

**PROGRAMMATIC SAFE HARBOR AGREEMENT
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITING WHITE RIVER SPRINGFISH, HIKO WHITE RIVER SPRINGFISH,
PAHRANAGAT ROUNDTAIL CHUB AND SOUTHWESTERN WILLOW FLYCATCHER
WITHIN PAHRANAGAT VALLEY, LINCOLN COUNTY, NEVADA**

This Safe Harbor Agreement (Agreement) is made and entered into on the 26TH day of September 2008, by and among the Nevada Department of Wildlife (Department); the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereinafter collectively called the "Parties." This Agreement will serve as a programmatic safe harbor agreement under which individual landowners ("Cooperators") will be enrolled through Cooperative Agreements. This Agreement follows the Service's Safe Harbor Agreement final policy (FR 64:32717) and final regulations (FR 64:32706), and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act (ESA). The State of Nevada enters into this agreement under authority of NRS § 501.351.

1. INTRODUCTION

The Safe Harbor program encourages proactive management to benefit endangered and threatened species by non-Federal landowners, by providing regulatory assurances that future property-use restrictions will not be imposed if those efforts attract endangered or threatened species to their enrolled property or result in increased numbers or distributions of listed species already present. This Agreement is a cooperative government/private effort to achieve biological goals for the covered species that are unlikely to occur on the enrolled property in the foreseeable future without such an Agreement. The Parties also intend the Agreement to demonstrate that conservation of endangered and threatened species is compatible with current land-use practices.

The purpose of this Agreement is to promote the conservation, enhancement of survival and recovery of the endangered fishes White River springfish, *Crenichthys baileyi baileyi*, Hiko White River springfish, *Crenichthys baileyi grandis*, and Pahrnagat roundtail chub, *Gila robusta jordani*, and the endangered Southwestern willow flycatcher, *Empidonax traillii extimus*, through the maintenance of, and where agreed upon by cooperators, enhancement of, habitat for those species on private and non-Federal lands. The distribution of these species or their habitats within Pahrnagat Valley, Nevada, is shown in Attachment 1. Under this programmatic Agreement, Cooperators will make habitat available to the covered species and will assist with maintenance and management of those species and their habitats on enrolled properties over a period of 30 years.

The Safe Harbor program encourages proactive conservation efforts by non-Federal landowners while providing them certainty that future property-use restrictions will not be imposed if those efforts attract covered species to their enrolled property or result in increased numbers or distributions of species already present. In return for voluntary conservation commitments, the Agreement will extend to the Department and Cooperators assurances allowing future alteration or modification of properties enrolled through certificates of inclusion back to their original

baseline conditions. Without this cooperative government/private effort, the enrolled lands would not otherwise be utilized by the species in the foreseeable future, or actions, which would enhance the survival and conservation of the species, would not occur.

When signed, this Agreement will serve as the basis for the Service and the Department to issue permits under ESA section 10(a)(1)(A), NRS §503.181 and 503.585, and NAC §503.093 that allow the incidental take of the included species. This Agreement will authorize the Department to enroll landowners (Cooperators) with certificates of inclusion under the Federal permit and State permit when Cooperators sign individual Cooperative Agreements that describe actions that will be taken to benefit the covered species. Thus, the Cooperators will be authorized for incidental take of covered species, and their progeny, that are introduced to the enrolled lands or have increased in numbers and/or distribution on those lands, above the baseline established in this Agreement and Cooperative Agreements as a result of the Cooperators' voluntary conservation activities. Although the Agreement and permits will authorize incidental take of the covered species associated with returning the enrolled property to its agreed-upon baseline condition, the Parties anticipate that this level of take will never be realized.

Incidental take is defined as take that is incidental to and not the purpose of, otherwise lawful activities and does not include shooting, capture or other direct take of animals or plants. Certificate of Inclusion issuance will not preclude the need for the Cooperator to abide by all other applicable Federal, State, and local laws and regulations that may apply.

2. COVERED SPECIES

2.1 COVERED SPECIES:

This agreement includes the White River springfish, *Crenichthys baileyi baileyi*, Hiko White River springfish, *Crenichthys baileyi grandis*, Pahrnagat roundtail chub, *Gila robusta jordani*, and Southwestern willow flycatcher, *Empidonax traillii extimus*, which are listed as endangered species under 16 USC 1533.

2.1.1. SPECIES DESCRIPTIONS

Five subspecies of the White River springfish *Crenichthys baileyi*, two of which are covered in this agreement, occur in isolated thermal spring systems along the pluvial White River system in eastern and southern Nevada (Williams and Wilde 1981). In general description *C. baileyi* are small (average 30 mm (1.2 in total length)), deep bodied fish that are generally olivaceous dorso-laterally and silver ventrally with two lateral rows of dark spots on the sides (USFWS 1998). Breeding males exhibit more intense coloration than females, with mid-dorsal markings becoming very dark (almost black) and contrasting with light, sometimes yellow, sides. The two rows of lateral spots differentiate all White River springfish subspecies from Railroad Valley springfish, *Crenichthys nevadae*, which have only one row of lateral spots. *C. nevadae* is the only other member of this genus which is unique to isolated thermal systems in Nevada.

White River springfish, *Crenichthys baileyi baileyi*, are moderately sized with many characteristics intermediate between the larger bodied Preston White River springfish and Hiko

White River springfish, and the smaller bodied Moorman White River springfish. Specific physical characteristics and the measurement of these characteristics that distinguish White River springfish from the other subspecies include a longer head and greater least bony interorbital (eye socket measurement) width than Preston White River springfish, longer anal to caudal length than Moorman White River springfish, and fewer fin rays than Hiko White River springfish and Moapa White River springfish (USFWS 1998). White River springfish that inhabit the outflow stream below Ash Springs exhibit some integration of the meristic (measurement of distinct physical characteristics) and color characteristics attributed to Hiko White River springfish.

Hiko White River springfish *Crenichthys baileyi grandis* differ from the other subspecies of White River springfish by their larger size (adults average longer than 40 mm, 1.6 in) and deeper coloration. The males are more yellow in color over the ventral surface of head and body, and become deep orange toward the caudal fin (USFWS 1998). Hiko White River springfish have longer heads than Preston White River springfish, and more dorsal and anal fin rays than Moorman White River springfish and Ash Springs White River springfish.

Pahranagat roundtail chub *Gila robusta jordani*:

The Pahranagat roundtail chub is taxonomically aligned with chubs of the Colorado River drainage (USFWS 1985). Early researchers granted the chub specific recognition; later authors have, however, recognized its similarity with other roundtail chubs and concluded that it is subspecifically distinct. *G. robusta jordani* is most similar to *G. robusta robusta* of the larger tributaries and mainstream Colorado River; differing from it by having typically more scales in, above, and below the lateral line, being less elongate, and being a greenish color with black blotches. This chub grows to a length of approximately 25 cm. It is elongate with a narrow caudal peduncle and a deeply cleft caudal fin.

Southwestern willow flycatcher *Empidonax traillii extimus*:

The Southwestern willow flycatcher is one of four subspecies of the willow flycatcher currently recognized. The willow flycatcher subspecies are distinguished primarily by subtle differences in color and morphology, and by habitat use. The southwestern willow flycatcher is generally paler than other willow flycatcher subspecies, and also differs in morphology, e.g., wing formula, bill length, and wing: tail ratio (USFWS 2002). These differences require considerable experience, training, and reference study skins to distinguish, and are not reliable characteristics for field identification. Evidence also suggests clinal variations in song form of the willow flycatcher (all subspecies). These variations may serve as another parameter to distinguish the subspecies, although variations within subspecies may occur as well.

2.1.2 SPECIES DISTRIBUTION AND STATUS:

White River springfish *Crenichthys baileyi baileyi*:

In the Pahranagat valley White River springfish are found throughout the Ash Springs source pool and outflow system with infrequent occurrences in the outflow stream known as the Pahranagat River or Pahranagat Ditch. Historically, White River springfish inhabited Ash Springs and its outflow stream and were considered common in these areas (USFWS 1998). The uppermost Ash Spring source pool is located on public (BLM) lands with the majority of

occupied suitable habitat on private lands. Current specific population estimates are not available for White River springfish but visual estimates have verified a resident population of at least several hundred individuals.

Hiko White River springfish *Crenichthys baileyi grandis*:

Historically the Hiko White River springfish was only found at two locations in Pahranaagat Valley; Crystal Springs, a large warm spring source and Hiko Spring, a smaller spring to the north of Crystal. Hiko Spring had a large population until 1963, when the outflow stream was modified for irrigation and mosquitofish, *Gambusia affinis*, were introduced. Shortfin mollies, *Poecilia mexicana*, and largemouth bass, *Micropterus salmoides*, were first observed in Hiko Spring in February 1965, after which the Hiko White River springfish population again declined (USFWS 1998). By 1967 Hiko White River springfish had been extirpated from Hiko Spring and its outflow stream. Despite the presence of nonnative fishes, including convict cichlids, *Cichlasoma nigrofasciatum*, and the replacement of the Hiko Spring outflow stream with a piped irrigation delivery system, Hiko White River springfish were reestablished in the Hiko Spring source pool in 1984. Recent monitoring indicates a resident population size of about 1,000 individuals (NDOW 2005a).

The second population of Hiko White River springfish in historic habitat exists at Crystal Spring. Springfish at this location primarily occupy a complex of spring pools in the upper spring source area. This site is also severely impacted by nonnative fishes, and the springfish at this location have maintained a population size of approximately 400 to 800 adult individuals based on recent monitoring efforts (NDOW 2005a). Springfish originally from Crystal Spring were cultured at the University of Nevada, Las Vegas in the 1980s, and the resultant progeny were the source for fish re-established in Hiko Spring in 1984 (USFWS 1998). A refugium population of Hiko White River springfish was successfully established at Blue Link Spring, in Mineral County, Nevada, in 1991 and this population was estimated at 6,991 adult fish in 2002 (NDOW 2005a).

Pahranaagat roundtail chub *Gila robusta jordani*:

The Pahranaagat roundtail chub is endemic to thermal waters in the Pahranaagat Valley (USFWS 1985). Precise historic distribution within these waters is uncertain because the species was not collected prior to the late 1800's, long after aquatic habitats in the area were significantly altered. However, collections made in the late 1940's, and its present distribution, indicate that the species existed in outflows from Crystal, Hiko, and Ash Springs, and in the Pahranaagat River. Early and recent investigations, and consideration of those habitats preferred by its closest relatives, indicate that this chub preferentially occupies flowing water systems rather than spring source areas. The amount of historically occupied habitat is estimated to have totaled approximately 42 kilometers (km) of stream, including the three springs and their outflows, the Pahranaagat River, and a small, unnamed lake at the downstream end of the river.

Current known distribution of the Pahranaagat roundtail chub in the wild is limited to an approximately 3/4-mile reach of the Pahranaagat River (Ditch) below the Ash Springs outflow on private property (USFWS 1985). It has not been observed in either Crystal or Hiko springs since the early 1950s, and suitable lotic habitats at both those locations have been severely reduced or eliminated. Presumed distribution within the Pahranaagat River (Ditch) is reduced from that found historically because much of the former river channel has been lined with concrete to facilitate

irrigation, or lost as a result of agricultural development. Approximately 2,300 meters of an earthen reach of the Pahrnagat River (Ditch) immediately downstream from Ash Springs was inhabited by less than 50 adult chubs in 2001. Surveys completed in spring 2006 (the first since fall 2001) observed a small number of adult and juvenile chub but poor underwater visibility precluded an accurate total population estimate.

A refugium population of chub is maintained at Dexter National Fish Hatchery and Technology Center (NFH) in Dexter, New Mexico, which was established using individuals collected from the wild in Pahrnagat Valley. A refugium population of chub was also established at Key Pitman State Wildlife Management Area in Pahrnagat Valley in 2004, with the transfer of approximately 2,400 chub from Dexter NFH through spring 2005. Evaluation of that refugium project is ongoing (NDOW 2005a).

Southwestern willow flycatcher *Empidonax traillii extimus*:

The historic breeding range of the southwestern willow flycatcher included southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and extreme northwestern Mexico (USFWS 2002). The flycatcher's current range is similar to the historical range, but the quantity of suitable habitat within that range is much reduced from historical levels. The flycatcher occurs from near sea level to over 2600 m (8500 ft), but is primarily found in lower elevation riparian habitats (USFWS 2002). Throughout its range, the flycatcher's distribution follows that of suitable riparian habitat; relatively small, isolated, widely dispersed locales in a vast arid region. Studies have found that 53% of southwestern willow flycatchers were in just 10 sites (breeding groups) range wide, while the other 47% were distributed among 99 small sites of 10 or fewer territories. The historic status of the flycatcher at its range limit in southern Nevada is unclear; reports show only three records, all before 1962. Recent investigations (1997-2005) have verified breeding flycatchers on the Virgin and Muddy Rivers, Ash Meadows NWR, Meadow Valley Wash, and the Pahrnagat River drainage (USFWS 2002; NDOW 2005b).

2.1.3 THREATS TO THE SPECIES:

White River springfish *Crenichthys baileyi baileyi*:

Threats to White River springfish include small population size, competition and predation by introduced nonnative aquatic species including mosquitofish, convict cichlids, mollies *Poecilia* sp., bullfrogs *Rana catesbeiana* and crayfish *Procambaris* sp.; unregulated recreational use in occupied habitats; water level regulation and alteration; and modifications and alterations to occupied aquatic habitats.

Hiko White River springfish *Crenichthys baileyi grandis*:

Threats to Hiko White River springfish include small population size, competition and predation by introduced nonnative aquatic species including mosquitofish, convict cichlids, mollies, bullfrogs and crayfish; unregulated recreational use in occupied habitats; livestock grazing practices; the presence of invasive plant species; water level regulation and alteration; and modifications and alterations to occupied aquatic habitats including the permanent loss and modification of spring outflow habitats.

Pahranagat roundtail chub *Gila robusta jordani*:

Threats to the Pahranagat roundtail chub include small population size, competition and predation by introduced nonnative aquatic species including common carp *Cyprinus carpio*, convict cichlids, mollies, bullfrogs, crayfish and the snail *Melanoides* sp.; livestock grazing practices; the presence of invasive plant species; water level regulation and alteration including seasonal diversion of flows for irrigation; and modifications and alterations to occupied aquatic habitats including the permanent loss and modification of spring outflow and lotic riparian and stream habitats. Specific reasons for recent observed declines in numbers of chub in occupied habitats are unclear, but may be partially related to changes in seasonal irrigation practices which have had an effect on warm-season thermal characteristics of those occupied habitats.

Southwestern willow flycatcher *Empidonax traillii extimus*:

On a range-wide basis, principal threats to the southwestern willow flycatcher include: loss and modification of riparian nesting habitat, reductions in water flow, interruptions in natural hydrological events and cycles, physical modifications to streams, and direct removal of riparian vegetation; surface water diversions and groundwater pumping for agricultural, industrial, and municipal uses; physical manipulation of stream courses including channelization, bank stabilization, and removal of riparian vegetation; overgrazing by domestic livestock; concentrated recreational use in riparian areas; depredation by other species and nest parasitism by brown-headed cowbirds (*Molothrus ater*); and catastrophic fire in riparian habitats causing changes in riparian plant density and species composition (USFWS 2002).

2.1.4. SPECIES RECOVERY NEEDS:

White River springfish *Crenichthys baileyi baileyi*:

White River springfish conservation and recovery are dependent on the maintenance and enhancement of Ash Springs habitats. The spring pools have been enlarged for past recreation developments which has altered these habitats and benefited the nonnative fishes at the expense of the springfish, and introduced fish species (primarily aquarium fish) occur throughout the spring source pools and outflow. Restoration of the spring and outflow habitats to more natural conditions would increase flow velocity and provide enhanced habitat conditions for the springfish. Continued nonnative fish control will be an element of any conservation strategy. Conservation strategies for *C. b. baileyi* habitats will need to include consideration for accommodating recreation activities on the public and private land segments of the spring outflow.

Conservation measures may include, but are not limited to:

- Reducing the size of spring pools to more natural dimensions
- Active restoration of degraded springbrook outflow habitats including physical restoration of habitat attributes
- Nonnative animal species trapping and control efforts
- Control of invasive weed and plant species
- Providing recreational activities off-site to reduce bank erosion caused by wave action

Hiko White River springfish, *Crenichthys baileyi grandis*:

Hiko White River springfish conservation is dependent on the maintenance and enhancement of Crystal and Hiko Spring habitats. These spring source pools and the Crystal Spring main outflow stream are key habitats that have been significantly altered from historic conditions and may have potential for restoration. The Crystal outflow is currently inhabited, almost entirely, by nonnative species and the channel is wide and unsuitable for native fish. Introduced animal and plant species are abundant at Hiko and Crystal Springs. Controlling or eliminating nonnative species would significantly contribute to the recovery of these Hiko White River springfish populations. Trapping is currently being used to control nonnative fish, crayfish and bullfrogs at both locations with limited success. Other methods of control and eradication of nonnative species should be investigated and implemented where feasible. Any restoration actions on the habitats at Hiko or Crystal Springs will need to accommodate existing legal water rights and diversions for agriculture and must be done in cooperation with private landowners to ensure that their needs are accommodated.

Conservation measures may include, but are not limited to:

- Restoring spring pool habitats to approximate historic conditions
- Active restoration of degraded springbrook outflow habitats including physical restoration of habitat attributes and negotiated changes to flow timing and amounts
- Nonnative animal species trapping and control efforts
- Control of invasive weed and plant species
- Curtailling illegal recreational use
- Modifications to livestock grazing practices

Pahranagat roundtail chub *Gila robusta jordani*:

Recovery of the Pahranagat roundtail chub depends on the restoration and maintenance of lotic habitats. Key habitat elements include year-round stream flow of suitable temperature and volume and structural attributes to maintain appropriate drift feeding and shelter areas for juvenile and adult chub. Nonnative species control is another recovery need although this may be a less critical element for chub at this time compared to springfish species. Lotic habitats in Pahranagat Valley occur almost entirely on private lands and would require varying degrees of restoration. The development of conservation agreements to enroll private landowners under this agreement will be key in securing these historic habitats from current and future threats. A recent effort to establish a new refuge population, from a stock which is maintained at the Dexter National Fish Hatchery in New Mexico, on State land was successful, but the reservoir habitat is not ideal. Additional refuge populations on public or private lands in Pahranagat Valley may be appropriate as interim recovery actions but the maintenance and reestablishment of historic or development of new populations in lotic environments will continue to be the primary need for effective recovery of this species. Additional information on life history characteristics and specific habitat requirements and preferences is also required.

Conservation measures may include, but are not limited to:

- Coordinating with upstream water users to stabilize the flow regime in the river/ditch
- Controlling nonnative plant and animal species
- Modifications to livestock grazing practices

Southwestern willow flycatcher *Empidonax traillii extimus*:

Recovery for the southwestern willow flycatcher will entail a variety of actions to protect, improve and expand existing habitat. Exclusions or seasonal restrictions on livestock grazing from willow habitat patches along riparian corridors by fencing of the patches and creating a reasonable buffer around each patch prevents damage to the riparian area by cattle and allows willow stands to achieve the necessary canopy densities for flycatcher use (USFWS 2002). These areas would also allow for the extension of the habitat as the willows fill in the fenced area. Cooperative efforts to provide seasonal flooding of riparian habitats will promote insect production, and the aggressive control and/or removal of certain undesirable nonnative, invasive plant species such as Tamarisk and Russian olive and replacement with new willow plantings could also be elements of restoration strategies on individual sites within the valley.

Conservation measures may include, but are not limited to:

- Fencing or other strategies to protect key habitat patches
- Modifications to livestock grazing practices
- Managing willow patches to maintain appropriate seral stage and canopy density
- Maintenance of seasonal flooding or high soil moisture through pasture and irrigation management strategies
- Control of invasive, nonnative plant species

2.2 IMPORTANCE OF PRIVATE LANDS:

White River springfish, *Crenichthys baileyi baileyi*:

Approximately 80 per cent of the known historic range and occupied habitat for this springfish subspecies occurs on private lands. Private lands conservation efforts are essential to develop and implement effective conservation and recovery measures.

Hiko White River springfish *Crenichthys baileyi grandis*:

Within Pahrnagat Valley 100 percent of the known historic range and occupied habitat for this springfish subspecies occurs on private lands. Blue Link Spring in Mineral County, Nevada, is on public lands but maintains a refuge population of the subspecies outside of known historic range. Private lands conservation efforts are essential to develop and implement effective conservation and recovery measures.

Pahrnagat roundtail chub *Gila robusta jordani*:

The only known wild population of Pahrnagat roundtail chub occurs entirely on private lands, as do the majority of historic, unoccupied habitats which have potential for restoration and repatriation of chub. Additional habitats which have potential for extant chub occupancy are located primarily on private lands as are areas of potential habitat which may not have historically contained chub. Existing and potential refuge sites are located on public lands but these sites do not have the potential to develop lotic habitats necessary for chub recovery. Private lands conservation efforts are essential to develop and implement effective conservation and recovery measures.

Southwestern willow flycatcher *Empidonax traillii extimus*:

Key Pitman Wildlife Management Area and the Pahranaagat National Wildlife Refuge contain occupied and potential southwestern willow flycatcher habitat; however, over 80 percent of the floodplain lands which contain suitable or potential riparian habitats to support flycatchers are privately owned. Private lands in Pahranaagat Valley have significant potential for maintenance or development of larger blocks of suitable vegetation and substrate types necessary to maximize benefits for this species. Cooperative efforts with private landowners to remove or control invasive plant species and replace them with native willow species, and continuation of current flood irrigation practices, will be an important element of any local recovery strategy and will be essential to maintain suitable long-term flycatcher habitat on both private and public lands. Private lands conservation efforts are essential to develop and implement effective conservation and recovery measures for this species in Pahranaagat Valley.

3. DESCRIPTION OF ENROLLED PROPERTY

The enrolled property is the area over which Safe Harbor assurances apply and on which incidental take of the covered species is authorized. The Parties reasonably expect the covered species may occupy all or a portion of habitats on enrolled properties as a result of management actions undertaken through this Agreement. This agreement will cover those properties that have existing, historic or potential suitable habitat for the covered species within Pahranaagat Valley, Lincoln County, Nevada. Such habitats may include reliable and protected water supplies and water quality, limited or controllable public access, accessibility for management actions and fish stocking/removal, permanent ponds with a minimum depth of 5 feet, natural springs, spring outflows or reaches of river that represent suitable habitat for any of the named fish species, and riparian terrestrial habitats incorporating gallery woodlands and/or willow patches that may or may not currently support flycatcher breeding populations. An enrolled property may include all or some combination of suitable habitat types, or the potential to create those habitats. A Cooperative Agreement will be completed and signed for each property to be enrolled. Each Cooperative Agreement will include a map of the property and its legal location, a description of the existing biological community including sensitive or protected species if any, the portion of the property to be enrolled and its acreage, and a description of the habitat types found on the portion of the property to be enrolled including an accurate description of ponds or other aquatic habitats and their characteristics or sections of riparian corridor that may support flycatchers. In addition, current land-use practices and existing development, and expected land-use changes and development will be described.

4. BASELINE DESCRIPTION

The baseline for each landowner signing a Cooperative Agreement is the number of individuals of the named species on the property and/or the amount of occupied, suitable habitat. For those properties where facilities are provided for the establishment of refuge populations and do not otherwise contain covered species habitat or those properties that do not contain occupied seasonal or permanent habitat at the time of enrollment, the baseline will be assumed to be zero

for covered species. Each Cooperative Agreement will specify the baseline for each species and included habitats for the particular property covered under that Cooperative Agreement. The format for a Cooperative Agreement is shown in Attachment 2.

5. RESPONSIBILITIES OF THE PARTIES

The responsibilities of the Cooperators will be detailed on each Cooperative Agreement, but at a minimum will include the responsibilities detailed on the draft Cooperative Agreement (Attachment 2). In addition to the following stipulations, the Parties will work cooperatively on other issues as necessary to further the purposes of the Agreement. Moreover, nothing in this Agreement shall limit the ability of Federal and State conservation authorities to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

Specific responsibilities of Parties to this Agreement are as follows:

Department:

- a. Department agrees to hold Federal and State permits and to enroll landowners who express interest in the program and who have potentially suitable habitat for covered species on their land. Department will develop Cooperative Agreements with such landowners, will process and sign Cooperative Agreements, and will issue landowners with a Certificate of Inclusion under the Federal and State permits (Attachment 3).
- b. Provide Service with copies of finalized Cooperative Agreements and Certificates of Inclusion prior to their execution.
- c. Meet with Cooperators on at least an annual basis and may visit enrolled properties for the purposes of compiling an annual report (as described in Section 10.3) on actions taken through this Agreement, on the numbers or distribution of the covered species on enrolled lands, on the condition and quality of existing or enhanced habitats on enrolled lands, and on any take of the covered species that has occurred on properties enrolled under this Agreement.
- d. Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.
- e. Ensure Cooperators are implementing the terms of the Agreement.
- f. Provide Cooperators with information on the included species biology and management needs and a handout on handling injured covered species and the covered species carcasses.
- g. Inform the Service of any known covered species mortalities or injuries within five working days of receiving notice from a Cooperator of the covered species mortalities or injuries.

- h. Carry out habitat management and enhancement activities as required by specific Cooperative Agreements.
- i. Conduct compliance and biological monitoring, as described in Section 10 of this Agreement and provide completed reports that describe the findings of monitoring activities to the Service.
- j. If warranted, recommend procedures the Cooperators can take to avoid future take based on any take described in past annual reports.
- k. Work with the Service on potential baseline adjustments, new management actions, and adaptive management plans as necessary.
- l. Provide to the Service an annual report providing information on biological and compliance monitoring and the contribution of enrolled properties to the success of recovery activities for covered species.
- m. Provide copies of all draft CAs to the Service for review and concurrence with the recommended activities/actions, baselines, and biological assessments. The Service will provide comments within 15 business days or less of receiving a draft CA. If no comments are received during this period, NDOW may proceed to finalize the CA.

Service:

- a. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue a permit to the Department in accordance with ESA section 10(a)(1)(A) authorizing incidental take of the covered species as a result of lawful activities within the enrolled property. The term of the permit will be 30 years except as otherwise provided by this Agreement.
- b. Provide technical assistance to the Department, to the maximum extent practicable, when requested, and provide information on Federal funding programs that the Department can provide to Cooperators.
- c. Ensure the Department is implementing the terms of the Agreement.
- d. Assist the Department with biological monitoring and management activities if assistance is requested.
- e. If warranted, recommend procedures the Department can suggest to Cooperators to avoid future take based on any take described in past annual reports.
- f. Work with the Department on potential baseline adjustments, new management actions, and adaptive management plans as necessary.

g. Review and concur on all draft Conservation Agreements and provide comments to NDOW within 15 business days or less.

6. MANAGEMENT ACTIVITIES FOR COVERED SPECIES

The primary objective of this Agreement is to aid in the recovery of the covered species and to assist in the re-establishment of wild populations of those species that in some situations may become self-sustaining. In order to accomplish this, it is essential that private landowners, the Service, and the Department work together to provide good habitat and positive stewardship for sites. Management activities that are undertaken through Cooperative Agreements will result in additional areas being available as protected habitats. Although specific planned conservation measures will vary depending on the individual enrolled property, its condition and restoration/enhancement needs, and the species present, a general description of conservation measures that will be applied to these habitats is provided in section 2.1.4.

The Service or the Department may choose, solely at its discretion, to remove any or all covered species from an enrolled property in excess of baseline levels. Additional management actions may be carried out on enrolled properties to enhance or improve covered species habitats and will be conducted by the landowner and/or the Department as specified in the Cooperative Agreement. The net effect of these management activities will be to increase the quality and acreage of habitats. Specific management actions that will be implemented are detailed on the draft Cooperative Agreement (Attachment 2) as described under Section 5, Responsibilities of the Parties.

Nothing in this Agreement prevents a Cooperator from implementing management activities not described in the Agreement, as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. As long as a Cooperator implements the agreed upon conservation measures and maintains baseline responsibilities on their enrolled lands, the Cooperator may develop, farm, ranch, graze, irrigate, conduct commercial or non-commercial recreational activities or make any other lawful use of the enrolled property, subject to any mutually agreed restrictions within the Cooperative Agreement, even if loss of covered species or occupied habitat above the established baseline levels occurs. The Cooperator will notify the Department 30 days in advance of any activities reasonably anticipated to result in the loss of species individuals or occupied habitat. The notification will allow the Department an opportunity to capture and relocate the affected individuals, thereby minimizing the impact of the authorized take.

Emergency situations arising from natural disasters (e.g., hurricanes, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of certain land management actions that may result in take of covered species. The Cooperator will notify the Department within 10 working days of such a situation, and will make reasonable accommodations to the Department and/or the Service for survey and/or relocation of covered species prior to initiation of the land management action. The Department and the Service acknowledge that survey and/or relocation may be impossible in certain urgent situations.

Cooperative Agreements will grant to the Department and to the Service, after reasonable prior notice, the right to enter the Cooperator's property for the purpose of ascertaining compliance with the Agreement and for monitoring aquatic habitat quality, censusing, removing, and relocating species, as well as other measures that may be necessary. In addition, the Department will complete in coordination with Cooperators and submit an annual report of activities related to species management to the Service, and other reports as required by the Agreement.

7. NET CONSERVATION BENEFIT

The biological goal of this Agreement is to aid in the conservation and recovery of covered species within their native range in the Pahranaagat Valley by protecting and augmenting existing habitat and creating new habitat for the covered species. For as long as management activities are carried out, or the habitat they create persists, enrolled lands will benefit the conservation of covered species. The majority of habitats in Pahranaagat Valley essential for recovery and conservation of the covered species occur on private lands. Without this cooperative government/private effort, a Cooperators' enrolled properties are unlikely to support a population increase of the covered species or a population of those species if they do not now occur on the enrolled lands, and may not continue to support populations of those covered species in the future where they now occur. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the authorized take, will provide a net conservation benefit to covered species.

The Parties anticipate this Agreement will result in an increased number and/or distribution of the covered species, and/or an increase in the total area of occupied suitable habitat, within the enrolled lands. Based upon the probable species' response time, the Service estimates it will take 3 years of implementing the planned conservation measures to fully reach a net conservation benefit for White River springfish and Hiko White River springfish, 5 years for Pahranaagat roundtail chub, and 5 years for southwestern willow flycatcher. Some level of benefit would likely occur within a shorter time period. Without this cooperative government/private effort, these lands would not otherwise aide in increasing the populations of the covered species, or the available quantity or quality of suitable habitat for those species, in the foreseeable future. The Agreement will also provide an example of a mutually beneficial relationship between government agencies and a private landowner to benefit endangered and threatened species, and evidence that such species can coexist with current land-use practices. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the authorized take, will provide a net conservation benefit to the species.

Cooperators will voluntarily manage the enrolled lands to produce a cumulative net conservation benefit to the covered species, by implementing conservation measures to maintain or increase species populations and/or enhance, restore and maintain suitable habitat. The net conservation benefit will be sufficient to contribute, directly or indirectly, to recovery of the covered species, after taking into account the lengths of the Cooperative Agreements and any off-setting adverse effects of authorized take. Although the Cooperative Agreements may not permanently conserve or recover species populations or their habitats, they provide for important short- and mid-term benefits to the species, including but not limited to the following: maintenance, restoration and

enhancement of habitat; maintenance and increase of population numbers and distributions; insurance against catastrophic events; and creation of areas for testing and implementing new conservation strategies.

The actions proposed under this Agreement are of limited duration making the Agreement's benefits appear transitory. However, the habitat maintained through this Agreement will not necessarily cease to exist upon expiration or termination of the Agreement because Cooperators may not choose to bring enrolled properties back to baseline at that time or any other time in the future. If new landowners continue to enroll under this Agreement over an extended period of time, the effect will be to have new land parcels coming under Cooperative Agreements while other Cooperative Agreements may expire. The net effect will be a shifting matrix of land being maintained for covered species conservation, with a net beneficial impact upon the existing baseline.

8. AGREEMENT AND PERMIT DURATION

Except as otherwise provided by this Agreement, the Agreement, including the obligations of the Parties and any commitments related to funding, will be in effect for 30 years following the date of its signing by the Parties. The rights to take will hold for the duration of the Federal and State permits. Except as otherwise provided by this Agreement, the Federal section 10(a)(1)(A) permit authorizing incidental take of the covered species will have a duration of 30 years from its effective date, and the State permit authorizing incidental take of the covered species will have a duration of 30 years from its effective date. The Permits extend beyond the life of the Agreement to allow the Cooperators the opportunity to defer take when the Agreement expires, thereby continuing species conservation and extending the net conservation benefit. The Agreement and Permits may be extended beyond their specified durations through amendment, with concurrence of both Parties. Given the probable species response time to the planned conservation measures, the Parties estimate it may take two [2] to five [5] years of implementing the Agreement to fully reach a net conservation benefit for the species, depending on the enrolled property, although some level of benefits will likely occur within a shorter time period. The 30-year duration of this Agreement is considered sufficient to restore and maintain terrestrial and aquatic habitats for included species on properties enrolled through Cooperative Agreements at a level that will substantially augment and assist recovery efforts for those species. The 30-year permit term will be advantageous to the Parties because of the potential that additional properties suitable for the maintenance or restoration of important aquatic and terrestrial habitats could be identified over the term of the permit and enrolled for conservation purposes under Cooperative Agreements and Certificates of Inclusion.

The Department may enroll Cooperators under Cooperative Agreements at any time from the date this Agreement is signed until 10 years before it terminates. Obligations under Cooperative Agreements will be in effect variable lengths of time depending on the property covered and the desire of the Cooperator and the Department, but the minimum duration of obligations will be for 10 years from the date each Cooperative Agreement is signed. Upon signing of a Cooperative Agreement the Department will issue a Certificate of Inclusion to a Cooperator authorizing the incidental take of covered species on the Cooperator's lands. The Certificate of Inclusion will

authorize incidental take of covered species for the remaining duration of the 30-year term of the Permits at the time the Certificate of Inclusion is issued. Incidental take authorization extends beyond the duration of each Cooperative Agreement to allow the Cooperator the opportunity to defer take beyond the expiration of the Cooperative Agreement, thereby promoting covered species conservation and extending the net conservation benefit for a longer duration.

9. TAKE

Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of federally listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities.

Under the terms of this Agreement, the Cooperators are authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or occupied habitat of covered species below the established baseline conditions. The permits will authorize take of covered species and their progeny resulting from lawful activities within the enrolled property, from the time this Agreement is signed until expiration of the permits. Such uses may include, but are not limited to: building or fence construction, gardening, forestry, hunting, farming, irrigating, grazing, mowing, maintenance of landscaping and recreational facility infrastructure, commercial and non-commercial recreational activities or cultivation of agricultural crops. The Cooperators may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of included species or loss of occupied habitat in excess of baseline amounts.

In addition to establishing a property's baseline, each Cooperative Agreement will detail the take of above-baseline individuals that is likely to occur. Implementation of this Agreement is expected to result in increased numbers of covered species in excess of the enrolled property's established baseline population. No loss of the existing baseline population is authorized by the Certificates of Inclusion issued in conjunction with the Agreement. Thus, the maximum net impact of take authorized under the Safe Harbor program is a return to initially established baseline conditions, which would not adversely impact covered species.

To return the enrolled property to baseline conditions, a Cooperator must demonstrate that the agreed-upon baseline conditions were maintained and the activities identified in the Agreement as necessary to achieve a net conservation benefit were carried out for the duration of the Agreement. If expansion in population numbers or occupied habitat occurs, at the end of the permit term a Cooperator may take species individuals or occupied habitat in excess of the original baseline before the permit expires, to avoid accruing additional take liability under the ESA. However, no species or habitat will be impacted until the Cooperator has given the Department a 30-day prior notice to relocate any remaining species individuals from the area to be impacted.

10. REPORTING AND MONITORING

10.1. COMPLIANCE MONITORING: The Department, possibly with the assistance of the Service, may visit enrolled properties to ensure compliance with this agreement, including any obligations of Cooperators under Cooperative Agreements and maintenance of baseline responsibilities. Cooperative Agreements will grant the Department, after reasonable prior notice to the Cooperator, the right to enter the enrolled lands to ascertain compliance with the Agreement.

10.2. BIOLOGICAL MONITORING: Following the placement of covered species on enrolled lands or when covered species are otherwise known to be present the Department, possibly with the assistance of the Service, will monitor covered species by visiting occupied enrolled lands at least semi-annually to ascertain the number and characteristics of covered species present including an assessment of nesting and breeding success and to monitor aquatic and terrestrial habitat quality.

10.3. ANNUAL REPORT: The Department must compile, and the respective Cooperator must assist with the compilation of, an annual report on the implementation of this Agreement. Annual reports will cover the period from July 1st to June 31st each year and are due October 1st of each year. Copies will be made available to the Service and the relevant Cooperator(s). The report will list all of the properties that are enrolled through Cooperative Agreements under this Agreement and their legal descriptions, current ownership, and presence or absence of covered species on each property including when that presence or absence was determined. The report will include copies of all Certificates of Inclusion and the associated Cooperative Agreements executed during the reporting period. This annual report will include information on the results of biological and compliance monitoring including; overall status of covered species, numbers of covered species stocked into individual ponds or aquatic habitats or removed for release to the wild by enrolled property, management activities related to covered species and occupied habitats, maintenance of baseline conditions, and any incidental take of covered species on lands covered by Cooperative Agreements signed under this Agreement. The report will include an assessment of the contribution of enrolled properties to the success of recovery activities for covered species through the augmentation of wild and refugium populations of those species.

10.4. ADAPTIVE MANAGEMENT: Adaptive management allows for mutually agreed-upon changes to the Agreement's conservation measures in response to changing conditions or new information. If the expected results of the conservation measures appear ineffective, management activities can be changed or alternative activities undertaken to achieve those results. Decisions related to adaptive management will be based primarily on an evaluation of the compliance and biological monitoring results detailed in the annual reports.

Adaptive management decisions can be made at any time as deemed necessary by the Department and the Service, however, a major evaluation of this Agreement will be carried out after the fifth annual report is submitted, to ensure that it is achieving its conservation goals. Management activities will be evaluated as to whether they are providing appropriate levels of avoidance of incidental take and resulting in the protection of covered species and habitats at a level appropriate to maintain baseline conditions, and if desired enhancements to baseline

conditions for covered species and habitats are occurring as identified in individual landowner Conservation Agreements. If protections and enhancements of covered species and habitats on enrolled lands are insufficient to meet the objectives of this agreement or individual cooperator Conservation Agreements, based on annual site performance evaluations, the Parties will assess reasons for that lack of performance and may recommend changes in management actions and strategies with the concurrence of enrolled cooperators. The evaluation will also include an assessment of incidental take that has occurred to determine if high levels of ongoing take that may have occurred on individual enrolled properties may be prevented or reduced through modifications to management practices for aquatic and terrestrial habitats or on adjacent lands.

If existing Cooperators agree to alter their Cooperative Agreements then any modification of their responsibilities in relation to adaptive management will be addressed on a case-by-case basis. Strategies to reduce incidental take, if necessary, will be reviewed with individual Cooperators and implemented where appropriate on a voluntary basis.

11. FUNDING

The responsibilities of the Department under this Agreement, to monitor enrolled properties and carry out biological monitoring and management of covered species, will be funded by the Department using existing grants, State of Nevada General Fund Appropriations, new federal grants and other sources. The responsibilities of the Service under this Agreement will be funded by the Service. Management activities undertaken by Cooperators will be paid for by the Cooperators undertaking those activities, unless otherwise agreed to under individual Cooperative Agreements.

12. MODIFICATIONS

After execution of this Agreement, the Service and the Department may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5).

12.1. MODIFICATION OF THE AGREEMENT: This Agreement may be modified to accommodate changed circumstances as provided by 50 CFR 13.23. Any Party may propose modifications or amendments to this Agreement by providing written notice to the other Parties and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other Parties' written concurrence. Any modifications to this Agreement will not affect Cooperators' responsibilities under existing Cooperative Agreements.

12.2. AMENDMENT OF THE PERMIT: The permits may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, the Service's permit regulations at 50 CFR 13 and 50 CFR 17, and the State of Nevada's regulations at NRS § 503. Any Party may propose amendments to the Permits by providing written notice to the other Parties. Such notice shall

include a statement of the proposed amendment, the reason for it, and its expected results. The Parties will make their best efforts to respond to proposed modifications within 90 calendar days of receiving the notice. Proposed amendments will become effective upon fulfillment of the legal requirements stated above. Any amendments to the Agreement will not affect Cooperator's responsibilities under existing Cooperative Agreements.

12.3. MODIFICATION OF COOPERATIVE AGREEMENTS: The Department or a Cooperator may propose modifications or amendments to a Cooperative Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties to a Cooperative Agreement will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other party's written concurrence.

12.4. BASELINE ADJUSTMENT TO COOPERATIVE AGREEMENTS: Unforeseen circumstances could involve habitat impacts resulting from catastrophic (*force majeure*) events such as hurricanes, rainstorms, severe drought, lethal forest fires, or insect/disease epidemics. Such events are beyond the reasonable control of, and did not occur through, the fault or negligence of the Department or the Cooperator, including but not limited to "acts of God" or sudden actions of the elements such as those described above. Such catastrophes could either locally destroy the species populations or render the habitat unsuitable, thereby reducing population numbers or occupied acreage below the original baseline conditions. For such circumstances beyond the control of the Department or the Cooperator, the Parties may agree to revise the Cooperative Agreement's baseline conditions to reflect the new circumstances, rather than terminate the Cooperative Agreement.

12.5. TERMINATION OF THE AGREEMENT: The Department will not terminate this Agreement before its expiration 30 years following approval. As provided for in Part 12 of the Service's Safe Harbor Policy (FR 64:32717), Cooperators may terminate implementation of their Cooperative Agreements before their expiration date for circumstances due to uncontrollable circumstances. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained. A Cooperator may terminate their Cooperative Agreement due to circumstances beyond the Cooperator's control upon 90 calendar days' prior written notice to the Department and the Service. Cooperators must provide the Department and the Service the opportunity to relocate covered species within 60 calendar days of receiving that notice. The Cooperator also may terminate their Cooperative Agreement at any time for any other reason, but termination for reasons other than uncontrollable circumstances such as those associated with a *force majeure* event shall extinguish the Cooperator's authority to take covered species, and the Cooperator must relinquish their Certificate of Inclusion to the Department.

12.6. PERMIT SUSPENSION OR REVOCATION: The Service may suspend or revoke the Federal permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if

continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service would exercise all possible measures to remedy the situation. The Department may suspend or revoke the State permit for cause pursuant to NRS § 503.585 and NAC § 503.093.

12.7. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION: The Department may suspend or revoke a Cooperator's Certificate of Inclusion if a Cooperator has breached their obligations under a Cooperative Agreement and has failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the Cooperative Agreement will achieve its stated goals.

12.8. REMEDIES: Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

12.9. DISPUTE RESOLUTION: The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

13. ADDITIONAL MEASURES

13.1. NEIGHBORING LANDS: Because of the distribution and potential connectivity of habitats suitable for covered species in Pahrangat Valley, the potential exists that suitable habitat on neighboring private ownerships could be colonized by animals from adjacent properties covered under individual landowner Cooperative Agreements and Certificates of Inclusion to this Agreement. Non-participating private landowners are not covered under the take permit associated with this Agreement. If voluntary conservation actions by a Cooperator result in listed species occupying adjacent properties, the Parties will use the maximum flexibility allowed under the ESA to address neighboring properties under the Agreement and associated take permit. The Parties' potential actions include, but are not limited to, granting take authority to owners of neighboring lands where occupation is expected as a result of the Agreement. Implications to neighboring landowners with non-enrolled lands will be determined on a case-by-case basis. In general, the Parties will make every effort to include the neighboring landowner as a Cooperator to this or a separate agreement and permit. A separate agreement could require, for example, the Parties to enter the adjacent property and remove any species individuals for relocation elsewhere.

13.1. SUCCESSION AND TRANSFER: This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, in accordance with applicable Federal regulations (50 CFR 13.24 and 13.25). The rights and obligations under this Agreement and any Cooperative Agreements shall run with the ownership of the enrolled properties and are transferable to subsequent private property owners pursuant to 50 CFR 13.25. A Certificate of Inclusion issued to a Cooperator also will be extended to the new owner. The Cooperator shall notify the Department of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that the Department can attempt to contact the new owner,

explain the baseline responsibilities applicable to the property, and explain the terms and conditions of the Cooperative Agreement. By becoming a party to the original agreement and permit, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner at the original baseline. The new owner(s) also will have the option of receiving Safe Harbor assurances by signing a new Cooperative Agreement and receiving a new Certificate of Inclusion.

13.2. AVAILABILITY OF FUNDS: Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

It is understood that all funding commitments made under the Agreement are subject to budget authorization and approval by the appropriate agency or government appropriation.

13.3. RELATIONSHIP TO OTHER AGREEMENTS: This agreement is intended to complement other conservation activities for wildlife, which may be occurring or may occur in the future on enrolled properties. Nothing in this agreement shall preclude the development between the Parties or between the Department or Service and Cooperators of cooperative agreements for activities under Partners for Fish and Wildlife, the Landowner Incentives Program, the Wetlands Incentive Program, or similar conservation programs unless such activities are in conflict with the objectives and implementation of this agreement.

13.4. NO THIRD-PARTY BENEFICIARIES: This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

13.5. OTHER LISTED SPECIES, CANDIDATE SPECIES, AND SPECIES OF CONCERN: The possibility exists that other listed, proposed, or candidate species, or species of concern may occur in the future on lands enrolled in the Agreement as a direct result of a Cooperator's voluntary conservation actions. If biological surveys determine this Agreement will provide a net conservation benefit to any such species or their potential habitat, the Parties may agree to amend the Agreement and permit to cover additional species, at the Department's request.

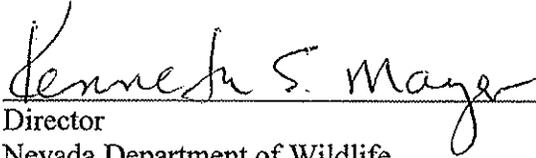
If federally designated candidate species should occur on enrolled properties, the Service will recommend measures for including them in a joint Safe Harbor Agreement/Candidate Conservation Agreement with Assurances to contribute toward the conservation of those species. If appropriate measures are included in such an agreement, the Service, consistent with its "No Surprises" policy, will not impose additional requirements on the Department or Cooperators as a result of any such species later being listed as threatened or endangered.

13.6. NOTICES AND REPORTS: Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Director
Nevada Department of Wildlife
1100 Valley Road
Reno NV 89512

Field Supervisor
U.S. Fish and Wildlife Service
1340 Financial Blvd., Suite 234
Reno NV 89502

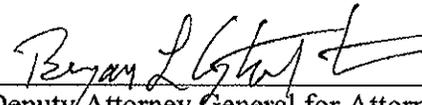
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit.



Director
Nevada Department of Wildlife

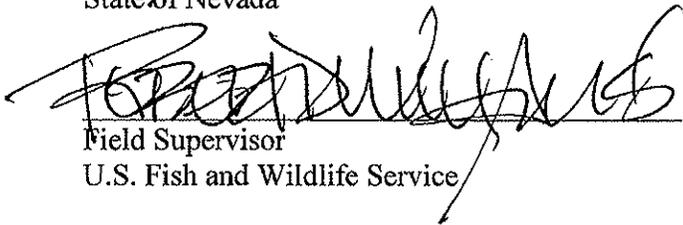
10/1/08
Date

APPROVED AS TO FORM ONLY:



Deputy Attorney General for Attorney General,
State of Nevada

28 OCT 2008
Date



Field Supervisor
U.S. Fish and Wildlife Service

9/26/08
Date

14. REFERENCES CITED

Nevada Department of Wildlife. 2005a. Native Aquatic Species Program Annual Report, Southern Region. 117 pg.

Nevada Department of Wildlife. 2005b. 2000-2005 Breeding Status and Surveys for the Southwestern Willow Flycatcher and Yellow-billed Cuckoo at Sites in Southern Nevada. 32pp + Appendices

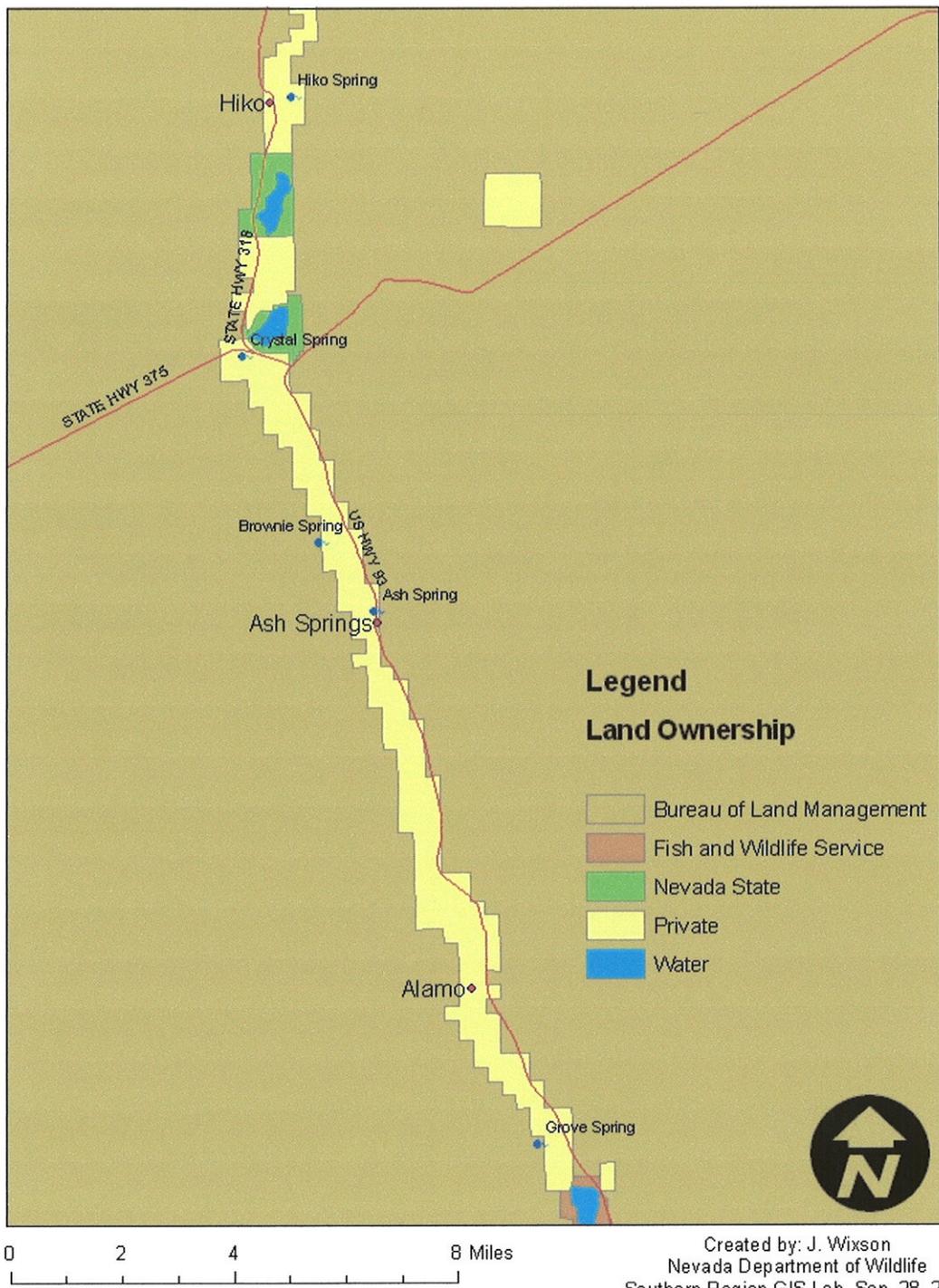
U. S. Fish and Wildlife Service. 1985. Recovery Plan for the Pahranaagat roundtail chub, *Gila robusta jordani*. U. S. Fish and Wildlife service, Portland, Oregon. 71 pg.

U. S. Fish and Wildlife Service. 1998. Recovery Plan for the Aquatic and Riparian Species of Pahranaagat Valley. Portland, Oregon. 82 pg.

U. S. Fish and Wildlife Service. 2002. Southwestern Willow Flycatcher (*Epimodax traillii extimus*) Recovery Plan. Albuquerque, New Mexico. 210 pg. + Appendices

Williams, J.E. and G.R.Wilde. 1981. Taxonomic status and morphology of isolated populations of the White River springfish, *Crenichthys baileyi* (Cyprinodontidae). Southwestern Naturalist 25: 485-503.

Attachment 1: Pahrnagat Valley



**PROGRAMMATIC SAFE HARBOR AGREEMENT
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITING WHITE RIVER SPRINGFISH, HIKO WHITE RIVER
SPRINGFISH PAHRANAGAT ROUNDTAIL CHUB AND SOUTHWESTERN
WILLOW FLYCATCHER WITHIN PAHRANAGAT VALLEY,
LINCOLN COUNTY, NEVADA**

LANDOWNER COOPERATIVE AGREEMENT TEMPLATE

1. INVOLVED PARTIES.

This Cooperative Agreement (CA), between the Nevada Department of Wildlife (NDOW) and _____ (Cooperator), is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit the endangered fishes White River springfish *Crenichthys baileyi baileyi*, Hiko White River springfish, *Crenichthys baileyi grandis* and Pahranaagat roundtail chub, *Gila robusta jordani*, and the endangered Southwestern willow flycatcher, *Empidonax traillii extimus* on land owned by the Cooperator. Participation in this CA is a prerequisite for obtaining a Certificate of Inclusion [reference attachment to this Cooperative Agreement] from NDOW issued as part of the agreement between NDOW and the U.S. Fish and Wildlife Service (Service) titled, “Programmatic Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting White River Springfish, Pahranaagat Roundtail Chub and Southwestern Willow Flycatcher Within Pahranaagat Valley, Lincoln County, Nevada” (Agreement).

2. ENROLLED PROPERTY.

The Cooperator owns property in Lincoln County, Nevada, that contains habitat that may be used by White River springfish, Hiko White River springfish, Pahranaagat roundtail chub and/or southwestern willow flycatcher. NDOW will enroll [# of acres] of this property under the Agreement, as shown on the attached property map [reference map attached to this Cooperative Agreement]. Other species of listed plants or animals may also occur on the property, but no incidental take of these other species is authorized or permitted under this Cooperative Agreement.

3. BASELINE RESPONSIBILITIES.

[Insert description of the extent and current condition of the enrolled lands and their acreage (e.g., major plant communities or habitat types, land use, location of existing ponds and aquatic habitats, water delivery and control systems, etc.) in terms appropriate for the included species. Describe how the baseline was determined and attach a map showing the boundaries of the property and areas of potential included species habitat. A species baseline may be expressed either as a population estimate or distribution (number and location, if determinable). Existing suitable habitat must be able to sustain seasonal or permanent use by one or more of the included species at the time the Cooperative Agreement is executed.]

The baseline for this property is set at [n] [insert included species] and [n] acres of [insert included species] habitat, the boundaries of which are shown on the attached map ([reference map attached to this Cooperative Agreement]).

Force majeure events such as severe storm events, drought, extreme sustained heat, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate [insert included species] from enrolled lands or render [insert included species] habitat on enrolled lands unsuitable for continued occupation. These events may reduce [insert included species] numbers or habitat below original baseline conditions through no fault of or negligence of the Cooperator. In such circumstances the Cooperator, NDOW, and the Service may agree to revise the CA's baseline conditions to reflect the new circumstances.

4. CONSERVATION MEASURES AND RESPONSIBILITIES OF THE PARTIES

4.1 CONSERVATION MEASURES. The primary objective of this CA is to aid in the conservation and recovery of [insert included species] through the restoration, maintenance and/or enhancement of suitable habitats on the included property. In order to accomplish this, it is essential that private landowners, the Service, and NDOW work together to provide good habitat and positive stewardship for [insert included species]. Management activities that are undertaken through this CA by the mutual agreement of the Cooperator and NDOW will result in the protection and enhancement of existing habitat and/or the creation of new habitat for [insert included species] and will provide a net conservation benefit for [insert included species]. If [insert included species] do not now occur on the included property, until such a time as a Cooperator and NDOW agree to place [insert included species] on a property for purposes of conservation or the presence of [insert included species] is identified on the included property the Cooperator will have no responsibilities under this CA except to report the absence of [insert included species] to NDOW on an annual basis.

Management actions that will be implemented to benefit [insert included species] on the included property are detailed under Section 4.2 "Responsibility of Parties". Dependent upon funding availability and need, additional management considerations and actions to benefit [insert included species] which are specific to the enrolled property may be identified in the future. Any additional actions which have been mutually agreed to between NDOW and the Cooperator will be identified in an Attachment to this CA.

Nothing in this CA prevents the Cooperator from implementing land management activities not described in the Agreement, as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. As long as the Cooperator implements the agreed upon conservation measures the Cooperator may develop, conduct commercial and recreational activities, or make any other lawful use of the enrolled property, even if loss of [insert included species] or occupied habitat above the established baseline levels occurs.

Emergency situations arising from natural disasters including but not limited to extreme drought, sustained extreme heat, insect infestations, or epidemic disease may require the initiation of certain land management actions that may result in take of [insert included species]. The Cooperator will notify NDOW within at least 5 working days of such a situation, and will make reasonable accommodations to NDOW and/or the Service for survey and/or relocation of [insert included species] prior to initiation of the land management action. Certain other urgent emergency situations such as fire, flood, excessive rainfall, and the failure of water delivery systems or pond structures, may occur outside of the control or intention of the Cooperator, which could result in the take of [insert included species]. Under such situations the Cooperator will notify NDOW as soon as is practicable to allow the salvage and/or relocation of affected [insert included species] individuals. NDOW acknowledges that survey and/or relocation may be impossible in certain urgent situations.

4.2 RESPONSIBILITIES OF THE PARTIES. The Cooperator and NDOW agree to carry out certain responsibilities under this CA.

Cooperator:

- a. Manage aquatic and/or terrestrial habitats within the enrolled property to [insert here specific management actions to benefit species or habitats to be implemented by the landowner individually or in cooperation with NDOW to benefit the included species to this CA. Add additional line items as necessary].
- b. Inform NDOW within three working days of finding any dead or accidentally killed [insert included species].
- c. With reasonable advance notification, allow access to the enrolled lands by NDOW to monitor [insert included species] and their habitats or to carry out other management activities identified in this CA or otherwise mutually agreed to by the Cooperator and NDOW.
- d. Inform NDOW as soon as practicable of natural or man-caused emergency circumstances, such as storm events, fire or failure of water delivery systems, which could negatively affect occupied aquatic or terrestrial habitats and could result in take of [insert included species], and allow access to NDOW for emergency salvage or relocation of affected individuals.
- e. Inform NDOW at least 30 calendar days in advance of planned, otherwise legal activities including the modification or alteration of occupied habitats, which might reasonably be anticipated to result in the indirect take of [insert included species] on the enrolled property, to allow for removal of [insert included species] to other habitats within the enrolled property or the removal of [insert included species] in excess of the established baseline from the enrolled property.
- f. Assist NDOW in compiling an annual report on activities related to [insert included species] management and any activities that resulted in or may have resulted in incidental take of [insert included species].
- g. With reasonable advance notification, allow access to the enrolled lands by NDOW for purposes of ascertaining compliance with this CA.
- h. Follow guidelines provided by NDOW for handling injured or dead [insert

included species].

- i. Agree to consider adaptive management recommendations that NDOW may present to the Cooperator.

NDOW:

- a. Upon execution of the CA will authorize incidental take of [insert included species] as a result of lawful activities on the enrolled property for the term remaining on the federal 10(a)(1)(A) Enhancement of Survival permit and State of Nevada permits through issuance of a Certificate of Inclusion to the Agreement to the Cooperator.
- b. Provide technical assistance to the Cooperator for management of [insert included species] habitat, to the maximum extent practicable, when requested.
- c. Provide guidelines to the Cooperator for handling injured or dead [insert included species] and for avoiding incidental take during otherwise lawful activities.
- d. Ensure the Cooperator is implementing the terms of the CA.
- e. [Insert here specific management actions to benefit species or habitats to be implemented by NDOW individually or for which NDOW will provide assistance to the Cooperator to benefit the included species to this CA. Add additional line items as necessary]
- f. Provide reasonable advance notification to the Cooperator before any visit by NDOW staff to the enrolled property.
- g. Compile an annual report with assistance from the Cooperator on activities required by this CA and/or related to [insert included species] management and any activities that resulted in or may have resulted in incidental take of [insert included species].
- h. Perform biological monitoring of [insert included species].
- i. Provide assistance for salvage or relocation of individual [insert included species] in the event of planned or emergency circumstances affecting occupied aquatic or terrestrial habitats which could result in indirect take of individual animals, following appropriate notification by the Cooperator.
- j. Provide adaptive management recommendations to the Cooperator, as they are developed, which could be implemented on a voluntary basis to enhance or improve management actions benefiting included species and habitats.
- k. If warranted, recommend procedures the Cooperator can take to avoid future incidental take based on incidental take described in past annual reports.

5. AGREEMENT DURATION.

Obligations under this Cooperative Agreement will be in effect for [minimum of 10] years from the date it is executed. Upon signing of the CA, NDOW will issue a Certificate of Inclusion to the Cooperator under the federal 10(a)(1)(A) Enhancement of Survival permit [permit reference number] NDOW holds, and a State of Nevada permit or Letter of Authorization, authorizing the incidental take of [insert included species] on the enrolled lands. The Certificate of Inclusion will authorize incidental take of [insert included species] from [date] to [date], the remaining duration of the 30-year term of the permits at the time the Certificate of Inclusion is issued.

6. INCIDENTAL TAKE.

Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of Federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities.

Under the terms of this CA, the Cooperator may make use of their enrolled property in any manner that does not result in reducing the population and/or occupied habitat of [insert included species] below the established baseline conditions. The Certificate of Inclusion will authorize incidental take of [insert included species] and their progeny resulting from lawful activities within the enrolled property, from the time this CA is signed until expiration of the permits. Such uses may include, but are not limited to: operation of vehicles and maintenance equipment, building or fence construction, gardening, hunting, farming, mowing, maintenance of infrastructure including roads and irrigation and water delivery systems, commercial and non-commercial recreational activities, livestock grazing or cultivation of agricultural crops. The Cooperator may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of [insert included species] or loss of occupied habitat in excess of baseline amounts. In the event of planned, otherwise legal activities including the modification or alteration of occupied habitats, which might reasonably be anticipated to result in the indirect take of [insert included species] on the enrolled properties, the Cooperator shall provide at least 30 calendar days notice to NDOW to allow for the removal of [insert included species] to other habitats within the enrolled property or the removal of [insert included species] from the enrolled property.

[Insert description of level of take that may potentially occur on the enrolled property based on property acreage, habitat types, and current distribution and population status of included species.]

[Insert included species] juveniles and adults may not be shot, captured, collected, netted, trapped or otherwise directly “taken.”

7. FUNDING.

Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. NDOW will inform the Cooperator of potential funding opportunities through State or Federal grant programs that may be relevant. NDOW may, with the agreement of the Cooperator, fund and/or undertake management activities on the enrolled property to benefit [insert included species]. Any such activities will be identified and detailed as an amendment to this CA.

8. TERMS AND CONDITIONS.

This CA is subject to all the terms and conditions laid out in the Programmatic Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting White River Springfish, Pahranaagat Roundtail Chub and Southwestern Willow Flycatcher within Pahranaagat Valley, Lincoln County, Nevada. It is also subject to the additional terms and conditions:

8.1. MODIFICATION OF COOPERATIVE AGREEMENTS. NDOW or the Cooperator may propose modifications or amendments to this CA by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other Party's written concurrence.

8.2. TERMINATION OF THE COOPERATIVE AGREEMENT. As provided for in Part 12 of the Service's Safe Harbor Policy (FR 64:32717), a Cooperator may terminate implementation of their CA before its expiration date for circumstances beyond the Cooperator's control. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained and as long as agreed upon conservation measures were implemented. A Cooperator may terminate their CA due to circumstances beyond the Cooperator's control upon 90 calendar days prior written notice to NDOW. Cooperators must provide NDOW the opportunity to relocate [insert included species] within 60 calendar days of receiving that notice. The Cooperator also may terminate their CA at any time for any other reason, but termination for reasons other than uncontrollable circumstances shall extinguish the Cooperator's authority to take [insert included species], and the Cooperator must relinquish their Certificate of Inclusion to NDOW. Cooperator must provide NDOW the opportunity to relocate [insert included species] within 60 calendar days of receiving that notice. NDOW may terminate the CA if it is determined that use of the enrolled property is no longer contributing a net conservation benefit for the included species. Following that determination and notification to the Cooperator, NDOW shall remove all [insert included species] above the established baseline from the included properties within 60 calendar days at their own expense and in coordination with the Cooperator, and release the Cooperator from any further obligations under the Agreement.

8.3. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. NDOW may suspend or revoke a Cooperator's Certificate of Inclusion if a Cooperator has breached their obligations under the CA and has failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the CA will achieve its goals. Termination of a CA, and removal of included species from the property, at the request of the Cooperator or NDOW for reasons identified in Section 8.2, shall also result in revocation of the Cooperator's Certificate of Inclusion.

8.4. SUCCESSION AND TRANSFER. The rights and obligations under this Cooperative Agreement shall run with the ownership of the enrolled property and are transferable to subsequent private property owners pursuant to 50 CFR 13.25 and NRS. The Certificate of Inclusion issued to the Cooperator will be extended to the new owner. By becoming a party to the original Cooperative Agreement and permit, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner at the original baseline. The Cooperator shall notify NDOW of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that NDOW can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Cooperative Agreement or a new one to benefit [insert included species] on the property. In the event that a new owner chooses not to be party to the existing Cooperative Agreement or a new one, Cooperator must provide NDOW the opportunity to remove all [insert included species] above the established baseline from the included properties beginning 60 calendar days prior to the estimated date of transfer of ownership at NDOW's expense and in coordination with the Cooperator, following which the Cooperator and future landowners will be released from any further obligations under the Agreement.

8.5. REMEDIES. Each party shall have all remedies otherwise available to enforce the terms of the CA and the Certificate of Inclusion, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this CA or any other cause of action arising from this CA.

9. NOTIFICATION.

Communication and correspondence required by this CA should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

[name and address of Cooperator]

Nevada Department of Wildlife
Supervising Biologist – Fisheries
4747 Vegas Drive
Las Vegas NV 89108

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

COOPERATOR

By: _____

Date: _____

NEVADA DEPARTMENT OF WILDLIFE

Director
Nevada Department of Wildlife

Date

APPROVED AS TO FORM ONLY:

Deputy Attorney General for Attorney General,
State of Nevada

Date

**PROGRAMMATIC SAFE HARBOR AGREEMENT
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITTING WHITE RIVER SPRINGFISH, HIKO WHITE RIVER
SPRINGFISH, PAHRANAGAT ROUNDTAIL CHUB AND SOUTHWESTERN
WILLOW FLYCATCHER WITHIN PAHRANAGAT VALLEY,
LINCOLN COUNTY, NEVADA**

LANDOWNER CERTIFICATE OF INCLUSION TEMPLATE

This certifies that the property described as follows [description of portion of property covered by the Safe Harbor Permit] owned by [Cooperator's name], is included within the scope of the Section 10(a)(1)(A) permit issued by the U.S. Fish and Wildlife Service expiring on September 26, 2008 under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (TE-195202-0) and the incidental take authorization issued by the Nevada Department of Wildlife (NDOW) on [date] expiring on [date] under the authority of NAC §503.093. The Permits authorize certain activities by [Cooperator] as part of the Programmatic Safe Harbor Agreement for Voluntary Enhancement/ Restoration Activities Benefiting White River Springfish, Pahrnagat Roundtail Chub and Southwestern Willow Flycatcher within Pahrnagat Valley, Lincoln County, Nevada. The holder of this Certificate is authorized to engage in any otherwise lawful activity on the above described property that may result in the incidental taking of [insert included species] or their habitat above baseline subject to the terms and conditions of the permit and authorization. This Certificate is only valid as long as the Cooperator fulfills their responsibilities as described in the Cooperative Agreement [reference number] entered into by NDOW and [Cooperator's name] on [date].

Director
Nevada Department of Wildlife

U.S. Fish and Wildlife Service, Portland, Oregon
Special Terms and Conditions for Permit TE-195202-0

- E. All sections of Title 50 Code of Federal Regulations, §§ 13 and 17.22 (Attachment) are conditions of this permit. If any such regulations are modified, any future action taken with respect to this permit shall be in accordance with such regulations in existence at the time such action is taken, except as specifically otherwise provided for by law.
- F. The authorization granted by this permit is subject to full and complete compliance with, and implementation of, the Programmatic Safe Harbor Agreement for White River springfish, Hiko White River springfish, Pahranaagat roundtail chub, and southwestern willow flycatcher within Pahranaagat Valley, Lincoln County, Nevada (Safe Harbor Agreement), which is hereby incorporated into this permit. This permit and the Safe Harbor Agreement are binding upon the Permittee and any authorized officer, employee, contractor, or agent.
- G. The Permittee and any person who is under the direct control of the Permittee (e.g., Cooperating landowner) or who is employed by or under contract to the Permittee for the purposes authorized by this permit are authorized to incidentally take (kill, harm, harass) White River springfish (*Crenichtheys baileyi baileyi*), Hiko White River springfish (*Crenichtheys baileyi grandis*), Pahranaagat roundtail chub (*Gila robusta jordani*), and Southwestern willow flycatcher (*Empidonax traillii extimus*) on or at the enrolled lands:
1. While the Safe Harbor Agreement is in effect and the Cooperating landowner(s) enrolled in the program through a Certificate of Inclusion and Cooperative Agreement are complying with the Safe Harbor Agreement;
 2. During the term of the Cooperating landowner's Cooperative Agreement (minimum of 5 years after being signed by the parties), provided the Cooperating landowner(s) was in compliance with the Safe Harbor Agreement; and
 3. If Cooperating landowner(s) terminate their Cooperative Agreement early, consistent with section 8.2 of the Cooperative Agreement.

Such take must be incidental to otherwise lawful activities on enrolled lands as described in the permit application, and as conditioned herein. This permit does not authorize intentional take of any of the covered species.

- H. The Permittee shall inform the U.S. Fish and Wildlife Service (Service) when a Cooperating landowner gives a 30-day advance notice (as per section 4.2.e

in the Cooperative Agreement) that the landowner expects to carry out an activity that is likely to result in the incidental take of the covered species, to give the Service or their representatives the opportunity to work with the Permittee on the removal or relocation of any affected covered species.

- I. In the case of emergency situations arising from natural disasters or human-caused emergency circumstances (e.g., fire, flood, failure of water delivery systems, extreme drought, excessive rainfall), certain management actions may need to be initiated by a Cooperating landowner that may result in take of the covered species. If the Cooperating landowner is able to notify the Permittee prior to initiation of the land management activity, the Permittee will work with the Service to remove or relocate the covered species. If prior notification is not possible, the Cooperating landowner will take into account known locations of the covered species and avoid impacts to the maximum extent possible during his/her emergency actions. The Cooperator will notify the Nevada Department of Wildlife (NDOW) as soon as practicable of taking such actions, including the measures taken to avoid impacts to each of the covered species. The Permittee will likewise notify the Service such taking as soon as they receive notification.
- J. The Permittee, with the assistance of the Service, will be responsible for conducting compliance and biological monitoring as described in Section 10.1 and 10.2 of the Safe Harbor Agreement.
- K. The annual report, prepared by the Permittee, covering the period from July 1st to June 31st, will be due by October 1st of each year to the Field Supervisor and Program Manager, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502. Reports shall include:
 - a) A narrative explanation describing the number of Cooperators and the amount of habitat potentially maintained, enhanced, or restored as a result of the management actions and/or conservation measures performed under each CA.
 - b) A summary of the location(s) and circumstance(s) where incidental take of covered species was anticipated including the identity of the Cooperator, the amount of habitat taken back to baseline, when the take occurred, and whether it was the result of a completed CA or early termination.
 - c) A summary of any interim take of covered species (any covered species or habitat that is taken above returning the property to baseline) which may have occurred, including the identity of the Cooperator, location, the amount of take which occurred, and the management action and conservation measure under which it occurred.

- d) A narrative explanation and results of all compliance monitoring activities for each enrolled property.
- e) A narrative explanation and copies of any biological monitoring for each enrolled property.
- f) A summary of actions of any Cooperators who are in non-compliance with the terms and conditions of their CA and/or CI, and the measures employed to remediate the non-compliance.

L. A copy of this permit must be on file with the Permittee. Please refer to Permit Number TE-195202-0 in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Assistant Field Supervisor, Las Vegas, Nevada, at 702-515-5230.

M. All applicable provisions of this permit must be presented and clearly explained to all authorizing officers, contractors, or agents of the Permittee that are conducting authorized activities.

ENVIRONMENTAL ACTION STATEMENT (EAS)

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the action of issuing a Section 10(a)(1)(A) Enhancement of Survival Permit to Nevada Department of Wildlife as described in the Safe Harbor Agreement for the purposes of creating, restoring, and enhancing White River Springfish, Hiko White River Springfish, Pahrnagat Roundtail Chub and Southwestern Willow Flycatcher habitat within Pahrnagat Valley, Lincoln County, Nevada.

is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation will be made.

is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare and EIS.

is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.

is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents:

- Environmental Action Statement Screening Form
- Biological Opinion
- Findings Document
- 1998 Recovery Plan for the Aquatic and Riparian Species of Pahrnagat Valley and 2002 Recovery Plan for the Southwestern Willow Flycatcher


Field Supervisor

9/26/08
Date