

Draft: December 5, 2001

**CONSERVATION AGREEMENT
TO IMPLEMENT THE
SANTA ANA SUCKER CONSERVATION PROGRAM**

This Conservation Agreement (“Agreement”) is made and entered into as of the ___ day of _____, 2001, by and among the Santa Ana Watershed Project Authority (“SAWPA”), the United States Fish and Wildlife Service (“Service”), an agency of the Department of Interior of the United States of America, and the other agencies and organizations (“Participants”) signing this Agreement pursuant to Paragraph ___ hereinbelow.

RECITALS

This Agreement is based upon the following recitals of fact:

- A.** The Santa Ana Sucker (*catosomus santaanae*) (the “Species”) is listed as a “threatened” species under the federal Endangered Species Act (“ESA”).
- B.** The parties desire to work together in an open and collaborative manner to promote the recovery of the species within the Santa Ana River Watershed (“SARW”).
- C.** An Ad-hoc Santa Ana Sucker Discussion Team (“Discussion Team”) has been formed and administered by the Santa Ana Watershed Project Authority (“SAWPA”). The Discussion Team has worked to develop a Conservation Program, dated December 11, 2001 (the “Conservation Program”), based upon and incorporating the biological program developed by San Marino Environmental Associates (“SMEA”), dated December 1999 (“Biological Conservation Program”).
- D.** The parties now desire to implement the Conservation Program, including, among other things, by providing necessary funding and, in connection therewith, to enter into and perform this Conservation Agreement.
- E.** In order to promote the collaborative conservation efforts contemplated by the Conservation Program and to streamline the regulation of activities affecting the Species, the Service has proposed to, in effect, allow the otherwise lawful “take” of the Species within the SARW as a result of the Normal Activities of the Participants.

The Service has determined that the Conservation Program will promote the conservation and recovery of the Species and reduce any jeopardy to the continued existence of the Species.

F. The hope of the parties is that the Conservation Program for the Species will expand in scope to address the conservation, restoration and enhancement of the wildlife and other resources of the SARW and, therefore, view the Conservation Program as a very important effort.

AGREEMENT

Based upon the above recitals of fact and the mutual covenants and undertakings set forth below, the parties agree as follows:

1. The parties shall cooperate to promote the conservation and recovery of the Species within the SARW as provided and in accordance with the provisions of the Conservation Program.
2. Each of the Participants shall provide the funding to be provided by such Participant as set forth in the annual programs under the Conservation Program which are approved by the Participants, subject to the right of such Participant to terminate the Conservation Program or its participation in the Conservation Program, all as provided in the Conservation Program.
3. Any “take” of individuals of the Species within the SARW pursuant to the otherwise lawful Covered Activities, including mitigation and minimization measures, of a Participant (as described in the Conservation Program and the Environmental Assessment incorporated therein by reference) during the period of time when an Annual Program approved by the Service is in effect shall not be deemed a “take” of the Species prohibited under Section 17.31 of the Code of Federal Regulations or Section 9 of the ESA, provided that the Annual Program then in effect has been fully funded and has not been terminated or suspended pursuant to the terms of the Conservation Program and the Biological Opinion issued by the Service in connection therewith has not been terminated as to the Conservation Program or with respect to the Covered Activities of the respective Participant or Participants.
4. Miscellaneous provisions:
 - a. The Conservation Program is intended to be, and by this reference is, incorporated in this Agreement.
 - b. Neither this Agreement nor the Conservation Program shall make or be deemed to make any party to this Agreement the agent for, the partner of, or a joint venturer with any other party.
 - c. The Environmental Assessment regarding the execution of a Conservation Agreement Implementing a Conservation Program for the Santa Ana Sucker within the Santa Ana River Watershed, California is intended to be and in this reference is, incorporated in this Agreement.

- d. The Environmental Assessment describes conservation measures to minimize the effects of the activities of each of the participants to the Sucker and human environment. These “minimization measures” are attached to this Agreement as Attachment A and will be implemented as part of the overall Conservation Program.
- e. This Agreement may be amended only by writing agreed upon by Service and the Participants in accordance with the provisions set forth in the Conservation Program.
- f. This Agreement shall be binding upon and inure only to the benefit of the parties. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. 1540(g), the parties intend that only the parties to this Agreement shall benefit from the Agreement. This Agreement shall not create in the public, any member of the public, or any other entity, any rights as a third-party beneficiary to this Agreement, nor shall it authorize anyone not a party to this Agreement to maintain a suit for injuries or damages under the provisions of this Agreement.
- g. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the parties.
- h. Agencies and persons with respect to Covered Activities specifically described in the Conservation Program and the Environmental Assessment attached thereto may become a Participant of the Conservation Program and party to this Agreement by executing and delivering a copy of this Agreement to SAWPA and paying any amounts specified and due with respect to an Annual Program.

Any agency or person with respect to a Covered Activity not specifically described in the Conservation Program and the Environmental Assessment may become a Participant with respect to such additional Covered Activity with the written approval of the Participants and the Service (which may be provided with conditions, including those related to minimization of impacts, provision of Program funding and information requested regarding the lawfulness of the Covered Activity, all as contemplated by the Conservation Program). In addition, the Service may determine that the anticipated impacts on the sucker, when taken together with the Program as a whole, are significant and will require further review in accordance with NEPA and under Section 7.

- i. This Agreement is subject to and is intended to be consistent with all applicable federal and state laws and interstate compacts and decrees.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth following their signatures below. This Agreement shall be deemed entered into as of the first date set forth above.

United States Fish and Wildlife Service

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Regional Solicitor

Date: _____

Santa Ana Watershed Project Authority

By: _____

Name: _____

Title: _____

Date: _____

Orange County Water District

By: _____

Name: _____

Title: _____

Date: _____

Riverside County Flood Control and Water Conservation District

By: _____

Name: _____

Title: _____

Date: _____

Riverside County Transportation Department

By: _____

Name: _____

Title: _____

Date: _____

San Bernardino County Flood Control District

By: _____

Name: _____

Title: _____

Date: _____

Orange County Flood Control District, County of Orange Public Facilities & Resources Department

By: _____

Name: _____

Title: _____

Date: _____

City of Riverside Regional Water Quality Control Plant

By: _____

Name: _____

Title: _____

Date: _____

City of San Bernardino Municipal Water Department Rapid Infiltration & Extraction Facility

By: _____

Name: _____

Title: _____

Date: _____