

**IMPLEMENTATION AGREEMENT NO. 9 BETWEEN  
THE NATOMAS BASIN CONSERVANCY AND  
THE SACRAMENTO AREA FLOOD CONTROL AGENCY  
REGARDING MONITORING THE NATOMAS LEVEE IMPROVEMENT  
PROGRAM GIANT GARTER SNAK/DRAINAGE CANAL**

THIS IMPLEMENTATION AGREEMENT NO. 9 (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE NATOMAS BASIN CONSERVANCY, a California non-profit public benefit corporation (“TNBC”), and the SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint powers authority established pursuant to the laws of the State of California (“SAFCA”). TNBC and SAFCA, and each of their respective successors and assigns, are sometimes hereinafter referred to collectively as “Parties” and individually as “Party.”

**RECITALS**

WHEREAS, TNBC and SAFCA have executed that certain Master Agreement dated as of March 4, 2009 (the “Master Agreement”) which sets forth the general agreement between the Parties regarding TNBC’s involvement with the Natomas Levee Improvement Program (“NLIP”) and its management of the habitat compensation features (“HCF” as described in the Master Agreement) being created by SAFCA to offset the NLIP’s unavoidable impacts on woodlands and agricultural lands that provide important upland and aquatic habitat values.

WHEREAS, SAFCA has constructed the Giant Garter Snake/Drainage (GGS/Drainage) Canal as a migration corridor for giant garter snake (*Thamnophis gigas*) and for drainage purposes as part of the NLIP, which canal serves as one of the NLIP’s HCFs. The GGS/Drainage Canal is shown on Exhibit A, attached hereto.

WHEREAS, Reclamation District No. 1000 (RD 1000) will operate and maintain the GGS/Drainage Canal under a separate agreement with SAFCA.

WHEREAS, the purpose of this Agreement is to set forth the understanding of the Parties as to how they will carry out their responsibilities under the Master Agreement for monitoring the GGS/Drainage Canal.

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree as follows:

1. Incorporation of Master Agreement. The recitals and terms of the Master Agreement are hereby incorporated into this Agreement by this reference. All terms not defined herein shall have the meanings ascribed to them in the Master Agreement. In the event of a conflict between the terms of the Master Agreement and this Agreement, the terms of this Agreement shall prevail.

2. Recordation of Drainage Facility Easement. SAFCA will record a drainage facility easement over the land encompassing the GGS/Drainage Canal.

3. Monitoring of the GGS/Drainage Canal.

3.1 TNBC Responsibilities. As of the effective date of this Agreement, TNBC shall be responsible for monitoring the GGS/Drainage Canal in accordance with the documents discussed in paragraph 4 below. SAFCA has provided the water delivery and drainage infrastructure necessary for operation of the canal. Water delivery is provided by the Natomas Central Mutual Water Company (NCMWC).

3.2 SAFCA Responsibilities. SAFCA shall be responsible for paying NCMWC fees for water delivered to the canal and the RD 1000 costs associated with operation and maintenance of the canal.

4. Preparation of Plan Documents. TNBC shall assist SAFCA with the preparation of a Site Specific Improvement Plan and a Site Specific Management Plan ("SSIP" and "SSMP" as these terms are defined in the Master Agreement) for the GGS/Drainage Canal. These documents shall detail the activities that TNBC will undertake on a long-term basis to monitor the habitat provided by the canal.

5. Administration and Management Costs.

5.1 Funding for 2017. Upon execution of this Agreement, SAFCA shall pay TNBC \$28,000 to cover TNBC's 2017 costs to carry out the responsibilities set forth herein, as provided in the budget estimate attached hereto as Exhibit B.

5.2 Funding for 2018 through 2054. In accordance with Section 8 of the Master Agreement, commencing as of January 1, 2018 and continuing through 2054, SAFCA shall pay TNBC an amount sufficient to cover TNBC's annual costs for monitoring the canal. These costs shall be calculated in accordance with the SAFCA Finance Model, as such model is modified to reflect TNBC's management of several of SAFCA's mitigation lands.

5.3 Funding of Endowment for 2054 and Beyond. SAFCA agrees that it will provide TNBC with an endowment sufficient in amount to cover TNBC's projected costs to forever monitor the canal from calendar year 2054 and beyond. The endowment shall be calculated in accordance with the SAFCA Finance Model; it shall be subject to adjustment as provided in Section 10.1 of the Master Agreement; and it shall be invested as provided in Section 10.2 of the Master Agreement.

6. Indemnification.

6.1 SAFCA Indemnification. SAFCA shall defend, indemnify and hold harmless TNBC and its officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the breach of this Agreement by SAFCA.

6.2 TNBC Indemnification. TNBC shall defend, indemnify and hold harmless SAFCA and its governing Board, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the breach of this Agreement by TNBC.

6.3 Survival. The indemnifications set forth in this Section 6 shall survive the expiration or termination of this Agreement.

7. Miscellaneous Provisions.

7.1 Notice. Any notice, demand, request, consent, communication, or approval given pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, postage prepaid, addressed as follows:

SAFCA:                    SAFCA  
                                  Attn: Executive Director  
                                  1007 7th Street, 7th Floor  
                                  Sacramento, California 95814  
                                  Facsimile No.: (916) 874-8289

With a copy to:        SAFCA  
                                  Attn: Agency Counsel  
                                  1007 7th Street, 7th Floor  
                                  Sacramento, California 95814  
                                  Facsimile No.: (916) 874-8289

TNBC:                    The Natomas Basin Conservancy  
                                  2150 River Plaza Dr., Suite 460  
                                  Sacramento, CA 95833  
                                  Attn: John Roberts  
                                  Facsimile No.: (916) 649-3322

Either Party may change the address to which subsequent notice and/or other communications should be sent by giving written notice designating a change of address to the other Party, which shall be effective upon receipt.

7.2 Legal Fees. SAFCA hereby agrees to pay all legal fees incurred by TNBC to negotiate and draft this Agreement.

7.3 Compliance with Laws. TNBC and SAFCA shall observe and comply with all applicable laws, regulations and ordinances.

7.4 Governing Laws and Jurisdiction. This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California and applicable Federal laws. Any

legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

7.5 Amendment and Waiver. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both Parties. Waiver by either Party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

7.6 Successors. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of TNBC and SAFCA in the same manner as if they were expressly named. The obligations under this Agreement may not be assigned without the express written consent of the other Party.

7.7 Interpretation. This Agreement shall be deemed to have been prepared equally by both of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

7.8 Prevailing Party. In the event either Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover from the losing Party in any such action or proceeding its reasonable costs and attorneys' fees, including its reasonable costs and attorneys' fees on appeal or in enforcing any judgment awarded to it.

7.9 Partial Invalidity. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

7.10 Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of SAFCA shall be personally liable to TNBC, its successors and assigns, in the event of any default or breach by SAFCA or for any amount which may become due to TNBC, its successors and assigns, or for any obligation of SAFCA under this Agreement. Likewise, notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of TNBC shall be personally liable to SAFCA, its successors and assigns, in the event of any default or breach by TNBC or for any amount which may become due to SAFCA, its successors and assigns, or for any obligation of TNBC under this Agreement.

7.11 Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both Parties.

7.12 Authority to Execute. Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the Parties to this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder has been duly authorized.

7.13 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement and the introductory paragraph preceding the Recitals are hereby incorporated into this Agreement as if fully set forth herein.

7.14 Further Assurances. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**TNBC:**

**THE NATOMAS BASIN  
CONSERVANCY**, a California non-profit  
mutual benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SAFCA:**

**SACRAMENTO AREA FLOOD  
CONTROL AGENCY**, a California  
joint powers authority

By: \_\_\_\_\_  
Jason Campbell, Deputy Executive  
Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
M. Holly Gilchrist, Agency Counsel



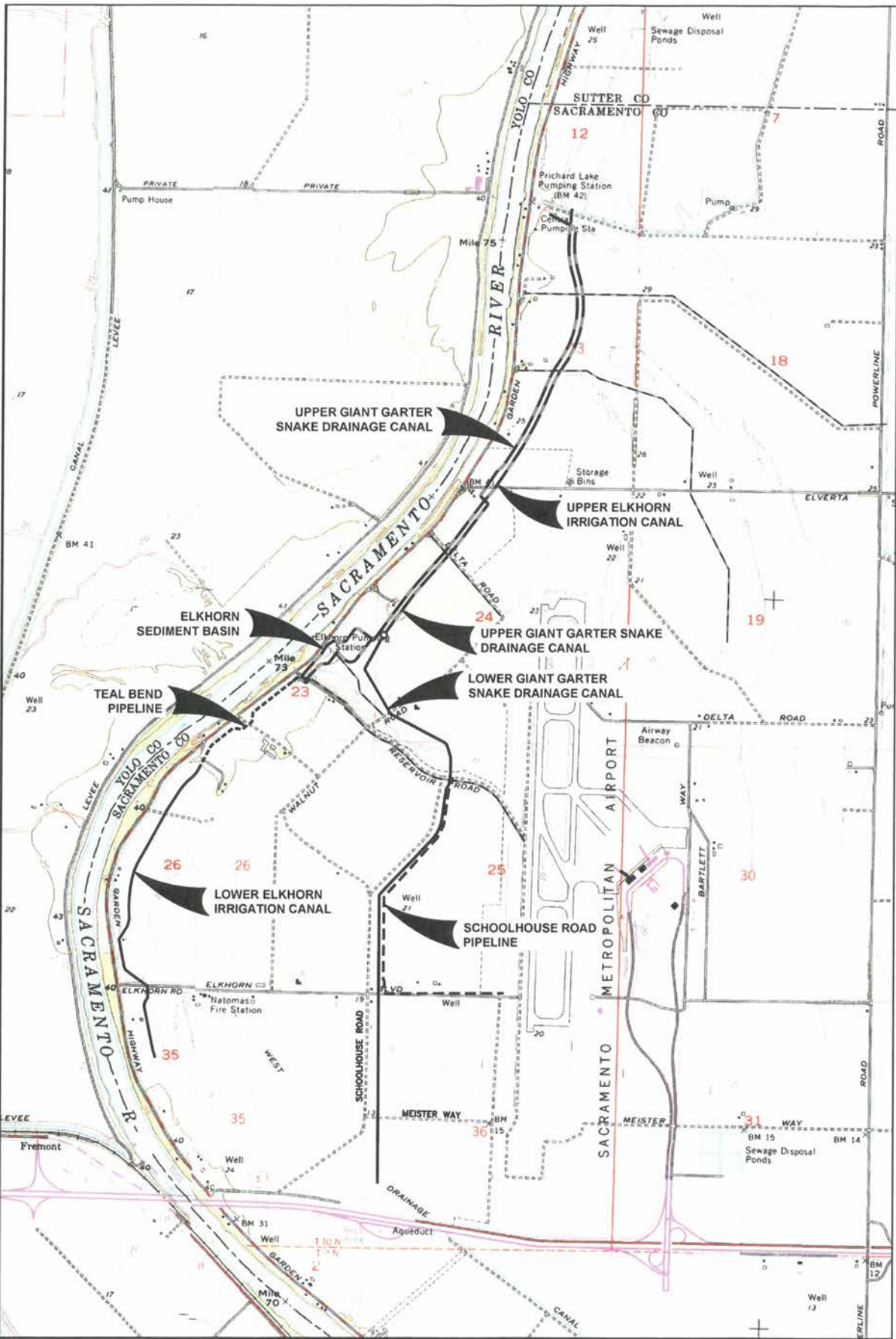


EXHIBIT A - GGS/DRAINAGE CANAL



4/20/17 11:52 PM  
 Sacramento Area Flood Control Agency  
 11/14/2017 10:43:00 AM  
 11/14/2017 10:43:00 AM