

**MINUTE ITEM**

This Calendar Item No. C08 was approved as Minute Item No. 08 by the California State Lands Commission by a vote of 3 to 0 at its 11-01-06 meeting.

**CALENDAR ITEM  
C08**

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11/01/06  
AD 513 W 25389  
J. Clark  
D. Plummer

**CONSIDER EXERCISING REVERSIONARY INTEREST IN HONEY LAKE PRIMARY PARCEL AND AMENDING MEMORANDUM OF AGREEMENT REGARDING HONEY LAKE MANAGEMENT AND TRANSFER**

**PARTIES:**

Honey Lake Conservation Team (consisting of the Trust For Public Lands, The Center For Urban Watershed Renewal, The Bioengineering Group, and Michael Baker, Jr., Engineering Inc.).

California State Lands Commission

**PROPOSAL:**

Staff recommends that the Commission exercise its reversionary interest in the area of the Honey Lake lakebed known as the Primary Parcel and amend the Memorandum of Agreement (MOA) the Commission approved in May 2004 with members of the Honey Lake Conservation Team (HLCT) for the management and administration of the Primary Parcel.

**BACKGROUND:**

Honey Lake, located south of Susanville in Lassen County, is a shallow, alkaline lake with no outlet. It is considered a temporal lake where lake levels can significantly fluctuate from season-to-season and year-to-year. In drought years, the lake may become completely dry, whereas in wet years, lake level can reach the areal extent of its lakebed and be several feet deep.

In 1933, the State of California ceded the lands comprising the bed of Honey Lake (approximately 62,100 acres) to the United States for military operations related to the Sierra Army Depot. The transfer of the Honey Lake bed to the U.S. was subject to a reversionary interest in the State should the Army cease military operations there. While in federal ownership, the Army utilized certain portions of Honey Lake during drought years for demolition of excess ammunition and munitions testing. As a result, approximately 4,500 acres, which includes a

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safety buffer, of the 62,100 acres of Honey Lake are potentially contaminated with ordnance and explosives (OE). This parcel –called the OE Parcel–is not the subject of this Commission action, but does lie adjacent to the Primary Parcel. The U.S. Army, as the continuing owner, and the California Department of Toxic Substances Control (DTSC) --the State lead for OE remediation—have actively investigated the OE Parcel and have selected a course of action for this portion of the lakebed in August 2006 that may take upwards to three years or more to implement. Currently, large signs warning the public of the possible presence of submerged ordnance and explosives are set throughout the safety zone perimeter.

The remaining 57,632 acres, the Primary Parcel, was used for limited aerial gunnery from 1931 to 1932. Subsequent investigation of the Primary Parcel led the Army, DTSC, and the Lahontan Regional Water Quality Control Board to conclude “no further action” was necessary. This conclusion means that response actions are either complete or not required and no additional actions are warranted. If, in the future, hazardous substances attributable to the Army are discovered on the Primary Parcel, the Army is required, under federal law, to address this problem and the Army has provided a covenant to return and take appropriate remedial action.

In 2003, the Army declared it no longer utilizes the bed of Honey Lake for support of its missions, and advertised the opportunity for nonprofit conservation organizations to submit applications to take title to the bed of the Honey Lake, subject to the State’s reversionary interest. On September 24, 2003, the Primary Parcel was conveyed by the United States to the Honey Lake Conservation Team (HLCT) which consists of the Trust for Public Lands, a nonprofit California public benefit corporation, the Center for Urban Watershed Renewal (CUWR) The Bioengineering Group, Inc., a Massachusetts corporation, and Michael Baker, Jr., Inc., a Pennsylvania corporation.

In May 2004, The Commission authorized the Executive Officer to execute an MOA with the HLCT to undertake several actions including: 1) the development of, and funding to implement, a comprehensive Honey Lake Management Plan; 2) the development of, and funding to implement, a Cultural and Historical Resources Preservation Plan; 3) the development of, and funding to implement, a conservation strategy for the Carson Wandering Skipper, a federally listed endangered species; 4) confirmation through analytical testing that the Primary Parcel in fact does not require any environmental remediation; 5) funding to resolve any encroachments that may have occurred onto the Primary Parcel

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during federal ownership; 6) the hiring of a full-time land manager to investigate habitat improvement projects and serve as community liaison for the HLCT.

Both the Commission and HLCT have substantially complied with the terms and conditions of the MOA. These proposed amendments will re-direct a certain portion of funds towards a grant to the Honey Lake Resource Conservation District's White Top eradication program. White Top is a non-native invasive weed that has rapidly spread throughout Lassen County. These discrete funds will be used to control White Top on the Primary Parcel lakebed and adjoining lands to prevent or eliminate the establishment of this noxious weed on State lands.

These eradication activities will also enhance certain habitat restoration projects in and around the Primary Parcel and directly benefit the federally listed endangered species Carson Wandering Skipper butterfly, known to be present in and around the lakebed. The balance of funds will be deposited in the Kapiloff Land Bank Fund to be expended for costs associated with management and administration activities associated with the Primary Parcel following Commission action.

Since the execution of the MOA, Commission staff, the HLCT, local elected officials and County staff, and the local community have held numerous discussions and two public workshops on how the Commission will manage and administer Honey Lake consistent with the State's public trust obligations upon re-taking full ownership of the Primary Parcel. These workshops and community input have been very beneficial and has enabled Staff to determine and recommend that no significant land use changes occur in the foreseeable future under State ownership.

Now that the Army has committed to a state approved remedy for the adjacent OE Parcel, Staff recommends that the Commission exercise its reversionary interest in the Primary Parcel. Staff also recommends that the Commission authorize the Executive Officer to, 1) amend certain terms and conditions of the MOA as substantially set forth in Exhibit B to effectuate this transfer and, 2) exercise all powers and duties necessary to manage these lands under State stewardship.

**STATUTORY AND OTHER REGULATIONS:**

Senate Bill No. 573, Chapter 845 (1933).

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**OTHER PERTINENT INFORMATION:**

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt under Class 25, Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions; Title 14, California Code of regulations, section 15325.

Authority: Public Resources Code section 21084 and Title 14 Cal. Code Regs., section 15300.

**EXHIBITS:**

- A. Map of Honey Lake and primary Parcel
- B. Terms of Amended Memorandum of Agreement

**PERMIT STREAMLINING ACT DEADLINE:**

N/A

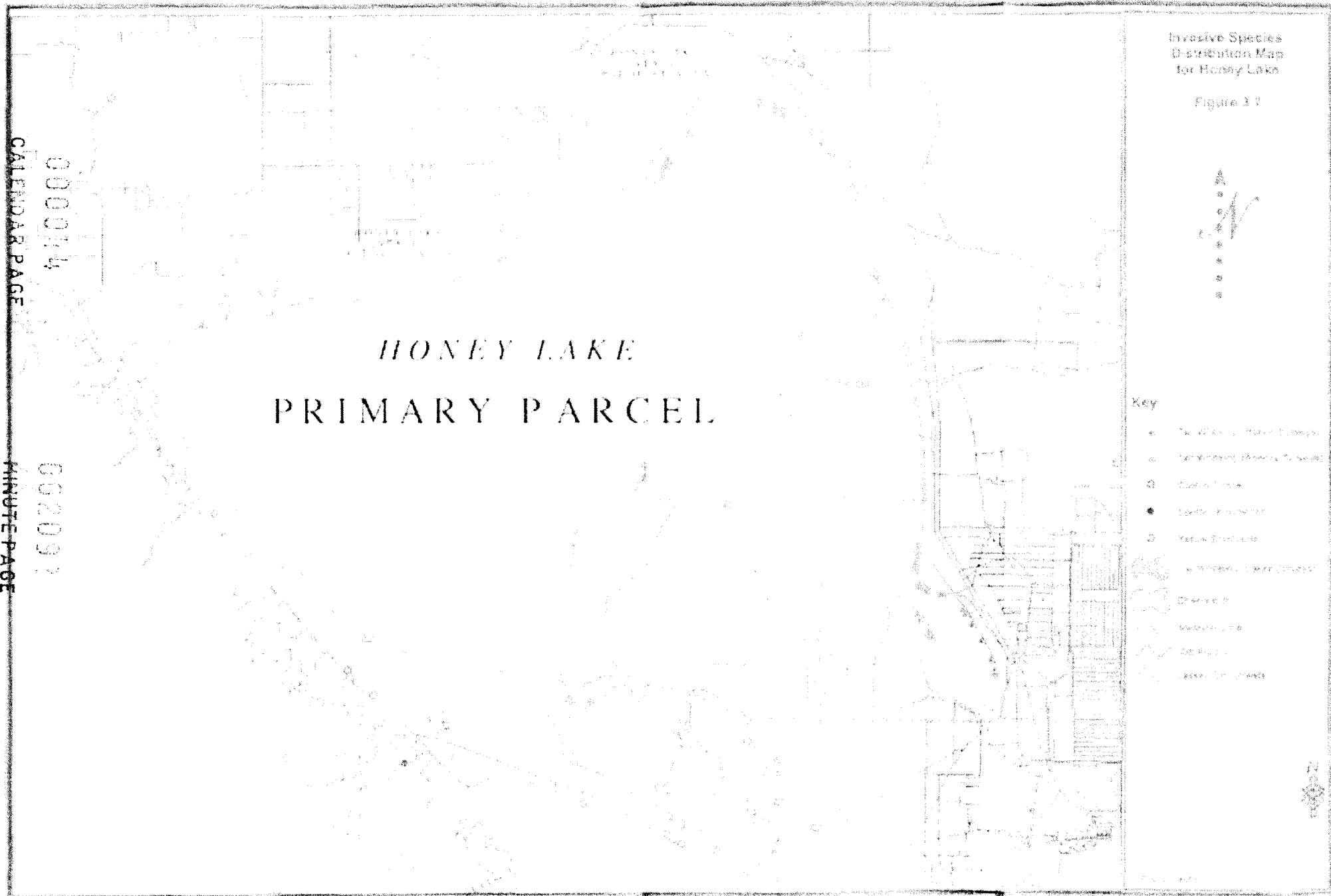
**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**AUTHORIZATION:**

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIRMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 25, TRANSFERS OF OWNERSHIP OF INTERESTS IN LAND TO PRESERVE EXISTING NATURAL CONDITIONS; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15325.
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE AMENDMENTS TO THE EXISTING MEMORANDUM OF AGREEMENT SUBSTANTIALLY AS SET FORTH IN EXHIBIT B.
3. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE ALL NECESSARY DOCUMENTS TO EXERCISE THE STATE'S REVERSIONARY INTEREST IN THE SOVEREIGN LANDS OF THE HONEY LAKE LAKEBED WITHIN THE PRIMARY PARCEL
4. AUTHORIZE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO: CARRY OUT THE PROVISIONS OF THE EXERCISE OF THE REVERSION AND AMENDMENTS TO THE MEMORANDUM OF AGREEMENT.

# HONEY LAKE PRIMARY PARCEL



## EXHIBIT B

### 2006 AMENDMENT TO THE MEMORANDUM OF AGREEMENT REGARDING HONEY LAKE PRIMARY PARCEL MANAGEMENT AND TRANSFER

This Amendment modifies the terms of the Memorandum of Agreement between the Honey Lake Conservation Team (consisting of the Trust For Public Land, CUWR Honey Lake, LLC, The Bioengineering Group, and Michael Baker, Jr., ("Baker")) and the California State Lands Commission that was entered into by the parties in May 2004. This Amendment also sets forth the terms and conditions for the conveyance of the Honey Lake Primary Parcel from CUWR Honey Lake, LLC, which currently holds the real property, to the State of California, acting by and through the California State Lands Commission.

#### I. BACKGROUND

On June 12, 1933, the State of California enacted Senate Bill No. 573, Chapter 845 (the "1933 Act"), thereby ceding Honey Lake near Susanville, in Lassen County, California, to the United States for purposes of aerial training, military camps and other Federal purposes, and providing that should the United States abandon the said lands or determine not to use said lands for the purposes mentioned, the State of California is entitled to the immediate reversion of said lands and may reenter and take possession as if the cession had not been made.

Honey Lake, as the property ceded, became a part of the Sierra Army Depot. The Army Depot was recommended for base realignment and closure on July 1, 1995 pursuant to the Defense Base Realignment and Closure Act of 1990, as amended (Public Law No. 101-510, 10 U.S.C. § 2687 and Note), and was realigned effective June 30, 2000.

The land referred to as the Honey Lake Primary Parcel ("Primary Parcel") constitutes approximately 57,632 acres of the whole of the Honey Lake property and was conveyed by the United States, acting by and through the Department of the Army ("Army"), to CUWR Honey Lake LLC by deed dated on or about September 24, 2003 ("Army Deed"). This transfer, pursuant to applicable federal law, was undertaken in order that certain obligations of the Army could be performed on the Primary Parcel by CUWR Honey Lake LLC.

The remaining approximately 4,500 acres of the Honey Lake lakebed is known as the Ordnance and Explosives Parcel ("OE Parcel"), which is currently leased by the United States to CUWR Honey Lake LLC pursuant to a Lease in Furtherance of Conveyance ("LIFOC"), dated on or about September 30, 2003, under which certain remediation work is being performed at this time. The California State Lands Commission ("State Lands") may consider entering into an agreement with the United States, acting by and through the Army, when certain additional remediation work has

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been performed on the OE Parcel with the potential for the return of the OE Parcel to State ownership as soon as practicable.

As to the Primary Parcel, a Memorandum of Agreement ("MOA") was entered into in May 2004 by and between State Lands and Honey Lake Conservation Team which defined the relationship of the parties and described the process by which the Primary Parcel would be conveyed by CUWR Honey Lake LLC to State Lands by quitclaim deed at some future date.

This 2006 Amendment modifies the terms of the MOA and sets forth the terms and conditions for the conveyance of the Honey Lake Primary Parcel from CUWR Honey Lake, LLC to State Lands. The parties anticipate closing this transaction in November 2006, presuming favorable action by the State Lands Commission at its meeting scheduled for November 2006.

### II. HLCT UNDERTAKINGS

**A. Deed.** CUWR Honey Lake LLC shall at the closing convey to State Lands the Primary Parcel utilizing the deed ("Deed"), which has been negotiated between the parties. The Deed provides for the following, inter alia:

1. Conveyance of all of the rights, title and interest of CUWR Honey Lake LLC in and to the Primary Parcel to the State Lands.
2. Restates the CERCLA Covenant received by CUWR Honey Lake LLC in the Army Deed whereby the United States provides that:
  - a. It has no knowledge of the storage of hazardous substances for one year or more, or the release or disposal of any hazardous substances on the Primary Parcel.
  - b. All remedial action necessary to protect human health and the environment with respect to any such hazardous substances remaining on the Primary Parcel has been taken before the date of conveyance hereunder [to wit: September 24, 2003]; and
  - c. Any additional remedial action found to be necessary after the date of the Army Deed [(to wit: September 24, 2003)] shall be conducted by the United States.
3. Reserves to the Army an access easement as required for further remediation work to be performed.
4. Provides, in accord with language in the Army Deed, that the United States acknowledges its obligation to and shall hold harmless, defend, and indemnify the Grantor [to wit: CUWR Honey Lake LLC] and any successor, assignee,

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transferee, lender, or lessee of the Grantor or its successors and assigns [to wit: State Lands as Grantee], as set forth in Section 330 of the Department of Defense Authorization Act of 1993, as amended, and as set forth in 10 U.S.C. § 2687 and Note.

5. Conveyance of all of CUWR Honey Lake LLC's interest in and to the Access Easement to Honey Lake provided by the United States, made of record on October 22, 2004 in Book 10760, Pages 31-43.

### **B. Payments to and for State Lands.**

1. Pursuant to the MOA CUWR Honey Lake LLC and HLCT committed to pay \$ 250,000, as allocated in subsections a, b and c below, to cover its on-going costs for time and effort in connection with the Primary Parcel.

CUWR Honey Lake LLC and HLCT have paid to the State Lands the following sums on the following dates:

- a. \$125,000 in June 2004.
- b. \$62,500 in April 2005.
- c. \$ 62,500 is due upon conveyance which is separate and apart from the funds identified in II.B.3. This \$62,500 shall be retained by CUWR Honey Lake LLC and HLCT members and expended on behalf of State Lands for the purposes set forth in II.B.4.

2. Pursuant to the MOA, CUWR Honey Lake LLC and HLCT shall pay to the State Lands the sum of \$500,000 upon conveyance of the Primary Parcel in consideration of which, in accordance with the desires of the State Lands, State Lands will assume all responsibility and liability associated with any title and boundary, cultural resource preservation and management plan issues that may arise in connection with the Primary Parcel pursuant to the Release document set forth in Section III.A.2.

3. Pursuant to the MOA, CUWR Honey Lake LLC and HLCT shall pay to State Lands the sum of \$200,000, less (i) the pro-rated annual premium of \$28,516 for the general CGL insurance to the date of conveyance and (ii) the \$16,060 necessary to complete the payment set forth in II.B.4 within 30 days of State Lands recording the property transfer documents for the conveyance of the Primary Parcel as in consideration of the action of the State Lands in accepting the conveyance of the Primary Parcel and the exercise of its right of reversion, all prior to September 2008. CUWR Honey Lake LLC and HLCT shall provide to State Lands documentation of the pro-rated premium and period of insurance coverage.

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4. Grant to HLVRCD. From the funds identified in II. B.1.(c) (i.e., \$62,500) and II. B.3. (i.e., \$16,060) of this paragraph, CUWR Honey Lake LLC /HLCT, on behalf of State Lands will make a grant payment in the sum of \$78,560 to the HLVRCD within 30 days of State Lands recording the property transfer documents for purposes of tall-white-top control and eradication as described in Paragraph II. C.1. (below).

5. All funds identified in Section II.B.3 which are remaining after the \$78, 560 grant payment in II. B. 4 has been made shall be paid to State Lands within 30 days of State Lands recording the property transfer documents.

### C. HLVRCD Payments and Tim Garrod Payments

1. Payment to HLVRCD. Within 30 days of State Lands recording the property transfer documents, CUWR Honey Lake LLC /HLCT will make a grant payment in the sum of \$100,000, to the Honey Lake Valley Resource Conservation District (HLVRCD), a political subdivision of the State of California, for purposes of tall-white-top control and eradication.

2. CUWR and the HLCT member entities shall provide to Baker the sum of \$57,120 to cover its administration of, and provide staff for, services in connection with post-transfer Honey Lake activities as set forth in the scope of work, and Baker, through the use of employee Tim Garrod (or other agreed upon replacement should Mr. Garrod become unable or unwilling to continue), shall provide staff for an average of 40 hours per month for the 30 months immediately following transfer (ending April 2009) to address post-transfer activities contained in the scope of work.

3. As part of its responsibilities as set forth in Section II.C.2, Baker will maintain and replace, from existing inventory of signs, any and all signs regarding the Sensitive Habitat Areas as required based on discussions with the US Fish and Wildlife Service.

### D. Miscellaneous Other Matters

1. Within 30 days of State Lands recording the property transfer documents, CUWR and the HLCT member entities will assign and convey to Baker those monies remaining in the possession of CUWR as of the date thereof and dedicated to the performance and fulfillment of the obligations of the HLCT member entities in connection with the USFWS Agreement (defined below) for the purpose of Baker performing and completing all work relating to the Carson Wandering Skipper as set forth in that certain letter to the US Fish and Wildlife Service dated August 15, 2003 in accordance with the Assignment, Release, Exoneration, And Discharge Agreement.

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### III. STATE LANDS UNDERTAKINGS

#### A. Documents

1. Deed. State Lands shall accept and record the Deed, by which ownership of the Primary Parcel will be conveyed to it.
2. State Lands will execute and deliver to CUWR Honey Lake LLC and the HLCT the Assignment, Assumption, Release, Exoneration, and Discharge Agreement, whereby State Lands shall release, exonerate and discharge the HLCT member entities and CUWR Honey Lake LLC and the HLCT from any and all obligations relating to title and encroachments on the Primary Parcel, cultural resource preservation, and the draft management plan that the parties have determined is not necessary to complete in order for the conveyance to occur
3. State Lands shall deliver to Baker a right-of-entry providing for entry by Baker and its employees onto the Primary Parcel for the purpose of their performing and completing all work relating to the Carson Wandering Skipper as set forth in that certain letter to the US Fish and Wildlife Service dated August 15, 2003.
4. State Lands shall provide to the HLVRCD and Baker rights-of-entry document sufficient for them to perform their obligations.

### IV. OTHER PROVISIONS

1. State Lands acknowledges and agrees that, except as otherwise provided by law, no trustee, officer, director, shareholder, member, employee, agent, equity owner, attorney or other representative of CUWR Honey Lake, LLC or the HLCT members or their respective parent, subsidiary or affiliate entities shall have any personal liability under this Amendment.
2. Each of the undersigned warrants and represents that he/she is legally authorized to execute this Amendment on behalf of his/her entity and to legally bind his/her entity to the terms and conditions of this Amendment.
3. All other provisions of the May 2004 MOA that are not inconsistent with or addressed in this Amendment shall remain in full force and effect.

**EXHIBIT B**

IN WITNESS of the foregoing provisions, the signatories have executed and delivered this Agreement as of the date set forth below.

**California State Lands Commission**

**CUWR Honey Lake LLC**

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

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

**Paul D. Thayer  
Executive Officer:**

**The Center for Urban Watershed  
Renewal, Inc., Paul Sutton, Executive  
Director.**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**THE BIOENGINEERING GROUP, INC.**

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

**Wendi Goldsmith  
President**

Date: \_\_\_\_\_

**MICHAEL BAKER, JR., INC.**

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

**John D. Whiteford  
Executive Vice President**

Date: \_\_\_\_\_

**THE TRUST FOR PUBLIC LAND,  
a California non-profit, public benefit  
corporation:**

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

**Peter N. Ives  
Regional Counsel**

Date: \_\_\_\_\_