

6.1 Overview

The Upper Santa Ana River Habitat Conservation Plan (HCP) Joint Powers Authority (JPA), also referred to as the Upper Santa Ana River Sustainable Resources Alliance (Alliance), will serve as the Implementing Entity of the HCP. As more fully described below, in its role as Implementing Entity, the Alliance will be responsible for implementing the HCP and assisting the other Permittee Agencies in complying with the terms and conditions of the Joint Incidental Take Permit in connection with their Covered Activities.

In many regional HCPs, the Implementing Entity serves as a single Master Permittee that issues certificates of inclusion to other entities who derive their incidental take authority through the Master Permittee. The Upper Santa Ana River HCP follows a different structure in which the Implementing Entity (i.e., the Alliance) and each of other the Permittee Agencies will receive incidental take authority directly from the U.S. Fish and Wildlife Service (USFWS) under a shared, joint incidental take permit (Joint ITP). Under this structure, the Joint ITP will (i) provide coverage to the Alliance for the incidental take of species incidental to the Alliance's implementation of the conservation strategy (e.g., for restoration or other physical work) and (ii) provide coverage to each of the other Permittee Agencies for their respective Covered Activities. Although a single Joint ITP will be issued to the JPA and the other Permittee Agencies, the respective responsibilities of the various Permittees will be severable, as more fully described below.

This chapter describes the formation and structure of the JPA, as well as the overall HCP implementation structure, roles and responsibilities, annual reporting requirements, and procedures for amending the HCP. In addition, this chapter addresses how the JPA will respond to Changed and Unforeseen Circumstances that may occur during the duration of the HCP.

HCP Implementing Entity: Upper Santa Ana River Sustainable Resources Alliance

The Alliance will be responsible for a broad variety of tasks, including:

1. Overall plan administration and management, such as HCP budgeting and finance, monitoring, and enforcement.
2. Implementation of the conservation strategy, ensuring HCP compliance by the Permittee Agencies, project consistency review, and allocation of incidental take and mitigation accounting.
3. Implementation of the Adaptive Management and Monitoring Program and updates, maintenance, and management of the HCP geographical information system (GIS) database and implementation and tracking tools.
4. Acting as a liaison between the Permittee Agencies and USFWS relative to HCP implementation and compliance, including annual reporting.
5. Sponsoring the Upper Santa Ana River HCP mitigation/conservation strategy.

6. Land acquisition, and HCP Preserve management and monitoring, all in coordination with the San Bernardino Valley Conservation Trust, or other appropriately qualified entity (as described below).
7. Public outreach and education (including establishment and management of the technical advisory and stakeholder committees).
8. Other administration functions, including providing GIS and other technical support to Permittee Agencies, grant administration, and third-party contracting (e.g., contracts between the JPA and Permittee Agencies or other parties for activities related to Plan implementation).
9. Other regulatory agency permitting implementation and oversight, including:
 - a. Implementation and compliance oversight of a Section 2081 Multi-Project ITP for incidental take under the California Endangered Species Act.
 - b. Implementation and compliance oversight of all other programmatic permits (e.g., 404, 401, 1600), including assisting the Permittee Agencies in submitting any sub-notifications and securing authorization for project-specific sub-permits/agreements for their respective Covered Activities.

Each of these roles is described more fully in Section 6.5, *HCP Implementing Entity*.

6.2 HCP Permit Structure

6.2.1 Permittee Agencies

The Permittees under the Upper Santa Ana River HCP include the 11 water agencies, the Upper Santa Ana River Sustainable Resources Alliance, and the San Bernardino Valley Conservation Trust or other appropriately qualified entity (referred to generally as the *Permittee Agencies*). The Permittee Agencies are listed in Table 6-1. Each Permittee Agency will receive incidental take authority to undertake their respective Covered Activities as described in Chapter 2. The 11 water agencies, the Alliance, and the Conservation Trust will operate under a single Joint ITP. A second ITP will be issued to Southern California Edison (SCE), as more fully described below, to provide incidental take coverage for any Santa Ana suckers that may be translocated to waters upstream of SCE's hydroelectric facilities, including those that are covered by SCE's licenses from the Federal Energy Regulatory Commission (FERC).

Table 6-1. Permittees Agencies Under the Joint ITP

Water Agencies
Rialto Utility Authority
East Valley Water District
Inland Empire Utilities Agency
Metropolitan Water District of Southern California
Orange County Water District
City of Riverside, Riverside Public Utilities
San Bernardino Municipal Water Department
San Bernardino Valley Municipal Water District

San Bernardino Valley Water Conservation District
West Valley Water District
Western Municipal District
Other Agencies
Upper Santa Ana River Sustainable Resources Alliance
San Bernardino Valley Conservation Trust (or other appropriately qualified entity)

6.2.2 Joint ITP Permit Structure

The Joint ITP structure was selected over other permit structures based on a need to coordinate efforts on the river itself and the conflicts that might arise if each Permittee Agency were to operate under its own ITP. Because the Permittee Agencies are independent legal agencies, each of which is undertaking its own Covered Activities, a master permit structure (i.e., one master permit holder with multiple sub-permittees) was determined not to be institutionally feasible for this HCP. By contrast, a joint permit structure will facilitate ongoing coordination among the parties, which, as described below, will be managed by the Alliance in accordance with a JPA and other contractual arrangements to allocate operational and funding responsibilities, risks, and liabilities under the HCP.

To coordinate their activities under the HCP, the Permittee Agencies will establish the Alliance as a JPA in accordance with the Joint Exercise of Powers Act (California Government Code Section 6500) and will be governed by a JPA Agreement in accordance with that statute. As more fully described below, the Alliance will have primary responsibility for overall implementation of the HCP including, for example, mitigation, monitoring, and reporting, and assisting the Permittee Agencies plan and implement their respective Covered Activities. The costs of administration of the Alliance, and the HCP as a whole, will be borne by the Permittee Agencies in accordance with the JPA Agreement. A separate Participation and Financing Agreement (PFA) between the Permittee Agencies will account for and assign financial responsibility of the Alliance among the Permittee Agencies. As more fully described below, the JPA Agreement will establish the operational aspects of the HCP, while the PFA will describe the financial responsibilities of each of the Permittee Agencies with respect to the HCP and the Alliance, as well as their own individual responsibilities under the Joint ITP.

Although the Permittee Agencies will operate collectively under the Joint ITP, each will be fully responsible for any Covered Activity undertaken by that agency under the HCP and will be required to coordinate with the Alliance staff in order to ensure consistency of the Covered Activity with the Plan and the ITP. Moreover, the responsibilities of the Permittee Agencies with respect to Covered Activities will be severable so that non-compliance by one of them will not compromise the rights of the others under the ITP. For example, if one Permittee Agency conducts a Covered Activity in a manner inconsistent with the HCP, that Permittee Agency's incidental take authority may be suspended or revoked without affecting the incidental take authority issued to the other Permittee Agencies or the Alliance. Moreover, any costs incurred by the Alliance or other Permittee Agencies as a result of non-compliance by one Permittee Agency will be borne by the non-complying Permittee Agency and reimbursed to the Alliance if the Alliance has incurred any associated costs.

Similarly, if one Permittee Agency withdraws from the Alliance, that withdrawal will occur in a manner that does not affect implementation of the HCP's Conservation Strategy or the ability of the other Permittee Agencies to operate under the HCP for the remainder of its terms. In particular, a

withdrawing Permittee Agency will be required to “make the HCP whole” by (i) reimbursing the Alliance any costs incurred on behalf of or attributable to the Permittee Agency prior to withdrawal; (ii) making any remaining contributions in the form of an endowment as needed to assure that any mitigation attributable to any Covered Activity already undertaken by the Permittee Agency is funded in perpetuity; and (iii) covering (in the form of an endowment or otherwise) any and all other additional costs associated with the withdrawal (e.g., Alliance administrative time, cost of amending or modifying the HCP (if necessary) or any other permit documents or agreements, increased incremental mitigation, or other costs). If a Permittee Agency withdraws from the Alliance prior to undertaking a specific Covered Activity, that Covered Activity may be removed from the proposed Covered Activities and, pending approval from the USFWS, any unused incidental take could be substituted for another Covered Activity (see Section 6.7, *Plan Changes and Amendments*). If a withdrawing Permittee Agency has already undertaken a Covered Activity, that agency will not be released from any financial responsibilities associated with that Covered Activity. The precise requirements for withdrawal from the Alliance will be fully described in the JPA Agreement and the PFA.

6.2.3 Southern California Edison ITP

As described in Chapter 2, *Covered Activities*, and further below, certain of SCE’s ongoing activities on the Upper Santa Ana River or tributaries are expected to require incidental take coverage as Santa Ana sucker populations are expanded within the watershed. In particular, the HCP’s conservation strategy requires the translocation of Santa Ana suckers into at least three tributaries of the Santa Ana River, some of which may be near where SCE operates and maintains hydroelectric facilities, including three that are operated in accordance with 30-year licenses issued by the FERC in 2003 (i.e., Covered Activities SCE.1, SCE.2, and SCE.3), and facilities that do not operate under a FERC license (SCE.4). The HCP provides coverage for SCE’s activities under the FERC licenses to the extent those activities result in incidental take of Santa Ana suckers. SCE will be issued its own incidental take permit for those activities.

Although SCE is a Permittee under the HCP, SCE will not be responsible for the actions of the Alliance or the other Permittee Agencies, nor will it participate in the JPA. Moreover, SCE will not be responsible for implementing of avoidance or minimization measures associated with Santa Ana sucker that may be translocated into the area of SCE operations. That is, any avoidance and minimization measures associated with SCE operations will be the responsibility of the Alliance, which will undertake those measures (e.g., rescue and relocation) in coordination with SCE as and when necessary. SCE and the Alliance may enter into separate contractual arrangements by which operational or other specified costs to SCE associated with the HCP may be covered by the Alliance.

Because the FERC licenses are subject to renewal during the life of the HCP, SCE has requested some assurance that the presence of Santa Ana sucker in the area of its operations will not negatively affect SCE’s long-term ability to operate in those areas. The HCP’s regulatory assurances therefore explicitly apply to SCE’s activities. To provide additional certainty to SCE, USFWS is expected to include in its biological opinion for the HCP all impacts of the long-term operations of SCE’s hydropower facilities in these areas. The HCP biological opinion can be used in connection with the USFWS consultation on future FERC relicensing.

6.3 Other Regulatory Agency Permits

Many of the Covered Activities will require authorizations under other State or Federal laws, including Section 2081 of the California Endangered Species Act, Section 1600 et seq. of the California Fish and Game Code (lake and streambed alterations), Sections 404 and 401 of the Clean Water Act, and the Porter-Cologne Water Quality Control Act (waste discharge requirements [WDRs] and Section 401 certifications). To facilitate implementation of Covered Activities under the HCP, the Permittee Agencies and the Alliance are also seeking authorizations under these laws. These separate authorizations will establish performance standards and mitigation requirements for various classes or aspects of Covered Activities. Except for the Section 2081 Multi-Project ITP (described below), these authorizations are expected to be programmatic in nature, thus enabling the proponents of those activities to secure project-level authorizations on a predictable and expedited basis. The performance standards of the other regulatory agency permits are expected to be as consistent as possible with those of the HCP to increase the efficiency of mitigation and coordinated permit compliance and implementation.

6.3.1 Section 2081 Multi-Project ITP (California Department of Fish and Wildlife)

A California Endangered Species Act (CESA) ITP is required from California Department of Fish and Wildlife (CDFW) under Section 2081 of the California Fish and Game Code. The information, analysis, and conservation actions described in this HCP have been prepared to meet the needs of CDFW in the development and issuance of a long-term CESA ITP for all Covered Activities to be undertaken by the Permittee Agencies or the Alliance where impacts on CESA-listed Covered Species have been identified. The CESA ITP's authorization to impact the CESA-listed Covered Species, which may be issued as a whole or in a phased manner, would expire 50 years from the date it is signed by CDFW, or alternate timeframe identified by CDFW.

The CESA ITP will be a Section 2081 Multi-Project ITP, or other ITP structure as deemed appropriate by CDFW. When issued it will provide a mechanism for the incidental take of CESA-listed Covered Species needed for implementation and operation of the Covered Activities. One benefit of this structure is that it will allow the Alliance to acquire and implement mitigation projects well ahead of incidental take without the need to rely on advance mitigation legal structures that are otherwise authorized specifically only under CDFW's Natural Community Conservation Plan (NCCP), Regional Conservation Investment Strategy (RCIS), or conservation and mitigation banking programs. This will provide both temporal mitigation benefits and assurance that mitigation will be available when needed by the Permittee Agencies or Alliance.

To assure that the assumptions and findings upon which the Section 2081 Multi-Project ITP or other ITP structure are based remain valid throughout the life of the permit, the Alliance will review each permitted activity prior to its being undertaken, ideally through multiple consistency reviews performed at several stages of project planning and design. During the consistency review process, the Alliance will confirm that the permitted activity is consistent with the assumptions and impact calculations of the HCP and the Section 2081 ITP(s). The Alliance will monitor compliance with the CESA ITP(s) and submit to CDFW compliance reports prepared as a part of the annual regulatory reporting activities. The report will include at a minimum the following:

1. A list of projects completed over the reporting period, including projects that are currently in progress.
2. Acreages of impacts on CESA-listed Covered Species Habitat(s) over the reporting period, along with GIS mapping depicting impacts on CESA-listed Covered Species Habitat(s) over the last 10 years.
3. Acres of CESA-listed Covered Species Modeled Habitat that was preserved for projects during the reporting period.
4. Acres of CESA-listed Covered Species Habitat that was restored for projects during the reporting period.
5. Number of impacted CESA-listed Covered Species, if available.
6. Any new information relevant to the conservation of the CESA-listed Covered Species and/or to the Upper Santa Ana River Habitat Conservation Planning Area.
7. A comprehensive summary and assessment of compliance with the Up Front and Stay-Ahead Provision to assure that mitigation requirements of the Conservation Strategy (i.e., as incorporated into the Section 2081 ITP[s]) stay ahead of Covered Activity impacts.
8. Any additional information/reporting required by CDFW and the CESA ITP(s).

6.3.2 Clean Water Act Section 404 Permitting (U.S. Army Corps of Engineers)

The HCP will be implemented in coordination with the regulatory permit required from the U.S. Army Corps of Engineers (USACE) under Section 404 of Clean Water Act for the discharge of dredged or fill material into waters of the United States. A USACE permit may be issued for a specifically identified activity (Individual Permit or IP) or they may also be issued on a programmatic basis for a class of activities. To assist in streamlining the issuance of Section 404 clearance(s), the Permittee Agencies and the Alliance will seek from the USACE the most appropriate permits for the proposed Covered Activities. The permitting approach has yet to be determined, but regardless of permitting path selected, the HCP will be implemented in coordination with these permits.

6.3.3 Clean Water Act Section 401 Certification/Waste Discharge Requirement (Regional Water Quality Control Board)

The HCP will also be implemented in coordination with the Section 401 certification process. Section 401 of the Clean Water Act requires that, prior to or as a condition of issuance of a USACE permit, a state certify that the proposed Federally authorized discharge complies with state water quality standards. In California, Section 401 certifications are issued by the State Water Resources Control Board (SWRCB) or one of the nine regional water quality control boards (RWQCBs). In reviewing any proposed discharge for certification, the water boards apply the standards issued under California's Porter-Cologne Water Quality Control Act, California Water Code Division 7 (Porter-Cologne). Where a discharge to a water of the State does not require a USACE permit, the water boards will issue WDRs to authorize that discharge under Porter-Cologne.

In April 2019, the SWRCB adopted a statewide wetlands definition and “Procedures for the Discharge of Dredged or Fill Material into Waters of the State.” The “Procedures,” which became effective on May 28, 2020, establish a uniform set of application, avoidance, and mitigation requirements for activities requiring Section 401 Certification or WDRs. Under the Procedures, the SWRCB or one of the RWQCBs may issue an “Order” that can serve as both a Section 401 Certification and WDRs. Orders may be issued on either an individual basis (like a USACE IP) or as a “General Order,” which is programmatic in nature. In particular, the Procedures authorize the issuance of General Orders “for specific classes of ... discharge activities that are similar; involve the same or similar types of discharges and possible adverse impacts requiring the same or similar conditions or limitations in order to alleviate potential adverse impacts to water quality; and are determined ... to more appropriately be regulated under a general order rather than an Individual Order.”

Under the Procedures, compensatory mitigation requirements for the discharge of dredged or fill material are determined based upon a watershed approach that may be developed from a “watershed plan” that (i) has been approved for use by the RWQCBs and analyzed in an environmental document, (ii) includes monitoring provisions, and (iii) includes guidance on compensatory mitigation opportunities. A watershed plan is defined as a document, such as a habitat conservation plan, that has been developed in consultation with relevant stakeholders and a specific goal of which is aquatic resource restoration, establishment, enhancement, and preservation within a watershed. In addition to governing mitigation decisions, a watershed plan may be used to evaluate alternatives to fill under the Procedures’ sequencing requirements. The Upper Santa Ana River HCP specifically has been developed to serve as a watershed plan under the Procedures.

The Permittee Agencies and the Alliance will apply to the Santa Ana and San Diego RWQCBs for a General Order under the Procedures.

The General Order will include Covered Activities proposed for authorization under any Programmatic IP or LOP issued by USACE. This Order will serve as a Section 401 certification for the Programmatic IP, as well as WDRs for any such activity that will result in a discharge to a water of the State but not a water of the United States. This Order will likely include terms and conditions, including mitigation requirements consistent with those imposed under the HCP, applicable to any activity permitted thereunder.

6.3.4 Master Streambed Alteration Agreement (California Department of Fish and Wildlife)

Similar to the above-mentioned regulatory processes, the HCP will also be implemented in coordination with implementation of a Master Streambed Alteration Agreement(s).

Any “entity” proposing to undertake an activity resulting in certain impacts (e.g., diversions, substantial alterations, certain discharges) to the bed, channel, or bank of a river, stream, or lake in California must secure an authorization from CDFW under Section 1600 et seq. of the California Fish and Game Code. This authorization takes the form of a negotiated agreement between CDFW and the entity, which agreement is referred to as a “Lake and Streambed Alteration Agreement” (LSAA).

To secure authorization, the entity proposing the activity submits a “notification” to CDFW in accordance with the application requirements identified in Section 1602 of the California Fish and Game Code. When issuing a draft agreement, CDFW includes “reasonable measures” to protect the

fish and wildlife resources that may be substantially affected by the proposed activity. Most LSAAs are authorized for specifically identified activities and carry a term of up to 5 years, subject to one extension. Under Section 1605 of the California Fish and Game Code, however, CDFW may enter into an LSAA for an initial term of longer than 5 years. Because of their longer terms, these LSAAs are subject to periodic reporting and reviews by CDFW to confirm that the measures in the agreement “continue to protect” the fish and wildlife resources affected by the activity covered.

Long-term agreements are often issued for classes of activities proposed to occur over a longer time frame. The type of long-term agreement that provides for both the construction and long-term operation and maintenance of projects is a “Master LSAA.” Master LSAAs provide coverage for projects proposed to be phased over time where project-level design plans are not yet available. Once project-level designs are available, a “sub-notification” is submitted to CDFW following the procedures identified in the Master LSAA, along with the specified fees. CDFW then reviews the sub-notification to ensure that it is consistent with the Master LSAA, and following a determination of completeness, issues sub-notification approval. The approval of Master LSAAs is not subject to the 60-day issuance period associated with short-term LSAAs.

The Permittees and the Alliance intend to seek a Master LSAA from CDFW to provide coverage for construction projects as well as routine operation and maintenance activities proposed for inclusion in the Programmatic IP and General Order.

6.3.5 Wastewater Change Petition

The reduction of effluent discharge is an HCP Covered Activity for several wastewater treatment plants operated by Permittee Agencies in the Planning Area. A Petition for Change is required to be submitted for approval to the SWRCB, Division of Water Rights, for any proposed changes to a water right (e.g., change in place of use, purpose of use, wastewater discharge reduction). A petitioner must evaluate the effect of the proposed changes on the water rights of other diverters as well as the effects on instream resources, including fish and wildlife (Water Commission Act, Section 1700–1707). Several Covered Activities have already received Orders from the SWRCB approving the Change of Use Petition; however, several others are in the approval process (Wastewater Petition Orders are available on the SWRCB website: <https://www.waterboards.ca.gov/>). The HCP is intended to quantify the impacts associated with the proposed Covered Activities seeking SWRCB approvals of Petitions for Change and demonstrate that the HCP adequately offsets those impacts on instream resources through the implementation of the Conservation Strategy.

6.4 Upper SAR Joint Powers Authority

The Upper Santa Ana River HCP will be implemented as a long-term, multi-jurisdiction, regulatory compliance program designed to coordinate environmental permitting processes such that the benefits to Permittees and regulated natural resources are maximized. The implementation of this program will improve the health of the Santa Ana River through the coordinated efforts of 11 public water agencies, State and Federal regulatory agencies, and interested stakeholders in order to provide a holistic conservation strategy that commits resources and assurances as needed for success. Although the overall purpose of the HCP is to facilitate development and operation of the public infrastructure, it does so through a coordinated permit and conservation strategy that could involve hundreds of individual agency actions over the life of the Plan. Note that the JPA as

Implementing Entity is referred to as the Upper Santa Ana River Sustainable Resources Alliance. However, in this section discussing JPA structure, membership, and governance, it is referred to simply as the JPA.

Given the complexity of the HCP and the number of agencies and other entities involved, it was determined appropriate to identify a single local implementing entity to assume overall responsibility for plan management, administration, and implementation. Rather than allocate this responsibility to just one Permittee Agency or a committee of agencies, the Permittee Agencies have formed a “joint exercise of powers authority” (JPA) to assume these responsibilities. Through this agreement the JPA is directed to be the HCP Implementing Entity identified as the Upper Santa Ana River Sustainable Resources Alliance.

A JPA is a legally created entity that allows two or more public agencies to exercise commonly held powers. The Joint Exercise of Powers Act, California Government Code Section 6500 et seq., which governs JPAs in California, does not require the agencies participating in a JPA to be the same kind of agencies so long as the participating agencies independently possess the requisite powers. Based upon an analysis of the statutory authority of each of the Permittee Agencies, it has been determined that they have sufficient powers in common to enter into the JPA and sufficient authority for the JPA to act as the implementing agency under the HCP.

JPAs are formed by contract between two or more public agencies. The Joint Exercise of Powers Act provides for two different types of JPA arrangements: (1) two or more public agencies may contract to jointly exercise common powers or (2) two or more public agencies may contract to form a separate legal entity. Many JPAs take the form of a separate legal entity from the contracting agencies, which can be beneficial to the contracting agencies as the debts, obligations, and liabilities of a separate entity JPA remain distinct from and do not belong to the contracting parties themselves. For this reason, the JPA proposed for the Upper Santa Ana River HCP will be established as a separate legal entity.

The roles and functions of the JPA are further described below.

6.4.1 Membership and Governance

The JPA will be composed of the Permittee Agencies and will be governed by a board of directors (JPA Governing Board) consisting of representatives of the Permittee Agencies who will be appointed by each Permittee Agency to serve on the JPA, and who will vote on certain identified major decisions related to the HCP. It is anticipated that each Permittee Agency on the JPA (referred to as Permittee Agencies) generally will receive one vote on decisions made by the JPA Governing Board. However, given that Permittee Agencies are contributing different levels of resources for HCP implementation costs, it is expected that votes on certain financial decisions (e.g., annual budget approval) may be weighted based upon each agency’s contribution commitment. The details of this voting structure are outlined more fully in the JPA Agreement, the instrument creating the JPA. The relative contributions of the JPA Permittee Agencies are presented in Table 6-2.

Table 6-2. Proportional Contribution of JPA Permittee Agencies to HCP Implementation

Permittee Agency	Total Share	Estimated Annual Operating Cost of Program Implementation¹
San Bernardino Valley Municipal Water District	40%	\$ 933,200.00
East Valley Water District	7%	\$ 163,310.00
Riverside Public Utilities	5%	\$ 116,650.00
Inland Empire Utilities Agency	20%	\$ 466,600.00
Western Municipal Water District of Riverside County	15%	\$ 349,950.00
San Bernardino Municipal Water Department	5%	\$ 116,650.00
Metropolitan Water District of Southern California	2%	\$ 46,660.00
Rialto Utility Authority	2%	\$ 46,660.00
San Bernardino Valley Water Conservation District	3%	\$ 69,990.00
Orange County Water District	1%	\$ 23,330.00
West Valley Water District	1%	\$ 23,330.00
Total	100%	\$ 2,333,000

¹Total and annual operating costs of Program implementation are calculated in Table 7-3.

The JPA Agreement will establish an HCP Executive Committee composed of the general managers of each of the Permittee Agencies, or some subset thereof. The purpose of the HCP Executive Committee is to oversee the administration of the JPA by JPA staff (described below), act as a liaison between the JPA and its Permittee Agencies, assist in resolving disputes between Permittee Agencies, approve annual budgets (subject to final approval by the JPA Governing Board), and report to the JPA Governing Board on significant policy and financial developments. The HCP Executive Committee will be chaired by the General Manager of the San Bernardino Valley Municipal Water District (Valley District), as the majority contributor to HCP implementation costs.

As described above, if one Permittee Agency withdraws from the JPA, that withdrawal will occur in a manner that does not affect the ability of the other Permittee Agencies to operate under the HCP for the remainder of its permit term. In particular, a withdrawing Permittee Agency will be required to make the JPA whole by (i) reimbursing the JPA any costs incurred on behalf of or attributable to the Permittee Agency prior to withdrawal; (ii) making any remaining contributions in the form of an endowment as needed to assure that any mitigation attributable to any Covered Activity already undertaken by the Member Agencies (i.e., as a Permittee Agency) is funded in perpetuity; and (iii) covering (in the form of an endowment or otherwise) any and all other additional costs associated with the withdrawal (e.g., JPA administrative time, cost of amending or modifying the HCP [if necessary] or any other permit documents or agreements, increased incremental mitigation or other costs).

If a Permittee Agency withdraws from the HCP and the JPA prior to that agency undertaking a Covered Activity, that Covered Activity may be “released” from the ITP, and any mitigation values allocated to that activity will be available for allocation to other Covered Activities under the HCP if needed. If a withdrawing Permittee Agency has already undertaken a Covered Activity, that agency will not be released from any responsibilities under the HCP or the ITP with respect to that activity. The precise requirements for withdrawal from the HCP and the JPA will be fully described in the JPA Agreement and the PFA.

6.4.2 JPA Termination

The JPA is intended to survive for the 50-year term of the HCP. At that time all Covered Activities, and all required mitigation, are anticipated to be implemented with endowments established for permanent management, monitoring, and reporting by a third party (e.g., the Conservation Trust). Given that the advisory and permit management functions of the JPA will no longer be necessary, it may terminate at that time. All remaining funds and liabilities will be distributed or allocated as specified in the JPA Agreement. However, the Permittee agencies may decide to pursue a renewal of the ITP or maintain the Alliance for HCP Preserve management or other reasons.

6.4.3 Participation and Financing Agreement

Although the JPA may receive grant funding for certain portions of its efforts above and beyond the HCP mitigation obligations, primary responsibility for JPA operation and HCP implementation will be funded by the Permittee Agencies themselves. The annual operational expenses of the JPA will be billed directly to the Member Agencies in accordance with budgets approved by the HCP Executive Committee and the JPA Governing Board. HCP-specific expenses will be funded in accordance with a separate PFA entered into between the Permittee Agencies and the JPA.

The purpose of the PFA is to ensure that each of the Permittee Agencies is committed to participate and comply with the terms of the HCP and ITP; that each of the Permittee Agencies bears the cost of each of its Covered Activities as set forth in the PFA, including its overall fair share of contributions (as set forth in Table 6-2) to the JPA; and that there is an established dispute resolution and enforcement mechanism to assure that Permittee Agencies perform their obligations in a manner that does not undermine the HCP ITP.

6.4.4 Conservation Easements, Fee Title, and Endowments

San Bernardino Valley Conservation Trust

The Alliance does not have the ability to hold conservation easements or the proper fiduciary mandates to hold endowments or other securities. Therefore, the San Bernardino Valley Conservation Trust (Conservation Trust), as a 501(c)(3) charitable corporation, or other appropriately qualified entity, as approved by the Wildlife Agencies, will be charged with holding fee title to, or conservation easements covering, land secured as mitigation for Covered Activities. The Conservation Trust is qualified to hold conservation easements, endowments and other forms of security in accordance with Section 815 et seq. of the California Government Code. Financial management of the Conservation Trust, or other entity, will be in accordance with the prudent investor standards set forth in the California Probate Code, and the overall activities of the Conservation Trust will be governed by Senate Bill 1094, codified at Sections 65965-98 of the California Government Code. The Conservation Trust has an independent board of directors and management separate from the managers of the HCP. It is anticipated that there will be some form of Memorandums of Agreement or Memorandums of Understanding between the Conservation Trust (or other appropriately qualified entity) and the Alliance establishing a long-term relationship for the purposes of plan compliance and implementation. The Conservation Trust, or other appropriately qualified entity, will receive incidental take under the Joint ITP for any activities it may conduct under the HCP.

6.5 HCP Implementing Entity

As described in Section 6.4, *Upper SAR Joint Powers Authority*, the JPA is the HCP Implementing Entity, and as Implementing Entity it operates as the Upper Santa Ana River Sustainable Resources Alliance.

6.5.1 Staffing of the Upper Santa Ana River Sustainable Resources Alliance

The Alliance will be staffed primarily by employees of Valley District with supplemental assistance provided by contracted consultants or other entities, as needed. The day-to-day operations of the Alliance will be run by the Executive Director. Additionally, the Executive Director will serve as the Principal Scientist for the HCP with the responsibility for guiding the scientific work plan and maintaining the highest level of scientific integrity within the Plan. The primary responsibility of the Executive Director is to ensure the Alliance and Permittee Agencies remain in compliance with the ITPs associated with the HCP and other programmatic permits issued for Covered Activities. The Executive Director will be supported by a staff of professionals, including a Program Compliance Manager, who will be responsible for ensuring that Covered Activities are implemented in a manner consistent with the Joint ITP and other agency permits (404, 401, 1602, 2081); and a Preserve System Manager, who will be responsible for ensuring that success criteria are being met within the HCP Preserve System through conservation actions that contribute to the conservation strategy of the HCP, as well as the mitigation requirements of the additional permits as committed by the Alliance.

6.5.2 Implementing Entity Responsibilities

The Alliance's responsibilities are fully spelled out on the JPA Agreement and are summarized below.

Plan Implementation

The Alliance will serve as the overall implementing entity on behalf of the Permittee Agencies. Although each Permittee Agency will be responsible for any and all of its actions in connection with the Covered Activities, including compliance with the terms of the HCP and the Joint ITP, the Alliance will be responsible for implementing the overall conservation strategy. The Alliance will also be responsible for all financial aspects of the HCP, including budgeting, grant administration, and expenditures.

HCP Compliance

The Alliance will be responsible for overall HCP compliance. This includes ensuring implementation of the specific mitigation requirements in the conservation strategy, as well as meeting all biological monitoring, reporting, and adaptive management requirements as described in Chapter 5, *Conservation Strategy*. The Alliance will also be responsible for ensuring that the Permittee Agencies implement Covered Activities consistent with the HCP and ITP, which will be enforced through the Project Consistency Review process described below.

Up-Front and Stay-Ahead Provision

The HCP's Up-Front and Stay-Ahead Provisions require that implementation of the Conservation Strategy and progress towards assembly and management of the HCP Preserve System will stay ahead of Covered Activity impacts by a minimum of 10%. The Alliance will ensure that HCP implementation complies with the Up-Front and Stay-Ahead Provisions by monitoring and tracking the establishment and management of the HCP Preserve System along with tracking of Covered Activity impacts. To ensure that mitigation is in Rough-Step and ahead of impacts (i.e., similar or superior Covered Species habitat is being acquired, restored, and managed, compared to those impacted by Covered Activities), the Up-Front and Stay-Ahead Provisions will track mitigation and impacts by general habitat type (i.e., aquatic, riparian, alluvial fan) and Preserve Unit area. For example, for San Bernardino kangaroo rat, Santa Ana River woolly-star, and slender-horned spineflower, mitigation and impacts will be tracked by Alluvial Fan Preserve Unit (i.e., Unit A or B), to ensure that mitigation is being acquired, restored, and managed within the same Alluvial Fan Unit as Covered Activity impacts. In addition to land acquisition (via fee title or easements), restoration and/or rehabilitation, and management, the Up-Front and Stay-Ahead Provisions, can be achieved by the purchase of credits from a USFWS-approved conservation or mitigation bank operating within the same Preserve Unit as Covered Activity impacts, where credits are available for the Covered Species being impacted.

Implementation Compliance and Concurrence Procedure

An Implementation Compliance and Concurrence Procedure (ICCP) will be instituted between the Alliance and USFWS for each phase of HCP implementation, including pre-HCP Covered Activity implementation (i.e., Up-Front). The ICCP will require the Alliance to quantify and demonstrate that the Conservation Strategy, and progress towards assembly and management of the HCP Preserve System, is ahead of Covered Activity impacts by a minimum of 10% and that mitigation is In-Step with impacts. The ICCP will involve the Alliance preparing, for submission to the USFWS, a 5-year compliance report that quantifies Covered Activity impacts and progress towards assembly and management of the HCP Preserve System for the prior 5 years, as well as the quantification and identification of the Stay-Ahead accounting for the next 5-years of HCP Implementation. The Stay-Ahead accounting will demonstrate that progress towards assembly and management of the HCP Preserve System is a minimum of 10% ahead of Covered Activity impacts proposed to occur within the next phase of HCP implementation. The ICCP will include a USFWS-Alliance meet and confer process whereby potential compliance issues can be discussed and addressed. The ICCP will apply to all phases of HCP Implementation, including Phase 1.

Compliance with and status of the Up-Front and Stay-Ahead Provisions will also be implemented through the consistency review process for Covered Activities (see *Project Consistency Review* below) and via the submission of annual reports.

Project Consistency Review

Prior to implementing any Covered Activity, a Permittee Agency will provide to the Program Compliance Manager a description of the proposed Covered Activity, including project specifications and schedule to enable evaluation of the project's consistency with the HCP, as well as other regulatory permits and environmental compliance required for that project (e.g., California Environmental Quality Act [CEQA], aquatic resource permits, 2081 State ITP). While the project may also receive regulatory permits through the Upper SAR Aquatic Resources Programmatic Permits

(CDFW Section 1600 Multi-Project Lake and Streambed Alteration Agreement, Clean Water Act Section 404 Regional General Permit and/or Programmatic IP, and Programmatic 401 Certification and/or General Order) and/or the Section 2081 ITP(s), each individual water agency will be responsible for their own project-specific CEQA compliance when required.

The Alliance will develop a regular calendared “pre-application” meeting where Permittees can discuss preliminary and project-level proposals/design plans with the Alliance, Wildlife Agencies, and water resources regulatory agencies to ensure projects are being designed in compliance with the HCP, ITPs, and other permits/agreements. The Alliance will also develop project review forms, checklists, and a fee schedule to streamline and support the project consistency review. The project consistency review will document the specific amount of planned impact and proposed impact of Covered Species and regulated resources to document the impacts and the associated mitigation to be used by the Covered Activity (see *Allocation of Incidental Take and Mitigation Accounting*, below). Upon a determination that the Covered Activity is consistent with the HCP, the Program Compliance Manager shall issue a Project Consistency Determination to the applying Permitting Agency and a Notice to Proceed. Decisions of the Program Compliance Manager may be appealed to the HCP Executive Committee. Regardless, the final Project Consistency Determination must be in compliance with the HCP and ITP.

Allocation of Incidental Take and Mitigation Accounting

Upon issuance of a Project Consistency Determination and Notice to Proceed, the Program Compliance Manager shall enter the Covered Activity data into the GIS impact and mitigation tracking database including the amount of incidental take allocated to the project under the ITP, and the amount of mitigation allocated to the project. The GIS impact and mitigation tracking database will be linked to the mitigation accounting system in the Mitigation Reserve Program and the parallel mitigation and species conservation program to ensure full transparency of impact and mitigation tracking and reporting. The Program Compliance Manager will report quarterly to the HCP Executive Committee and JPA Governing Board the amount of incidental take and mitigation issued under the HCP. Impact and mitigation reporting will also include the extent to which mitigation has stayed up front and ahead of impacts, and will identify any foreseeable challenges for upcoming mitigation needs relative to overall phasing and schedules for Covered Activity and mitigation action implementation.

Permit Coordination

The Alliance will provide advice and guidance to Permittee Agencies to support their project planning and implementation of Covered Activities to facilitate project streamlining and HCP compliance. Permit coordination support may include advisory input on project-specific CEQA needs, preconstruction surveys, avoidance and minimization requirements associated with the implementation of any Covered Activity, and other related regulatory advice for Covered Activity implementation. The Alliance will also provide advice to Permittee Agencies for coordinating, securing, and implementing any authorizations needed for Covered Activities under the Aquatic Resources Permits issued by the USACE, the Santa Ana or San Diego RWQCB, and CDFW as described in Section 6.3, *Other Regulatory Agency Permits*.

Regulatory Agency Liaison

In addition to assisting in HCP and permit implementation, the Alliance will serve in a general liaison role between the Permittee Agencies and USFWS and other regulatory agencies, thus providing streamlined feedback to and coordination between the Permittee Agencies and Regulatory Agencies.

Land Acquisition and Mitigation/Conservation Program Management

The Alliance will be responsible for implementing the mitigation requirements of the HCP. This will include the acquisition and funding of conservation easements to be held by the Conservation Trust, or other appropriately qualified entity as approved by the Wildlife Agencies, as well as serving as sponsor of the mitigation and species conservation program described above. The Alliance will be responsible for overall management of the preserve established under the HCP, although specific responsibilities will be undertaken by the Conservation Trust or other easement- or landholders.

Adaptive Management and Monitoring Oversight

The Alliance is responsible for implementation of the Comprehensive Adaptive Management and Monitoring Program (CAMMP). The CAMMP includes adaptive management guidance that applies across all areas of the HCP Preserve System as well as guidance for detailed management actions to be developed at the Preserve Unit-level for specific management issues. The Alliance will be responsible for collecting the appropriate data to ensure that the goals and objectives of the HCP and individual preserve areas are met, determining if HCP Preserve System management strategies are having the desired effect, and evaluating if underlying biological assumptions are supported by field-collected data from the preserves. A framework and guidance for preparation of the CAMMP can be found in Section 5.12, *Comprehensive Adaptive Management and Monitoring Program*.

GIS/Database Maintenance

The Alliance will maintain the overall GIS database required for HCP implementation, including monitoring and reporting and provision of other geospatial services. The GIS database will be available to Permittee Agencies to aid HCP implementation and administration of the other regulatory permits. The GIS database will be linked to the mitigation accounting system in the Mitigation Reserve Program and the parallel mitigation and species conservation program to ensure full transparency of impact and mitigation tracking and reporting. The GIS database is also an integral part of the CAMMP implementation tool set.

Third-Party Contracting

The JPA will have the power to contract with third parties for various services required for HCP implementation. Most importantly, the JPA may enter into agreements with Permittee Agencies from time to time for specific HCP projects. For example, existing Memorandums of Understanding between Valley District and the City of Riverside, and between Valley District and the San Bernardino Municipal Water Department, relative to the Tributary Stream Restoration/Rehabilitation Projects and certain water supply issues, respectively, will be assigned to the JPA for implementation. The JPA may enter into other agreements with Permittee Agencies, or regulatory agencies, relative to specific actions required for implementation of the HCP conservation strategy or otherwise. The JPA will be party to any agreements with SCE and/or the U.S. Forest

Service relative to implementation of the Santa Ana sucker translocation into streams in SCE's hydroelectric operating areas.

Grant Administration

The Alliance will be responsible for writing and securing grants, and administering any grant funds available and needed for HCP implementation.

6.5.3 Public Input

Stakeholder Committee

To receive public input on the implementation of the HCP over its 50-year life, the JPA will form a committee of outside stakeholders that will meet periodically (at least twice per year). Ideally, the Stakeholder Committee will include participants with a range of views, including cities and counties, conservation organizations, the business community, and the public at large. The Stakeholder Committee will be provided with reports of ongoing HCP activity, upcoming decisions, significant policy issues, changes in management arising out of the HCP's adaptive management provisions, and other relevant information. The purpose is to secure a broad cross-section of community views to inform HCP decision-making.

Technical Advisory Committee

To receive technical input on the implementation of the HCP over its 50-year life, the JPA will form a Technical Advisory Committee that will meet periodically (at least once per year, or more frequently as needed). The Technical Advisory Committee will include scientists, engineers, and other professionals with expertise in biology, hydrology, and other relevant areas. Although the Technical Advisory Committee will be provided with reports of all ongoing HCP activity, its most important role will be to advise the Alliance on adaptive management questions that may arise over the life of the Plan. The Technical Advisory Committee may have some overlapping membership with the Preserve Management Committee described below.

Preserve Management Committee

The JPA, in conjunction with the Conservation Trust, or other appropriately qualified entity, will form a Preserve Management Committee to advise on questions related to the establishment and long-term management of the HCP Preserve System. This will include preparation of focused preserve management plans for each Preserve Unit (Preserve Unit Plans, or PUPs), monitoring and management of each preserve area and the overall health of the preserve, and identification and establishment of future preserve areas as needed to complete the mitigation obligations of the HCP. In addition to participation by the JPA and the Conservation Trust, this committee may also include members of the Technical Advisory Committee, Stakeholder Committee, the Wildlife Agencies, and other regulatory agencies.

The Preserve Management Committee will provide advice and input on the content of HCP Preserve System Annual Management Work Plan and 5-year update of the PUPs, along with the funding to be allocated to implement the Annual Management Work Plan and to be anticipated for each 5-year PUP.

Any potential for incidental take occurring from actions implemented under the Preserve System Annual Management Work Plan is covered by the HCP ITP, and will be documented by the Program Compliance Manager and entered into the GIS impact and mitigation tracking database.

Annual Public Meeting

The Alliance will hold a noticed public meeting to present the results in the Annual Report on HCP Implementation. The public meeting will include reports from the committees described above and a report from the wildlife agencies evaluating JPA compliance with the HCP ITP. The annual public meeting will be conducted to provide a transparent accounting of HCP implementation and to receive public input on matters of public concern or interest.

6.6 Mitigation/Conservation Program Implementation

A mitigation program will be developed to provide accounting of mitigation requirements identified in the HCP and other permits. The program will track the types of mitigation (e.g., restoration, rehabilitation, re-establishment, establishment) implemented/proposed to be implemented, and the species and habitat value of each identified mitigation unit. The HCP will determine the most appropriate mechanism to pursue for this mitigation program (e.g., mitigation and/or conservation bank, in-lieu fee program, or other system) as deemed appropriate and acceptable by the regulatory agencies.

If a mitigation and/or conservation bank is deemed the most appropriate strategy, all regulatory agencies will likely be signatory to the bank. The USACE is authorized to approve mitigation banks in accordance with detailed regulations it adopted in 2008 governing all types of mitigation (2008 Mitigation Rule). The USFWS may also approve banks for mitigation projects involving threatened or endangered species. Banks approved by USFWS are referred to as “conservation banks,” but they are often combined with USACE-approved mitigation banks through an inter-agency approval process articulated in the 2008 Mitigation Rule. CDFW may also participate in such banks for the purposes of generating credits under CESA, Section 1600 et seq. of the California Fish and Game Code, or CEQA. CDFW has adopted a comprehensive banking policy to provide guidance. Although the SWRCB has not yet adopted its own policy on banking, their 2019 *Wetland Definition and Procedures for the Discharge of Dredged or Fill Material into Waters of the State* provide certain specific regulatory benefits for banks.

6.6.1 Early Implementation of HCP Mitigation

Prior to approval of the Upper Santa Ana River HCP, some of the Permittee Agencies initiated conservation projects intended to benefit the Santa Ana sucker. In particular, Valley District entered into a cooperative arrangement with the City of Riverside to undertake certain restoration efforts in the Santa Ana River and its tributaries (Tributary Restoration Projects). The participants’ intent was to begin these efforts as early implementation of the HCP (i.e., in advance of HCP approval) given the critical state of the Santa Ana sucker population, but to have the benefit of these efforts built into and accounted for in the HCP’s Up-Front and Stay-Ahead Provisions, and to serve as mitigation for various Covered Activities under the HCP. The mitigation value generated by these early implementation restoration efforts will be integrated into mitigation/conservation program.

6.6.2 Mitigation/Conservation Program Sponsor

If a mitigation/conservation bank(s) is chosen as the appropriate mitigation strategy, the JPA will serve as the bank sponsor and will have the ability to allocate credits to various Permittee Agencies undertaking projects within the Planning Area. Unlike a typical mitigation or conservation bank, however, the primary purpose for establishing these credits is for use by the HCP Permittees to mitigate impacts from Covered Activities, over a long period of time. The JPA will use the bank ledger process established in the Mitigation Reserve Program as an accounting mechanism to track the impacts of Covered Activities to assure they are fully mitigated over the life of the HCP. However, if for any reason one or more of the Permittee Agencies decides to formally abandon a project covered by the HCP, thus leaving unused credits available in a bank, a secondary purpose of a mitigation/conservation bank is to enable the JPA to sell those unused credits to private or public third parties (i.e., who are not Permittees under the HCP) to recoup some portion of the cost of the mitigation projects. The process for credit generation, tracking, allocation and sale will, along with other aspects of the bank, be set forth in a “Bank Enabling Instrument(s)” between the JPA as bank sponsor and participating State and Federal agencies, and will be integrated into the Mitigation Reserve Program.

6.6.3 Mitigation on CDFW Lands

It should also be noted that, because restoration projects will occur on land owned by CDFW, as a matter of CDFW policy they may not be included in a bank. These restoration projects (Hidden Valley Creek, Hidden Valley Wetlands, and Lower Hole Creek) will instead be treated as “permittee responsible” mitigation projects. The mitigation value created through restoration on CDFW-owned lands will also be tracked through the Mitigation Reserve Program.

6.7 Plan Changes and Amendments

6.7.1 Withdrawal of Permittee Agencies

A Permittee Agency may withdraw as a Permittee Agency of the JPA if the JPA and the Wildlife Agencies determine that such withdrawal will not compromise the viability of the HCP (including its conservation strategy), and the withdrawing Permittee Agency makes the JPA whole as described below.

If a Permittee Agency wishes to withdraw, that Agency will provide written notice to the Executive Director, with a copy to each Permittee Agency and each Wildlife Agency, specifying the reasons and proposed timing of withdrawal. The Executive Director will thereafter make a recommendation as to those funds needed from the withdrawing agency to make the JPA whole as described in Sections 6.2, *HCP Permit Structure*, and 6.4, *Upper SAR Joint Powers Authority*, and as will be more fully set forth in the JPA Agreement and the PFA. The Executive Director’s recommendation will be forwarded to the JPA Governing Board for a final determination regarding the terms and conditions of withdrawal, which, following the board’s determination, will be forwarded to the withdrawing Permittee Agency.

No withdrawal shall occur until the JPA and the withdrawing Permittee Agency have entered into a binding agreement providing for payment of any funds and including such indemnities, hold

harmless provisions, and other contractual assurances as may be determined by the JPA Governing Board to be appropriate and, if required, any amendments to the HCP completed together with appropriate environmental review. Until the withdrawal is complete, and unless agreed otherwise by the JPA, a withdrawing Permittee Agency shall remain in compliance with the JPA Agreement and the PFA. In no event shall a Permittee Agency be entitled to reimbursement of any costs incurred by the JPA prior to the date of withdrawal.

If a Permittee Agency has engaged in a Covered Activity in reliance upon the ITP, the Permittee Agency may not withdraw from the HCP or the JPA, but may seek to remove other Covered Activities from the HCP as described below.

6.7.2 Removal of Covered Activities and Substitution of Mitigation Values

If a Permittee Agency determines that a Covered Activity will no longer be undertaken, then that Covered Activity may be removed from the HCP and ITP coverage. Removal will occur if a Permittee Agency decides to withdraw from the HCP and JPA in accordance with Section 6.4, or it may occur if a Permittee Agency decides to remove some but not all of its Covered Activities from the HCP and the ITP. Removal may occur only with the approval of the JPA and the Wildlife Agencies and will constitute a minor Amendment of the HCP. If a Covered Activity is removed, then any mitigation value generated by mitigation projects conducted under the HCP, and allocated by the JPA to the Covered Activity being removed either in the form of bank credits or as otherwise accounted for in the Mitigation Reserve Program, may be reallocated by the JPA to other Covered Activities.

Note that the JPA may choose not to reduce the overall mitigation requirements of the HCP and instead reserve the excess mitigation value available resulting from the removal of the Covered Activity and reallocate it to other Covered Activities proposed by the Permittee Agency removing a Covered Activity, or apply it as and if needed to address Changed Circumstances requiring the provision of additional mitigation. The terms of removal shall be approved by the JPA Governing Board and the Wildlife Agencies and shall not be effective until the JPA and the withdrawing Permittee Agency have entered into a binding agreement providing for payment of any funds and including such indemnities, and hold harmless provisions and other contractual assurances as may be determined by the JPA Governing Board to be appropriate; and, if required, any amendments to the HCP have been completed together with appropriate environmental review. In no event shall a Permittee Agency be entitled to reimbursement of any costs incurred by the JPA prior to the date a Covered Activity is removed from the ITP and the HCP, provided, however, that funds, mitigation, or other resources provided by a Permittee Agency may be reallocated as appropriate to other Covered Activities of that Permittee Agency that remain within the HCP and ITP.

6.7.3 Addition of Covered Activities

A Permittee Agency may request the JPA and the Wildlife Agencies to add a new Covered Activity to the HCP and the ITP that would potentially increase the amount of incidental take above that allocated in the ITP. Any such addition would constitute a Major Amendment of the HCP (as described below), and shall occur only upon that Permittee Agency paying into the HCP an appropriate share of past and future HCP development and implementation costs as may be determined by the JPA and the Wildlife Agencies.

6.7.4 Substitution of Covered Activities

A Permittee Agency may request the JPA and the Wildlife Agencies substitute a new Covered Activity to the HCP and the ITP in exchange for removing a Covered Activity no longer planned for implementation such that the total incidental take allocated in the ITP is the same or less. Any such substitution would constitute a Minor Amendment of the HCP (as described below), and shall occur only if the new project impacts are determined to be equal or lesser than the Covered Activity it replaced, and only with approval of the JPA Governing Board and the Wildlife Agencies.

6.7.5 HCP Amendment Process

Minor Amendments

Minor Amendments are changes that would not appreciably increase the HCP's impacts associated with Covered Activities, implementation of the conservation strategy, or additional amount of incidental take, and therefore would not require an amendment to the ITP. A Minor Amendment is not appropriate to add a new species to be covered under the HCP, or to change the boundaries of the HCP. Examples of Minor Amendments include correction of spelling errors or minor corrections in boundary descriptions. The Minor Amendment process would be accomplished through an exchange of letters between the JPA and the USFWS Palm Springs Field Office. Proposed revisions will be reviewed by USFWS upon submission of each annual report to ensure the successful implementation of the conservation strategy. USFWS will review and respond within 30 days. Revisions to measures will be approved by USFWS prior to the JPA adopting revised measures.

Major Amendments

Major Amendments to the HCP would require an amendment to the ITP. Major Amendments involve changes that do affect the amount of impact from Covered Activities, implementation of the conservation strategy, or increase in the amount of incidental take. A Major Amendment is required to add new species or to change significantly the boundaries of the HCP. Major Amendments often require amendments to the USFWS decision documents, including the NEPA document, the biological opinion, and findings and recommendations document. Major Amendments will often require additional public review and comment.

6.7.6 Suspension/Revocation

USFWS may suspend or revoke the Joint ITP if the JPA fails to implement the HCP in accordance with the terms and conditions of the permits or if suspension or revocation is otherwise required by law. Suspension or revocation of the Section 10(a)(1)(B) permit, in whole or in part, by USFWS shall be in accordance with its regulations in effect at the time of such suspension or revocation (see 50 Code of Federal Regulations [CFR] 13.27-29, 17.22(b)(8), and 17.32 (b)(8)). To avoid a situation in which a failure by one Permittee Agency compromises the incidental take authority enjoyed by the other Permittee Agencies, the IA and the PFA include mechanisms for the early identification and resolution of compliance issues. Where compliance by one Permittee Agency is not addressed following notice from USFWS and an opportunity to cure, USFWS may suspend the incidental take authorization of the non-complying Permittee Agency until such time as compliance is achieved and, if appropriate, any mitigation for a default affecting the environment has been provided or assured.

Unless the identified non-compliance affects the overall viability of the HCP, or the default is not severable, it is not anticipated that USFWS would suspend or revoke the Joint ITP as a whole.

6.7.7 Permit Renewal

Upon expiration, the Section 10(a)(1)(B) permit may be renewed without the issuance of a new ITP, in accordance with the permit renewal regulations then in effect, provided that the biological circumstances and other pertinent factors affecting Covered Species are not significantly different than those described in the original HCP. To renew the ITP, the JPA will submit the following to USFWS, in writing:

- A request to renew the ITP with reference to the original permit number.
- A certification that all statements and information provided in the original HCP and ITP application, together with any approved HCP amendments, are still true and correct, and inclusion of a list of changes.
- A description of all incidental take that has occurred under the existing ITP.
- A description of any portions of Covered Activities still to be completed.

If USFWS concurs with the information provided in the request, it will renew the ITP consistent with permit renewal procedures required by Federal regulation in effect at the time of the ITP renewal request (see 50 CFR 13.22). If the JPA files a renewal request and the request is on file with the issuing USFWS office at least 30 days prior to the ITP expiration, the ITP will remain valid while the renewal is being processed, provided the existing ITP is renewable. However, the Permittees may not impact listed species beyond the quantity of incidental take authorized by the original ITP or change the scope of the HCP. If the JPA fails to file a renewal request within 30 days prior to ITP expiration, the ITP will become invalid upon expiration. The Permittees must have complied with all annual reporting requirements to qualify for a permit renewal.

6.8 Implementing Agreement

6.8.1 Purpose of the Implementing Agreement

USFWS and the JPA will enter into an “Implementing Agreement” (IA) relating to the Upper Santa Ana River HCP concurrent with HCP approval and issuance of the Joint ITP. The IA will have a term equal to that of the HCP. Although not legally required under the Endangered Species Act, IAs are recognized in the USFWS HCP Handbook (USFWS 2016) as a potentially valuable tool that lays out the legal obligations of the parties in more detail than may be appropriate in an HCP. Given the multiple parties and wide range of Covered Activities under the HCP, USFWS determined that an IA is appropriate in this case.

The stated purposes of the IA are to (i) ensure implementation of each of the terms and conditions of the HCP and the Joint ITP; (ii) provide long-term assurances to the Permittee Agencies that, pursuant to the Federal “No Surprises” provisions of 50 CFR 17.22(b)(5) and 17.32(b)(5), as long as the terms and conditions of the IA, the HCP, and the ITP are fully satisfied, USFWS will not require the Permittee Agencies to commit additional land, water, or financial compensation, or to accept additional restrictions on the use of land, water, or other natural resources, either to minimize and

mitigate the impacts of Authorized Incidental Take, or to provide for the conservation and management of the Covered Species in the Planning Area, except as provided in the IA and the HCP; and (iii) describe remedies and recourse should any Party fail to perform its obligations as set forth in the IA.

6.8.2 Contents of the Implementing Agreement

The IA outlines the basic responsibilities of USFWS, the JPA, and the Permittee Agencies under the HCP, largely along the lines described in this chapter of the HCP. It then addresses specific areas of JPA responsibility, including (i) overall plan implementation, (ii) implementation of plan-wide conservation measures, (iii) implementation of conditions on Covered Activities, (iv) establishment and management of the HCP Preserve System, (v) monitoring and adaptive management, (vi) operation of the mitigation/conservation program and other conservation actions, and (vii) coordination of the HCP ITP with the other regulatory permits. Additional topics covered by the IA include the scope and joint nature of incidental take coverage, regulatory assurances, requirements for coverage under Section 7 of the ESA, funding sources and assurances, reporting obligations, and remedies and enforcement. Remedies may include, among others, suspension or revocation of the incidental take authority under the Joint ITP of any Permittee Agency that falls out of compliance with the HCP.

6.8.3 Relationship to Other Instruments

The IA incorporates the HCP by reference. The IA includes similar language to the PFA because the PFA is intended to support the JPA's obligations under the IA. To ensure that the JPA can remain in compliance with the IA, the PFA provides to each of the Permittee Agencies a right to cure defaults by other Permittee Agencies on the part of the JPA, and a dispute resolution process to assure that, in light of the interdependent nature of the activities of the Permittee Agencies, all appropriate efforts are taken to ensure the continued success of the HCP (and the JPA's continuing performance under the IA) even if one Permittee Agency breaches or otherwise has difficulties with compliance with the terms of the HCP.

6.8.4 Dispute Resolution Process

The IA will incorporate the principles of severability included in the JPA and PFA as described in Sections 6.2 and 6.4 above. In particular, the IA will assure that, if one Permittee Agency conducts a Covered Activity in a manner inconsistent with the HCP, (i) that Permittee Agency's incidental take authority may be suspended or revoked without affecting the incidental take authority issued to the other Permittee Agencies or the JPA and (ii) any costs incurred by the JPA or other Permittee Agencies as a result of non-compliance by one Permittee Agency will be borne by the non-complying Permittee Agency and shall be reimbursed to the JPA if the JPA has incurred any associated costs. The IA also provides for notice of default, opportunity to cure, and dispute resolution provisions to assure that the HCP may continue to operate without disruption, to the extent possible, while any disputes between the parties are resolved.

If a dispute should arise between the Alliance and USFWS (or other regulatory agency), a dispute resolution process will be implemented to encourage expedient resolution of the dispute. Most issues and decisions are expected to be readily resolved at the Alliance and agency Staff Level. However, if disputes are not resolved relatively quickly, they will be elevated to the Managers

Group. If the Managers Group cannot resolve the dispute in one meeting, it will be elevated to the Directors Group, then the State Managers Group, and finally to the Appointed and Elected Official Level for final arbitration and decision (Figure 6-1).

6.9 Responses to Changed Circumstances

Section 10 regulations (50 CFR 17.22(b)(2) and 17.32(b)(2)) require that an HCP specify the procedures to be used for dealing with changed and unforeseen circumstances that may arise during the implementation of the HCP. In addition, the HCP No Surprises Rule (69 *Federal Register* 71723, December 10, 2004, as codified in 50 CFR 17.22 (b)(5) and 17.32(b)(5)) describes the obligations of the Permittees and USFWS. The purpose of the No Surprises Rule is to provide assurance to the non-federal landowners participating in habitat conservation planning under the Endangered Species Act that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the Permittees.

Changed Circumstances are defined in 50 CFR 17.3 as changes in circumstances affecting a species or geographic area covered by an HCP that can reasonably be anticipated by the Permittees and USFWS and for which contingency plans can be prepared (e.g., a fire, or other natural catastrophic event in areas prone to such event). If additional conservation and mitigation measures are deemed necessary to respond to Changed Circumstances and these additional measures were provided for in the Plan's responses to the identified Changed Circumstances (e.g., conservation management activities or mitigation measures expressly agreed to in the HCP), then the Permittees will implement those measures as specified in the Plan. However, if additional conservation management and mitigation measures are deemed necessary to respond to Changed Circumstances and such measures were not provided for in the Plan's responses to the identified Changed Circumstances, USFWS will not require these additional measures absent the consent of the Permittees, provided that the HCP is being "properly implemented" (to properly implement the HCP means fully implementing all commitments and provisions agreed to in the HCP, the IAs, and the ITPs).

Chapter 7, *Funding*, estimates an average annual cost for Changed Circumstances of approximately \$225,000 to implement the HCP. Annual funding of the Changed Circumstances Reserve will be higher in early years of HCP implementation to establish the reserve (see Section 7.5.8, *Cost Uncertainties and Changed Circumstances*).

The HCP has identified and addresses six Changed Circumstances that can be reasonably anticipated in the Planning Area: Climate Change, Fire, Drought, Flood, Invasion of New Nonnative Species, and Future Listing of Non-Covered Species. Each of these Changed Circumstances is described below.

6.9.1 Climate Change

There are clear scientific data indicating that alteration of the atmosphere is causing changes in climate, including increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising sea levels. In California, it is anticipated that there will be warmer temperatures, greater extremes in weather, and larger variation between wet and dry years, but precipitation patterns are more difficult to project (Bedsworth et. al. 2018). Though annual precipitation may not vary greatly, a greater proportion of precipitation will come from larger storm

events allowing for higher variability in annual rainfall depending on the size of the larger storms (Dettinger 2016). Higher nighttime temperatures are predicted, perhaps altering days of frost, daily temperature extremes, and distribution of some species (IPCC 2007). Some of the most dramatic potential climate change impacts include increased frequency and severity of extreme events, such as heat waves, wildfires, and flooding (Lenihan et al. 2006, IPCC 2007, Bedsworth et. al. 2018)). To accommodate shifts in distribution, species will need a range of large-core habitat areas connected by landscape-level linkages (Keeley et. al. 2018). The species most at risk are those that have specific habitat requirements, have limited ability to relocate, or are surrounded by development (leaving few relocation options).

Although the extent and nature of impacts from climate change within the Planning Area are unknown, some climatic models suggest that there may be changes in vegetation patterns and increases in wildfire size and frequency (Bedsworth et. al. 2018).

Response to Climate Change: The Upper Santa Ana River HCP conservation strategy protects and enhances through restoration and management of the habitat connectivity in the region. Protection of habitat connectivity, especially along ecological gradients such as elevational gradients and along natural hydrologic features, provides the opportunity for species to shift their range and area of occupied habitat in response to climate change. Additional adaptive management may be needed to enhance connectivity at key locations, or to translocate individuals across existing barriers to movement. Long-term monitoring of the distribution of Covered Species and their habitat may indicate shifts in distribution and the need to adaptively manage the integrity and function of habitat connectivity at key locations. Monitoring will occur as a part of the CAMMP) implementation, and response to climate change will be managed through enhancement of connectivity for species movement at key locations as needed.

6.9.2 Fire

A repetitive fire that results in or substantially increases the risk of type conversion (e.g., converting shrub lands to non-native grasslands or loss of riparian overstory) constitutes a Changed Circumstance. USFWS has indicated that for sage scrub and riparian habitat, repeat fires within the same footprint within 10 years of the original burn can adversely hamper natural regrowth and interrupt the ability of the habitat to rejuvenate. Diffendorfer et al. (2007) cite several sources that indicate fire cycles of 1 to 3 years within sage scrub can increase the presence of invasive weeds and lead to conversion to grassland. Ten years after a fire, shrub-dominated habitat types are expected to be fully re-established and capable of natural regeneration. In riparian habitats, invasive species such as *Arundo* and tamarisk appear to be making riparian areas more fire prone, and are better adapted to recover from fire than native species, leading to a decline in native species after fires (Lambert et. al. 2010). Of particular concern in the Planning Area is the prevalence of homeless encampments in riparian habitats where cooking and heating fires spark wildfire in the surrounding riparian vegetation.

Response to Fire: Based on the frequency, extent, and severity of damage from a repetitive fire, specific adaptive management tasks will be identified and implemented. Natural regrowth within the damaged area will be monitored and measures to control invasion of nonnative, invasive plant species, excessive erosion, and/or type conversion will be applied as part of the CAMMP implementation. The damage caused by wildfires will be addressed as follows:

<p>STAFF LEVEL</p>	<p>ROLES & APPROACH FOR ISSUE RESOLUTION</p> <ul style="list-style-type: none"> • Regular meetings occurring quarterly or more frequently as needed • If issue arises, clearly define issues before elevating for resolution • If issue cannot be resolved relatively quickly (1-2 meetings), elevate immediately 	<p>TEAM</p> <ul style="list-style-type: none"> • Alliance: Preserve System Manager and/or Program Compliance Manager • USFWS: Palm Springs Field Office staff • CDFW: Region 6/Ontario office staff • USACE: Los Angeles District Project Manager • RWQCB: Santa Ana RWQCB Staff
<p>MANAGERS GROUP</p>	<p>ROLES & APPROACH FOR ISSUE RESOLUTION</p> <ul style="list-style-type: none"> • Periodic meetings scheduled on a regular basis, even if there are not specific issues to elevate • If group cannot resolve issue in one meeting, elevate immediately 	<p>TEAM</p> <ul style="list-style-type: none"> • Alliance: Technical Advisory Committee and/or Preserve Management Committee • USFWS: Assistant Field Supervisor, Carlsbad Field Office • CDFW: Environmental Program Manager, South Coast Region • USACE: Chief, Los Angeles and San Bernardino Counties Section, Regulatory Division • RWQCB: Santa Ana Team RWQCB Senior Regulatory Staff
<p>DIRECTORS GROUP</p>	<p>ROLES & APPROACH FOR ISSUE RESOLUTION</p> <ul style="list-style-type: none"> • Quarterly meetings scheduled, even if there are not specific issues to elevate • Meetings would include a briefing for group on progress and status/milestones 	<p>TEAM</p> <ul style="list-style-type: none"> • Alliance: Executive Director • USFWS: Field Supervisor, Carlsbad Field Office • CDFW: Regional Manager, South Coast Region • USACE: Los Angeles Division Regulatory Branch Chief • RWQCB: Santa Ana RWQCB Executive Officer
<p>STATE MANAGERS</p>	<p>ROLES & APPROACH FOR ISSUE RESOLUTION</p> <ul style="list-style-type: none"> • Meeting scheduled if needed 	<p>TEAM</p> <ul style="list-style-type: none"> • Alliance: Executive Director and Valley District GM • USFWS: Assistant Regional Director, HCP Coordinator Regional Office • CDFW: Deputy Director, Ecosystem Conservation Division • USACE: Los Angeles District Commander • RWQCB: SWRCB Chief Deputy Executive Director for Water Quality
<p>APPOINTED AND ELECTED OFFICIAL LEVEL</p>	<p>ROLES & APPROACH FOR ISSUE RESOLUTION</p> <ul style="list-style-type: none"> • Final arbitrator of elevation • Meeting scheduled if needed 	<p>TEAM</p> <ul style="list-style-type: none"> • Alliance: Executive Director and Valley District GM • USFWS: Regional Office Director • CDFW: Director • USACE: As Determined by ACOE • RWQCB: SWRCB Executive Director

Figure 6-1
Regulatory Agency Dispute Resolution Process
Upper Santa Ana River Habitat Conservation Plan



- Nonnative annual grasses and other invasive plants becoming established in the burn area will be controlled.
- Seed-free straw wattles or their equivalent will be placed in areas vulnerable to erosion.
- Native trees, shrubs, and annual forbs will be revegetated through seeding and/or container plants if, within 5 years of the fire, the percent cover of native vegetation is less than 30% of the pre-fire perennial and annual cover and/or in an adjacent unburned area of similar habitat.

6.9.3 Drought

For the purpose of defining Changed Circumstances, drought is defined as climatic drought of 5 to 10 years in length, as declared by the California State Department of Water Resources or, if needed, by the JPA. Longer periods of drought (greater than 10 years) are considered *Unforeseen Circumstances*.

Response to Drought: Depending upon the extent and severity of the drought, a specific adaptive management action plan will be developed and implemented as part of the CAMMP implementation. Management activities may include increased effort to control nonnative plant species and other nonnative invasive species. In extreme cases the Alliance will access and make available additional water supply from the Santa Ana River Conservation and Conjunctive Use Program (SARCCUP), or other conjunctive use program the Alliance is party to (or potentially via additional discharge from the wastewater treatment plants along the upper Santa Ana River), as a potential management tool for supplemental water and habitat maintenance (see Chapter 5).

6.9.4 Flood

A 100-year flood event as classified by the Federal Emergency Management Agency (FEMA) and determined by the Flood Control constitutes a Changed Circumstance under this HCP. However, flooding is a natural event and is not anticipated to cause sufficiently severe damage that would prevent natural regeneration within the HCP Preserve.

Response to Flood: If the extent and severity of flood damage indicate a need for increased monitoring or management, measures will be identified and applied as part of CAMMP implementation.

6.9.5 Invasion of New Nonnative Species

For the purpose of defining Changed Circumstances, invasion of new nonnative species is defined as an introduction of a nonnative species within the HCP Preserve that has either: (a) not previously been known to occur in the Planning Area and has been shown to be problematic elsewhere or (b) is a particularly problematic variety of nonnative species that is resistant to typical control measures (e.g., herbicide-resistant variety of plant). Unforeseen Circumstances would be defined as invasion within the HCP Preserve of a species not currently known to be problematic elsewhere, but that becomes so upon establishment in the HCP Preserve.

Response to Invasion of New Nonnative Species: When nonnative invasive species are discovered, actions designed to reduce such species will be applied. If an unanticipated invasion by a nonnative invasive species occurs as a result of another Changed Circumstance identified in this section (e.g., repeated fires), USFWS will be notified. The damage caused by the unanticipated invasion by the nonnative species will be addressed as follows:

- The nonnative invasive species will be mapped and their abundance at each location will be noted.
- Mapped infestations of the nonnative invasive species will be treated and re-treated as necessary to achieve control and eventual eradication.
- The response of species/habitats to the action(s) taken will be monitored.

For new nonnative invasive terrestrial plant species, where the influx involves a species included on the California Invasive Plant Council (Cal-IPC) "List A" or State or Federal "noxious" weeds lists, USFWS and CDFW will be notified and a plan of action will be determined within 30 days of such notice.

For new nonnative invasive aquatic plants and animals, the presence and abundance of the species will be recorded during periodic Covered Species and habitat surveys. Any new nonnative invasive species not previously documented in the Planning Area (constituting a Changed Circumstance) will be brought to the immediate attention of the JPA and Wildlife Agencies, and a plan to assess the threat and response will be developed within 30 days. For previously known but particularly noxious species, a nonnative invasive species control and eradication plan will be developed and implemented within 6 months of detection.

6.9.6 Future Listings of Non-Covered Species

In the event that a species that occurs or has the potential to occur within the Planning Area that is not a Covered Species under this HCP is listed by USFWS subsequent to the issuance of the ITP, such listing will be considered a Changed Circumstance.

Response to Future Listings of Non-Covered Species: The JPA, with assistance from USFWS, will evaluate the potential effects of Covered Activities on the newly listed species and any designated critical habitat. If there is a potential for adverse effects to occur during implementation of Covered Activities, the JPA will implement measures identified by USFWS to avoid the likelihood of impact of the newly listed non-Covered Species, or modification of the newly designated critical habitat, until the HCP and Joint ITP are amended to include such species, or until USFWS notifies the JPA that such measures are no longer needed. The JPA may enter into negotiations with USFWS regarding necessary modifications to the HCP, if any, to revise or amend the Joint ITP to cover the newly listed species. If the JPA decides to pursue coverage of the species under this HCP, USFWS will provide technical assistance in identifying appropriate modifications to the HCP that will be necessary to revise or modify the Joint ITP to cover the newly listed species. USFWS will take into account habitat benefits for the newly listed species provided by existing HCP management activities. A revision to the Joint ITP to include a new species would be processed as a Major Amendment to the HCP.

6.9.7 Responses to Unforeseen Circumstances

Unforeseen Circumstances are defined in 50 CFR 17.3 as changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by the Permittees or USFWS at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in status of the Covered Species. The purpose of the No Surprises Rule is to provide assurances to non-federal landowners participating in habitat conservation planning under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of Unforeseen Circumstances, without the consent of the Permittees.

In case of an unforeseen event for the Upper Santa Ana River HCP, the JPA will immediately notify USFWS staff who have functioned as the principal contacts for the HCP. In determining whether such an event constitutes an Unforeseen Circumstance, USFWS will consider, but not be limited to, the following factors: size of the current range of the affected species, percentage of range adversely affected by the HCP, percentage of range conserved by the HCP, ecological significance of that portion of the range affected by the HCP, level of knowledge about the affected species and specificity of the species-specific conservation strategy under the HCP, and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

If USFWS determines that additional conservation and mitigation measures are necessary to respond to the Unforeseen Circumstances where the HCP is being properly implemented, the additional measures required of the JPA must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set-aside in the HCP's planned preserve system. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or restrictions on the use of land, water, or other natural resources otherwise available for use by Covered Activities under original terms of the HCP, unless agreed to by the JPA and Permittee Agencies.