

AGREEMENT

between

U.S. FISH AND WILDLIFE SERVICE

and

COALITION OF COUNTY AND LOCAL GOVERNMENTS

for the

**CALIFORNIA CONDOR EXPERIMENTAL POPULATION AREA
NORTHERN ARIZONA and SOUTHERN UTAH**

This Agreement is made and entered into by and between the U.S. Fish and Wildlife Service (Service) as represented by the Southwest Region (Albuquerque, New Mexico); the Arizona Ecological Services Office (Phoenix, Arizona); the Mountain-Prairie Region (Denver, Colorado); the Utah Ecological Services Office (Salt Lake City, Utah); and the Western Region (Portland, Oregon); the Ventura Field Office (Ventura, California); and a Coalition of County and Local Governments (Coalition) located in the California condor Experimental Population Area. The parties to this Agreement will be referred to as the Cooperators.

PURPOSE

The purposes of this Agreement are to ensure to the maximum extent practicable that current and future land, water, or air uses within the experimental population area are not affected as a consequence of the release of California condors in northern Arizona/southern Utah, and to promote the recovery of the California condor.

OBJECTIVES

This Agreement is made and entered into in an attempt to meet the following objectives:

1. To facilitate cooperation among Federal, State, County, and local Governments, and private landowners within the experimental population area.
2. To support the establishment of a nonessential experimental population of California condors in the northern Arizona/southern Utah region.

3. To ensure to the maximum extent practicable that all current and future land, water, or air uses within the experimental population area will not be restricted due to the designation or presence of the nonessential experimental population of California condors.
4. Develop opportunities for local communities to participate in the California Condor Recovery Program, including ways which may provide economic benefits.

BACKGROUND

The Service's Pacific Region, Ventura Field Office, is responsible for overall coordination of the California Condor Recovery Program (Program) and, in consultation with the California Condor Recovery Team and other Program participants, directs the implementation of recovery tasks prescribed in the Condor Recovery Plan in order to meet established recovery goals. The Service's Southwest Region, Arizona Ecological Services Office and the Mountain-Prairie Region, Utah Ecological Services Office take part in the California condor recovery effort by either directing or participating in all condor recovery efforts within their geographic area of jurisdiction.

The goal of the April 1996 California Condor Recovery Plan is to reclassify the condor from endangered to threatened. To accomplish this goal, at least two geographically separate wild populations numbering 150 individuals with 15 breeding pairs each are to be established. The Service proposed in January 1996 an experimental project to release captive reared California condors (*Gymnogyps californianus*) into a specially designated area in northern Arizona/southern Utah (61 Fed. Reg. 35). This release will implement a primary recovery action to establish the second wild condor population.

The Endangered Species Act of 1973, as amended (Act) allows the Service to release a listed species outside its current range, but within its historic range, if such a release will further the conservation of such species. However, local communities expressed concern about the potential prohibitions that may accompany a listed species and may potentially impact cultural or economic activities. These concerns were addressed in the 1982 amendments to the Act, Public Law 97-304, published October 13, 1982. These amendments included the creation of section 10(j), which established the procedures for the designation of specific populations as "experimental populations."

Section 10(j) is designed to increase the Service's flexibility to manage reintroduced populations and to protect current and future land uses and activities through the designation of experimental populations. Before an experimental population can be released, section 10(j) requires that the population be determined to be either "essential" or "nonessential" to the continued existence of the species in the wild. For the purposes of defining the protections afforded by Section 7(a)(2) of the Act, an essential experimental population is treated as a

threatened species; a nonessential experimental population is treated as a species proposed for listing as threatened. However, a nonessential population is also treated as a threatened species when located within the National Park System or National Wildlife Refuge System.

This California condor population to be reintroduced within portions of northern Arizona/southern Utah has been designated as nonessential experimental. This nonessential experimental population will be managed in accordance with the provisions of the final rule published on October 16, 1996 establishing the designation, an Interagency Memorandum of Understanding (MOU), and this Agreement. The final rule is incorporated by reference into this Agreement. The 50 C.F.R. section 17.80(d) requires that, to the extent practicable, the regulation promulgated by the Service represents an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Section 7(a)(2) of the Act prohibits Federal agencies from authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify their critical habitats. Therefore, Federal agencies must consult with the Service to ensure that any activity that is authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a listed species. This requirement also applies to the destruction or adverse modification of critical habitat of a listed species. A nonessential experimental population for the purposes of section 7(a)(2) is treated as a proposed species outside of National Park System or National Wildlife System lands, not a listed species, and therefore is excluded from the protection and consultation requirements of section 7(a)(2). Only two provisions of section 7 apply to a species of this status. Section 7(a)(1), which requires Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which only requires Federal agencies to informally confer with the Service on actions likely to jeopardize such species. Conferences are advisory in nature and do not place any requirements on the conferring agency. Activities undertaken on private lands are not affected by section 7 unless the activities are authorized, funded, or carried out by a Federal agency. A nonessential experimental population located within the National Park System or National Wildlife Refuge System shall be treated, for the purposes of Section 7(a)(2), as a listed threatened species, and therefore, subject to the protection and consultation requirements of section 7(a)(2).

Section 9 of the Act prohibits the take of listed species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or to attempt to engage in any such conduct. However, in accordance with the special rules promulgated under section 10(j), a person may take a California condor within the experimental population area, provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Throughout the entire California condor experimental population area, a person(s) will not be in violation of the Act for unavoidable and unintentional take (including killing or injuring) of a California condor, when such take is non-negligent and incidental to a lawful activity, such

as hunting, driving, or recreational activities and is reported as soon as possible. Intentional "take" of a condor, such as willful shooting, egg collecting, or nest destruction, would still be considered a violation under the Act.

PARTIES

WHEREAS, the U.S. Fish and Wildlife Service, a Federal land management and regulatory agency, is responsible for initiating, conducting, and supporting programs for the recovery of listed populations under the authority of the Endangered Species Act of 1973, as amended. Such programs include those designated to recover the California condor.

WHEREAS, County and Local Governments are responsible generally for the health, safety, and welfare of residents and visitors, as well as promoting prosperity, morals, peace and good order, comfort, convenience, aesthetics, tax base, industries, and protection of both urban and non-urban development (Utah Codes 10-9-102 and 17-27-102).

The U.S. Fish and Wildlife Service agrees:

1. All released California condors and their progeny will constitute a nonessential experimental population for the time they are present in the experimental population area, or until the condor is delisted.
2. The experimental population area boundaries are as follows. The southern boundary is Interstate Highway 40 in Arizona from its junction with Highway 191 west across Arizona to Kingman; the western boundary starts at Kingman, goes northwest on Highway 93 to Interstate Highway 15, continues northeasterly on Interstate Highway 15 in Nevada, to Interstate Highway 70 in Utah; where the northern boundary starts and goes across Utah to Highway 191; where the eastern boundary starts and goes south through Utah until Highway 191 meets Interstate Highway 40 in Arizona. All California condors and their progeny found in the wild within these boundaries will comprise the nonessential experimental population for the entire duration which condors are present in the population area, or until the condor is delisted.
3. Before the condors are released, the Service will enter into a Memorandum of Understanding (MOU) among affected Federal agencies, State agencies, and Tribes to establish a general framework for cooperation and participation in this project within the experimental population area. The MOU provides a conduit for information exchange necessary to manage the needs of this nonessential experimental population in a manner that will be compatible with existing and future land management needs and strategies on both public and private land.
4. To relocate any California condors that move outside the experimental population area. All California condors and their progeny in the experimental population area will be

marked and visually identifiable by plastic colored and coded wing markers. In the event that a condor moves outside the experimental population area, the condor will be captured and returned to the experimental population area, or placed in a captive breeding facility. All captures and relocations from outside the experimental population area will be coordinated with Service Cooperators and conducted with the permission of the land owner or appropriate land management agency. The Service has proposed this experimental population area to accommodate the potential future movements of the reintroduced population of condors. All released condors and their progeny are expected to remain in the experimental area due to the geographic extent of the designation.

5. To relocate any California condor within the experimental population area, including the National Park System to address immediate hazards to condors, improve condor survival, and avoid conflicts with ongoing or proposed activities, or as requested by an adversely affected landowner, land manager, local government, political subdivision, or other adversely affected party. Adverse effects and requests for condor relocations will be documented, reported, and resolved in as an expedient manner as appropriate to the specific situation to protect condors and avoid conflicts. All captures and relocations inside the experimental population area will be coordinated with Service Cooperators and conducted with the permission of the land owner or appropriate land management agency.
6. To monitor the experimental population. Any condor displaying evidence that it is in poor health, diseased, or injured will be captured by authorized personnel, evaluated and either re-released, held temporarily, or maintained in captivity. All California condors will be given physical examinations before being released. If there is any evidence that a condor is in poor health or diseased, it will not be released to the wild.
7. Review the progress of the reintroduction project and recovery plan objectives within the first five years after the initial release and every 5 years afterwards. This evaluation will include, but not be limited to, a review of management issues, compliance with agreements, assessment of available food base (carrion), dependence of older condors on supplemental food sources, post release behavior, causes and rates of mortality, alternative release sites, project costs, and public acceptance. The number of variables that could affect this reintroduction project make it difficult to develop a criteria for success or failure after 5 years. However, if after 5 years the project is experiencing a 40 percent or greater mortality rate, or released condors are not finding food on their own, serious consideration will be given to terminating the project and revocation of the 10 (j) rule through all applicable Federal rule-making and other procedures. Updates and new data will be provided at the scheduled annual meeting by the parties to this agreement.

8. To ensure to the maximum extent practicable that current and future land, water, or air uses and activities such as, but not limited to, commercial and business development, forest management, agriculture, mining (e.g., coal), livestock grazing, development of transportation and utility corridors (e.g., power transmission lines), communication facilities, water development projects, sport hunting and fishing, air tour operations, and outdoor recreational activities (e.g., jeep tours, hiking) should not be restricted due to the designation of the nonessential experimental population, the presence or potential presence of California condors. In addition, no operational restrictions will be placed on currently permitted activities, due to the presence or potential presence of condors, on Bureau of Land Management grazing allotments located in the proximity of the proposed release site at the Vermilion Cliffs leased by Rich, Sturdavant, Carter, and Schoppmann. Further, if any modifications of existing structures are needed to protect condors, they will be made or paid for by the appropriate MOU cooperator with the approval of the land manager and/or private operator in accordance with all applicable procedures.

9. Both the Glen Canyon and Lake Mead National Recreation areas are located within the California condor experimental population area. These National Recreation Areas (NRAs) are units of the National Park System and are subject to the 1916 Organic Act and other laws applicable to National Parks and Monuments. Although enabling legislation for each NRA authorizes activities unique to the region, they are still managed as units of the National Park System. Therefore, condors located in either of these two NRAs (or national parks) would be treated as a threatened species and subject to the consultation requirements of section 7(a)(2) of the Act.

The Service does not foresee that activities in the California condor experimental population area, including activities in the NRAs, would result in jeopardy to the California condor. Additionally, the Service does not foresee that any ongoing or future land, water, air, or other uses of interest to the Coalition will be restricted due to this reintroduction project. This is demonstrated by (1) condors utilize remote, canyon habitat; (2) the Service has never determined that an activity may cause jeopardy of the California condor during the time (29 years) that the condor has been listed; (3) the size of the California condor population is expected to increase in the future; (4) existing land management is compatible with condors; and (5) the management strategies identified in the experimental population rule virtually eliminate the possibility of impacts to condors or existing and future activities in the experimental population area.

A significant portion of the California condor experimental population area includes remote wild canyon back country habitat that will provide this population with a natural refugium in which to raise young and will minimize the opportunity for condor conflicts with any ongoing or proposed activities. Also, the condor's requirement for remote unaccessible cliff nesting habitat, wide-ranging foraging patterns, and carrion prey base make them less susceptible to impacts from most human related activities.

Consequently, condors released into the experimental population area will be able to co-exist with the current and anticipated land, water, or air uses in the area in a compatible manner without conflict.

Since the California condor was listed as endangered in 1967 (29 years), the Service has never rendered a jeopardy determination on the wild, fully protected condor population in southern California, clearly demonstrating the benign nature of this species and the likelihood that a jeopardy opinion would ever be rendered on this experimental population.

For the purposes of section 7(a)(2) the Service would consider the effects a proposed activity would have on the entire species. Thus, in analyses under section 7(a)(2), the Service would evaluate the effects of an activity within National Park System lands located in the experimental population area, against the entire condor population and not solely against the northern Arizona/southern Utah nonessential experimental population. Furthermore, as the condor populations increase and approach recovery, the overall effect of activities on the California condor would become less significant and the likelihood of a jeopardy determination would become increasingly remote.

As part of the management strategy for this population, the Service will relocate any condor within the experimental population area [special rule # 4 (I)], including the National Park System, to avoid conflicts with ongoing or proposed activities, or when relocation is requested by an adversely affected landowner. This provision of the Service's management strategy virtually eliminates any possibility of conflict by allowing the Service or permitted cooperator to remove a condor in order to resolve an existing or potential conflict. It is evident that the Service and its Cooperators are committed to do all they can to resolve any problems in an expedient manner in order to avoid conflicts between condors and any current or proposed activities.

10. The Service does not intend to pursue a change in the nonessential experimental population designation to experimental essential, threatened, or endangered, or to modify the experimental population area boundaries without consulting with and obtaining the full cooperation of (1) affected parties located within the experimental population area, (2) the reintroduction program Cooperators identified in the MOU developed for this program, and (3) the Cooperators identified in the Agreement developed for this program. The Service does not intend to change the status of this nonessential population until the California condor is recovered and delisted in accordance with the Act or the reintroduction project is unsuccessful and the rule is revoked. No designation of critical habitat will be made for nonessential populations (16 U.S.C. Section 1539(j)(2)(C)(ii). If legal actions or other circumstances compel a change in this nonessential experimental population's legal status to essential, threatened, or endangered, or compel the Service to designate critical habitat for the California condors within the experimental population area defined in the rule, then,

unless the parties to the MOU and Agreement existing at the time agree that the birds should remain in the wild, all California condors will be removed from such area and the experimental population rule will be revoked. Changes in the legal status and/or removal of this population of California condors will be made in compliance with any applicable Federal rulemaking and other procedures.

11. Throughout the entire California condor experimental population area, a person(s) will not be in violation of the Act for unavoidable and unintentional take (including killing or injuring) of a California condor, when such take is non-negligent and incidental to a lawful activity, such as hunting, driving, or recreational activities, and the take is reported promptly. Any take must be reported as soon as possible to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Arizona Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona, 85021 (telephone 602/640-2720) who will determine the disposition of any live or dead specimens.
12. If and when recovery goals are met for downlisting the California condor, a rule will be proposed and published in the Federal Register. A rule to downlist an endangered species to threatened would not affect the status of any experimental population.

The Coalition agrees to:

1. Notify the Service or other Cooperators of any potential problems, issues, or concerns, and provide an opportunity for these issues to be resolved in a expedient manner in order to avoid conflicts.
2. Notify the Service or other Cooperators of any emergency situations regarding California condor health and safety.
3. Work cooperatively with the Service; however, their participation in this agreement and the California Condor Recovery Program does not constitute agreement with the Service's position on the historical record or presumed occurrence of the California condor in the states of Arizona and Utah.

**IT IS MUTUALLY AGREED AND UNDERSTOOD BY
AND AMONG THE COOPERATORS THAT:**

1. This agreement shall become effective when signed by all Cooperators and stay in effect for the life of the project, which is the period of time California condors are present in the experimental population area or until the condor is delisted.
2. Each of the parties hereto shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, and to seek remedies and compensation for any breach of this Agreement.

3. Conduct coordination meetings at least annually, the first to take place in May 1997, to review the implementation of this agreement, consider amendments, and to inform local governments and communities of the status of the reintroduction effort.
4. All communications will be conducted in an expedient manner appropriate to the specific situation. In order to facilitate communication, a list of cooperating agency contacts is provided in appendix 1.
5. The principle contacts for this agreement are:

U.S. Fish and Wildlife Service:
Field Supervisor
Arizona Ecological Services Office
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
(602) 640-2720

Coalition of County Governments
Chairman, Kane County Commission
78 South 100 East
Kanab, Utah 84741
(801) 644-2551

or to such other address or the attention of such other officer from time to time shall designate by written notice to the other.

IN WITNESS WHEREOF:

Nancy M. Kaufman

Nancy Kaufman, Director, Region 2
U.S. Fish and Wildlife Service
Albuquerque, New Mexico

Date

Ralph Q. Morganweck

Ralph Morganweck, Director, Region 6
U.S. Fish and Wildlife Service
Denver, Colorado

5-1-97
Date

Michael J. Spear

Michael J. Spear, Director, Region 1
U.S. Fish and Wildlife Service
Portland, Oregon

12/2/96
Date

Norman Carroll

Norman Carroll, Chairperson
Kane County Commission

6-9-97
Date

Gayle M. Aldred

Gayle M. Aldred, Chairperson
Washington County Commission

7-30-97
Date

Louise Liston

Louise Liston, Chairperson
Garfield County Commission

7/28/97
Date

Bart Leavitt, Chairperson
Grand County Council

Date

Tony Gabeldon, Chairperson
Coconino County Board of Supervisors

Date

Thomas B. Cardon

Thomas B. Cardon, Chairperson
Iron County Commission

14 July 1997

Date

Carol Anderson, Chairperson
Mohave County Board of Supervisors

Date

Randy Johnson

Randy Johnson, Chairperson
Emery County Commission

7/16/97

Date

Ty Lewis, Chairperson
San Juan County Commission

Date

Chad W. Johnson

Chad W. Johnson, Chairperson
Beaver County Commission

Date

