

**PROGRAMMATIC SAFE HARBOR AGREEMENT
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES
BENEFITING WHITE RIVER SPRINGFISH, PAHRANAGAT
ROUNDTAIL CHUB AND SOUTHWESTERN WILLOW FLYCATCHER
WITHIN PAHRANAGAT VALLEY, LINCOLN COUNTY, NEVADA**

LANDOWNER COOPERATIVE AGREEMENT TEMPLATE

1. INVOLVED PARTIES.

This Cooperative Agreement (CA), between the Nevada Department of Wildlife (NDOW) and _____ (Cooperator), is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit the endangered fishes White River springfish *Crenichtheys baileyi baileyi*, Hiko White River springfish, *Crenichtheys baileyi grandis* and Pahrnagat roundtail chub, *Gila robusta jordani*, and the endangered Southwestern willow flycatcher, *Empidonax traillii extimus* on land owned by the Cooperator. Participation in this CA is a prerequisite for obtaining a Certificate of Inclusion [reference attachment to this Cooperative Agreement] from NDOW issued as part of the agreement between NDOW and the U.S. Fish and Wildlife Service (Service) titled, “Programmatic Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting White River Springfish, Pahrnagat Roundtail Chub and Southwestern Willow Flycatcher Within Pahrnagat Valley, Lincoln County, Nevada” (Agreement).

2. ENROLLED PROPERTY.

The Cooperator owns property in Lincoln County, Nevada, that contains habitat that may be used by White River springfish, Hiko White River springfish, Pahrnagat roundtail chub and/or southwestern willow flycatcher. NDOW will enroll [# of acres] of this property under the Agreement, as shown on the attached property map [reference map attached to this Cooperative Agreement]. Other species of listed plants or animals may also occur on the property, but no incidental take of these other species is authorized or permitted under this Cooperative Agreement.

3. BASELINE RESPONSIBILITIES.

[Insert description of the extent and current condition of the enrolled lands and their acreage (e.g., major plant communities or habitat types, land use, location of existing ponds and aquatic habitats, water delivery and control systems, etc.) in terms appropriate for the included species. Describe how the baseline was determined and attach a map showing the boundaries of the property and areas of potential included species habitat. A species baseline may be expressed either as a population estimate or distribution (number and location, if determinable). Existing suitable habitat must be able to sustain seasonal or permanent use by one or more of the included species at the time the Cooperative Agreement is executed.]

The baseline for this property is set at [n] [insert included species] and [n] acres of [insert included species] habitat, the boundaries of which are shown on the attached map ([reference map attached to this Cooperative Agreement]).

Force majeure events such as severe storm events, drought, extreme sustained heat, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate [insert included species] from enrolled lands or render [insert included species] habitat on enrolled lands unsuitable for continued occupation. These events may reduce [insert included species] numbers or habitat below original baseline conditions through no fault of or negligence of the Cooperator. In such circumstances the Cooperator, NDOW, and the Service may agree to revise the CA's baseline conditions to reflect the new circumstances.

4. CONSERVATION MEASURES AND RESPONSIBILITIES OF THE PARTIES

4.1 CONSERVATION MEASURES. The primary objective of this CA is to aid in the conservation and recovery of [insert included species] through the restoration, maintenance and/or enhancement of suitable habitats on the included property. In order to accomplish this, it is essential that private landowners, the Service, and NDOW work together to provide good habitat and positive stewardship for [insert included species]. Management activities that are undertaken through this CA by the mutual agreement of the Cooperator and NDOW will result in the protection and enhancement of existing habitat and/or the creation of new habitat for [insert included species] and will provide a net conservation benefit for [insert included species]. If [insert included species] do not now occur on the included property, until such a time as a Cooperator and NDOW agree to place [insert included species] on a property for purposes of conservation or the presence of [insert included species] is identified on the included property the Cooperator will have no responsibilities under this CA except to report the absence of [insert included species] to NDOW on an annual basis.

Management actions that will be implemented to benefit [insert included species] on the included property are detailed under Section 4.2 "Responsibility of Parties". Dependent upon funding availability and need, additional management considerations and actions to benefit [insert included species] which are specific to the enrolled property may be identified in the future. Any additional actions which have been mutually agreed to between NDOW and the Cooperator will be identified in an Attachment to this CA.

Nothing in this CA prevents the Cooperator from implementing land management activities not described in the Agreement, as long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in the Agreement. As long as the Cooperator implements the agreed upon conservation measures the Cooperator may develop, conduct commercial and recreational activities, or make any other lawful use of the enrolled property, even if loss of [insert included species] or occupied habitat above the established baseline levels occurs.

Emergency situations arising from natural disasters including but not limited to extreme drought, sustained extreme heat, insect infestations, or epidemic disease may require the initiation of certain land management actions that may result in take of [insert included species]. The Cooperator will notify NDOW within at least 5 working days of such a situation, and will make reasonable accommodations to NDOW and/or the Service for survey and/or relocation of [insert included species] prior to initiation of the land management action. Certain other urgent emergency situations such as fire, flood, excessive rainfall, and the failure of water delivery systems or pond structures, may occur outside of the control or intention of the Cooperator, which could result in the take of [insert included species]. Under such situations the Cooperator will notify NDOW as soon as is practicable to allow the salvage and/or relocation of affected [insert included species] individuals. NDOW acknowledges that survey and/or relocation may be impossible in certain urgent situations.

4.2 RESPONSIBILITIES OF THE PARTIES. The Cooperator and NDOW agree to carry out certain responsibilities under this CA.

Cooperator:

- a. Manage aquatic and/or terrestrial habitats within the enrolled property to [insert here specific management actions to benefit species or habitats to be implemented by the landowner individually or in cooperation with NDOW to benefit the included species to this CA. Add additional line items as necessary].
- b. Inform NDOW within three working days of finding any dead or accidentally killed [insert included species].
- c. With reasonable advance notification, allow access to the enrolled lands by NDOW to monitor [insert included species] and their habitats or to carry out other management activities identified in this CA or otherwise mutually agreed to by the Cooperator and NDOW.
- d. Inform NDOW as soon as practicable of natural or man-caused emergency circumstances, such as storm events, fire or failure of water delivery systems, which could negatively affect occupied aquatic or terrestrial habitats and could result in take of [insert included species], and allow access to NDOW for emergency salvage or relocation of affected individuals.
- e. Inform NDOW at least 30 calendar days in advance of planned, otherwise legal activities including the modification or alteration of occupied habitats, which might reasonably be anticipated to result in the indirect take of [insert included species] on the enrolled property, to allow for removal of [insert included species] to other habitats within the enrolled property or the removal of [insert included species] in excess of the established baseline from the enrolled property.
- f. Assist NDOW in compiling an annual report on activities related to [insert included species] management and any activities that resulted in or may have resulted in incidental take of [insert included species].
- g. With reasonable advance notification, allow access to the enrolled lands by NDOW for purposes of ascertaining compliance with this CA.
- h. Follow guidelines provided by NDOW for handling injured or dead [insert

included species].

- i. Agree to consider adaptive management recommendations that NDOW may present to the Cooperator.

NDOW:

- a. Upon execution of the CA will authorize incidental take of **[insert included species]** as a result of lawful activities on the enrolled property for the term remaining on the federal 10(a)(1)(A) Enhancement of Survival permit and State of Nevada permits through issuance of a Certificate of Inclusion to the Agreement to the Cooperator.
- b. Provide technical assistance to the Cooperator for management of **[insert included species]** habitat, to the maximum extent practicable, when requested.
- c. Provide guidelines to the Cooperator for handling injured or dead **[insert included species]** and for avoiding incidental take during otherwise lawful activities.
- d. Ensure the Cooperator is implementing the terms of the CA.
- e. **[Insert here specific management actions to benefit species or habitats to be implemented by NDOW individually or for which NDOW will provide assistance to the Cooperator to benefit the included species to this CA. Add additional line items as necessary]**
- f. Provide reasonable advance notification to the Cooperator before any visit by NDOW staff to the enrolled property.
- g. Compile an annual report with assistance from the Cooperator on activities required by this CA and/or related to **[insert included species]** management and any activities that resulted in or may have resulted in incidental take of **[insert included species]**.
- h. Perform biological monitoring of **[insert included species]**.
- i. Provide assistance for salvage or relocation of individual **[insert included species]** in the event of planned or emergency circumstances affecting occupied aquatic or terrestrial habitats which could result in indirect take of individual animals, following appropriate notification by the Cooperator.
- j. Provide adaptive management recommendations to the Cooperator, as they are developed, which could be implemented on a voluntary basis to enhance or improve management actions benefiting included species and habitats.
- k. If warranted, recommend procedures the Cooperator can take to avoid future incidental take based on incidental take described in past annual reports.

5. AGREEMENT DURATION.

Obligations under this Cooperative Agreement will be in effect for **[minimum of 10]** years from the date it is executed. Upon signing of the CA, NDOW will issue a Certificate of Inclusion to the Cooperator under the federal 10(a)(1)(A) Enhancement of Survival permit **[permit reference number]** NDOW holds, and a State of Nevada permit or Letter of Authorization, authorizing the incidental take of **[insert included species]** on the enrolled lands. The Certificate of Inclusion will authorize incidental take of **[insert included species]** from **[date]** to **[date]**, the remaining duration of the 50-year term of the permits at the time the Certificate of Inclusion is issued.

6. INCIDENTAL TAKE.

Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of Federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities.

Under the terms of this CA, the Cooperator may make use of their enrolled property in any manner that does not result in reducing the population and/or occupied habitat of [insert included species] below the established baseline conditions. The Certificate of Inclusion will authorize incidental take of [insert included species] and their progeny resulting from lawful activities within the enrolled property, from the time this CA is signed until expiration of the permits. Such uses may include, but are not limited to: operation of vehicles and maintenance equipment, building or fence construction, gardening, hunting, farming, mowing, maintenance of infrastructure including roads and irrigation and water delivery systems, commercial and non-commercial recreational activities, livestock grazing or cultivation of agricultural crops. The Cooperator may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of [insert included species] or loss of occupied habitat in excess of baseline amounts. In the event of planned, otherwise legal activities including the modification or alteration of occupied habitats, which might reasonably be anticipated to result in the indirect take of [insert included species] on the enrolled properties, the Cooperator shall provide at least 30 calendar days notice to NDOW to allow for the removal of [insert included species] to other habitats within the enrolled property or the removal of [insert included species] from the enrolled property.

[Insert description of level of take that may potentially occur on the enrolled property based on property acreage, habitat types, and current distribution and population status of included species.]

[Insert included species] juveniles and adults may not be shot, captured, collected, netted, trapped or otherwise directly "taken."

7. FUNDING.

Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. NDOW will inform the Cooperator of potential funding opportunities through State or Federal grant programs that may be relevant. NDOW may, with the agreement of the Cooperator, fund and/or undertake management activities on the enrolled property to benefit [insert included species]. Any such activities will be identified and detailed as an amendment to this CA.

8. TERMS AND CONDITIONS.

This CA is subject to all the terms and conditions laid out in the Programmatic Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting White River Springfish, Pahrnagat Roundtail Chub and Southwestern Willow Flycatcher within Pahrnagat Valley, Lincoln County, Nevada. It is also subject to the additional terms and conditions:

8.1. MODIFICATION OF COOPERATIVE AGREEMENTS. NDOW or the Cooperator may propose modifications or amendments to this CA by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the other Party's written concurrence.

8.2. TERMINATION OF THE COOPERATIVE AGREEMENT. As provided for in Part 12 of the Service's Safe Harbor Policy (FR 64:32717), a Cooperator may terminate implementation of their CA before its expiration date for circumstances beyond the Cooperator's control. In such circumstances, the Cooperator may return the enrolled property to baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained and as long as agreed upon conservation measures were implemented. A Cooperator may terminate their CA due to circumstances beyond the Cooperator's control upon 90 calendar days' prior written notice to NDOW. Cooperators must provide NDOW the opportunity to relocate [insert included species] within 60 calendar days of receiving that notice. The Cooperator also may terminate their CA at any time for any other reason, but termination for reasons other than uncontrollable circumstances shall extinguish the Cooperator's authority to take [insert included species], and the Cooperator must relinquish their Certificate of Inclusion to NDOW. Cooperator must provide NDOW the opportunity to relocate [insert included species] within 60 calendar days of receiving that notice. NDOW may terminate the CA if it is determined that use of the enrolled property is no longer contributing a net conservation benefit for the included species. Following that determination and notification to the Cooperator, NDOW shall remove all [insert included species] above the established baseline from the included properties within 60 calendar days at their own expense and in coordination with the Cooperator, and release the Cooperator from any further obligations under the Agreement.

8.3. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. NDOW may suspend or revoke a Cooperator's Certificate of Inclusion if a Cooperator has breached their obligations under the CA and has failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the CA will achieve its goals. Termination of a CA, and removal of included species from the property, at the request of the Cooperator or NDOW for reasons identified in Section 8.2, shall also result in revocation of the Cooperator's Certificate of Inclusion.

8.4. SUCCESSION AND TRANSFER. The rights and obligations under this Cooperative Agreement shall run with the ownership of the enrolled property and are

transferable to subsequent private property owners pursuant to 50 CFR 13.25 and NRS. The Certificate of Inclusion issued to the Cooperator will be extended to the new owner. By becoming a party to the original Cooperative Agreement and permit, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner at the original baseline. The Cooperator shall notify NDOW of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that NDOW can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Cooperative Agreement or a new one to benefit [insert included species] on the property. In the event that a new owner chooses not to be party to the existing Cooperative Agreement or a new one, Cooperator must provide NDOW the opportunity to remove all [insert included species] above the established baseline from the included properties beginning 60 calendar days prior to the estimated date of transfer of ownership at NDOW's expense and in coordination with the Cooperator, following which the Cooperator and future landowners will be released from any further obligations under the Agreement.

8.5. REMEDIES. Each party shall have all remedies otherwise available to enforce the terms of the CA and the Certificate of Inclusion, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this CA or any other cause of action arising from this CA.

9. NOTIFICATION.

Communication and correspondence required by this CA should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

[name and address of Cooperator]

Nevada Department of Wildlife
Supervising Biologist – Fisheries
4747 Vegas Drive
Las Vegas NV 89108

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

COOPERATOR

By: _____

Date: _____

NEVADA DEPARTMENT OF WILDLIFE

Director
Nevada Department of Wildlife

Date

APPROVED AS TO FORM ONLY:

Deputy Attorney General for Attorney General,
State of Nevada

Date