

**SWEETWATER RIVER CONSERVANCY
GREATER SAGE-GROUSE HABITAT BANK, LLC
CONSERVATION BANK AGREEMENT**



By and Between

Pathfinder Bummer Ranch, LLC, Pathfinder Cardwell Ranch, LLC, Pathfinder Cardwell Access Ranch, LLC, Pathfinder Miracle Mile Ranch, LLC, Pathfinder Pathfinder Ranch, LLC, Pathfinder Perkins Ranch, LLC, and Pathfinder Two Iron Ranch, LLC

and

Sweetwater River Conservancy Greater Sage-Grouse Habitat Bank, LLC



and

U.S. Fish and Wildlife Service

SWEETWATER RIVER CONSERVANCY GREATER SAGE-GROUSE HABITAT BANK, LLC CONSERVATION BANK AGREEMENT

This CONSERVATION BANK AGREEMENT ("Agreement") is made and entered into effective as of December ____, 2014, by and between the SWEETWATER RIVER CONSERVANCY GREATER SAGE-GROUSE HABITAT BANK, LLC ("Sweetwater River Conservancy") and the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS") (referenced jointly as the "Parties"). This Agreement sets forth the terms and conditions for the establishment, use, operation and maintenance of the Sweetwater River Conservancy Conservation Bank ("SRCCB").

AGREEMENT RECITALS

A. WHEREAS, Pathfinder Bummer Ranch, LLC, Pathfinder Cardwell Ranch, LLC, Pathfinder Cardwell Access Ranch, LLC, Pathfinder Miracle Mile Ranch, LLC, Pathfinder Pathfinder Ranch, LLC, Pathfinder Perkins Ranch, LLC, and Pathfinder Two Iron Ranch, LLC ("Property Owners") own real property located in Natrona and Carbon Counties, Wyoming, approximately 50 miles west of the City of Casper, Wyoming, and south of Wyoming State Highway 220 (the "Property"). The Property is identified in **Exhibit A** and described in **Exhibit B**. The Property consists of approximately 50,576 deeded acres.

B. WHEREAS, the Property Owners, by affixing their signature to this Agreement, authorize Sweetwater River Conservancy to enter into and implement this Agreement on the Property and serve, for purposes of this Agreement, as the sponsor of the SRCCB. The organizational structure for the Property Owners and the Sweetwater River Conservancy is provided in **Exhibit C**.

C. WHEREAS, the USFWS, an agency of the U.S. Department of the Interior, has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat pursuant to various federal laws, including, but not limited to, the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, and the Fish and Wildlife Act, 16 U.S.C § 742(f), *et seq.*

D. WHEREAS, establishment of the SRCCB on the Property represents an excellent opportunity to conserve highly valuable biological resources, including the habitat of the Covered Species. The SRCCB will provide permanent conservation and protection of habitat for the Covered Species including, but not limited to, all of the species' life stages (breeding, summer brood-rearing, and wintering). In addition, important sage-steppe vegetation and associated native wildlife occur on the Property. A general description of the biological resources on the Property,

including geographic location and features, topography, vegetation, past and present land use, presence and use by the Covered Species, and the species' habitat, is set forth in the Management Plan in **Exhibit D**.

E. WHEREAS, the USFWS has determined that the Property is suitable to mitigate for impacts to habitat of the Covered Species within the Service Area.

F. WHEREAS, it is anticipated that development activities will occur within the Service Area that will impact the Covered Species and/or its habitat and may require the implementation of conservation measures to offset and compensate for such impacts.

G. WHEREAS, the Sweetwater River Conservancy desires to establish the SRCCB to provide for the conservation and management of the Property for the benefit of the Covered Species.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this Agreement is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the SRCCB to compensate for impacts to, and conserve and protect, the habitat of the Covered Species. The Sweetwater River Conservancy or its successors and assigns shall preserve, restore, create, and/or enhance habitat for the Covered Species and then manage and maintain that habitat in accordance with this Agreement and the Management Plan (attached in **Exhibit D**).

The Parties and Property Owners mutually agree the Sweetwater River Conservancy and its successors and assigns are permitted to manage the SRCCB to preserve and/or enhance the habitat of elk, mule deer, pronghorn, bald and golden eagles, other raptor species, migratory birds, and other wildlife and promote improved water quality and quantity with the SRCCB, while irrigating crop and range lands in a manner that permits the Property Owners to retain the water rights that have been allocated to those lands pursuant to Wyoming law and regulation. The Parties and Property Owners agree that these values are generally not inconsistent with and, in many instances, enhance the Conservation Values on the Property.

Further, the Parties and Property Owners mutually agree that the Sweetwater River Conservancy and its successors and assigns are permitted to manage the SRCCB to maintain open space, enhance recreational

opportunities, improve range health through livestock grazing, conduct Agricultural activities and engage in other activities that are not inconsistent with the Conservation Values on the Property.

B. Authorities

The establishment and use of the SRCCB for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

- a. Endangered Species Act (16 U.S.C. § 1531 *et seq.*) ("ESA") and its implementing regulations; and
- b. Guidance for the Establishment, Use and Operation of Conservation Banks (U.S. Department of the Interior Memorandum, dated May 2, 2003).

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this Agreement are defined as set forth below.

1. "Adaptive Management" means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the Parties based upon SRCCB monitoring and annual report results, and USFWS review of overall SRCCB performance and compliance.
2. "Agriculture" and "Agricultural" means grazing, pasturing, feeding, watering and, in general, care for livestock of every nature including the keeping, pasturing, raising, training, and/or boarding of horses; crop production, including soil preparation, seeding, cultivating, irrigation and harvesting hay, grain, alfalfa, vegetables, and other crops common to the region of Wyoming within which the Property is located; the operation of a plant nursery which may include the use of one or more greenhouses; and the continuation of traditional agricultural and ranching uses, including, but not limited to, replacing or building new fences, stack yards for hay storage, replace existing or install new culverts, construct or repair bridges crossing ditches, canals, etc., as are common to such region. "Agriculture" and "Agricultural" also include the use of currently accepted and, in the future, newly developed means of livestock and crop production.
3. "Bank Establishment Date" is the date determined pursuant to Section V, when the SRCCB is considered established as to all or a portion of the Property and Transfer of Credits may begin.
4. "Catastrophic Event" shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on

the Property, and over which the Sweetwater River Conservancy has no control.

5. "Conservation Easement" means a perpetual conservation easement established and recorded for the Property in accordance with this Agreement and Wyoming law, in the form of or substantially similar to **Exhibit J**.
6. "Conservation Values" means ecological values which serve as habitat (including, without limitation, food, water and proper vegetative mix and canopy cover) necessary to support occupancy, survival, and reproduction of the Covered Species.
7. "Covered Species" means the greater sage-grouse (*Centrocercus urophasianus*) for which Credits have been allocated as set forth in **Exhibit E**.
8. "Credits" are units of measure representing the accrual, attainment, restoration, or protection of the Conservation Values on the Property.
9. "Credit Receipt" means the written acknowledgement that Credits have been transferred by the Sweetwater River Conservancy.
10. "Credit Release" means an action by the USFWS to make specified Credits available for Transfer pursuant to this Agreement.
11. "Deed Restrictions" means restrictions granted by the owners of the Property to the benefit of Sweetwater River Conservancy requiring operation of the entire Property in a manner not inconsistent with the Agreement and Management Plan, precluding sale of any portion or all of the Property to third parties except as authorized under the Agreement, and further committing to such restrictions until closure of the SRCCB pursuant to Section VII.D. in the form of or substantially similar to **Exhibit K**.
12. "Endowment Deposit" is the deposit or series of deposits made or required to be made by the Sweetwater River Conservancy to fully fund the Endowment Principal.
13. "Endowment Fund" is a sum of money, held by the Endowment Fund Manager, to provide income to fund perpetual management, maintenance, monitoring, and other activities on the Property consistent with the Management Plan. The term "Endowment Fund" as used in this Agreement shall refer to the Endowment Principal and all interest, dividends, other earnings, additions and appreciation thereon.
14. "Endowment Fund Manager" means an independent, qualified non-governmental organization or financial entity selected by the Sweetwater River Conservancy and approved by USFWS, responsible for holding, managing, and disbursing the Endowment Fund in accordance with this Agreement.

15. "Endowment Principal" means that portion of the Endowment Fund that is non-wasting and that is to be maintained and managed in perpetuity to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Management Plan. Endowment Principal shall consist of the Endowment Deposits and any additions to the principal that are made from earnings, appreciation in value or subsequent deposits for the purpose of compensating for inflation and ensuring the real value of the principal does not decline over time.
16. "Force Majeure" shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, tornadoes, other natural disasters or extraordinary climatic events, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the SRCCB or the Property and over which the Sweetwater River Conservancy has no control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood; (iii) a fire shall be considered an event of Force Majeure only if it is a wildfire that burns more than one thousand (1,000) acres of the Property; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Property and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.
17. "Grantee" shall mean the third party that is qualified and willing to enforce the terms of the Conservation Easement(s) established pursuant to this Agreement.
18. "Interim Management Security" means an amount of funding sufficient to implement the Management Plan and ensure compliance with the Deed Restrictions during the first year of SRCCB operations or until such time that sufficient funds have been placed into the Endowment Fund from the sale of Credits, consistent with Section VI of this Agreement, to provide long-term financial assurances related to the implementation of the Management Plan and compliance with the Deed Restrictions and/or the Conservation Easement(s).
19. "Management Plan" means the document attached as **Exhibit D** that is intended to ensure the Property is managed, monitored, and maintained in

perpetuity to conserve and protect the habitat of the Covered Species and Conservation Values.

20. "Phase I Environmental Site Assessment" is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E 1527-05, E 2247-08, or 40 C.F.R. Part 312.
21. "Preservation" means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
22. "Purchaser" means any individual or entity that purchases Credits from the SRCCB.
23. "Remedial Action" means any reasonable corrective measures which the Sweetwater River Conservancy or Grantee is required to take to ameliorate any material injury or adverse impact to the Property that materially impairs the conservation objectives of the SRCCB.
24. "Service Area" means the geographic area(s) within which impacts to Covered Species that occur may be mitigated or compensated through Credits from the SRCCB.
25. "Target Amount" means the amount required to be deposited for the Endowment Fund to be considered self-sustaining to meet long-term management objectives of the SRCCB.
26. "Target Date" means the date by which the Parties anticipate the Target Amount to be achieved.
27. "Transfer" means the use, sale, or conveyance of Credits by the Sweetwater River Conservancy.
28. "Unlawful Act" shall mean the unlawful act of any person or entity other than the Sweetwater River Conservancy and shall include an event or series of events, such as the intentional release within the Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the Property.
29. "Unobligated Credits" shall mean Credits that have not been used, sold, or conveyed, including conveyance involving an option to purchase such Credits, by the Sweetwater River Conservancy.

Section III: Stipulations

A. Baseline Condition

The current condition of the Property is described in **Exhibit D**.

B. Disclaimer

Nothing contained in this Agreement shall be deemed to limit the USFWS's jurisdiction over impacts to and applicable mitigation for endangered, threatened, and sensitive species and biological resources, or to restrict the ability of the USFWS to fully discharge its responsibilities under applicable law, including, without limitation, the ESA. Nothing in this Agreement restricts the USFWS from reviewing other banking documents that may identify an overlapping Service Area with that identified in this Agreement.

C. Exhibits

The following Exhibits are attached to and incorporated by reference into this Agreement:

1. Exhibit A – General Location Map and Site Location Map for Property
2. Exhibit B – Title Report, Legal Description and Legal Parcel Map for Property
3. Exhibit C – Ownership and Organizational Structure
4. Exhibit D – Management Plan
5. Exhibit E – Credit Valuation
6. Exhibit F – Phase I Environmental Site Assessment
7. Exhibit G – Mineral and Water Rights Review
8. Exhibit H-1 – Service Area
9. Exhibit H-2 – Current Range of the Greater Sage-Grouse
10. Exhibit I – Credit Purchase Documents
11. Exhibit J – Conservation Easement
12. Exhibit K – Deed Restrictions

Section IV: SRCCB Evaluation and Development

A. Baseline Condition

The Sweetwater River Conservancy has evaluated the baseline biological conditions of the Property, including cataloguing habitat for Covered Species and the presence and use of the Property by Covered Species. A summary of that evaluation is provided in the Management Plan in **Exhibit D**.

B. Site Assessment by the USFWS

The USFWS has evaluated the SRCCB's Covered Species, Property and Conservation Values and have agreed upon the assignment of Credits set forth in **Exhibit E**.

C. Phase I Environmental Site Assessment

The Sweetwater River Conservancy prepared a Phase I Environmental Site Assessment of the Property dated October 4, 2011, attached hereto as **Exhibit F**, and represents and warrants to the USFWS that all appropriate assessment, clean-up, remedial or removal actions have been completed for any recognized environmental conditions identified in the Phase I Environmental Site Assessment for the Property as of the effective date of this Agreement.

D. Permits

The Sweetwater River Conservancy will obtain all appropriate permits and other authorizations needed to establish and maintain the SRCCB. This Agreement does not constitute or substitute for any such approval.

E. Assessment and Warranty

The Sweetwater River Conservancy shall notify the USFWS of any errors or discrepancies in the assessments and warranties in **Exhibit B** and **Exhibit G** discovered subsequent to its signing of this Agreement. The USFWS shall evaluate any impacts of the errors or discrepancies on the Property and the Conservation Easement(s), and may reduce the number of available Credits as a result of such impacts according to the policies of the USFWS in effect at the time of notice to the USFWS. USFWS will notify the Sweetwater River Conservancy of any such reduction and the basis and rationale therefore.

F. Additional Parcels

1. Private Lands

Sweetwater River Conservancy anticipates that it may execute additional agreements with landowners, pursuant to which it will have the right to cause such landowners to grant Conservation Easements on additional parcels of land (the "Additional Parcels") to appropriate and qualified Grantees. The Sweetwater River Conservancy also anticipates that it may add additional deeded acres to the SRCCB and grant Conservation Easements on these additional parcels of land (also "Additional Parcels") to appropriate and qualified Grantees. In such events, Sweetwater River Conservancy may request USFWS's approval to include such Additional Parcels (or any portion thereof) as part of the SRCCB. Additional Parcels will either meet the minimum establishment criteria in effect at the time of the request or be adjacent to existing portions of the SRCCB then in existence. Additional Parcels must comply with USFWS documentation requirements in effect on the date of submission of the complete documentation for the proposed Additional Parcel. Each Additional Parcel

must be approved by the USFWS. Upon receipt of such request, USFWS agrees to evaluate such Additional Parcels to determine: (a) whether all or any portion thereof is suitable as mitigation for impacts to the habitat of the Covered Species; and (b) the number of Credits available to be allocated from those portions of the Additional Parcels.

2. Public Lands

The Sweetwater River Conservancy anticipates that it may execute agreements with federal and/or state landowners, pursuant to which it may request USFWS's approval to include such lands (or any portion thereof) as part of the SRCCB. Upon receipt of such request, USFWS agrees to evaluate such lands to determine: (a) whether all or any portion thereof is suitable as mitigation for impacts to the Covered Species; and (b) the number of Credits available to be allocated from those portions of the federal and/or state lands.

G. Credit for Restoration or Enhancement and Additions of Other Species

1. Credit for Restoration or Enhancement

The total number of available Credits may be increased by restoration or enhancement of the Property in accordance with and by amendment to this Agreement. USFWS agrees to evaluate any request related to increased Credit availability due to restoration or enhancement of the Property and determine: (a) whether the restoration or enhancement of the Property has resulted in additional Conservation Values for the Covered Species; and (b) the number of additional Credits to be allocated to the Sweetwater River Conservancy based on the additional Conservation Values resulting from the restoration or enhancement of the Property.

2. Additions of Other Species

Upon the request of the Sweetwater River Conservancy, the USFWS will consider and determine whether and upon what terms other species, in addition to the Covered Species, can be included within the SRCCB. Upon receipt of such request, USFWS agrees to evaluate such request to determine: (a) whether all or any portion of the SRCCB is suitable to serve as mitigation for impacts to the other species; and (b) the number of Credits available to be allocated to serve as mitigation for impacts to the other species.

H. Sweetwater River Conservancy's Retained Rights

The Sweetwater River Conservancy retains and reserves to itself and its representatives, successors, and assigns, all rights accruing by virtue of owning the Property subject to this Agreement, including but not limited to the following rights:

1. Consistent Activities. To undertake or continue any activity or use of a Parcel neither prohibited by nor inconsistent with the Deed Restrictions and/or Conservation Easement(s) and this Agreement.
2. Transfer Parcels. To give, lease, sell, grant, or otherwise convey the underlying fee title of the Property, subject to the Deed Restrictions and/or Conservation Easement(s) and this Agreement.

Section V: Bank Establishment Date

- A. The Bank Establishment Date will occur and Transfer of Credits may begin when all of the following actions have occurred:
 1. The Agreement has been fully executed by the Parties;
 2. The Deed Restrictions have been duly recorded with the county clerks of Natrona and Carbon Counties; and
 3. The Sweetwater River Conservancy has complied with its obligation to establish an Endowment Fund in accordance with Section VI.
- B. Within 30 days of the Bank Establishment Date, the Sweetwater River Conservancy shall provide an electronic copy of the final, signed Agreement including all of its Exhibits, to the USFWS.
- C. If the Sweetwater River Conservancy has not completed the actions in Section V to establish the SRCCB within one year of USFWS signature to this Agreement, the Sweetwater River Conservancy may only establish the SRCCB with written approval from the USFWS. The USFWS, at its discretion, may require minor amendment of this Agreement, including but not limited to, updating the Exhibits to ensure Conservation Values on the Property continue to support the purposes of this Agreement and to promote consistency with then-current conservation banking standards.

Section VI: Financial Assurances

The Sweetwater River Conservancy is responsible for providing financial assurances for the performance and completion of SRCCB management, monitoring, and Remedial Action in accordance with this Agreement.

A. Interim Management Security

Concurrent with the Transfer of the first Credit, Sweetwater River Conservancy shall furnish an Interim Management Security in the amount of \$100,000 to the Endowment Fund Manager. The amount of the Interim Management Security reflects an amount sufficient to implement the Management Plan and ensure compliance with the Deed Restrictions during the first year of SRCCB operations or until such time that sufficient funds have been placed into the Endowment Fund from the sale of Credits,

consistent with Section VI, to provide long-term financial assurances related to the implementation of the Management Plan and compliance with the Deed Restrictions and/or the Conservation Easement(s). The Interim Management Security shall be in the form of an irrevocable standby letter of credit or in the form of a cash deposit held by the Endowment Fund Manager. The Sweetwater River Conservancy shall notify the USFWS within 30 days of establishing the Interim Management Security. Once the Endowment Principal reaches an amount sufficient to generate \$100,000 on an annual basis, the irrevocable standby letter of credit or cash deposit shall be released by the manager of the Endowment Fund to the Sweetwater River Conservancy.

B. Letters of Credit

When letters of credit are used, they shall be submitted to and approved by the Endowment Fund Manager before they satisfy any financial assurance requirement. Any letter of credit shall be issued for a period of at least one year, and shall provide that the expiration date will be automatically extended for at least one year on each successive expiration date unless, at least 120 days before the current expiration date, Sweetwater River Conservancy and the holder have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The letter of credit shall provide that any unused portion shall be available for 120 days after the date Sweetwater River Conservancy and the holder have received such notice, as shown on the signed return receipts. If the issuer fails to extend the expiration date of any letter of credit, Sweetwater River Conservancy shall provide the holder with replacement security in the form of a letter of credit or cashier's check, as determined by the holder, within 60 days after receiving notice of the issuer's failure to extend. If Sweetwater River Conservancy does not provide such replacement security on or before the expiration of the 60-day period, then the holder shall have the right to immediately draw upon the letter of credit for which the replacement security was required.

C. Endowment Fund

As a condition of establishment of the SRCCB, the Sweetwater River Conservancy shall establish an Endowment Fund before the first Conservation Credit is sold to ensure that the manager of the SRCCB and/or Grantee of any Conservation Easement(s) entered into pursuant to this Agreement have the financial resources to manage the SRCCB and any Conservation Easement(s) for the benefit of the Covered Species in perpetuity. The Sweetwater River Conservancy shall notify the USFWS within 30 days of establishing the Endowment Fund. The Endowment Fund shall be managed to generate sufficient interest and/or returns to be used exclusively for the management of the SRCCB in perpetuity in accordance with this Agreement, the Deed Restrictions and/or the Conservation Easement(s), and

the Management Plan. The Endowment Fund will be held in trust by the Endowment Fund Manager and managed in accordance with this Agreement.

1. The Endowment Fund will be created primarily through Endowment Deposits collected from the sale or conveyance of Conservation Credits. The calculation of the Endowment Deposit shall be designed to achieve the Target Amount by the Target Date and shall account for inflation by incorporating inflation in the calculation of the projected Property management costs. The Endowment Deposit from a transaction of the sale or conveyance of Conservation Credits shall be deposited into the Endowment Fund within 30 days after any such transaction.
2. The Target Amount for the Endowment Fund shall be \$5,000,000. The Target Date for establishing the Target Amount is 20 years from the date the SRCCB is established in accordance with Section V. Once the Target Amount is achieved the Endowment Deposits shall cease. In the event the Target Amount is not achieved by the Target Date, within 30 days thereafter, the Sweetwater River Conservancy shall deposit into the Endowment Fund the difference between the Endowment Principal at that time and the Target Amount. The Sweetwater River Conservancy shall notify the USFWS within 30 days after achieving the Target Amount. The Target Amount may be revised if the total number of Credits in the SRCCB is increased or decreased in accordance with this Agreement.

Section VII: Credit Establishment

- A. Upon establishment of the SRCCB in accordance with Section V of this Agreement, the Sweetwater River Conservancy may sell and convey Credits to any Purchaser.
- B. The Sweetwater River Conservancy shall have the exclusive right to determine the price for any and all Credits. The sale price of Credits is considered proprietary and confidential business information and will not be disclosed in accordance with applicable laws.
- C. The habitat value of each Credit in relation to the acreage of the Property subject to the Deed Restrictions and/or the Conservation Easement(s) has been determined in accordance with the Credit Valuation set forth in **Exhibit E** to this Agreement. Future Credit valuation shall be determined in accordance with the methods used to establish the current value of Credits for the SRCCB set forth in **Exhibit E**.
- D. The number of Credits available for Transfer and agreed to by the Parties upon the Bank Establishment Date is summarized below:

Habitat quality¹	Acres	Value multiplier	Total Credits
Low	4,072	0.2	814.4
Medium-Low	6,419	0.4	2,567.6
Medium	5,171	0.6	3,102.6
Medium-High	8,207	0.8	6,565.6
High	19,060	1.0	19,060.0
Total	42,928		32,110.2

- E. Credits for the SRCCB have been generated using the breeding and summer season Resource Selection Function ("RSF") analysis as described in Exhibit E. Results of the winter RSF were not used to develop Credits due to insufficient winter use data for the Covered Species. Once additional data on winter use for the Covered Species have been collected, the RSF analysis will be used to determine winter habitat quality for additional Credit valuation. Sweetwater River Conservancy will request USFWS's approval to include these additional Credits as part of the SRCCB once the Credit valuation has been completed.

Section VIII: Operation of the SRCCB

A. Service Area

1. The Service Area for the SRCCB is described and shown in **Exhibit H-1**. The use of SRCCB Credits to compensate for impacts to the habitat of the Covered Species that occur outside of the Service Area may be approved by the USFWS on a case-by-case basis.
2. Subject to federal permitting agency concurrence, Credits would be available to compensate for federally permitted actions that impact the habitat of the Covered Species outside the Service Area but within the current range of the Covered Species, an area described and shown in **Exhibit H-2**, following consultation and/or conferencing with the USFWS.
3. In the case of state permitted actions that impact the habitat of the Covered Species in any of the ten states that are outside of the Service Area but within the current range of the Covered Species, including the states of Washington, Oregon, California, Idaho, Nevada, Montana, South Dakota, North Dakota, Colorado and Utah, described and shown in **Exhibit H-2**, Credits would be available to compensate for such actions subject to the approval of the individual state permitting agency.

¹A description of the five habitat quality "bins" set forth in the table is included in **Exhibit E**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon or after the Bank Establishment Date and must be authorized by the appropriate permitting agency or agencies on a case-by-case basis. The minimum Credit unit that may be Transferred is 0.1 Credit.
2. In no case shall the number of Credits transferred or obligated exceed the total number of Credits that have been released for Transfer by the USFWS.
3. Sweetwater River Conservancy shall notify USFWS upon any Transfer of Credits in accordance with Section IX of this Agreement.
4. If the Property is damaged after the Bank Establishment Date, and such damage materially impairs Conservation Values on such damaged Property, then the USFWS may, at its discretion, direct Sweetwater River Conservancy to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the SRCCB in proportion to such damaged area, unless and until the Sweetwater River Conservancy has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the USFWS. In no circumstances will Credits that have been transferred to Purchasers be rescinded by the USFWS.
5. Credit modifications due to expansion, restoration or other means that have been approved in writing by the USFWS shall be set forth in an amendment to this Agreement according to Section IV.
6. Each Transfer shall be made pursuant to a written purchase agreement substantially in the form of **Exhibit I**.
7. The Sweetwater River Conservancy shall issue a Credit Receipt to each Purchaser and provide the USFWS with a copy of each Credit Receipt within 30 days after the issuance.

C. Bank Management

1. Once the Property within the SRCCB has been placed under Deed Restrictions the Sweetwater River Conservancy shall manage and monitor the Property to preserve its habitat and Conservation Values in accordance with this Agreement, the Deed Restrictions and the Management Plan. Once the Property within the SRCCB has been placed under a Conservation Easement(s), the Grantee and Property Owner shall manage and monitor the Property in perpetuity to preserve its habitat and Conservation Values in accordance with the Conservation Easement(s) and Management Plan and in consultation with the Endowment Fund Manager. The Parties shall meet and confer upon the request of either Party, to consider revisions to the Management Plan which may be necessary or appropriate to better conserve the habitat and Conservation Values of the Property. The Sweetwater River Conservancy

or Grantee shall be responsible for submitting reports to USFWS in accordance with Section IX of this Agreement.

2. The Sweetwater River Conservancy shall at all times have the authority to direct the expenditure of all interest and earnings as described in Section VII.E.(2) so long as it is in compliance with the terms of this Agreement and the Management Plan, until such time that it transfers its interests in the Property and/or SRCCB pursuant to Section XII.C. of this Agreement.

D. Bank Closure

1. Upon SRCCB closure, no further Transfer of Credits shall occur.
2. The SRCCB closure shall be deemed to take place upon occurrence of the following:
 - a. All financial responsibilities of the Sweetwater River Conservancy have been met, including full funding of the Endowment Fund for not less than one year;
 - b. The Conservation Easements have been accepted by the Grantee, approved by the USFWS and recorded in the official records of the counties in which the Property is located, at which time the Deed Restrictions shall be released on that Property described in the Conservation Easements; and
 - c. Either:
 1. The last authorized Credit has been transferred; or
 2. The Sweetwater River Conservancy requests bank closure by written notice to the USFWS.

E. Endowment Fund Management

1. The Endowment Principal amount should not decrease in value through expenditure or investment strategy. The Endowment Principal amount is intended to increase in value to keep up with inflation. Therefore a portion of the interest and earnings on the Endowment Principal balance shall be reinvested into the Endowment Fund as required to adjust the Endowment Principal for inflation. After the Target Amount is achieved, however, no additional Endowment Deposits or other additional financial assurances will be required from the Sweetwater River Conservancy even if interest earnings are insufficient to increase the Endowment Principal to keep up with inflation.
2. Interest earnings beyond those necessary to provide for Endowment Principal growth commensurate with inflation will be made available to fund annual management of the Property in accordance with the terms of

this Agreement and the Management Plan. Such earning shall be made available to the Sweetwater River Conservancy to fund annual management of any Property covered by a Deed Restrictions and to the Grantee to fund annual management of any Property covered by a Conservation Easement.

3. Any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Property shall be retained in the Endowment Fund and may be made available to fund unexpected expenses, enhancements to the Property, and Adaptive Management needs. Such revenues shall be made available to the Sweetwater River Conservancy to fund unexpected expenses, enhancements to the Property, and Adaptive Management needs on any Property covered by the Deed Restrictions and to the Grantee to fund such expenditures on any Property covered by a Conservation Easement.
4. Prior to closure of the SRCCB under Section VII.D, if there is not sufficient funding available from the Endowment Fund interest and earnings or if Management Plan expenses exceed those estimated in Endowment Fund revenues, the Sweetwater River Conservancy shall consult with the Endowment Fund Manager to identify the most effective means to implement the management measures and tasks with the resources available. Following consultation with the Endowment Fund Manager, the Sweetwater River Conservancy may propose amendment to the Management Plan pursuant to Section VIII.C.(1) or modification of the Agreement pursuant to Section IX.D.(1) to achieve effective management of the SRCCB.
5. Funds from the Endowment Fund, other than interest and earnings, may not be expended unless a written request for approval is submitted to the Endowment Fund Manager detailing the reasons for the request, and the Endowment Fund Manager approves such request in writing. In determining whether to grant such a request, the Endowment Fund Manager shall consider whether the request is in furtherance of a conservation purpose contemplated by this Agreement. The Endowment Fund Manager's written approval of any such request may include provisions requiring reimbursement of the expended amounts to the Endowment Fund within a prescribed time period.
6. Upon transfer, assignment, or termination of this Agreement, any funds in the Endowment Fund shall continue to be expended in a manner consistent and in accordance with this Agreement.

F. Financial Records and Auditing

The Sweetwater River Conservancy shall maintain complete and accurate records relating to the financial operation of the SRCCB using generally

accepted accounting methods, principles and practices consistently applied. The financial operation of the SRCCB includes all financial assurances received or expended during the establishment and operation of the SRCCB. No more frequently than annually, the Sweetwater River Conservancy shall have records relating to the financial operation of the SRCCB audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the USFWS upon completion. Consistent with Section VII.B, Credit pricing information will be considered proprietary and confidential business information and will not be disclosed. This subparagraph is to be narrowly construed to limit access by the USFWS, the independent, licensed Certified Public Accountant described in this Section or any other entity to only those records directly relating to the financial operation of the SRCCB. In no circumstances does such access extend to any authority or authorization to audit, review or otherwise inspect any records of the Sweetwater River Conservancy or the Property Owners or any of its affiliates except for those records directly relating to the financial operation of the SRCCB.

G. Remedial Action Plan

Prior to SRCCB closure, if a Party discovers any material injury or adverse impact to the Property as preserved, restored, or enhanced, the Party making the discovery shall notify the other Party. The USFWS may require the Sweetwater River Conservancy to develop and implement a Remedial Action plan to correct such condition, prior to SRCCB closure, as described below. The annual report required under Section IX shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, describe its effectiveness.

1. Within 60 days after the date of written notice from the USFWS, the Sweetwater River Conservancy shall develop a Remedial Action plan and submit it to the USFWS for approval. The Remedial Action plan must identify and describe proposed actions to ameliorate injury or adverse impact to the Property and set forth a schedule within which the Sweetwater River Conservancy will implement those actions. The Sweetwater River Conservancy shall, at its cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the USFWS. In the event the Sweetwater River Conservancy fails to submit a Remedial Action plan to the USFWS in accordance with this section, the USFWS will notify the Sweetwater River Conservancy that it is in default and may identify Remedial Action the USFWS deems necessary. If (a) the Sweetwater River Conservancy fails to develop a Remedial Action plan or to implement Remedial Action identified by the USFWS, in accordance with this section, or (b) conditions have not improved or continue to deteriorate one year after the date that the USFWS approved a Remedial Action plan or notified Sweetwater River

Conservancy of Remedial Actions the USFWS deemed necessary, the Parties may take action consistent with Section XII.E. or, in the alternative, the Sweetwater River Conservancy may elect to suspend and/or reduce the number of Credits available for Transfer pursuant to Section VIII.B.4.

2. If the USFWS determines that the SRCCB is operating at a Credit deficit (i.e., that Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Agreement), then the USFWS shall notify the Sweetwater River Conservancy. Upon the USFWS giving such notice, the Sweetwater River Conservancy shall immediately cease Transfer of Credits. The USFWS will determine what Remedial Action is necessary to correct the Credit deficit, and Sweetwater River Conservancy shall, implement such Remedial Action, in accordance with this Section.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

On January 2nd of each year following the Bank Establishment Date and until the Target Amount is achieved, the Sweetwater River Conservancy shall report to the USFWS the following values:

1. The adjusted Endowment Principal, determined in accordance with Section IV; and
2. The resulting adjusted Endowment Deposit amounts.

B. Reports Prior to Bank Closure

Sweetwater River Conservancy shall submit an annual report to USFWS on or before August 15th of each year following the Bank Establishment Date until bank closure. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the then-current year (the "Reporting Period"). The annual report shall address the following:

1. Management

The annual report shall contain an itemized account of the management tasks conducted during the Reporting Period in accordance with the Management Plan, including the following:

- a. The time period covered, i.e. the dates "from" and "to";
- b. A description of each management task conducted;
- c. The total dollar amount expended for management tasks conducted during the reporting period; and

d. Biological status reports as described in the Management Plan attached as **Exhibit D**.

2. Transfer of Credits

The annual report shall include an updated Transfer Ledger showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

3. Financial Operation

The annual report shall describe the status of the Interim Management Security and the Endowment Fund.

C. Transfer Reporting

Upon the Transfer of each and every Credit the Sweetwater River Conservancy shall submit to the USFWS:

1. A copy of the fully executed Credit Purchase Agreement in substantially the same form as provided at **Exhibit I**, provided however that financial terms will be redacted; and
2. An updated accounting of Credits transferred and accounting of remaining Credits in substantially the same form as provided at **Exhibit I**.

D. Reports After Bank Closure

After closure of the SRCCB, the Sweetwater River Conservancy or Grantee shall submit status reports once every five years as described in the Management Plan attached as **Exhibit D**.

Section X: Responsibilities of the Sweetwater River Conservancy

A. Without limiting any of its other obligations, including without limitation, under the Deed Restrictions and/or the Conservation Easement, Sweetwater River Conservancy hereby agrees and covenants that, prior to the closure of the SRCCB:

1. Sweetwater River Conservancy shall execute the Conservation Easement identified in **Exhibit J** with a Grantee that has agreed to hold said Conservation Easement and is competent and authorized to hold the Conservation Easement pursuant to Wyoming law.
2. Sweetwater River Conservancy shall be responsible for all activities and costs associated with the establishment and operation of the SRCCB, including but not limited to Remedial Action, documentation, maintenance, management, monitoring, and reporting, until the Target Amount has been achieved.

3. Sweetwater River Conservancy agrees to assume responsibility for compensatory mitigation requirements of USFWS biological opinions and permits for which it Transfers Credits. Once a Purchaser has secured the appropriate number and type of Credits from the Sweetwater River Conservancy, the Sweetwater River Conservancy will provide USFWS and the permitting agency or agencies requiring the compensatory mitigation with documentation that confirms that the Sweetwater River Conservancy has accepted the responsibility for providing such mitigation in accordance with the terms of this Agreement.
 4. Notwithstanding the Sweetwater River Conservancy's assumption of responsibility for compensatory mitigation requirements, and subject to Covered Species being subject to regulation under the ESA, Federal action agencies with biological opinions and non-federal ESA Section 10 permit holders that use SRCCB Credits for Covered Species are still responsible for ensuring that the incidental take authorized in any biological opinions and ESA Section 10 permits is not exceeded and that all actions required to mitigate and minimize take are accomplished.
 5. Sweetwater River Conservancy shall allow, or otherwise provide for access to the Property by the USFWS, as described in the Deed Restrictions, and Grantee of the Conservation Easement(s) and the USFWS, as described in the Conservation Easement(s) and/or this Agreement.
- B. After the SRCCB is closed and until such time that the Property Owners transfer their interests in the Property and/or the Sweetwater River Conservancy transfers its interest in the SRCCB pursuant to Section XII.C. of this Agreement, the Sweetwater River Conservancy shall only be obligated to comply with the Management Plan and the terms of the Deed Restrictions or Conservation Easement(s). Upon the transfer of its interests in the Property and/or the SRCCB pursuant to Section XII.C. of this Agreement, the Sweetwater River Conservancy shall have no further obligations financial or otherwise. However, the Property upon which the SRCCB is based shall be bound by all of the terms of the Deed Restrictions or Conservation Easement(s).
- C. The Endowment Fund represents the absolute, aggregate limit of the Sweetwater River Conservancy's liability or, if the Sweetwater River Conservancy transfers its interests in the Property and/or the SRCCB pursuant to Section XII.C. of this Agreement, the transferee's liability, including liability for any and all damages to the Bank caused by

Catastrophic Events or events of Force Majeure, following full funding of the Endowment Fund to the Target Amount.

- D. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this Agreement, or changed financial or business circumstances in and of themselves, shall not automatically serve as the basis for modifications of this Agreement or extensions for the performance of the requirements of this Agreement.
- E. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Sweetwater River Conservancy must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the USFWS

A. USFWS Oversight

The USFWS agrees to provide appropriate technical assistance in carrying out provisions of this Agreement.

B. USFWS Review

The USFWS will make a good faith effort to review requests to add additional Credits based on results of the winter RSF analysis and expand the SRCCB pursuant to Section VII.E and Section IV. F and G; and to provide comments on the annual reports and Remedial Action plans within 60 calendar days from the date of submittal. If the USFWS is unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Sweetwater River Conservancy.

C. Compliance Inspections

The USFWS may conduct compliance inspections pursuant to this Agreement, after providing 48 hours written notice prior to conducting any such inspection, as necessary:

1. To verify the Credits currently available in the SRCCB; and/or
2. To recommend Remedial Action as needed; and/or
3. For any other purpose determined by the USFWS as necessary to assess compliance with this Agreement. However, nothing in this subparagraph or Agreement shall be construed to preclude inspection of the Property by federal, state and local law enforcement in accordance with federal, state and local laws.

Section XII: Other Provisions

A. Force Majeure

1. The Sweetwater River Conservancy shall be responsible to maintain the Property and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Sweetwater River Conservancy shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Sweetwater River Conservancy and any person or entity under the direction or control of the Sweetwater River Conservancy, including its employees, agents, contractors and consultants;
 - b. That neither the Sweetwater River Conservancy, nor any person or entity under the direction or control of the Sweetwater River Conservancy, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.
2. The Sweetwater River Conservancy shall notify the USFWS within 48 hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Sweetwater River Conservancy and the USFWS shall meet to discuss the course of action in response to such occurrence. In the meantime, Sweetwater River Conservancy shall continue to manage and maintain the Property to the full extent practicable.

B. Dispute Resolution

1. The USFWS and the Sweetwater River Conservancy agree to work together in good faith to rectify any default of and resolve disputes concerning the terms of this Agreement. Unless either of Party has initiated legal action, the Parties may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Party of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Party shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such Party may seek clarification of the initial notice;
 - c. Within 30 days after such notified Party's response was provided or due, whichever is later, the Parties shall confer and negotiate

in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution.

- d. The dispute resolution process may be terminated by any Party upon written notice to the other Party.
2. Notwithstanding the agreement to resolve disputes concerning this Agreement informally, the Parties reserve the right to seek any available remedy at any time.

C. Conveyance of Bank Property or Other Interests

1. The Property Owners shall have the right to sell, assign, transfer or convey (each a "transfer" for purposes of this subparagraph) their interests in the Property at any time; *provided*, however, that any such transfer on or after the execution date of this Agreement must be made in accordance with this Agreement and the Deed Restrictions and shall be subject to written concurrence by the USFWS. Such written concurrence by the USFWS shall be provided upon the transferee assuming and agreeing in writing to observe and perform all of the Property Owners' obligations pursuant to this Agreement. Any transfer of Property subject to a Conservation Easement shall be made pursuant to the terms of the Conservation Easement. From and after the date of any transfer by the Property Owners of their interests in the Property, the Property Owners shall have no further obligations hereunder and all references to it in this Agreement shall thereafter refer to such transferee, except that the Sweetwater River Conservancy's and Property Owners' liability for acts, omissions, or material breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owners' and/or Sweetwater River Conservancy's interest in the Property made without the prior written concurrence of the USFWS described in this subparagraph may, at the discretion of the USFWS, result in the termination of this Agreement.
2. The Sweetwater River Conservancy may sell or convey its interest in the SRCCB at any time, provided that it is in full compliance with all requirements of this Agreement (including all financial assurance requirements), and subject to the prior written approval of the USFWS. If any of the financial assurances required under this Agreement are not completely funded at the time the Sweetwater River Conservancy requests USFWS approval of a sale or conveyance of the SRCCB, then the USFWS shall not approve such sale or conveyance unless and until either the Sweetwater River Conservancy, or the proposed replacement bank sponsor provides all required financial assurances. In addition, prior to sale or conveyance, the Sweetwater River Conservancy shall provide to the USFWS a written agreement signed by the replacement bank sponsor in

which the Sweetwater River Conservancy assigns to the replacement bank sponsor, and the replacement sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Sweetwater River Conservancy under the Agreement. Any such sale or conveyance made without the prior written concurrence of the USFWS may, at the discretion of the USFWS, result in the termination of this Agreement.

D. Modification and Termination of the Agreement

1. Amendment and Modification

This Agreement, including its Exhibits, may be amended or modified only with the written approval of the Parties. All proposed amendments and modifications must be consistent with current USFWS banking guidance and guidance for conservation of habitat for the Covered Species in effect at the time of the amendment. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this Agreement.

2. Termination

- a. The Sweetwater River Conservancy may withdraw the entire Property and terminate this Agreement at any time prior to any Transfer of Credit.
- b. In the event this Agreement is terminated or the SRCCB is closed prior to the Transfer of all authorized Credits, any Unobligated Credits shall be extinguished and will no longer be available for Transfer.
- c. The USFWS may terminate this Agreement if the Sweetwater River Conservancy transfers or sells its rights as sponsor of the SRCCB without the prior written concurrence of the USFWS.
- d. The USFWS may terminate its participation in this Agreement upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:
 - 1) Sweetwater River Conservancy has materially breached one or more covenants, terms or conditions set forth herein;
 - 2) Sweetwater River Conservancy has received written notice of such breach from the USFWS; and
 - 3) Sweetwater River Conservancy has failed to cure such breach within 30 days after such notice; provided that in the event such breach is curable in the judgment of the USFWS, but cannot reasonably be cured within such 30-day period, the USFWS shall not terminate this Agreement so long as Sweetwater River

Conservancy has commenced the cure of such breach and is diligently pursuing such cure to completion.

- e. Nothing in this Section is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USFWS in the event of a threatened or actual breach of this Agreement.

E. Default

The Sweetwater River Conservancy may be in default of this Agreement if it fails to observe or perform any obligations or responsibilities required of it by this Agreement. In the event the Sweetwater River Conservancy realizes it is in default, it shall promptly notify the USFWS. Once the USFWS receives notification or otherwise becomes aware that the Sweetwater River Conservancy is in default, the Parties may elect to either pursue dispute resolution consistent with this Section or may cause the Endowment Fund Manager to draw upon and expend the appropriate financial security as necessary to continue SRCCB management, or operation, as provided in Section VIII. In the event the informal dispute resolution process is invoked, the Endowment Fund Manager shall not draw upon the financial securities until such time as the informal dispute resolution process has been terminated.

F. Controlling Language

The Parties intend the provisions of this Agreement and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Agreement conflicts with specific language in any document that is incorporated into this Agreement by reference, the specific language within this document that is incorporated into this Agreement by reference shall be controlling. The captions and headings of this Agreement are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This Agreement, and all exhibits, appendices, schedules and agreements referred to in this Agreement, constitute the final, complete and exclusive statement of the terms of the agreement between and among the USFWS and the Sweetwater River Conservancy pertaining to the SRCCB, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Agreement, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a

written amendment in accordance with Section XII. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this Agreement, whenever this Agreement requires Sweetwater River Conservancy or the USFWS to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Sweetwater River Conservancy or the USFWS disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Agreement.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this Agreement to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this Agreement shall be in writing and deemed given when delivered personally or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Party in the manner specified in this Section.

To the Sweetwater River Conservancy Greater Sage-Grouse Habitat Bank, LLC:

Sweetwater River Conservancy
36695 West Highway 220
Alcova, Wyoming 82620

To the USFWS, Wyoming Ecological Services Office:
Attention: Field Supervisor
United States Fish and Wildlife Service
Ecological Services Wyoming Field Office
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

With a copy to:
Wyoming Game and Fish Department
Attention: Habitat Protection Supervisor
5400 Bishop Boulevard
Cheyenne, Wyoming 82006

L. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This Agreement shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as otherwise provided by law in the event this Agreement had never been executed.

N. Availability of Funds

Implementation of this Agreement by the USFWS is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Agreement may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury.

O. No Partnerships

This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner or joint venture of any other Party.

P. Governing Law

This Agreement shall be governed by and construed in accordance with the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) *et seq.*, and the laws of the State of Wyoming and other applicable Federal and State of Wyoming laws and regulations.

Q. Attorneys' Fees

If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, then each Party shall pay its own attorney's fees and cost.

Section XIII: Execution

Each of the undersigned Parties, Property Owners and members of the Conservation Bank Review Team, empaneled by the USFWS to participate in the establishment, use and operation of the SRCCB, certifies that he or she has full authority to bind the Party and entity that he or she represents for purposes of entering into this Agreement. This Agreement shall be deemed executed on the date of the last signature by the Parties, Property Owners and members of the Conservation Bank Review Team.

THIS SPACE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Property Owners, Parties and Members of the Conservation Bank Review Team have executed this Agreement as follows:

PARTIES AND PROPERTY OWNERS

Pathfinder Bummer Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of DeKal

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Bummer Ranch, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires Feb 05, 2018



Pathfinder Cardwell Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

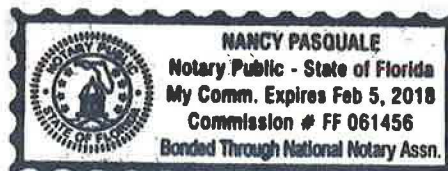
ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Cardwell Ranch, LLC.

[Signature]
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



Pathfinder Cardwell Access Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Cardwell Access Ranch, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



Pathfinder Miracle Mile Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

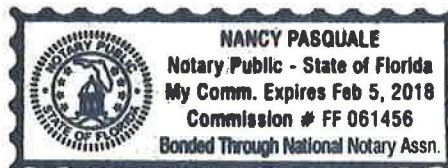
ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Miracle Mile Ranch, LLC.

[Signature]
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



Pathfinder Pathfinder Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Pathfinder Ranch, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



Pathfinder Perkins Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Perkins Ranch, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



Pathfinder Two Iron Ranch, LLC

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of Duval

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Pathfinder Two Iron Ranch, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



**Sweetwater River Conservancy Greater
Sage-Grouse Habitat Bank, LLC**

By: Jeff Meyer

Title: Man. Member

Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Florida
County of Deeal

This instrument was acknowledged before me on 12/17/14
by Jeff Meyer, Personally Known on behalf of
Sweetwater River Conservancy Greater Sage-Grouse Habitat Bank, LLC.

Nancy Pasquale
Notary Public, State of Florida

My Commission Expires: Feb 05, 2018



United States Department of the Interior
United States Fish and Wildlife Service
Wyoming Ecological Services Office

By: R. MARK SATTELBERG

Title: FIELD SUPERVISOR

Signature: *[Handwritten Signature]*

Date: 12-23-2014

ACKNOWLEDGMENT

State of Wyoming
County of Laramie

This instrument was acknowledged before me on December 23, 2014
by R. Mark Sattelberg, Field Supervisor on behalf of the
United States Fish and Wildlife Service, Wyoming Ecological Services
Office, an agency of the United States Department of the Interior.



Mary E Scheer
Notary Public, State of Wyoming

My Commission Expires: 11-14-2017

SWEETWATER RIVER CONSERVANCY
GREATER SAGE-GROUSE HABITAT BANK, LLC
CONSERVATION BANK AGREEMENT
CONSERVATION BANK REVIEW TEAM

State of Wyoming
Wyoming Game and Fish Department

By: SCOTT TALBOTT

Title: Director

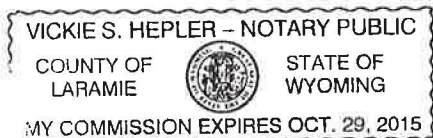
Signature: [Signature]

Date: 12/17/14

ACKNOWLEDGMENT

State of Wyoming
County of Laramie

This instrument was acknowledged before me on 12/17/14
by SCOTT TALBOTT, _____ on behalf of
the Wyoming Game and Fish Department, an agency of the State of
Wyoming, as a member of the Conservation Bank Review Team.



Vickie Hepler

Notary Public, State of Wyoming

My Commission Expires: Oct 29, 2015

State of Wyoming
Office of State Lands and Investments

By: Bridget Hill

Title: Director

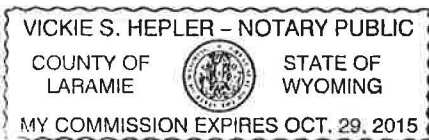
Signature: Bridget Hill

Date: 12/9/14

ACKNOWLEDGMENT

State of Wyoming
County of Laramie

This instrument was acknowledged before me on 12/9/14
by Bridget Hill, _____ on behalf of
the **Office of State Lands and Investments**, an agency of the State of
Wyoming, as a member of the Conservation Bank Review Team.



Vickie S. Hepler
Notary Public, State of Wyoming

My Commission Expires: 10/29/15

State of Wyoming
Wyoming Department of Environmental Quality

By: Todd Parfitt

Title: DIRECTOR

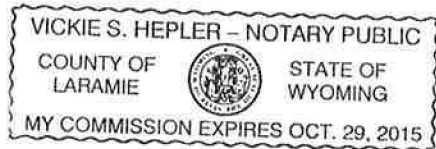
Signature: Todd Parfitt

Date: 12/11/14

ACKNOWLEDGMENT

State of Wyoming
County of Laramie

This instrument was acknowledged before me on Dec 11, 2014
by Todd Parfitt, _____ on behalf of
the Wyoming Department of Environmental Quality, an agency of the
State of Wyoming, as a member of the Conservation Bank Review Team.



Vickie S. Hepler
Notary Public, State of Wyoming

My Commission Expires: Oct 29, 2015

United States Department of the Interior
Bureau of Land Management
Wyoming State Office

By: Donald A. Simpson

Title: State Director

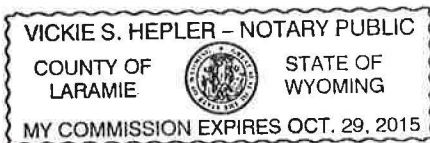
Signature: Donald A. Simpson

Date: 12/9/14

ACKNOWLEDGMENT

State of Wyoming
County of Laramie

This instrument was acknowledged before me on 12/9/14
by Donald A. Simpson, _____ on behalf of
the **Bureau of Land Management, Wyoming State Office, an agency of the**
United States Department of the Interior, as a member of the
Conservation Bank Review Team.



Vickie S. Hepler
Notary Public, State of Wyoming

My Commission Expires: Oct 29, 2015