



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

1. PERMITTEE

Malpai Borderlands Group
P.O. Drawer 3536
Douglas, Arizona 85608

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER
TE-155587-0

4. RENEWABLE	5. MAY COPY
<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> NO

6. EFFECTIVE 9/1/2008	7. EXPIRES 9/1/2038
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8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)
Bill McDonald, Executive Director

9. TYPE OF PERMIT
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
the approximate 828,000-acre Malpai Borderlands Region of Cochise County, Arizona and Hidalgo County New Mexico.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

12. REPORTING REQUIREMENTS
Annual reports shall be submitted by October 1 of each year the permit is in effect.

ISSUED BY:	TITLE Deputy Regional Director	DATE
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E. DEFINITIONS

The following terms as used in this Permit shall have the meanings set forth below:

E.1. The term “Implementing Agreement” (IA) shall mean the written agreement by and among Malpai Borderlands Group (MBG), Natural Resources Conservation Service, Arizona Game and Fish Commission, New Mexico Department of Game and Fish, Arizona State Land Department, New Mexico State Land Office, and the U.S. Fish and Wildlife Service (FWS) to establish an integrated conservation program for Covered Species executed by the parties thereto subsequent to the issuance of this Permit. Terms identified and utilized in the IA shall have the same meaning when utilized in this Permit, except as specifically noted herein.

E.2. The term “Changed Circumstances” shall mean the changes in circumstances affecting a species or geographic area covered by the Malpai Borderlands Habitat Conservation Plan (MBHCP) that are identified in subparagraph O.1 hereof and in the MBHCP. The term “Changed Circumstances” shall not include Unforeseen Circumstances, as that term is defined in subparagraph E.15 hereof.

E.3. The term “Certificate of Inclusion” (COI) shall refer to the document through which private landowners and State Agencies may enroll under the MBHCP to implement a Covered Activity and through which the Permit authority and incidental take coverage is provided to the private landowner or state agency from the Permittee.

E.4. The term “Covered Activities” shall refer to Grassland Improvement Activities and Ranch Management Activities identified in the Section 3.5 of the MBHCP, including all species conservation activities identified in Section 5.0 of the MBHCP, undertaken by the Permittee, any successor in interest to the Permittee, or an Enrolled Landowner or State Agency.

E.5. The Term “Covered Area” shall mean the geographic area of privately owned and state trust lands to which this Permit and MBHCP apply and on which Covered Activities would occur. Generally, the covered area consists of the triangular-shaped Malpai Borderlands area as it is depicted on Figure 2-1 of the MBHCP, which straddles the southern end of the state border between Arizona (in Cochise County) and New Mexico (in Hidalgo County). It includes, specifically, all private and state trust lands within the following defined boundaries: (1) the U.S./Mexico border on the south; (2) from milepost 10 on Geronimo Trail following current ranch boundaries north to Hwy 80, then north-east along Hwy 80 to the point where the section line between Township 21 South and Township 22 South crosses the highway, then north-west along current ranch boundaries to the National Forest boundary, then north-east along the National Forest boundary to the section line between Township 19 South and Township 20 South, then east to Hwy 80, then north along Hwy 80 to its junction with Hwy 9 on the west; (3) Hwy 9 on the north; and the Continental Divide (to where it enters Diamond A Ranch) and thence the boundary of the Diamond A Ranch to its junction with the U.S./Mexico border on the east.

E.6. The term “Covered Species” shall mean the species covered by the MBHCP and this Permit, as fully set forth herein.

E.7. The term “Effective Date” shall mean the date upon which the FWS issued this Permit and the IA is subsequently signed by both MBG and FWS, whichever is later in time.

E.8. The term “Enrollee” shall mean the private land owner or state agency that enrolls

with MBG under the MBHCP through a COI.

E.9. The term “ESA” shall mean the Endangered Species Act, 16 U.S.C. § 1531 et seq. Terms defined and utilized in the ESA and implementing regulations shall have the same meaning when utilized in this Permit, except as specifically noted herein.

E.10. The term “HCP” shall mean the Malpai Borderlands Habitat Conservation Plan, to be implemented by MBG in conjunction with the Covered Activities. Terms defined and used in the HCP shall have the same meaning when used in this Permit, except as specifically noted herein.

E.11. The term “Parties” shall mean MBG and the FWS.

E.12. The term “Permit” shall mean this incidental take permit (ITP), issued by FWS to MBG pursuant to Section 10(a)(1)(B) of the ESA.

E.13. The term “Permit Area” shall mean the geographic area to which the MBHCP and its associated Permit apply. This will include the privately owned and state trust lands, along with the Federal lands on which effects of the covered activities may occur. The Permit Area is generally the same as the Covered Area, but includes the San Bernardino National Wildlife Refuge (Figure 2-1 of the MBHCP). The Coronado National Forest is excluded from the Permit Area, as no take from the MBHCP is expected on U.S. Forest Service lands.

E.14. The term State Agency shall mean any governmental agency of the states of Arizona or New Mexico.

E.14. The term “Permittee” shall mean MBG.

E.15. The term “Unforeseen Circumstances” shall mean changes in circumstances affecting a species or geographic area covered by the HCP, which could not reasonably have been anticipated by the Parties at the time of the HCP’s negotiation and development, and which result in a substantial and adverse change in the status of Covered Species. The term “Unforeseen Circumstances” shall not include Changed Circumstances, as that term is defined in subparagraph E.2 hereof.

E.16. The term “Unlisted Covered Species” shall mean a Covered Species that is not listed as endangered or threatened under the ESA as of the Effective Date. The term “Unlisted Covered Species” includes both candidate species and species of special concern.

F. EXTENT OF INCIDENTAL TAKE

F.1. The Permittee is authorized to “Take” (kill, harm, harass) the Chiricahua leopard frog (*Rana chiricahuensis*), beautiful shiner (*Cyprinella formosa*), Yaqui catfish (*Ictalurus pricei*), Yaqui chub (*Gila purpurea*), Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), Mexican spotted owl (*Strix occidentalis lucida*), New Mexico ridge-nosed rattlesnake (*Crotalus willardi obscurus*), northern aplomado falcon (*Falco femoralis*, should the 10(j) designation and special rule be terminated or lapses), western yellow-billed cuckoo (*Coccyzus americanus*, if subsequently listed), Yaqui sucker (*Catostomus berrardini*, if subsequently listed), Mexican longfin dace (*Agosia chrysogaster*, if subsequently listed), Mexican stoneroller (*Campostoma ornatum*, if subsequently listed), lowland leopard frog (*Rana yavapaiensis*, if subsequently listed), northern Mexican gartersnake (*Thamnophis eques megalops*, if subsequently listed),

black-tailed prairie dog (*Cynomys ludovicianus*, if subsequently listed), western burrowing owl (*Athene cunicularia hypugaea*, if subsequently listed), white-sided jackrabbit (*Lepus callotis*, if subsequently listed), and western red bat (*Lasiurus blosseveillii*, if subsequently listed), to the extent described and specified in subparagraphs F.2 through F.12 herein and in the HCP, incidental to the Covered Activities, as described in the Permittee's application and supporting documents, and as conditioned herein.

F.2. Incidental Take of Chiricahua leopard frog. During the life of this Permit, as long as the MBHCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take Chiricahua leopard frogs (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres (809 hectares) per calendar year, (c) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet (11 meters) in width and result in no more than 4 acres (1.6 hectares) of new ground disturbance on average annually, and (d) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to livestock tank use and maintenance (if the special rule is terminated or lapses), erosion control activities, and livestock management not to exceed the loss of one population site every five (5) years on average.

F.3. Incidental Take of beautiful shiner, Yaqui catfish, Yaqui chub, and Yaqui topminnow. During the life of this Permit, as long as the HCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take beautiful shiner, Yaqui catfish, Yaqui chub, and Yaqui topminnow (a) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually, (d) in the form of harm, harass, and mortality from indirect impacts related to livestock management, when take cannot be attributed to other actions, up to the loss of the younger cohort of each species in annual monitoring for two consecutive years in the channel of Black Draw, (e) in the form of harm, harass, and mortality from direct impacts and indirect impacts related to livestock management at Astin Spring up to the entire population of each species present at this ephemeral site.

F.4. Incidental Take of Northern Aplomado Falcon. During the life of this Permit, as long as the HCP is being properly implemented, the Permittee may, in carrying out the Covered Activities within the Covered Area, incidentally take northern Aplomado falcon (a) in the form of harm, harass, or mortality of young life stages (egg, hatchling, and young fledglings) from direct and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually, (d) in the form of harm, harass, and mortality from direct impacts of livestock management on up to 2 nests destroyed over the life of the Permit. This Permit shall become effective for the northern aplomado falcon as specified in part F.1 above.

F.5. Incidental Take of Mexican spotted owl. During the life of this Permit as long as the HCP is being properly implemented, the Permittee may, in carrying out the Covered Activities within the Covered Area, incidentally take Mexican spotted owl (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to decisions and actions related to wildland fire use and escaped managed fire and (b) in the form of harm and harass from direct impacts and indirect impacts related to cool season burns, provided fire management activities do not exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within burn perimeter.

F.6. Incidental Take of New Mexico ridge-nosed rattlesnake. During the life of this Permit as long as the HCP is being properly implemented, the Permittee may, in carrying out the Covered Activities within the Covered Area, incidentally take New Mexico ridge-nosed rattlesnake (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to decisions and actions related to wildland fire use and escaped managed fire and (b) in the form of harm, harass, and mortality from direct impacts and indirect impacts related to cool season burns, provided fire management activities do not exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within burn perimeter.

F.7. Incidental Take of Western Yellow-billed Cuckoo. During the life of this Permit, as long as the HCP is being properly implemented, the Permittee may, in carrying out the Covered Activities within the Covered Area, incidentally take western yellow-billed cuckoo (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within

any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm or harass from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually. This Permit shall become effective for the western yellow-billed cuckoo as specified in part F.1 above.

F.8. Incidental Take of Yaqui Sucker, Mexican Longfin Dace, Mexican Stoneroller. During the life of this Permit, as long as the HCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take Yaqui sucker, Mexican longfin dace, and Mexican stoneroller (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually, (d) in the form of harm, harass, and mortality from indirect impacts related to livestock management, when incidental take cannot be attributed to other actions, up to the loss of the younger cohort of each species in annual monitoring for two consecutive years in the channel of Black Draw, (e) in the form of harm, harass, and mortality from direct impacts and indirect impacts related to livestock management at Astin Spring up to the entire population of each species present at this ephemeral site. This Permit shall become effective for the species listed in this subparagraph F.8 as specified in subparagraph F.1 above.

F.9. Incidental Take of Lowland Leopard Frog. During the life of this Permit, as long as the MBHCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take lowland leopard frogs (a) in the form of harm, harass, or mortality, from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to the construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually, and (d) in the form of harm, harass, or mortality

from direct impacts and indirect impacts related to livestock tank use and maintenance, erosion control activities, and livestock management not to exceed the loss of one population site every five (5) years on average. This Permit shall become effective for the species listed in this subparagraph F.9 as specified in subparagraph F.1 above.

F.10. Incidental Take of Northern Mexican Gartersnake. During the life of this Permit, as long as the MBHCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take northern Mexican gartersnake (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually, and (d) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to livestock tank use and maintenance, erosion control activities, and livestock management not to exceed 15 individuals killed or injured during the term of the Permit. This Permit shall become effective for the species listed in this subparagraph F.10 as specified in subparagraph F.1 above.

F.11. Incidental Take of Black-tailed Prairie Dog, Western Burrowing Owl, and White-sided Jackrabbit. During the life of this Permit, as long as the MBHCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take black-tailed prairie dogs, western burrowing owls, and white-sided jackrabbits (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually. This Permit shall become effective for the species listed in this subparagraph F.11 as specified in subparagraph F.1 above.

F.12. Incidental Take of Western Red Bat. During the life of this Permit, as long as the MBHCP is being properly implemented, the Permittee may, in carrying out Covered Activities within the Covered Area, incidentally take western red bats (a) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to fire management activities not to exceed twenty-five percent (25%) of the ground surface area within any given one-year calendar period or fifty percent (50%) of the ground surface area within any given five-

year calendar period of any individual watershed (defined in section 5.5.2.1 of the MBHCP) as a result of the combined total acreage of all managed fires, including prescribed burns and wildland fires, based upon total acreage within the burn perimeter, (b) in the form of harm from direct impacts and indirect impacts related to mechanical brush control activities under the MBHCP not to exceed 2,000 acres per calendar year, (c) in the form of harm, harass, or mortality from direct impacts and indirect impacts related to construction or maintenance of linear facilities not to exceed 35 feet in width and result in no more than 4 acres of new ground disturbance on average annually. This Permit shall become effective for the species listed in this subparagraph F.12 as specified in subparagraph F.1 above.

G. INCORPORATION OF HCP AND AGREEMENT; GOVERNING LAW

G.1. The MBHCP, the IA, and each of their provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction among the terms of the IA, the HCP, and this Permit, the terms and conditions of this Permit shall control. In all other cases, the terms of the IA, the HCP, and this Permit shall be interpreted to be supplementary to each other.

G.2. This Permit, the HCP, and the IA, and the Parties' compliance therewith, shall be governed by the ESA and implementing regulations.

H. PROPER IMPLEMENTATION OF HCP

H.1. The HCP will be deemed properly implemented if the commitments and provisions of the HCP, IA, and this Permit have been or are being implemented and met in accordance with their terms. The Permittee shall timely and completely comply with and perform its obligations under the HCP and the IA.

H.2. The Permittee shall submit an annual report detailing implementation of the MBHCP, as described at Section 5.10 of the MBHCP. Annual reports will be submitted by March 15 of each year (detailing accomplishments in the previous calendar year) to the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021, and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Suite 4102, Albuquerque, New Mexico 87103.

I. TERM

This Permit shall have a duration beginning on the Effective Date, and continuing in full force and effect for a period of 30 years thereafter, or until revocation or surrender and cancellation of this Permit as provided for in subparagraphs M.2 and M.3 hereof, whichever occurs earlier.

J. PERMIT IN EFFECT FOR LISTED SPECIES ON EFFECTIVE DATE; PERMIT TO BECOME EFFECTIVE FOR UNLISTED COVERED SPECIES UPON LISTING

This Permit will take effect for Covered Species federally listed as threatened or endangered at the time this Permit is issued. Subject to the Permittee's compliance with all other

terms of this Permit, the HCP, and the IA, this Permit will take effect for Unlisted Covered Species upon the listing of such species as threatened or endangered by FWS.

K. DISPOSITION OF DEAD, INJURED, OR SICK INDIVIDUALS OF LISTED SPECIES

Upon locating a dead, injured, or sick individual of a Covered Species listed in subparagraphs F.2 through F.6 above, within the Permit Area and Compensation Lands, the Permittee is required to contact the FWS Law Enforcement Office, 2450 West Broadway Road, #113, Mesa, Arizona 85202, 480/967-7900, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

L. SATISFACTION OF PERMITTING REQUIREMENTS UNDER MIGRATORY BIRD TREATY ACT AND BALD AND GOLDEN EAGLE PROTECTION ACT

L.1. Migratory Bird Treaty Act Special Purpose Permit for Listed Species. This Permit shall constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for take of the northern aplomado falcon, in the event the section 10(j) designation and/or the special rule is terminated or lapses, and the Mexican spotted owl, and, in the event it is listed by FWS as threatened or endangered, the yellow-billed cuckoo and western burrowing owl, in the amount and subject to the terms and conditions specified in this Permit, the IA, and the HCP.

M. PERMIT SUSPENSION, REVOCATION, AND SURRENDER

M.1. Permit Suspension

(a) FWS may suspend this Permit if the Permittee is not in compliance with the terms and conditions of this Permit, or with any applicable federal laws or regulations governing the conduct of the Covered Activities. The suspension shall remain in effect until FWS determines that the Permittee has corrected the deficiencies. Notwithstanding the foregoing, FWS shall not suspend this Permit without first: (1) notifying the Permittee in writing that this Permit may be subject to suspension pursuant to this subparagraph N.1(a), including a statement of the deficiencies that must be corrected by the Permittee; and (2) providing the Permittee with a period of 30 days after the date of notice of deficiencies in which to correct the deficiencies.

(b) A partial suspension of this Permit may apply only to specified Covered Species, or to only a portion of the Permit Area or Covered Activities. In the event of a partial suspension, the portion of this Permit not subject to the suspension shall remain in full force and effect.

M.2. Permit Revocation

(a) FWS shall not revoke this Permit for any reason except those listed in 50 C.F.R. 13.28(a)(1)-(4), or unless the Covered Activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, this Permit will only be revoked if FWS and the Permittee have not been successful in remedying any such inconsistency through other means.

(b) A partial revocation of this Permit may apply only to specified Covered Species, or to only a portion of the Permit Area or Covered Activities. In the event of a partial revocation, the portion of this Permit not subject to the revocation shall remain in full force and effect.

M.3. Surrender and Cancellation of Permit. In the event that the Permittee, or any successor in interest to the Permittee, permanently discontinues the Covered Activities, the Permittee or successor-in-interest shall return this Permit to FWS within 30 calendar days of the discontinuance with a written statement surrendering this Permit for cancellation. This Permit will be deemed cancelled only upon a determination by FWS, in collaboration with the Permittee, that sufficient measures have been implemented by the Permittee to mitigate for take of Covered Species that occurred pursuant to the terms of this Permit, before its surrender. Upon surrender of this Permit, no further take of the Covered Species by the Permittee shall be authorized.

N. CERTIFICATES OF INCLUSION SUSPENSION, REVOCATION, AND SURRENDER

N.1. Certificate of Inclusion Suspension and Revocation. A COI may be suspended or revoked for cause by either MBG or the FWS, acting jointly or separately, if: the enrollee has failed to satisfy any specific responsibility or condition required by the MBHCP, Permit, or COI; MBG and/or the FWS have made reasonable, good faith efforts to cooperatively work with the rancher or State Agency to correct the deficiency; the deficiency remains uncorrected, even after MBG's and/or the FWS's good faith efforts; and written notice has been provided to the affected enrollee alerting the enrollee of the pending suspension or revocation a minimum of 30 days prior to the effective date of the suspension or revocation.

N.2. Certificate of Inclusion Severability. COI issued by MBG or its authorized designee to a Malpai-area rancher is severable with respect to MBG's Permit, and with respect to COIs issued by MBG or its authorized designee to other Malpai-area ranchers. Thus, failure by one rancher or State Agency to comply with the requirements of a COI, potentially invalidating that rancher's or State Agency's Permit coverage, does not affect the rights and obligations of other ranchers or State Agencies under their respective COIs, or MBG's rights or obligations under its Permit, provided that MBG or other such ranchers or State Agencies are themselves in compliance with the requirements of the MBHCP, the Permit, or their COIs, as applicable.

N.3. Certificate of Inclusion Amendments. If a COI requires an amendment because of change of ownership, the Permittee will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original Permit. The activities proposed or in progress under an original COI may not be interrupted provided the required terms and conditions of an issued permit are being

followed.

N.4. Certificate of Inclusion Early Termination. Voluntary or early termination of a COI by an enrollee is allowable only if all obligations and measures required by the MBHCP and the Permit have been fully implemented or satisfied. Any enrollee requesting early termination of a COI also understands that the benefits provided by the MBHCP and its associated Permit, regulatory or otherwise, also cease as of the effective date of termination of the COI. An enrollee who wishes to terminate a COI prior to its specified expiration date may do so by giving MBG written notice of such termination, together with a written explanation of the reason for termination, a minimum of 60 calendar days prior to the effective date of the termination. Upon such notification, the COI with respect to that rancher will be considered terminated as of the end of the 60-day period, provided that the conditions of this section of the Permit and in Section 9.2.3 of the MBHCP are satisfied. Early termination of a COI will not require FWS approval. However, MBG will inform FWS of all such early terminations occurring in a given year in its annual report, as required in Section 5.10 of the MBHCP and Section H.2 of this Permit.

O. LIMITATION ON IMPOSITION OF ADDITIONAL CONSERVATION MEASURES

O.1. Changed Circumstances, Notice of Changed Circumstances, and Implementation of Response

(a) Changed Circumstances. The following are Changed Circumstances, and corresponding conservation and mitigation measures, if any, that the Permittee shall implement in response to such Changed Circumstances, should they occur during the life of this Permit:

MBHCP Section	Changed Circumstance	Conservation, Mitigation, or Management Measures (as described in the HCP)
8.3.2	The occurrence of high-severity fire during any managed fire in excess of 10% of the burn area.	For each acre affected by high-severity fire apply 3 acres toward the 1-year/5-year watershed and annual grassland burn/fire limits; also for such areas, extend the 5-year burn frequency limit to 10 years.
8.3.3	Occurrence of large wildfire that exceeds 1-year/5-year watershed or grassland burn/fire limits.	Discontinue managed fires in affected area until beginning of new 1-year or 5-year tracking period, as applicable; subtract acreage of habitat burned in excess of burn limits in previous period from acre allowance in following period.
8.3.4	Drought	When the National Oceanographic and Atmospheric Administration's Palmer Drought Index indicates the area is in a drought, covered activities that are impacted by drought will be deferred, per section 8.3.4 of the HCP
8.3.5	Occurrence of significant flooding	Significant flooding, as defined in Section 8.3.5, that results in direct and indirect effects to covered species and their habitat will result in corrective measures as outlined in Section 8.3.5 of the HCP.
8.3.6	Termination or Lapse of FWS's 4(d) rule for Chiricahua leopard frog.	Measures described in Section 5.5.3.3 will take effect, per Section 8.3.6 and those conditions will be amended to the permit.
8.3.7	Termination or lapse of FWS's	Measures described in Section 5.5.2 and 5.5.3 of the

	10(j) designation and 4(d) rule for northern aplomado falcon	MBHCP will be amended from recommended minimization measures to required minimization measures per Section 8.3.7, and those conditions will be amended to the permit.
8.3.8	Inability of MBG to fund monitoring	Measures will be taken to find additional funding, to continue existing monitoring. If this is not possible MBG will work to reduce the monitoring schedule and seek an amendment to the Permit to reflect any changes, per Section 8.3.8 of the HCP.
8.3.9	New listing of an uncovered species	MBG would evaluate the potential for take and discuss with FWS if avoidance measures could be implemented. Then consider amending the HCP and the Permit.
8.3.10	New critical habitat designation	No response would be required, but MBG may review covered activities to determine if further conservation is warranted and desirable. Then consider amending the HCP and the Permit.
8.3.11	Development or subdivision of ranches in the Covered Area	MBG would need to determine if the implementation of their covered activities and conservation is still feasible. If the covered activities and conservation are no longer feasible on a reduced landscape, then these activities would no longer be implemented and MBG would surrender this permit in accordance with section M.3 above
All responses to changed circumstances and response actions are discussed in the appropriate sections in the MBHCP and included herein by reference.		

As long as the terms of the HCP are being properly implemented, FWS shall not require the implementation of any conservation and mitigation measures by the Permittee in response to Changed Circumstances, other than those measures specified in this subparagraph O.1(a).

(b) Notice of Changed Circumstances & Implementation of Response

i) Permittee-initiated Response to Changed Circumstances. The Permittee shall give written notice to FWS within 30 days after learning that any of the Changed Circumstances listed in the HCP and subparagraph O.1(a) hereof has occurred. As soon as practicable thereafter, but no later than 90 days after learning of the Changed Circumstances, the Permittee shall modify its activities in the manner and to the extent required by the HCP and subparagraph O.1(a) hereof and report to the FWS on its actions. The Permittee shall make any such required modifications without awaiting notice from FWS.

ii) FWS-initiated Response to Changed Circumstances. If FWS determines that Changed Circumstances have occurred and that the Permittee has not responded in accordance with the HCP and subparagraph O.1(a) hereof, FWS shall so notify the Permittee in writing and direct the Permittee to make the required changes. Within 90 days after receiving such notice, the Permittee shall make the required changes and report to FWS on its actions.

(c) Effect of Changed Circumstances on Permit and HCP

i) In General. Changed Circumstances are provided for in the HCP and, hence, do not constitute Unforeseen Circumstances or require amendment of this Permit, the HCP, or the IA. Changed Circumstances do not constitute “new information” under 50 C.F.R. §

402.16(b), and, hence, the occurrence of Changed Circumstances does not require the reinitiation of formal consultation by FWS under Section 7 of the ESA.

ii) Critical Habitat. FWS shall consider the HCP in its preparation of any proposed designation of critical habitat concerning any Covered Species. Consistent with 50 C.F.R. § 424.12, the HCP incorporates special management considerations necessary to conservation of the Covered Species. If critical habitat is designated for any Covered Species, and as long as the HCP is being properly implemented, FWS shall not require, through the formal consultation process of Section 7 of the ESA or otherwise, the commitment by the Permittee of additional land, water, financial compensation, or other measures beyond those already provided for in the HCP.

O.2. Unforeseen Circumstances

(a) No Surprises Assurances. The “Covered Species” listed in subparagraphs F.2. through F.6 above, are considered adequately addressed under the HCP and are, therefore, covered by no surprises rule assurances. In the event that it is demonstrated by FWS that Unforeseen Circumstances exist during the life of this Permit, and additional conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, FWS may require additional measures of the Permittee where the HCP is being properly implemented, but only if such measures are limited to modifications to the HCP’s operating conservation program for the Covered Species, and maintain the original terms of the HCP to the maximum extent practicable. Notwithstanding the foregoing, FWS shall not:

i) Require the commitment of additional land, water, or financial compensation by the Permittee without the consent of the Permittee; or

ii) Impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Permittee under the original terms of the HCP, including additional restrictions on the Covered Activities and restrictions on the Permittee’s operation of other dams outside the Permit Area to mitigate the effects of the Covered Activities.

(b) Effect of Unforeseen Circumstances on Permit. Except as provided in subparagraph N.2 hereof, notwithstanding the occurrence of Unforeseen Circumstances, as long as the Permittee continues to properly implement the provisions of the HCP and any additional measures required by FWS in accordance with subparagraph O.2(a) hereof, this Permit will remain in full force and effect.

(c) Notice of Unforeseen Circumstances. FWS shall notify the Permittee in writing of any Unforeseen Circumstances of which FWS becomes aware that may affect the obligations of the Permittee under this Permit, the HCP, or the IA.

P. AMENDMENT OF THE PERMIT

P.1. This Permit may be amended in accordance with the provisions of 50 C.F.R. § 13.23. The proponent of the amendment shall provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects to the other parties, including its effects on operations under the HCP and on Covered Species.

P.2. If, during the life of this Permit, the Covered Activities and/or the extent of the impact of the Covered Activities described in the HCP are altered, such that there may be an

increase in the anticipated incidental take of the Covered Species, the Permittee is required to contact the FWS and obtain authorization and/or amendment of this Permit before commencing any construction or other activities that might result in incidental take beyond those described in the HCP and IA.

Q. RENEWAL OF PERMIT

The Permittee may apply for the renewal of the Permit prior to its expiration date in accordance with the provisions of 50 C.F.R. § 13.22.

R. SUCCESSORS AND ASSIGNS

The terms and conditions of this Permit shall be binding on and shall inure to the benefit of the Permittee and FWS, and their respective successors and assigns, as provided in 50 C.F.R. §§ 13.24 and 13.25.

S. SEVERABILITY

The terms and conditions of this Permit shall be deemed severable, and if any term or condition of this Permit shall be held invalid, illegal, or unenforceable by a federal court, after exhaustion of all available appeals, the remainder shall continue to be effective and binding upon FWS and the Permittee. Notwithstanding the foregoing, in the event that any portion of this Permit shall be held invalid, FWS and the Permittee shall use their best efforts to agree upon amendments to this Permit, consistent with condition P above.

-----End of Permit Terms and Conditions # TE-155587-0 -----