



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

2800 Cottage Way, Ste 2606  
Sacramento, CA 95825

**In Reply Refer To:**  
FWS/LR8/IR08/IR10

April 18, 2022

By Electronic Mail

Joe Yun  
Executive Officer  
California Water Commission  
715 P Street, P.O. Box 942836  
Sacramento, CA 94236-0001

Holly Geneva Stout, Esq.  
California Water Commission  
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**Subject:** United States Fish and Wildlife Service  
Submission of *Amended* Comments for the April 20, 2022, Resolution of Necessity  
Hearing  
California Water Commission

APNs 033-180-001,-008, and -009 – DWR Parcel No. YBSH-132

Glide in Ranch - FWS Easement # 17C – 851.9 acres

Dear Mr. Yun and Ms. Stout:

As stated in the March 24, 2022, Notice of the Resolution of Necessity hearing, the United States Fish and Wildlife Service (“FWS” or “Service”) submits these written comments concerning the above-referenced easement in which the United States holds an interest. **These comments replace the letter submitted by the Service on April 14, 2022.**

### **Federal Interest in DWR Parcel No. YBSH-132**

First, understand that the conservation easement held here is an interest in lands held by the United States. As such, absent a waiver of sovereign immunity, a federal interest in real property cannot be condemned. *United States v. Navajo Nation*, 556 U.S. 287, 289 (2009). (“A waiver of the Federal Government’s sovereign immunity must be unequivocally expressed in statutory text, and will not be

implied. Moreover, a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign."); *Minnesota v. United States*, 305 U.S. 382, 386-87 (1939), *superseded on other grounds by statute as stated in Morda v. Klein*, 865 F.2d 782, 783 (6th Cir. 1989); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917). The sole extant statutory exception to this federal preemption relating to condemning real property owned by the United States is under the Quiet Title Act ("QTA"), 28 U.S.C. § 2410(a), and this is a limited waiver of sovereign immunity. *Id.* (the United States "may be made a party" in a case "to condemn . . . real or personal property on which the United States has or claims a mortgage or other lien."); *Block v. North Dakota*, 461 U.S. 273, 286 (1983) ("Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."). Moreover, this waiver as related to a mortgage or lien is narrowly construed. *See, e.g., Hussain v. Boston Old Colony Ins. Co.*, 311 F.3d 623, 629 (5th Cir. 2002) (Section 2410 "was specifically passed to waive the sovereign immunity of the United States so that private parties could get the government into court when necessary to quiet title or resolve priority of liens or mortgages"); *Village of Wheeling v. Fragassi*, No. 09 C 3124, 2010 WL 3087462, at \*4 (N.D. Ill. Aug. 2, 2010) (lease not a mortgage or lien under § 2410); *Ansonia Nat'l Bank v. United States*, 147 F. Supp. 864, 865 (D. Conn. 1956) (easement not a "lien" under § 2410).

Likewise, the doctrine of prior public use ensures that the United States' interest, absent a contrary statutory provision enacted by Congress, triumphs over a state or local government's effort to condemn federal lands or real property interests. The doctrine is designed to prevent courts from becoming embroiled in competing claims by governmental entities to the same property. *See United States v. Acquisition of 0.3114 Cuerdas of Condemnation Land More or Less, Located on Calle*, 753 F. Supp. 50, 54 (D.P.R. 1990) ("Without the prior use doctrine, there could be a free for all of battling entities all equipped with eminent domain power, passing title back and forth."). Simply stated, even ignoring that the public interest of the United States may be supreme, our prior public interest reflected in the United States' ownership of the property suffices to block any condemnation by state or local governments.

### **Procedural Background**

FWS Refuges has come a bit late to this process. Our Realty Section, Refuge Staff, and the Department of Water Resources ("DWR") participated in a meeting and exchanged a few correspondences in February-April of 2021. FWS heard nothing further until our Realty Section received a letter dated October 28, 2021, from DWR Right-of-Way Agent Jesus Cedeno. The October 28, 2021, letter notified FWS of DWR's intent to acquire a flowage easement on these conservation easement parcels. In response, the FWS submitted a letter to Catherine McCalvin of DWR dated February 14, 2022, setting forth the federal interest in the conservation easement. DWR responded to the Service's letter on April 6, 2022. The Service did NOT receive written notice of the Informational Hearing for this property that was held in March, and written notice of the Resolution of Necessity Hearing was received on April 1, 2022, barely within the 21-day period required by the Water Commission procedures. As required within 15 days of the date of the Notice of Hearing, FWS submitted its written request to be heard on April 7, 2022, regarding this Parcel.

### **Glide In Easement**

Please note that our easement covers APNs 033-180-01, 033-180-08, and 033-180-20, not 033-180-09 as described in DWR's documents.

Enclosed herein as Exhibit A is the Glide In Easement, recorded on December 17, 1996, and acquired by the United States of America from Glide In Ranch. The United States acquired a perpetual conservation easement over a total of 851.93 acres under authority of the Migratory Bird Conservation Act of February 18, 1929 (16 U.S.C. 715, et seq. as amended), which authorizes the Secretary of the Interior to acquire

certain lands or interests therein for waterfowl habitat. The purpose of this easement is to maintain habitat for waterfowl. The United States expended one million one hundred seven thousand five hundred nine and 00/100 dollars (\$1,107,509.00) for the easement, which is a component part of the National Wildlife Refuge System and subject to pertinent National Wildlife Refuge system laws and regulations.

Notably, the easement in Paragraph 6 specifically provides that the Grantor “shall not grant any additional easements, rights-of-way, or other interests in the Easement Lands, other than a fee or leasehold interest, or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Lands as waterfowl habitat suitable for migratory birds or interfere with the availability of Easement Waters for the Easement Lands.” Paragraph 4 of the Easement prohibits the Grantor from altering the existing topography, or from otherwise altering or using or permitting the use by third parties of the Easement Lands for any purpose without the prior written authorization of the Service. Such authorization will only be given if the Secretary of the Interior or her designated representative determines that the proposed activity will not change the character of the Easement Lands or adversely affect the use of the Easement Lands as waterfowl habitat suitable for migratory birds.

If the proposed flowage easement affects the Service’s easement interest, the Service must first make a compatibility determination before authorizing this use (16 U.S. Code § 668dd(d)(3)(A)(i)). A compatibility determination is a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge (50 CFR 25.12(a)). In making the determination, the Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use (603 FW 2.11B(3)).

As stated in the USFWS easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service. In order to facilitate this Project, we are reviewing hydrologic data provided by DWR, engaging with the landowner, and will work with DWR and the landowner to resolve identified issues. Upon receipt of an application, the Service will then engage in a compatibility determination for the Project. Note that the Service *cannot* make a compatibility determination on future permitted construction and operation of the fish passage and floodplain restoration projects amounting to a change in the Project not analyzed previously. Should they arise, any future changes to the Project would require additional environmental analyses. Such future projects would also require a compatibility determination, but this cannot occur until they have been sufficiently analyzed in future environmental analyses, which would allow us to ensure proposed future modifications do not impact our interest in the property.

### **Existing Purpose of USFWS Easement on Glide In Parcel**

The USFWS Easement was purchased to protect wetlands and easement waters in perpetuity for waterfowl and other migratory birds. Wetlands on this property are considered managed freshwater wetlands and consist of a complex of shallow wetland impoundments contained by levees that are delivered water through managed irrigation infrastructure. Landowners actively manage the water levels

of these wetlands using water control structures to promote beneficial wetland vegetation and provide foraging habitat for wintering and migrating waterfowl. Although water depth varies with wetland topography, landowners typically manage for an average depth of 8-10 inches that provides optimal foraging habitat for most waterfowl and a great diversity of migratory waterbirds.

### **DWR's Proposed Flowage Easement**

Under DWR's proposed flowage easements, the landowner would grant a perpetual right-of-way and easement in the real property, for the purposes of seasonal floodplain fisheries rearing habitat and fish passage in the Yolo Bypass. In addition, the proposed flowage easement would provide the Grantee (DWR) the right for the flowage of water over and upon the Property as may be required for the *present and future* permitted construction and operation of fish passage and floodplain restoration projects. It is not clear if the easement would allow alteration to riparian habitat. The proposed flowage easement would also include the right to flow water and materials and by said flow erode; or place or deposit earth, debris, sediment, or other material.

### **Anticipated Project Impacts from DWR data**

According to DWR analysis, the Big Notch Project would flood the Glide In Ranch Parcel 033-180-001 an average of 3.4 additional days above 6" within the November 1 through February 28 hunt period. The number of additional days the parcel would flood above 6" during the hunt period would range from 0 to 16 days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 3.8 additional days above 12" during the hunt period, with a range from 0 to 16 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 1.9 additional days above 18" during the hunt period, with a range from 0 to 10 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, water control structures) in addition to access, waterfowl use and hunting quality.

The Big Notch Project would flood the Glide In Ranch Parcel 033-180-008 an average of 6.8 additional days above 6" within the November 1 through February 28 hunt period. The number of days the parcel would flood above 6" during the hunt period would range from 0 to 37 additional days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 6.1 additional days above 12" during the hunt period, with a range from 0 to 30 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 5.9 additional days above 18" during the hunt period, with a range from 0 to 26 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, roads, water control structures) in addition to access, waterfowl use and hunting quality.

The Big Notch Project would flood the Glide In Ranch Parcel 033-180-020 an average of 6.4 additional days above 6" within the November 1 through February 28 hunt period. The number of days the parcel would flood above 6" during the hunt period would range from 0 to 31 additional days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 5.9 additional days above 12" during the hunt period, with a range from 0 to 28 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 6.2 additional days above 18" during the hunt period, with a range from 0 to 26 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, roads, water control structures) in addition to access, waterfowl use and hunting quality.



## **Standard for Resolution of Necessity**

The lands covered by this United States easement are already appropriated for a public use. As such, the Commission must follow certain procedures to make determinations as to whether the proposed new use is either compatible with or more necessary than the existing use.

CCP 1240.510 requires that the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. As noted, this easement was acquired for the purpose of waterfowl habitat suitable for migratory birds.

Under CCP 1240.610, the Commission would need to find that use for which the property is sought to be taken is a more necessary public use than the use for which the property is appropriated.

Increased flooding over 6" in depth on these wetlands would likely have a negative impact on migratory bird foraging habitat, potentially impacting waterfowl use and ultimately hunting quality. Increased flooding over 12" would further decrease migratory bird foraging habitat and would also impact landowner access by potentially flooding roads/ levees/hunting blinds and making it unsafe for hunters to wade the wetlands. Finally, increased flooding over 18" would not only impact migratory bird habitat and landowner access, but significantly overtop roads, levees and water control structures potentially causing costly damage to wetland infrastructure. The FWS purchased a conservation easement on this property with the understanding that landowners would continue to optimally manage their lands for migratory birds as long as they had the incentive to hunt and enjoy passive recreation on their properties. Increased flooding has the potential to decrease hunting quality, decrease landowner access, and increase infrastructure maintenance costs, all of which could be impediments to future management of the property as migratory bird habitat.

The April 6, 2022, letter from DWR states without explanation that operation of the Project is compatible with the existing conservation easements and will not unreasonably interfere with or impair the continuance of the Service's public use as it exists or may reasonably be expected to exist in the future. Citing to the Easement for the 'Upper Swanton[sic]' property, which is not applicable to the In Glide property, the DWR letter further indicates that the Service's conservation easements specify that the "properties are subject to a nonexclusive right to flood the properties between October 15 and March 1, as an existing use [footnote omitted]. Therefore, DWR does not anticipate the need to modify the existing Service conservation easements."

For Glide In, the 1996 United States easement provides in Paragraph 3 that "[h]owever, in any year that the Grantor does not flood its ponds on the Easement Lands, during the fall and winter seasons, to the historic levels as determined by its system of checks and levees, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the pond areas of the Easement Lands from September 1<sup>st</sup> through March 1<sup>st</sup> of the following year." However, flooding by the United States to the "historic levels as determined by its system of checks and levees" would be for the purpose of maintaining habitat for waterfowl and is not the same as the prospective flooding under the proposed project to the levels shown in modeling, which in certain cases exceed the historic levels that were contemplated in the Glide In easement.

## **Conclusion**

The Fish and Wildlife Service has been in contact with the landowner for this property. We have initiated discussions to determine if reasonable measures can be implemented to ensure landowners have access to the property and to identify other reasonable improvements, such as modifications of levees and water control structures, to ensure these properties can continue to be managed and used as private wetlands.

As stated in the USFWS Easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service, which, in determining whether to grant such authorization, will be looking at whether the proposed interest interferes with the use of the Easement lands as waterfowl habitat suitable for migratory birds. To that end, we request DWR continue to work with FWS and the landowners to implement reasonable measures to help ensure this property continues to provide the migratory bird benefits for which it was acquired, regardless of a Resolution of Necessity determination for the property. As DWR moves forward, it needs to take appropriate steps to ensure that the Project will not unreasonably interfere with or impair the vital public use to provide suitable habitat for migratory waterfowl. We look forward to cooperating with DWR and the landowners on the Project, while ensuring the US easement parcel continues to provide benefits for migratory waterfowl.

Sincerely,

**PRISCILLA  
WHEELER**

Digitally signed by  
PRISCILLA WHEELER  
Date: 2022.04.18 11:56:25  
-07'00'

Polly Wheeler  
Assistant Regional Director  
Refuges Program  
United States Fish and Wildlife Service  
California Great Basin Region  
2800 Cottage Way, Suite W-2606  
Sacramento, CA 95825

Enclosure

cc: Catherine McCalvin, DWR  
Elizabeth Vasquez, DWR  
Rachel Taylor, DWR  
Mario Manzo, BOR

# EXHIBIT A

\*No. Transfer Tax Due Pursuant  
To R & T Code Section 11922  
\*Exempt From Recording Fees  
Pursuant To Code Section 3099  
RECORDING REQUESTED; WHEN RECORDED  
MAIL TO: Attn: Stephen M. Dyer  
U.S. Fish and Wildlife Service  
Sacramento Realty Field Office  
2233 Watt Avenue, Suite 375  
Sacramento, California 95825-0509

YOLO Co Recorder's Office  
Tony Bernhardt County Recorder

DOC - 96-0030313-00  
Acct 104-Placer Title  
Tuesday, DEC 17, 1996 09:14:00  
Ttl Pd \$0.00 Nbr-0000040965  
VRB/R6/10

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

GRANT OF EASEMENT

THIS GRANT OF EASEMENT, Made this 22 day of AUGUST, 1996 between  
Glide In Ranch, a California corporation, its successors and assigns,  
hereinafter referred to as Grantor, and the UNITED STATES OF AMERICA and its  
assigns, hereinafter referred to as Grantee,

WHEREAS the Migratory Bird Conservation Act of February 18, 1929, (16  
U.S.C. 715 et seq), as amended, and since August 1, 1958, authorizes the  
Secretary of the Interior to acquire certain lands or interests therein for  
waterfowl habitat;

AND ALSO WHEREAS, the easement interest rights in the following described  
lands are being acquired for administration by the Secretary of the Interior  
(Secretary) through the United States Fish and Wildlife Service, and the use,  
occupation and operation of the reservations retained herein shall be  
subordinate to and subject to such rules and regulations as may be prescribed  
by the Secretary governing the use, occupation, protection and administration  
of units of the National Wildlife Refuge System under and in compliance with  
provisions of Section 6 of the Migratory Bird Conservation Act of February 18,  
1929 (45 Stat. 1222), as amended by Section 301 of the Refuge Revenue Sharing  
Act of June 15, 1935, (49 Stat. 381).

NOW THEREFORE, For and in consideration of ONE MILLION ONE HUNDRED SEVEN  
THOUSAND FIVE HUNDRED NINE AND 00/100 DOLLARS (\$1,107,509.00), the Grantor  
hereby grants to the UNITED STATES OF AMERICA, Grantee, a perpetual  
conservation easement for the maintenance and use of the land and waters  
described below (hereinafter referred to as "Easement Lands" and "Easement  
Waters") for the management of migratory birds on the terms and conditions  
stated herein. There is included in this Grant of Easement a right of access  
by designated representatives of the U.S. Fish and Wildlife Service over any  
and all Easement Lands and those lands described as excluded from the Easement  
Lands described below, as reasonably necessary for the limited purposes of  
entering the Easement Lands to verify compliance by the Grantor with the terms  
and conditions of this easement and exercising Grantee's rights under this  
Grant of Easement. Said lands contain 851.93 acres, more or less, all being  
located in Yolo County, State of California described as follows:

TRACT (17C):

PARCEL ONE: That portion of Section 22, T. 7N., R. 3E., M.D.B. & M.,  
according to the Official Plat thereof, which lies South of a line which is



parallel with and 1374.1 feet distant Southerly, measured at right angles from the North boundary of said Section 22.

Assessors Parcel No.: 033-180-01

PARCEL TWO: That portion of Section 23, T. 7N., R. 3E., M.D.B. & M., according to the Official Plat thereof, lying South of a line which is parallel with and 1374.1 feet Southerly, measured at right angles from the North boundary line of said Section 23, and West of that parcel of land described as Parcel 2 in the Deed to the Sacramento-Yolo Port District, recorded April 30, 1957 in Book 512 of Official Records on page 230.

Assessors Parcel No. 033-180-08

PARCEL THREE: That portion of Section 23, 26 and 35, T. 7N., R. 3E., M.D.B. & M., according to the Official Plat thereof, also being portions of Swamp Land Surveys 807, 1005 and 1029, Yolo County Surveys; described as follows (Basis of bearings and coordinates is California State Coordinate System for Zone II):

BEGINNING at a point on the West line of said Swamp Land Survey 1029, which point bears North 0° 12' 40" West 589.07 feet from the Southwest corner of said Swamp Land Survey 1029, coordinates of said point of beginning being North 272,135.25, East 2,110,554.45; thence from said point of beginning and along the West line of said Swamp Land Survey 1029, North 0° 12' 40" West 628.63 feet; thence leaving the West line of said Swamp Land Survey 1029, North 19° 47' 18" East 587.91 feet; thence North 10° 12' 42" West 1157.82 feet to a point on the West line of said Swamp Land Survey 807; thence along the said West line of Swamp Land Survey 807 North 0° 12' 40" West 354.06 feet; thence leaving the said West line of Swamp Land Survey 807, North 19° 47' 18" East 2022.78 feet; thence North 49° 47' 18" East 1200.00 feet; thence North 19° 47' 18" East 4787.36 feet to a point on a line parallel with and 1374.1 feet Southerly of the North line of said Section 23; thence along the said parallel line North 89° 55' 37" East 217.97 feet; thence South 19° 47' 18" West 4833.07 feet; thence along a curve of 385.37 feet radius and curving to the right an arc distance of 201.78 feet, said arc being subtended by a chord bearing South 34° 47' 18" West 199.48 feet; thence South 49° 47' 18" West 709.65 feet; thence along a curve of 1370.00 feet radius and curving to the left an arc distance of 717.33 feet, said arc being subtended by a chord bearing South 34° 47' 18" West 709.16 feet; thence South 19° 47' 18" West 1296.36 feet; thence along a curve of 1370.00 feet radius and curving to the left an arc distance of 717.33 feet, said arc being subtended by a chord bearing South 4° 47' 18" West 709.16 feet; thence South 10° 12' 42" East 909.65 feet; thence along a curve of 460.00 feet radius an arc distance of 240.85 feet, said arc being subtended by a chord bearing South 4° 47' 18" West 238.12 feet; thence South 19° 47' 18" West 1112.98 feet to the point of beginning.

EXCEPTING THEREFROM that portion thereof lying South of the Southern line of said Section 23.

Assessors Parcel No.: 033-180-20

North Central Valley WMA (17C)

Page 2 of 9

PARCEL FOUR: A non exclusive right of way for road purposes over the East 30 feet of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 28, T. 7N., R. 3E., M.D.B. & M., according to the Official Plat thereof.

PARCEL FIVE: A non-exclusive easement for road purposes and ingress and egress over the following described property.

- a) The East 30 feet of the North half of the Southeast Quarter of the Northeast Quarter of Section 28, T. 7N., R. 3E., M.D.B. & M., to the Official Plat thereof.
- b) The East 30 feet of the Northeast Quarter of the Northeast Quarter of Section 28, T. 7N., R. 3E., M.D.B. & M., according to the Official Plat thereof.
- c) The East 30 feet of the Southeast Quarter of the Southeast Quarter of Section 21, T. 7N., R. 3E., M.D.B. & M., according to the Official Plat thereof.

Excluding except for the purpose of access to and over the Easement Lands the following lands:

TRACT (17C2-1):

The following described tract of land is located in Yolo County, California, situate approximately 9 miles South of the city of Davis, California, and being a part of the land described in the Partnership Grant Deed from Glide In Ranch Duck Club, a general partnership, to Glide In Ranch, a California Corporation, recorded in the Official Records of Yolo County, California, June 30, 1981 in Book 1480, Page 422, said tract being more particularly described as follows;

All bearings and distances are based on the Lambert State Plane Coordinate System, NAD 83/91, California Zone 2; divide distances by 0.99998 for ground distances.

T. 7 N., R. 3 E., MOUNT DIABLO MERIDIAN:

A portion of the Southwest 1/4 of section 22, above said Township and Range, more particularly described as follows:

BEGINNING at a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "116, 1996", said point marking the Northwest corner of this tract, and which point bears North 2° 45' 13" East, 46.34 feet from the 1 3/4" iron pin stamped L.S. 2355 marking the South 1/16 corner common to sections 21 and 22, of T. 7 N., R. 3 E., and of record in Yolo County in Drawer 1, Book 1, Page 71; thence, North 89° 52' 53" East, 450.62 feet; to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "119, 1996"; thence, South 0° 07' 07" East, 290.00 feet to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "118, 1996"; thence, South 89° 52' 53" West, 450.62 feet to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "117, 1996";

thence, North 0° 07' 07" West, 290.00 feet to the point of BEGINNING, containing 3.00 acres, more or less.

The above described tract of land, containing 3.00 acres, more or less, is delineated on a map tracing designated GLIDE IN RANCH TRACT (17Cz-1) bearing the date of April 5, 1996, of record in the files of the Department of the Interior.

1. Grantee understands that Grantor does not control sub-surface mineral rights on the Easement Lands. There are excepted and reserved from this Grant of Easement all minerals, including gas, oil, and other hydrocarbon substances, underlying the Easement Lands, and this Grant of Easement is subject to all existing easements and rights-of-way of record held by third parties, and to all outstanding mineral rights, including all oil and gas leases of record, held by third parties.

2. The Easement Waters consist of (i) any riparian water rights appurtenant to the Easement Lands, (ii) any appropriative water rights to the extent those rights are appurtenant to the Easement Lands, (iii) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Easement Lands, and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Lands or on those lands described as excepted from the Easement Lands in the legal description and that are capable of being used by the Grantor to maintain the Easement Lands in a flooded condition. The Easement Waters are limited to the amount of water reasonably required to maintain the pond portions of the Easement Lands in a flooded condition, at an elevation not to exceed the historical fall and winter season levels that are presently used by Grantor when flooding its pond areas.

3. Grantor is not obligated to take any action or to incur any expense related to the maintenance of the Easement Lands as waterfowl habitat. Nor is Grantor obligated to apply water to the Easement Lands or to maintain, repair, or construct any water distribution facilities to serve the Easement Lands. However, in any year that the Grantor does not flood its ponds on the Easement Lands, during the fall and winter seasons, to the historic levels as determined by its system of checks and levees, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the pond areas of the Easement Lands from September 1st through March 1st of the following year. In this connection, Grantee shall have, at its sole discretion, the right and option, but not the obligation, to use any and all of the Easement Waters that Grantee deems suitable for waterfowl habitat purposes and to place on the Easement Lands and convey through Grantor's water distribution facilities any other waters Grantee may acquire or have available to it.

In connection with any flooding done by Grantee pursuant to this paragraph, (i) Grantee shall have the right to make full use of Grantor's water distribution facilities, including both existing facilities and any facilities constructed in the future and including all water wells and pumps, to the extent those facilities are capable of serving the Easement Lands, on

the condition that Grantee shall pay the expenses of operating Grantor's pumps, exclusive of maintenance costs, during any period of such uses by Grantee, and (ii) Grantor shall pay any taxes, assessments, or other charges, excluding actual water costs, due to any water or irrigation district on account of the use by Grantee of Easement Water supplied by such district.

4. (a) Grantor shall not, except as provided in 5 below, (i) alter the existing topography of or cultivate agricultural crops on the Easement Lands, (ii) otherwise alter or use or permit the use by third parties of the Easement Lands for any purpose, including the exploration or development of any reserved minerals, or (iii) place any structures on the Easement Lands other than hunting blinds without the prior written authorization of Grantee given through the Fish and Wildlife Service. Grantee acknowledges that the rights to explore, develop and produce all mineral deposits, including oil and gas, have been reserved by third parties prior to the execution of this Grant of Easement, and nothing in this Grant of Easement can affect the rights of those third parties. Such authorization to alter the existing topography of, or cultivate agricultural crops on the Easement Lands, will only be given if the Secretary or his designated representative determines that the proposed activity will not change the character of the Easement Lands or adversely affect the use of the Easement Lands as habitat suitable for migratory birds.

(b) Grantee acknowledges that Grantor does not control subsurface mineral rights on the Easement Lands, and therefore cannot, through this Grant of Easement grant rights which it does not have. Grantor and Grantee agree that the exploration, development, and production of reserved oil and gas deposits by the Grantor or authorized third parties shall be considered compatible with maintenance and use of the Easement Lands and Waters for the management of migratory birds and shall be authorized by the Fish and Wildlife Service provided that Grantor shall notify Grantee in writing, of any proposed exploration activity planned by the owners of the mineral rights. Grantee and Grantor both desire that any exploration, development and production operations do not interfere with Grantor's hunting club operations and Grantee's Easement Lands rights, and therefore to the extent possible, Grantor and Grantee agree that (i) all exploration and development operations and, in particular, all drilling and workover activities, are conducted after June 1st and prior to September 1st of each year and (ii) Grantee, through the Fish and Wildlife Service shall have the right to approve, as is possible, the locations and methods of all proposed exploration, development and production operations to insure such operations are carried out in a manner that is compatible with protection of Grantee's easement interest.

5. The provisions of Paragraph 3 hereof shall not prohibit hunting or operation of a hunting club on the Easement Lands and such use shall be deemed to be consistent with maintenance of the Easement Lands as waterfowl habitat so long as such use is in accordance with all applicable state and federal laws and regulations regulating hunting on privately owned lands. In this connection, Grantor may take such actions as they may deem appropriate to improve the Easement Lands as waterfowl habitat and to facilitate the operation of any hunting club on the Easement Lands, including building or relocating blinds, excavating channels to blinds, irrigating vegetation, fertilizing, planting native trees and wetland vegetation, provided that such



trees and vegetation are included in Exhibit A attached to and incorporated herein by reference, removing trees and vegetation to the extent they encroach on the open marsh and interfere with the use of the Easement Lands as waterfowl habitat, and removing brush to the extent it encroaches on dikes and impedes access thereto for hunting and maintenance purposes.

6. Grantor shall not grant any additional easements, rights-of-way, or other interests in the Easement Lands, other than a fee or leasehold interest, or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Lands as waterfowl habitat suitable for migratory birds or interfere with the availability of Easement Waters for the Easement Lands. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Easement Lands that is subject to the terms of this Grant of Easement.

7. Upon acceptance of this Grant, the easement interest acquired by the United States shall become a component part of the National Wildlife Refuge System and shall be subject to those laws and regulations pertaining to the National Wildlife Refuge System that are applicable to the easement interests being acquired. Violation of those applicable laws and regulations may subject the violator to civil and/or criminal penalties. Laws and regulations that regulate conduct that does not affect the property interests conveyed to the United States through this Grant of Easement are not applicable. For example, regulations controlling hunting and fishing or any public use are not applicable since these rights have not been conveyed.

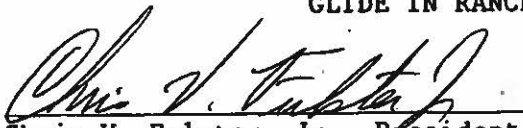
8. This Grant of Easement shall be binding upon, and shall inure to the benefit of, the Grantor, its successors and assigns and Grantee and its assigns.

9. This Grant of Easement imposes no other obligations or restrictions on the Grantor and neither them nor their successors, nor any other person or entity claiming under them, shall be in any way restricted from using all of the subject lands in the customary manner except as provided herein.

10. This Grant is made in compliance with Yolo County Resolution No. 95-185, passed November 21, 1995, and shall not otherwise limit the control and management over resident wildlife species vested under law in the California Fish and Game Commission and the Department of Fish and Game.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand as of the day and year above written.

GLIDE IN RANCH, a California corporation

  
Chris V. Fulster, Jr., President

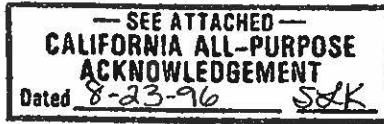
  
Greg Kassis, Secretary



ACKNOWLEDGMENT

STATE OF }  
COUNTY OF } ss  
}

On this \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared ~~Glide In Ranch~~, a California corporation, known to me to be the persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same.



(SEAL)

Notary Public

My Commission expires: May 8, 1998

CERTIFICATE OF ACCEPTANCE  
State of California Code Section 27281

This is to certify that the Secretary of the Interior, acting by and through his authorized representative, the Senior Realty Officer, U.S. Fish and Wildlife Service, hereby accepts on behalf of the United States of America, the real property described within the Grant of Easement and consents to recordation thereof.

November 19, 1996  
Date

*Stephen H. Dyer*  
Senior Realty Officer  
U.S. Fish and Wildlife Service

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SACRAMENTO

On August 23, 1996 before me, SANDRA L. KOLKER, NOTARY

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Chris V. Fulster, Jr and Greg Kassis

Name(s) of Signer(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s)



whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sandra L. Kolker  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: GRANT OF EASEMENT

Document Date: 8-23-96 Number of Pages: 9

Signer(s) Other Than Named Above: NONE

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

EXHIBIT A

The following list contains most of the plants considered desirable for waterfowl and other wildlife in the North Central Valley Wildlife Management Area. This list is not intended to be all-inclusive, and other species may be desirable under some circumstances. Plants not on this list may not be introduced on the Easement Land without written permission from the Grantee.

Scientific Name

Common Name

Trees, shrubs, and vines:

Salix gooddingii	Black willow
Salix hindsiana	Sandbar willow
Populus fremontii	Fremont cottonwood
Alnus rhombifolia	White alder
Elaeagnus angustifolia	Russian olive

Aquatic-floating and submerged:

Lemna minor	Duckweed
Potamogeton pectinatus	Sego pondweed
Potamogeton species	Other pondweeds
Zannichellia palustris	Horned pondweed
Najas guadalupensis	Southern naiad
Chara species	Muskgrass

Aquatic-emergent:

Scirpus acutus	Hardstem bulrush (tule)
Scirpus robustus	Alkali bulrush
Scirpus fluviatilis	River bulrush
Carex species	Sedges
Heleocharis palustris	Spike rush
Cyperus species	Flat sedges (nutgrass)
Echinodorus berteroi	Burhead
Sagittaria latifolia	Wapato, duck potato
Sagittaria species	Arrowhead
Typha species	Cattails