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Statement of the Wildlife Heritage Foundation

November 15, 2022

Good morning Chairman and Members of the Water Commission:

My name is Darla Guenzler, Executive Director of the Wildlife Heritage Foundation. Our nonprofit organization is the holder of a conservation easement over a portion of the fee title property owned by Running W Land LLC.

The conservation easement is over a property known as the "Pope Ranch Conservation Bank" which is to provide protection generally for wildlife and native habitat values and specifically for the federally listed Giant Garter Snake and its habitat. Other types of project developers, such as residential builders, purchased "credits" to this property as mitigation for impacting or destroying Giant Garter Snake habitat on their own respective properties. Thus, this property is a concentrated site for providing habitat for Giant Garter Snake and its habitat.

WHF would like to voice several points in regard to the Department of Water Resources proposed flowage easement. As we consider it, there is a great deal that makes analyzing the impact upon the conservation values of our conservation easement challenging:

1. The flowage easement proposed by the Department of Water Resources is for the "present and future permitted construction and operation of fish passage and floodplain restoration site. We are informed that the water flow can as much as quadruple what we have been told is presently planned. Future construction or floodplain restoration is unclear. Such activities could violate prohibited uses and activities of the conservation easement.
2. The flow of water can uproot vegetation, deposit sediment and debris as well as other impacts that could diminish or destroy habitat values and kill or injure Giant Garter Snakes, a federally listed species. The proposed easement explicitly states that "the flowage right includes the right to flow water and materials and by said flow erode; or place or deposit earth, debris, sediment, or other materials".

3. What monitoring strategies do we need to employ to assess what the impacts of the flowage easement are on the Giant Garter Snake, its habitat and the other wildlife and native habitat that is the purpose of this conservation easement? What are the restoration strategies if damage is seen or numbers decline?
4. Currently, the property is managed for GGS and other wildlife. The proposed flowage easement would increase the difficulty at best and confound it at worst. The proposed increased flooding will interfere with the management of water conducted by the preserve operator to maintain snake habitat, disturb the over-winter burrows, impact access by the landowner, preserve operator and conservation easement holder.

With regard to the property and easement aspects of the matter:

1. The conservation easement explicitly requires that the Grantor (i.e., landowner) “shall not grant any additional easements, rights-of-way, or other interests in the property... without the prior written authorization of the Grantee, the Service and CDFG. We are not allowed to grant such uses if the proposed activity would interfere with the conservation values of the property.
2. What the flowage easement is proposing to do would be an explicit violation of the conservation easement terms. Since we first learned of the proposed condemnation, DWR changed its position ~~from~~ proposing that the flowage easement would not be senior to the conservation easement. However, that does not solve the problem. As noted in the previous point, we cannot grant such a use. WHF would be in a position of issuing constant Notices of Violation to the State of California and landowner.

In this instance, the DWR is proposing to condemn a wildlife preserve authorized by the Department of Fish and Wildlife Service and the U.S. Fish and Wildlife Service in furtherance of state and federal laws for the mitigation of dozens of mitigation projects. This conservation easement meets the requirement of “property appropriated to public use” and the California Code of Civil Procedure 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. What is proposed would arguably interfere with the management of the Preserve that was explicitly created in furtherance of state and federal law for a listed species. Accordingly, it is a high order question under California Code of Civil Procedure 1240.610 for the Commission to find that the use proposed is a more necessary public use than the use for which the property is appropriated.

Whatever the outcome of the Commission’s consideration of the Resolution of Necessity question today, we ask that the Department of Water Resources work with the U.S. Fish and Wildlife Service, our organization as the conservation easement holder, and the landowner to consider how we can collectively ensure that the important conservation values of this property are not impaired which may

include, among other things, mitigation for this project (as any other project would have to do when impacting a listed species), monitoring, restoration, and other strategies that may be identified.

Thank you,

A handwritten signature in blue ink, appearing to read "Darla Guenzler", is displayed within a light gray rectangular box.

Darla Guenzler, Ph.D.

Executive Director