

98-066.CON

**NATIONAL FISH AND WILDLIFE FOUNDATION
GRANT AGREEMENT**

PROJECT #: 98-066

PROJECT TITLE: Conway Ranch Acquisition

GRANTEE: Mono County Energy Management Department

GRANT PERIOD: 01/01/1998 to 01/01/1999

CHALLENGE (raised by Grantee and presented to NFWF): \$400,000

NFWF MATCH - FEDERAL FUNDS:

Source of NFWF Match

U.S. Fish and Wildlife Service \$100,000

TOTAL CHALLENGE GRANT: \$500,000

Mono County Energy Management Department is responsible for complying with all conditions of this Agreement, including all referenced attachments. For the purposes of this Agreement, the National Fish and Wildlife Foundation is referred to as "NFWF;" Mono County Energy Management Department as the "Grantee;" funds raised by the Grantee as "Challenge Funds;" NFWF's federal matching funds as "Matching Funds;" the total of the Challenge Funds and Matching Funds as "Total Challenge Grant;" and third parties contributing Challenge Funds as "Donors."

In consideration of the Grantee's procurement of the Challenge Funds, and for otherwise conforming to the terms of this Agreement, NFWF has agreed to provide Matching Funds to the Grantee, subject to the terms and conditions set forth below.

I. PURPOSE OF GRANT: This Grant is made to the Grantee for the purposes of satisfactorily performing the project proposal received by NFWF on 08/07/1997, as amended, described as follows:

Summary Project Description: This grant supports the acquisition of 62 acres of wet meadow within the 1,031 acre Conway Ranch property. This project will benefit numerous waterfowl, songbirds and other wildlife along with the local tourism and recreation based economy.

Description of Final Product(s): The Grantee will submit a written report summarizing and evaluating the accomplishments made under this grant. The grantee will also submit slides of the project area, publications, newspaper articles, brochures, and any other information the

grantee feels exemplifies the success of this grant. In addition, the grantee will submit copies of the appraisal and deed of the lands acquired under this grant (Attachment B).

II. GRANT CONDITIONS: Under the terms of this Agreement, NFWF agrees to match all Challenge Funds, up to a total of \$400,000, on a 4:1 ratio (\$400,000 Challenge Funds/ \$100,000 Matching Funds) for a total of \$500,000.

Challenge Funds: Challenge Funds consist of cash contributions raised by the Grantee from third parties. To ensure that Challenge Funds for this project represent money raised in response to this NFWF challenge grant, **all funds raised by the Grantee must come directly to NFWF from the contributing donor(s).** Challenge Funds will not be accepted directly from the Grantee without prior written approval from NFWF. Failure to comply with the above stated policy may result in funding delays. Contributions raised by the Grantee are to be made payable to the "*National Fish and Wildlife Foundation (98-066)*" and sent to California Program Office; 116 New Montgomery Street, Suite 209; San Francisco, CA 94105. **Reference the project number and title set forth on page 1 of this Agreement on all correspondence with NFWF.**

Goods and services donated by third parties specifically for this project ("contributed goods and services") will be eligible for consideration as Challenge Funds provided: 1) the donation is made to NFWF directly from the Donor; and 2) the donated goods or services have an easily definable value in the market place for the purposes of determining value. Only "hard" donations of goods and services with a demonstrable value are eligible for consideration. NFWF has sole discretion over the approval of contributed goods and services as Challenge Funds; the Grantee must submit proposed contributed goods and services in writing to NFWF for advance written approval.

Restrictions on Use of Funds: Challenge Funds will be used solely for the project described in Section I of this Agreement. Until disbursed to the Grantee, Challenge Funds will be held by NFWF who acts as a custodian for the Donor(s).

No Funds, Challenge or Matching, provided for this Grant may be used to support litigation expenses or lobbying activities--defined as attempting to persuade members of any legislative or administrative branch (city, state, or U.S. Congress) to enact, defeat or repeal legislation or regulations of any kind. **No portion of Grant Funds may be used to cover general operating expenses, overhead, or other indirect expenses without NFWF's prior written approval.** Direct project expenses related to overhead, such as telephone charges, postage or rent, must be accounted for by a specific tracking mechanism.

Matching Fund Restrictions: The Grantee cannot use Matching Funds provided by NFWF as a match for other federal funds solicited by the Grantee. Similarly, Challenge Funds raised by the Grantee to meet NFWF's required match cannot be applied to other federal matching programs.

Unused Funds and Reversion: This Grant, consisting of both Challenge Funds and Matching Funds, is intended to support the particular project described in Section I for a specified grant period. **Any portion of the Total Challenge Grant not expended at the end of the grant period will be returned to NFWF within thirty (30) days.** Any Challenge Funds not expended

will be returned by NFWF to the respective Donor.

Prohibition Against Assignment of Rights and Benefits: As of the date of this Agreement, the Grantee has not and will not assign or convey any rights or benefits arising from or connected to either the Project or this Agreement to any party without the prior written consent of NFWF. This includes, but is not limited to, photographs, newspaper and magazine articles, publishing rights, or marketing agreements.

Additional Conditions: *None*

III. PUBLICITY AND ACKNOWLEDGEMENT OF SUPPORT: The Grantee will give appropriate credit to NFWF, NFWF's Source of Matching funds (*see page 1*) and all Challenge Donors for their financial support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding the services performed pursuant to this Agreement, including but not limited to any tangible final products produced pursuant to this Agreement. Copies of such materials will be provided to NFWF as part of the reporting process. The Grantee gives NFWF the right and authority to publicize NFWF's financial support for this Agreement and the Grantee in press releases, publications and other public communications, and to use the Grantee's name, likeness, logo or other official representation of the Grantee in such communications.

IV. PAYMENT SCHEDULE: No Funds, Challenge or Matching, will be disbursed by NFWF to the Grantee unless NFWF is in receipt of 1) an executed copy of this Agreement; 2) an original invoice from the Grantee requesting payment (FAX copies not acceptable); 3) quarterly Financial Reporting Forms and semi-annual Programmatic Reports as they are due (see Section VI); and 4) in the event there have been substantial expenditures since the last quarterly financial report, an interim Financial Reporting Form.

Grantee must request disbursement of Challenge or Matching Funds by submitting an original dated invoice on Grantee's letterhead bearing an authorized signature. Challenge Funds will be available to the Grantee as soon as they are received by NFWF. Matching Funds will be available to the Grantee on a reimbursement basis, based on expenditures indicated on the most recent Financial Reporting Form (Attachment A), to the extent challenge funds have been raised and expended in the grant ratio referenced in Section II. Matching Funds reimbursement requires the Grantee to pre-pay project expenses, and invoice NFWF after project expenses have been incurred. In certain limited circumstances, the Grantee may request NFWF to consider providing advance payment of part of the Matching Funds prior to expenditure, once the appropriate ratio of Challenge Funds have been raised. **Any approval of advance payment of Matching Funds will be made at the sole discretion of NFWF based on an assessment of Grantee's needs.** Section VI outlines the financial reporting requirements.

Release on Completion: Notwithstanding the other provisions of this Agreement, NFWF reserves the right to retain twenty percent (20%) of the Matching Funds until submission and acceptance of the Final Report.

The Grantee will report to NFWF any variances which exceed ten percent (10%) within any

approved budget item (Attachment A). In order to reprogram funds to cover such variances, the Grantee must submit a written request explaining the variances and an amended budget to NFWF for approval.

V. CASH MANAGEMENT OF FEDERAL FUNDS: This Grant consists of \$100,000 in federal Matching Funds (*see page 1 for Source of NFWF Matching funds*). Accepting these funds renders the Grantee subject to all terms and conditions of appropriate OMB Circulars (Section XIV), such as allowable costs and cost principles. The Grantee must comply with all applicable federal laws and regulations imposed on states receiving federal funds, including equal opportunity employment, the Americans with Disabilities Act, and drug-free work place requirements (Refer to Government Certifications attachment for more information). The Grantee's financial management system must comply with internal control requirements including, but not limited to, cash receipts, cash disbursements, indirect costs, procurement, and labor costs.

Subgrantees: If the Grantee uses federal funds to make "sub-grants" to other entities, all conditions in this Agreement applicable to recipients of federal funds will be transferred in writing to the sub-grantee. The Grantee is responsible for informing all subgrantees that funds provided consist of federal funds and that all subgrantees must comply with all applicable federal laws and regulations imposed on individuals and organizations receiving federal funds, and for providing sub-grantees with relevant OMB Circulars (see Section XIV).

VI. REPORTING REQUIREMENTS: It is the responsibility of the Grantee to keep NFWF informed of project progress. Required reports are explained below. Submit one hard copy of each Programmatic and Final Report narrative and one copy on floppy disk (WordPerfect) or by E-mail (using snickers@nfwf.org).

Financial Reporting Forms: A Financial Reporting Form (Attachment A) outlining cumulative receipts and expenditures made under the terms of this Agreement must be submitted quarterly (see dates below). If the Grantee is delinquent in submitting quarterly Financial Reporting Forms, payment of invoices will be delayed. Expense information will be presented in comparison with the approved budget (Attachment A), and must clearly indicate what portion of specific budget items are funded by Matching Funds and which are funded by Challenge Funds. If the Grantee has neither received nor expended funds for the project at the time a Financial Reporting Form is due, the Grantee will submit in writing a brief report indicating that no financial activity has occurred.

Programmatic Reports: A Programmatic Report is required semi-annually. Programmatic Reports will be succinct written statements of project accomplishments since initiation, or since the last Report was submitted to NFWF, with relevant attachments.

Final Report: In addition to the Financial Reporting Forms and Programmatic Reports described above, the Grantee will submit a Final Report which includes: 1) a Final Financial Reporting Form accounting for all receipts and grant expenditures compared to the approved budget; 2) a Final Programmatic Report summarizing and evaluating the accomplishments achieved during the term of the Grant; and 3) copies of all publications, press releases and other appropriate

"products" resulting from the project (see Attachment C). For projects involving land acquisition, see the attached "Land Acquisition Requirements" for additional reporting parameters. A representative number of color 35mm slides depicting the project will, if appropriate, also be provided to NFWF as part of the Final Report.

Reporting Dates: Financial Reporting Forms (Attachment A) must be submitted quarterly to reflect activity through the end of each quarter. Financial Reporting Forms are due not later than 30 days after the end of each quarter. Quarters end on:

1st Quarter: March 31
2nd Quarter: June 30
3rd Quarter: September 30
4th Quarter: December 31

Programmatic Reports are due semi-annually, on 2nd and 4th Quarter reporting dates listed above. No separate Programmatic Report is required for the quarter in which the Final Report is submitted.

Final Reports are due no later than 60 days after the end of the Grant Period. Any requests for extensions of this Final Report submission date must be made in writing to the NFWF Project Officer.

It is important that these reporting requirements be observed. The Grantee must communicate early and in writing with NFWF about potential problems with providing these reports on a timely basis. Inaccurate or incomplete reports will delay payment of invoiced funds. Failure to provide complete and timely reports will be considered a breach of this Agreement. The Grantee should contact NFWF Project Officer (Section X) with any questions.

A-128 Audits: If the Grantee receives \$100,000 or more in Federal Funds in a given fiscal year, an OMB Circular A-128 single audit report is required. The single audit report must be completed and submitted to NFWF within 13 months of the end of the Grantee's fiscal year in which funds were received. If the Grantee receives between \$25,000 and \$100,000 in federal funds, an A-128 program audit is required. Under certain circumstances, Grantees receiving less than \$100,000 may not be required to have a program audit. Contact NFWF for additional information.

VII. FINANCIAL/ADMINISTRATIVE RESPONSIBILITIES: NFWF may, at its sole discretion, postpone any or all payments if the Grantee fails to submit satisfactory and timely reports, as set forth in Section VI, or otherwise fails to comply in any way with the terms of this Agreement.

Procurement Procedures: The Grantee will establish procurement procedures to ensure against unnecessary or duplicative purchases.

Supporting Documentation/Record Keeping: In addition to the reporting requirements set forth

in Section VI, the Grantee will keep systematic records of all expenditures relating to this Grant. Vouchers, consisting of timesheets, bills, invoices, cancelled checks, receipts, etc., will be retained by the Grantee for three (3) years after the submission and acceptance of a final report by NFWF and will be available for inspection and audit by representatives of NFWF or the U.S. Government at any time during this period.

Foreign Exchange and International Travel: In cases where Challenge Funds and/or Matching Funds are converted to foreign currency, the exchange rate received must be the best available through the channels authorized by applicable laws and regulations. Documentation of the exchange rate and method of exchange will be provided as part of the reporting requirements outlined in Section VI.

All international travel funded by federal funds under this Agreement must be made on U.S. flag air carriers, to the extent service by such carriers is available. Any exceptions must be documented in writing and approved in advance by NFWF.

Audit: NFWF may, at its own expense, examine, audit, or have audited the records of the Grantee insofar as they relate to activities supported by this Grant. For all federal funds, the Grantee is responsible for determining and complying with the audit requirements and conditions set forth in OMB Circular A-128 and other OMB Circulars (Section XIV). If an OMB A-128 audit is found to be required, a copy of the audit must be submitted to NFWF within 13 months after the end of the Grantee's fiscal year in which Grant funds were received.

Grantee will reimburse NFWF, at the Grantee's sole expense, the amount of any expenditures disallowed by auditors through an audit exception or other appropriate means. This will be noted as a written finding, that such expenditures failed to comply with any provision of this Agreement, including the Cash Management of Federal Funds (Section V and Section XIV).

VIII. AMENDMENTS: NFWF makes this Grant with the understanding that Total Challenge Grant funds will be used in accordance with the project description and budget as approved by NFWF's Board of Directors. Should there be any material change in the purpose, character, method of operation, budget, personnel, governance or grant period for the project, the Grantee will provide timely written notice of these changes to NFWF. **The Grantee must receive written acceptance of any proposed changes prior to proceeding further with the project.** If NFWF determines a change to be contrary to the purposes of the Grant, Section IX will apply.

IX. TERMINATION: Should the Grantee fail to comply with any of the conditions of this Agreement, NFWF may, at its sole discretion, immediately terminate the Grant and demand the Grantee to repay, within sixty (60) days, all Matching Funds and interest earned which have been advanced but not expended. In the event of termination, NFWF may cancel all unpaid installments of the Total Challenge Grant. Any Challenge Funds held by NFWF will be returned to the Donor(s). This Grant may also be terminated by mutual agreement, in which case any sums advanced, but not expended, will be returned to NFWF. NFWF also reserves the right to recall all Matching Funds should NFWF determine that they have been expended in violation of the terms of this Agreement.

X. NOTICE: Correspondence between the parties should be addressed to:

NFWF: Eric Hammerling, Project Officer
California Program Office
116 New Montgomery Street, Suite 209
San Francisco, CA 94105
415 778-0999

Grantee: DanLyster
Mono County Energy Management Department
P.O. Box ~~347~~ 2415
Mammoth Lakes, CA 93546
760-924-5452

Grantee will notify NFWF immediately concerning changes to project officer, address, telephone, etc.

XI. PATENTS AND COPYRIGHTS: The Grantee has the right to obtain patents and copyrights on any product created under this Agreement. However, the Grantee shall not sell or grant copyrights to a third-party who intends to sell such product as a profit-making venture. NFWF reserves a non-exclusive, royalty-free, irrevocable right to reproduce, publish and otherwise use, and to authorize others to use, any and all products created under this Agreement for non-commercial purposes. The Grantee may sell any product resulting from this Grant, in accordance with regulations related to their 501(c)(3) status, at fair market value, which shall not include any costs of development, production, marketing or distribution of the product financed by Federal funds.

XII. ADDITIONAL SUPPORT: In making this Grant, NFWF assumes no obligation to provide further funding or support to the Grantee beyond the terms stated herein. Contributions made to the Grantee under this Agreement do not by direct reference or implication convey NFWF or Federal Government endorsement of the Grantee's products or activities.

All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government."

XIII. LIABILITY: In making this Grant, NFWF assumes no liability for injuries or loss to persons or property resulting from Grantee's activities under this Agreement. The Grantee agrees to indemnify NFWF and the U.S. Government for any claims, judgments, actions or suits of any kind whatsoever arising from the actions of the Grantee, its employees, subcontractors, or agents funded by this Agreement. In the case of state institutions barred by law from accepting this liability clause, a letter so stating and citing the appropriate statute must be submitted to NFWF.

In the event of any claim or suit against NFWF or the U.S. Government on account of any

alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed under this contract, Grantee shall furnish to NFWF or the U.S. Government, when requested, all evidence and information in the possession of the Grantee pertaining to such suit or claim.

XIV. ATTACHMENTS: This Grant Agreement requires an understanding of, and compliance with, all attached documents.

- (x) Government Certifications
- (x) Land Acquisition Requirements
- () AID Handbook 13
- (x) OMB Circular A-87 (Allowable Costs)
- (x) OMB Circular A-102 (Uniform Admin. Requirements)
- (x) OMB Circular A-128 (Audit Guidelines)

XV. ARBITRATION AND CHOICE OF LAW:

Arbitration: All claims, disputes, and other matters in question arising out of, or relating to, this Agreement, its interpretation or breach shall be decided through arbitration by a person or persons mutually acceptable to both NFWF and the Grantee. Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. The award rendered by the arbitrator or arbitrators shall be final.

Law and Jurisdiction: This Agreement has been executed and delivered in the District of Columbia and shall be subject to and interpreted by the laws of the District of Columbia, without regard to choice of law principles. By entering into this Agreement, NFWF and the Grantee hereby agree to submit to the jurisdiction of the courts of the District of Columbia.

XVI. NO WAIVER

The failure of NFWF to enforce, or the delay by NFWF in enforcing, any of the terms and conditions of this Agreement shall not be deemed a continuing waiver or a modification to this Agreement unless the waiver is expressly written and signed by NFWF and the Grantee.

Executed and made effective by the authorized representative of the National Fish and Wildlife Foundation.

By: *Amos S. Ero*
Amos S. Ero
Executive Director

Mono County Energy Management Department acknowledges receipt of this Agreement and attachments as referenced above for the Conway Ranch (CA) Acquisition project (98-066). The terms and conditions set forth herein are acceptable and we agree to comply with them and with all federal laws and regulations imposed on states receiving federal funds. We understand that failure to comply with all conditions listed herein and with all applicable federal laws and regulations may result in immediate termination of this Grant.

Signature: *Don Lypta*
Title: *Grant Administrator* Date: *2-11-98*

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