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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 2:13-cv-848-MCE-CMK

Plaintiff,

v.

MATTHEW R. ANCHORDOGUY,
ANCHORDOGUY AND COMPANY
LIMITED PARTNERSHIP, and JOHN
R. BARLOW,

Defendants.

Appendix C:

Agreement Concerning Mitigation Funds

AGREEMENT CONCERNING MITIGATION FUNDS

This Agreement Concerning Mitigation Funds (“Agreement”) is entered by and between Matthew R. Anchordoguy, Anchordoguy and Company Limited Partnership, and John R. Barlow (collectively, “Funders”) and The Nature Conservancy (“Conservancy”), a District of Columbia non-profit corporation acting through its California Operating Unit.

RECITALS

- A. WHEREAS, on May 1, 2013, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in the United States District Court, Eastern District of California, United States v. Matthew R. Anchordoguy, Anchordoguy and Company Limited Partnership, and John R. Barlow, No. 2:13-cv-848-MCE-CMK, alleging that Funders violated the Clean Water Act by discharging dredged or fill material into waters of the United States that included vernal pools, wetland swales, streams tributary to Coyote Creek, and Coyote Creek, in Tehama County, California, and Funders have denied any liability to the United States arising out of the alleged activities;
- B. WHEREAS, the United States and Funders have entered into a Consent Decree to settle the above referenced enforcement action;
- C. WHEREAS, the Consent Decree requires Funders to mitigate the alleged losses of ecological functions resulting from the alleged violations by providing funding (“Mitigation Funds”) in the amount of Seven Hundred Ninety-Five Thousand Dollars (\$795,000) to the Conservancy, to be used for conservation of vernal pool, riparian and salmon habitats in the Sacramento River watershed, with a special emphasis on such habitats in Butte, Glenn, Shasta, and Tehama Counties, as set forth in this Agreement, of which the United States approves;
- D. WHEREAS, the Conservancy desires to accept the Mitigation Funds;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. OBLIGATIONS WITH RESPECT TO FUNDERS

- 1.1. Funders shall deliver the \$795,000 Mitigation Funds in one lump sum by certified check to the Conservancy at 190 Cohasset Road, Suite 177, Chico, CA 95926, Attention: Jake Jacobson, or wire transfer to:

Bank Name: Bank of America
Bank Address: 1111 E. Main Street, Richmond, VA 23219
ABA Routing Number: 026009593
Account Name: The Nature Conservancy
Account Number: 04112981822

by the fifteenth (15th) day after the Effective Date of the Consent Decree. For purposes of this Agreement, if the fifteenth day after the Effective Date of the Consent Decree should fall on a Saturday, Sunday, or legal holiday, Funders shall make the delivery by the close of business of the next day that is not a Saturday, Sunday, or legal holiday.

- 1.2. Funders shall be deemed to have discharged their obligations and liabilities under this Agreement upon full compliance with Paragraph 1.1.

2. OBLIGATIONS WITH RESPECT TO THE CONSERVANCY.

- 2.1. The Conservancy's obligations under this Agreement shall be conditioned on its actual receipt of the full amount of the Mitigation Funds.
- 2.2. The Conservancy may pool and invest the Mitigation Funds with other funds that the Conservancy holds for similar purposes but shall separately account for and track expenditures of the Mitigation Funds.
- 2.3. The Conservancy shall use the Mitigation Funds exclusively for the purpose of protecting, preserving, enhancing, restoring, maintaining, managing, and monitoring vernal pool habitat and salmon and riparian habitats as natural open space in perpetuity in the Sacramento River watershed, with a special emphasis on such habitats in Butte, Glenn, Shasta, and Tehama Counties ("Conservation Purpose").
- 2.4. Subject to Paragraphs 2.5 and 2.6, in carrying out the Conservation Purpose, the Conservancy shall prioritize its usage of the Mitigation Funds as follows:
 - 2.4.1. Within 18 months from the Effective Date of this Agreement, the Conservancy shall use the Mitigation Funds to acquire and maintain a conservation easement on the 515-acre Foor Ranch as natural open space in perpetuity. The Foor Ranch is located in southern Tehama County, California, just east of State Highway 99E and about 25 minutes north of Chico. The Conservancy represents that the easement will protect the Foor Ranch's vernal pools and vernal swales, which provide wildlife habitat, support numerous at-risk species, including endangered freshwater shrimp and rare plants, and function as important Pacific Flyway "stop over" sites for migratory birds, while allowing compatible cattle grazing to continue. The Foor Ranch is entirely surrounded by conserved lands, with conservation easements

encumbering lands to the west, north and east, and the Conservancy's 4,600-acre Vina Plains Preserve of vernal pool and grassland habitats to the south. The Foor Ranch's excellent connectivity to other conservation lands further increases its conservation value than if it were a stand-alone site.

The Conservancy further represents that the Vina Plains Preserve is a critical component and a crucial research site of the Conservancy's 900,000-acre Lassen Foothills Project in eastern Tehama County and southeastern Shasta County. With thirty conservation easements acquired to date, mostly with working ranch families, the Lassen Foothills Project protects wildlife habitat on ranches along key wild salmon streams tributaries to the Sacramento River, riparian forests, and vernal pool complexes. Acquisition of the Foor Ranch easement will complete one of the last pieces of the Conservancy's plan for the Vina Plains Preserve.

Exhibit 1 is a vicinity map showing the in-holding position of the Foor Ranch (with dark green indicating areas already under the Conservancy's protection). Exhibit 2 is a fact sheet on the Conservancy's Vina Plains Preserve. Both Exhibits are made part of this Agreement.

- 2.4.2. Within 42 months after the Effective Date of this Agreement, the Conservancy shall use the remaining funds, if any, for projects consistent with the Conservation Purpose, subject to prior written approval by the EPA.
- 2.5. Subject to prior written approval by the EPA, the Conservancy may adjust the timelines specified in Paragraph 2.4 above to better effectuate the protection priorities and carry out the Conservation Purpose. Upon approval by the EPA, the adjusted timelines shall be incorporated automatically and implemented as part of this Agreement.
- 2.6. If, after good faith efforts or due to changed circumstance, the Conservancy determines that it is unable or does not desire to carry out any or all the activities as specified in Paragraphs 2.4.1 and 2.4.2 above, the Conservancy shall use the Mitigation Funds for suitable alternative projects to carry out the Conservation Purpose, subject to prior written approval by the EPA. Upon approval by the EPA, said alternative project shall be incorporated automatically and implemented as part of this Agreement.
- 2.7. The Conservancy shall provide an annual report to the EPA. The annual report shall include a programmatic summary of the status of the activities undertaken pursuant to this Agreement and a fiscal statement itemizing the expenditure of the Mitigation Funds, including any accrued interest or

investment income thereon made available to the local project, if applicable. The Conservancy shall submit the report annually on or about January 31st of each year, until such time as the Mitigation Funds have been fully expended.

- 2.8. The Conservancy shall provide to the EPA the draft conservation easement for each proposed acquisition under this Agreement and a conformed copy of the conservation easement upon execution and recording.
- 2.9. The Conservancy shall have the sole responsibility and discretion for the terms and conditions of instruments used to acquire real property interests with the Mitigation Funds.

3. TRANSFER OF ACQUIRED PROPERTY INTEREST.

- 3.1. The Conservancy may transfer or sell any real property interest acquired with the Mitigation Funds only to: (i) a governmental entity, or (ii) a tax-exempt nonprofit organization that is qualified under Section 501(c)(3) of the Internal Revenue Code and has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, or open-space condition.
- 3.2. The Conservancy shall provide written notice to the EPA of any sale or transfer of property interest acquired with the Mitigation Funds at least thirty (30) business days prior to the date of the sale or transfer.
- 3.3. The requirements set forth in this Paragraph shall survive any modification or termination of this Agreement.

4. SUCCESSORS AND ASSIGNS.

- 4.1. Funders may not assign this Agreement.
- 4.2. The Conservancy may assign any or all portions of the Mitigation Funds to another tax-exempt nonprofit organization that is qualified under Section 501(c)(3) of the Internal Revenue Code and has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, or open-space condition, to carry out activities consistent with the Conservation Purpose. The Conservancy shall provide written notice to the EPA at least thirty (30) business days prior to the planned assignment and shall subject the assignment to the terms and conditions of this Agreement.

5. THE EPA AS THIRD PARTY BENEFICIARY

- 5.1. The Parties agree that the EPA is an intended third-party beneficiary under this Agreement with the right to enforce the terms and obligations of the Agreement.

5.2. The requirements set forth in this Paragraph shall survive any modification or termination of this Agreement.

6. NO ASSUMPTION OF LIABILITY.

6.1. By accepting the Mitigation Funds, the Conservancy in no way assumes responsibility or liability for any requirement or commitment that Funders may have to the EPA or any other person or entity.

7. NOTICES.

7.1. All notices, requests, approvals, and other communications pursuant to this Agreement shall be made through the following persons and addresses, as appropriate:

To Funders:

DOWNEY BRAND, LLP
Robert P. Soran, Esq.
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
(916) 444-1000 (p)
rsoran@downeybrand.com

B. Demar Hooper, Esq.
3910 Knollwood Court
Sacramento, CA 95821
(916) 849-3447 (p)
demar@bdhooperlaw.com

Matthew R. Anchordoguy
P.O. Box 136
Vina, CA 96092

Anchordoguy and Company Limited Partnership
77 Talon Drive
Chico, CA 95973

John R. Barlow
77 Talon Dr.
Chico, CA 95973

To the Conservancy:

Jake Jacobson
Project Director

Lassen Foothills
The Nature Conservancy, California Chapter
Central Valley and Mountains Regions
190 Cohasset Road, Suite 177
Chico, CA 95926

To the EPA:

Jessica Kao
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, Ca 95105

7.2. Any party may, by written notice to the others, change its designated recipient or notice addresses.

8. MISCELLANEOUS PROVISIONS.

- 8.1. This Agreement shall survive the termination of the Consent Decree.
- 8.2. This Agreement shall be governed by the laws of the State of California and the United States.
- 8.3. This Agreement represents the entire agreement of the parties and may not be modified except by writing signed by each party hereto. Any modification of this Agreement shall be subject to the EPA's prior written approval.
- 8.4. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the other provisions shall not be affected by such invalidity.

9. SIGNATORIES.

- 9.1. Each party hereby represents and warrants that the person executing this Agreement on behalf of such party is duly authorized to do so and bind such party to this Agreement.
- 9.2. This Agreement may be executed in counterparts, such counterpart signature pages shall be given full force and effect, and its validity shall not be challenged on that basis.

10. EFFECTIVE DATE. This Agreement shall be ~~effect~~ ^{effective} upon the Effective Date of the Consent Decree, which will be the date upon it is entered by the United State District Court, Eastern District of California, in the above referenced action.

11. TERMINATION. This Agreement shall terminate on its own terms.

12. EXHIBITS. The following Exhibits are attached to and part of this Agreement.

12.1. Exhibit 1: Foor Ranch Vicinity Map

12.2. Exhibit 2: The Nature Conservancy Vina Plains Preserve Fact Sheet

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the last date entered below.

FUNDERS:

By: Matthew R. Anchordoguy
Name: Matthew R. Anchordoguy

Date: 7/22/14

By: John R. Barlow
Name: Anchordoguy and Company Limited Partnership

Title: General Partner

Date: 7-22-14

By: John R. Barlow

Name: John R. Barlow

Date: 7-22-14

THE CONSERVANCY:

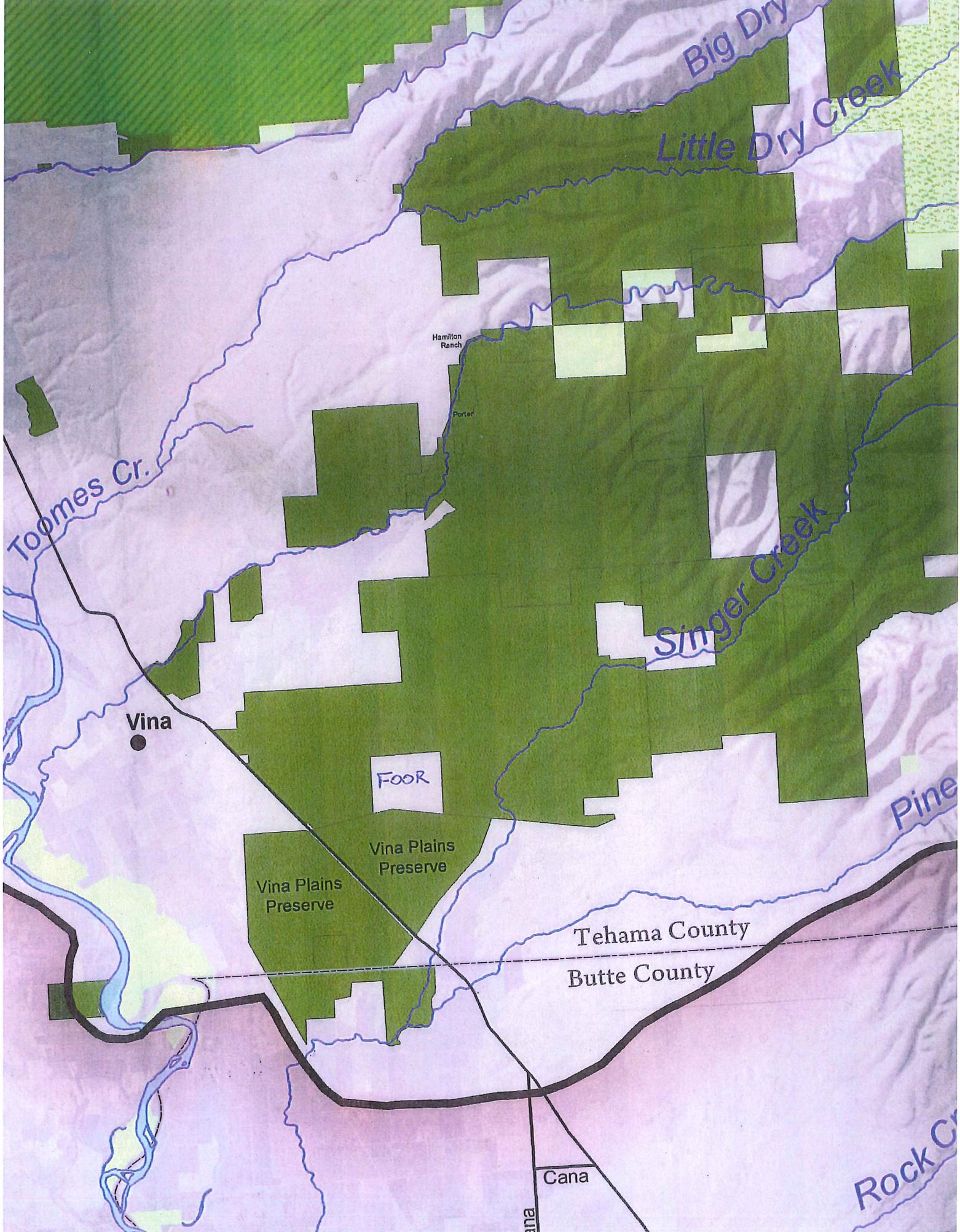
THE NATURE CONSERVANCY, a District
of Columbia nonprofit corporation

By:  _____

Name: JAKE JACOBSON
for ERIC HALLSTEIN

Title: PROJECT DIRECTOR

Date: AUGUST 12, 2014



Big Dry

Little Dry Creek

Toomes Cr.

Hamilton Ranch

Porter

Singer Creek

Vina

FOOR

Vina Plains Preserve

Vina Plains Preserve

Pine

Tehama County

Butte County

Cana

Rock Cr

The Nature Conservancy's
VINA PLAINS PRESERVE



SIZE: 4600 acres

LOCATION: The preserve is located at the southern edge of Tehama County bordering Highway 99, 13 miles north of Chico. The entry gate is on the east side of the highway, opposite Haille Rd.

HISTORY: The Vina Plains was first inhabited by nomadic Maidu Indians. At that time, elk and antelope roamed the grasslands. With the arrival of European settlers, cattle and sheep were introduced to the Plain. Along with the settlers came many introduced non-native plants which now coexist with native species. The Nature Conservancy, a private non-profit organization, began purchasing property and conservation easements in the Vina area in 1982.

NATURAL CHARACTERISTICS: The Vina Plains is an excellent example of California annual grasslands and vernal pools on the upper terrace of the Sacramento Valley. The shallow soils are underlain by an impervious, rocky hardpan formed by volcanic mudflows a million or more years ago. Subsequent weathering and wind erosion scoured out shallow depressions which fill with water during the rainy season. Because of the impermeable substrate, the water remains until it is lost by evaporation late in the spring. These temporary ponds support a wide variety of plants, crustaceans, snails, flatworms, insects, and microorganisms. During winter the

ponds attract legions of waterfowl and shorebirds. Songbirds such as meadowlarks nest in the grasslands and raptors can be seen hunting overhead.

From February through early May, the Vina Plains is ablaze with masses of showy wildflowers. More than 280 species of plants offer excellent examples of adaptations to the Mediterranean climate of wet winters and intensely hot dry summers. Of particular interest are vernal pool plants, some of which are able to germinate and grow leaves underwater and then flower on land as the water recedes in the spring.

There are several rare and endangered plant species on the Preserve, including *Orcuttia pilosa*, *Orcuttia tenuis*, *Tuctoria greenei*, *Fritillaria pluriflora* and *Chamaesyce hooveri*.

PUBLIC TOURS: Public visitation is only by guided tours. They are conducted on selected weekends from the first of March to the middle of May or until the ponds have dried.

For your safety and protection of the preserve, please adhere to the following regulations:

1. Respect the scheduled tour hours for entering and leaving the property.
2. Pets, firearms, hunting, camping and campfires are not permitted.
3. Refrain from smoking.
4. Do not collect specimens without permission.
5. Park cars in designated areas only.
6. While on a tour, please stay close to the group.

MANAGEMENT: The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on earth by protecting the lands and waters they need to survive. Vina Plains is actively managed and monitored by Conservancy Scientists to protect the unique life found in its vernal pools and grasslands. Both prescribed fire and livestock grazing are used as tools to reduce non-native weedy plants.

ADDITIONAL INFORMATION: The Preserve is also dedicated to the education of the public through its guided tours and to support instruction and research at California State University, Chico and other educational institutions.

For further information contact The Nature Conservancy, Lassen Foothills Project, 190 Cohasset Road, Suite # 177, Chico CA 95926, (530) 897-6370