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**FINAL ENVIRONMENTAL ASSESSMENT (EA/IS-09-080)**

*BUENA VISTA WASTER STORAGE DISTRICT*

*BV8 STATE WATER PROJECT TURNOUT*

**Appendix K**

**California Department of Fish and Game**

**Incidental Take Permit (No. 2081-2011-056-04)**

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December 2011

two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Designated Biologist shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded if possible, or the Designated Biologist shall move Covered Species out of harm's way before allowing work to continue. If at any time a trapped or injured Covered Species is discovered, Permittee shall contact the United States Fish and Wildlife Service (USFWS) Sacramento Fish and Wildlife Office and DFG's Regional Representative within one (1) working day of the incident.

- 7.5. Inspection of Structures. Workers shall thoroughly inspect for Covered Species in all construction pipe, culverts, or similar structures with a diameter of 7.6 centimeters (3 inches) or greater that are stored for one or more overnight periods before the pipe is subsequently moved, buried, or capped. If during inspection one of these animals is discovered inside a pipe, workers shall allow the animal to safely escape that section of pipe before moving and utilizing the pipe.
- 7.6. Inspection Under Vehicles and Equipment. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall wait for the Covered Species to move unimpeded to a safe location. Alternatively, especially if the animal is inside a fenced area, the Designated Biologist shall be contacted to move the animal out of harm's way outside of the Project Area.
- 7.7. Delineation of Ingress and Egress Routes. All access roads shall be flagged in the field from the paved road and vehicle operation shall be limited by the Permittee to these designated ingress and egress routes
- 7.8. Flag Burrows. The Designated Biologist shall flag all potential small mammal burrows within 50 feet of the Project footprint to alert biological and work crews to their presence. An avoidance buffer of 50 feet or greater around active small mammal burrows shall be maintained where possible (see ITP conditions 7.9 and 7.10). Permittee shall limit actions outside of the buffer zone to vehicle and equipment operation on existing roads.
- 7.9. SJAS Relocation. Any potential SJAS burrows detected by the Designated Biologist that cannot be avoided by the 50-foot avoidance buffer shall be live trapped by the Designated Biologist prior to the initiation of Covered Activities in the occupied location. The Designated Biologist shall relocate any captured

SJAS to the DFG-approved release site identified in the SJAS Relocation Plan (described in Condition 6.3).

- 7.10. TKR Relocation. Any potential TKR burrows detected by the Designated Biologist that cannot be avoided by the 50-foot avoidance buffer shall be live trapped by the Designated Biologist prior to the initiation of Covered Activities in the occupied location. The Designated Biologist shall relocate any captured TKR to the DFG-approved release site identified in the TKR Relocation Plan (described in Condition 6.4).
- 7.11. Burrow Excavation. Following live trapping activities as described in Conditions 7.9 and 7.10, the Designated Biologist shall perform or oversee the excavation by hand of any small mammal burrows present within the Project area that cannot be avoided by the 50-foot buffer, and that have the potential to be occupied by the Covered Species. The Designated Biologist shall ensure that any Covered Species encountered in the excavated burrows is relocated in accordance with the approved SJAS and/or TKR Relocation Plan.
- 7.12. Record of Handling. The Designated Biologist shall maintain a record of all SJAS and TKR handled, and all documented observations of SJKF. This information shall include for each animal; (1) the locations (Global Positioning System (GPS) coordinates and maps) and time of capture and/or observation as well as release; (2) sex; (3) approximate age (adult / juvenile); (4) weight; (5) general condition and health, noting all visible conditions including gait and behavior, diarrhea, emaciation, salivation, hair loss, ectoparasites, and injuries; and (6) ambient temperature when handled and released. A Relocation Summary shall be prepared by the Designated Biologist and included in the Monthly Report described in Condition 6.6 of this ITP. The Relocation Summary in the Final Mitigation Report shall include cumulative results, and analysis of data collected, and conclusions.
- 7.13. SJKF Pre-construction Surveys. No more than thirty (30) days prior to ground-disturbing activities, the Designated Biologist shall perform a pre-construction survey for SJKF fox dens (potential, known, active, atypical, and natal), that covers the Project area and a buffer zone of 200 feet in size beyond the Project area.
- 7.14. Den Avoidance. If a potential Covered Species den (one that shows evidence of current use or was used in the past) is discovered or a Covered Species is found is found in an "atypical" den such as a pipe or culvert, a minimum 50-foot buffer shall be established using flagging. If a known Covered Species den is discovered, Permittee shall establish a minimum buffer of at least 100 feet using

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fencing. If a natal den is discovered, Permittee shall establish a minimum buffer of at least 200 feet using fencing. Natal dens with pups shall be avoided by at least 500 feet. Buffer zones shall be considered Environmentally Sensitive Areas, and entry shall be restricted. The Permittee shall notify the USFWS and DFG's Regional Representative immediately via telephone or e-mail if any Covered Species dens, natal dens, or atypical dens are discovered.

- 7.15. Den Excavation. For active dens, dens known to be active, and potential dens that exhibit signs of Covered Species use or characteristics suggestive of Covered Species dens (including dens in natural substrate and in/under man-made structures) within the portion of the Project Site to be disturbed and that cannot be avoided as per ITP Condition 7.14. If, after four consecutive days of monitoring with tracking medium or infrared camera the Designated Biologist(s) has determined that the Covered Species is not currently present, the den may be destroyed. Any hole three inches or larger and exhibiting no signs of Covered Species use or characteristics suggesting it is a Covered Species den may be excavated under the supervision of the Designated Biologist(s) without advance tracking or camera monitoring. Natal dens shall not be excavated until the pups and adults have vacated and then only after consultation with the USFWS and DFG. If the excavation process reveals evidence of current use by the Covered Species then den destruction shall cease immediately and tracking or camera monitoring as described above shall be conducted/resumed. Destruction of the den may be completed when, in the judgment of the Designated Biologist(s), the animal has escaped from the partially destroyed den. Destruction of all types of Covered Species dens shall be accomplished by careful excavation until it is certain no individuals of the Covered Species are inside. Dens to be destroyed shall be fully excavated, filled with dirt and compacted to ensure that SJKF cannot reenter or use the den during the construction period. If an individual of the Covered Species does not vacate a den within the construction footprint within a reasonable timeframe, DFG and the USFWS shall be contacted and the Permittee shall get written guidance (e-mail will suffice) from both agencies prior to proceeding with den destruction.

## **8. Take Mitigation Measures:**

The following requirements are intended to ensure the mitigation of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to mitigate take of Covered Species:

- 8.1. Artificial Dens. Permittee shall replace each kit fox den that must be destroyed with an artificial den, to compensate for the loss of important shelter used by kit foxes for protection, reproduction, and escape from predators. For existing known dens, artificial den placement shall occur prior to den destruction. For

dens determined through monitoring to be actively used by kit fox, artificial den placement shall occur within 72 hours following den destruction. The Designated Biologist shall determine the appropriate design and placement through consultation with USFWS and DFG on a site-specific basis.

- 8.2. Injured Covered Species. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a DFG-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. Permittee shall notify DFG of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident, and the name of the facility where the animal was taken.

**9. Habitat Management Land Acquisition:**

DFG has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and DFG's estimate of the acreage required to provide for adequate compensation. It should be noted that during surveys conducted of the Project footprint for BNLL in May, June, July, and August of 2008 and 2011, no individual SJAS were observed or their vocalizations heard. However, SJAS is known to occur adjacent to the Project area and there is potential habitat for this species within the Project site. In light of the extensive surveys of the Project site and that it appears to be unoccupied by SJAS, DFG has determined that compensation in the amount of five (5) acres is adequate and that compensation through the purchase of habitat credits at the Kern Water Bank Authority's (KWBA) Conservation Bank will be sufficient to fully offset the impacts of the taking.

- 9.1 To meet this requirement, the Permittee shall purchase five (5) acres (five (5) credits) of Covered Species habitat from the KWBA Conservation Bank. This DFG-approved conservation bank is located in western Kern County and is known to provide habitat for Covered Species. DFG holds a conservation easement on the conservation lands and funds for long-term management of the conservation lands (non-wasting endowment) are also held by DFG in the Special Deposit Fund. Endowment costs are included in the sale price of conservation credits at this bank. Purchase of five (5) credits from the KWBA must be completed prior to initiating Covered Activities. A copy of the conservation credit certificate issued by Kern Water Bank must be provided to DFG prior to initiating

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ground-disturbing activities and a copy should be kept at the Project site while conducting Covered Activities at all times.

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable regulations and law. This ITP may also be amended without the concurrence of the Permittee as required by law, including if DFG determines that continued implementation of the Project under existing ITP conditions would jeopardize the continued existence of the Covered Species or that Project changes or changed biological conditions necessitate an ITP amendment to ensure that impacts to the Covered Species are minimized and fully mitigated.

**Stop-Work Order:**

DFG may issue Permittee a written stop-work order to suspend any activity covered by this ITP for an initial period of up to 25 days to prevent or remedy a violation of any ITP condition(s) (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. DFG may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. DFG may commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7 within five working days of issuing a stop-work order. Neither the Designated Biologist nor DFG shall be liable for any costs incurred in complying with stop-work orders.

**Compliance with Other Laws:**

This ITP contains DFG's requirements for the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable State, federal, and local laws.

**Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Game  
Attention: CESA Permitting Program  
1416 Ninth Street, Suite 1260  
Sacramento, California 95814

Written notices, reports and other communications relating to this ITP shall be delivered to DFG by registered first class mail at the following addresses, or at addresses DFG may subsequently provide the Permittee. Notices, reports, and other communications shall

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reference the Project name, Permittee, and ITP Number 2081-2011-056-04 in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Jeffrey R. Single, Ph.D., Regional Manager  
California Department of Fish and Game  
1234 East Shaw Avenue  
Fresno, California 93710  
Telephone (559) 243-4005  
Fax (559) 243-4022

Copy of cover without attachment(s) to:

Office of the General Counsel  
California Department of Fish and Game  
1416 Ninth Street, 12th Floor  
Sacramento, California 95814

And:

Habitat Conservation Planning Branch  
California Department of Fish and Game  
1416 Ninth Street, Suite 1260  
Sacramento, California 95814

Unless Permittee is notified otherwise, DFG's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Brandon Sanderson  
California Department of Fish and Game  
3196 South Higuera Street, Suite A  
San Luis Obispo, California 93401  
Telephone (805) 594-6141  
Fax (805) 542-4609

**Compliance with CEQA:**

DFG's issuance of this ITP is subject to CEQA. DFG is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Buena Vista Water Storage District. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the BV8 State Water Project Turnout, (State Clearinghouse Number 2010081076) dated October 12, 2010, that the lead agency adopted for the BV8 State Water Project Turnout on October 12, 2010. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project it also adopted all mitigation measures described in the Mitigated Negative Declaration as conditions of Project approval.

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In fulfilling its obligations as a responsible agency, DFG's obligations pursuant to CEQA are more limited than those of the lead agency. DFG, in particular, is responsible for considering only the effects of those Project activities that it is required by law to carry out or approve, and mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).)<sup>7</sup>. Accordingly, because DFG's exercise of discretion is limited to issuance of this ITP, DFG is responsible for considering only the environmental effects that fall within its permitting authority pursuant to CESA.

This ITP, along with DFG's CEQA findings for this ITP and Project, which are available as a separate document, provide evidence of DFG's consideration of the lead agency's Mitigated Negative Declaration for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). DFG finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, DFG finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by DFG through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. DFG consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

#### **Findings Pursuant to CESA:**

These findings are intended to document DFG's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds. (a)-(b), 783.5, subd. (c)(2).)

DFG finds based on substantial evidence in the ITP application, BV8 State Water Project Turnout Mitigated Negative Declaration, Biological Evaluation for the Buena Vista Water Storage District Aqueduct Turnout Project, Streambed Alteration Agreement No. 1600-2010-0176-R4, the results of consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the

<sup>7</sup>The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.



MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. DFG evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and DFG's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, DFG determined that the protection and management in perpetuity of five (5) acres of compensatory habitat at Kern Water Bank Authority's Conservation Bank, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, DFG's finding is based, in part, on DFG's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**Attachments:**

FIGURE 1

FIGURE 2

ATTACHMENT 1

Site Location Map of Project

Aerial Photograph of Project Site Area

Mitigation Monitoring and Reporting Program

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**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME**

on OCTOBER 12, 2011



Jeffrey R Single, Ph.D., Regional Manager  
CENTRAL REGION

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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Figure 1. Site Location Map



