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

*BUENA VISTA WASTER STORAGE DISTRICT*

*BV8 STATE WATER PROJECT TURNOUT*

**Appendix L**

**California Department of Fish and Game**

**Streambed Alteration Agreement (No. 1600-2010-0176-R4)**

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December 2011



DEPARTMENT OF FISH AND GAME

JOHN McCAMMAN, Director

Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4593  
[www.dfg.ca.gov](http://www.dfg.ca.gov)



March 15, 2011

David Hampton  
Buena Vista Water Storage District  
525 North Main Street  
Post Office Box 756  
Buttonwillow, California 93206

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2010-0176-R4  
Kern River Flood Channel – Kern County

Dear Mr. Hampton:

Enclosed is the final Stream Alteration Agreement (Agreement) for Buena Vista 8 State Water Project Turnout (Project). Before the Department of Fish and Game (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a Responsible Agency, filed a Notice of Determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Negative Declaration the Lead Agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the Project. You may begin your Project before the 30-day period expires if you have obtained all necessary local, State, and Federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Annette Tenneboe, Environmental Scientist, at the address on this letterhead or by telephone at (559) 243-4014, extension 231.

Sincerely,

Jeffrey R. Single, Ph.D.  
Regional Manager

cc: Annette Tenneboe, Environmental Scientist

## NOTICE OF DETERMINATION

**TO:** Office of Planning and Research  
Post Office Box 3044  
Sacramento, California 95814

**FROM:** California Department of Fish and Game  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**cc:** County Clerk, Kern County

**SUBJECT:** Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

**PROJECT TITLE:** Stream Alteration Agreement No. 2010-0176-R4 for the Buena Vista 8 Water Project Turnout (Project).

**STATE CLEARINGHOUSE NUMBER:** 2010081076

**LEAD AGENCY:** Buena Vista Water Storage District  
**CONTACT:** Dan Bartel, (661) 324-1101

**RESPONSIBLE AGENCY:** California Department of Fish and Game  
**CONTACT:** Annette Tenneboe (559) 243-4014, ext. 231

**PROJECT LOCATION:** The Project site is located in the Kern River Flood Channel between the California Aqueduct and the BVWSD's West Side Canal, approximately 18 miles west of the City of Bakersfield, Kern County, California; (SW ¼ of Section 09, Township 30 South, Range 24 East MDB&M).

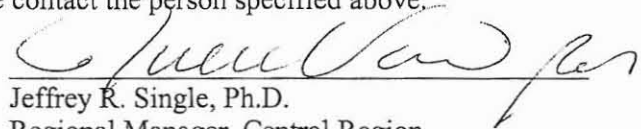
**PROJECT DESCRIPTION:** The California Department of Fish and Game is executing a Lake and Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code for the BV8 State Water Project Turnout. The Project will consist of the construction of a new water turnout on the California Aqueduct to deliver water into BVWSD's West Side Canal via a new underground pipeline and discharge structure. The turnout structure will be constructed on the east bank of the Aqueduct consisting of a concrete structure, 78-inch by 78-inch sluice gate, electronic actuator, trash screens, pedestrian walk and rails, and appurtenances along with a meter vault, instrument building, and air vents within the Department of Water Resources right-of-way. The underground pipeline connecting the turnout to the discharge facility on the West Side Canal will be approximately 1510 feet long, 78-inches diameter, and of reinforced concrete pipe. The temporary trench will have a maximum depth of approximately 13 feet deep with a maximum trench width of approximately 30 feet. It will be necessary for the pipeline and trench to traverse the Kern River Flood Channel in order to deliver water into the West Side Canal.

This is to advise that the California Department of Fish and Game as a Responsible Agency approved the Project described above on 3/17/11 and has made the following determinations regarding the above described Project.

The Project [ will ☒ **will not** ] have a significant effect on the environment.  
A Negative Declaration was prepared for this Project pursuant to the provisions of CEQA.  
Mitigation measures [ ☒ **were** were not ] made a condition of the approval of the Project.  
Findings [ ☒ **were** were not ] made pursuant to the provisions of CEQA.

This is to certify that a copy of the Negative Declaration prepared for this Project is available to the general public and may be reviewed at: the Buena Vista Water Storage District, 525 North Main Street, Buttonwillow, California 93206. Please contact the person specified above.

Date: 3/17/2011

  
Jeffrey R. Single, Ph.D.  
Regional Manager, Central Region  
California Department of Fish and Game

Date received for filing at OPR: \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
REGION 4 - CENTRAL REGION  
1234 EAST SHAW AVENUE  
FRESNO, CALIFORNIA 93710



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2010-0176-R4  
KERN RIVER FLOOD CHANNEL – KERN COUNTY  
BUENA VISTA 8 STATE WATER PROJECT TURNOUT (PROJECT)

DAVID HAMPTON  
BUENA VISTA WATER STORAGE DISTRICT  
525 N. MAIN STREET (MAIL POST OFFICE BOX 756)  
BUTTONWILLOW, CALIFORNIA 93206

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Buena Vista Water Storage District (BVWSD) (Permittee) represented by David Hampton.

## **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) Section 1602, Permittee notified DFG on November 17, 2010 that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to FGC Section 1603, DFG has determined that the Project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the Project in accordance with the Agreement.

## **PROJECT LOCATION**

The Project is located in the Kern River Flood Channel between the California Aqueduct and the BVWSD's West Side Canal, approximately 18 miles west of the City of Bakersfield, Kern County, California; (SW ¼ of Section 09, Township 30 South, Range 24 East MDB&M). Driving directions: From Bakersfield, head west on Stockdale Highway and turn south on Dairy Road. Dairy Road ends at Adohr Road. Turn east on Adohr Road and continue until it turns south and becomes Tupman Road. Head South on Tupman Road for 1 mile and then turn west on the north bank of the Short Main Canal. Continue on the Short Main Canal until it ends at the West Side Canal and the



Kern River Flood Channel. Continue northwest on the west bank of the West Side Canal for approximately 0.9 miles to the proposed Project site.

## PROJECT DESCRIPTION

The BV8 Project includes the construction of a new water turnout on the California Aqueduct to deliver water into BVWSD's West Side Canal via a new underground pipeline and discharge structure. The turnout structure will be constructed on the east bank of the Aqueduct consisting of a concrete structure, 78-inch by 78-inch sluice gate, electronic actuator, trash screens, pedestrian walk and rails, and appurtenances along with a meter vault, instrument building, and air vents within the Department of Water Resources right-of-way. The underground pipeline connecting the turnout to the discharge facility on the West Side Canal will be approximately 1510 feet long, 78-inches diameter, and of reinforced concrete pipe. The temporary trench will have a maximum depth of approximately 13 feet deep with a maximum trench width of approximately 30 feet. It will be necessary for the pipeline and trench to traverse the Kern River Flood Channel in order to deliver water into the West Side Canal.

Construction of the trench and use of the vehicles will involve clearing and disturbing an area in the channel of approximately 0.43 acres. In the area of the proposed Project site, the Kern River Flood Channel runs parallel and adjacent to the West Side Canal. The discharge structure on the canal will be a concrete structure on the west bank with pedestrian rails and an energy dissipater. Riprap will also be placed in the vicinity of the discharge facility to eliminate or reduce erosion.

Equipment used will include an excavator, loader/backhoe, lifts, cranes, graders, water trucks, dump trucks, cement trucks, pipe haulers, personnel vehicles, and hand crews.

## PROJECT IMPACTS

**Plant and Animal Special Status Species:** This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the Project area, and the immediate adjacent habitat. Absent implementation of the protective measures required by this Agreement, the following species and habitat types could potentially be impacted within the area covered by this Agreement: the Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the State and Federally endangered and State fully-protected blunt-nosed leopard lizard (*Gambelia sila*), the State and Federally endangered Tipton kangaroo rat (*Dipodomys nitratoideus nitratoideus*), the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*), the State species of special concern burrowing owl (*Athene cunicularia*), the State species of special concern LeConte's thrasher (*Toxostoma lecontei*), as well as other birds, mammals, fish, reptiles, amphibians, invertebrates and plants that comprise the local ecosystem. The California Natural Diversity Data Base (CNDDB) and other DFG files and references contain information

on species and ecosystems that could be subject to potential generated impacts from this Project.

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to DFG personnel or personnel from another State, Federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a Provision in the Agreement might conflict with a Provision imposed on the Project by another local, State, or Federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the Project site at any time to verify compliance with the Agreement.
- 1.5 Legal Obligations. This Agreement does not exempt the Permittee from complying with all other applicable local, State and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" ("take" defined in FGC Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or endangered species. Any such "take" shall require separate permitting as may be required.
- 1.7 Water Diversion. To the extent that the Provisions of this Agreement provide for the diversion of water, they are agreed to with the understanding that the Permittee possesses the legal right to so divert such water.
- 1.8 Trespass. To the extent that the Provisions of this Agreement provide for activities that require the Permittee to trespass on another owner's property, they are agreed

to with the understanding that the Permittee possesses the legal right to so trespass.

1.9 Construction/Work Schedule. The Permittee shall submit a construction/work schedule to DFG (mail, or fax to (559) 243-4020, with reference to Agreement 1600-2010-0176-R4) prior to beginning any activities covered by this Agreement. The Permittee shall also notify DFG upon the completion of the activities covered by this Agreement.

1.10 Training. Prior to starting any activity within the stream, all workers shall have received training from the Permittee, a qualified biologist, or an approved alternate trainer, on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance.

## **2. Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Construction/Work Hours. All non-emergency work activities during the construction phase will be confined to daylight hours.

2.2 Flagging/Fencing. Prior to any activity within the stream, the Permittee shall identify the limits of the required access routes and encroachment into the stream. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed.

2.3 Listed, Fully-Protected, and Special Status Species.

(a) This Agreement does not authorize "take," or "incidental take," of any State- or Federally-listed threatened or endangered, or fully-protected species. Liability for any "take", or incidental "take", of such listed species remains the responsibility of the Permittee for the duration of the Project. The Permittee affirms that no "take" of any State- or Federally-listed species shall occur without appropriate State or Federal "take" authorization. Any unauthorized "take" of such listed species may result in prosecution and nullify this Agreement.

(b) Suitable habitat for State listed species including San Joaquin kit fox, Nelson's antelope squirrel, and Tipton kangaroo rat exist within, and adjacent to, the Project site. Burrows and sign characteristic of kangaroo rat was



observed within the Project site, but surveys to confirm which species are present were not conducted. A review of the CNDDDB indicates that these species have been documented within the vicinity of the Project site. The Permittee shall contact Annee Ferranti, Senior Environmental Scientist, with DFG Region 4, at (559) 243-4014 extension 227 or [aferranti@dfg.ca.gov](mailto:aferranti@dfg.ca.gov), well in advance of the proposed construction start date to determine whether State incidental "take" authorization will be necessary, or suitable "take" avoidance measures can be implemented. If a State Incidental Take Permit (ITP) is necessary pursuant to FGC Section 2081(b), then Project implementation shall not occur under this Agreement until after an ITP is secured from DFG. Be advised that the issuance of an ITP is considered a discretionary Project and is subject to separate review under the California Environmental Quality Act by the Lead Agency (DFG).

- (c) If the Permittee, in the performance of the agreed work, discovers the presence of a listed species within or adjacent to the Project Boundary, work shall stop immediately. The Permittee shall not resume activities authorized by this Agreement until such time as valid "take" permits are obtained from DFG pursuant to FGC Section 2081(b).
- (d) A review of the CNDDDB indicates that known occurrences for blunt-nosed leopard lizard have been documented within the Project vicinity. Suitable habitat and refugia for the lizard have been documented within the Project boundary. According to the Negative Declaration submitted with the notification, protocol surveys for blunt-nosed leopard lizard were not conducted, but are required prior to Project implementation. "Take" (incidental or otherwise) of the State fully protected blunt-nosed leopard lizard can not be authorized by DFG. Therefore, the Permittee shall conduct protocol-level surveys (both fall and spring surveys) to establish presence/absence (DFG 2004).

The results of protocol surveys are considered valid for up to one (1) year from completion and multiple survey seasons may be necessary for the duration of the Project. Results of each survey season shall be submitted to the DFG. If blunt-nosed leopard lizards are detected within the Project site or buffer area, DFG and United States Fish and Wildlife Service (USFWS) shall be contacted for guidance prior to Project implementation.

- (e) San Joaquin Antelope Squirrel: If the Permittee cannot maintain a minimum 50-foot buffer from all small mammal burrows of suitable size for San Joaquin antelope squirrel, then a qualified, permitted biologist shall conduct focused visual surveys for San Joaquin antelope squirrel within a 500-foot buffer of the work area. These surveys shall coincide with their most active season, April 1 to September 30, and shall be conducted only when air temperatures



are between 20" to 30" C (68" to 86" F). Surveys should be conducted using daytime line transects with 10 to 30 meter spacing. If San Joaquin antelope squirrels are observed during surveys, no vegetation or soil disturbance will be allowed within 50 feet of occupied burrows or burrow systems until the individuals are determined to no longer be occupying the area, as determined by a qualified biologist. If active burrow systems can not be avoided by a minimum 50-foot buffer, the Project may potentially result in "take" of this species and "take" authorization from the Department in the form of an Incidental Take Permit would be required prior to Project implementation.

- (f) Tipton Kangaroo Rat: If the Permittee cannot maintain a minimum 50-foot buffer from all small mammal burrows of suitable size for kangaroo rat, or from burrows with diagnostic sign of kangaroo rat use, then a qualified, permitted biologist shall conduct focused visual and trapping surveys during the optimum activity period of April 1 to June 30 to determine presence of Tipton kangaroo rat within the Project site. If Tipton kangaroo rats are observed or trapped during surveys, no vegetation or soil disturbance will be allowed within 50 feet of occupied burrows or burrow systems. If active burrow systems can not be avoided by a minimum 50-foot buffer, the Project may potentially result in "take" of this species and "take" authorization from the Department in the form of an Incidental Take Permit would be required prior to Project implementation. Be advised that a lack of visual observation or negative trapping results does not necessarily determine species absence.
- (g) Pre-activity surveys for sensitive species or their sign (with emphasis on San Joaquin kit fox, San Joaquin antelope squirrel, Tipton kangaroo rat, blunt-nosed leopard lizard, and burrowing owl) shall be conducted by a qualified biologist within 30 days prior to commencement of the proposed construction activity or as specified within current survey protocols. Be advised that this survey is in addition to any required protocol or biological surveys. The Permittee shall notify the DFG of the discovery of any rare, threatened, or endangered species prior to commencement of construction. Surveys shall be conducted within a minimum 500-foot radius of the "work area". The purpose of pre-activity surveys is to avoid intentional and "incidental take," confirm previous observations, identify any subsequent occupation of the stream corridor and other work areas by listed species, and clearly mark all resources to be avoided by Project activities. All surveys for threatened or endangered species shall be done in accordance with the appropriate protocol. Surveys for any State threatened, endangered, or fully-protected species shall be completed unless appropriate preconstruction surveys determine the lack of habitat for these species or potential habitat is flagged and avoided.

- (h) A qualified biological monitor shall be available on-site during any vegetation clearing and grubbing activities, initial ground disturbing, and trenching activities. The biological monitor shall survey ahead of any ground disturbing activity. Following completion of these activities, and for the remainder of the Project, the monitor shall then visit the site daily each morning prior to construction activities to ensure no special status species have re-entered the site, are trapped in trenches, pipes, or other facilities, and to verify compliance with avoidance and minimization measures for special status species.
- (i) If any San Joaquin kit fox dens are observed, they will be avoided by the following buffer zones: occupied = 150 feet; potential = 50 feet; known = 100 feet; kit or natal den = 500 feet (as required in the Negative Declaration). Absolutely no disturbance to San Joaquin kit fox dens will occur.
- (j) If active burrowing owl burrows are observed outside of the nesting season, a minimum 150-foot no disturbance buffer shall be established around each burrow. Implementation of passive relocation with one-way doors is not authorized by DFG for this Project.
- (k) If any special status species, or their burrows, are subsequently discovered on, or within 250 feet of any work site, all potentially disturbing activities shall be halted immediately and work shall not resume until appropriate protective buffer zones are established (unless otherwise approved by DFG).
- (l) No off-road driving shall be permitted except within the approved work site. Storage and parking areas, as well as borrow and spoil sites, are subject to all of the "take" avoidance and mitigation measures that apply to the other work areas.
- (m) All pipes with inside diameter openings smaller than 12-inches shall be capped or otherwise covered prior to being left overnight. If an animal is found in a pipe, the pipe shall be avoided and the animal(s) left to leave of their own accord. If a listed species is found occupying a pipe, all potentially disturbing activities shall be suspended immediately. Work shall not resume without DFG and USFWS concurrence. DFG's and USFWS's approved protective measures shall be implemented.

## 2.4 Wildlife.

- (a) If any general wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.

- (b) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to "take," possess, or needlessly destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no construction shall be completed from February 1 through August 30 unless the following surveys are completed by a qualified biologist.

Raptors: Survey for nesting activity of raptors (with emphasis on burrowing owl) within a 500-foot radius of the construction site. Surveys shall be conducted at appropriate nesting times. If any active nests or owl burrows are observed, these nests and burrows shall be designated an ESA and protected (while occupied) during Project-construction. A minimum 250-foot avoidance buffer shall be established and maintained around each nest or owl burrow.

Other Avian Species: Survey for other avian nesting activity within a 250-foot radius of the defined work area. Surveys shall be conducted at appropriate nesting times. A minimum 150-foot avoidance buffer shall be established and maintained around each nest.

## 2.5 Vegetation.

- (a) Trees shall not be removed. Vegetation removal shall not exceed the minimum necessary to complete operations and shall only occur within the defined work area. If small areas of vegetation need to be utilized, vegetation (i.e., saltbush or *Atriplex*) shall be crushed or trimmed rather than removed. The disturbed portions of the stream bed, banks or channel shall be restored to as near their original condition as possible.
- (b) Vegetation or material removed from the stream areas shall not be stockpiled in the streambed or on its banks.

## 2.6 Vehicles.

- (a) Vehicles shall not be operated in areas where surface water is present. Vehicles shall only operate in the channel during naturally dry conditions or while the affected section of stream is dewatered.
- (b) Construction vehicle access to the stream's banks and bed shall be limited to predetermined ingress and egress corridors on existing roads. All other areas adjacent to the work site shall be considered an ESA and shall remain off-limits to construction equipment. Vehicle corridors and the ESA shall be identified by the Permittee's resident engineer in consultation with DFG representative.



- (c) Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (d) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

2.7 Structures. The Permittee confirms that any and all structures and constructed features shall be properly aligned and otherwise engineered, installed, and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill and that they will not cause long-term changes in water flows that adversely modify the existing upstream or downstream stream bed/bank contours or increase sediment deposition.

2.8 Fill/Spoil.

- (a) Spoil storage sites shall not be located within the stream, where spoil will be washed into the stream. Rock, gravel, and/or other materials shall not be imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.
- (b) Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Excess fill material shall be moved off-site at Project completion.

2.9 Erosion. All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following construction. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used as appropriate to prevent siltation of the stream. Any installation of non-erodible materials not described in the original Project description shall be coordinated with DFG. Coordination may include the negotiation of additional Agreement Provisions for this activity.

2.10 Pollution.

- (a) During construction, the Permittee will not dump any litter or construction debris within the stream zone. All such debris and waste will be picked up daily and properly disposed of at an appropriate site.

- (b) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents will be located outside of the stream/lake channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream/lake, will be positioned over drip-pans.
- (c) Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish or wildlife resulting from Project-related activities, will be prevented from contaminating the soil and/or entering the "Waters of the State".
- (d) The Permittee and all contractors shall be subject to the water pollution regulations found in the FGC Sections 5650 and 12015.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Incidental Take. "Incidental take" authorization and associated compensation shall be obtained from DFG if suitable "take" avoidance measures can not be implemented.
- 3.2 Material and Debris. Excess material and debris shall be removed from the Project site.
- 3.3 Revegetation.
  - (a) If the Project causes any exposed slopes or exposed areas on the stream banks, these areas shall receive an application of seed, straw, or mulch. The seeding/mulching shall be completed as soon as possible.
  - (b) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with DFG. Coordination may include the negotiation of additional Agreement Provisions for this activity.
- 3.3 Structures and Recontouring.
  - (a) Structures and associated materials, not designed to withstand high seasonal flows, shall be removed to areas above the high-water mark before such flows occur.

- (b) The Permittee shall remove and recontour any Project-constructed access corridors to the stream bottom to the original contour.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

##### **4.1 Obligations of the Permittee.**

- (a) The Permittee shall have primary responsibility for monitoring compliance with all protective measures included as "Measures" in this Agreement. Protective measures must be implemented within the time periods indicated in the Agreement and the program described below.
- (b) The Permittee (or the Permittee's designee) shall ensure the implementation of the Measures of the Agreement, and shall monitor the effectiveness of these Measures.

##### **4.2 Reports.** The Permittee shall submit the following Reports to DFG:

- Construction/work schedule (Administrative Measure 1.9).
- Written confirmation from the appropriate DFG staff whether State incidental "take" authorization will be necessary (Avoidance and Minimization Measure 2.3 (b)).
- Results of surveys for the blunt-nosed leopard lizard (Avoidance and Minimization Measure 2.3 (d)).
- Results of surveys for San Joaquin antelope squirrel and Tipton kangaroo rat if a minimum 50-foot buffer can not be maintained around all suitably sized small mammal burrows (Avoidance and Minimization Measures 2.3 (e) and (f)).
- Results of pre-activity surveys (Avoidance and Minimization Measure 2.3 (g)).
- Results of avian surveys for nesting birds if any construction is scheduled during the avian nesting season (Avoidance and Minimization Measure 2.4(b)).
- A Final Project Report to be submitted within 30 days after the Project is completed. The final report shall summarize the Project-construction, including any problems relating to the protective measures of this Agreement. "Before and after" photo documentation of the Project site shall be required.



## **CONTACT INFORMATION**

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other.

### To Permittee:

David Hampton  
Buena Vista Water Storage District  
525 N. Main Street (Mail: Post Office Box 756)  
Buttonwillow, California 93206  
Office Phone: (661) 324-1101  
Fax: (661) 764-5053  
[dhampton@bvh2o.com](mailto:dhampton@bvh2o.com)

### To DFG:

Department of Fish and Game  
Region 4 – Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
Attn: Lake and Streambed Alteration Program – Annette Tenneboe  
Notification #1600-2010-0176-R4  
Phone: (559) 243-4014, ext. 231  
Fax: (559) 243-4020  
[atenneboe@dfg.ca.gov](mailto:atenneboe@dfg.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other Federal, State, or local laws or regulations before beginning the Project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC Sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5050 (fully-protected reptiles), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and the Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake

or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see California Code of Regulations, Title 14, Section 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see California Code of Regulations, Title 14, Section 699.5).

## **EXTENSIONS**

In accordance with FGC Section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see California Code of Regulations, Title 14, Section 699.5). DFG shall process the extension request in accordance with FGC Section 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (FGC Section 1605, Subdivision (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC Section 711.4 filing fee listed at [http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall remain in effect for five (5) years beginning on the date signed by DFG, unless it is terminated or extended before then. All Provisions in the Agreement



shall remain in force throughout its term. Permittee shall remain responsible for implementing any Provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC Section 1605(a)(2) requires.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE:**

The Permittee's concurrence signature on this Agreement serves as confirmation to the DFG that the activities conducted under the terms of this Agreement are consistent with the Project as described in the Negative Declaration prepared by the Buena Vista Water Storage District. A Negative Declaration (State Clearinghouse Number 2010081076) regarding the Project was approved by the Buena Vista Water Storage District, on October 12, 2010. A copy of the Notice of Determination for the Project was provided with the Section 1602 Notification.

#### **EXHIBITS**

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Figure 1. Project Location USGS Quad Map.

#### **AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the Provisions herein.


## AUTHORIZATION

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC Section 1602.

## CONCURRENCE

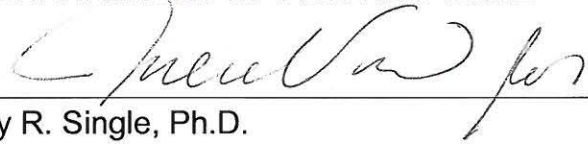
The undersigned accepts and agrees to comply with all Provisions contained herein.

### FOR PERMITTEE

  
\_\_\_\_\_  
David Hampton  
Buena Vista Water Storage District

3/11/2011  
\_\_\_\_\_  
Date

### FOR DEPARTMENT OF FISH AND GAME

  
\_\_\_\_\_  
Jeffrey R. Single, Ph.D.  
Regional Manager – Central Region

3/17/11  
\_\_\_\_\_  
Date

Prepared by: Annette Tenneboe  
Environmental Scientist

**Figure 1**

**Exhibit A**

