

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD., C-220
ONTARIO, CALIFORNIA 91764



STREAMBED ALTERATION AGREEMENT
EPIMS-SBR-42496-R6
SANTA ANA RIVER

EAST VALLEY WATER DISTRICT
STERLING NATURAL RESOURCES CENTER

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and East Valley Water District (Permittee), or as represented by Jeff Noelte.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on July 26, 2023 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW 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 Sterling Natural Resources Center project (Project) is located within the Santa Ana River, at the San Bernardino City Municipal Water Department's Rapid Infiltration and Extraction Facility (RIX), in the City of Colton, County of San Bernardino, State of California; Latitude 34.041337, Longitude -117.354514; Assessor's Parcel Number (APN) 0260-081-22 (Exhibit 1).

PROJECT DESCRIPTION

The Project is limited to the reduction of 6 million gallons of tertiary-treated discharge from the RIX facility to the Santa Ana River per day and habitat creation, restoration, and/or enhancement activities related to compensatory mitigation requirements. East Valley Water District (EVWD) recently completed construction of a new treatment plant (Sterling Natural Resources Center), therefore all wastewater generated within the

EVWD's service area and treated at the RIX facility will now be diverted and treated at the Sterling Natural Resources Center facility.

The RIX facility currently discharges 28.5 million gallons of water per day (MGD) into the Santa Ana River. According to the Reduced Discharge Study analysis completed for Wastewater Change Petition WW0095, the reduction of 6 MGD will affect approximately 4 miles of hydrology and ecology at the Santa Ana River, from the RIX facility downstream to Mission Bridge. Rising groundwater at the Mission Bridge is expected to persist unaffected by Project related reduction and continuing downstream to Prado Basin. The reduction of 6 MGD from the RIX facility will reduce total flow by 18-21 percent, lower water depth in the channel by a maximum of 1.1 inches, reduce the wetted area by 6 percent, and result in an average change in velocity class of 2 percent. Stream width will also be reduced by 3 percent, with riparian vegetation expected to encroach and hang over stream channel.

There are no ground-disturbing activities associated with this Project.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: **BIRDS:** least Bell's vireo (*Vireo bellii pusillus*), Cooper's hawk (*Accipiter cooperi*); **FISH:** Santa Ana sucker (*Catostomus santaanae*); **HABITAT:** Riparian wetland.

The adverse effects the project could have on the fish or wildlife resources identified above include: loss of fluvial processes and sediment transport, reduced water depth, width and velocity, change in contour of channel, decline of vegetative diversity, loss of riparian habitat, direct loss of resources for aquatic organisms, loss of foraging habitat, increased risk of predation.

This Agreement authorizes no more than 1.3 acres of impacts Fish and Game Code section 1602 resources. If any additional impacts to Fish and Game Code section 1602 resources are anticipated, Permittee shall, in coordination with CDFW, submit a new notification or apply for an amendment to this Agreement for authorization of those impacts.

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 CDFW 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 CDFW 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, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Compliance with Other Agencies. The Agreement does not relieve the Permittee of responsibility for compliance with applicable federal, state, or local laws, ordinances, or grant conditions.
- 1.6 Additional Project Impacts. Permittee shall submit to CDFW a request to amend this Agreement if any additional projects or impacts subject to Fish and Game Code section 1602 not identified in this Agreement are anticipated. No additional impacts subject to Fish and Game Code section 1602 are authorized unless the projects and/or impacts are expressly authorized by CDFW by amendment to this Agreement.
- 1.7 Take of Listed Species. The issuance of this Agreement does not authorize the take, incidental or otherwise, of any state or federally listed threatened, endangered, candidate or fully protected species. Take of any California Endangered Species Act (CESA) listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, may result in take of CESA-listed species, CDFW recommends that the project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081).
- 1.8 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

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 Designated Biologist. Permittee shall submit to CDFW for review and approval the name, contact information, and qualifications of each biologist, botanist, or other specialist (Designated Biologist(s)) proposed to perform surveys and/or conduct monitoring activities addressed by this Agreement. Permittee shall specify within these submittals which activities each Designated Biologist is being considered for, and clearly identify the qualifications and experience they possess to support the assignment. Permittee shall also ensure that handling of non-listed fish, wildlife, or plant species is conducted only by Designated Biologists approved by CDFW in writing. Handling of state-listed species will require CESA authorization. Permittee shall submit the aforementioned information at least 30 days before commencement of Project activities addressed by this Agreement. Permittee shall notify CDFW in advance and in writing if a Designated Biologist must be changed to a person not previously proposed for the Project.
- 2.2 Responsibility of Designated Biologist(s). The Designated Biologist(s) shall be responsible for monitoring activities addressed by this Agreement, including, but not limited to all activities that result in clearing, grading, excavation, and/or other ground-disturbing activities. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall confirm and monitor the limits of Project activities addressed by this Agreement.
- 2.3 Authority of Designated Biologist. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall immediately halt any activity that does not comply with this Agreement, and/or order any reasonable measure to avoid the violation of, or maintain compliance with, any measure of this Agreement. The Designated Biologist(s) shall not have the authority to handle any listed species (e.g., threatened, endangered, candidate) and must halt construction and notify CDFW immediately if any listed species identified within or adjacent to the Project area and could be impacted by the Project. If compliance with any measure of this Agreement fails or if the measures of this permit are violated, Permittee shall notify CDFW immediately in writing at R6LSAreporting@wildlife.ca.gov with a cc to Lisa.Cardoso@Wildlife.ca.gov, and contact Lisa Cardoso at (805) 712-0346.
- 2.4 Access Routes and Work Areas. The Designated Biologist(s) shall establish and delineate work areas and access routes, within those areas and routes identified in the notification, to minimize impacts to sensitive resources to the greatest extent feasible. The Designated Biologist(s) shall clearly demarcate, using non-ground-disturbing methods, the prescribed work areas and access routes, and any necessary avoidance areas, including an appropriate buffer. If Permittee determines that alternative access routes or work areas, beyond those described in the notification, are necessary, the Designated Biologist(s) or Permittee shall

contact CDFW for written approval prior to utilizing the alternative route. CDFW may require an amendment to this Agreement if Project modifications are required.

- 2.5 Santa Ana Sucker. **This Agreement does not authorize the handling, translocation, or holding of the Santa Ana sucker (SAS), apart from Moving out of Harm's way (Measure 2.7).** Under Fish and Game Code § 650, CCR, Title 14, a Scientific Collecting Permit (SCP) is required to conduct any activities that pertain to fish and wildlife, including the SAS. To conduct an activity that involves the SAS, the Permittee shall submit an SCP that will be reviewed by CDFW.
- 2.6 Biological and Hydrological Monitoring. Permittee shall monitor biological and hydrological resources prior to and post-Project activity. The monitoring will encompass two efforts, and associated monitoring:
- 2.6.1 One biological assessment will be focused on aquatic resources. The assessment will be completed in the fall, prior to Santa Ana sucker spawning season, and prior to the start of Project activity, within the 4-mile stretch of the Santa Ana River that will be impacted by the decrease of water output. This survey will be used as a reference for future surveys and will encompass: 1) native fish surveys using standardized protocols, 2) measurements of in-stream habitat substrate conditions (cover of substrate type), 3) measurements of stream-adjacent habitat conditions, 4) hydrology (including stream flow, width, and wetted area), and 5) photographs. The effort will produce data on native fish diversity and abundance.
- 2.6.2 The second biological assessment will consist of riparian bird surveys. Surveys will be conducted during the spring and summer prior to the start of Project activity.
- 2.6.3 Following Project completion, post-Project biological assessments shall be conducted annually, consistent with baseline survey assessments (including seasonal timing and variables collected), for a minimum of ten years. Pre- and post- conditions will be assessed and reported to CDFW as described in Measure 4.2.
- 2.7 Moving out of Harm's Way. To reduce direct injury and mortality, the Designated Biologist(s) shall be at the Project site prior to and during all habitat creation and/or restoration activities to move or allow to move out of harm's way any non-listed wildlife that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety.

2.8 Best Management Practices. Permittee shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into streams during project activities. Permittee shall monitor and repair BMPs if necessary, to ensure maximum erosion, sediment, and pollution control. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within and adjacent to areas subject to Fish and Game Code section 1602. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

3. Compensatory Measures

Upon monitoring the acreage of impacts created from Project activities during a ten year span, total impacts shall not exceed 1.3 acre. To compensate for adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

3.1 Aquatic Habitat Creation (Permittee Responsible Mitigation). No later than 12 months following the initiation of Project activities, Permittee, shall enhance a minimum of 2-acres of streambed-associated habitat for the benefit of Santa Ana sucker, as measured in the fall, along approximately 2.5 miles of the Santa Ana River as described in a CDFW-approved Santa Ana Sucker Habitat Mitigation and Monitoring Plan (SAS HMMP; Measure 3.6).

Nodes will be installed in stream reaches lacking suitable habitat for one or more life stages of Santa Ana sucker. Enhancements will include the use of natural materials to increase scour and pool formation, substrate augmentation may also occur to enhance perennial stream function. **There will be no additional impacts created from on-site habitat creation such as vegetation removal, grading, trenching, etc.**

Permittee shall monitor habitat nodes as described in the CDFW-approved SAS HMMP, with reports submitted to CDFW per Measure 4.2. Survey data will be used to assess the need for corrective measures.

3.2 Habitat Enhancement (Permittee Responsible Mitigation). Permittee shall develop and implement a habitat enhancement program along no less than 4.2 miles of the Santa Ana River. Habitat "enhancement" may include removal of nonnative plant species, trash, and debris. Maintenance and monitoring activities shall be defined, in detail, in the CDFW-approved SAS HMMP (Measure 3.6). An Annual Report shall be completed and submitted to CDFW once annual enhancement is

completed pursuant to Measure 4.2. CDFW approval of the SAS HMMP is required prior to the initiation of Project activities.

- 3.3 Off-site Permittee Responsible Mitigation. Permittee shall create, or rehabilitate and enhance, conserve (through the recordation of a CDFW-approved conservation easement, as appropriate), and perpetually manage with a Permittee-funded and CDFW-approved endowment (or other CDFW-approved funding instrument) a total of 3.9 acres of streambed and adjacent riparian habitat, at the CDFW-approved Hidden Valley Creek Project site (Notification No. 1600-2020-0035-R6) (termed herein as 'Mitigation Area').

Permittee shall follow CDFW-approved templates and shall provide all necessary, supporting title and funding documents to CDFW for review and approval, including a Property Analysis Record (PAR) or other PAR-like analysis to identify costs associated with long-term management (see Measure 3.4), and the overall endowment requirement.

- 3.4 Long-Term Management Plan. Permittee shall prepare, or fund the preparation of, a long-term management plan (LTMP) designed to sustain or surpass the habitat quality of the Mitigation Area at CDFW "sign-off" in perpetuity. At a minimum, the LTMP shall identify: (1) an description of the physical conditions of the Mitigation Area expected upon achieving Mitigation Area HMMP success criteria, including water resources and habitat types, and a map that identifies the location of the site; (2) goals related to sustaining habitat quality, wildlife usage, and overall function of the Mitigation Area; and (3) management strategies proposed to meet those goals, including: (a) a monitoring and maintenance schedule and (b) list of contingency measures. The CDFW approved land manager shall be responsible for implementing the LTMP and shall submit a Management Report every year documenting, at a minimum: (1) management activities completed within the previous 12-month term, including: (a) any remedial measures completed; (b) details of non-native species removal; and (c) enforcement activity necessary; (2) an assessment of overall habitat quality within the Mitigation Area, including: (a) percent non-native vegetation cover, (b) any shifts in habitat type, (c) any loss of habitat cover, (d) any change in water resources, and (e) any new non-native species observed ; (3) an evaluation of the success or failure of management strategies implemented, and any changes to management strategies proposed in response to the successes or failures. The Management Report shall include photos documenting the management activities. **Permittee shall submit the LTMP to CDFW for review and approval within 12 months of the initiation of Project activities.**

- 3.4.1 Property Analysis Record for Long-Term Management of Mitigation Lands. Within one (1) year of final signature of this Agreement, the Permittee shall prepare a PAR or PAR-equivalent analysis to calculate the amount of funding necessary to ensure long-term management for the mitigation site subject to this Agreement. The PAR will be reviewed and approved by

CDFW in coordination with the CDFW-approved conservation entity to determine the management needs and costs described above, which then will be used to calculate the amount of capital needed for the management fund. This management fund shall be held and managed by an entity approved by CDFW.

- 3.5 Habitat Mitigation and Monitoring Plan (Off-site Permittee Responsible Mitigation). The Permittee shall submit to CDFW for review and written approval, no later than 30 days prior to initiation of Project activities, a Habitat Mitigation and Monitoring Plan (HMMP) outlining the creation, rehabilitation, and or enhancement activities that will occur on the 3.9-acre off-site Mitigation Area (Measure 3.3). The HMMP shall be prepared by a restoration specialist with expertise in restoration of native plants in southern California ecosystems and native plant revegetation techniques, the restoration specialist will monitor all plantings, maintenance, monitoring and reporting activities. This plan shall include plantings of both overstory and understory vegetation. The plan shall include at a minimum 1) a hydroseed mix appropriate to wetland and riparian vegetation within the Project area, consisting entirely of seeds of native species, 2) a planting palette, including tree species being removed from the Project site, 3) invasive species control measures, 4) a description of the proposed numbers, container sizes, and planting locations, by species, of plants proposed for installation at the Mitigation Area, 5) the proposed monitoring activities (e.g., locations, techniques, scheduling), 6) a description of all maintenance operations, with particular emphasis on watering methods and schedules; and 7) any/all other references to revegetation and restoration activities specified by this Agreement. All procedures shall be approved by CDFW in writing. The primary monitoring surveys shall be conducted in Spring and Fall, and an annual quantitative survey shall be performed to determine the success of restoration efforts (survival, cover and growth of plants). Additional Information the HMMP shall provide includes:
- 3.5.1 **Baseline Data.** A baseline of the vegetation types within Project and Mitigation Area using quantitative data (e.g. vegetation cover, density, and species diversity) shall be collected and analyzed using a CDFW approved sampling method (e.g. quadrats, transects, or releve).
 - 3.5.2 **Physical Conditions.** A description of the physical conditions of the Mitigation Area, including (i) a map and (ii) GIS shapefiles;
 - 3.5.3 **Success Standards.** Success standards using approved sampling techniques (e.g. transects, releve, etc.) that provides quantitative/ qualitative data (e.g. diversity indices, vegetation relative/absolute cover, survivorship, etc.) as determined within the approved HMMP; and
 - 3.5.4 **Source Plant Material.** Plant Material for revegetation methodology to be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from randomly selected native trees and shrubs occurring

locally within the same drainage system. Any replacement tree/shrub stock, if used, which cannot be grown from cuttings or seeds, shall be obtained from a native plant survey, be ant-free, and shall not be inoculated to prevent heart rot.

- 3.5.5 Nonnative Vegetation. Cover of invasive nonnative plants listed in the California Invasive Plant Council's Invasive Plant Inventory: <http://www.cal-ipc.org/ip/inventory/index.php> shall be as followed:
- 3.5.5.1 Nonnative perennial species (Cal-IPC threat of High or Moderate) <5%
 - 3.5.5.2 Nonnative annual species (Cal-IPC threat of High or Moderate) ≤5%; and
 - 3.5.5.3 Other nonnative plant species <10%.
- 3.5.6 Contingency measures. Corrective actions to be taken or alternative areas when mitigation measures do not meet the proposed targets, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or offsite, or purchase of mitigation credits from a mitigation bank for that portion of the Mitigation Area that has not met the criteria. Any contingency actions will be determined in coordination with, and approved by, CDFW. If Permittee proposes to meet the success criteria through modifications to the existing habitat or creation of additional habitat, Permittee shall be responsible for maintaining and monitoring these areas with the same survival and growth requirements for 5 years after planting, or until CDFW deem the sites successful.
- 3.5.7 Mitigation and Monitoring Reports. Permittee shall have the qualified restoration specialist monitor the recovery of plant, wildlife, and aquatic resources in the area following mitigation implementation. Monitoring of plant, wildlife, and aquatic resources shall be done at least twice a year as outlined in the HMMP, through the term of restoration. The results and analysis shall be submitted annually to CDFW by February 1 of each year after mitigation implementation for at least 5 years and until mitigation success criteria have been met. This report shall include the status and any success trends (i.e., comparison throughout the 5 years of monitoring) for the success criteria outlined in the HMMP. Photos from designated photo stations shall be included.
- 3.5.8 HMMP Success Criteria. The HMMP shall identify the success criteria for the habitats specified above and shall compare against an appropriate reference site with as good or better-quality habitat than the pre-Project impact site. The reference site shall be approved by CDFW. The success

criteria shall include percent cover (invasive and native vegetation), species diversity, and any other measures of success deemed appropriate by CDFW. Success criteria shall be separated into vegetative layers (tree, shrub, grass, and forb), and each layer shall be compared to the success criteria of the reference site to ensure one species or layer does not disproportionately dominate a site, but instead mimic the conditions of the reference site. Permittee shall be responsible for any cost incurred during the restoration/mitigation or in subsequent corrective measures.

3.5.9 **Mitigation Success.** After the fifth monitoring year, if the site has met the success criteria outlined in the HMMP, CDFW may request a site visit to determine if the mitigation portion of the agreement is deemed complete. The site should be free of trash and any irrigation infrastructure shall be removed if it was used.

3.6 **Santa Ana Sucker.** Permittee will submit a SAS HMMP for the following proposed activities, with details of each activity to be submitted, reviewed, and approved by CDFW. Permittee will acquire a Scientific Collecting Permit for the activities listed below.

3.6.1 **Aquatic Predator Control.** A minimum of two aquatic predator control efforts will occur annually, in-perpetuity, within the upper Santa Ana River watershed, including the created habitat nodes.

Upper Watershed Santa Ana Sucker Establishment. Translocation of SAS to tributary streams within the species historic range as approved by and consistent with a USFWS and CDFW-approved SAS Translocation Plan. A financial security deposit, in an amount approved by USFWS and CDFW, will be established prior to Project flow reduction to the Santa Ana River, to provide assurances that the translocations will be implemented and monitored to demonstrate achievement of success criteria (progress towards achievement of success criteria demonstrated within 5 years of translocation, or met within 10 years of translocation)

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 **Biological Monitoring Reports.** Permittee shall prepare and submit pre- and post-Project biological monitoring reports as described in Measure 2.6. Annual Reports are to be submitted within 30 days of monitoring completion.
- 4.2 **Annual Reporting – Aquatic Habitat Creation, Santa Ana River Habitat Enhancement, and SAS HMMP.** Permittee shall submit annual reports to CDFW

as described in the SAS HMMP (which encompasses Measure 3.1 Aquatic Habitat Creation, and Measure 3.2 Habitat Enhancement (along the Santa Ana River).

- 4.3 Notification to CNDDDB. If any sensitive species (rare, threatened, endangered, candidate, fully protected, species of special concern, etc.) are observed on or in proximity to the Project site, or during Project surveys, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings. The CNDDDB form is available online at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submittign-Data>. A copy of this information shall also be mailed or emailed within seven days to CDFW at the address or email listed below under Contact Information. Please reference Notification No. EPIMS-SBR-42496-R6.
- 4.4 Notification of Start of Project Activity. Permittee shall notify CDFW, in writing, of Project initiation and Project completion. Notification shall be sent at least 14 days prior to Project initiation, and 14 days following Project completion. Notification shall be emailed to R6LSAReporting@Wildlife.ca.gov.

5. Financial Security

Permittee shall provide financial security in the form of a Letter of Credit (LOC) (Exhibit 2), or other form of security approved by CDFW, for an amount sufficient for CDFW or its contractors to complete and perform all compensatory and reporting measures pursuant to this Agreement, prior to commencement of Project activities.

- 5.1 The amount of the LOC, or other form of security approved by CDFW, shall be based on a cost estimate that shall be submitted to CDFW for approval no less than 60 days **prior to commencing project activities** within areas subject to Fish and Game Code section 1602.
- 5.2 Once the amount of the financial security is approved by CDFW, Permittee shall provide a draft copy of the LOC, or other form of security approved by CDFW, to CDFW at the address listed below for review and approval no less than 30 days prior to commencing project activities. The financial security shall not be executed without CDFW's prior approval.
- 5.3 The final executed LOC, or other form of security approved by CDFW, shall be submitted to CDFW **prior to commencing project activities** within areas subject to Fish and Game Code section 1602. Upon execution of the LOC, or other form of security approved by CDFW, Permittee shall provide the original and one copy of the executed document to CDFW at the address listed below .
- 5.4 In the event that the LOC will expire and not be renewed before the compensatory and reporting obligations have been met, Permittee shall be responsible for providing CDFW a new LOC to replace the existing LOC **at least 60 days prior to the expiration date**.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through Environmental Permit Information Management System (EPIMS) as instructed by CDFW.

To Permittee:

East Valley Water District
EPIMS-SBR-42496-R6
Sterling Natural Resources Center
31111 Greenspot Road,
Highland, California 92346
inoelte@eastvalley.org

To CDFW:

Department of Fish and Wildlife
Inland Deserts Region
EPIMS-SBR-42496-R6
Sterling Natural Resources Center
R6LSAReporting@Wildlife.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 CDFW'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

CDFW 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 CDFW 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 CDFW 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 CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW 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 CDFW'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 complying with, or 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

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 Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 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

CDFW may amend the Agreement at any time during its term if CDFW 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 CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the

corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 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 CDFW 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 use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with Fish and Game Code section 1605, subdivision (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 use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (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 (Fish & G. Code § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on November 4, 2028, 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 Fish and Game Code section 1605, subdivision (a)(2) requires.

EXHIBITS

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

- A. EXHIBIT 1: Project Area
- B. EXHIBIT 2: Letter of Credit Template

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 CDFW in accordance with Fish and Game Code section 1602.

CONCURRENCE

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's EPIMS, the permittee accepts and agrees to comply with all provisions contained herein.

The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.

EXHIBIT 1: Project Area



EXHIBIT 2: Letter of Credit Template

[Financial institution letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. **[number issued by financial institution]**

Issue Date: **[date]**

Beneficiary:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract Coordinator

Amount: U.S. \$**[dollar number]** **[(dollar amount)]**

Expiry: **[Date]** at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, [name of applicant] ("Applicant"), we, **[name of financial institution]** ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$**[dollar number]** **[(dollar amount)]** ("Principal Sum").
2. We are informed that this Credit is and has been established for the benefit of CDFW pursuant to the terms of the **[conservation or mitigation bank name]** **[choose one: Bank Enabling Instrument (BEI) or Conservation Bank Enabling Instrument (CBEI)] [(CDFW tracking number)]**, approved and signed by **[choose one: CDFW or the Interagency Review Team (IRT)]** on **[date]**.
3. We are finally informed that this Credit is intended by **[choose one: CDFW or the IRT]** and the Applicant to serve as security for the **[choose one: performance or interim management or construction]** by the Applicant under the terms of the **[conservation or mitigation bank name]** **[choose one: BEI or CBEI]**.
4. CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A,

which is attached hereto, at our office located at [***name and address of financial institution***].

5. The Certificate shall be completed and signed by an Authorized Representative of CDFW as defined in paragraph 11 below. Presentation by CDFW of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.
6. Upon presentation of a duly executed Certificate as above provided, payment shall be made to CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
7. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
8. Upon being notified that the demand for payment was not effected in conformity with the Credit, CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
9. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
10. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of CDFW, as defined in paragraph 11 below.
11. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Chief of CDFW's Habitat Conservation Planning Branch.
12. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least one hundred twenty (120) days prior to any such date, we notify CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
13. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of financial institution***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, Post Office Box 944209, Sacramento, CA

94244-2090, Attn: HCPB Contract Coordinator; and (ii) for the Applicant: [***name and address of applicant***].

14. This Credit may not be transferred.

15. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

16. This Credit shall, if not canceled, expire on [***expiration date***], or any extended expiration date.

17. We hereby agree with CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.

18. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

[***Name of financial institution***]

By: _____

Name: _____

Title: _____

ATTACHMENT A

CERTIFICATE FOR DRAWING

[*CDFW Letterhead*]

[*Date*]

[*Name and address of financial institution*]

Re: Irrevocable Standby Letter of Credit No. [*number issued by financial institution*]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in paragraph 11 of the above-referenced standby letter of credit ("Credit"), hereby certifies to the Issuer that:

1. [*Insert one of the following statements:* "In the opinion of CDFW, the Applicant has failed to comply with the terms of the [*conservation or mitigation bank name*] [*insert:* Bank Enabling Instrument *or* Conservation Bank Enabling Instrument] referenced in paragraph 3 of the Credit." *or* "As set forth in paragraph 12 of the Credit, the Issuer has informed CDFW that the Credit will not be extended and the Applicant has not provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. CDFW is therefore making a drawing under the Credit in amount of U.S.
4. \$_____.
5. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, CDFW has executed and delivered this certificate as of this _____ day of [*month*], [*year*].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[*Insert one of the following:* "Director" *or* "General Counsel" *or* "Regional Manager, [*Name of Regional Office*]" *or* "Chief, Habitat Conservation Planning Branch"]

ATTACHMENT B

CERTIFICATE FOR CANCELLATION

[CDFW Letterhead]

[Date]

[Name and address of financial institution]

Re: Irrevocable Standby Letter of Credit No. [**number issued by financial institution**]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in paragraph 11 of the above-referenced standby letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. **Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the terms referenced in paragraph 3 of the Credit" **or** "The Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."
2. CDFW therefore requests the cancellation of the Credit.

Therefore, CDFW has executed and delivered this certificate as of this ___day of **[month]**, **[year]**.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[Insert one of the following: "Director" **or** "General Counsel" **or** "Regional Manager, [Name of Regional Office]" **or** "Chief, Habitat Conservation Planning Branch"]