

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CA, 92123



STREAMBED ALTERATION AGREEMENT - DRAFT VERSION 4
EPIMS-ORA-48911-R5
SYPHON RESERVOIR AND UNNAMED DRAINAGES TRIBUTARY TO SYPHON
RESERVOIR

PAUL A. COOK
IRVINE RANCH WATER DISTRICT
SYPHON RESERVOIR IMPROVEMENT PROJECT (PROJECT)

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Irvine Ranch Water District (Permittee) as represented by Paul A. Cook.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on March 13, 2024, 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 Project is located at the existing Syphon Reservoir and unnamed drainages to Syphon Reservoir, northeast of Portola Parkway between Bee Canyon Access Road and SR-133 in the County of Orange, State of California; Latitude 33.712018 N, Longitude -117.729456 W; Assessor's Parcel Numbers (APN) 104-117-40, 104-117-27, and 104-117-42.

The off-site mitigation area is located near San Joaquin Marsh, northwest of the intersection of Campus Drive and University Drive in City of Irvine, County of Orange, State of California; Latitude 33.65560953 N, Longitude -117.84787172 W; APN 445-072-16.

PROJECT DESCRIPTION

The Project is limited to activities associated with the expansion of Syphon Reservoir, the Syphon Dam, and Syphon Reservoir Treatment Facilities. Access and maintenance roads; and an on-site and an off-site mitigation area are also included in the Project.

Site Preparation, Preconstruction Activities, and Access Roads

All water within the reservoir will be drained and vegetation cleared between September 16 to January 31, outside of the bird nesting season, prior to initiation of active construction activities. Access roads and temporary construction roads will then be established, with the primary access point for operation and maintenance provided at the intersection at Portola Parkway and Sand Canyon Ave. An existing unpaved road, previously used to access an abandoned portion of the Highline Canal, will be improved to allow for two lanes of construction access on site. Excavation into the existing slope and retaining wall construction may be conducted to allow for large truck access.

Stockpile, staging areas, and runoff settling basins will also be installed during construction mobilization and will be located primarily within the expanded reservoir inundation area. These locations will hold reusable excavation materials, sediments, topsoil, as well as material imported from off site, and may be used for excavating borrow materials once stockpiles are removed. Additional stockpile/staging locations may be established outside the inundation area to hold materials primarily used in upland restoration. Temporary construction roads may be adjusted following exhaustion of these stockpiles, staging, and potential excavation areas. Some of these roads may transition into permanent maintenance and access roads. Runoff settling basins will capture sediment and runoff, including nuisance flow, flows from the storm drain conduit below SR-133, and flows from dewatering operations. They may also be used as a water source for dust control and soil moisture conditioning. Initial construction areas will be cleared, and ingress/egress areas will be delineated/marked so that surrounding habitat and riparian impacts are minimized.

Reservoir Expansion

Reservoir expansion will increase the reservoir's maximum water surface elevation from 376 ft above mean sea level (AMSL) to 456 ft AMSL, and reservoir capacity will increase from 500 acre-feet to approximately 5,500 acre-feet. Shoreline expansion will result from the increased reservoir capacity, inundating up to 82 acres of upland and wetland vegetation communities, including Natural Conservation Community Planning (NCCP)/Habitat Conservation Plan (HCP) Reserve lands. The existing reservoir ground surface will be non-uniformly excavated to obtain approximately 2.2 million cubic yards of material for construction of the new dam. A seepage control drainage system will be constructed on the downstream side of the dam to route seepage through the dam and prevent erosion in the embankment area.

A groundwater monitoring well is also included within the reservoir expansion area. The sampling location is within the Project footprint.

Groundwater relief trenches will be installed as needed during excavation. The area downstream of the toe of the dam will also be dewatered. Large excavators and articulated trucks will be used for borrow excavation, and processing and drying of saturated materials will take place at the stockpile areas. The excavation phase of the Project is anticipated to take approximately 7 to 9 months.

Dam Expansion

Following excavation, stockpiling, and processing of sediment, the existing dam at Syphon Reservoir will be replaced with a new engineered dam, increasing dam height to 136 ft from 59 ft and increasing dam crest elevation to 468 ft AMSL from 385 ft AMSL. The dam will be an earthen fill embankment, with embankment slopes providing adequate stability for seismic loading conditions. The dam crest will be approximately 30 ft wide and 1,400 ft long. The dam will be constructed of primarily on-site materials obtained from excavation of the existing earthen embankment dam and spillway, excavation below the new dam footprint, and borrow excavations within the existing and proposed reservoir area; however, importation of some natural earth material from a quarry located in Corona is anticipated, approximately 200,000 cubic yards of material. The natural earth material will be non-toxic and inert. To provide erosion protection from wave action within the reservoir, the upstream slope of the dam will be slope protected with riprap. Grass will be installed on the downstream slope to provide vegetative erosion protection from rainfall runoff. Depending on weather conditions, approximately 12 months of work will be required to construct the embankment above 340 ft AMSL of elevation (up to the dam crest). Equipment used to construct the embankment will include scrapers, large excavators, articulated trucks, bulldozers, sheepsfoot, vibratory rollers, graders, and water wagons.

The spillway crest will be constructed to an elevation of approximately 456 ft AMSL, which will prevent overtopping of the dam by providing 12 ft of freeboard relative to the dam crest (468 ft AMSL). The spillway will be constructed as an underground pipe.

Construction of the expanded reservoir, dam, and spillway is expected to be completed in approximately 48 months, depending on weather conditions.

Treatment Facilities

Existing strainer and disinfection facilities will be demolished during construction of the new dam and replaced with expanded facilities at the toe of the new dam for filtration, chlorination, and de-chlorination. The footprint of the facilities is anticipated to be approximately 45 ft by 200 ft. Once the new dam embankment is largely complete, the new treatment facility area will be prepared and graded, followed by installation of buried and exposed piping, mechanical, electrical/control, and structural facilities. Any water encountered during excavation or trenching will first be reused on site as construction water (if feasible), second be discharged to sewer, and third be discharged to storm drain with treatment if the capacities of the first two options are exceeded. Trench width, depending on the size of the pipeline, will vary from 2 to 6 ft. Construction of treatment facilities is expected to take approximately 2 years, and equipment includes

a front-end loader, backhoe, bobtail dump truck, transit mix concrete truck, cranes, vibratory walk-behind compactor and water truck.

On-site Freshwater Wetland and Riparian Habitat Replacement Areas

An on-site mitigation area for woody-riparian habitat of at least 6.0 acres will be established at the northeast end of the expanded reservoir. The on-site mitigation area will be initially irrigated with temporary overhead spray irrigation to assist with plant establishment. Permanent irrigation will be provided from two sources: 1) directly from the expanded reservoir when water levels reach the control structure elevation in the peripheral berm, that will allow water to flow into the on-site mitigation area; and 2) a flood irrigation system installed at the high points of the site to allow water to inundate the area. Water will be supplied from the existing Santiago Aqueduct Commission water line that crosses the northeast corner of the property. IRWD has existing agreements allowing its use of water from the Santiago Aqueduct Commission water line.

San Joaquin Marsh Off-site Aquatic Habitat Mitigation Area

An off-site mitigation area will be established directly to the west of IRWD's 321-acre San Joaquin Marsh (SJM) wetland area. This area is comprised of two sub-parcels: the SAMS-1 parcel, previously used as mitigation by The Irvine Company; and the NTS-62 parcel, which was considered for a habitat restoration and water quality improvement project by IRWD but was not implemented. The mitigation site will be irrigated with water from San Diego Creek diverted directly to the Off-site Mitigation Area. This irrigation would be provided through a new pipeline that stems off the existing SJM discharge pump (or from the discharge pipeline closer to San Diego Creek). In addition to irrigation of the mitigation site, the new piping will also allow for connection to the existing UC Pond 1, which is directly to the southwest of the site. Currently, water is occasionally diverted from SJM to the University of California's (UC) San Joaquin Marsh Reserve after large rain events. This Agreement does not authorize any repairs or replacements to UC's existing intake.

Operations, Maintenance, and Additional Geotechnical Investigations

This Agreement covers the activities associated with the expansion of Syphon Reservoir, the Syphon Dam, and Syphon Reservoir Treatment Facilities, access/maintenance roads, and on-site and off-site restoration. It does not cover the operations, maintenance, or any additional activities including, but not limited to, geotechnical investigations. These subsequent activities may require new notification for Lake or Streambed Alteration to be submitted to CDFW.

PROJECT IMPACTS

Existing fish or wildlife resources the Project could substantially adversely affect include:

Amphibians: California toad (*Anaxyrus boreas halophilus*), Baja California treefrog (*Pseudacris hypochondriaca hypochondriaca*);

Birds: sharp-shinned hawk (*Accipiter striatus*), Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*), grasshopper sparrow (*Ammodramus savannarum*), red-shouldered hawk (*Buteo lineatus*), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*), Vaux's swift (*Chaetura vauxi*), northern harrier (*Circus cyaneus*), white-tailed kite (*Elanus leucurus*), prairie falcon (*Falco mexicanus*), American peregrine falcon (*Falco peregrinus anatum*), yellow-breasted chat (*Icteria virens*), coastal California gnatcatcher (*Polioptila californica californica*), yellow warbler (*Setophaga petechia*), least Bell's vireo (*Vireo bellii pusillus*), mallard (*Anas platyrhynchos*), redhead (*Aythya americana*), Canada goose (*Branta canadensis*), ruddy duck (*Oxyura jamaicensis*), California quail (*Callipepla californica*), western grebe (*Aechmophorus occidentalis*), double-crested cormorant (*Phalacrocorax auritus*), great egret (*Ardea alba*), great blue heron (*Ardea herodias*), green heron (*Butorides virescens*), snowy egret (*Egretta thula*), white-faced ibis (*Plegadis chihi*), turkey vulture (*Cathartes aura*), osprey (*Pandion haliaetus*), Cooper's hawk (*Accipiter cooperii*), red-tailed hawk (*Buteo jamaicensis*), American coot (*Fulica americana*), killdeer (*Charadrius vociferous*), black-necked stilt (*Himantopus mexicanus*), least sandpiper (*Calidris minutilla*), greater yellowlegs (*Tringa melanoleuca*), Caspian tern (*Hydroprogne caspia*), Forster's tern (*Sterna forsteri*), rock pigeon (*Columba livia*), mourning dove (*Zenaida macroura*), greater roadrunner (*Geococcyx californianus*), lesser nighthawk (*Chordeiles acutipennis*), white-throated swift (*Aeronautes saxatalis*), Anna's hummingbird (*Calypte anna*), rufous hummingbird (*Selasphorus rufus*), Allen's hummingbird (*Selasphorus sasin*), northern flicker (*Colaptes auratus*), Nuttall's woodpecker (*Picoides nuttallii*), Pacific-slope flycatcher (*Empidonax difficilis*), ash-throated flycatcher (*Myiarchus cinerascens*), black phoebe (*Sayornis nigricans*), Say's phoebe (*Sayornis saya*), Cassin's kingbird (*Tyrannus vociferans*), American crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), horned lark (*Eremophila alpestris*), barn swallow (*Hirundo rustica*), cliff swallow (*Petrochelidon pyrrhonota*), northern rough-winged swallow (*Stelgidopteryx serripennis*), tree swallow (*Tachycineta bicolor*), bushtit (*Psaltriparus minimus*), Bewick's wren (*Thryomanes bewickii*), house wren (*Troglodytes aedon*), blue-gray gnatcatcher (*Polioptila caerulea*), wrentit (*Chamaea fasciata*), northern mockingbird (*Mimus polyglottos*), California thrasher (*Toxostoma redivivum*), cedar waxing (*Bombycilla cedrorum*), Townsend's warbler (*Dendroica townsendi*), common yellowthroat (*Geothlypis trichas*), orange-crowned warbler (*Oreothlypis celata*), Wilson's warbler (*Wilsonia pusilla*), song sparrow (*Melospiza melodia*), California towhee (*Melozone crissalis*), spotted towhee (*Pipilo maculatus*), Lazuli bunting (*Passerina amoena*), blue grosbeak (*Passerina caerulea*), black-headed grosbeak (*Pheucticus melanocephalus*), western tanager (*Piranga ludoviciana*), Bullock's oriole (*Icterus bullockii*), hooded oriole (*Icterus cucullatus*), great-tailed grackle (*Quiscalus mexicanus*), western meadowlark (*Sturnella neglecta*), house finch (*Carpodacus mexicanus*), lesser goldfinch (*Carduelis psaltria*), Lawrence's goldfinch (*Spinus lawrencei*), American goldfinch (*Spinus tristis*);

Invertebrates: Crotch's bumble bee (*Bombus crotchii*), mourning cloak (*Nymphalis antiopa*), western tiger swallowtail (*Papilio rutulus*), painted lady (*Vanessa cardui*);

Mammals: coyote (*Canis latrans*), Virginia opossum (*Didelphis virginiana*), desert cottontail (*Sylvilagus audubonii*), raccoon (*Procyon lotor*);

Plants: San Diego County viguiera (*Bahiopsis laciniata*), Santa Catalina mariposa lily (*Calochortus catalinae*), intermediate mariposa-lily (*Calochortus weedii* var. *intermedius*), blue elderberry (*Sambucus nigra* ssp. *caerulea*), procumbent pigweed (*Amaranthus blitoides*), California amaranth (*Amaranthus californicus*), laurel sumac (*Malosma laurina*), lemonadeberry (*Rhus integrifolia*), poison oak (*Toxicodendron diversilobum*), wild carrot (*Daucus pusillus*), sanicle (*Sanicula* sp.), climbing milkweed (*Funastrum cynanchoides* var. *hartwegii*), sacapellote (*Acourtia microcephala*), western pearly everlasting (*Anaphalis margaritacea*), California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), mule fat (*Baccharis salicifolia*), California brickellbush (*Brickellia californica*), fascicled tarweed (*Deinandra fasciculata*), false daisy (*Eclipta prostrata*), California brittlebush (*Encelia californica*), brittlebush (*Encelia farinosa*), pine-bush (*Ericameria pinifolia*), horseweed (*Erigeron canadensis*), leafy fleabane (*Erigeron foliosus*), golden yarrow (*Eriophyllum confertiflorum*), lowland cudweed (*Gnaphalium palustre*), California matchweed (*Gutierrezia californica*), telegraph weed (*Heterotheca grandiflora*), Menzies' goldenbush (*Isocoma menziesii* var. *menziesii*), coastal goldenbush (*Isocoma menziesii* var. *vernonioides*), Coulter's horseweed (*Laennecia coulterii*), narrowleaf cottonrose (*Lagfia gallica*), goldfields (*Lasthenia* sp.), false rosinweed (*Osmadenia tenella*), two-color rabbit-tobacco (*Pseudognaphalium bioletti*), Ladies' tobacco (*Pseudognaphalium californicum*), Wright's cudweed (*Pseudognaphalium canescens*), Jersey cudweed (*Pseudognaphalium luteoalbum*), grassland silverpuffs (*Stebbinsoseris heterocarpa*), rod wirelettuce (*Stephanomeria virgata*), silver puffs (*Uropappus lindleyi*), cocklebur (*Xanthium strumarium*), common fiddleneck (*Amsinckia menziesii*), cryptantha (*Cryptantha* sp.), seaside heliotrope (*Heliotropium curassavicum* var. *oculatum*), caterpillar phacelia (*Phacelia cicutaria*), wild Canterbury bells (*Phacelia minor*), popcornflower (*Plagiobothrys* sp.), shaggyfruit pepperweed (*Lepidium lasiocarpum*), curvepod yellowcress (*Rorippa curvisiliqua*), common eucrypta (*Eucrypta chrysanthemifolia*), coast cholla (*Cylindropuntia prolifera*), tuna cactus (*Opuntia ficus-indica*), coastal prickly pear (*Opuntia littoralis*), western prickly pear (*Opuntia occidentalis*), Vasey's prickly pear (*Opuntia vaseyi*), small-flower catchfly (*Silene gallica*), bladderpod (*Peritoma arborea*), island false bindweed (*Calystegia macrostegia*), pigmy weed (*Crassula connata*), lance-leaved dudleya (*Dudleya lanceolata*), many-stemmed dudleya (*Dudleya multicaulis*), calabazilla (*Cucurbita foetidissima*), chilicothe (*Marah macrocarpa*), turkey-mullein (*Croton setigerus*), rattlesnake weed (*Euphorbia alomarginata*), smallseed sandmat (*Euphorbia polycarpa*), thyme-leafed spurge (*Euphorbia serpillifolia*), deerweed (*Acmispon glaber*), small flowered lotus (*Acmispon micranthus*), strigose lotus (*Acmispon strigosus*), miniature lupine (*Lupinus bicolor*), arroyo lupine (*Lupinus succulentus*), blunt leaved lupine (*Lupinus truncatus*), clover (*Trifolium* sp.), coast live oak (*Quercus agrifolia*), California centaury (*Zeltnera venusta*), white sage (*Salvia apiana*), chia (*Salvia columbariae*), black sage (*Salvia mellifera*), vinegarweed (*Trichostema lanceolata*), chaparral mallow (*Malacothamnus fasciculatus*), Miner's lettuce (*Claytonia perfoliata*), wishbone bush (*Mirabilis laevis* var. *crassifolia*), intermediate sun cups (*Camissoniopsis intermedia*), California fuchsia (*Epilobium canum*), creeping primrose-willow (*Ludwigia*

repens), purple owl's-clover (*Castilleja exserta*), orange bush monkeyflower (*Diplacus aurantiacus*), Nuttall's snapdragon (*Antirrhinum nuttallianum*), California plantain (*Plantago erecta*), Turkish rugging (*Chorizanthe staticoides*), California buckwheat (*Erigonum fasciculatum*), false waterpepper (*Persicaria hydropiperoides*), willow weed (*Persicaria lapathifolia*), fairy mist (*Pterostegia drymariodes*), toyon (*Heteromeles arbutifolia*), narrow leaved bedstraw (*Galium angustifolium*), Goodding's black willow (*Salix gooddingii*), arroyo willow (*Salix lasiolepis*), Parry's jepsonia (*Jepsonia parryi*), showy penstemon (*Penstemon spectabilis*), sacred thorn-apple (*Datura wrightii*), Indian tobacco (*Nicotiana quadrivalvis*), American black nightshade (*Solanum americanum*), greenspot nightshade (*Solanum douglasii*), bigbract verbena (*Verbena bracteata*), western vervain (*Verbena lasiostachys*), wavyleaf soap plant (*Chlorogalum pomeridianum* var. *pomeridianum*), chaparral yucca (*Hesperoyucca whipplei*), giant yucca (*Yucca gigantea*), moundlily yucca (*Yucca gloriosa*), tall cyperus (*Cyperus eragrostis*), California bulrush (*Schoenoplectus californicus*), toad rush (*Juncus bufonius*), common goldenstar (*Bloomeria crocea*), splendid mariposa lily (*Calochortus splendens*), salt grass (*Distichlis spicata*), giant wild rye (*Elymus condensatus*), Mexican sprangletop (*Leptochloa fusca* ssp. *uninervia*), little California melica (*Melica imperfecta*), littleseed muhly (*Muhlenbergia microsperma*), Nevada blue grass (*Poa secunda*), Mediterranean grass (*Schismus barbatus*), crested needlegrass (*Stipa coronata*), foothill needlegrass (*Stipa lepida*), purple needlegrass (*Stipa pulchra*), common goldenstar (*Bloomeria crocea*), blue dicks (*Dichelostemma capitatum*), narrowleaf cattail (*Typha domingensis*);

Reptiles: coastal whiptail (*Aspidoscelis tigris stejnegeri*), orange-throated whiptail (*Aspidoscelis hyperythrus*), western fence lizard (*Sceloporus occidentalis*), side-blotched lizard (*Uta stansburiana*), southern Pacific rattlesnake (*Crotalus oreganus helleri*);

And all other riparian/wetland vegetation which provides habitat for these species and all other aquatic and wildlife resources in the Project vicinity.

The adverse effects the Project could have on the fish or wildlife resources identified above include: change in channel cross-section (confinement or widening); relocation of stream channel; degradation or aggradation of channel; accelerated channel scour; increase of bank erosion during construction; change in composition of channel materials; change in contour of bed, channel or bank; increase in sediment transport; increased turbidity; short-term release of contaminants; change in water temperature; change in dissolved oxygen (DO); loss or decline of riparian and/or emergent marsh habitat; change to, or loss or decline of natural bed substrate; colonization by exotic plant species; disruption to nesting birds and other wildlife; construction pits and trenches that can capture terrestrial organisms; disturbance from Project activity; change in shading or insolation leading to vegetative change; diversion of flow water from, or around, activity site; dewatering; rewatering; change in stream flow; change in flow depth, width, and velocity; and change in channel form; loss or decline of instream channel habitat; soil compaction.

Impacts

The Project is anticipated to impact approximately 6.2 acres of woody riparian habitat consisting of arroyo willow thicket, black willow thicket, mule fat scrub, and other species; 5.33 acres of tule marsh; and 0.74 acres of ephemeral drainage consisting of coyote brush scrub, chapparal bushmallow scrub, laurel sumac chaparral, California sagebrush scrub, coast prickly pear scrub, and other species.

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, all related notification materials, and California Environmental Quality Act (CEQA) documents, if any, always readily available at the Project site and shall be presented to CDFW personnel, or personnel from another local, state, or federal 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 acknowledges that CDFW law enforcement personnel, using lawful means, may enter the Project site any time without notice to verify compliance with the Agreement. Permittee agrees that CDFW scientific personnel may enter the Project site with 24-hour advance notice to verify compliance with the Agreement.
- 1.5 Changes in Project. If Permittee anticipates Project scope changes, any additional impacts to resources subject to Fish and Game Code section 1602, or additional operations and maintenance activities not identified in this Agreement, Permittee shall submit to CDFW a request to amend this Agreement.
- 1.6 Notification Requirements. CDFW requires that Permittee: 1) immediately contact CDFW in writing if monitoring reveals that any of the protective measures were not implemented or if it anticipates that measures will not be implemented within the time period specified; or 2) immediately notify CDFW if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring. Permittee shall provide recommendations, if any, for alternative

protective measures. Permittee shall report any violations or non-compliance of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, to the CDFW contact identified below within 24 hours of the violation or non-compliance occurring.

- 1.7 Compliance. CDFW may, at its sole discretion, review relevant documents maintained by Permittee, interview Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement. CDFW shall verify compliance with protective measures to ensure the accuracy of Permittee's mitigation, monitoring, and reporting efforts.
- 1.8 Agreed Work Activities. The activities identified in the above Project description constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that Permittee is precluded from doing other activities within the streams identified within the Project location. However, activities not specifically agreed to and resolved by this Agreement may be subject to a separate notification.
- 1.9 No Trespass. To the extent that any provisions of this Agreement provide for activities that require Permittee to traverse another owner's property, such provisions are agreed to with the understanding that Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.
- 1.10 Local, State, and Federal Permits. This Agreement does not relieve Permittee from obtaining any other permits or authorizations that might be required under other local, state, or federal laws or regulations before beginning the Project the Agreement covers.
- 1.11 Designated Biologist(s). Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with the Designated Biologist(s) or Biological Monitors that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take.

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.

Definitions

- 2.1 Designated Biologist Definition. A Designated Biologist is an individual who is approved by CDFW to handle all terrestrial/aquatic common species and species of special concern listed above.

- 2.2 Listed Species Definition. A listed species means a candidate, threatened, or endangered species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.).
- 2.3 Fully Protected Species Definition. Fully protected species are those specifically identified in Fish and Game Code sections 3511, 4700, 5050, and 5515.

Species Protection

- 2.4 County of Orange (Central/Coastal) NCCP/HCP Plan Conditions. Permittee shall implement conditions applicable to the Project under the Central/Coastal NCCP/HCP Plan, including but not limited to conditions regarding least Bell's vireo, coastal California gnatcatcher, and other species covered under the Central/Coastal NCCP/HCP Plan.
- 2.5 Does Not Authorize Take of State-listed Species. This Agreement does not authorize take of any candidate, threatened, or endangered or candidate species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), or any species fully protected under the Fish and Game Code. "Take" means "to hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.). If there is potential for take of any CESA-protected or fully protected species, Permittee shall consult with CDFW.
- 2.6 Incidental Take Permit. An Incidental Take Permit (ITP) from CDFW may be required if the Project, Project construction, or any Project-related activity during the life of the Project will result in "take" as defined by the Fish and Game Code, of any species protected by CESA [Fish & G. Code, §§ 86, 2080, 2081, subd. (b) (c)]. If there is a potential for take, Permittee should request consultation with CDFW and obtain the necessary state permits and/or submit plans to avoid any impacts to the species. Consultation with U.S. Fish and Wildlife Service or National Marine Fisheries Service would be required to receive take authority for federal threatened and endangered species.
- 2.7 Environmental Education Program/Materials. Educational materials shall be created and incorporated into an environmental training, to be conducted for all Project personnel entering the Project area where sensitive habitats and/or species may be present. Educational materials may be brief and concise but should illustrate sensitive species and their habitat, discuss any specific measures to protect the species, what to do if the species is observed, and so forth. Interpretation shall be provided for workers who do not have fluency in English, and the same instruction shall be provided for any new workers prior to their performing work on-site. Permittee shall prepare and distribute wallet-sized cards or a fact sheet for workers to carry on-site that contains this information and pertinent Project contacts. Upon completion of the education program, employees shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request.

- 2.8 Designated Biologist. Permittee shall obtain CDFW's written approval to qualify a biologist at least thirty (30) days before initiating any Project activities. Permittee shall submit to CDFW in writing, the name, qualifications, business address, and contact information for any biologist to conduct work under this Agreement. The Designated Biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources present at the Project site, and they shall have experience identifying, capturing, handling, and relocating the wildlife species. The Designated Biologist shall be responsible for monitoring all Project activities, including construction and any ground- or vegetation-disturbing activities in areas subject to this Agreement.
- 2.9 Designated Biologist Authority. The Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid or minimize impacts to fish and wildlife resources. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred as a result of compliance with this measure. This includes cease-work orders issued by CDFW.
- 2.10 Biological Monitor. Permittee or Designated Biologist may designate a person as a Biological Monitor to monitor on-site compliance with all conditions of this Agreement. The Biological Monitor shall halt Project Activities to comply with the terms of this Agreement and otherwise avoid impacts to species or habitats. The Biological Monitor is **not** authorized to handle or otherwise disturb special status species.
- 2.11 Daily Clearance Survey. Before the start of daily Project activities, a Designated Biologist or Biological Monitor shall survey the Project area to ensure wildlife incidentally trapped due to Project activities are allowed to escape.
- 2.12 Terrestrial Wildlife Species. Designated Biologist or Biological Monitor shall inspect the Project area prior to any Project activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a Designated Biologist may guide, handle, or capture an individual non-listed wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the Designated Biologist shall release it into the most suitable habitat nearby the site of capture.
- 2.13 Wildlife Records. A record shall be maintained of all relocated wildlife. The record shall include the date of capture, the method of capture, the location of movement in relation to the Project site, and the number and species moved. The record shall be provided to CDFW upon request.
- 2.14 Injured Wildlife. Subject to CDFW's pre-approval, the Designated Biologist shall also make arrangements with a CDFW-qualified wildlife rescue and rehabilitation

facility to temporarily hold sick or injured wildlife encountered at the Project site, in accordance with California Code of Regulations, title 14, section 679. The injured wildlife shall be returned to the Project site when deemed releasable, but only after Project activities have been completed. Healthy wildlife shall not be removed from the wild or held in captivity.

- 2.15 Report Mortalities and Serious Injuries Immediately. If any native species are found dead or injured during Project-related activities, the Designated Biologist shall provide written notification to CDFW by writing within 24 hours. The purpose of the contact with CDFW is to review the activities resulting in mortality and to determine if additional protective measures are required.
- 2.16 Reporting Sensitive Species Observations to the California Natural Diversity Database (CNDDDB). Permittee shall be responsible for reporting all observations of threatened, endangered, or species of special concern to the CDFW Natural Diversity Database (CNDDDB) within 14 days of sighting. Information can be found at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. This includes submitting observations that occurred for Project surveys already conducted and for the term of the Agreement. Observation forms shall be provided as a status report submittal through the Environmental Permit Information Management System (EPIMS), and a copy will be submitted to EPIMS.R5@wildlife.ca.gov. For bird species, the CNDDDB will only accept observations that include confirmed nesting and/or breeding activities (with exceptions for wintering observations of the burrowing owl).
- 2.17 Pre-Work General Biological Surveys. Permittee shall have the Designated Biologist conduct a pre-Project survey within and adjacent to the proposed work area within a 1-week period prior to Project-related activities commencing for the season or if Project activities are paused for 7 days or more. Pre-Project surveys shall include: a) general surveys for botanical and wildlife resources, including surveys for any avian nests. Survey results, including negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review prior to the start of Project activities or prior to continuation of Project activities if Project activities are paused for 7 days or more. If any special status species other than those that are covered under the NCCP/HCP are observed during the surveys, Permittee shall not commence with work activities and will contact CDFW immediately.
- 2.18 Avoidance of Sensitive Resources. Following the completion of the pre-activity sweep, the Designated Biologist(s) shall ensure that all sensitive resources identified are mapped/marked for avoidance unless otherwise permitted to be impacted in accordance with this Agreement, or covered under the NCCP/HCP or permitted through a separately issued permit, and that the buffers proposed to protect those sensitive resources are appropriately sized and clearly demarcated. In addition, if additional access is proposed that differs from the designated access routes depicted on the 100% Design Plans (permitted under this Agreement), the Designated Biologist(s) shall identify and mark the most appropriate path (i.e., the

route that provides full avoidance of sensitive resources, vegetation, and other habitat values) for construction vehicles and equipment to utilize to access the Project site. The Designated Biologist(s) shall use available scientific research, independent judgement, and personal experience when assigning avoidance buffer. Details of these avoidance measures shall be provided to CDFW in the post-activity report within 14 days after Project completion. If full avoidance of designated avoidance areas cannot be accomplished, Permittee shall postpone work activities in the immediate area and buffer as determined by the Designated Biologist and contact CDFW to discuss an appropriate path forward. The Permittee may resume activities at other Project locations after clearance by the Designated Biologist(s).

- 2.19 Access Routes and Work Areas. The Designated Biologist(s), in coordination with the contractor 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.
- 2.20 Staging Areas. Permittee shall confine all Project site-related parking, storage areas, laydown sites, equipment storage, and any other Project site staging activities to locations outside of non-permitted areas subject to Fish and Game code 1602 and, to the greatest extent possible, shall use previously disturbed areas.
- 2.21 Pre- and Post-Project Monitoring. Prior to Project activities, Permittee shall photo-document each impact location subject to this Agreement. Following completion of Project activities, Permittee shall photo-document, in the same location and aspect, the post-Project conditions. The Designated Biologist(s) shall submit to CDFW the photo documentation within fourteen (14) days after each visit.

Nesting Birds

- 2.22 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. Fish and Game Code Section 3513 makes it unlawful to take or possess any migratory nongame bird or part thereof except as provided by the rules and regulations

adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. § 703 et seq.) before January 1, 2017, and subsequent rules and regulations adopted pursuant to the MBTA that are consistent with the Fish and Game Code. The issuance of this Agreement does not authorize take of nesting birds.

2.23 Least Bell's Vireo. The Project site has been determined to contain suitable habitat and be occupied with least Bell's vireo. Conditional coverage for least Bell's vireo can be issued under the Orange County Central/Coastal NCCP/HCP. Prior to the initiation of Project-activities, Permittee shall provide a mitigation plan in accordance with the Central/Coastal NCCP/HCP. The mitigation plan shall include, but not be limited to, addressing design modifications and other on-site measures that are consistent with the Project's purpose, minimize impacts, and provides appropriate feasible protections; providing restoration and/or enhancement of suitable compensatory habitat at an appropriate location consisting of planting riparian trees/shrubs and/or cowbird trapping; and providing for monitoring and adaptive management of habitat. This mitigation plan shall be reviewed and approved by CDFW prior to initiation of Project activities.

2.24 White-Tailed Kite. The Designated Biologist shall survey the proposed work area to verify the presence or absence of white-tailed kite. Survey results, including locations of any detected individuals, negative findings, analysis, recommendations, and field notes shall be submitted to CDFW for review a minimum of five (5) days before the start of work or two (2) weeks after the conclusion of the survey, whichever comes first. This survey shall be completed before the start of work or if there is a pause in Project-related activities of seven (7) days or more. Work shall not commence or continue until any white-tailed kite move from the area of their own volition. CDFW shall be notified of any white-tailed kite sightings within 1,000 feet of the work area. All observations must be reported to CDFW within 12 hours of observation. White-tailed kite is a state fully protected species (see Avoidance and Minimization Measure 2.3 and 2.5).

2.25 Nesting and/or Breeding Birds. It is the Permittee's responsibility to avoid impacts to nesting birds anytime birds are nesting on site. Permittee shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures.

2.25.1 Designated Biologist. Permittee shall designate a biologist (Designated Biologist(s)) experienced in identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology (e.g., Ralph et al. 1993¹ and United States Fish and Wildlife Service and/or [CDFW-](#)

¹ Ralph, C.J., G.R. Geupel, P. Pyle, T.E. Martin, and D.F. DeSanta. 1993. Handbook of field methods for monitoring landbirds. General Technical Report PSW-GTR 144. USDA Forest Service Pacific Southwest Research Station. Albany, CA.

[accepted species-specific survey protocols](#)²); nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success (e.g., Martin and Geupel 1993³); determining/ establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

2.25.2 Pre-Construction Surveys. Surveys shall be conducted by the Designated Biologist(s) at the appropriate time of day/night and during appropriate weather conditions no more than three days prior to the initiation of Project activities addressed by this Agreement. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property, density and complexity of the habitat, number of survey participants, survey techniques employed and shall be sufficient to ensure the data collected is complete and accurate. Pre-Project surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Designated Biologist(s) shall establish a disturbance-free buffer until additional surveys can be completed or until the location can be inferred based on observations. The Designated Biologist(s) shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed but thought to be inactive, the Designated Biologist(s) shall monitor the nest for one hour (four for raptors) prior to approaching the nest to determine status. The Designated Biologist(s) shall use their best professional judgment regarding the monitoring period and whether approaching the nest is appropriate. Results of pre-activity surveys shall be provided to CDFW per Measure 4.2.9.

2.25.3 Buffers. When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgment and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site

² <https://wildlife.ca.gov/conservation/survey-protocols>

³ Martin, T.E. and G.R. Geupel. 1993. Nest-monitoring plots: methods for locating nests and monitoring success. *Journal of Field Ornithology* 64:507-514.

conditions including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall monitor the active nest daily when active work addressed by this Agreement and at the onset of any changes in the Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist(s) determines that the Project activities may be causing an adverse reaction, the Designated Biologist(s) shall adjust the buffer accordingly. No work shall occur within the established buffer until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project.

- 2.25.4 Protection from Excessive Sound. If Project activities must take place within the buffer, a Designated Biologist or Biological Monitor shall monitor noise using noise measuring devices placed at the edge of the buffer or adjacent limits of habitat as work approaches the edge of the occupied habitat as directed by the Designated Biologist(s). If the noise meets or exceeds the 60 dB(A) Leq threshold, is a substantial increase over existing ambient levels, or if the Designated Biologist(s) determines that activities are disturbing nesting activities, the Designated Biologist(s) shall have the authority to halt the Project activities and shall consult with CDFW to devise methods to reduce the noise and/or disturbance. This may include methods such as, but not limited to, turning off vehicle engines and other equipment whenever feasible to reduce noise, installing a protective noise barrier between the nesting birds and the activities, and working in other areas until the young have fledged. Protective noise barriers shall be removed when birds are done nesting and shall not remain installed in the Project site during the rainy season if within the floodplain of the stream(s). The Designated Biologist(s) or Biological Monitor shall monitor the nest daily until activities are no longer within the buffer, or the fledglings become independent of their nest, or the nest has failed.
- 2.25.5 Ongoing Monitoring. If active nests are present, the Designated Biologist(s) or Biological Monitor(s) shall be onsite daily, when work is occurring, to monitor all existing nests, the efficacy of established buffers, and to document any new nesting occurrences. The Designated Biologist(s) shall document the status of all existing nests, including the stage of reproduction and the expected fledge date, when this can be determined without endangering the nest by disturbance or alerting predators. If a nest is suspected to have been abandoned or failed, CDFW recommends the Designated Biologist(s) or Biological Monitor(s) monitor the nest for a minimum of 1 hour (4 hours for raptors), uninterrupted, during favorable field conditions. If no activity is observed during that time, the Designated

Biologist(s) may approach the nest to assess the status.

- 2.25.6 Securing Site. Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering material with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used pose an entanglement or entrapment risk to birds or other species.
- 2.25.7 Reporting. The Designated Biologist(s) shall be responsible for providing summary reports to CDFW no less than once weekly regarding the nesting species identified onsite, discovery of any of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. If the project results in the abandonment of, or damage to a nest, Permittee shall notify CDFW within 24 hours of discovery.
- 2.26 Protection of Crotch's Bumble Bee. This Agreement does not authorize the take of Crotch's bumble bee, nests, or their nesting and overwintering habitat. Any authorization of take will be covered in an Incidental Take Permit (ITP) that is currently in progress. If an ITP is not issued and impacts to Crotch's bumble bee cannot be avoided, the Permittee shall consult with CDFW prior to starting Project activities.

Habitat Protection

- 2.27 Invasive Species. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.) from one Project site and/or watershed to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <https://stopaquatic hitchhikers.org/>.
- 2.28 Notification of Invasive Species. Permittee shall notify CDFW immediately if an invasive species not previously known to occur within the Project site is discovered during Project activities by submitting a completed Suspect Invasive Species Report (available online at: <https://wildlife.ca.gov/Conservation/Invasives/Report>) and photos to the Invasive Species Program by email at: invasives@wildlife.ca.gov. Notification may also be provided by calling (866) 440-9530. Upon receiving notification, CDFW will provide Permittee with guidance for further action as appropriate to the species.
- 2.29 Work Period in Low Rainfall / Dry Weather Only. The work period in Syphon Reservoir and the surrounding tributary drainages shall be restricted to period of low rainfall (less than $\frac{3}{4}$ " per 24-hour period) and periods of dry weather. Wet

weather is defined as periods of rainfall of $\frac{3}{4}$ " or greater, in a 24-hour period. All erosion control measures shall be initiated prior to all storm events. Revegetation, restoration, and erosion control work is not confined to this work period. Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project area. No work shall occur during a dry-out period of 24 hours after the above referenced wet weather. Weather forecasts shall be documented upon request by CDFW.

- 2.30 Post-Storm Event Inspection. After any storm event, Permittee shall inspect all sites scheduled to begin or continue construction within the next 72 hours. Corrective action for erosion and sedimentation shall be taken as needed. National Weather Service 72-hour weather forecasts shall be reviewed prior to the start of any phase of the Project that may result in sediment runoff to the stream and construction plans adjusted to meet this requirement. The National Weather Service forecast can be found at: <https://www.weather.gov/>.
- 2.31 Remove Cleared Material from Streams and Waterways. All trimmed or cleared material/vegetation shall be removed from the Project site and deposited where it cannot re-enter the stream.
- 2.32 No Work in Wetted Areas. Heavy equipment shall not be operated in wetted areas including, but not limited to, ponded or flowing areas excluding areas within the Project grading limits that may collect nuisance runoff after rain events.
- 2.33 Work Area Boundary. Work area boundaries shall be delineated by posting signs, staking, flagging, erecting temporary fencing, or otherwise clearly marking to minimize surface and vegetation disturbance. No paint or permanent discoloring agents shall be applied to rocks or other vegetation to indicate limits of survey or construction activity where any sensitive biological resources occur. All temporary fencing and flagging shall be removed at the conclusion of construction activities.
- 2.34 Erosion Control Best Management Practices (BMPs). Permittee shall actively implement BMPs to prevent erosion and the discharge of sediment and pollutants into streams during Project activities. BMPs shall be monitored by the Designated Biologist(s) and repaired, 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 the regulatory authority of CDFW. 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.

- 2.35 Excavation Spoils. Spoil Storage sites shall not be located within a stream or where it will cover aquatic or riparian vegetation beyond what is necessary to construct the Project (i.e., the movement of soil associated with the reservoir expansion).
- 2.36 Cover Spoil Piles. Permittee shall have readily available plastic sheeting or visquine to cover exposed spoil piles and exposed areas in order to prevent loose soil from moving into the stream. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into the stream.

Equipment and Access

- 2.37 Staging. Permittee shall confine all Project site-related parking, storage areas, laydown sites, equipment storage, and any other Project site staging activities to locations outside of areas subject to the regulatory authority of CDFW (e.g., Fish and Game Code §1602) and, to the greatest extent possible, shall use previously disturbed areas. Staging and storage of all 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 shall be positioned over drip-pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.38 Hours of Operation and Lighting. Permittee's activities shall take place between 7:00 a.m. and 7:00 p.m. Mondays through Fridays and between 9:00 a.m. and 6:00 p.m. on Saturdays. Nighttime work will only occur for urgent or other unforeseen circumstances that could temporarily require construction activities, for limited periods of time, outside of the construction hours permitted by the City of Irvine and County of Orange noise ordinances.
- 2.39 Clean Equipment Prior to Area Regulated by Agreement. Prior to working within the dry streambed and waterway, all equipment shall be closely examined for oil and fuel discharges. Any contaminants shall be cleaned prior to any work within a streambed and shall be maintained daily. In addition, equipment shall be cleaned daily to ensure non-natives are not introduced into mitigation areas or spread throughout Project site. All equipment shall be free of materials deleterious to aquatic life including noxious and nuisance weeds, aquatic invasive species, oil, grease, hydraulic fluid, soil, and other debris.
- 2.40 Equipment Maintenance and Fueling. No equipment maintenance or fueling shall be done within or near any stream channel margin where petroleum products or other pollutants from the equipment may enter these areas.
- 2.41 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated 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 life. Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze,

hydraulic fluid, grease, or other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. Permittee shall be responsible for spill material removal and disposal to an approved off-site landfill and spill reporting to the permitting agencies. Service/maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills.

2.42 Decontamination of Project Equipment. Permittee shall decontaminate all tools, waders and boots, vehicles, trailers, and other equipment that will be used in areas regulated by this Agreement and make contact with water or wetted soils prior to initially entering and upon reentering with verification that subsequent decontamination is required with the following specific guidance: Permittee shall decontaminate Project gear and equipment utilizing one of three methods: drying, using a hot water soak, or freezing, as appropriate to the type of gear or equipment. For all methods, Permittee shall begin the decontamination process by thoroughly scrubbing equipment, paying close attention to hard-to-reach areas, and clean areas with a stiff-bristled brush to remove all plant, seeds, soil, and other organisms. To decontaminate by drying, Permittee shall allow equipment to dry thoroughly (i.e., until there is a complete absence of water and all plant, seeds, and soil), preferably in the sun, for a minimum of 48 hours. To decontaminate using a hot water soak, Permittee shall immerse equipment in 140°F or hotter water and soak for a minimum of 5 minutes. To decontaminate by freezing, Permittee shall place equipment in a freezer 32°F or colder for a minimum of 8 hours. Repeat decontamination is required only if the equipment/clothing is removed from the site, used in contact with water or wet soil within a different watershed, and returned to the Project site.

2.43 Decontamination Sites. Permittee shall perform decontamination of vehicles and other Project gear and equipment in a designated location where runoff can be contained and not allowed to pass into any river, lake, or stream and associated riparian areas and other sensitive habitat areas. Cleaning of equipment may occur at a location that contains and recycles resulting wastewater.

Pollution, Litter, and Cleanup

2.44 Hazardous Materials. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, 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 aquatic life, wildlife, or riparian habitat resulting from the Project-related activities shall be prevented from contaminating the soil and/or entering the stream or any water. Any of these substances/materials, placed within or where they may enter a stream or lake, by Permittee or any party working under contract, or with the permission of Permittee, shall be removed immediately. When operations are completed, any excess materials or debris shall be removed from the work area.

- 2.45 Pollutants and Debris. Permittee shall not dump litter or debris within the stream or areas where such waste could wash into the stream. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.
- 2.46 Litter and Pollution Control. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws, and it shall be the responsibility of Permittee to ensure compliance. All trash and food-related items shall be disposed in self-closing, sealable containers with lids that latch to prevent wind and wildlife from opening containers. Trash containers shall be emptied daily and removed from the Project site when construction is complete.
- 2.47 Refuse Removal. Upon completion of Project activities, Permittee shall remove and properly dispose of all refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 2.48 Personnel Compliance on Site. Permittee, its contractors, subcontractors, employees, and visitors to the site are prohibited from 1) feeding wildlife, 2) bringing domestic pets to the Project site, 3) collecting native plants, or 4) harassing wildlife. It shall be the responsibility of Permittee to ensure compliance.
- 2.49 Spill Containment. All activities performed in or near a stream shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. If a spill occurs the Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall also be notified by the Permittee and consulted regarding clean-up procedures.
- 2.50 Spill Cleanup. Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by Permittee of any spills that release hazardous material (oil, cement, fuel, etc.) into any stream/channel/culver/ditch and shall be consulted regarding cleanup procedures.

3. Compensatory Measures

Permittee shall compensate for adverse impacts to approximately 12.27 acres of impacts to stream bed, bank, and channel, identified above, that cannot be avoided or minimized. The habitat types impacted by this Project consists of 6.2 acres of woody riparian habitat composed of arroyo willow thicket, black willow thicket, mule fat scrub, and other species; 5.33 acres of tule marsh; and 0.74 acres of ephemeral drainage composed of coyote brush scrub, chapparal bushmallow scrub, sumac chaparral, California sagebrush scrub, coast prickly pear scrub, and other upland species. The Permittee shall provide for mitigation for impacts through the measures below.

- 3.1 Permittee Responsible Mitigation – On-site and Off-site Mitigation Sites. Permittee shall compensate for impacts to 12.27 acres of woody riparian, tule marsh, and ephemeral drainage, through the acquisition, restoration, and perpetual

conservation and management of an “On-site Mitigation Site” containing at least 6.0 acres of woody riparian habitat within the Lower Santa Ana Watershed (Measures 3.1.1, 3.1.2). and an “Off-site Mitigation Site” containing no less than approximately 25.32 acres of stream and stream-associated habitat within the Lower Santa Ana Watershed (Measures 3.1.1, 3.1.2). The 33.4-acre Off-site Mitigation Site includes approximately 12.08 acres designated for freshwater marsh and open water, with up to 13.24 acres for woody riparian habitat as mitigation for impacts at Syphon Reservoir. The Off-site Mitigation Site also includes mitigation for potential impacts to 2.39 acres of remnant riparian and 0.40 acre of alkali meadow habitat at a 1:1 ratio.

The Permittee shall prepare a Habitat Mitigation and Monitoring Plan (HMMP; Measure 3.2.2); and a Long-Term Management Plan (LTMP; Measure 3.2.7) designed to sustain or surpass the habitat quality of the Mitigation Site in perpetuity. Permittee shall also establish long-term management funding (Measures 3.2.7 through 3.2.12). Permanent protection and funding for perpetual management of the Mitigation Site(s) must be complete **prior to initiation of Project activities, or within 18 months of starting Project activities if Security is provided** pursuant to Measure 3.4 below for all uncompleted obligations.

3.1.1 Habitat Mitigation and Monitoring Plan. Permittee shall develop and submit to CDFW for review and written approval a Habitat Mitigation and Monitoring Plan (HMMP), for the On-Site Riparian Habitat Restoration Site and the Off-site Riparian & Wetland Mitigation at the San Joaquin Marsh **no later than four months prior to the start of Project activities OR six months following start of Project activities if Security is provided**. Permittee shall ensure the HMMP for both sites are successfully implemented and be responsible for any cost incurred during the restoration/mitigation or in subsequent corrective measures. At a minimum, the HMMP shall include the following:

3.1.1.1 Restoration Specialist. The HMMP shall be prepared by person(s) with expertise in the restoration of habitat types of the same, or similar, to the Project area and native plant re-vegetation techniques (Restoration Specialist). Planting, maintenance, monitoring, and reporting activities shall be overseen by the Restoration Specialist familiar with restoration of native plants.

3.1.1.2 Site Description. The HMMP shall include a description of the physical conditions and vegetation communities including a map and GIS shapefiles. Photo-documentation of the site, including restored areas, shall be provided before and after restoration.

3.1.1.3 Reference Site. If applicable, an appropriate reference site with as good or better-quality habitat than the pre-Project impact site shall be identified and approved by CDFW. The HMMP shall include

survey information for the reference site.

- 3.1.1.4 Schedule. A schedule that outlines all foreseeable activities necessary.
- 3.1.1.5 Planting Plan. Details of the site preparation consisting of a detailed contouring/grading plan, if applicable, and details of native plant installation (Planting Plan), including the type and number of materials to be used (e.g., local native seeds, cutting, and/or container stock), source(s) of the materials, planting location, methods of installation, and a local California native plant palette. This Planting Plan shall include plantings of both overstory and understory vegetation as appropriate. All seeded/planted species installed shall include only local California native container plants and cuttings and shall be typical of the existing native plant species present within, or immediately adjacent to the site.
- 3.1.1.6 Native Plant Sources. Revegetation plant material shall be derived from cuttings, materials salvaged from disturbed areas, and/or seeds obtained from high quality specimen locations that exhibit healthy, sound, and viable seed from multiple populations occurring locally within the same drainages. The HMMP shall identify the percentage of seed collected from local native plants and shall not exceed 5% of the seed produced by a population during any given year. Any container stock, if used, shall be obtained from a licensed nursery which can ensure that container plants are pest free, and have not been subject the application of synthetic pesticides.
- 3.1.1.7 Sampling Techniques. The HMMP shall identify the sampling techniques (e.g., quadrats, transects, or relevé to be used to collect quantitative/qualitative data (e.g., vegetation relative/absolute cover, density, diversity indices, recruitment, survivorship, etc.) for baseline conditions and to establish and measure success criteria. The sampling techniques shall have adequate detail so that it can be duplicated by different people and shall include a sample data collection sheet that shows appropriate data to be collected per the proposed sampling methodology.
- 3.1.1.8 Survey Timing. The primary monitoring surveys to determine the success of restoration efforts (survival, cover, and growth of plants) shall be conducted at a minimum twice annually in Spring and Fall.
- 3.1.1.9 Maintenance Activities. The HMMP shall provide a description of maintenance operations with particular emphasis on invasive species control and watering methods and schedules. If irrigation is required, details on any irrigation to be used, irrigation designs

and/or plans, and timing/schedule.

3.1.1.10 Success Criteria. The HMMP shall identify the success criteria for the Mitigation Site(s) and shall be compared against an appropriate reference site with as good or better-quality habitat than the pre-Project impact site. The success criteria shall include percent relative and absolute cover (invasive and native vegetation), species diversity, abundance, and any other measures of success deemed appropriate by CDFW.

3.1.1.11 Monitoring and Reporting. The HMMP shall include monitoring and reporting procedures, with a sample data collection sheet. Permittee shall have the 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 twice a year, in Spring and Fall, with an annual quantitative survey to determine the success of restoration efforts (survival, cover, and growth of plants) through the term of restoration. The results and analysis shall be submitted with the annual restoration monitoring report to CDFW by February 1 of each year after mitigation implementation for at least five years and until mitigation success criteria have been met. This report shall include the status and any success trends (i.e., comparison throughout the five years of monitoring) for the success criteria outlined in the HMMP. Photos from designated photo stations shall be included.

3.1.1.12 Corrective Actions. The HMMP shall include a description of corrective actions to be taken if restoration measures do not meet the proposed criteria or targets. If the survival and cover requirements have not been met as established in the HMMP (Refer to Measure 3.1.2.10 above), the Permittee shall follow contingency measures, including but not limited to, performing modifications to the existing habitat, creation of new habitat on or off site, or purchase of mitigation credits from a mitigation bank. Any contingency actions will be determined in coordination with 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 five years after planting, or until CDFW deems the sites successful.

3.1.2 Mitigation Site Land Manager. Permittee shall designate long-term land manager(s) approved by CDFW. **After CDFW approval of the Mitigation Site (Measure 3.1.1) and no later than four months prior to the start of Project activities OR six months following start of Project activities if**

Security is provided, Permittee shall obtain CDFW approval of a land manager entity to manage the Mitigation Site(s). Permittee shall also provide the necessary documents requested by CDFW for due diligence review at the time the land manager is proposed (list available here: “Checklist for Entities being Considered to Hold Conservation Easements or Manage and Steward Mitigation Land”):

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=225933>.

- 3.1.3 **Security**. Permittee shall provide financial security in the form of escrow accounts, for start-up activities for an amount sufficient to complete the on-site and off-site mitigation. The amount shall be determined by a line item cost-estimate breakdown. A funding agreement specifying all the financial requirements and funding mechanisms shall be submitted to CDFW for review and approval. The escrow accounts shall be funded no later than 60 days prior to initiation of Project activities.
- 3.1.4 **Mitigation Site Grant Deed Amendments**. Permittee shall amend existing Grant Deeds for the On-Site Riparian Habitat Restoration Site and the Off-site Riparian & Wetland Mitigation at the San Joaquin Marsh. Amended grant deeds will be cross-referenced in the Funding Agreement noted in Compensatory Mitigation Measure 3.1.4. CDFW shall be added as a third-party beneficiary in the amended grant deeds. As part of the amendments, language will be included to specify that “in the event IRWD or its successor agency is no longer the property owner” of either site, that a Conservation Easement shall be recorded prior to transfer of ownership.
- 3.1.4.1 Permittee shall record the amended grant deeds after CDFW approval of the amended grant deeds and all associated documents **prior to the start of Project activities OR within 18 months following start of Project activities if Security is provided**.
- 3.1.4.2 Permittee shall be responsible for all costs associated with the grant deed amendments and associated restrictions, including recording, Mitigation Site monitoring, and long-term management costs.
- 3.1.5 **Mitigation Success**. After the fifth monitoring year, if a site has met the success criteria outlined in the HMMP, Permittee may request a site visit to determine if that particular mitigation portion of the Agreement is deemed complete. The site should be free of trash.
- 3.1.6 **Mitigation Site Long-Term Management Plan**. **No later than three months prior to the start of Project activities OR seven months following start of Project activities if Security is provided**, Permittee shall provide LTMPs for the On-Site and Off-Site Mitigation Sites to CDFW for review and written approval (see

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>). The LTMP shall be implemented in perpetuity and shall be designed to sustain or surpass the habitat quality of the Mitigation Site(s) upon achieving HMMP success criteria as approved by CDFW in writing.. The CDFW-approved long-term Mitigation Site Land Manager shall be responsible for implementing the LTMP. At a minimum, the LTMP shall include:

- 3.1.6.1 Site Description. A description of the physical conditions and vegetation communities of the respective Mitigation Site(s) expected upon achieving HMMP success criteria, including water resources and habitat types, and a map that identifies the location of the site(s).
- 3.1.6.2 Management Goals. A description of management goals related to sustaining habitat quality, wildlife usage, and overall function of the Mitigation Site(s).
- 3.1.6.3 Management Tasks. A description of specific tasks and management strategies proposed to meet management goals, including but not limited to fencing, invasive species management, trash and trespass control, and resource monitoring using a monitoring and management schedule, adaptive management plans, and strategies to address foreseeable site disturbances (e.g., dumping, wildfires, unauthorized recreational activities, etc.), and maintenance of signage and fencing.
- 3.1.6.4 Reporting. A description of the reporting procedures including a Management Report, which shall be completed every five years documenting, at a minimum:
 - 3.1.6.4.1 Management activities completed within the previous five-year term, including: (1) any remedial measures completed; (2) details of non-native and invasive species management such as (a) species and location where they were treated and/or removed, (b) the amount and frequency of removal, and (c) the techniques used; (3) fencing information; (4) resource monitoring, adaptive management strategies developed and how they were implemented; and (5) enforcement activity necessary.
 - 3.1.6.4.2 An assessment of overall habitat quality within the Mitigation Site, including: (1) any changes to native and non-native vegetation cover, (2) any shifts in habitat type,

(3) any loss of habitat cover, (4) any change in water resources, and (5) any new invasive species observed.

3.1.6.4.3 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.

3.1.6.4.4 The Management Report shall include photos documenting the management activities.

3.1.7 Mitigation Site Maintenance Funds. Permittee shall ensure that the Mitigation Sites are perpetually managed, maintained, and monitored by the Mitigation Site Land Manager as described in this Agreement and the LTMP approved by CDFW. Permittee shall establish escrow accounts to provide long-term management funding for the perpetual management of the Mitigation Sites by establishing a separate long-term management fund (escrow accounts) for each of the Sites. The escrow account instructions shall be approved by CDFW. Each escrow account will be funded on an annual basis through Permittee's approved operating budget and will provide funds for the perpetual management, monitoring, and other activities on the Mitigation Site(s) consistent with the management plan(s) required by Measure 3.1.7. Permittee shall adopt, as part of its annual (or bi-annual) operating budget, an amount to be deposited in each escrow account for the forthcoming year (or two sequential years).

After the interim management period, Permittee shall ensure that the designated Mitigation Site Land Manager implements the management and monitoring of the Mitigation Site according to the LTMP. The long-term Mitigation Site Land Manager shall be required to manage and monitor the Mitigation Site in perpetuity to preserve their conservation values in accordance with this Agreement, the CE, and the LTMP. Such activities shall be funded through the escrow accounts.

3.1.8 Deposit Amount. After obtaining CDFW written approval of the Mitigation Site(s), LTMP, and escrow instructions, Permittee shall prepare, in coordination with the Mitigation Site Land Manager, a Long-Term Management cost estimate analysis to calculate the amount of funding necessary to ensure the long-term management of the Mitigation Site (Escrow Account Deposit Amount) is consistent with the LTMP. Permittee shall provide to CDFW for review and approval a cost estimate analysis for the Mitigation Site developed in coordination with the long-term Mitigation Site Land Manager. The Permittee shall submit to CDFW for review and approval the results of the Long-Term Management cost estimate before transferring funds to the escrow account and no later than three months prior to the start of Project activities OR seven months following start of

Project activities if Security is provided.

4. Reporting Measures

- 4.1 Notification Prior to Work and Prior to Completion of Work. Permittee shall notify CDFW, in writing, at least five (5) days prior to initiation of Project-related activities and at least five (5) days prior to completion of Project-related activities. Notification shall be sent through the Environmental Permit Information Management System (EPIMS) and to the email address: EPIMS.R5@wildlife.ca.gov, reference # EPIMS-ORA-48911-R5 and CC Jessie.Lane@wildlife.ca.gov.
- 4.2 Reporting. Permittee shall submit the following reports and any other required communication between Permittee and CDFW through EPIMS as well as to the email address EPIMS.R5@wildlife.ca.gov, reference # EPIMS-ORA-48911-R5 and CC Jessie.Lane@wildlife.ca.gov.
- 4.2.1 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns of any conflicting provisions as described in Administrative Measure 1.3.
- 4.2.2 Changes in Project. If Permittee anticipates activities not identified in this Agreement, they shall notify CDFW as described in Administrative Measure 1.5.
- 4.2.3 Notification Requirements. Permittee shall immediately contact CDFW if monitoring reveals that any protective measures were not or will not be implemented or if the protective measures are not providing the appropriate level of protection as described in Administrative Measure 1.6.
- 4.2.4 Designated Biologist(s). At least thirty (30) days before activities, Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for Designated Biologist(s) as described in Avoidance and Minimization Measure 2.8
- 4.2.5 Wildlife Records. Permittee shall submit records of wildlife handling or injury/mortality as described in Avoidance and Minimization Measure 2.13.
- 4.2.6 Report Mortalities and Serious Injuries Immediately. If any native aquatic species are found dead or injured during maintenance-related activities, the Designated Biologist shall contact CDFW as described in Avoidance and Minimization Measure 2.15.
- 4.2.7 Reporting Sensitive Species Observations to the California Natural Diversity Database (CNDDDB). Permittee shall submit species observations

as outlined in Avoidance and Minimization Measure 2.16.

- 4.2.8 Pre-activity Survey Report. Permittee shall submit results of the pre-work general biological survey as described in Avoidance and Minimization Measure 2.17.
- 4.2.9 Avoidance of Sensitive Resources. Permittee shall describe implemented avoidance measures in a post-activity report within 14 days after Project completion and/or shall contact CDFW to discuss an appropriate path forward if full avoidance of sensitive resources cannot be accomplished as described in Avoidance and Minimization Measure 2.18.
- 4.2.10 Project Site Photos. Prior to Project activities, Permittee shall photo-document each impact location subject to this Agreement. Following completion of Project activities and after each impact location has been recontoured to pre-Project grade, Permittee shall photo-document, in the same location and aspect, the post-Project conditions. The Designated Biologist(s) shall submit to CDFW the photo documentation within fourteen (14) days after each visit as described in Avoidance and Minimization Measure 2.21.
- 4.2.11 Least Bell's Vireo. Permittee shall submit a mitigation plan in accordance with the Central/Coastal NCCP/HCP prior to initiation of Project activities as described in Avoidance and Minimization Measure 2.23.
- 4.2.12 White-Tailed Kite. Permittee shall submit the results of white-tailed kite surveys to CDFW five (5) days before the start of work or two (2) weeks after conclusion of the survey or if there is a pause in Project-related activities of five (5) days or more as described in Avoidance and Minimization Measure 2.24. CDFW shall also be notified within 12 hours of any white-tailed kite sightings within 1,000 feet of the work area.
- 4.2.13 Nesting Bird Survey. Permittee shall submit results of the general nesting bird survey as described in Avoidance and Minimization Measure 2.25.7.
- 4.2.14 Crotch's Bumble Bee. If an ITP has not yet been issued and Crotch's bumble bee is still a special status species, Permittee shall consult with CDFW prior to starting Project activities if impacts to Crotch's bumble bee cannot be avoided as described in Avoidance and Minimization Measure 2.26.
- 4.2.15 Notification of Invasive Species. Permittee shall notify CDFW immediately of any invasive species not previously known to occur at the Project site are discovered during Project activities as described in Avoidance and Minimization Measure 2.28.

- 4.2.16 Spill Containment. Permittee shall notify CDFW regarding clean-up procedures in case of a spill as described in Avoidance and Minimization Measure 2.49.
- 4.2.17 Spill Cleanup. Permittee shall be notified immediately of any spills that release hazardous material as described in Avoidance and Minimization Measure 2.50.
- 4.2.18 Restoration and Monitoring. Permittee shall submit all required documentation outlined in Section 3, Compensatory Measures.
- 4.2.19 Final Report. Permittee shall submit a final report within 30 days after the Project is fully completed. This Final Report shall summarize the Project, including a summary of the implementation of each Protective Measure of this Agreement. This Final Report shall include documentation of animals moved out of harm's way, reports of special status species to CNDDDB, reports of invasive species removed, monitoring reports, reports of newly discovered invasive species, and final temporary and permanent impact amounts.
- 4.3 Format of Reports. All reports shall be submitted to CDFW electronically and shall include geographic information system (GIS) shapefiles, along with the appropriate metadata of the Project area. For more details on creating shapefiles, please visit <http://www.esri.com/library/whitepapers/pdfs/shapefile.pdf>.
- Electronic versions of reports shall be submitted through EPIMS. Click or paste this link in your browser to be routed to EPIMS:
<https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.
- 4.4 Annual Reports. Permittee shall submit an annual restoration and monitoring report to CDFW by March 15 of each year for 2 years after the restoration installation at the On-Site Riparian Habitat Restoration Site and the Off-site Riparian & Wetland Mitigation at the San Joaquin Marsh. The report(s) shall include an evaluation of each site as compared to the success criteria, an overview of the revegetation effort, wildlife observed, and the method used to assess these parameters as described in the respective HMMPs. Photographs from designated photograph stations shall be included.

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:

Fiona Nye, Director of Water Resources
Irvine Ranch Water District

EPIMS-ORA-48911-R5
Syphon Reservoir Improvement Project
15600 Sand Canyon Avenue
PO Box 57000
Irvine, CA, 92619-7000
nye@irwd.com

To CDFW:
Department of Fish and Wildlife
South Coast Region 5
EPIMS-ORA-48911-R5
Syphon Reservoir Improvement Project
EPIMS.R5@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 CDFW 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 this Agreement, in accordance with section 723 of title 14 of the California Code of Regulations.

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://wildlife.ca.gov/Conservation/Environmental-Review/CEQA/Fees>.

TERM

This Agreement shall expire on October 24, 2030, 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.

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.