

## **INFORMATION HANDOUT**

**For Contract No. 08-0Q3004  
At 08-SBd-138-R17.1/R19.2**

**Identified by  
Project ID 08-00020191**

## **PERMITS**

Regional Water Quality Control Board Clean Water Act 401 Permit  
United States Army Corps of Engineers – Section 404 Individual Permit  
California Department of Fish and Wildlife – Section 1602 Streambed  
Alteration Agreement

## **MISCELLANEOUS HANDOUTS**

Water Source Information  
Fire Plan for Construction and Service Contracts by United States Forest  
Service, dated August 2, 2012

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**Santa Ana Regional Water Quality Control Board**

August 28, 2015

Mr. Craig Wentworth  
California Department of Transportation  
464 4th Street, 6th Floor, MS 822  
San Bernardino, CA 92401

[craig.wentworth@dot.ca.gov](mailto:craig.wentworth@dot.ca.gov)

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR STATE ROUTE 138 REALIGNMENT PROJECT, COUNTY OF  
SAN BERNARDINO, CALIFORNIA (ACOE REFERENCE NO. SPL-2012-00137-VCL)  
(SARWQCB PROJECT NO. 362015-09)**

Dear Mr. Wentworth,

On February 11, 2015, we received from the California Department of Transportation (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to establish a new alignment for a two-mile portion of State Route 138 (SR-138) located east of Interstate 15 in the Cajon Pass area. The Applicant submitted a filing fee of \$90,900 with the Certification application materials, which satisfies the Project fee requirement for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, Section 2200 (a) (3).

This letter responds to your request for Certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments:

**Project Description:** The Project entails construction of a new alignment for 2.2 miles of SR-138 easterly of the intersection of SR-138 and I-15. The new highway will be forty feet wide, with one 12-foot wide lane in each direction and an 8-foot wide paved shoulder on each side. Three bridges will be constructed along the new alignment crossing Hog Ranch Creek, Miner's Shack Creek, and Double Drain Creek. The Project includes

removal of the sections of SR-138 and associated drainage structures no longer in use.

The work will take place within Sections 24 and 25 of Township 3 North, Range 6 West, of the U.S. Geological Survey *Cajon* 7.5 minute topographic quadrangle map (33° 19.809' N/ -117° 26.552 W).

Receiving water: Hog Ranch Creek, Miner's Shack Creek, Double Drain Creek and unnamed tributaries of Crowder Canyon, which is tributary to Cajon Creek. Cajon Creek has beneficial use designations (existing or potential) that include: municipal and domestic supply (MUN), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), cold fresh water habitat (COLD), wildlife habitat (WILD), and Rare, Threatened or Endangered Species (RARE).

Fill area:

Temporary Impact to Waters of the United States	0.477 acres
Permanent Impact to Waters of the United States	2.69 acres

Dredge/Fill volume: Not Applicable

Federal permit: U.S. Army Corps of Engineers Individual Permit Reference Number SPL-2012-00137-VCL

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.
- In lieu of traditional rip-rap protection, native vegetation will be interspersed throughout placed rock ('vegetated rip-rap') along 0.241 acres of the Project.
- Stream restoration of 0.51 acres will be accomplished by removing old roadway and drainage structures, re-grading to original stream contours, and then replanting native riparian vegetation.

- Streambed enhancement will be accomplished by installing native riparian plantings over 1.223 acres of the streambed. Locations include around the abutments of the new Hog Wash Bridge and from the bridge approximately 300 feet downstream. Also at the abutments of the new Miner's Creek Bridge and to 425 feet downstream of the bridge. At the new Double Creek Bridge riparian plants will be installed adjacent to area of temporary impacts.
- Temporary impacts will be mitigated by re-grading stream segments to their original site contours, and replanting with appropriate native riparian vegetation.

Offsite Water Quality Standards Mitigation Proposed:

- The Project Applicant will mitigate 2.69 acres of permanent impacts through the purchase of 3.93 acres of rehabilitation mitigation credit at a 1:1.5 mitigation ratio or 5.67 acres of enhancement mitigation credit at a 1:2.1 mitigation ratio in the Riverside-Corona Resource Conservation District (RCRCD) In-Lieu Fee Program.

Should the proposed Project have the potential to impact State- or federally-listed endangered species or their habitat, the Applicant will ensure that the Project implements measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife to mitigate those impacts to an acceptable level.

Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of SWRCB Order No. 2012-0011-DWQ (NPDES Permit No. CAS000003), commonly known as the State of California Department of Transportation Storm Water Permit, and subsequent iterations thereof.

This 401 Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil liability.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a Responsible Agency, the Regional Board is required to consider a Mitigated Negative Declaration (MND) prepared by the lead agency in determining whether to approve an application submitted by a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project, which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the MND prepared for the proposed Project by the California Department of Transportation that was filed with the State Clearinghouse on September 29, 2014, and subsequent information provided in the Applicant's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based upon the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality will be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been incorporated into the Project that should avoid or mitigate impacts to water quality to a less than significant level.

**This 401 Certification is contingent upon the execution of the following conditions:**

- 1) The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
- 2) This Order does not authorize emergency repair activities. The Applicant is required to apply for separate authorization to perform emergency repairs should they be necessary.
- 3) The Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any on-site construction activities.
- 4) A copy of this Certification and any subsequent amendments must be maintained on-site for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP), Water Quality Management Plan (WQMP) and/or Habitat Mitigation and Management Plan (HMMP).
- 5) A HMMP for all onsite mitigation shall be provided to this office for approval prior to the discharge of fill to, or the dredging or excavation of material from, waters of United States (U.S.) or waters of the State of California.
- 6) The Applicant shall complete the post-construction restoration of temporary impacts and onsite streambed enhancement and stream restoration to waters of the U.S. within 30 days following completion of construction activities. Upon consideration of a written request, this period may be extended by Regional Board authorization to accommodate proper planting times. If restoration is not initiated within one year of impacts, additional mitigation may be required to offset temporal loss of waters of the U.S.

- 7) All materials generated from construction activities associated with this Project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this Project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified. Additionally no materials shall be stored within waters of the U.S. or waters of the State of California.
- 8) The Project proponent shall utilize BMPs during Project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.
- 9) Substances resulting from Project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the State. All waste concrete shall be removed from the Project site.
- 10) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the State on-site, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 11) This 401 Water Quality Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 12) Construction de-watering discharges, including temporary stream diversions necessary to carry out the Project, are subject to regulation by Regional Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at [www.waterboards.ca.gov/santaana/](http://www.waterboards.ca.gov/santaana/)

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the Applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the Applicant to submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this 401 Water Quality Certification, the holder of any permit or license subject to this Certification shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of Section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby certify that any discharge from the referenced Project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at: [www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo\\_2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

Should there be any questions, please contact Jason Bill at (951) 782-3295 or [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov), or Wanda Cross at (951) 782-4468 or [wanda.cross@waterboards.ca.gov](mailto:wanda.cross@waterboards.ca.gov).

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc (via electronic mail):

Department of Transportation – Josh Jaffery – [josh.jaffery@dot.ca.gov](mailto:josh.jaffery@dot.ca.gov)

U. S. Army Corps of Engineers, Los Angeles Office - Veronica Chan

CA Department of Fish and Wildlife – Kim Freeburn-Marquez

State Water Resources Control Board, Office of Chief Counsel - David Rice

State Water Resources Control Board DWQ - Water Quality Certification Unit

U.S. EPA -Supervisor of the Wetlands Section – Jason A. Brush



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
915 WILSHIRE BOULEVARD, SUITE 930  
LOS ANGELES, CA 90017-3401

September 2, 2015

Scott Quinnell, Senior Environmental Planner  
California Department of Transportation, District 8  
464 West 4th Street, 6th Floor, MS-822  
San Bernardino, California 92401-1400

Dear Mr. Quinnell:

I have signed and enclosed your validated Department of the Army Permit (File No. SPL-2012-00137-VCL) for the State Route 138 Re-alignment East of Interstate 15 Project. Please retain this permit for your files.

The **Notification of Commencement of Work** statement and the **Notification of Completion of Work and Certification of Compliance** statement should be completed and returned as directed in each statement.

Thank you for participating in the Regulatory Program. If you have any questions, contact Veronica Li at 213-452-3292 or via e-mail at Veronica.C.Li@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey).

Sincerely,

ESTES.STEPHEN.  
M.1385639275

Digitally signed by ESTES.STEPHEN.M.1385639275  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=USA, cn=ESTES.STEPHEN.M.1385639275  
Date: 2015.09.02 18:29:59 -07'00'

Stephen M. Estes  
Acting Chief, Orange & Riverside Counties Section  
South Coast Branch  
Regulatory Division

Enclosures

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** California Department of Transportation, District 8 (POC: Scott Quinnell)  
**Permit Number:** SPL-2012-00137-VCL  
**Issuing Office:** Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** Caltrans proposes to discharge permanent fill into approximately 2.58 acres of non-wetland waters of the U.S. and temporary fill into approximately 0.48 acre of non-wetland waters of the U.S. Caltrans also proposes to re-establish 0.51 acres of non-wetland waters of the U.S. through removal of previously authorized fill (culverts and old roadbed fill) and grading of locations to match natural streambed elevations. Therefore, authorization is required pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), in association with constructing the State Route 138 (SR-138) Re-alignment East of Interstate 15 (I-15) Project, as shown on the attached drawings.

Specifically, you are authorized to:

1. Discharge permanent fill material into approximately 2.58 acres of non-wetland waters of the U.S. and discharge temporary fill material into approximately 0.48 acre of non-wetland waters of the U.S., in association with constructing a new 2.1-mile-long 40-foot-wide roadway section that would provide two 12-foot-wide travel lanes, (one lane in each direction), and 8-foot-wide shoulders along a new alignment. Caltrans would also decommission the current alignment and re-establish 0.51 acre of waters of the U.S. through removal of previously authorized fill (culverts and old roadbed fill) and grading of locations to match natural streambed elevations. Please refer to the attached figures, for locations of impacts to waters of the U.S. Corps-regulated activities that would affect waters of the U.S. include the following:
  - Construct a 40-foot-wide roadway that would provide two 12-foot-wide travel lanes, one lane in each direction, and two 8-foot-wide shoulders;
  - Construct wildlife crossing bridges at the following locations:
    - o Hog Ranch Creek Bridge

- Miner's Shack Creek Bridge
- Double Drain Creek Bridge
- Construct an off highway vehicle (OHV) crossing along an approved OHV trail system within unnamed tributary at subwatershed 3
- Create mid-slope benches with drainage ditches
- Construct two maintenance vehicle pullouts
- Revegetate slopes for erosion control and embankment slope stabilization
- Install replacement plantings for impacts to vegetation and aquatic resources
- Use temporary equipment and access roads during construction to construct roadway, culverts, bridges, and piers.

**Project Location:** In Hog Ranch Creek, Crowder Creek, Miner Shack Creek, Double Drain Creek, and several unnamed tributaries to Crowder Canyon Creek, Section 24, Township 3N, Range 6W, within the San Bernardino National Forest, San Bernardino County, California (at Lat/Long: 34.3282519°N,-117.4406719°W)

**Permit Conditions:**

**General Conditions:**

1. **The time limit for completing the authorized activity ends on August 28, 2020.** If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

**Special Conditions:**

1. The Permittee shall abide by the terms and conditions of the Clean Water Act (CWA) section 401 Water Quality Standards Certification, dated August 28, 2015.
2. At least thirty (30) days prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed grading/construction plans showing all work and structures in waters of the U.S., including dewatering plans. All plan sheets shall be signed, dated, and submitted electronically or on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.
3. No debris, soil, silt, sand, rubbish, cement or concrete washings thereof, oil or petroleum products or washings thereof, shall be allowed to enter into or placed where it may be washed by rainfall or runoff into the waterway. When project operations are completed, any and all excess construction materials, debris, and or other associated excess project materials shall be removed to an appropriate off-site location outside of any waters of the U.S.
4. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter avoided waters of the U.S. areas shown in the attached figures. Adverse impacts to waters of the U.S. beyond the Corps Regulatory Division-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.
5. At least 15 days prior to initiating construction in waters of the U.S. and to mitigate for permanent impacts to 2.58 acres of non-wetland waters of the U.S. and for temporary impacts to 0.48 acres of non-wetland waters of the U.S., the Permittee shall provide documentation verifying purchase of 3.93 acres of rehabilitation or 5.67 acres of enhancement mitigation credits for non-wetland waters of the U.S. from a Corps Regulatory Division-approved in-lieu fee program (i.e., the Riverside-Corona Resource Conservation District In-Lieu Fee Program [ILFP]). The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps Regulatory Division as to compliance with this special condition. The Permittee retains responsibility for providing the compensatory mitigation until the number and resource type of credits described above have been secured from a Corps Regulatory Division-approved ILFP and the Corps Regulatory Division has received documentation that confirms that the ILFP has accepted the responsibility for providing

the required compensatory mitigation. This documentation may consist of a letter or form signed by the ILFP, with the permit number and a statement indicating the number and resource type of credits that have been secured from the ILFP.

6. Within 45 calendar days of completing authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a memo including the following:
  - A) Date(s) work within waters of the U.S. was initiated and completed;
  - B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions completed or being taken to achieve compliance);
  - C) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.;
  - D) One copy of as-built drawings for the entire project (all sheets must be signed, dated, to-scale, and no larger than 8.5 x 11 inches); and
  - E) Signed Certification of Compliance.
  
7. Upon project completion, all temporary fills shall be removed and all temporarily affected streams shall be re-contoured to pre-construction conditions. In addition, the Permittee shall hydroseed, where possible, the disturbed portions of the earthen stream banks with native, non-invasive species, as appropriate to the affected areas, to reduce the potential for erosion. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the areas disturbed by construction or hydroseeded/replanted areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent (absolute cover) of the areas disturbed by the project are vegetated by non-native and invasive plant species. For each project drainage feature, the Permittee shall submit a memorandum by December 15<sup>th</sup> after completion of the two-year maintenance and monitoring period. The memo shall indicate for each project crossing/impact area, when temporary construction areas were re-contoured to pre-construction conditions, when native seeding was completed, the species and percent cover (absolute) of invasive and/or non-invasive plant species that occur onsite each year prior to treatment, and when and how many/the extent of invasive and/or non-invasive plant species that were removed each year.
  
8. The Permittee shall minimize for permanent impacts to 2.58 acres of non-wetland waters of the U.S. and for temporary impacts to 0.48 acres of non-wetland waters of the U.S., through removal of 0.51 acre of previously authorized fill (culverts and old roadbed fill) and grade of locations to match natural streambed elevations. A pre-construction survey shall be conducted on the proposed washes to be re-establishment to delineate the areas where fill would be removed. A post-construction survey shall be conducted to delineate the acreage of fill that was restored to sandy bottom wash. A memorandum shall be prepared in accordance with Special Condition 9, below. Prior to completing activities associated with impacts to waters of the U.S., the Permittee shall complete the re-establishment of 0.51 acre of sandy bottom wash. The restored sandy bottom wash areas and slopes shall be maintained and monitored for a period of two years, to insure that less than 10 percent (absolute cover) of the areas disturbed by the

project are vegetated by non-native and invasive plant species in accordance with Special Condition 7, above.

9. Within 45 calendar days of complete installation of all mitigation, the Permittee shall submit to the Corps Regulatory Division a memorandum including the following information:
  - A) Date(s) all mitigation was installed and monitoring was initiated;
  - B) Schedule for future mitigation monitoring and reporting pursuant to final, Corps-approved mitigation plan;
  - C) Color photographs (including map of photo points) taken at each mitigation site before and after installation such that correct installation per final, Corps-approved mitigation plan can be verified;
  - D) One copy of "as built" drawings for the entire project, including all mitigation sites. Electronic submittal (Adobe PDF format) is preferred. All sheets must be signed, dated, and to-scale. If submitting paper copies, sheets must be no larger than 11 x 17 inches; and
  - E) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance).
  
10. This Corps permit does not authorize you to take any threatened or endangered species, in particular the least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Epidonax traillii extimus*), and arroyo toad (*Bufo californicus*), or to adversely modify designated critical habitat of any federally listed species. In order to legally take a federally listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA section 10 permit, or a Biological Opinion (BO) under ESA section 7, with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (USFWS) BO (FWS-SB-1537.7) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps Regulatory Division permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, terms and conditions of which are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with the incidental take specified in the BO, where a take of the federally listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps Regulatory Division permit. The Corps Regulatory Division, Caltrans as the federal lead (and recipient of the BO), and USFWS are the appropriate authorities to determine compliance with the terms and conditions of the referenced BO and with the ESA.
  
11. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division (Veronica Li at 213-452-3292 or Stephanie Hall at 213-452-3410) and Archaeology staff (John Killeen at 213-452-3861) within 24 hours. The Permittee shall immediately suspend all work within 100 feet of any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction

in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

**Further Information:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as Permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
PERMITTEE

9-2-15  
DATE

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

ESTES.STEPHEN.M.1385639  
275

Digitally signed by ESTES.STEPHEN.M.1385639275  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=USA, cn=ESTES.STEPHEN.M.1385639275  
Date: 2015.09.02 18:30:44 -07'00'

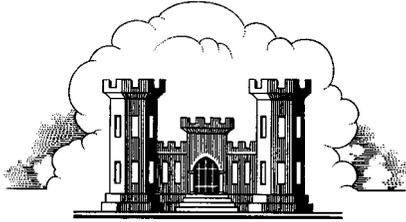
Stephen M. Estes  
Acting Chief, Orange & Riverside Counties  
Section

DATE

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
TRANSFEEEE

\_\_\_\_\_  
DATE



*LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS*

**NOTIFICATION OF COMMENCEMENT OF WORK  
FOR  
DEPARTMENT OF THE ARMY PERMIT**

**Permit Number:** *SPL-2012-00137-VCL*  
**Name of Permittee:** *California Department of Transportation, District 8 (POC: Scott Quinnell)*  
**Date of Issuance:** August 28, 2015

**Date work in waters of the U.S. will commence:** \_\_\_\_\_  
**Estimated construction period (in weeks):** \_\_\_\_\_  
**Name & phone of contractor (if any):** \_\_\_\_\_

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that I, and the contractor (if applicable), have read and agree to comply with the terms and conditions of the above referenced permit.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

At least ten (10) days prior to the commencement of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to:  
Veronica.C.Li@usace.army.mil

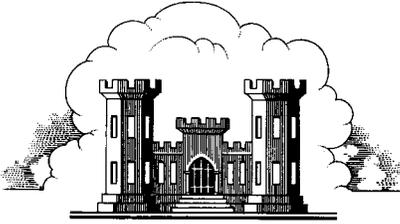
OR

(2) FAX this certification, after signing, to: 213-452-4196

OR

(3) MAIL to the following address:

U.S. Army Corps of Engineers  
Regulatory Division  
ATTN: CESPL-RG-SPL-2012-00137-VCL  
915 Wilshire Boulevard, Suite 930  
Los Angeles, CA 90017-3401



LOS ANGELES DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

**NOTIFICATION OF COMPLETION OF WORK AND  
CERTIFICATION OF COMPLIANCE WITH  
DEPARTMENT OF THE ARMY PERMIT**

**Permit Number:** *SPL-2012-00137-VCL*  
**Name of Permittee:** *California Department of Transportation, District 8 (POC: Scott Quinnell)*  
**Date of Issuance:** August 28, 2015

**Date work in waters of the U.S. completed:** \_\_\_\_\_  
**Construction period (in weeks):** \_\_\_\_\_  
**Name & phone of contractor (if any):** \_\_\_\_\_

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

Upon completion of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to:  
Veronica.C.Li@usace.army.mil

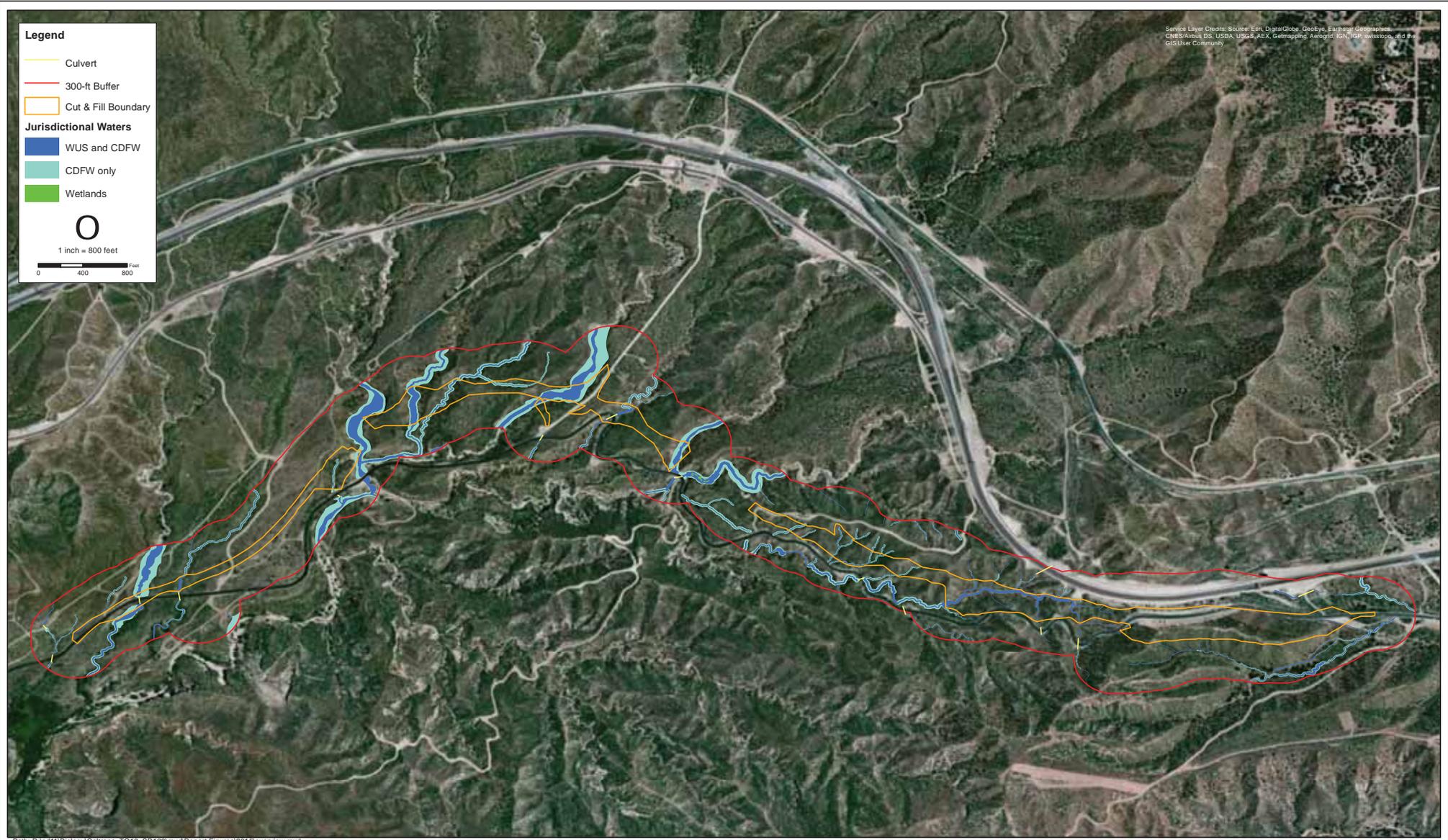
OR

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OR

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U.S. Army Corps of Engineers  
Regulatory Division  
ATTN: CESPL-RG-SPL-2012-00137-VCL  
915 Wilshire Boulevard, Suite 930  
Los Angeles, CA 90017-3401



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Overview of Jurisdictional Waters  
 State Route 138 Realignment Project  
 California Department of Transportation

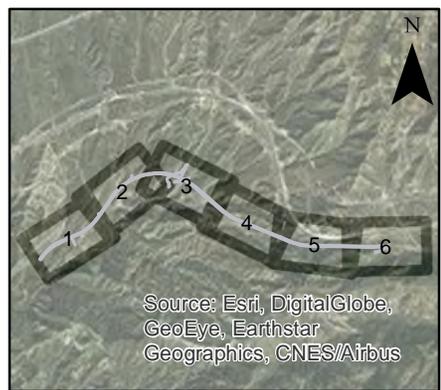
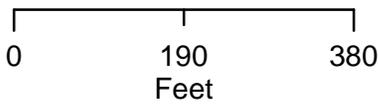
FIGURE

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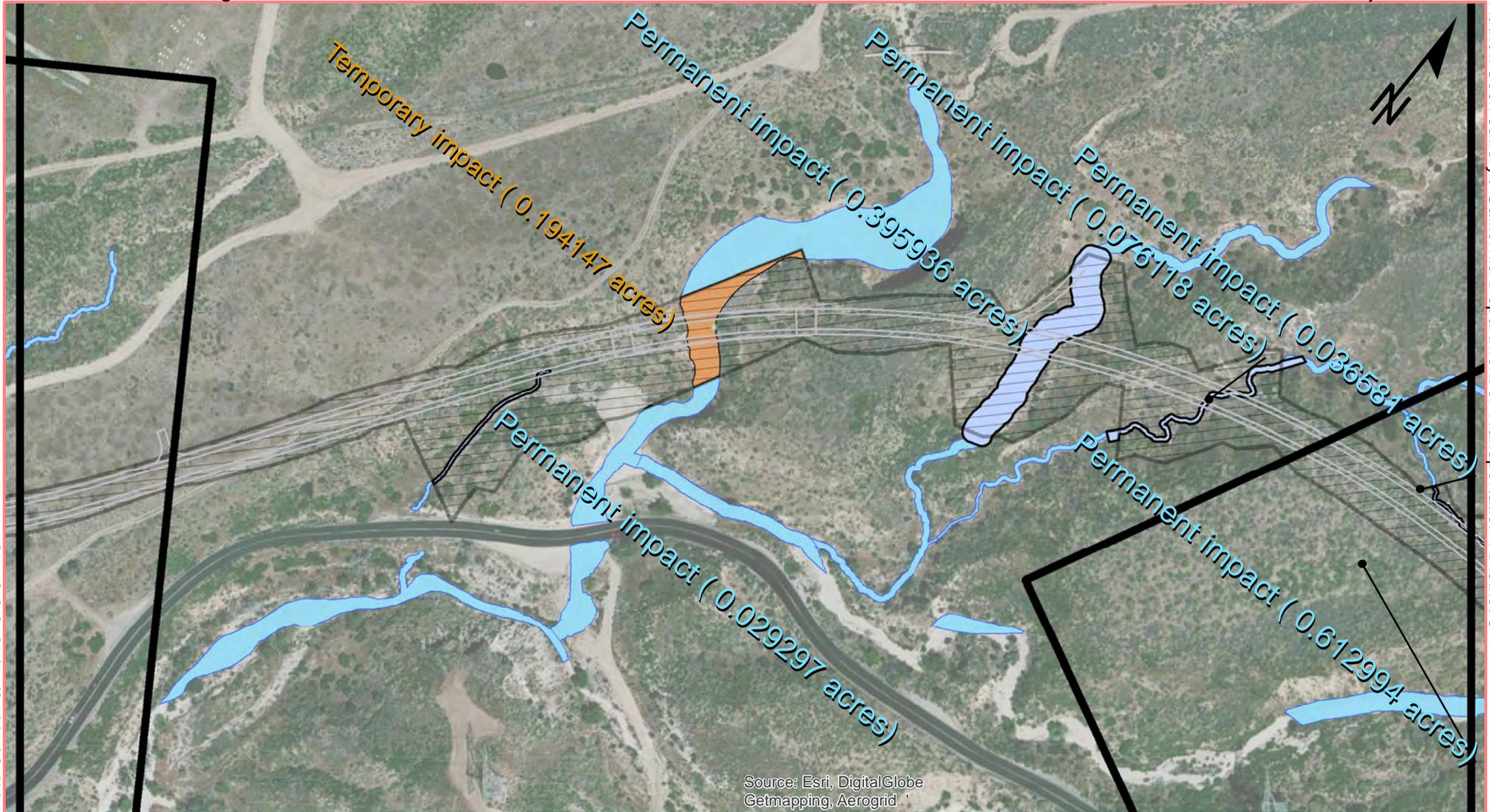
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**Applicant's Preferred Alternative  
Proposed Project Page 1 of 6**

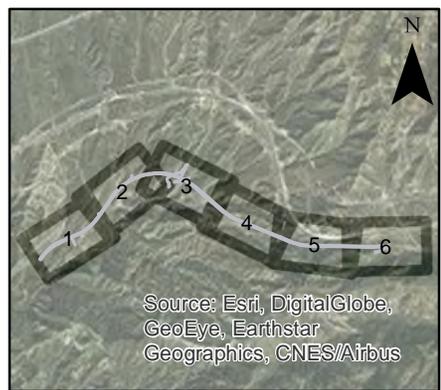
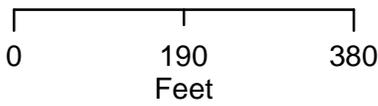
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- Waters of US Permanent
- Waters of US Temporary
- Strip Map Index
- CIDH Piles 84in Dia
- Pavement Limits
- Cut & Fill (Grading Area)

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Source: Esri, DigitalGlobe, Getmapping, Aerogrid.

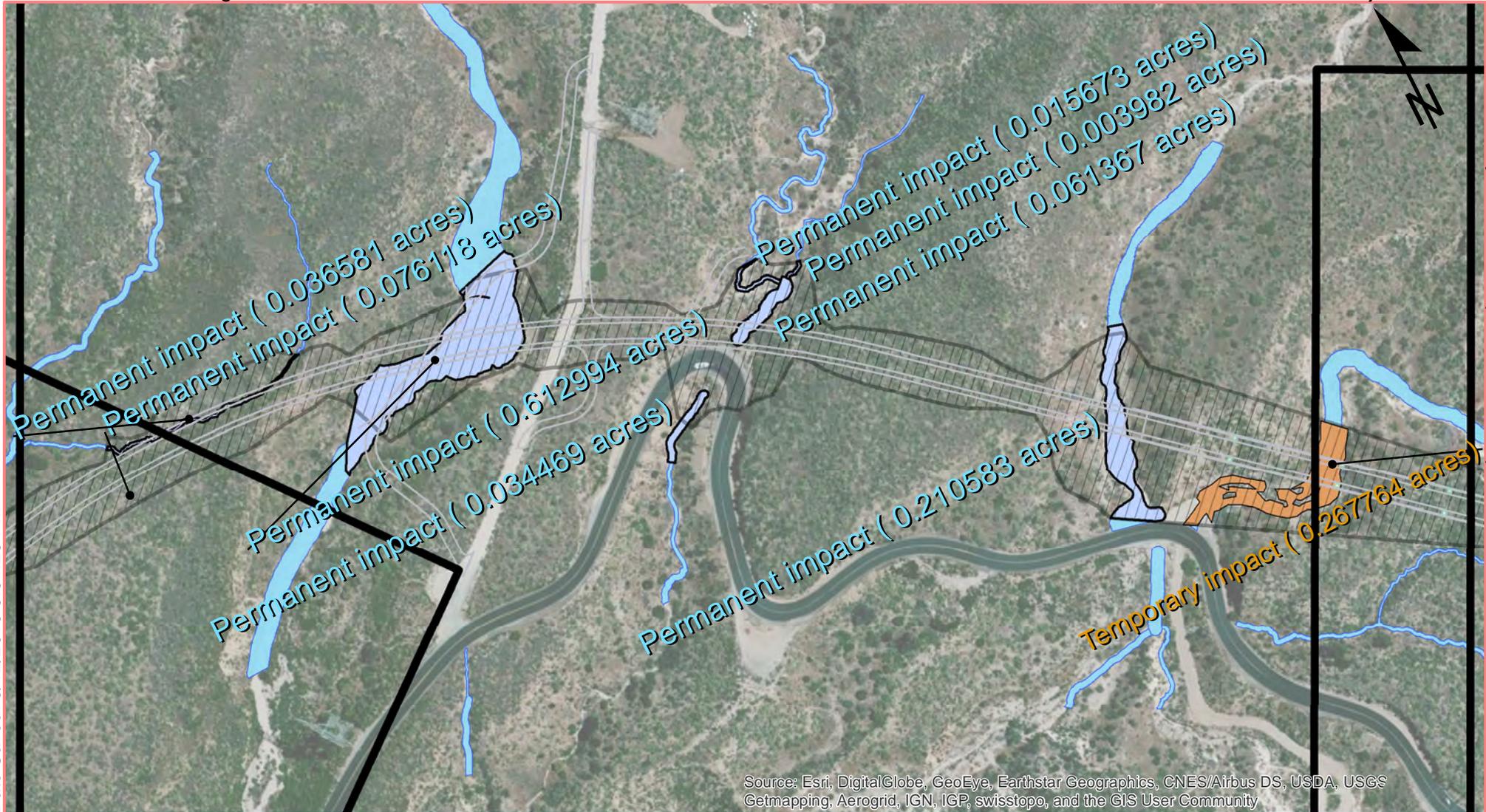
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**Applicant's Preferred Alternative  
Proposed Project Page 2 of 6**

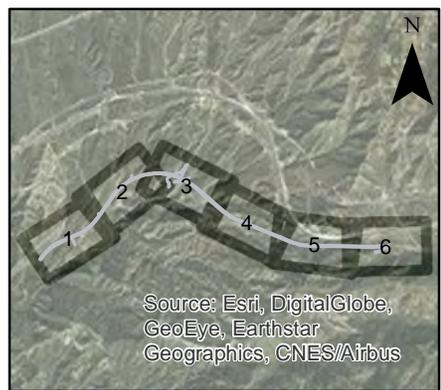
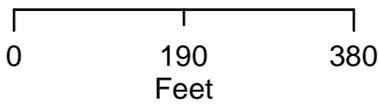
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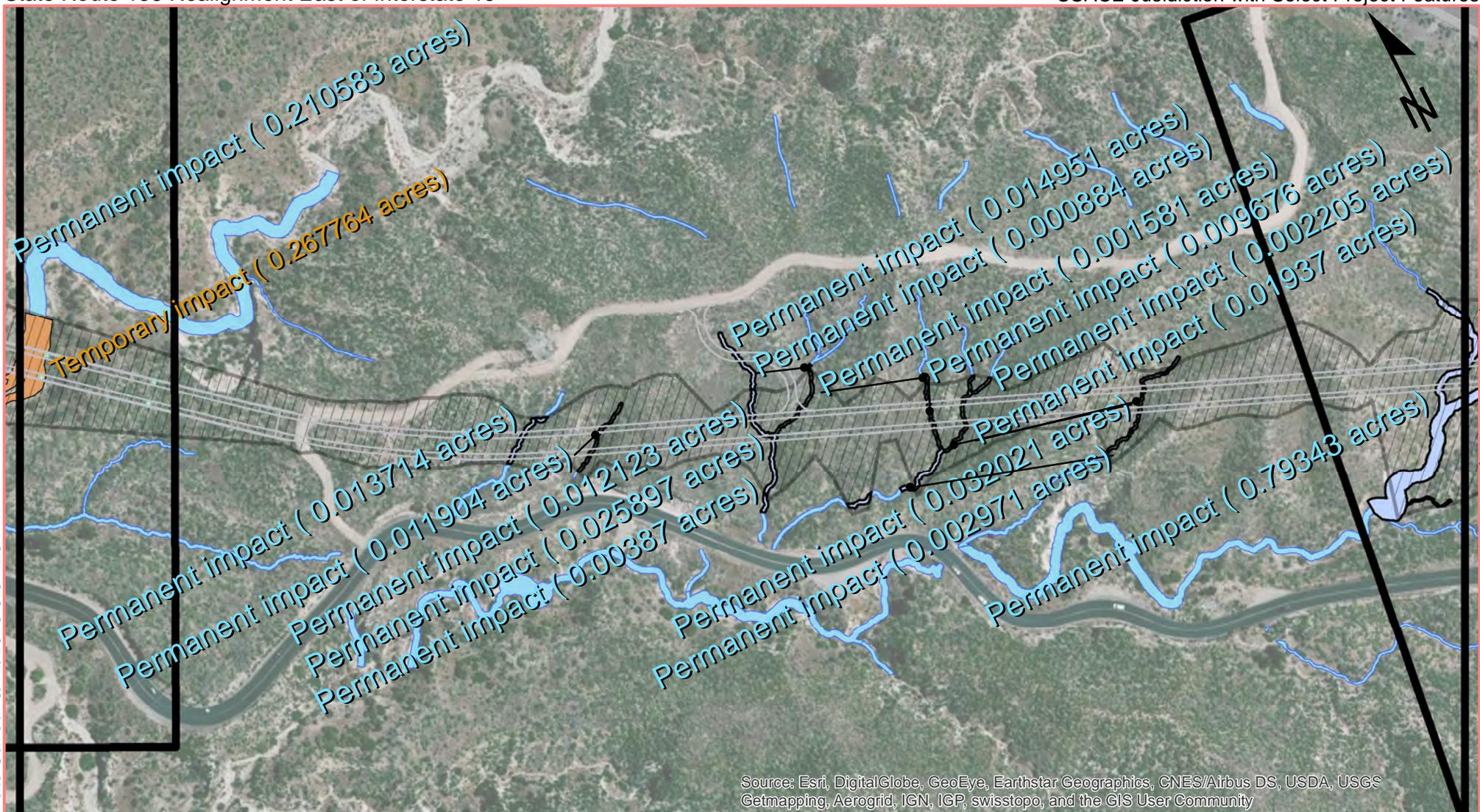
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

1 inch = 213 feet



**Applicant's Preferred Alternative  
Proposed Project Page 3 of 6**

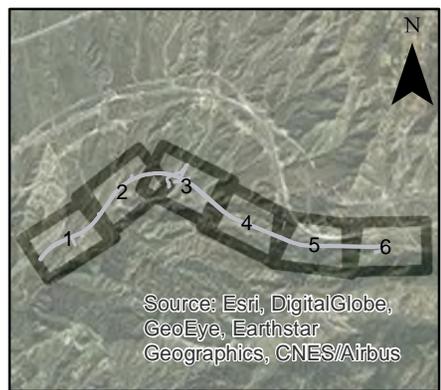
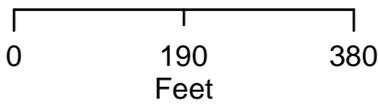
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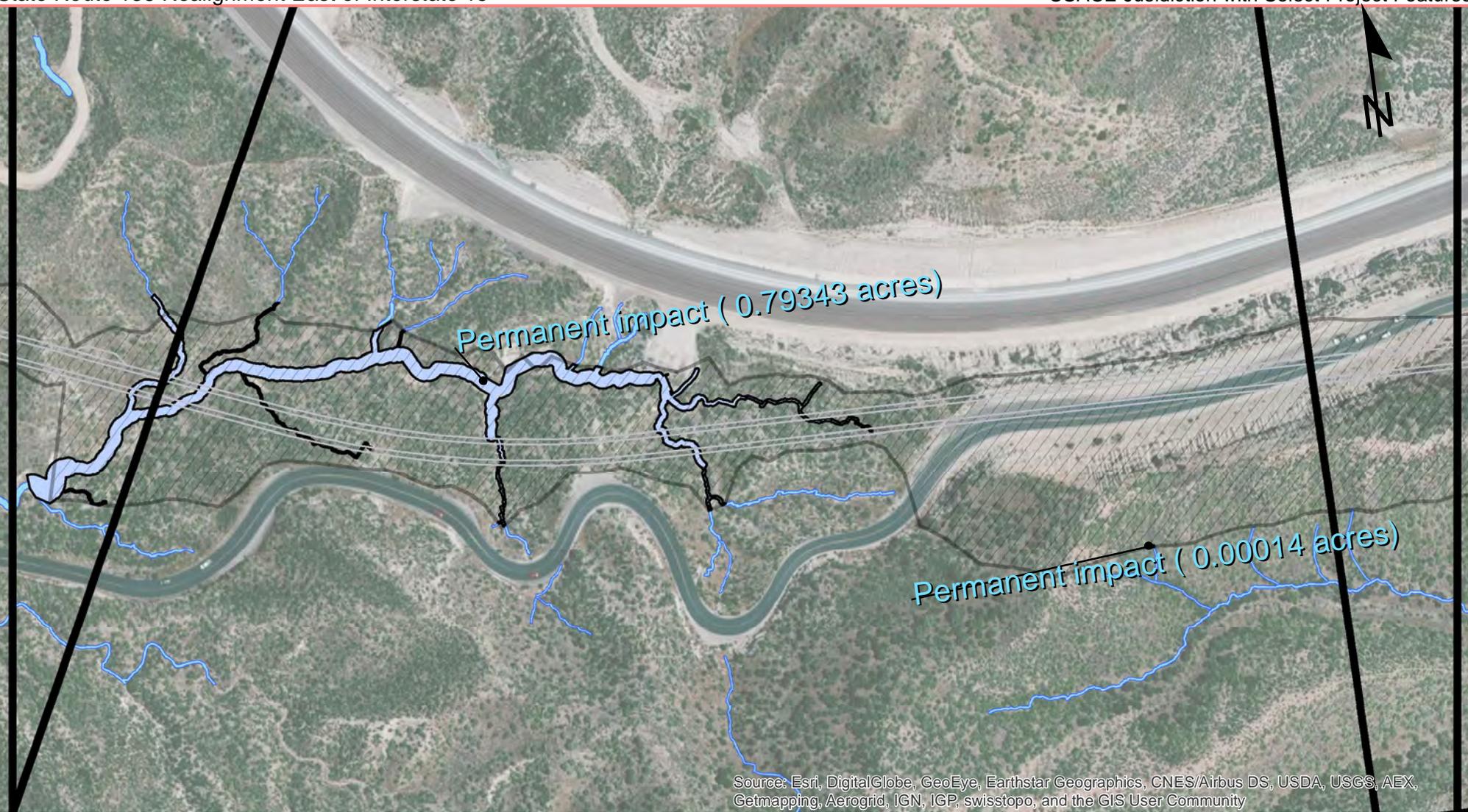
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**Applicant's Preferred Alternative  
Proposed Project Page 4 of 6**

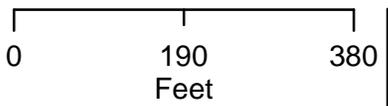
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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

1 inch = 213 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus

**Applicant's Preferred Alternative  
Proposed Project Page 5 of 6**

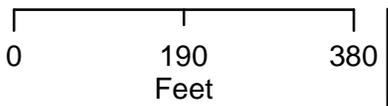
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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

1 inch = 213 feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus

**Applicant's Preferred Alternative  
Proposed Project Page 6 of 6**

- Waters of the United States (Study Area)
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- Strip Map Index
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- Waters of US Temporary



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, California 92009



In Reply Refer To:  
FWS-SB-1537.7

OCT 6 2003

Mr. Michael G. Ritchie  
Division Administrator  
U.S. Department of Transportation  
Federal Highway Administration  
California Division  
980 Ninth Street, Suite 400  
Sacramento, California 95814-2724

Re: Biological Opinion for the State Route 138 Safety Realignment Project, San Bernardino County, California.

Dear Mr. Ritchie:

This document transmits our biological opinion based on our review of the proposed realignment of State Route 138 (SR138) and its effects on the federally endangered arroyo toad (*Bufo californicus*) in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The proposed project will realign SR138 north of the existing alignment, from 2.6 km east of Interstate 15 to 0.2 km west of Summit Post Office Road in San Bernardino County, California. The project will be constructed by the California Department of Transportation (Caltrans) and funded, in part, by the Federal Highway Administration (FHWA). Designated critical habitat for the arroyo toad was vacated on October 30, 2002, by the U.S. District Court for the District of Columbia. Therefore, critical habitat for the arroyo toad will not be addressed in this opinion. Your request for formal consultation was received on April 28, 2003.

Your initiation letter requested concurrence with the determination that the proposed action was not likely to adversely affect the federally endangered least Bell's vireo (*Vireo bellii pusillus*, "vireo"). The revised biological assessment (BA) states that this species may be adversely affected by construction noise; however, this language was inadvertently left in the BA from a previous version. With implementation of the proposed avoidance measures, we concur that the project is not likely to adversely affect the vireo. Therefore, the vireo will not be discussed further in this opinion.

This biological opinion is based on information provided in the revised biological assessment provided on April 28, 2003, correspondences, electronic mail, telephone conversations, field

TAKE PRIDE  
IN AMERICA 

investigations, meetings, and other sources of information. A complete administrative record of this consultation is on file at the Carlsbad Fish and Wildlife Office (CFWO).

#### CONSULTATION HISTORY

Informal consultation for this project began on May 8, 1995, when the CFWO received a request for a list of proposed, threatened, and endangered species that could be impacted by the realignment and widening of SR138. The CFWO supplied the list on June 16, 1995. On May 22, 1996, the CFWO received from Caltrans a notice of preparation of an Initial Study/Environmental Assessment (IS/EA) for the SR138 realignment and expansion. On June 26, 1996, the CFWO responded, recommending surveys for least Bell's vireo, southwestern willow flycatcher (*Empidonax traillii extimus*) and arroyo toad. The Draft IS/EA for the proposed project was sent to the CFWO on February 19, 1998.

On April 2, 1999, the CFWO wrote a letter requesting that growth-inducing effects of the proposed safety realignment and highway widening be considered and that additional surveys for arroyo toad be conducted. On June 4, 1999, Caltrans responded and agreed to conduct additional surveys. Caltrans also informed the CFWO that the project purpose was being narrowed to address only the safety realignment, not the highway widening, and, therefore, should not be considered growth-inducing. The highway widening was anticipated to be conducted at a later date.

On October 1, 1999, the CFWO received from Caltrans a letter requesting initiation of the Section 404 Memorandum of Understanding (MOU) Integration Process for Realignment of SR138. On October 22, 1999, the CFWO requested clarification as to whether the proposed project could include the widening of SR138. On October 29, 1999, Caltrans again requested the CFWO's participation in the Section 404 MOU Integration Process. On November 11, 1999, a letter from FHWA to the CFWO clarified that the project would be restricted to the safety realignment only and again requested the CFWO's participation. On December 3, 1999, the CFWO sent a letter to Caltrans concurring with the purpose and need and alternative analysis for the proposed project and agreeing to participate in the Section 404 MOU Integration Process.

On December 22, 1999, the CFWO wrote a letter to Caltrans expressing concerns regarding the extent of impacts to wetlands and animal movement that would result from filling existing drainages, as proposed in the IS/EA. On March 21, 2001, the CFWO wrote a letter to Caltrans to confirm a commitment by Caltrans to construct bridges over the main drainages along the proposed realignment.

On January 8, 2002, the CFWO received from FHWA a letter requesting initiation of consultation regarding potential effects of the proposed project on arroyo toad, least Bell's vireo, and southwestern willow flycatcher and a BA. On March 5, 2002, the CFWO responded, initiating formal consultation. On June 16, 2002, the CFWO sent FHWA a letter requesting a 60-day extension to consultation due to uncertainty regarding the proposed purchase of toad habitat at Summit Valley Ranch, which was being considered as a possible means to offset potential impacts to toad associated with the proposed project. On September 7, 2002, FHWA

sent the CFWO an electronic mail message notifying the CFWO that formal consultation under Section 7 was being withdrawn to reevaluate potential impacts to and offsetting measures for the arroyo toad.

On April 28, 2003, the CFWO received from FHWA another request to initiate formal consultation to address potential impacts to the arroyo toad associated with the proposed project and a revised BA. On June 4, 2003, the CFWO responded, initiating formal consultation.

## BIOLOGICAL OPINION

### DESCRIPTION OF THE PROPOSED ACTION

The proposed project will realign SR138 north of the existing alignment, from 1.6 miles east of Interstate 15 to 0.1 miles west of Summit Post Office Road. The new roadbed will be 40 feet wide, consisting of two 12-foot-wide lanes and two 8-foot-wide shoulders. The new section of road will be approximately 1.9 miles long. Other project-related infrastructure includes an infiltration/detention basin along the new alignment, an off-highway vehicle (OHV) crossing, and a temporary detour during construction. The total area impacted will be an estimated 40.1 acres, including cut and fill, new roadbed material, and the proposed basin. Total paved area of the new alignment and access roads will result in 9.9 acres of paved surface. Temporary impacts associated with the proposed detour will total an estimated 1.4 acres.

### *Conservation/Minimization Measures*

- 1) Pre-construction surveys will be conducted by a qualified biologist to identify arroyo toads in the project impact area. If arroyo toads are found, construction will not begin, and reinitiation of section 7 consultation will occur. Unless there is new evidence that the project would result in substantive unanticipated impacts to arroyo toad, additional minimization measures will be relatively minor (e.g., construction of toad exclusionary fencing), and the CFWO will make every effort to ensure that the project does not experience undue delays.
- 2) A qualified biological monitor will be on-site during construction. Should arroyo toads disperse into the project area during construction, all work will cease, and reinitiation of section 7 consultation will occur. Again, unless there is new evidence that the project would result in substantive unanticipated impacts to arroyo toad, additional minimization measures will be relatively minor, and the CFWO will make every effort to ensure that the project does not experience undue delays.
- 3) The old alignment and temporary detour for SR138 will be abandoned along certain sections and obliterated along others. Abandonment involves removing asphalt/concrete and all materials from underlying roadbed and grading the area to blend in with existing surroundings. Abandoned sections will no longer be traversable. Obliteration involves removing asphalt/concrete but leaving underlying roadbed. Obliterated sections will be traversable by United States Forest Service (USFS) for utility access and/or maintenance.

About 1.22 miles of the old road will be abandoned, and about 0.68 miles will be obliterated.

- 4) At least 12.81 acres of mixed upland habitat (chaparral/sage scrub) will be planted on the sides of drainages along the old road alignment. At least 0.59 acres of sandy wash will be restored along the old road alignment. At least 1.0 acres of woody riparian vegetation (willow woodland/mulefat scrub) will be created near the proposed bridges along the new alignment or in appropriate locations along the old alignment.
- 5) Prior to project initiation (any ground disturbing activity, vegetation removal, or importation of material), a detailed restoration plan identifying locations where restoration would take place, the seed and container plants that would be used, the methods that would be used to prepare and maintain the site, and the performance standards will be submitted to and reviewed for approval by the CFWO.
- 6) The new alignment will be lined with 5-strand barbed wire fencing and locked gates will be installed to exclude OHV and other unauthorized access of the surrounding area. About 1.4 acres of unauthorized OHV roads around SR138 will no longer be accessible.
- 7) Three bridges will be constructed along the new alignment at three major washes. These three bridges will be between 125 and 385 feet long and between 16 and 66 feet high.
- 8) All vegetation removal will occur outside the riparian bird nesting season (March 1 through September 30).
- 9) Best Management Practices will be implemented to minimize direct and indirect impacts in the project area.
- 10) A variety of measures will be taken to minimize the amount of pollution entering the soil and waterways as a result of the proposed project. These include the following:
  - A storm water pollution prevention program will be developed and implemented to protect water resources:
  - Potentially dusty areas will be watered down for dust control.
  - 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, resulting from project related activities, shall be prevented from contaminating the soil.
  - No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the state.

- No equipment maintenance/storage shall be done within or near any stream, harbor, or channel margin where petroleum products or other pollutants from the equipment may enter these areas under any flow. This includes drainages.

#### STATUS OF THE SPECIES

The arroyo toad was listed as endangered on December 16, 1994 (59 FR 63264). A recovery plan for the species was published in July 1999 (U.S. Fish and Wildlife Service, "USFWS" 1999). At the time of listing, the arroyo toad was described as the arroyo southwestern toad (*Bufo microscaphus californicus*). Gergus (1998) recently published a genetic justification for the reclassification of the arroyo southwestern toad as a full species (i.e., arroyo toad [*Bufo californicus*]).

**Description.** The arroyo toad is a small, dark-spotted toad of the family Bufonidae. The parotoid glands, located on the top of the head, are oval-shaped and widely separated. A light/pale area or stripe is usually present on these glands and on top of the eyes. The arroyo toad's underside is buff-colored and usually without spots (Stebbins 1985). Recently metamorphosed individuals typically blend in with streamside substrates and are usually found adjacent to water. The male arroyo toad's courtship vocalization is a high trill, usually lasting 8-10 seconds per call.

**Habitat Affinities.** Arroyo toads breed and deposit egg masses in shallow, sandy pools which form in low-gradient sections of streams. These stream segments are usually bordered by sand-gravel flood-terraces. Stream order, elevation, and floodplain width appear to be important factors in determining habitat capability (Sweet 1992, Griffin 1999). High stream order (i.e., 3<sup>rd</sup> to 6<sup>th</sup> order), low elevation (particularly below 3,000 feet), and wide floodplains seem to be positively correlated with arroyo toad population size. However, small arroyo toad populations are found along 1<sup>st</sup> and 2<sup>nd</sup> order streams at elevations up to 4,600 feet.

Optimal breeding habitat consists of low-gradient sections of slow-moving streams with shallow pools; also, these areas contain nearby sandbars and adjacent, undeveloped stream terraces. Outside of the breeding season, arroyo toads are essentially terrestrial and are known to utilize a variety of upland habitats, including, but not limited to, sycamore-cottonwood woodlands, oak woodlands, coastal sage scrub, chaparral, and grassland (Holland 1995, Griffin et al. 1999).

**Life History/Population Dynamics.** Arroyo toad larvae feed on loose organic material such as interstitial algae, bacteria, and diatoms. They do not forage on macroscopic vegetation (Sweet 1992, Jennings and Hayes 1994). Juvenile toads rely on ants almost exclusively (USFWS 1999). By the time they reach 0.7 to 0.9 inches in length, they take more beetles, along with the ants (Sweet 1992, USFWS 1999). Adult toads probably consume a wide variety of insects and arthropods including ants, beetles, spiders, larvae, caterpillars, and others. Breeding typically occurs from February to July on streams with persistent water (Griffin et al. 1999). Female arroyo toads must feed for a minimum of approximately two months to develop the fat reserves needed to produce a clutch of eggs (Sweet 1992). Eggs are deposited and larvae develop in shallow pools with minimal current and little or no emergent vegetation. The substrate in these pools is generally sand or fine gravel overlain with silt. Arroyo toad eggs hatch in 4 to 5 days

and the larvae are essentially immobile for an additional 5 to 6 days (Sweet 1992). They then begin to disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks (Sweet 1992). After metamorphosis (June-July), the juvenile toads remain on the bordering gravel bars until the pool no longer persists (usually from 8 to 12 weeks depending on site and yearly conditions) (Sweet 1992). Most individuals become sexually mature by the following spring (Sweet 1992).

This species has been observed moving approximately 1 mile within a stream reach and 0.7 miles away from the stream, into native upland habitats (Sweet 1992, USFWS 1999, Ramirez 2001) or agricultural areas (Griffin et al. 1999). Movement distances may be regulated by topography and channel morphology. Griffin (1999) reported a female arroyo toad traveling more than 948 feet perpendicular from a stream and Holland and Sisk (2000) found arroyo toads 0.7 miles from a water course. Although toads do disperse into upland habitat, studies of individual toads have shown that toads move more frequently and for greater distances along drainages (Griffin et al. 1999, Ramirez 2001, 2002a, 2002b). Arroyo toads are critically dependent on upland terraces and the marginal zones between stream channels and upland terraces during the non-breeding season, especially during periods of inactivity, generally late fall and winter (Sweet 1992).

Historic and Current Range. Historically, arroyo toads occurred in at least 22 river basins in southern California from the upper Salinas River system in Monterey County to San Diego County and southward to the vicinity of San Quintin, Baja California, Mexico. They have been found at elevations extending from sea level to 4,600 feet (USFWS 1999). Arroyo toads have been extirpated from an estimated 75 percent of their former range in the United States, and they now occur primarily in small, isolated areas in the middle to upper reaches of streams. The current distribution of the arroyo toad in the United States is from the San Antonio River in Monterey County, south to the Tijuana River and Cottonwood Creek Basin along the Mexican border. Arroyo toads are also known from a seemingly disjunct population in the Arroyo San Simeon River System, about 10 miles southeast of San Quintin, Baja California. Although the arroyo toad occurs principally along coastal drainages, it also has been recorded at several locations on the desert slopes of the Transverse Range (Patten and Myers 1992, Jennings and Hayes 1994).

Rangewide Trends and Current Threats. Because arroyo toad habitats (i.e., broad, flat floodplains in southern California) are favored sites for flood control projects, agriculture, urbanization, and recreational facilities, such as campgrounds and off-highway vehicle parks, many arroyo toad populations were reduced in size or extirpated due to extensive habitat loss from 1920 to 1980 (USFWS 1999). The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, caused arroyo toads to disappear from a large portion of their previously occupied habitat in California (Jennings and Hayes 1994). Currently, the major threats to arroyo toad populations are from stream alteration, introduction of exotic species, urban and rural development, mining, recreation, grazing, drought, wildfire, and large flood events.

#### ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of State and private actions that are contemporaneous with the consultation in progress.

According to 50 CFR § 402.02 pursuant to section 7 of the Act, the "action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area. We have described the action area to include the upper portions Crowder Canyon, Horsethief Canyon, and Little Horsethief Canyon watersheds, within one mile of the proposed project.

Crowder Creek runs from east to west roughly parallel to SR138 at site of the proposed realignment. Horsethief Canyon runs from west to east, starting near the eastern end of the proposed realignment, and running adjacent to SR138 for several miles. Little Horsethief Canyon runs roughly parallel to and a mile south of Horsethief Canyon and converges with Horsethief Canyon about five miles east of the project site.

Arroyo toad surveys were conducted in Crowder Creek and its tributaries in 1997, 1999, 2000, and 2001. The surveys in 1997 and 1999 were abbreviated and consisted of only three visits. In 2000 and 2001, six visits were made to the site, consistent with USEWS guidelines. Although Crowder Creek appears to contain some suitable breeding habitat for arroyo toad, all surveys were negative. Breeding arroyo toads have been observed about five miles south of the proposed project in Cajon Wash, to which Crowder Creek is a tributary (Brown et al. 2000). Cajon Wash contains a large amount of high-quality arroyo toad breeding habitat but is heavily impacted by off-highway vehicles, recreation, and trash dumping.

In 2001, two individual arroyo toads were observed on SR138 0.7 miles and 1.3 miles east of the proposed project in the Horsethief Canyon drainage (AMEC 2001). One toad was dead when it was found, and the other was injured. Focused surveys for arroyo toad were not conducted in Horsethief Canyon because during the years in which surveys took place, the creek did not hold water long enough to provide suitable breeding habitat for the toad. Because breeding toads have not been observed in Horsethief Canyon, it is assumed that these toads dispersed from the population in Little Horsethief Canyon. Toads dispersing from Little Horsethief to the locations where they were observed on the SR138 could have moved over the ridge that separates the two canyons; using this route, the toads would have had to move through about a mile of fairly steep, rocky terrain. Alternatively, the toads could have moved up Horsethief Canyon from where it converges with Little Horsethief Canyon, a distance of about four miles to the locations where the toads were found.

Little Horsethief Canyon contains extensive arroyo toad breeding habitat. Breeding arroyo toads have been observed from the western portion of Little Horsethief Canyon, about a mile southeast

of the eastern edge of the project boundary, to the confluence of Little Horsethief and Horsethief Canyons.

Existing uses in the area include the current SR138 alignment, a utility corridor for gas pipeline and electrical lines, a railroad to the north of the road, and recreational activities, including unauthorized OHV use. The current SR138 alignment is a two-lane road that experienced 2,150 daily trips in the year 2000. The current alignment runs through all of the drainages that would be impacted by the new alignment and contains no bridges and four small culverts.

The utility corridor is accessed by a dirt road from SR138. Employees from the utility companies make monthly visits to inspect the pipeline and electrical lines and occasionally perform maintenance activities. The railroad runs roughly parallel and less than a mile north of the existing and proposed SR138 alignments.

Because the current road alignment does not have a right-of-way fence along it or have locked gates for the utility access road, OHV activities are common in the vicinity. Most of the OHV activity is along the bottoms of drainages, where it is most likely to result in direct impacts to any arroyo toads that may be present or to degrade the habitat along potential toad dispersal corridors.

#### EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action, that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action, are later in time, and still reasonably certain to occur.

##### *Direct Effects*

##### Construction Activities

Construction activities, such as grading, pouring asphalt, etc., could impact arroyo toads, if they were present while these activities were taking place. However, suitable habitat in the vicinity of the proposed project was surveyed in 1997, 1999, 2000, and 2001, and survey results were negative each time. Therefore, it is unlikely that arroyo toads will be present during the construction period and will be impacted by the proposed construction activities. To ensure that arroyo toads are not impacted during construction, a qualified biologist will conduct a pre-construction survey and will monitor construction activities. If arroyo toads are present, construction activity will cease and consultation will be reinitiated.

### Habitat Loss

The proposed project will fill and culvert ten smaller drainages along the new road alignment. All of the drainages that will be filled are tributaries of Crowder Creek. Grading and support structures for the bridges will affect habitat in the four larger drainages along the new road alignment. Including impacts associated with grading and filling, the new road alignment will permanently affect 12.81 acres of upland habitat along the slopes of the drainages and 0.59 acre of sandy wash. Temporary impacts associated with the detour will affect 0.69 acre of mixed willow woodland/mulefat scrub. Impacts to sandy wash, riparian vegetation, and upland habitat along a drainage are considered impacts to potential "arroyo toad habitat" which could be used by arroyo toads for dispersal and foraging. In addition to the impacts described above, the project will impact 27.4 acres of upland habitat that is not associated with a particular drainage and is, therefore, described as "non-arroyo toad habitat."

The distinction between "arroyo toad habitat" within drainages and "non-arroyo toad habitat" outside of the drainages is made because the proposed project is at the edge of the range at which dispersal from known populations is possible, and it is assumed that if arroyo toads do occasionally disperse onto the project site, they will likely be moving through the drainages and upland habitat along the drainage slopes (see "Dispersal" in the *Indirect Effects* section below). If a breeding population were located in the immediate vicinity of the proposed project, all of the upland habitat would be considered potential arroyo toad habitat, and if breeding populations were located at a distance where dispersal was determined to be impossible, none of the habitat would be considered potential arroyo toad habitat.

The abandonment of the majority of the old SR138 alignment and restoration of at least 0.59 acre of sandy wash, 0.69 acre of willow woodland/mulefat scrub, and 12.81 acres of upland habitat associated with drainages along the old SR138 alignment will help minimize the impacts of the new alignment on potential arroyo toad habitat.

### *Indirect Effects*

#### Dispersal

The closest known breeding population at Little Horsethief Canyon is just over a mile from the proposed project and is separated by steep, rocky upland habitat. Breeding toads in Cajon Wash and at the confluence between Horsethief Canyon and Little Horsethief Canyon are connected to the project site by drainages but are about five miles away. Dispersal distances of over a mile through steep, rocky upland habitat or five miles along drainages have not been recorded in the literature, but the observation of an arroyo toad less than a mile east of the project site in the Horsethief Canyon drainage demonstrates that toads are able to disperse to a location that is within a mile of the project site and is connected to the site by a well-defined drainage. Thus, occasional dispersal by arroyo toads into the project area is possible.

Arroyo toads moving through the project area are most likely to be moving through drainages and their immediately associated upland habitat. Although it has been demonstrated that arroyo

toads use upland habitat up to at least 0.7 miles from the nearest water course (Holland and Sisk 2000), radio telemetry studies have shown that most dispersal occurs along well-defined drainages (Griffin et al. 1999, Ramirez 2001, 2002a, 2002b). Thus, the filling of drainages and impacts to adjacent upland habitat could inhibit the occasional dispersal of individuals through the action-area. The use of bridges over the larger drainages will help avoid and minimize impacts to dispersing arroyo toads by allowing them to pass safely under the road.

The abandonment of the old road alignment and habitat restoration will help minimize potential effects of the project on arroyo toad dispersal by removing impediments to dispersal where the road passed through drainages and by restoring adjacent upland habitat that could be used for foraging or burrowing.

#### Off-Highway Vehicles

The old SR138 alignment allows OHVs to access the surrounding Forest Service lands. Consequently, a number of unauthorized OHV trails have become established and are used regularly. As discussed in the "Environmental Baseline" section, these trails are mostly along sandy washes and drainage bottoms, where they are most likely to impact dispersing arroyo toads and their habitat. By eliminating much of the OHV access, the proposed project will reduce the potential direct effects of unauthorized OHV use in the area and allow the recovery of 1.4 acres of unauthorized OHV trails that could occasionally be used by dispersing arroyo toads.

#### Traffic

Automobile traffic can severely impact amphibian populations in proximity to roads (Fahrig et al. 1995, Hels and Buchwald 2001). However, the proposed project is anticipated to result in relatively small impacts to arroyo toads for the following reasons: 1) known populations are separated from the project site by substantial distances and/or geographic barriers so arroyo toads are expected to disperse onto the site only occasionally; 2) arroyo toads that have dispersed long distances to the site are likely to be moving through the drainages and under bridges as opposed to moving through the upland habitat and crossing the road.

#### Habitat Degradation

Project implementation could result in off-site habitat degradation as a result of pollutants and sediment entering the habitat during and after construction-related activities. Best Management Practices and the minimization measures in the project description, including the development of a storm water pollution prevention program, will help minimize these effects.

#### CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

We are unaware of any non-Federal actions affecting listed species that are reasonably certain to occur in the action area considered by this opinion. The expansion of SR138 and the Rancho Los Flores and Summit Valley Ranch are anticipated to be addressed under a separate Habitat Conservation Plan. Issuance of a permit by the USFWS for that Habitat Conservation Plan would constitute a Federal action that would not be considered in the cumulative effects analysis.

#### CONCLUSION

After reviewing the current status of the arroyo toad, environmental baseline for the action area, effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of this species. Our conclusion is based on the following reasons:

- 1) The proposed project is in an area in which arroyo toads are seldom expected to occur;
- 2) Before and during construction, a qualified biological monitor knowledgeable of arroyo toad biology will be present to suspend construction activity should animals be detected in the project site;
- 3) Post-construction, most arroyo toads that disperse into the area will likely be able to safely move through because:
  - a. Proposed bridges will allow toads to safely move through the largest drainages;
  - b. Proposed abandonment of the majority of the old road alignment and restoration of drainages and associated upland habitat will minimize and offset anticipated impacts to toad habitat and dispersal; and
  - c. Restricting access by OHVs to the surrounding area will help limit direct impacts to arroyo toads resulting from OHV use and will allow the restoration of drainages and upland habitat affected by OHV activity.

#### INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined by us to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. We defined harass as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and

not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and must be undertaken by FHWA so that they become binding conditions of any grant or permit issued to the permittee, as appropriate, for the exemption in section 7(o)(2) to apply. FHWA has a continuing duty to regulate the activity covered by this incidental take statement. If FHWA (1) fails to assume and implement the terms and conditions or (2) fails to require the permittee to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of the incidental take, FHWA must report the progress of the action and its impact on the species to the CFWO as specified in the incidental take statement [50 CFR §402.14(i)(3)].

#### AMOUNT OR EXTENT OF TAKE

With implementation of conservation and minimization measures before and during construction, take of arroyo toads is not anticipated and therefore none is authorized. Post-construction, it is anticipated that during appropriate environmental conditions, a few toads could disperse onto the proposed project site and that a small fraction of these dispersing animals will be killed on the realigned road. Given the infrequency with which these events are anticipated and the difficulty of detecting these events, quantifying the take of arroyo toads is not possible, although we anticipate that the number of individuals that may be taken will be low. Because we cannot provide a reliable estimate of the numbers of individuals of arroyo toads that are likely to be taken, we have established take thresholds that, if exceeded, will trigger reinitiation of consultation. The take threshold and limit is the mortality of more than one toad in every two years along the new road alignment. If the take thresholds are reached, FHWA shall immediately contact the CFWO to review the activities resulting in take and to determine if additional protective measures are required.

#### EFFECT OF THE TAKE

In the accompanying biological opinion, the CFWO determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

#### REASONABLE AND PRUDENT MEASURE

The CFWO believes that the following reasonable and prudent measure is necessary and appropriate to minimize take of the arroyo toad:

1. FHWA will ensure implementation and compliance with all onsite minimization measures described in this biological opinion.

### TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, FHWA must comply with the following terms and conditions which implement the reasonable and prudent measure described above. These terms and conditions are non-discretionary.

1.1 FHWA shall monitor compliance with proposed arroyo toad conservation measures, impact avoidance and minimization measures, and resolve non-compliance issues.

1.2 FHWA shall follow reporting requirements regarding the arroyo toad.

### DISPOSITION OF SICK, INJURED, OR DEAD SPECIMENS

Upon locating dead, injured, or sick individuals of threatened or endangered species, initial notification must be made to our Division of Law Enforcement in either San Diego, California, at (619) 557-5063 or in Torrance, California, at (310) 328-6307 within three working days. Notification should also be sent by telephone and writing to this office in Carlsbad, California, at 6010 Hidden Valley Road, Carlsbad, California 92009, (760) 431-9440. Written notification must be made within five calendar days and include the collection date and time, the location of the animal, and any other pertinent information. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible state. The remains of intact specimens shall be placed with educational or research institutions holding the appropriate State and Federal permits. Remains shall be placed with the San Diego Natural History Museum, San Diego. Arrangements regarding proper disposition of potential museum specimens shall be made with the institution by the authorized biologist prior to implementation of the action.

### CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The recommendations provided here do not necessarily represent complete fulfillment of FHWA's responsibility for these species, pursuant to section 7(a)(1) of the Act.

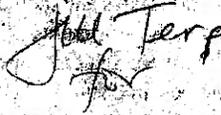
We recommend that for future transportation projects in sensitive habitat, the use of culverts that accommodate wildlife dispersal in addition to conveying flowing water be considered. For the proposed project, the bridges will facilitate wildlife movement through the larger drainages, but the culverts through the smaller drainages could inhibit dispersal through the smaller drainages. The culverts to be used in the proposed project are unlikely to accommodate wildlife movement, as animals would have to move over a corrugated metal pipe that is protected by large rip-rap at either end of the culvert. Culverts with a natural bottom and bank protection that does not

present an obstacle to wildlife movement would allow animals to pass under roads more easily and minimize the likelihood of road mortality.

#### REINITIATION NOTICE

This concludes formal consultation on the SR138 realignment project as outlined in materials submitted to us. As provided in 50 CFR §402.16 reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; and (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. Any questions or comments should be directed to Jonathan Snyder of my staff or me at (760) 431-9440.

Sincerely,



Karen A. Gebel  
Assistant Field Supervisor

cc:

Caltrans, District 8, San Bernardino, CA (Attn: Nathaniel Pickett)  
USACOE, Los Angeles, CA (Attn: Robert Smith)  
CDFG, Chino Hills, CA (Attn: Scott Crawford)  
CDFG, San Diego, CA (Attn: Pam Bohrt)  
USFWS, Ventura Field Office (Attn: Ray Bransfield)  
City of Hesperia, Hesperia, CA (Attn: Dave Reno)

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Michael Ritchie (FWS-SB-1537.7)

16

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## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road  
Carlsbad, California 92009



In Reply Refer To:  
FWS-SB-1537.8

Mr. Gene Fong  
Division Administrator  
Federal Highway Administration  
California Division  
650 Capitol Mall, Suite 4-100  
Sacramento, California 95814

SEP 13 2004

Re: Amendment to the Biological Opinion (FWS-SB-1537.7) for the State Route 138  
Realignment in San Bernardino County, California

Dear Mr. Fong:

This letter is in response to your letter, dated May 27, 2004, and received June 1, 2004, regarding the above referenced biological opinion issued by the U.S. Fish and Wildlife Service (Service) on October 6, 2003, that addressed the effects to the federally endangered arroyo toad (*Bufo californicus*) associated with the realignment of Highway 138 in San Bernardino County, California. Your letter identified some clarifications regarding the acreage of impact and restoration that you wanted incorporated into the biological opinion. Based on our review of your request, we will amend the October 6, 2003, biological opinion as described below. Note that there are a few changes in addition to those suggested in your letter based on information you provided summarizing project-associated impacts and restoration.

#### DESCRIPTION OF THE PROPOSED ACTION

- Replace conservation measure 4 on page 4, shown in ~~strikeout~~, with the following:  
~~4. At least 12.81 acres of mixed upland habitat (chaparral/sage scrub) will be planted on the sides of drainages along the old road alignment. At least 0.59 acres of sandy wash will be restored along the old road alignment. At least 1.0 acres of woody riparian vegetation (willow woodland/mulefat scrub) will be created near the proposed bridges along the new alignment or in appropriate locations along the old alignment.~~  
  
4. At least 13.0 acres of mixed upland habitat (chaparral/sage scrub) will be planted on the sides of drainages along the old road alignment. At least 0.11 acre of sandy wash will be restored along the old road alignment. At least 1.56 acres of woody riparian vegetation (willow woodland/mulefat scrub) will be created or restored near the proposed bridges along the new alignment or in appropriate locations along the old alignment.

TAKE PRIDE  
IN AMERICA 

- Replace the fourth and fifth sentences from the first paragraph on page 9, shown in ~~strikeout~~, with the following:  
~~Including impacts associated with grading and filling, the new road alignment will permanently affect 12.81 acres of upland habitat along the slopes of the drainages and 0.59 acre of sandy wash. Temporary impacts associated with the detour will affect 0.69 acre of mixed willow woodland/mulefat scrub.~~

*Including impacts associated with grading and filling, the new road alignment will permanently affect 12.92 acres of upland habitat along the slopes of the drainages and 0.44 acre of sandy wash. There will be 1.41 acres of temporary impacts and 0.05 acre of permanent impact to mixed willow woodland/mulefat scrub.*

- Replace the third paragraph on page 9, shown in ~~strikeout~~, with the following:  
~~The abandonment of the majority of the old SR138 alignment and restoration of at least 0.59 acre of sandy wash, 0.69 acre of willow woodland/mulefat scrub, and 12.81 acres of upland habitat associated with drainages along the old SR138 alignment will help minimize the impacts of the new alignment on potential arroyo toad habitat.~~

*The abandonment of the majority of the old SR138 alignment and restoration of at least 0.11 acre of sandy wash, 1.56 acres of willow woodland/mulefat scrub, and 13.0 acres of upland habitat associated with drainages along the old SR138 alignment will help minimize the impacts of the new alignment on potential arroyo toad habitat.*

In addition to the changes noted above, 1.0 acre of credit will be purchased from the Cajon Creek Conservation Bank to meet Regional Water Quality Control Board 401 Program requirements and help offset permanent impacts to sandy wash. Arroyo toads have not been observed in the vicinity of the Cajon Creek Conservation Bank, so this measure will not be incorporated into the biological opinion. However, this measure will provide additional conservation benefits for a variety of sensitive species other than arroyo toad.

Based on the relatively small scale of the proposed changes, we concur that the above changes will not result in or are not likely to result in additional effects to listed species. If you have any questions or concerns regarding this letter, please call Jonathan Snyder of this office at (760) 431-9440.

Sincerely,



For Karen A. Goebel  
Assistant Field Supervisor  
Carlsbad Fish and Wildlife Office

cc:  
Nathaniel Pickett, Caltrans



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
(909) 484-0167  
www.wildlife.ca.gov

*EDMUND G. BROWN, Jr., Governor*  
*CHARLTON H. BONHAM, Director*



July 31, 2015

Scott Quinnell  
California Department of Transportation  
464 West 4th Street  
San Bernardino, CA 92401

Subject: Final Streambed Alteration Agreement  
Notification No. 1600-2015-0035-R6  
State Route 138 Realignment, East of Interstate 15

Dear Mr. Quinnell:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the State Route 138 Realignment East of Interstate 15 (project). Before the California Department of Fish and Wildlife (CDFW) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, CDFW, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Mitigated Negative Declaration the lead agency prepared for the project.

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

If you have any questions regarding this letter, please contact Nick Buckmaster, Environmental Scientist, at (760) 872-1110 or [Nick.Buckmaster@wildlife.ca.gov](mailto:Nick.Buckmaster@wildlife.ca.gov).

Sincerely,

Alisa Ellsworth  
Senior Environmental Scientist

cc: Nick Buckmaster  
Chron

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
INLAND DESERTS REGION  
3602 INLAND EMPIRE BOULEVARD, SUITE C-220  
ONTARIO, CA 91764  
(909) 484-0167



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2015-0035-R6

CALIFORNIA DEPARTMENT OF TRANSPORTATION  
STATE ROUTE 138 REALIGNMENT PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the California Department of Transportation (Caltrans), as represented by Scott Quinnell (Permittee).

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on February 6, 2015 that Permittee intends to complete the Project described herein.

WHEREAS, pursuant to FGC 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 on seven tributaries to Crowder Creek, a tributary to Lytle Creek and the Santa Ana River, west of the City of Hesperia, San Bernardino County, California. Latitude 34°19.809 N, Longitude 117°26.552 W; Sections 24 and 25 of Township 3 North, Range 6 West, and Sections 19, 20, 29, and 30 of Township 3 North, Range 5 West, U.S. Geological Survey (USGS) Cajon quad map. The assessor's parcel numbers are listed in the Notification package provided to CDFW.

**PROJECT DESCRIPTION**

The proposed Project (Project) is limited to: the construction of three (3) new bridges and wildlife crossings, the placement of fill within CDFW jurisdiction, the construction of eleven (11) culverts associated with the construction of 2.1 miles of 2-lane (39.4-foot-

wide) highway, the removal of 15 existing culverts, and the restoration of streambed currently within the existing roadway. The Project includes the demolition or obliteration and subsequent restoration of the existing roadway. No work will occur in wet weather conditions, or when surface water is present.

The Project includes the following activities:

1. Construction of new bridges and wildlife crossings at the locations identified below. Bridge construction will result in the excavation of 1,160 cubic yards of stream bank material and the placement of 2,657 cubic yards of un-grouted, rock-slope-protection (RSP) within CDFW jurisdiction.
  - a. A 40 foot-wide, 130-foot-long, pre-cast concrete bridge located along Hog Ranch Creek (34°19'43.33"N, 117°26'55.78"W)
  - b. A 40-foot-wide, 250-foot-long, pre-cast concrete bridge located along Miner's Shack Creek Bridge (34°19'46.77"N, 117°26'43.43"W)
  - c. A 40-foot-wide, 700-foot-long, pre-cast concrete bridge located along Double Drain Creek Bridge (34°19'49.22"N, 117°26'31.66"W)
2. Grading and infill of 0.452 acres of streambed within an unnamed drainage located at 34°19'43.45.3"N, 117° 26'27.0"W.
3. The removal of 15 existing culverts and the demolition/of the existing roadway.
4. The installation of eleven (11), corrugated steel pipe culverts between 36 and 90 inches in diameter along the constructed roadway, one of which is a 84 inch corrugated steel culvert with headwall and wingwalls at inlet and outlet adjacent Double Drain Creek.
5. Revegetation of demolished roadways.
6. Ingress/egress along Double Drain Creek, resulting in minimal impacts.

Ingress/egress will occur from the existing roadway, shall avoid all identified wetland areas, and minimize impacts to streambed habitats to the greatest possible extent. Detailed plans were provided in the Notification package provided to CDFW. Permanent impacts to CDFW-jurisdictional, vegetated streambed will result from bridge construction and in-fill of existing streambed, and temporary impacts to CDFW-jurisdictional streambed will occur from ingress/egress, removal of existing culverts and road demolition/obliteration.

## PROJECT IMPACTS

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

**BIRDS.** The Project could substantially adversely affect: willow flycatcher (*Empidonax traillii*), least Bell's vireo (*Vireo bellii pusillus*), golden eagle (*Aquila chrysaetos*), mourning dove (*Zenaidura macroura*), black-chinned hummingbird (*Archilochus alexandri*), Nuttall's woodpecker (*Picoides nuttallii*), black phoebe (*Sayornis nigricans*), bushtit (*Psaltriparus minimus*), house wren (*Troglodytes aedon*), yellow warbler (*Setophaga petechia*), song sparrow (*Melospiza melodia*), and lesser goldfinch (*Spinus psaltria*), burrowing owl (*Athene cunicularia*), and other bird species occurring near the Project area.

**VEGETATION.** The Project will substantially adversely affect two vegetation communities: **riparian forest** comprised of Fremont's cottonwood (*Populus fremontii*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), narrow-leaved willow (*Salix exigua*), western sycamore (*Platanus racemosa*), monkey flower (*Mimulus sp.*), and mulefat (*Baccharis salicifolia*); and **chamise/Yerba Santa scrub** comprised of: chamise (*Adenostoma fasciculatum*), big berry manzanita (*Artostaphylos glauca*), California buckwheat (*Eriogonum fasciculatum*), deer weed (*Lotus scoparius*), squaw bush (*Rhus trilobata*), yerba santa (*Eriodictyon trichocalyx*), and black sage (*Salvia mellifera*). 22 individual short-jointed beavertail cacti (California 1B.2) are located within the Project area.

**MAMMALS.** The Project could substantially adversely affect: American badger (*Taxidea taxus*), San Diego pocket mouse (*Chaetodipus fallax pallidus*); *Myotis sp.*; black-tailed deer (*Odocoileus hemionus columbianus*), raccoon (*Procyon lotor*); Audubon's cottontail (*Sylvilagus audubonii*); black-tailed jackrabbit (*Lepus californicus*); striped skunk (*Mephitis mephitis*); Coyote (*Canis latrans*); desert kit fox (*Vulpes macrotis arripes*); grey fox (*Urocyon cinereoargenteus*); California ground squirrel (*Spermophilus beecheyi*); white-tailed antelope squirrel (*Ammospermophilus leucurus*); Botta pocket gopher (*Thomomys bottae*); and bobcat (*Lynx rufus*).

**AMPHIBIANS.** The Project could substantially adversely affect: western toad (*Anaxyrus boreas*), California chorus frog (*Pseudacris cadaverina*), Baja California chorus frog (*Pseudacris h. hypochondriaca*), and arroyo toad (*Anaxyrus californicus*).

**REPTILES.** The Project could substantially adversely affect: coastal whiptail (*Aspidoscelis tigris stejnegeri*), coast horned lizard (*Phrynosoma blainvillii*), two-striped garter snake (*Thamnophis hammondi*), Great Basin fence lizard (*Sceloporus occidentalis longipes*), side-blotched lizard (*Uta stansburiana*), and San Diego gopher snake (*Pituophis catenifer annectens*).

The adverse effects the Project could have on the wildlife resources identified above includes: permanent disturbance to, alteration of, and/or loss of nesting, refugia, and foraging habitat. The construction of the Project will permanently impact 4.0 acres of CDFW-jurisdictional vegetated wash, temporarily impact 0.90 acres of ephemeral washes, and temporarily impact 0.033 acres of wetlands. The Project will result in the removal of two Fremont cottonwoods with a diameter-at-breast-height (DBH) between ten and twelve inches, two California sycamore trees with a DBH between five and ten inches, and one coyote willow with a DBH of six inches.

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

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Compliance with other Agencies. This Agreement does not relieve the Permittee of responsibility for compliance with applicable federal, state, or local laws, ordinances or grant conditions.
- 1.5 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site at any time to verify compliance with the Agreement.
- 1.6 Nesting Birds. This Agreement does not authorize take of Nesting Birds. Sections 3503, 3503.5 and 3513 pursuant to FGC prohibits the take of all birds and their active nests, including raptors and other migratory non-game birds (as listed under the United States Migratory Bird Treaty Act).

## 2. Avoidance and Minimization Measures

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

- 2.1 Authorized Impacts. Permittee shall not impact any wetland and/or riparian habitats other than those specified in the Project description. If additional impacts to wetland and/or riparian habitats are anticipated, the Permittee shall contact as soon as possible, but not later than five days following the impacts and incorporate appropriate mitigation and monitoring. CDFW shall be contacted at the address below under Contact Information, and via email at:  
Nick.Buckmaster@wildlife.ca.gov.
- 2.2 Designated Biologist(s). Permittee shall have a CDFW approved Designated Biologist(s) (DB) at the Project site while Project activities are occurring to ensure Agreement conditions are being met and impacts to fish and wildlife habitat are minimized. To protect fish and wildlife resources, the DB (s) shall conduct preconstruction surveys for sensitive species or species of special concern prior to the initiation of Project activities. The DB shall have the authority to immediately stop any Project activity. Permittee shall ensure that the DB (s) is knowledgeable and experienced in the identification, natural history, collecting, and handling of appropriate species. The DB (s) shall be responsible for monitoring activities addressed by the Agreement, including, but not limited to all activities that result in the clearing or grading of sensitive habitats, as well as grading, excavation, and/or other ground-disturbing activities in CDFW jurisdictional areas. The DB (s) shall flag the limits of grading and the jurisdictional areas, perform necessary surveys, and take photographs during the construction process. If a State listed Species of Special Concern, or threatened, or endangered species not addressed in this Agreement is found within the Project work area, the DB(s) shall immediately stop work within the Project work area and notify CDFW, via email (Nick.Buckmaster@wildlife.ca.gov), and by calling Nick Buckmaster, Environmental Scientist at (760) 872-1110. Consultation with CDFW is required prior to cancellation of a stop work order. Permittee shall submit to CDFW in writing the name, qualifications, resume or curriculum vitae, and contact information of DB(s) responsible for monitoring of Project activities. This information shall be submitted to CDFW via email to:  
Nick.Buckmaster@wildlife.ca.gov. Permittee shall obtain CDFW approval of DB (s) in writing 14 days before the commencement of Project activities (including site preparation), and shall also obtain approval in writing five days in advance if the DB (s) must be changed.
- 2.3 Sensitive Species Surveys. Permittee shall conduct preconstruction surveys for sensitive species, including species of special concern, prior to the initiation of Project activities. Surveys shall include focused surveys for short-jointed beavertail

cactus, willow flycatcher, least Bell's vireo, two-striped garter snake, coastal whiptail, and sensitive rodent species. The results of surveys shall be included in the report described in Condition 4.1 of this Agreement. If a sensitive species or species of special concern is found during preconstruction surveys, notification shall be submitted to CDFW via email to: Nick.Buckmaster@wildlife.ca.gov. Permittee shall have CDFW-approval of all survey methods prior to initiation of sensitive species surveys. Proposed methods shall be submitted via email to: Nick.Buckmaster@wildlife.ca.gov.

- 2.4 Worker Environmental Awareness. Prior to any construction activities on the Project site, the Permittee will implement a Worker Environmental Awareness Program (WEAP) to educate on-site workers about sensitive environmental issues associated with the Project. The program will be administered to all on-site personnel, including the Applicant's personnel, contractors, and all subcontractors, prior to the employee's commencing work on the site. The WEAP will include but not be limited to protected species and species of special concern that have potential to occur within the Project footprint (short-jointed beavertail cactus, willow flycatcher, least Bell's vireo, two-striped garter snake, coastal whiptail, sensitive rodent species, amphibian species, coastal whiptail, coast horned lizard, burrowing owl, and nesting birds).
- 2.5 Escape Ramp. At the end of each workday, the Permittee shall place an escape ramp at each end of any open trenches or pits to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees. Open trenches and pits shall be checked each morning by the DB for wildlife sheltering within them. The DB shall relocate any
- 2.6 Nesting Bird Plan. **No later than September 1, 2015**, Permittee shall submit to CDFW for review and approval a Nesting Bird (NBP) that includes project specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur and that the project complies with all applicable laws related to nesting birds and birds of prey. These measures shall include surveys of culverts and overhangs to ensure swallows (*Hirundininae*), phoebes (*Sayornis*), or other birds are not nesting within them. The NBP shall include at a minimum: monitoring protocols; survey timing and duration; the creation, maintenance, and submittal to CDFW of a bird-nesting log; and Project-specific avoidance and minimization measures. Avoidance and minimization measures shall include, at a minimum: project phasing and timing, monitoring of project-related noise, sound walls, and buffers. The NBP shall be submitted to CDFW via email to: Nick.Buckmaster@wildlife.ca.gov.
- 2.7 Bird Nesting Surveys. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). In addition, Sections 3503, 3503.5, and 3513 of

the FGC prohibit the take of all breeding birds and their nests. The Designated Biologist(s) shall survey the entirety of the project site, and within the buffer zone specified in the NBP (with the exception of inaccessible private properties) surrounding the project site for both diurnal and nocturnal nesting birds, prior to commencing project activities (including construction and/or site preparation). Surveys shall be conducted by the Designated Biologist(s) at the appropriate time(s) of day, no more than three days prior to commencement of project activities. Documentation of surveys and findings shall be submitted to CDFW in the annual report described in Measure 3.1. If an active bird nest is located, the Designated Biologist(s) shall implement and monitor specific avoidance and minimization measures as specified in the CDFW-approved NBP (refer to Measure 2.7).

- 2.8 Burrowing Owl. Prior to the initiation of any Project activities, Permittee shall conduct a burrowing owl habitat assessment. This habitat assessment, and all associated reports shall be completed following the recommendations and guidelines provided within the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012). The assessment shall be conducted by a biologist knowledgeable of burrowing owl habitat, ecology, and field identification of the species and burrowing owl. If burrowing owl habitat is present onsite, the Permittee shall conduct burrowing owl surveys during the breeding season of February 1 through September 30 (CDFG 2012). If surveys confirm occupied burrowing owl habitat in or adjoining the Project area, the Permittee shall contact CDFW at the information provided and conduct an impact assessment. Reports shall be submitted as described in condition 4.1.
- 2.9 Cacti Salvage Plan. The California Desert Native Plants Act is intended to prohibit the unlawful harvest of certain native desert plant species. The Project site contains one species of cactus subject to the California Desert Native Plants Act within CDFW jurisdiction, the short-jointed, beavertail cactus. The Permittee shall submit a Cactus Salvage Plan to CDFW **no later than September 1, 2015**. The Cactus Salvage Plan include the following:
- 2.9.1 The qualifications, resume, and contact information of the botanist who will be implementing the salvage plan.
  - 2.9.2 Proposed measures to retain as many cacti as is practical on the project site, and a spatial and quantitative description indicating the species and locations of cacti to be preserved.
  - 2.9.3 A spatial inventory of all native cacti within the project site, including species and locations, and a quantitative assessment of the numbers of each cactus species to be removed by the project.
  - 2.9.4 The methods that will be used to remove and replant all native cacti that will be relocated. These methods should include the criteria for selecting

the appropriate replanting site, replanting methods and monitoring procedures to ensure the success of the translocation.

2.9.5 Proposed measures to retain as many cacti as is practical on the project site, and a spatial and quantitative description indicating the species and locations of cacti to be preserved.

2.10 Arroyo Toad Avoidance Plan. The Permittee shall submit an Arroyo Toad Avoidance Plan to CDFW **no later than September 1, 2015**. This plan shall include, at a minimum, two preconstruction surveys for arroyo toad (*Anaxyrus canorus*). The first shall be following a rain event during the mid-spring breeding season, and the second shall be **no later than 14 days prior to commencement of Project activities**. The surveys shall be conducted by a biologist knowledgeable of arroyo toad identification (including the larval and metamorph life stages). CDFW recommends that the surveys consist of walking the entire Project site and adjoining areas within 150 meters, including areas that may be indirectly impacted by the Project, to identify the presence of arroyo toads or their habitat. The results of these surveys shall be submitted as described in condition 4.1. In the event that one or more arroyo toad (s) is found in the Project area, the Permittee shall contact CDFW immediately.

2.11 Reptile Management Plan. The Permittee shall submit a Reptile Avoidance Plan to CDFW **no later than September 1, 2015**. The Reptile Plan shall include the preconstruction surveys for coast horned lizard and coastal whiptail, and the appropriate methods to ensure that take does not occur.

2.12 Culvert-dwelling Wildlife Protection. Permittee shall comply with the following culvert-dwelling wildlife protection measures. All contractors, subcontractors, and employees shall also comply with these measures and it shall be the responsibility of Permittee to ensure compliance.

2.12.1 The DB (s) shall survey all culverts for the presence of nesting birds or roosting bats prior to the initiation of Project activities.

2.12.2 If any roosting bats are discovered during Project activities all work shall stop on, under, around, or within 500-feet of the structure, and the Permittee shall notify Nick Buckmaster, Environmental Scientist, via email: [Nick.Buckmaster@wildlife.ca.gov](mailto:Nick.Buckmaster@wildlife.ca.gov). Consultation with CDFW is required prior to cancelation of the stop-work order.

2.12.3 All night work (dusk until dawn) in the vicinity of the structure shall have concurrence from CDFW prior to any work or scheduling of any work between March 1 and September 1.

- 2.13 Lighting. Any lighting or fencing for infrastructure adjacent to jurisdictional areas shall be reviewed by CDFW in order to ensure wildlife movement within the open space and conserved areas is not hindered. Fencing shall also be monitored to ensure wildlife is not trapped against the fence or otherwise impacted by the installation or presence of the fence.
- 2.14 Work in Wet Weather. No work shall occur in wet weather conditions (e.g. rain).
- 2.15 Dewatering plan. If groundwater is encountered, or the Permittee expects to encounter groundwater during Project activities, the Permittee shall stop work and submit a dewatering and diversion plan to CDFW. This plan shall include pumping methods, and contingencies to ensure that no petroleum products, or material deleterious to aquatic life are introduced into groundwater. This condition does not allow for the take or disturbance of any State or federally listed species, or State listed species of special concern.
- 2.16 Best Management Practices. Permittee shall actively implement Best Management Practices (BMPs), defined in the "State of California Department of Transportation Construction Site Best Management Practice Field Manual and Trouble Shooting Guide," to prevent erosion and the discharge of sediment and pollutants into streams during Project activities. BMPs shall be monitored and repaired if necessary to ensure maximum control of erosion, sediment, and pollution. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as monofilament netting (erosion control matting) or similar material, within and adjacent to CDFW jurisdictional areas. All fiber rolls, straw waddles, 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 that will be placed in CDFW jurisdiction for a time period greater than two weeks 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.
- 2.17 Pollution and Litter. 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.
- 2.17.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a streambed, or be placed in locations that may be subjected to high storm flows.
- 2.17.2 Stockpiles and spoil sites shall not be located within a streambed, or locations that may be subjected to high storm flows, where spoil shall be washed back into a streambed, or where it will impact streambed habitat.

2.17.3 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 wildlife resources resulting from Project related activities shall be prevented from contaminating the soil and/or entering a streambed. These materials, placed within or where they may enter a streambed by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.

2.17.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into a streambed. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any streambed.

2.17.5 All equipment or vehicles driven and/or operated within or adjacent to a streambed shall be checked daily and maintained as need to prevent deleterious material leaks.

2.17.6 No equipment maintenance shall be done within or near any streambed where petroleum products or other pollutants from the equipment may enter these areas under any flow.

2.18 All temporary impacts to ephemeral washes and unvegetated CDFW jurisdictional habitats shall be re-contoured to match pre-existing conditions.

### **3. Compensatory Measures**

3.1 Permanent impacts totaling 4.0 acres of shall be mitigated either by: (A) the purchase, restoration, and perpetual management of 12.0 acres of CDFW-jurisdictional streambed at a CDFW approved location in San Bernardino or Riverside Counties, (B) the restoration, and perpetual management of 12.0-acres of Caltrans-owned, CDFW-jurisdictional streambed at a CDFW-approved location, or (C) the purchase of 12.0-acres of mitigation credits for sandy, streambed habitat from a CDFW-approved mitigation bank or in-lieu-fee (ILF) program. All lands proposed for mitigation shall be restored as needed and managed and preserved in perpetuity. If options A or B are selected, Permittee shall submit a Habitat Monitoring and Mitigation Plan to CDFW for approval by December 31, 2015; if option C is selected, the Permittee shall obtain CDFW-approval of the mitigation bank or ILF by July 31, 2015, and provide proof of purchase shall be provided to CDFW no later than December 31, 2015.

- 3.2 Habitat Restoration - Onsite. **Within 30 days of project completion**, Permittee shall restore all demolished roadway and temporarily impacted areas, by recontouring to preexisting grade and contours, and seeding/planting with California local native species that were present on-site. All on-site restoration areas shall achieve 80% native plant cover within five years of project completion. The plant palette shall be approved by a CDFW- approved biologist and shall include plant species (including subspecies) that are currently present within the vicinity of each affected jurisdictional feature. The plant palette shall be submitted to CDFW for review and concurrence **at least 30 days prior to seeding/planting**. Existing topsoil from known locations of sensitive plant populations will be salvaged and used in the restoration areas if feasible.
- 3.3 Impacts to two Fremont cottonwood trees, two California sycamores, and one coyote willow shall be mitigated by planting six Fremont cottonwood trees and six California sycamore trees within the onsite restoration site referenced in Condition 3.2. These trees shall have a survival rate of 80% after five years. The Habitat Monitoring and Mitigation Plan (HMMP) described in Condition 4.2 shall include a planting schedule and contingency plans to ensure the success criteria are met.

#### 4. Reporting Measures

- 4.1 Minimization Measures Report. Within 30 days of the initiation of Project activities, the Permittee shall submit to CDFW a report summarizing the results of preconstruction surveys, avoidance measures that were implemented and the effectiveness of these measures. This report shall include, at a minimum:
- 4.1.1 The methods used and the results of the sensitive species surveys identified in Measure 2.3.
  - 4.1.2 The results of the burrowing owl habitat assessment identified in Measure 2.8, as well as any subsequent surveys for burrowing owl that were conducted.
  - 4.1.3 A summary of the cacti salvage activities described in the Cacti Salvage Plan identified in Measure 2.9.
  - 4.1.4 The methodology and results of the arroyo toad surveys identified in Measure 2.10.
  - 4.1.5 A summary of all sensitive reptile surveys and minimization measures that were implemented per the Reptile Management Plan (Measure 2.11).
- 4.2 Habitat Monitoring and Mitigation Plan (HMMP). No later December 31, 2015, the Permittee shall submit to CDFW for review and approval a Final HMMP designed to meet the habitat restoration goals identified in Conditions 3.1, 3.2, and 3.3 of this

Agreement. At a minimum, the HMMP shall include the following information: (a) a description of the existing physical conditions of the restoration site, including water resources and habitat types, and a map that identifies the location of the site; (b) a plan for the preparation of the restoration site, including the removal of nonnative plant species, and recontouring of the streambed, if appropriate; (c) a local California native plant palette; (d) a planting plan, (e) an irrigation plan if needed; (f) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the restoration site and a nonnative plant removal plan; and (g) success standards and contingency measures. Monitoring and maintenance of the restoration site shall be conducted for a minimum of five years, or until CDFW determines the restoration site to be successful.

- 4.3 Annual Report. An annual report shall be submitted to CDFW each year for a minimum of five years following the completion of mitigation activities, or until CDFW determines any restoration, revegetation, and enhancement activities on the mitigation land are successful and meet mitigation site meets the mitigation required under this Agreement. At a minimum, this report shall include the following information: (1) a description of the enhancement, establishment, and restoration activities conducted during the previous year, including: (a) site preparation, (b) an overview of the planting effort, (c) the number by species of plants replaced or naturally recruited, and (d) when the activities were conducted; (2) current site conditions, including: (a) the percent survival, percent cover, and height of both tree and shrub species planted, and (b) the methods used to assess these parameters; and (3) information regarding nonnative plant removal, including: (a) the methods used for removal, (b) the amount removed and/or treated, (c) the frequency and timing of removal and treatment, (d) disposal specifics, and (e) a summary of the general successes and failures or failure of the nonnative removal plan. The report shall also include wildlife species observed at the restoration site during monitoring surveys including sensitive species and/or listed species. Photos from designated photo stations shall be included. **The first annual report is due to CDFW no later than December 31, 2016 or December 31, 2017 if Project activities are delayed until 2016.** This report shall be sent via email to [Nick.Buckmaster@wildlife.ca.gov](mailto:Nick.Buckmaster@wildlife.ca.gov)
- 4.4 If any sensitive species are observed on or in proximity to the Project site, or during Project surveys, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings, and provide the regional CDFW office with copies of the CNDDDB forms and survey maps. The CNDDDB form is available online at: [www.dfg.ca.gov/whdab/pdfs/natspec.pdf](http://www.dfg.ca.gov/whdab/pdfs/natspec.pdf). **This information shall be mailed within five days to:** California Natural Diversity Data Base, 1807 13th Street, Suite 202, Sacramento, CA 95814, Phone (916) 324-3812. A copy of this information shall also be mailed within five days to CDFW Inland Deserts Region at the address below under Contact Information. **Please reference SAA # 1600-**

**2015-0035-R6.**

- 4.5 The Permittee shall notify CDFW, in writing, at least five (5) days prior to the initiation and completion of Project activities in jurisdictional areas. Notification shall be sent via email to Nick.Buckmaster@wildlife.ca.gov.

**CONTACT INFORMATION**

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

To Permittee:

Scott Quinnell  
California Department of Transportation  
464 West 4<sup>th</sup> Street  
San Bernardino, CA 92401  
(909) 383-6936  
scott\_quinnell@dot.ca.gov

To CDFW:

Department of Fish and Wildlife  
Inland Deserts Region  
407 West Line Street  
Bishop, CA 93514  
Attn: Lake and Streambed Alteration Program – Nick Buckmaster  
Notification #1600-2015-0035-R6  
(760) 872- 1110  
Nick.Buckmaster@wildlife.ca.gov

**LIABILITY**

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

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

**SUSPENSION AND REVOCATION**

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

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

## **ENFORCEMENT**

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

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

## **OTHER LEGAL OBLIGATIONS**

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

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

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

## **AMENDMENT**

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 submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and 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 submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and 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 FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and 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 FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (FGC section 1605(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 FGC section 711.4 filing fee listed at [http://www.wildlife.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html).

## TERM

This Agreement shall expire on **May 1, 2020**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a) (2) requires.

## 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 FGC section 1602.

## CONCURRENCE

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

## FOR CALIFORNIA DEPARTMENT OF TRANSPORTATION



Scott Quinnell

Senior Environmental Planner

7-14-15

Date

## FOR DEPARTMENT OF FISH AND WILDLIFE

*for Heidi Calvert*  
 EPM (A)

Heidi Calvert

Acting Environmental Program Manager

07/30/2015

Date

Prepared by: Nick Buckmaster  
Environmental Scientist

**FIRE PLAN FOR CONSTRUCTION AND SERVICE CONTRACTS**  
**08/02/2012**

1. **SCOPE:**

The provisions set forth below outline the responsibility for fire prevention and suppression activities and establish a suppression plan for fires within the contract area. The contract area is delineated by map in the contract. The provisions set forth below also specify conditions under which contract activities will be curtailed or shut down.

2. **RESPONSIBILITIES:**

A. Contractor

(1) Shall abide by the requirements of this Fire Plan.

(2) Shall take all steps necessary to prevent his/her employees, subcontractors and their employees from setting fires not required in completion of the contract, shall be responsible for preventing the escape of fires set directly or indirectly as a result of contract operations, and shall extinguish all such fires which may escape.

(3) Shall permit and assist in periodic testing and inspection of required fire equipment. Contractor shall certify compliance with specific fire precautionary measures in the fire plan, before beginning operations during Fire Precautionary Period and shall update such certification when operations change.

(4) Shall designate in the Fire Plan and furnish on Contract Area, during operating hours, a qualified fire supervisor authorized to act on behalf of Contractor in fire prevention and suppression matters.

B. Forest Service

The Forest Service may conduct one or more inspections for compliance with the Fire Plan. The number, timing, and scope of such inspections will be at the discretion of agency employees responsible for contract administration. Such inspections do not relieve the Contractor of responsibility for correcting violations of the fire plan or for fire safety in general, as outlined in paragraph 2.A above.

3. **DEFINITIONS:**

The following definitions shall apply:

**Active Landing:** A location the contractor may be skidding logs into, or performing other operations such as delimiting, log manufacturing, and chipping logs. Except for EV and E days, loading logs or stockpiling chips only, on a cleared landing, does not constitute an Active Landing.

**Hot Saw:** A harvesting system that employs a high-speed (>1100 rpm) rotating felling head, i.e., full rotation lateral tilt head.

**Mechanical Operations:** The process of felling, skidding, chipping, shredding, masticating, piling, log processing and/or yarding which requires the use of motorized power which includes, chainsaws, chippers, motorized carriages, masticators, stroke delimiters, skidders, dozers etc.

4. **TOOLS AND EQUIPMENT:**

The Contractor shall comply with the following requirements during the fire precautionary period, as defined by unit administering contracts:

**The Fire Precautionary Period is set by the State of California which is April 1 through December 1 of any year.**

- This contract  requires,  does not require, a Fire Box and associated Fire Tools according to CPRC Section 4428 on Ev days.

**A. Fire Tools and Equipment:** Contractor shall meet minimum requirements of Section 4428 of the California Public Resources Code (C.P.R.C.). Fire tools kept at each operating landing shall be sufficient to equip all employees in the felling, yarding, loading, chipping, and material processing operations associated with each landing. Fire equipment shall include two tractor headlights for each tractor dozer used in Contractor's Operations. Tractor headlights shall be attachable to each tractor and served by an adequate power source. All required fire tools shall be maintained in suitable and serviceable condition for fire fighting purposes.

Trucks, tractors, skidders, pickups and other similar mobile equipment shall be equipped with and carry at all times a size 0 or larger shovel with an overall length of not less than 46 inches and a 2-1/2 pound axe or larger with an overall length of not less than 28 inches.

Where cable yarding is used, Contractor shall provide a size 0 or larger shovel with an overall length of not less than 46 inches and a filled backpack can (4 or 5 gallon) with hand pump within 25 feet of each tail and corner block.

**B. Fire Extinguishers:** Contractor shall equip each internal combustion yarder, fuel truck, and loader with a fire extinguisher for oil and grease fires (4-A:60-B:C).

Skidders and tractors shall be equipped with a minimum 5-BC fire extinguisher.

All Fire Extinguishers shall be mounted, readily accessible, properly maintained and fully charged.

Contractor shall equip each mechanized harvesting machine with hydraulic systems, powered by an internal combustion engine (chipper, feller/buncher, harvester, forwarder, hot saws, stroke delimeter, etc), except tractors and skidders, with at least two 4-A:60-B:C fire extinguishers or equivalent.

**C. Spark Arresters and Mufflers:** Contractor shall equip each operating tractor and any other internal combustion engine with a spark arrester, except for motor vehicles equipped with a maintained muffler as defined in C.P.R.C. Section 4442 or tractors with exhaust-operated turbochargers. Spark Arresters shall be a model tested and approved under Forest Service Standard 5100-1a as shown in the National Wildlife Coordinating Group Spark Arrester Guide, Volumes 1 and 2, and shall be maintained in good operating condition. Every motor vehicle subject to registration shall at all times be equipped with an adequate exhaust system meeting the requirements of the California Vehicle Code.

**D. Power Saws:** Each power saw shall be equipped with a spark arrester approved according to C.P.R.C. Section 4442 or 4443 and shall be maintained in effective working order. An Underwriters Laboratories (UL) approved fire extinguisher containing a minimum 14 ounces of fire retardant shall be kept with each operating power saw. In addition, a size 0 or larger shovel with an overall length of not less than 38 inches shall be kept with each gas can but not more than 300 feet from each power saw when used off cleared landing areas.

- This contract  requires,  does not require, Section 4E of the Fire Plan on Ev days.

**E. Tank Truck or Trailer:** Contractor shall provide a water tank truck or trailer on or in proximity to Contract Area during Contractor's Operations hereunder during Fire Precautionary Period. When Project Activity Level B or higher is in effect, a tank truck or trailer shall be on or immediately adjacent to each active landing, unless otherwise excepted when Hot Saws or Masticators are being used. See Section 6 for specific contract requirements.

The tank shall contain at least 300 gallons of water available for fire suppression. Ample power and hitch shall be readily available for promptly and safely moving tank over roads serving Contract Area. Tank truck or trailer shall be equipped with the following:

- (1) Pump, which at sea level, can deliver 23 gallons per minute at 175 pounds per square inch measured at the pump outlet. Pumps shall be tested on Contract Area using a 5/16 inch orifice in the Forester One Inch In-Line Gauge test kit. Pump shall meet or exceed the pressure value in the following table for nearest temperature and elevation:

T e m p	Sea Level		1000 Feet		2000 Feet		3000 Feet		4000 Feet		5000 Feet		6000 Feet		7000 Feet		8000 Feet		9000 Feet		10000 Feet	
55	179	23	174	23	169	23	165	22	161	22	157	22	153	22	150	21	146	21	142	21	139	21
70	175	23	171	23	166	22	162	22	158	22	154	22	150	21	147	21	143	21	139	21	136	20
85	171	23	168	23	163	22	159	22	155	22	151	21	147	21	144	21	140	21	136	20	133	20
100	168	23	164	23	159	22	155	22	152	22	148	21	144	21	141	21	137	20	133	20	131	20
	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G
	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M

The pump outlet shall be equipped with 1-1/2 inch National Standard Fire Hose thread. A bypass or pressure relief valve shall be provided for other than centrifugal pumps.

- (2) 300 feet of 3/4-inch inside diameter rubber-covered high-pressure hose mounted on live reel attached to pump with no segments longer than approximately 50 feet, when measured to the extreme ends of the couplings. Hose shall have reusable compression wedge type 1-inch brass or lightweight couplings (aluminum or plastic). One end of hose shall be equipped with a coupling female section and the other end with a coupling male section. The hose shall, with the nozzle closed, be capable of withstanding 200 PSI pump pressure without leaking, distortions, slipping of couplings, or other failures.
- (3) A shut-off combination nozzle that meets the following minimum performance standards when measured at 100 P.S.I. at the nozzle:

	G.P.M.	Horizontal Range
Straight Stream	10	38 feet
Fog Spray	6 - 20	N/A

- (4) Sufficient fuel to run the pump at least 2 hours and necessary service accessories to facilitate efficient operation of the pump.

When Contractor is using Hot Saws or Masticators, an additional 250 feet of light weight hose, approved by the Forest Service, shall be immediately available for use and be capable of connecting to the 300 feet of hose and appurturances in (2) and (3) above.

**This equipment and accessories shall be deliverable to a fire in the area of operations and is subject to the requirements for each specific activity level identified in Section 6.**

**F. Compressed Air Foam System:** A Compressed Air Foam System (CAFS) is a fire suppression system where compressed air is added to water and a foaming agent. By agreement, Contractor may substitute a CAFS or functional equivalent in lieu of the tank truck, trailer or fire extinguishers, provided it meets or exceeds the following specifications and requirements:

1. Variable foam expansion ratio – 10:1 to 20:1.
2. Units shall be kept fully charged with air; water and foam concentrate as recommended by the manufacturer and have the appropriate tools to service the system.
3. The unit shall contain enough energy to empty tank and clear hose prior to exhausting propellent.
4. The unit shall be capable of being completely recharged within 10 minutes.
5. When used on cable yarding landings, the unit shall be outfitted for immediate attachment to carriage and transported without damage to the unit.

Fire extinguishers required for Hot Saws, Masticators and similar equipment identified in Section 4 B. above may be substituted with a 3 gallon CAFS.

Tank truck, trailer or equivalent may be substituted with a 30 Gallon CAFS with at least 550 feet of one inch hose and an adjustable nozzle with enough water, air and foam concentrate for at least one recharge.

**This equipment and accessories shall also be deliverable to a fire in the area of operations and subject to the requirements for each specific activity level identified in Section 6.**

5. **GENERAL**

- A. **State Law:** In addition to the requirements in this Fire Plan, the Contractor shall comply with all applicable laws of the State of California. In particular, see California Public Resource Codes.
- B. **Permits Required:** The Contractor must secure a special written permit from the District Ranger or designated representative before burning, welding or cutting metal or starting any warming fires. If contract requires Blasting and Storing of Explosives and Detonators, an Explosives Permit may be required pursuant to the California Health and Safety Code, Section 12101.
- C. **Blasting:** Contractor shall use electric caps only unless otherwise agreed in writing. When blasting is necessary in slash areas, a Fire Patrolperson equipped with a size 0 or larger shovel with an overall length of not less than 46 inches and a filled backpack can (4 or 5 gallon) with hand pump shall remain in the immediate area for an hour after blasting has been completed.
- D. **Smoking:** Smoking shall not be permitted during fire season, except in a barren area or in an area cleared to mineral soil at least three feet in diameter. In areas closed to smoking, the CO may approve special areas to be used for smoking. The Contractor shall sign designated smoking areas. Contractor shall post signs regarding smoking and fire rules in conspicuous places for all employees to see. Contractor's supervisory personnel shall require compliance with these rules. Under no circumstances shall smoking be permitted during fire season while employees are operating light or heavy equipment, or walking or working in grass and woodlands.
- E. **Storage and Parking Areas.** Equipment service areas, parking areas, and gas and oil storage areas shall be cleared of all flammable material for a radius of at least 10 feet unless otherwise specified by local administrative unit. Small mobile or stationary internal combustion engine sites shall be cleared of flammable material for a slope distance of at least 10 feet from such engine. The COR shall approve such sites in writing.
- F. **Reporting Fires:** As soon as feasible but no later than 15 minutes after initial discovery, Contractor shall notify Forest Service of any fires on Contract Area or along roads used by Contractor. Contractor's employees shall report all fires as soon as possible to any of the following Forest Service facilities and/or personnel listed below, but not necessarily in the order shown:

	Name	Office Address	Office telephone
<b>Dispatch Center</b>		<b>602 S. Tippecanoe Ave., San Bernardino, CA, 92408</b>	<b>909-383-5651</b>
Nearest FS Station	Alandale	21157 Highway 243, Banning, CA, 92220	951-849-5750 951-849-5759
Inspector	Pablo Gonzalez	602 S. Tippecanoe Ave.	909-382-2967
COR	Joshua Direen	602 S. Tippecanoe Ave.	909-382-2609
District Ranger	Arturo Delgado	54270 Pine Crest Ave., Idyllwild, CA 92549	909-382-2924

**When reporting a fire, provide the following information:**

- Your Name
- Call back telephone number
- Project Name
- Location: Legal description (Township, Range, Section); and Descriptive location (Reference point)

- Fire Information: Including Acres, Rate of Spread and Wind Conditions.
- **This contract  requires,  does not require, Section 5G of the Fire Plan.**

G. **Communications:** Contractor shall furnish a serviceable telephone, radio-telephone or radio system connecting each operating side with Contractor's headquarters. When such headquarters is at a location which makes communication to it clearly impractical, Forest Service may accept a reasonable alternative location. The communication system shall provide prompt and reliable communications between Contractor's headquarters (or agreed to alternative) and Forest Service via commercial or Forest Service telephone.

- **This contract  requires,  does not require, Section 5H of the Fire Plan.**

H. **Fire Patrolperson:** Contractor shall furnish a qualified fire patrolperson each operating day when Project Activity Level C or higher is in effect. When on duty, sole responsibility of patrolperson shall be to patrol the operation for prevention and detection of fires, take suppression action where necessary and notify the Forest Service as required. This Fire patrol is required on foot, unless otherwise agreed. By agreement, one patrolperson may provide patrol on this and adjacent projects. No patrolperson shall be required on Specified Road construction jobs except during clearing operations unless otherwise specified.

The Contractor shall, prior to commencing work, furnish the following information relating to key personnel:

<u>Title</u>	<u>Name</u>	<u>Telephone Number</u>
<b>Fire Supervisor</b>		
<b>Fire Patrolperson</b>		

I. **Clearing of Fuels:** Contractor shall clear away, and keep clear, fuels and logging debris as follows:

Welding equipment and stationary log loaders, yarders and other equipment listed in California State Law:	10 feet slope radius
Tail or corner haulback blocks:	All running blocks shall be located in the center of an area cleared to mineral soil at least 15 feet in diameter.
Lines near, between or above blocks:	Sufficient clearing to prevent line from rubbing on snags, down logs and other dead woody material.

## 6. EMERGENCY PRECAUTIONS

Contractor's Operations shall conform to the limitations or requirements in the Project Activity Level (PAL) table below. Project Activity Levels applicable to this project shall be the predicted activity levels for the Fire Danger Rating Area(s), or fire weather station(s) stated in the Contract Area Map Legend on Integrated Resource Service Contracts (IRSC's), and other contracts where applicable.

**Fire Danger Rating Area/Fire Weather Station for Project** 670

The Forest Service, in its sole discretion, may change the predicted activity level if the current fire suppression situation, weather and vegetation conditions warrant an adjustment. If practicable, Forest Service will determine the following day's activity level by 6:00 PM. Contractor shall obtain the predicted Project Activity Level from the appropriate Ranger District Office before starting work each day.

**Phone Number or Website to obtain Predicted Activity Levels:** 909-382-2600

Project is in area 57. Forest Service may change the Project Activity Level Table to other values upon revision of the National Fire Danger Rating System. When Contractor is notified, the revised Project Activity Levels will supersede the levels in the Project Activity Level Table below.

### PROJECT ACTIVITY LEVEL

<b>Level</b>	<b><i>Project Activity Minimum Requirements and Restrictions. Restrictions at each level are cumulative.</i></b>
<b>A</b>	Minimum requirements noted above in Sections 4 and 5.
<b>B</b>	1. Tank truck, trailer, or approved CAFS substitute shall be on or adjacent to the Active Landing.
<b>C</b>	1. When Hot Saws or Masticators are operating, a tank truck, trailer, or approved CAFS substitute shall be within ¼ mile of these operations. Effective communications shall exist between the operator and the Active Landing. 2. Immediately after Mechanical Operations cease, Fire patrol is required for two hours.
<b>D</b>	1. Immediately after Hot Saw or Masticator operations cease, Fire patrol is required for three hours. 2. No Dead Tree felling after 1:00 PM, except recently dead. 3. No burning, blasting, welding or cutting of metal after 1:00 PM, except by special permit.
<b>Ev</b>	<p>1. The following activities may operate all day:</p> <ul style="list-style-type: none"> <li>a) Loading and hauling logs decked at approved landings.</li> <li>b) Loading and hauling chips stockpiled at approved landings.</li> <li>c) Servicing equipment at approved sites.</li> <li>d) Dust abatement, road maintenance (Chainsaw use prohibited), culvert installation within cleared area, chip sealing, paving, earth moving or rock aggregate stock pile loading and installation (does not include pit or quarry development).</li> <li>e) Chainsaw and log processing operations associated with loading logs or other forest products at approved landings.</li> </ul> <p>2. Hot Saws or Masticators may operate until 1:00 PM; provided that:</p> <ul style="list-style-type: none"> <li>a) A tractor or other equipment with a blade capable of constructing fireline is on or adjacent to the active landing or within ¼ mile of the operating equipment. This piece of equipment shall have effective communication with the Hot Saw or Masticator.</li> <li>b) Any additional restrictions specified by the Forest.</li> </ul> <p>3. All other conventional Mechanical Operations are permitted until 1:00 PM.</p> <p>4. Some operations may be permitted after 1:00 PM, on a case-by-case basis, under the terms of a PAL Ev Variance Agreement. Activities for which a Variance may be issued are:</p> <ul style="list-style-type: none"> <li>• Rubber Tire Skidding</li> <li>• Chipping on Landings</li> <li>• Helicopter Yarding</li> <li>• Fire Salvage</li> </ul> <p>When approved by a Line Officer, a Variance Agreement can be implemented when the criteria specified in the agreement are met and mitigation measures are in place. This approval is good for ten (10) days unless cancelled sooner or extended by the Contracting Officer for an additional ten (10) days. Variance approval can be withdrawn at the sole discretion of the Forest Service. Variance approval is contingent on the 7-day fire weather forecast, fuel conditions, site characteristics, current fire situation, state of Contractor's equipment for prevention and suppression readiness, type of operation and social and community considerations etc. (See attached Project Activity Level Variance Agreement).</p>



**Region 5 Project Activity Level (PAL) Ev Variance Application/Agreement**

Project Name: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_  
 Contractor Name: \_\_\_\_\_  
 Request #\_\_, for period: \_\_\_\_\_  
 Units/Subdivisions Affected: \_\_\_\_\_

<b>Location of operation:</b>	
Slope	
Aspect	
Elevation	
Fuels on site	
Fuels in surrounding area	
7 Day PAL Outlook	
Short range predictions (Red Flags)	
<b>Fuel Moistures</b>	
Response time of suppression resources	
Potential for ignition	
RAWS location	
<b>Current Fire Situation:</b>	
Draw down information	
National Readiness Level	
<b>Contractual considerations:</b>	
Normal Operating Season	
Frequency of recent contract fires in area	
Type of operation	
Contractors past/current performance & equipment readiness	
Other site specific mitigation or precaution (i.e. Contractors proposals)	
<b>Social &amp; Community Considerations:</b>	
Proximity of high value resources	
Sensitivity of location	

**Proposed Actions:**

**Description of Mitigation Measures:**

**Remarks:**

\_\_\_\_\_  
Fire Management Officer Concurrence

\_\_\_\_\_  
Date

\_\_\_\_\_  
Line Officer Approval

\_\_\_\_\_  
Date

I have considered the above request and determined the specified mitigation measures or actions must be implemented to continue operations in Project Activity Level Ev. Unless extended, the approval remains in effect for ten (10) calendar days unless cancelled sooner or extended by the Forest Service for an additional ten (10) days. At the sole discretion of the Forest Service, this variance can be modified and/or cancelled at no cost to the government.

\_\_\_\_\_  
Contracting Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Representative

\_\_\_\_\_  
Date

**CALIFORNIA DEPARTMENT OF TRANSPORTATION  
PROJECT NO. 0800020191**

**Highway Realignment  
NEAR HESPERIA, IN SAN BERNARDINO COUNTY**

**Water Source Information**

To be used with SSP 2-1.06B.

**No known construction water supply source available within the project limits.**

Water Purveyor	* Approximate Distance from Project Site (miles)	Construction Water Availability		Contact Information
		Non-potable (gallons)	Potable (gallons)	
City of Hesperia	10	Maybe	None	Mr. Mike Podegracz, City Manager Phone: (760) 947-1025 Email: mpodegracz@cityofhesperia.us <a href="http://www.cityofhesperia.us/index.aspx?NID=304">http://www.cityofhesperia.us/index.aspx?NID=304</a>
City of Victorville	20	Unknown	Unknown	Mr. Joseph Ogg, Water Distribution Manager Phone: (760) 955-2998 Email: jogg@ci.victorville.ca.us <a href="http://ci.victorville.ca.us/site/cityservices2.aspx?id=2974">http://ci.victorville.ca.us/site/cityservices2.aspx?id=2974</a>
City of Upland	30	None	None	Ms. Rosemary Hoerning, Public Works Director Phone: (909) 291-2931 Email: rhoerning@ci.upland.ca.us <a href="http://ci.upland.ca.us/asp/Site/PublicWorks/Introduction/index.asp">http://ci.upland.ca.us/asp/Site/PublicWorks/Introduction/index.asp</a>
City of Ontario	35	None	None	Mr. Mike Sigsbee, Municipal Utilities Administration Phone: (909) 798-7516 Email: msigsbee@ci.ontario.ca.us <a href="http://www.ci.ontario.ca.us/index.aspx?page=426">http://www.ci.ontario.ca.us/index.aspx?page=426</a>
City of Redlands	40	None	None	Mr. Tim Wilson, Senior Civil Engineer Phone: (909) 798-7585 x3 <a href="http://www.cityofredlands.org/MUED">http://www.cityofredlands.org/MUED</a>

\* Potential construction water supply source within 50 miles of project site.

The water source information shown above is for information only. The Contractor will need to conduct an independent search for construction water.