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HABITAT CONSERVATION
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California Department of Fish and Wildlife
Inland Deserts Region
3602 INLAND EMPIRE BOULEVARD, SUITE C-220
ONTARIO, CA 91764

California Endangered Species Act
Incidental Take Permit No. 2081-2017-073-06

NORTH HAIWEE DAM NO. 2 PROJECT

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee:	Los Angeles Department of Water and Power
Principal Officer:	Clarence Martin, Manager of Aqueduct
Contact Person:	Clarence Martin, (760) 873-0342
Mailing Address:	300 Mandich Street Bishop, CA 93514

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2026**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.7 of this ITP.

¹Pursuant to Fish and Game Code section 86, "'take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take' ... means to catch, capture or kill"].)

²"The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

Project Location:

The North Haiwee Dam No. 2 Project (Project) is located approximately 1.1 miles southeast of the community of Olancha, and approximately 0.9 miles north of the community of Haiwee in Inyo County. The Project Area is bordered on the south by the North Haiwee Reservoir (NHR), on the east by undeveloped Los Angeles Department of Water and Power (LADWP)-owned property, on the north by the privately-owned Butterworth Ranch, and on the west by undeveloped U.S. Bureau of Land Management-owned land. The existing North Haiwee Dam (NHD) is located at the north end of NHR approximately 0.7 miles east of U.S. Highway 395 and is accessed via the partially paved North Haiwee Road from the west and via the partially paved Cactus Flats Road from the north and east. The Project Area is located in the Haiwee Reservoir USGS quadrangle within T19, R37E, S33 (southeast ¼) and S34 (southwest ¼); and T20S, R37E, S04 (northeast ¼) and S03 (northwest ¼).

Project Description:

LADWP proposes to replace or to improve the seismic reliability of the existing North Haiwee Dam (existing dam or NHD). The Project consists of the following components:

1. Construction of North Haiwee Dam No. 2 (NHD2) components, including construction of NHD2 and east and west berms, and grading the area between NHD and NHD2 for the basin;
2. Realignment of Cactus Flats Road;
3. Realignment of the Los Angeles Aqueduct (LAA), construction of the diversion structure and temporary bridge, and excavation of materials (gravel and sand) for construction of NHD2; and
4. Construction of the diversion channel and NHD modifications.

North Haiwee Dam No. 2

NHD2 will be constructed north of the existing dam. The NHD2 axis will be located approximately 800 feet north of and roughly parallel to the existing dam axis. NHD2 will serve as a backup dam in the event the existing dam is damaged in an earthquake event. NHD2 will be designed to retain water in the NHR in the event of failure of the NHD. The proposed NHD2 location provides a basin and a new accessible length of aqueduct channel between the existing dam and NHD2 that may be utilized for water quality and sediment management purposes or storage. The new dam would be an embankment dam, and would either be homogeneous (non-clay core dam comprised of one primary material) or zoned (containing a clay core, and "zones" of different material types).

Construction of NHD2 and associated components would require the operation of heavy equipment, including bulldozers, excavators, scrapers, cranes, forklifts, and various types of trucks. An average of 88 and a maximum of 128 pieces of heavy construction equipment would operate daily for construction of the NHD2 components.

Cactus Flats Road Realignment

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LOS ANGELES DEPARTMENT OF WATER AND POWER
NORTH HAIWEE DAM NO. 2

As with the existing LAA, construction of NHD2 would interrupt the existing Cactus Flats Road, directly blocking the roadway. Cactus Flats Road, which falls under the jurisdiction of Inyo County and is not a primary roadway, is used by mining vehicles traveling to and from local mining sites, LADWP personnel, and other motorists. To maintain access to this public road, the existing Cactus Flats Road would need to be realigned to accommodate the new dam. For drainage purposes, a four-foot wide concrete ditch, approximately 2,500 feet long, would be constructed just north of the Cactus Flats Road Realignment.

The Cactus Flats Road Realignment would require the operation of heavy equipment, including bulldozers, excavators, cranes, forklifts, rollers, pavers, and various types of trucks. An average of 20 and a maximum of 26 pieces of heavy construction equipment would operate daily. Over the course of two months, the realignment of Cactus Flats Road would require an average of three daily and a maximum of 70 truck trips per month for delivery of concrete and asphalt.

The design parameters for the realigned portion of Cactus Flats Road are an approximate length of 7,000 feet and width of 20 feet. The realigned Cactus Flats Road would have a grade of up to eight percent and would incorporate compacted base material along the roadway.

Los Angeles Aqueduct Realignment

The LAA is an open flow channel that flows continuously. The westerly abutment of NHD2 would encroach upon a portion of the existing LAA. In order to construct NHD2 and maintain operations of the LAA, the Project would realign a portion of the LAA. Once the realigned LAA is constructed, the flow of water through the existing LAA would be halted temporarily to connect the newly built segment to the existing LAA. After the LAA is reconnected, the obsolete existing LAA segment would be demolished and backfilled. Any excess soil from the excavation would be analyzed for potential use as material for the new dam. The realigned LAA would utilize the following design parameters:

- Trapezoidal Concrete Channel
- Approximately 1,900 feet in length
- Channel Width: 32 to 35 feet
- Channel Depth: 12 to 15 feet
- Channel Side Slopes: 3:1

Along both sides of the LAA realignment, 20-foot wide unpaved access roads would be constructed. These roads would be connected to the existing access road across Bureau of Land Management (BLM) land which connects the LAA to US Highway 395. This road would be widened by up to five feet and would be extended by up to 200 feet to connect with the new LAA realignment access roads. In total, the US 395 access road for the LAA realignment would be approximately 3,800 feet long, including the existing roadway and proposed extension.

The LAA Realignment and associated components would require the operation of heavy equipment, including bulldozers, excavators, scrapers, cranes, forklifts, rollers, compactors, and various types of trucks. An average of 47 and a maximum of 53 pieces of heavy construction equipment would operate daily for the LAA Realignment. Over the course of four months, the construction of the LAA Realignment and associated components would require an average of four daily truck trips for delivery of concrete.

The Project will be conducted in three overlapping phases that would occur over approximately seven years. The first phase would include the Cactus Flats Road Realignment; the second phase would include the realignment of the LAA; the third phase would include borrow site excavation and the NHD2 component construction.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Mohave ground squirrel (<i>Xerospermophilus mohavensis</i>)	Threatened ³
2. Desert tortoise (<i>Gopherus agassizii</i>)	Threatened ⁴

These species and only these species are the "Covered Species" for the purposes of this ITP.

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vegetation removal, grading, work staging activities, vehicle travel, construction of NHD2, construction of LAA diversion structure, and realignment of Cactus Flats Road (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as collapsing burrows by hand prior to mechanical vegetation removal; vehicle strikes and crushing of burrows during vegetation removal by construction equipment; construction equipment and vehicles driving within Project limits; walking through the Project Area and unintentionally collapsing burrows, resulting in crushing or suffocation; and accidental crushing by construction equipment. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so from entrapment in holes or trenches, uncovering Covered Species through the excavation of burrows, and relocation of Covered Species

³See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(A).

⁴See *Id.*, subd. (b)(4)(A).

when required by this ITP. The areas where authorized take of the Covered Species is expected to occur include: NHD2 construction area, Cactus Flats Road realignment area, LAA realignment and excavation area, and access roads (collectively, the Project Area).

The Project is expected to cause the permanent loss of 39.84 acres of habitat for the Covered Species, and the temporary loss of 53.9 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations, capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, disturbance to burrows, removal and/or damage of vegetation, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2014101065) certified by LADWP on July 24, 2018 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA; notification not yet submitted) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Biological Opinion (FWS-INY-17B0532-18F0447) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall take precedence.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

6. General Provisions:

- 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, survey protocols, and collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any

activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

- 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project Area upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers daily and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.

- 6.9. Delineation of Property Boundaries. Before starting Covered Activities within each area of active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.10. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description, and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur because of the Project modification.
- 6.12. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.
- 6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee's control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove

from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

- 6.16. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs (except service dogs) from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW's Regional Representative Rose Banks (Rose.Banks@wildlife.ca.gov) in writing 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW's Regional Representative Rose Banks at (760) 873-4412 and in writing (Rose.Banks@wildlife.ca.gov) if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily during all initial ground-disturbing activities. After initial ground-disturbing activities, the Designated Biologist shall conduct weekly site visits, and will be on-call to resolve any biological resource issues that arise during construction. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. During initial ground-disturbing activities, the Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity, and after area disturbances are completed.
- 7.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition

of Approval 7.3 into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Rose Banks (Rose.Banks@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

7.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 30 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first relative to the observation.

7.7. Final Mitigation Report. No later than 60 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Quarterly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an

assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species;

(7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

7.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Bishop Field Office at (760) 872-1171 and by notifying via email the CDFW Regional Representative Rose Banks (Rose.Banks@wildlife.ca.gov). The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and this ITP Number (2081-2017-073-06). Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

8. Take Minimization Measures:

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

Mojave ground squirrel

8.1. Preconstruction Surveys. No more than 14 days prior to initiating ground-or vegetation-disturbing Project activities, the Project Area shall be surveyed for Covered Species by the Designated Biologist using protocols approved by CDFW. If a covered Species is found, a follow-up survey shall be conducted no more than 48 hours in advance of initiating ground- or vegetation-disturbing Project activities. During these surveys, all burrows of Covered Species that may be affected by Project activities shall be prominently flagged by the Designated Biologist and avoided to the maximum possible extent during Project activities. Permittee shall include the survey results in the quarterly compliance reports and in the ASR.

8.2. Burrow Excavation. The Designated Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by the Covered Species. The Designated Biologist(s) shall allow Covered Species encountered in the excavated burrows during their *active period*

(February through August) to escape out of harm's way. During the Covered Species' *dormant period* (approximately September through January), the Designated Biologist(s) shall collect and immediately relocate Covered Species to an artificial burrow at a protected off-site location approved in advance by CDFW's Regional Representative. The Covered Species may only be relocated by the Designated Biologist(s). The Designated Biologist(s) shall prepare relocation burrows in the following manner: (1) dig a hole of at least two feet deep; (2) install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible pipe that runs to the ground surface at a 45-degree angle; (3) the Designated Biologist(s) shall place the Covered Species in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Covered Species burrow.

Desert Tortoise

- 8.3. Pre-Construction surveys. No more than 30 days prior to start of Covered Activities, the Designated Biologist(s) shall conduct pre-construction surveys for desert tortoise. These surveys shall cover 100 percent of the Project Area with a 50-foot buffer zone. The Designated Biologist(s) shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual 2009. The Designated Biologist(s) shall flag all potential burrows within the survey area. Within 30 days of performing the pre-construction surveys, the Designated Biologist(s) shall submit a report to CDFW documenting results (following most current USFWS guidance document).
- 8.4. Handling Covered Species and Excavating Burrows. Only the Designated Biologist(s) may excavate burrows and handle the Covered Species. During pre-construction clearance surveys the Designated Biologist(s) shall excavate all burrows by hand that cannot be avoided within the area to be impacted as a result of the Project, including burrows not recently used that are considered by the Designated Biologist(s) at the time of the survey to be potentially suitable for the Covered Species. Potentially suitable burrows shall be excavated and collapsed by the Designated Biologist(s) at the time of the survey to prevent re-entry by the Covered Species. The Designated Biologist(s) shall excavate potentially suitable burrows in accordance with the handling protocol outline in Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). If the Covered Species is active above-ground, a final survey for the Covered Species shall occur no more than 48 hours before the onset of surface-disturbing activities.
- 8.5. Clearance Survey and Burrow Collapse. Immediately prior to start of ground disturbance activities, the Designated Biologist(s) shall resurvey the Project Area and access route for Covered Species and their burrows. The Designated Biologist(s)

shall inspect all the burrows within the Project Area for habitation prior to collapsing them in accordance with this ITP.

- 8.6. Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Designated Biologist(s) and wait for the Covered Species to move unimpeded to a safe location OR the Designated Biologist(s) shall relocate the Covered Species as described in Condition of Approval 8.8 of this ITP before moving vehicles and equipment.
- 8.7. Covered Species Observations. All personnel on the Project site shall immediately report all encounters with the Covered Species to the Designated Biologist(s). If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and contact the Designated Biologist(s). The Designated Biologist shall allow the Covered Species to escape unimpeded, or relocate the Covered Species as described in this ITP or Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). Permittee shall not resume work until the Designated Biologist has relocated the animal or allowed it to move outside the Project Area on its own. The Designated Representative shall immediately, or no later than noon on the next business day, notify CDFW of any Covered Species Observations. Notification to CDFW shall be to Rose Banks via telephone (760) 873-4412 and email (Rose.Banks@wildlife.ca.gov), followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name(s) of the Designated Biologist(s) that relocated the individual, and the location (including GPS coordinates) where the individual was moved.
- 8.8. Relocation of Desert Tortoise. Using the methods described in Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009), the Designated Biologist(s) shall capture, collect measurement and identification data, permanently mark, and relocate any desert tortoise found within the Project Area to suitable, undisturbed CDFW-approved off-site habitat. The Designated Biologist(s) shall follow all excavation, capture, handling, and relocation procedures described in the Handling Guidelines to protect the health and well-being of desert tortoise. If a desert tortoise is found during burrow excavation, the Designated Biologist(s) shall relocate it to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Designated Biologist(s) shall construct an artificial burrow similar in size, depth, and orientation as the original burrow. The Designated Biologist(s) shall follow all protocols for the construction of the artificial burrows found in the Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). The Designated Biologist(s) shall collapse all potential or actual desert tortoise burrows present within the work site after establishing that desert tortoises do not currently occupy them.

- 8.9. Ambient Air Temperature. The Designated Biologist(s) shall ensure that desert tortoises are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius). The Designated Biologist(s) shall ensure that no desert tortoise is captured if the ambient air temperature is anticipated to exceed 95 degrees Fahrenheit before handling or processing can be completed. If the ambient air temperature exceeds 95 degrees Fahrenheit during handling or processing, the Designated Biologist(s) shall ensure the desert tortoise is kept in a shaded environment with a temperature that does not exceed 95 degrees Fahrenheit, and that the individual is not released until ambient air temperature declines to below 95 degrees Fahrenheit. Desert tortoises moved during inactive periods shall be monitored by the Designated Biologist(s) for at least two (2) days after placement in the new burrows to ensure their safety. During relocation, the Designated Biologist(s) may hold a captured desert tortoise overnight and move it the following morning within these temperature constraints.
- 8.10. Desert Tortoise Rehydration. If a desert tortoise voids its bladder as a result of being handled, the Designated Biologist(s) shall rehydrate the individual(s). The Designated Biologist(s) shall rehydrate the desert tortoise at the location where the individual(s) was or were captured, or the location where the individual(s) is or will be relocated. The Designated Biologist(s) shall rehydrate the desert tortoise by placing it in a tub with a clean plastic disposable liner. The Designated Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the desert tortoise. The Designated Biologist(s) shall place the lined tub in a quiet protected area during rehydration. After each tortoise is rehydrated the water shall be emptied and a new plastic disposable liner placed in the tub.
- 8.11. Fatally Injured or Killed Desert Tortoise. Permittee shall submit tortoises fatally injured or killed by project activities for necropsy, according to *Protocol for Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoises* (2007) (Attachment 2), at the expense of the Permittee.
- 8.12. Record of Handling. The Designated Biologist shall maintain a record of all desert tortoises handled. This information shall include the following for each tortoise: (1) the locations (narrative and maps, including whether the individual(s) was found above ground or in a burrow) and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) the location moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; (6) whether any eggs were discovered and relocated; (7) digital photographs of any desert tortoises or eggs handled; and (8) results of any

ongoing monitoring. The Designated Biologist(s) shall provide CDFW a written summary via email to Rose Banks (Rose.Banks@wildlife.ca.gov) of the handling/relocation event, including the information listed above, within 24 hours of the event. This information shall also be recorded in the daily observation and inspection records for inclusion in the Quarterly Compliance and ASR as directed in Conditions 7.4 and 7.5 above. (1) the locations and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) the location moved from and location moved to (using GPS technology); (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; and (6) digital photographs of each handled desert tortoise. The Designated Biologist shall mark each desert tortoise moved from within the Project Area using the acrylic paint epoxy covering technique on the fourth left costal scute as described in the Desert Tortoise Handling Guidelines. The Designated Biologist shall take digital photographs of the carapace, plastron, and fourth costal scute of each desert tortoise handled (notching of scutes is NOT permitted). The Designated Representative shall record the information detailed above in the daily observation and inspection records for inclusion in the Quarterly Compliance and ASR as directed in Conditions 7.4 and 7.5 above.

Other Minimization Measures:

- 8.13. **Trench Inspection.** The Designated Biologist(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day during initial ground-disturbing activities for trapped animals, and during weekly site visits thereafter. To prevent inadvertent entrapment of Covered Species or any other animals, the Designated Biologist(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Where covering is not feasible, Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Designated Biologist(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Designated Biologist(s) immediately. Project workers and the Designated Biologist(s) shall allow the Covered Species to escape out of harm's way unimpeded if possible, or a Designated Biologist approved under Condition 6.2 of this ITP shall move the Covered Species out of harm's way before allowing work to continue. The use of temporary fencing around the perimeter of trenches or holes is an acceptable minimization measure.

8.14. Covered Species Injury. If a Covered Species is injured as a result of Covered Activities, the Designated Biologist(s) shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition 7.8. Notification shall include the name of the facility where the animal was taken.

8.15. Vehicular Traffic Restrictions. Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this effect during covered activities. Vehicle speeds shall be posted not to exceed 20 mph in order to see, identify, and avoid Covered Species on or traversing the Project Area and roads. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Designated Biologist(s) of the Covered Species location.

9. Habitat Management Land Acquisition and Restoration:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall purchase 44.76 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2). The Permittee shall also restore on-site 53.9 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.3 below.

9.1. Cost Estimates. CDFW has estimated the cost of restoration of on-site temporary impacts to habitat as described in Condition 9.3, calculated at \$1,500/acre for 53.9 acres: \$80,850.00.

9.2. Covered Species Credits. Permittee shall purchase 44.76 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank and provide proof of credit purchase to CDFW prior to initiating Covered Activities.

9.3. Habitat Restoration. Permittee shall restore on-site the 53.9 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better

conditions. Prior to the start of construction, the Permittee shall prepare a CDFW-approved Vegetation Restoration Plan (Plan) to facilitate revegetation of the 53.9 acres of temporary construction disturbance on-site. The plan shall include site preparation, seed mixes appropriate for the vegetation types disturbed, application rates of the seed mixes, and schedules for planting. Site preparation shall include segregation of topsoil during grading and spreading topsoil onto disturbed areas prior to application of the seed mixes. The plan shall also include schedules for maintenance and monitoring. The restored areas shall be monitored on a quarterly basis for the first two years, then annually for three years, or until success criteria are achieved. Success criteria shall be in the plan and shall include density and cover percentage. The plan shall also identify additional means to provide compensatory mitigation if success criteria are not met. Permittee shall document the success of the restoration efforts by providing CDFW annual progress reports, as well as a final revegetation report that includes documentation of annual monitoring results, and demonstrates that the success criteria in the plan have been met. If success criteria have not been met after five years from the start of revegetation activities, Permittee shall consult with CDFW on the need for an amendment to this ITP, as well as the purchase of up to an additional 53.9 credits to mitigate for loss of habitat resulting from any portion of the disturbance area that has not met success criteria.

10. Performance Security

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before covered activities begin. Permittee shall provide Security as follows:

- 10.1. Security Amount. The Security shall be in the amount of **\$80,850.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.
- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or

by way of an approved instrument such as escrow, irrevocable letter of credit, or other.

10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Timely submission of all required reports.
- Final revegetation report that includes documentation of annual monitoring results and demonstrates that the success criteria in the Vegetation Restoration Plan have been met.

CDFW may require the Permittee to provide additional Habitat Management lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe of the Vegetation Restoration Plan.

Amendment:

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

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

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Compliance with Other Laws:

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

Notices:

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

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 95814-2090

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2017-073-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Leslie MacNair, Regional Manager
California Department of Fish and Wildlife
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
Telephone (909) 484-0167
Fax (909) 941-7364

and a copy to:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 95814-2090

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

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Rose Banks, Environmental Scientist
California Department of Fish and Wildlife
787 North Main Street, Suite 220
Bishop, CA 93514
Telephone (760) 873-4412
Fax (760) 872-1284

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, LADWP. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the North Haiwee Dam No. 2 Project Environmental Impact Report (EIR), (SCH No.: 2014101065) dated September 2017 that the LADWP certified for the North Haiwee Dam No. 2 Project on July 24, 2018. At the time the lead agency certified the EIR and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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

Findings Pursuant to CESA:

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

CDFW finds based on substantial evidence in the ITP application, the North Haiwee Dam No. 2 Project EIR, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;

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- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 44.75 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

ATTACHMENT 1
ATTACHMENT 2
ATTACHMENT 3
ATTACHMENT 4

Mitigation Monitoring and Reporting Program
Desert Tortoise Salvage Protocol
Letter of Credit Form
Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/2/19



Leslie MacNair, Regional Manager
INLAND DESERTS REGION

ACKNOWLEDGMENT

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

By:  Date: 4/16/19

Printed Name: Clarence E. Martin Title: Manager of Aqueduct

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