



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. 2081-2021-092-06

SANTA ANA RIVER ENHANCED RECHARGE 1B PROJECT

I. 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 However, CDFW may authorize the take of any such species by permit pursuant to the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c). (See Cal. Code Regs., tit. 14, § 783.4).

Permittee:	San Bernardino Valley Municipal Water District
Principal Officer:	Heather Dyer, Chief Executive Officer/General Manager
Contact Person:	Joanna Gibson, (909) 387-9259
Mailing Address:	380 East Vanderbilt Way San Bernardino, CA 92408

II. Effective Date and Expiration Date of this ITP:

This ITP was originally issued on February 8, 2023. It is being reissued to address corrections to the project description, and measures 7.3, 8.2, 8.3 and 8.8.

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **October 10, 2027**.

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".])

²The 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.

III. Project Location:

The Santa Ana River Enhanced Recharge 1B Project (Project) is located south of Greenspot Road, north of the Santa Ana River, and east of Plunge Creek, and adjacent to current and old mining operations, in the unincorporated San Bernardino County, California (See Figure 1).

IV. Project Description:

The Project includes the construction of new groundwater recharge basins, improvements and extension of the existing man-made earthen channel, and improvements to the existing, man-made recharge basins located north and east of Cone Camp Road, as described below. Project activities consist of the removal, repair, and construction of inter-recharge basin connections, construction of culverts, low water crossings, drop structures, diversion structures, energy dissipator structures, and dirt access roads. Activities will also include ingress and egress of the Project site (Figure 2, grading of the entire Project site, excavation and trench digging, and stabilization/reinforcement of the basins. Construction equipment includes track excavators, D4 dozers, water trucks, water tankers, small backhoes, rock trucks, and sheepsfoot compactors.

The project will occur in three phases over the course of 24 months as follows:

- Phase 1 will include the construction of the A basins
- Phase 2 will include the construction of the northern B basins
- Phase 3 will include the construction of the channel and southern B basins

The above phases are summarized in Figure 1.

More specifically, the project proposes to construct the following:

1. Earthen channels. An existing channel will be widened, deepened, and reinforced (~ 21 feet). A new channel will be constructed from the end of the existing channel to about 1,200 feet west of the existing East Branch Extension and inland feeder pipelines. This new channel will be 12 feet wide and include an emergency overflow constructed at the very western extent of the channel. Channels will be constructed with reinforced concrete drop structures (10) to achieve desired channel slopes. Most drop structures will include new reinforced concrete diversion structures to divert flows into the recharge basins from the main channel.
2. Existing recharge basins. Four new inter-basin pipeline connections will be installed between each of the existing basins. All pipelines will be buried concrete metal pipes. Most of the basin interconnection locations are flexible except between the channel and basin 10 as well as between basin 14 and new basin EE.
3. New Basins. A total of 18 new recharge basins will be constructed and two existing basins will be lengthened. Eleven basins (C, D, E [expansion of existing basin], F [expansion of existing basin], G, H, AA, BB, CC, DD, EE) will be constructed west of Cone Camp Road and east of the old railroad line road. Interconnections will be installed between all basins. Emergency overflow outlets will be installed at the southwestern corner of Basins N – R (Figure 1).

4. Project Staging/Processing Areas and Access. Equipment staging will be limited to the western extent of the borrow pit.

Following the construction activities, the Project plans to restore all temporary impact areas (1.4 acres) and interstitial sites between the A basins and manage restored areas in perpetuity (Conditions of Approval 9.3). The Project will also preserve and manage approximately 30.8 acres to the southeast on the Project Site, just below the Santa Ana River, or at an alternate location approved by CDFW (Conditions of Approval 9.3).

V. Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

<u>Name</u>	<u>CESA Status</u> ³
1. San Bernardino Kangaroo Rat (<i>Dipodomys merriami parvus</i>)	Candidate ⁴

This species and only this species is the “Covered Species” for the purposes of this ITP.

VI. 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 excavation, grading, filling, operation and staging of vehicles and heavy equipment, and installation and/or construction of Project facilities (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 excavation and operation of heavy equipment that induce vibrations and loud noise, such as pile driving, resulting in crushing of individuals in burrows, increase in vehicle strikes aboveground, covering of individuals in burrows with soil, collapse or damage of burrows, increased exposure, and increased risk of predation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of capture, or attempt to do so, of the Covered Species from handling and relocation of individuals, trapping of individuals within exclusionary fencing, and creating barriers to movement. The areas where authorized take of the Covered Species is expected to occur include construction or access routes within or adjacent to areas determined occupied through trapping data, including the four locations in the southern basins, areas adjacent to existing access roads, and portions of the earthen channel crossing Cone Camp Road, and all newly constructed basins and roads that may become occupied through the course of construction depicted and labeled as 1 – 4 in Figure 3 (collectively, the Project Area).

³ Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.

⁴ In February 2022, the Commission found that listing of SBKR as endangered is warranted, but new regulations implementing the status change have yet to become effective at the date of ITP issuance.

The Project is expected to cause the permanent loss of 2.1 acres of occupied habitat for the Covered Species, and temporary loss of 1.4 acres of occupied habitat for the Covered Species, for a total impact of 3.5 acres. Due to the nature of the Covered Species, additional areas may become occupied as a result of Covered Activities resulting in ground disturbance. The Project is expected to impact an additional 128 acres of suitable, but unoccupied habitat; including a 80.5 acre “interstitial” area between newly created basins. Impacts of the authorized taking also include adverse impacts to the Covered Species related to decreased movement (including reduction of individual’s nightly movement), decreased connectivity and habitat fragmentation, temporal losses, elevated stress from capture and relocation activities, interrupted behavioral dynamics and structural community, disruption of breeding and/or lowered reproductive success, and increased habitat fragmentation and edge effects as well as the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from excavation, collapsing of day burrows from the use of vibrational and loud noise equipment, soil disturbance and compaction, displacement from preferred habitat leading to increased vulnerability to predation and competition for resources, reduction in habitat values and connectivity, and disruption of breeding and reproductive success.

VII. 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.

VIII. 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 Reports (SCH No.2004051023) certified by San Bernardino Valley Municipal Water District on July 19, 2012 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

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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 No. EPIMS-SBR-24521-R6) 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 Upper Santa Ana River Wash Habitat Conservation Plan (FWS-SB-08B0318 -20F1299) 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 control.
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 the Designated Biologist using the Biologist Resume Form (Attachment 2) or another format containing the same information at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, 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 immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties.

If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.

- 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 prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. 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. 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 Documentation. The Designated Biologist shall maintain construction-monitoring documentation on-site in either hard copy or digital format 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 documentation is available for review at the Project site 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 and removed, ideally at daily intervals but 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 along each part of the route in 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 as a result 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 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.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 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 if 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 follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily, or as otherwise approved by CDFW in writing, when Covered Activities occur. 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.

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.

- 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 Chelsea Price (Chelsea.Price@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 60 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 45 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 Regional Office at (909) 484-0167. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. 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:

- 8.1. Season Restriction. If feasible, Covered Activities shall avoid initial ground disturbing impacts to Covered Species and Covered Species habitat during peak breeding season (January 15 through May 15).
- 8.2. Pre- Exclusionary Fencing – Burrow Mapping. No less than 20 days prior to installing the exclusionary fencing, the Designated Biologist(s) shall identify and map all potential kangaroo rat burrows within the Project Area and 500-foot buffer surrounding the Project Area. The kangaroo rat burrows map shall be provided to CDFW within 10 days prior to any Covered Activities being performed, including exclusionary fence installation or other ground disturbing activities.
- 8.3. Pre-Exclusionary Fencing – Small Mammal Trapping. No less than 25 days prior to erecting the exclusionary fencing, Designated Biologist(s) shall design small mammal trapping grids/transects for CDFW review and approval. To achieve total coverage of Covered Species suitable habitat, transects shall be used within narrow linear habitat and grids shall be used within larger areas of habitat. Transects and grids shall be established within the Project Area and 500-foot buffer surrounding the Project Area. Trap locations shall be geographically indexed with latitude/longitude coordinates along with the datum used (e.g., degrees/minutes/seconds, decimal degrees, etc.). The grids shall be permanent (e.g. capable of replication), with equal stratification to be representative of different qualities of suitable SBKR habitat and distributed throughout the Project Area and 500-foot buffer where permission by the landowner is granted. Once the permanent grids and transect locations are approved by CDFW, the Designated Biologist(s) shall trap the grids/transects

for 5 consecutive nights no less than 20 days prior to installing the exclusionary fencing. The Designated Biologist(s) shall conduct trapping only if the nightly low temperature is forecasted to be 40 degrees Fahrenheit or above, and if no extended periods of wind, rain, fog, or other inclement weather will occur to make conditions unsuitable for trapping or will unduly imperil the lives of the animals. If temperature is forecast to drop below 40 degrees, at the discretion of the Designated Biologist, trapping will not occur, or traps will be set, then checked and closed at midnight. To measure future Covered Species survivorship and abundance/density estimates, as well as measure conspecific interactions, all captured kangaroo rats shall be individually marked using ear tags with unique alphanumeric codes. Trapping results shall include captured kangaroo rats' age, gender, mass, trap location, new/recapture status, tag identification, and any burrow locations that are used upon release. Pre-exclusionary fencing trapping results shall be provided to CDFW no less than 10 days prior to installing the exclusionary fence.

8.4. Exclusionary Fencing Installation. No less than 30 days prior to the initiation of Covered Activities, Permittee shall submit to CDFW for review and approval an Exclusionary Fencing Plan detailing the location(s), installation methodology, fencing design and material. No more than 10 days prior to the initiation of any Covered Activities, following CDFW approval, and following completion of the trapping described in Condition of Approval 8.3, Permittee shall install fencing to exclude Covered Species from Covered Activities and roads around the perimeter of construction zones to limit the potential for Covered Species to enter these zones. The Designated Biologist shall be present during the fence installation. Fencing will be maintained during the duration of Covered Activities.

8.5. Post-Exclusionary Fencing Installation. Within 7 days following the installation of the exclusionary fence, the Designated Biologist(s) shall perform the following:

8.5.1. The Designated Biologist(s) shall conduct small mammal trapping within the exclusionary fenced area. Small mammal trapping shall continue for a minimum of 5 consecutive nights with at least 3 consecutive nights of no Covered Species captures. The Designated Biologist(s) shall conduct trapping only if the nightly low temperature is forecast to be 40 degrees Fahrenheit or above, and if no extended periods of wind, rain, fog, or other inclement weather will occur to make conditions unsuitable for trapping or will unduly imperil the lives of the animals. If temperature is forecast to drop below 40 degrees, at the discretion of the Designated Biologist, trapping will not occur, or traps will be set, then checked and closed at midnight. The Designated Biologist(s) shall affix ear tags with a unique alphanumeric code to each captured Covered Species individual and each shall be placed in a standard rodent carrier.

8.5.1.1. If a lactating female is captured, it shall be released and followed to determine where it's burrow is located. A fiberoptic scope or mini camera shall be immediately used within the located burrow or, if not found, all kangaroo

burrows within a 20-meter (66 feet) radius. If no Covered Species are observed within the burrow, it shall be hand excavated to ensure no occupancy. If Covered Species pups are observed, CDFW shall be notified at once, and the pups shall be captured and placed in a rodent carrier with the female.

- 8.5.1.2. All juveniles and non-lactating females captured shall be “soft” released, as specified in Condition of Approval 8.6. If a previously ear-tagged juvenile or non-lactating female is captured, the Designated Biologist(s) shall consult previous capture locations to inform the release location. If the animal was previously captured outside of the exclusion zone, that animal shall be “soft” released within 24 hours, at the last-known capture location outside of the exclusionary fence. If the animal had not been previously trapped or was previously trapped only inside the exclusion fence area, the Designated Biologist(s) shall hold the animal until trapping within the exclusionary fence is complete (after 3 consecutive nights of no captures) and CDFW approves the proposed relocation site (see Condition of Approval 8.5.2).
- 8.5.1.3. All males captured within the exclusion fence shall be evaluated as candidates to receive transmitters based on weight (see Condition of Approval 8.5.1.5). All males captured within the exclusionary fence, of appropriate weight, shall be held in individual cages in a temperature-controlled location where daylight is excluded until transmitters can be fitted on the individuals by a Designated Biologist with experience fitting and assessing harness functionality and impact on the Covered Species. Newly transmitted animals shall be held for 24 hours to observe the fit and function of the transmitter harness before being released. If an individual proves to be unfit or unable to wear a harness, the Designated Biologist shall remove the harness and transmitter before release. If the animal had not been previously trapped or was previously trapped inside the exclusion fence area, the Designated Biologist(s) with previous experience handling the Covered Species shall hold the animal until trapping within the exclusionary fence is complete (after 3 consecutive nights of no captures) and CDFW approves the proposed relocation site (see Condition of Approval 8.5.2).
- 8.5.1.4. The Designated Biologist(s) shall affix ear tags with a unique alphanumeric code to all kangaroo rats. The Designated Biologist(s) shall affix radio transmitters on SBKR Covered Species individuals as described in Conditions of Approval 8.5.1.5. All small mammals shall be released at the trap location, or CDFW-approved relocation site for animals trapped within the exclusion area, following the installation of tracking devices and recordation of data as described in Condition of Approval 8.5.1.6;

- 8.5.1.5. The Designated Biologist(s) with previous experience fitting and assessing harness functionality and impact (e.g., Dr. Shier or other similarly qualified, CDFW-approved person) shall place or oversee the placement of Very High Frequency (VHF) radio transmitters (e.g., Holohil Systems [model BD- 2C]) with a plastic-coated loop and crimp attachment system backpack harness, created from a modified figure 8 design used for small passerine birds (10-200 g) (Rappole & Tipton 1991) and Wildlife Materials International transmitters [SOM-2038 HWSC] with a cable tie attachment system) on males of the Covered Species so that movements and survival can be monitored after release by receiver or sensor. The loops of the figure 8 wrap around the animal's front legs and the transmitter sits across the animals back (Shier and Swaisgood 2012). The transmitters shall generally be 5% of body mass or less.
- 8.5.1.6. The Designated Biologist(s) shall record captured kangaroo rats' age, gender, reproductive status, mass, trap location, new/recapture status, and radio transmitter/ear tag identification;
- 8.5.2. Prior to relocation, the Designated Biologist(s) shall provide CDFW for review and approval: spatial map of kangaroo rats trapped both within the exclusionary fence and adjacent 500-foot buffer surrounding the Project Area, individual(s) information (Condition of Approval 8.5.1.5), map of proposed relocation area(s) that includes individual spatial grouping, and any other details related to the relocation.
- 8.6. Soft Release Exclusion. To limit dispersal and allow Covered Species to acclimate to relocation, the Designated Biologist(s) shall perform a "soft release" at CDFW-approved locations as follows:
- 8.6.1. Construct above-ground wire mesh retention cage using 6.4 mm (1/4 in) hardware cloth, each measuring about 90 × 60 cm (23.6 x 35.4 in) and closed on the top and open on the bottom (Refer to Figure 3);
- 8.6.2. Dig burrows into the ground using a soil auger that is approximately the same diameter as a Covered Species burrow (45 mm) at roughly a 30° angle to a length of 1 m (3.3 feet). To maintain the integrity of the created burrow, cardboard mailing tubes, or other structural material shall be placed in the burrow, as required. The burrows shall be established outside of the exclusionary fencing in the same approximate neighbor relationship as trapped, and as approved by CDFW. Holes should be close to natural size (Refer to Figure 3);
- 8.6.3. Place each retention cage over the burrow. The sides of the cage will be buried to an approximate depth of 20 cm (8 in) to discourage animals from digging out;

- 8.6.4. Place retention cages/burrows at least 15 m apart to avoid aggressive interactions when the retention cage is removed, unless trapping and burrow mapping suggests otherwise;
- 8.6.5. Move Covered Species individuals from the Project Area to outside of the exclusionary fencing in the same approximate neighbor relationship as trapped and approved by CDFW;
- 8.6.6. Install remote infrared wildlife cameras at 10% of the enclosures, or 10 cameras, whichever is greater, to video record activity during acclimation and for 30 days following removal of the cage. If, after placing one camera at each enclosure, there are cameras remaining from the 10 total cameras, the additional cameras shall be placed along the exclusionary fence line closest to each relocation area;
- 8.6.7. Place each relocated Covered Species individual into its own retention cage for 7-10 days to allow acclimation to the release site and dampen dispersal. The burrow entrance shall be plugged during the day and unplugged each night to allow the individual to enter into the cage;
- 8.6.8. Feed Covered Species individuals a combination of romaine lettuce, inoculated finch seed mix, and plant seeds native to the release site daily while in the retention cage/burrow. Seed shall be microwaved for 1-3 minutes before broadcast at the release site to prevent seed germination and alteration of the native vegetation community;
- 8.6.9. After 7-10 days, remove the retention cages;
- 8.6.10. Provide CDFW daily updates, or as otherwise approved by CDFW in writing, on the status of the Covered Species during, and 30 days following, the soft release, including any camera data information (activity period, behaviors, physical trauma, predation attempts), daily monitoring summary, cage damage, and vandalism.
- 8.7. Supplemental Feeding. Permittee shall complete supplemental feeding, as follows, for each "soft" release session (i.e., at the initial release following the exclusion fence installation and trapping, and when the transmittered males are released). Seed shall be broadcast at the release sites 3 evenings per week for the first month following the removal of the retention cages and one evening each week thereafter for the next 3 months. Seed will be microwaved for 1-3 minutes before broadcast at the release site to prevent seed germination and alteration of the native vegetation community.
- 8.8. Relocation Monitoring. Following the removal of the retention cages, the Designated Biologist(s) shall log the location of the radio transmitted animals 3-4 times per night at least 3 times weekly and 1 time per day at least once weekly until the battery life ends, or

other variation of frequency and duration, as approved by CDFW. The Designated Biologist(s) shall also conduct live small mammal trapping in the relocation release area(s) and the 500-foot buffer. Permittee shall conduct trapping each month for the first 3 months following relocation, and then annually thereafter for the duration of the Project. The Designated Biologist(s) shall individually mark all captured kangaroo rats using ear tags with unique alphanumeric codes and record captured kangaroo rats' age, gender, mass, trap location, new/recapture status, and tag identification. The Designated Biologist(s) shall remove the radio transmitters from any recaptured Covered Species individuals once the battery life has ended after 10 weeks of monitoring. A report of the relocation monitoring findings shall be submitted to CDFW annually for the duration of the Project.

- 8.9. Exclusionary Fence Maintenance. Exclusionary fencing that remains within the Project Areas shall be inspected by the Designated Biologist(s) at the close of each workday, or as otherwise approved by CDFW in writing, to ensure that it is in place and properly maintained for the duration of Covered Activities.
- 8.10. Covered Species Monitoring. Designated Biologist(s) shall perform daily visual surveys, or as otherwise approved by CDFW in writing, for kangaroo rat burrows, sign, and individuals prior to the start of Covered Activities within the Project Area and a 100-foot buffer, including stockpiles and equipment storage areas. Positive new findings shall be mapped and submitted to CDFW within 24 hours. If Covered Activities are occurring within 100 feet of a kangaroo rat burrow, the Designated Biologist(s) shall monitor the burrow for disturbance (e.g. debris or water accumulation) a minimum of 3 times daily. If the burrow shows evidence of disturbance, the Designated Biologist(s) shall immediately make adjustments to the location, type, and/or frequency of the Covered Activities occurring to preclude further potential impacts and increase monitoring of the burrow to ensure the adjustments were effective. The Designated Biologist(s) shall use best professional judgement regarding the monitoring period and adjustment of the work buffer surrounding the burrow. If impacts beyond those authorized in this ITP are identified or suspected, Permittee shall cease the Project Activities potentially responsible for those impacts and notify CDFW immediately. Results of monitoring, including photographs and a brief assessment, the type of activity occurring (e.g. drilling, grading, falsework, etc.), distance from the burrow, impacts measured/noted, and any buffer adjustment made shall be provided to CDFW within 24 hours.
- 8.11. Lighting Minimization. If feasible, Project Activities will be restricted to daytime hours. If nighttime construction is needed, Permittee shall implement the following measures within 500 feet of Covered Species habitat:
- 8.11.1. The Designated Biologist(s) shall be present at all times;
- 8.11.2. Vehicles and equipment shall not exceed 5 miles per hour;

8.11.3. All construction-related lighting shall not have significant illumination pass beyond the immediate work area. Shielding techniques may include, but should not be limited to, the use of fence slats, netting, mesh, or tarps; and

8.11.4. All construction lighting used shall be yellow or orange lighting

8.12. Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist 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.

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 from 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 protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for both the permanent protection and management of 30.8 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. The Permittee shall also revegetate with local, native plant species, the on-site 128 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.5 below. Of the 128 acres, the Permittee shall manage in-perpetuity, or until the basins are no longer in operation, the interstitial areas (80.5 acres) of the A-Basins. These areas are depicted in Figure 4. Ongoing habitat maintenance, following the completion of construction, that could result in take of the Covered Species should be conducted under appropriate CESA authorization.

9.1. Cost Estimates. For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

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- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$125,000/acre for 30.8 acres: **\$3,850,000**. Land acquisitions costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;
- 9.1.2. All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 9.3.1 and 9.3.2 below: **\$17,440.00**;
- 9.1.3. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$136,710.00**; including.
- 9.1.4. Interim management period (years 1 – 5) funding as described in Condition of Approval 9.3.6 below, estimated at **\$389,698.00**;
- 9.1.5. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1216.70/acre for 30.8 acres: **\$37,474.36**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.6. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3000.00**.
- 9.1.7. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$3,040/acre for 128 acres: **\$389,337.50**.
- 9.1.8. All costs associated with CDFW engaging an outside contractor to complete the mitigation tasks, including but not limited to acquisition, protection, and perpetual funding and management of the HM lands and restoration of temporarily disturbed habitat. These costs include but are not limited to the cost of issuing a request for proposals, transaction costs, contract administration costs, and costs associated with monitoring the contractor's work **\$75,000.00**.
- 9.2. Habitat Management Lands Acquisition and Protection. To provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, Permittee shall:
 - 9.2.1. Fee Title. Transfer fee title of the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person,

or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended.

- 9.2.2. Conservation Easement. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW elects not to be named as the grantee for the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Civil Code sections 815-816, as amended, and Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e). Because the “doctrine of merger” could invalidate the conservation interest, under no circumstances can the fee title owner of the HM lands serve as grantee for the conservation easement.
- 9.2.3. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, documentation identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project’s impacts on Covered Species;
- 9.2.4. HM Lands Documentation. Provide a recent preliminary title report, Phase I Environmental Site Assessment, and other necessary documents (please contact CDFW for document list). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 9.2.5. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified. The grantee for the conservation easement cannot serve as the interim or long-term manager without the express written authorization of CDFW in its sole discretion.

9.2.6. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&inline>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;

9.2.7. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, and monitoring of the Covered Species.

Permittee shall either (1) provide Security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

9.3. Endowment Fund. If the Permittee elects to provide for the acquisition, permanent protection, and perpetual management of HM lands to complete compensatory mitigation obligations, then the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that is permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside, which costs include the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with this ITP, the conservation easement, and the management plan required by Condition of Approval 9.3.6. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The

Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.3.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended.

Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e).

Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(3) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(3).

- 9.3.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare an endowment assessment (equivalent to a Property Analysis Record (PAR)) to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Note that the endowment for the easement holder should not be included in this calculation. The Permittee shall submit to CDFW for review and approval the results of the endowment assessment before transferring funds to the Endowment Manager.

- 9.3.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the endowment assessment and adjust for any additional administrative, periodic, or annual fees.
- 9.3.2.2. Endowment Buffers/Assumptions. Permittee shall include in the endowment assessment assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:
- 9.3.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
- 9.3.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 9.3.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 9.3.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.
- 9.3.4. Management of the Endowment. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

Notwithstanding Probate Code sections 18501-18510, the Endowment Manager shall not make any disbursement from the Endowment that will result in expenditure of any portion of the principal of the endowment without the prior written approval of CDFW in its sole discretion. Permittee shall ensure that this requirement is included in any agreement of any kind governing the holding, investment, management, and/or disbursement of the Endowment funds.

Notwithstanding Probate Code sections 18501-18510, if CDFW determines in its sole discretion that an expenditure needs to be made from the Endowment to preserve the conservation values of the HM lands, the Endowment Manager shall process that

expenditure in accordance with directions from CDFW. The Endowment Manager shall not be liable for any shortfall in the Endowment resulting from CDFW's decision to make such an expenditure.

- 9.4. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.
- 9.5. Habitat Restoration. Permittee shall restore on-site the 128 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions. Within 6 months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the 128 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. Restoration activities shall include placement of harvested soil and planting of local and native plants to increase the livelihood of Covered Species. Permittee shall submit a report and photos to CDFW documenting the completion of restoration activities within 60 days of restoration completion
- 9.5.1. Long-Term Management Plan. The Permittee shall prepare or fund the preparation of a Long-Term Management Plan (LTMP) designed to sustain or surpass the habitat quality of the interstitial area restoration sites at time of completion, in perpetuity. At a minimum, the LTMP shall identify: (1) an estimated description of the physical conditions of the mitigation site (at completion), including water resources and habitat types, and a map that identifies the location of the site; (2) goals related to sustaining habitat quality, wildlife usage, and overall function of the mitigation site; and (3) management strategies proposed to meet those goals, including a monitoring and maintenance schedule, maintenance of signage and a list of contingency measures. Permittee should consult with CDFW for LTMP requirements and for an appropriate LTMP template. The Permittee shall be responsible for implementing the LTMP and shall submit a Management Report every five (5) years documenting, at a minimum: (1) management activities completed within the previous five-year term, including: (a) any remedial measures completed, (b) details of non-native species removal including: (i) species removed, (ii) the amount and frequency of removal, and (iii) the techniques used, and (c) enforcement activity necessary; (2) an assessment of overall habitat quality within the mitigation site, including: (a) percent native and non-native vegetation cover, (b) any shifts in habitat type, (c) any loss of habitat cover, (d) any change in water resources, and (e) any new non-native species observed; and (3) an evaluation of the success or failure of management strategies implemented and any

changes to management strategies proposed in response to the successes or failures. The Management Report shall include photos documenting the management activities. Permittee shall submit the LTMP to CDFW for review and approval within one (1) year after the effective date of this ITP.

- 10. 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 **\$4,509,322.36** or in the amount identified in 9.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 9.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.
 - 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. 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 an escrow agreement, 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:

Habitat Management Land Acquisition (HMLA)

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;

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- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM 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.

IX. 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.

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order 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, regardless of whether that species is a Covered Species under this ITP. 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 30 additional days.

If Permittee fails to remedy the violation or to comply with a stop-work order, CDFW may proceed with suspension and revocation of this ITP. 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.

XI. 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.

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XII. Notices:

The Permittee shall sign and return this ITP to CDFW. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Manual (wet) signatures on duplicate original paper copies shall be returned by the Permittee via 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 94244-2090

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or 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 (2081-2021-092-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Heidi Calvert, Regional Manager
California Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
Telephone (909) 484-0523
Heidi.Calvert@wildlife.ca.gov

and a copy to:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 94244-2090
CESA@wildlife.ca.gov

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

Chelsea Price
Inland Deserts Region

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3602 Inland Empire Blvd., Suite C-220
 Telephone (760) 507-5059
 Chelsea.Price@wildlife.ca.gov

XIII. Compliance with the California Environmental Quality Act:

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, San Bernardino Valley Municipal Water District. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan (EIRs) (SCH No. 2004051023) dated March 24, 2008, that the San Bernardino Valley Municipal Water District certified for the Wash Plan on July 19, 2012. 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 EIRs 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 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.

XIV. 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, Santa Ana River Water Rights Applications for Supplemental Water Supply and Upper Santa Ana River Wash Land Management and Habitat Conservation Plan, the results of 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;
- (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

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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 a cumulative 111.3 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.

XV. Attachments:

FIGURE 1	Map of Project
FIGURE 2	Roads that will be used during construction
FIGURE 3	Impact Area
FIGURE 4	Temporary impact areas
FIGURE 5	Retention Cage

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ATTACHMENT 1
ATTACHMENT 2
ATTACHMENT 3
ATTACHMENT 4

Mitigation Monitoring and Reporting Program
Biologist Resume Form
Letter of Credit Form
Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ON 03/01/2023

DocuSigned by:

Heidi Calvert

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Heidi Calvert, 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: Heather Dyer Date: 3/2/2023

DocuSigned by:

Heather Dyer

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Printed Name: Heather Dyer Title: CEO/General Manager

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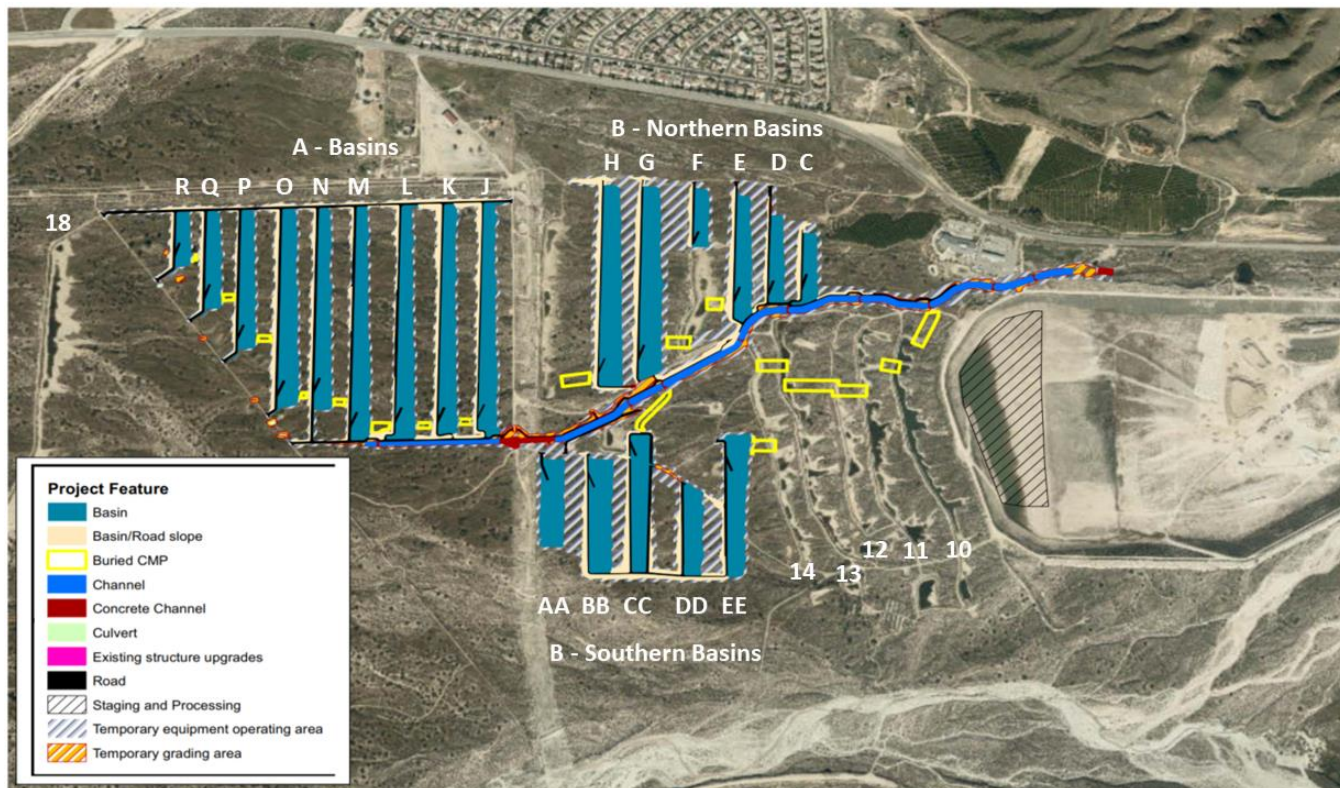


Figure 1: Project site with proposed Basins (blue) and existing basins (#'ed)

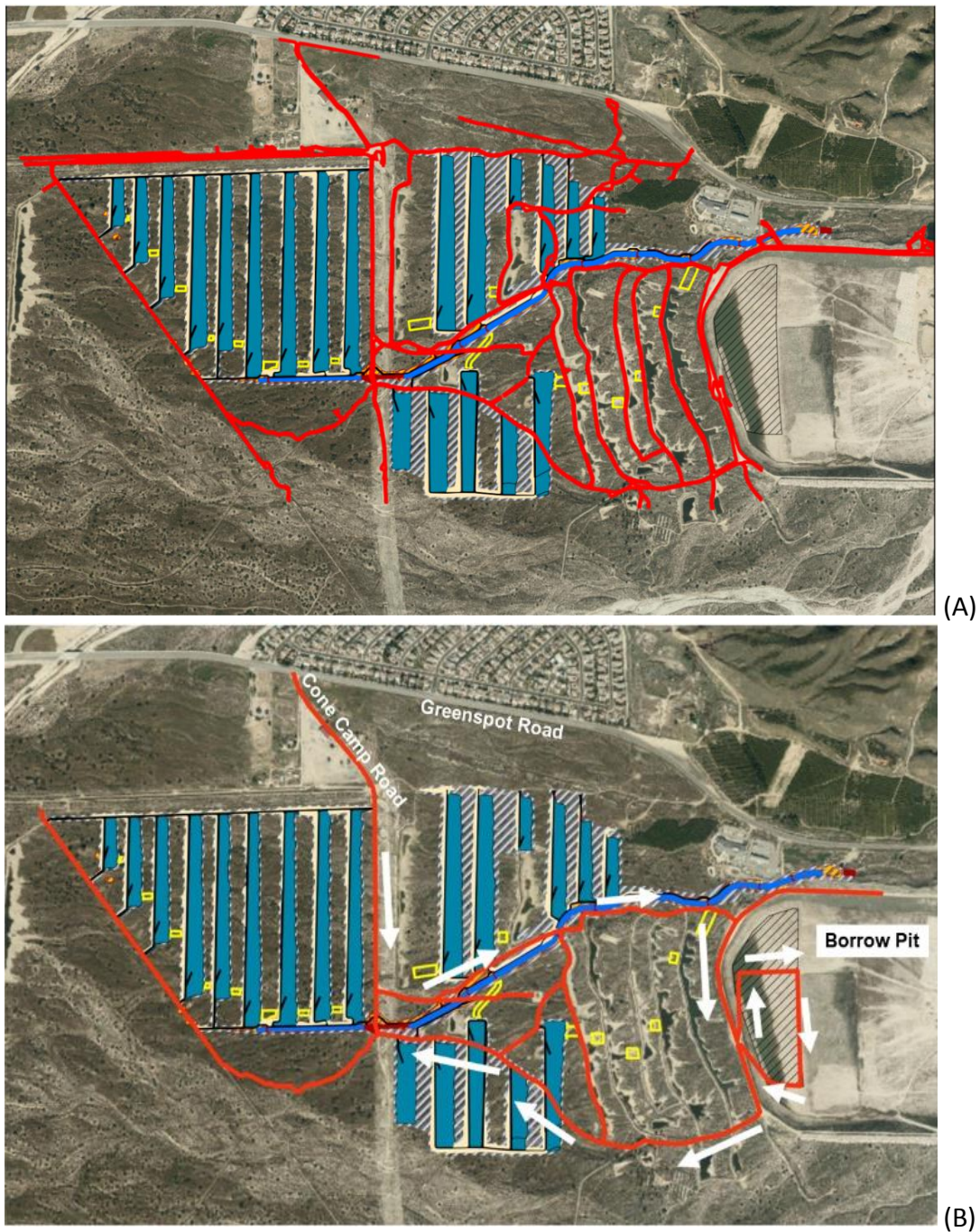


Figure 2: (A) Existing roads in the Project area (B) Roads (red) that will be used during the construction of the Enhanced Recharge Project with construction traffic circulation to / from the Borrow Pit shown with white arrows.

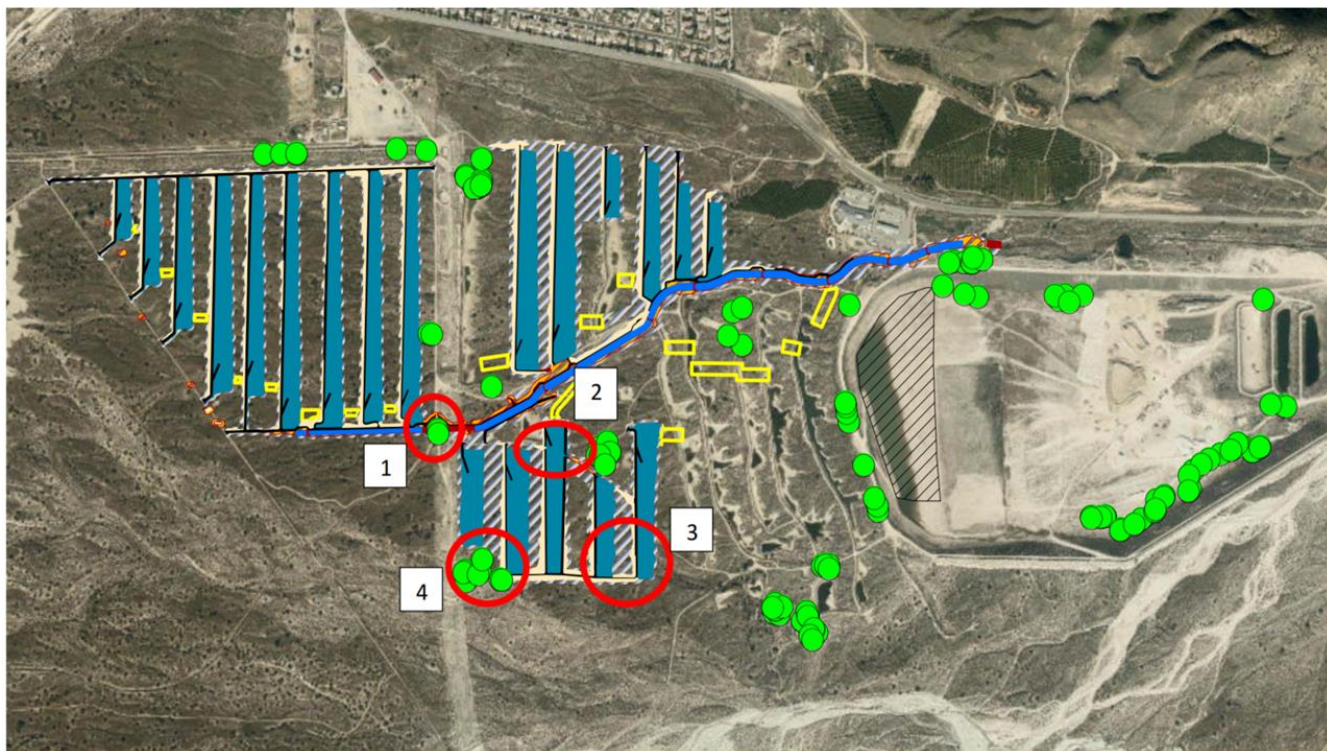


Figure 3: SBKR occurrences (green dots) and impact locations (labeled 1 – 4 / red circles). Location (1) Existing dirt road over EBX, (2) existing dirt road that will be replaced with Basin CC (3) Southern end of new proposed Basins EE and DD and (4) Grading area at the southwest corner of new proposed Basin BB.



Figure 4:Temporary impact areas (cross hatched) and interstitial habitat restoration area (green).

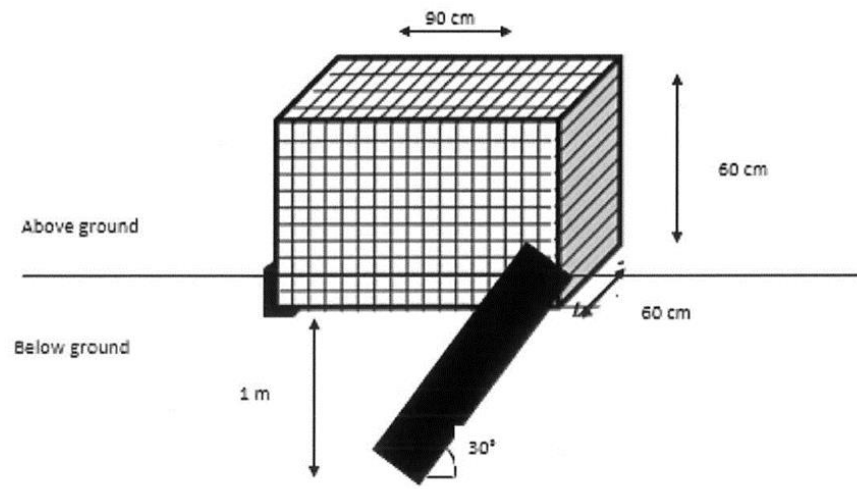


Figure 5: Retention cage and burrow design.