

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



AMENDMENT NO. 2  
(A Major Amendment)  
California Endangered Species Act  
Incidental Take Permit No. 2081-2017-073-06  
Los Angeles Department of Water and Power  
North Haiwee Dam No. 2 in Inyo County

## INTRODUCTION

On April 2, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-073-06 (ITP) to Los Angeles Department of Water and Power (LADWP; Permittee) authorizing take of Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) (collectively, the Covered Species) associated with and incidental to the North Haiwee Dam No. 2 in Inyo County, California (NHD2; Project). At that time, the ITP authorized the permanent loss of 39.84 acres and temporary loss of 53.9 acres of Covered Species habitat. The Project as described in the ITP originally issued by CDFW includes improving the seismic reliability of the existing North Haiwee Dam (NHD) by constructing North Haiwee Dam No. 2 (NHD2). The Project consists of the following components: 1) Construction of NHD2; 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; and 4) Construction of the diversion channel and NHD modifications. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On March 15, 2022, CDFW issued Major Amendment 1 to add 108.13 acres of permanent Western Joshua Tree (*Yucca brevifolia*) as a Covered Species under the ITP and extend the expiration date of the ITP to December 31, 2028. Major Amendment 1 authorized the permanent loss of up to 108.13 acres of suitable western Joshua tree habitat, the permanent removal of 610 and translocation of up to 69 individual western Joshua trees.

On June 28, 2023 CDFW received a request from the Permittee for a second major amendment to the ITP and corresponding fee payment. The request included adding and/or modifying project features. On August 18, 2023, CDFW received additional Project information and take estimates.

Major Amendment 2 adjusts the Project work limits to include work in new areas for replacement of the Loco Creek spillway structure at the Los Angeles Aqueduct, bypass the Los Angeles Aqueduct, identify excavation and grading for North Haiwee Dam No 2., abutment, settling basin and toe drain, increase the temporary work area to construct a permanent Project perimeter fence, and place sensitive cultural resources. The new work areas occur on 6.25 acres of land and include both temporary and permanent disturbance. Of this, 4.10 acres will be temporary and 2.15 will be permanent impacts. Of the 2.15 acres of permanent impacts, 1.94 acres were identified by and covered by the original April 2, 2019 ITP, but not in Amendment 2.

This Major Amendment 2 (Amendment 2) makes the following changes to the existing ITP:

1. This amendment includes a water diversion for replacement of the spillway structure in Loco Creek at the LAA;
2. This amendment includes the construction of a temporary bypass channel to allow realignment of the LAA
3. This amendment includes additional excavation and grading for the NHD2, settling basin, and toe drain;
4. This amendment includes additional temporary disturbance for installation of permanent fencing around the Project area;
5. This amendment includes the placement of cultural resources at undisclosed locations, up to 2 locations that are 20 x 20 ft

### ***Loco Creek Spillway Structure at the Los Angeles Aqueduct***

With current conditions of elevated water run-off (not contemplated at the time of the original ITP application), Loco Creek may be flowing while work is being performed to replace the existing spillway structure that connects Loco Creek to the LAA. Because of this, additional space is needed upstream of the Loco Creek spillway for a water diversion, if water is flowing at the time of work. A cofferdam will be constructed to divert the flow through this area so that work can be performed in the dry on the spillway structure. An additional 0.09 acres is needed for operations and access to the work area. This area will be revegetated so will only be temporarily impacted.

### ***Los Angeles Aqueduct Realignment Bypass***

With the elevated water run-off conditions, water in the LAA cannot be halted for an extended period of time. Therefore, in order to tie in the new LAA realignment to the old alignment, a temporary bypass channel in the north and south are needed to handle the existing flows in the LAA during work. An additional 0.19 acres of temporary impacts will be needed for operations and power poles may be installed along the access route to the site. This area will be revegetated pursuant to an approved revegetation plan.

### ***Additional Excavation for NHD2***

- 1) Four additional components are needed for work to complete NHD2. At the northeast corner of NHD2, an additional .21 acres is needed for the dam abutment and a section of the seepage outlet channel for the dam toe drain.
- 2) Additional excavation and work area is needed at the right dam abutment to tie into the existing grade. Approximately thirty additional feet is needed for cut and fill operations amounting to 0.84 acres. This area will be revegetated so will only be temporarily impacted.
- 3) Near the existing NHD, 1.94 acres is needed for the basin between the old and new dams that was not included in the impact area used for the ITP Amendment 1. However, the acreage was included in the original ITP for MGS and DT.
- 4) To the east of the existing NHD, an additional 0.43 acres of work area is needed for cut and fill operations around the old borrow pit used to construct the original dam. This area will be revegetated so will only be temporarily impacted.

### ***Permanent Fencing***

The permanent chain link fence will be constructed around the Project area. To install the fence, a 30-foot-wide area needs to be mowed. The area will be mowed to create a drivable path on one side of the fence alignment while a material laydown area is needed on the other. An additional 2.55 acres is needed for construction of the fence. This area will be mowed and access will be made using drive- and-crush to facilitate revegetation; no grading is needed.

### ***Placement of sensitive Cultural Resources***

Two, 20 x 20 ft, excavations may be required for the placement of recovered, sensitive cultural resources from the Project site. Locations must be kept confidential but will be near the Project site and accessible with a small piece of equipment. It is estimated that an additional 0.05 acres of disturbance is needed for this work. All efforts will be made to limit impacts to covered species habitat and the areas will be revegetated.

## **AMENDMENT**

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

This Major Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

The Project Description shall be amended to read:

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

- a. Construction of the North Haiwee Dam No. 2 (NHD2) components, including construction of the NHD2 and east and west berms, and grading the area between NHD and NHD 2 for the basin,
- b. Realignment of Cactus Flats Road,
- c. Realignment of the Los Angeles Aqueduct (LAA), construction of the **water** diversion structure and temporary bridge, and excavation of materials (gravel and sand) for construction of NHD2,
- d. Construction of the Diversion channel and NHD modifications,
- e. **Temporary bypass channel to handle existing flows in the LAA,**
- f. Installation of 19 power poles,
- g. Permanent road closures and their revegetation.
- h. Installation of permanent chain link fencing, **and 30-foot-wide temporary work zone,**
- i. Installation of security cameras
- j. **Placement of cultural resources, up to 2 locations measuring 20-feet by 20-feet in size**

2. 'Impacts of the Taking of Covered Species' section shall be amended as follows:  
"The Project is expected to cause the permanent loss of 108.13 acres of suitable habitat for western Joshua tree including the permanent removal of ~~610~~ **668** individual western Joshua trees, up to 69 individual western Joshua trees will be translocated to suitable habitat.

3. Section 6, General Provisions:

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 the ITP, **amendments**, 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.

4. Section 7, Monitoring, Notification, and Reporting Provisions:

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](mailto:Rose.Banks@wildlife.ca.gov))~~ **Bryant Luu in writing at [bryant.luu@wildlife.ca.gov](mailto:bryant.luu@wildlife.ca.gov)** if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or this MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.

**7.3 Compliance Monitoring.** The Designated Biologist shall be on-site daily during all Project activities. The Designated Biologist shall conduct daily 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 as indicated in the ITP application. The Designated Representative or Designated Biologist shall prepare daily written observations and inspection records submitted to CDFW every Friday, summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, number, location, height, age class and photographs of western Joshua trees removed, survey results, project photographs from established photo points, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity.

**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 7.2 and submit it to CDFW along with a copy of this 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 the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of the ITP's approval, the CDFW Regional Representative is ~~Rose Banks (Rose.Banks@wildlife.ca.gov)~~ **Bryant Luu (Bryant.luu@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.

**7.8 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)~~ **Bryant Luu (bryant.luu@wildlife.ca.gov)**. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the 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.

## 5. Section 8, Take Minimization Measures:

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](mailto:Rose.Banks@wildlife.ca.gov)) **Bryant Luu** ([bryant.luu@wildlife.ca.gov](mailto:bryant.luu@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 Annual Status Reports 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 Annual Status Reports as directed in Conditions 7.4 and 7.5 above.

6. Section 9, Habitat Management Land Acquisition shall be amended shall add condition 9.6 to identify the habitat mitigation credits that have been purchased and are fully allotted with the execution of ITP Amendment 2.

**11 Mitigation Credits in Full. CDFW has determined that the permanent protection of 44.76 desert tortoise and Mohave ground squirrel mitigation credits and 356.39 western Joshua tree mitigation credits fully mitigate impacts of up to 37.83-acres of permanent desert tortoise and Mohave ground squirrel habitat, and 108.13-acres of western Joshua tree habitat respectively. Permittee agrees that the 44.76 and 356.39 Covered Species credits are provided in their entirety to satisfy permanent impacts associated with Project Activities through ITP Amendment 2. Any subsequent amendments or changes to project impacts will require separate**

***and additional compensatory mitigation efforts. Permittee will restore any temporary impacts associated with Project Impacts through ITP Amendment 2 as agreed upon in an updated restoration plan reflecting the changes to Project disturbance areas, approved by CDFW.***

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

## **FINDINGS**

*Issuance of this Amendment will not increase the amount of take of the Covered Species habitat as compared to the Project as approved in the original ITP and Amendment 1; however, it will increase the take of the number of western Joshua tree by 58 individuals as originally permitted in Amendment 1.*

Discussion: This Amendment reflects a change in the number of western Joshua trees which will be impacted by Project activities, though the area of disturbance will be reduced. The Permittee modified the Project impact area (e.g., footprint) to reduce the Project's actual temporary and permanent impacts to Covered Species habitat below the impact levels permitted and mitigated pursuant the original ITP. Similarly, the Permittee reduced the actual Covered Species impact area below the impact levels permitted and mitigated pursuant to ITP Amendment 1. While Amendment 2 proposes additional impact areas, the total of this additional impact does not exceed the reduction in actual impacts from what has been previously permitted and mitigated. The mitigation that the Permittee completed to date was originally contemplated to fully mitigate a greater area of impact than the Project and Amendments 1 and 2 will result in.

*Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).*

Discussion: CDFW determined in April 2019 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

*None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.*

Discussion: CDFW issued the ITP in April 2019 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Environmental Impact Report certified by LADWP as the lead agency for the Project. In issuing this second amendment to the ITP, CDFW considered the CEQA Lead Agency's (LADWP) August 21, 2023 Addendum No. 3 to the Environmental Impact Report/Environmental Assessment. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

*CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).*

Discussion: This Amendment authorizes take of additional western Joshua trees and potential impacts to all Covered Species habitat to allow LADWP to modify the Project footprint to improve Project water conveyance structural integrity. As described above, these changes constitute an increase in take of individuals. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

**Attachments:**


Major Amendment No. 2  
Incidental Take Permit 2081-2017-073-06  
LOS ANGELES DEPARTMENT OF WATER AND POWER  
North Haiwee Dam No. 2



- FIGURE 1 Project Area
- FIGURE 2 Project Map Depicting Area G
- FIGURE 3 A2 NHD2 ITP Work Area**
- FIGURE 4 NHD2 Project Components**
- FIGURE 5 NHD2 Project Components West**
- ATTACHMENT 1 Mitigation Monitoring and Reporting Program**
- ATTACHMENT 2 Desert Tortoise Salvage Protocol
- ATTACHMENT 3 Letter of Credit Form
- ATTACHMENT 4 Mitigation Payment Transmittal Form
- ATTACHMENT 5 Bill of Sale for DT and MGS-February 21, 2020**
- ATTACHMENT 6 Credit Sale and Transfer Agreement-June 27, 2023**

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**


on 8/30/2023

DocuSigned by:  
  
 CAEE4779B63E4A3...

Heidi Calvert  
Regional Manager

**ACKNOWLEDGMENT**

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

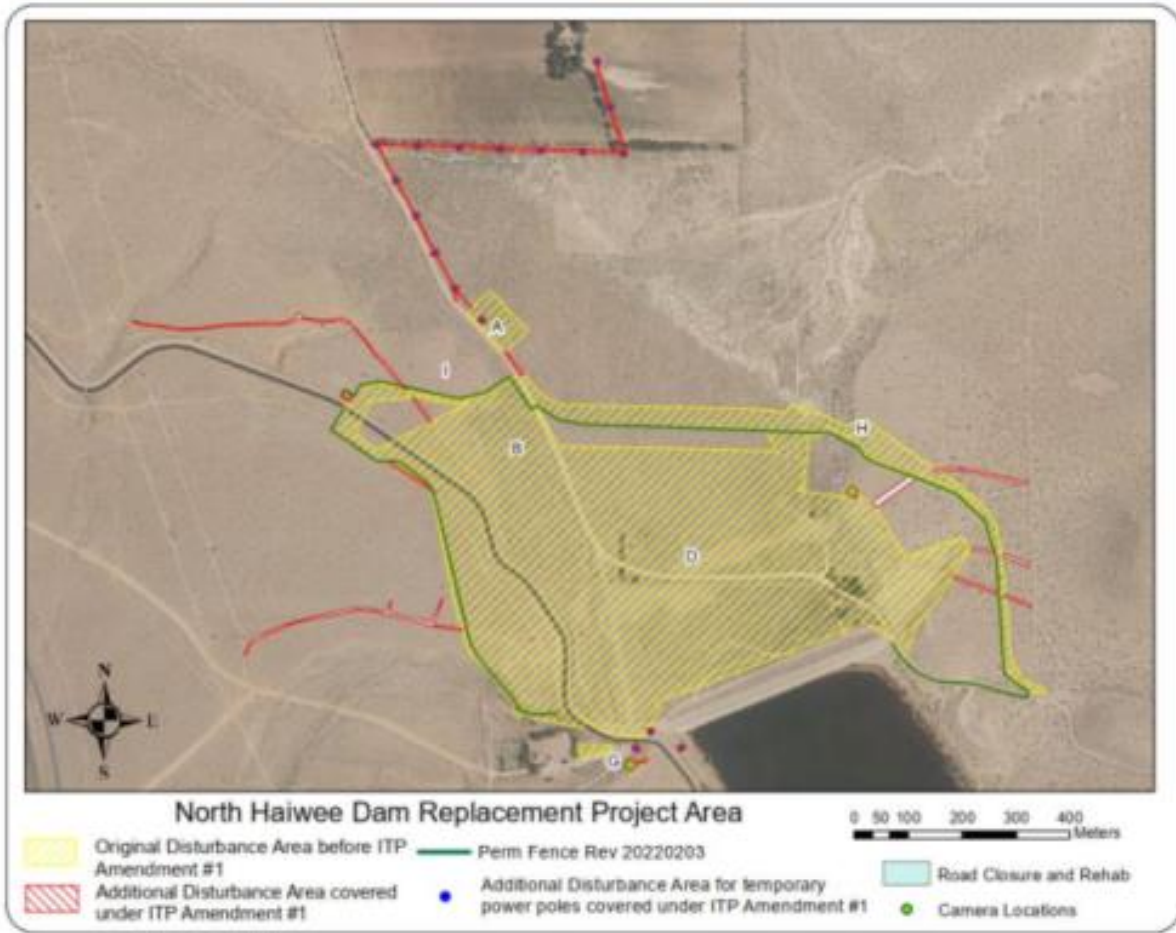
By:   
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Date: 9/1/2023

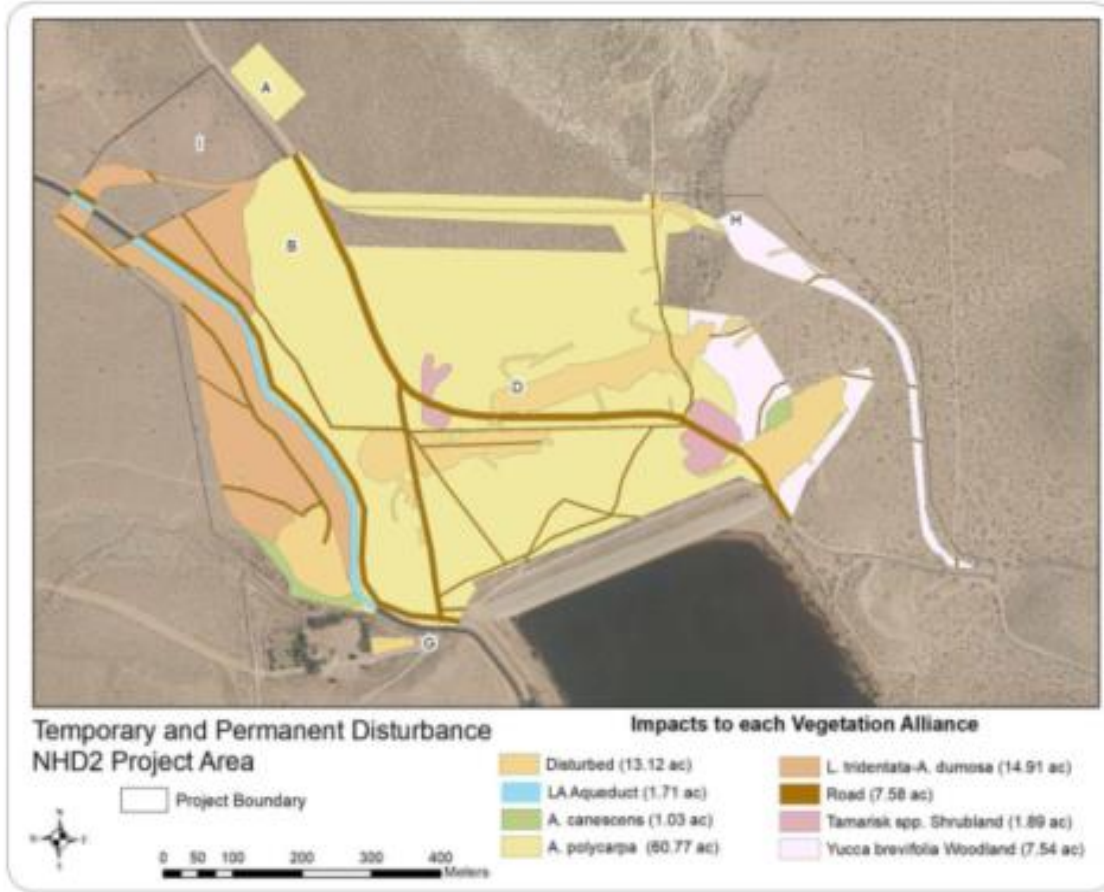
Printed Name: Adam Perez

Title: Manager of Aqueduct

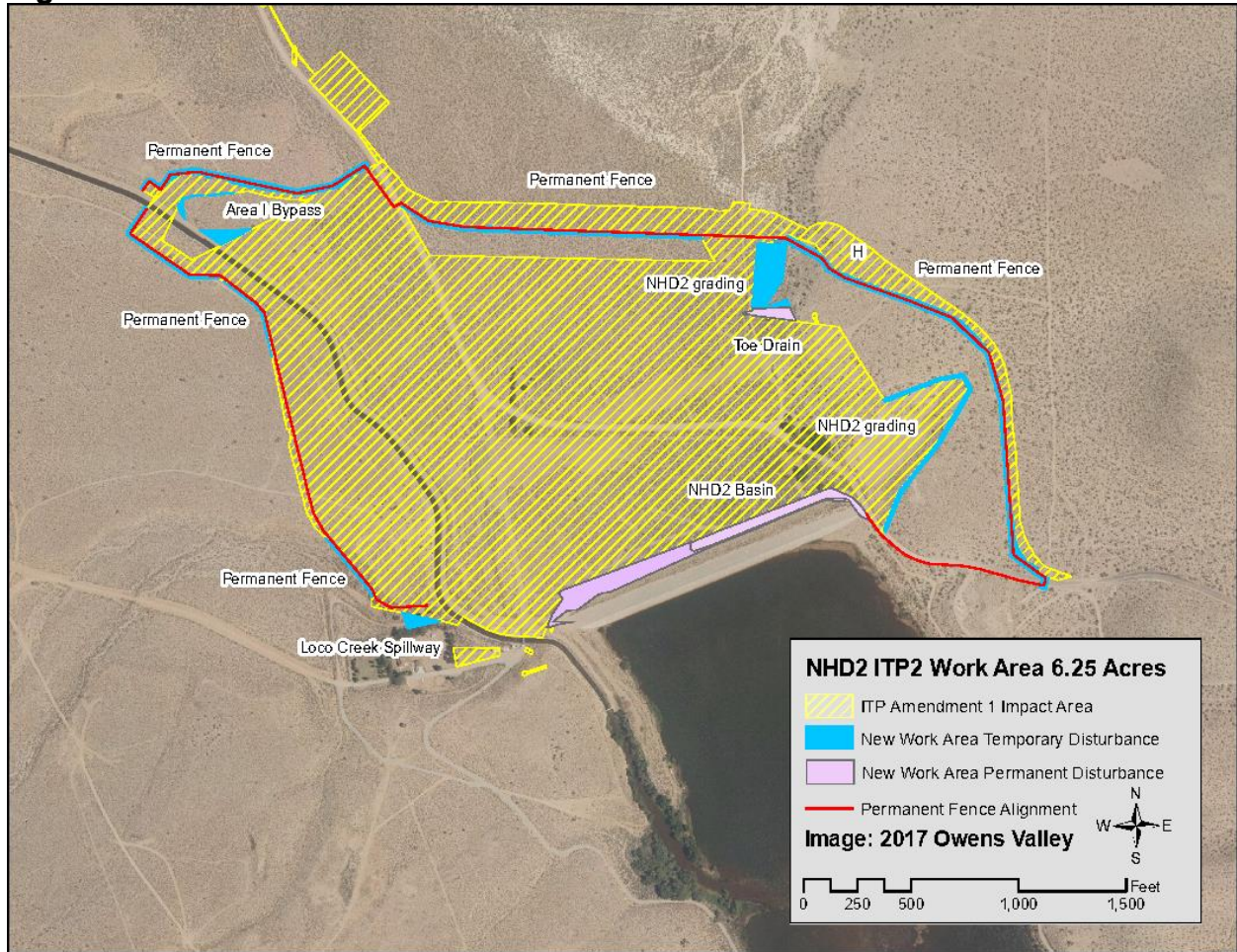
**FIGURE 1: Project Area**



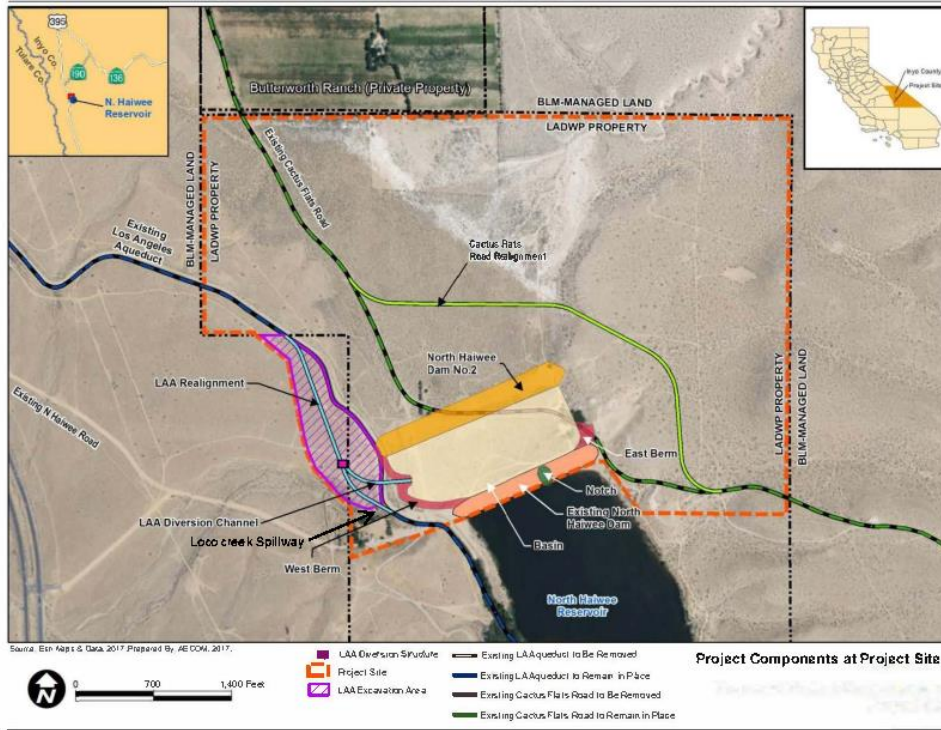
**FIGURE 2: Project Map Depicting Area G**



**Figure 3: A2 NHD2 ITP Work Area**

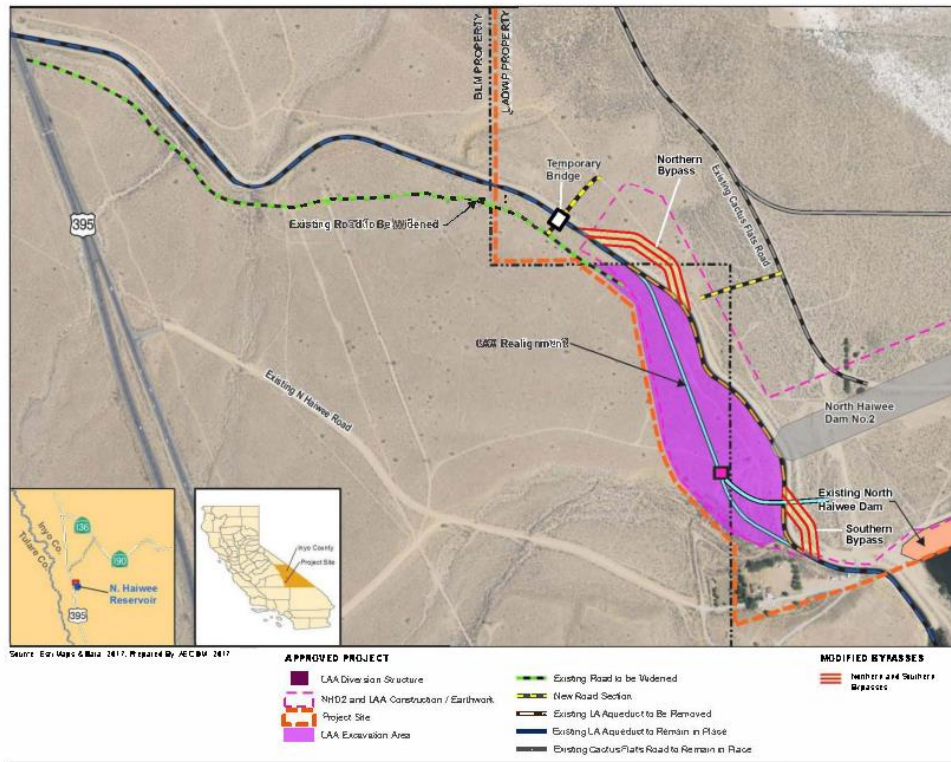


**Figure 4: NHD2 Project Components**



Major Amendment No. 2  
 Incidental Take Permit 2081-2017-073-06  
 LOS ANGELES DEPARTMENT OF WATER AND POWER  
 North Haiwee Dam No. 2

**Figure 5: NHD2 Project Components West**



Major Amendment No. 2  
 Incidental Take Permit 2081-2017-073-06  
 LOS ANGELES DEPARTMENT OF WATER AND POWER  
 North Haiwee Dam No. 2

**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)  
CALIFORNIA ENDANGERED SPECIES ACT**

**INCIDENTAL TAKE PERMIT NO. 2081-2017-073-06**

**PERMITTEE: Los Angeles Department of Water and Power**

**PROJECT: North Haiwee Dam No. 2 Project (Major  
Amendment No.2)**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

**OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

**VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

## **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP condition that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report, and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.



	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
<b>BEFORE DISTURBING SOIL OR VEGETATION</b>					
1	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the 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 the ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	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 and natural history 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.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	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 the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before their performing 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.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
4	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 closed (animal-proof) containers daily and removed regularly (at least once a week) to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
5	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.	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
6	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.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
7	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.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
8	The Designated Representative shall notify CDFW's Regional Representative 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
9	<b><i>Environmentally Sensitive Area (ESA) Fencing Prior to ground-disturbing activities, and for the duration of the construction, Permittee shall fence a 25-foot buffer around the Project Impact Area (108 acres) with temporary, high-visibility Environmentally Sensitive Area (ESA) fencing and mark the ESA with signage to prevent unintended take. No access to the ESA is permitted for any reason. During daily fence checks the Designated Biologist shall ensure that the ESA is intact and make any repairs to the ESA fencing immediately.</i></b>	ITP Condition # 8.17	Before commencing ground- or vegetation-disturbing activities	Permittee	
10	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 <del>53.9</del> <b>52.49</b> acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.3 below.  Permittee shall either purchase 356.39 acres of western Joshua tree credits from a CDFW-approved conservation bank pursuant to section 9.5 below OR shall provide for both the permanent protection and management of 356.39 acres of Habitat Management (HM) land that is within the range of the western Joshua tree and has western Joshua tree present on site, pursuant to Condition of Approval 9.6 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 compensatory habitat 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 10.1 below	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
11	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 <del>53.9</del> <b>52.49</b> acres: \$80,850.00.	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
12	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.	ITP Condition # 9.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
13	Permittee shall restore on-site the <del>53.9</del> <b>52.49</b> 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 to facilitate revegetation of the <del>53.9</del> <b>52.49</b> 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 the ITP, as well as the purchase of up to an additional <del>53.9</del> <b>52.49</b> credits to mitigate for loss of habitat resulting from any portion of the disturbance area that has not met success criteria.	ITP Condition # 9.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
	<p><u>Cost Estimates.</u> 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 as follows:</p> <ul style="list-style-type: none"> <li>i) Land acquisition costs for HM lands identified in Condition of Approval 9.6, estimated at \$4,200/acre for 356.39 acres: \$1,496,838.00. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements.</li> <li>ii) All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 9.6.1 and 9.6.2 below: \$3,400.</li> <li>iii) Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.6.5, estimated at \$1,500.00/acre for 356.39 acres: \$534,585.00</li> <li>iv) Interim management period funding as described in Condition of Approval 9.6.6, estimated at \$1,500/acre for 356.39 acres: \$534,585.00</li> <li>v) Long-term management funding as described in Condition of Approval 9.7, estimated at \$3,500/acre for 356.39 acres: \$1,247,365.00. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.</li> <li>vi) 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 9.6, estimated at \$6,000.</li> <li>vii) 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.</li> </ul>	<p>ITP Condition #9.4</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
14	<p><u>Habitat Acquisition and Protection.</u> To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:</p> <p><u>Fee Title.</u> Transfer fee title to 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.</p> <p><u>Conservation Easement.</u> 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.</p> <p><u>HM Lands Approval.</u> 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.</p> <p><u>HM Lands Documentation.</u> 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.</p> <p><u>Land Manager.</u> 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.</p> <p><u>Start-up Activities.</u> 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 <a href="https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&amp;inline">https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=137386&amp;inline</a>) (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.</p> <p><u>Interim Management (Initial and Capital).</u> 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, and vegetation and invasive species management.</p>	ITP Condition #9.6	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
15	<p><u>Endowment Fund.</u> If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.6, 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</p>	ITP Condition # 9.7	Before commencing ground- or vegetation-disturbing activities (or within 18 months of	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
	<p>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 9.6.5. 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.</p> <p>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.</p>		<p>issuance of the ITP if Security is provided)</p>		
16	<p><u>Identify an Endowment Manager.</u> 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.</p> <p>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).</p> <p>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).</p>	<p>ITP Condition #9.7.1</p>	<p>Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)</p>	<p>Permittee</p>	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
17	<p><u>Calculate the Endowment Funds Deposit.</u> 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</p> <p><u>Capitalization Rate and Fees.</u> 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.</p> <p><u>Endowment Buffers/Assumptions.</u> 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:</p> <ul style="list-style-type: none"> <li>• <u>10 Percent Contingency.</u> A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.</li> <li>• <u>Three Years Delayed Spending.</u> The endowment shall be established assuming spending will not occur for the first three years after full funding.</li> <li>• <u>Non-annualized Expenses.</u> 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.</li> </ul>	ITP Condition #9.7.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
18	<p><u>Transfer Long-term Endowment Funds.</u> Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above.</p>	ITP Condition #9.7.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
19	<p><u>Management of the Endowment.</u> 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.</p> <p>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.</p> <p>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.</p>	ITP Condition #9.7.4	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
20	<p><u>Reimburse CDFW.</u> 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.</p>	ITP Condition #9.8	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	



	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
21	<p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <ul style="list-style-type: none"> <li>a) <u>Security Amount</u>. The Security shall be in the amount of \$80,850.00 This amount is based on the cost estimates identified in Condition 9.1 above; The Security for western Joshua tree shall be in the amount of \$3,897,773.00. This amount is based on the cost estimates identified in Condition of Approval 9.4 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.</li> <li>b) <u>Security Form</u>. 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;</li> <li>c) <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of the ITP, whichever occurs first;</li> <li>d) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW;</li> <li>e) <u>Security Transmittal</u>. 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;</li> <li>f) <u>Security Drawing</u>. 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 the ITP;</li> <li>g) <u>Security Release</u>. The Security (or any portion of the Security then remaining) shall be released to the Permittee after all secured requirements have been met as evidenced by: <ul style="list-style-type: none"> <li>• Timely submission of all required reports;</li> <li>• Final revegetation report that includes documentation of annual monitoring results and demonstrates that the success criteria in the Vegetation Restoration Plan have been met.; and</li> <li>• Written approval from CDFW.</li> </ul> </li> </ul> <p>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.</p>	ITP Condition # 10	Before commencing ground- or vegetation-disturbing activities	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
22	<b><i>Mitigation Credits in Full.</i></b> CDFW has determined that the permanent protection of 44.76 desert tortoise and Mohave ground squirrel mitigation credits and 356.39 western Joshua tree mitigation credits fully mitigate impacts of up to 37.83-acres of permanent desert tortoise and Mohave ground squirrel habitat, and 108.13-acres of western Joshua tree habitat respectively. Permittee agrees that the 44.76 and 356.39 Covered Species credits are provided in their entirety to satisfy permanent impacts associated with Project Activities through ITP Amendment number 2. Any subsequent amendments of changes to project impacts will require separate compensatory mitigation efforts. Permittee will restore any temporary impacts associated with Project Impacts through ITP Amendment number 2 as agreed upon in an updated restoration plan reflecting the changes to Project disturbance areas, approved by CDFW.	ITP Condition # 11	Before commencing ground- or vegetation-disturbing activities	Permittee	
<b>DURING CONSTRUCTION</b>					
23	The Designated Biologist shall be on-site daily during all Project activities. The Designated Biologist shall conduct daily 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 as indicated in the ITP application. The Designated Representative or Designated Biologist shall prepare daily written observations and inspection records submitted to CDFW every Friday, summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, number, location, height, age class and photographs of western Joshua trees removed, survey results, project photographs from established photo points, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of once a week during periods of inactivity.	ITP Condition # 7.3	Entire Project	Permittee	
24	The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Quarterly Compliance 7.2 and submit it to CDFW along with a copy of this 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 the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of the ITP's approval, the CDFW Regional Representative is <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose Banks (Rose.Banks@wildlife.ca.gov)</a> <b>Bryant Luu</b> ( <a href="mailto:Bryant.luu@wildlife.ca.gov">Bryant.luu@wildlife.ca.gov</a> ) and Headquarters CESA Program email is <a href="mailto:CESA@wildlife.ca.gov">CESA@wildlife.ca.gov</a> . 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.	ITP Condition # 7.4	Entire Project	Permittee	
25	Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the 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 this 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.	ITP Condition # 7.5	Entire Project	Permittee	
26	The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDB) 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.	ITP Condition # 7.6	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
27	The Designated Representative shall immediately notify CDFW's Regional Representative <del>Rose Banks</del> at (760) 873-4412 and in writing ( <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose.Banks@wildlife.ca.gov</a> ) <b>Bryant Luu</b> at <a href="mailto:bryant.luu@wildlife.ca.gov">bryant.luu@wildlife.ca.gov</a> if it determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or this MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.	ITP Condition # 7.2	Entire Project	Permittee	
28	The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period which shall include a copy of the ITP, <b>amendments</b> , 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.	ITP Condition # 6.5	Entire Project	Permittee	
29	Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.8	Entire Project	Permittee	
30	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.	ITP Condition # 6.16	Entire Project	Permittee	
31	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 the ITP, among other reasons, if additional take of Covered Species will occur because of the Project modification.	ITP Condition # 6.11	Entire Project	Permittee	
32	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 specifically provided for in Condition 6.11 of the ITP.	ITP Condition # 6.12	Entire Project	Permittee	
33	Permittee shall immediately stop and following 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.	ITP Condition # 6.13	Entire Project	Permittee	
34	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 the ITP.	ITP Condition # 6.14	Entire Project	Permittee	
35	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.	ITP Condition # 8.1	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
36	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 <i>active period</i> (February through August) to escape out of harm's way. During the Covered Species' <i>dormant period</i> (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.	ITP Condition # 8.2	Entire Project	Permittee	
37	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).	ITP Condition # 8.3	Entire Project	Permittee	
38	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.	ITP Condition # 8.4	Entire Project	Permittee	
39	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 the ITP.	ITP Condition # 8.5	Entire Project	Permittee	
40	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 the ITP before moving vehicles and equipment.	ITP Condition # 8.6	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
41	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 the 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.	ITP Condition # 8.7	Entire Project	Permittee	
42	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.	ITP Condition # 8.8	Entire Project	Permittee	
43	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.	ITP Condition # 8.9	Entire Project	Permittee	
44	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.	ITP Condition # 8.10	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
45	Permittee shall submit tortoises fatally injured or killed by project activities for necropsy, according to <i>Protocol for Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoises</i> (2007) (Attachment 2), at the expense of the Permittee.	ITP Condition # 8.11	Entire Project	Permittee	
46	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 ( <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose.Banks@wildlife.ca.gov</a> ) Bryant Luu ( <a href="mailto:Bryant.luu@wildlife.ca.gov">Bryant.luu@wildlife.ca.gov</a> ) 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 Annual Status Reports 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 Annual Status Reports as directed in Conditions 7.4 and 7.5 above.	ITP Condition # 8.12	Entire Project	Permittee	
47	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. 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 the 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.	ITP Condition # 8.13	Entire Project	Permittee	

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
48	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.	ITP Condition # 8.14	Entire Project	Permittee	
49	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.	ITP Condition # 8.15	Entire Project	Permittee	
50	<u>Worker Environmental Awareness Training (WEAT)</u> Prior to ground-disturbing activities, Permittee shall conduct a mandatory WEAT for all construction personnel about western Joshua tree identification, status, protection, consequences of violation, and protective measures of western Joshua tree on the Project. Upon completion of the WEAT, employees shall sign a form stating they attended and understand all protection measures.	ITP Condition # 8.16	Entire Project	Permittee	
51	<u>Environmentally Sensitive Area (ESA), Permanent Chain Link Fencing or staking.</u> Prior to ground-disturbing activities, and for the duration of the construction, Permittee shall fence a maximum 25-foot buffer around the perimeter of the active section of the Project area with temporary, high-visibility Environmentally Sensitive Area (ESA) fencing or permanent chain link fencing and mark the ESA with signage to prevent unintended take of western Joshua trees outside of the Project area. Alternate exclusion methods such as staking may be used in lieu of the above fencing types in consultation with and after approval by CDFW. Fencing of area G (Figure 2) and the portion of the Project adjacent to the face of the existing North Haiwee Dam is not required. Permittee shall protect the area facing the existing North Haiwee Dam by installing staking and high visibility flagging spaced every 50 feet. No access to the ESA is permitted except as indicated in Figure 1 to close/rehabilitate existing dirt roads, to install cameras and to install temporary power poles. During compliance monitoring the Designated Biologist shall ensure that the ESA fencing or staking is intact and ensure any repairs to the ESA fencing or staking are made immediately.	ITP Condition # 8.17	Entire Project	Permittee	
52	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 <del>Rose Banks</del> ( <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose.Banks@wildlife.ca.gov</a> ) <b>Bryant Luu</b> ( <a href="mailto:bryant.luu@wildlife.ca.gov">bryant.luu@wildlife.ca.gov</a> ). The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the 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.	ITP Condition # 7.8	Entire Project	Permittee	
53	To ensure compliance with the Conditions of Approval of the ITP, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a species not covered by the ITP.	ITP Condition # 6.3	Entire Project	CDFW	
<b>POST-CONSTRUCTION</b>					

	<b>Mitigation Measure</b>	<b>Source</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>	<b>Status / Date / Initials</b>
54	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.	ITP Condition # 6.15	Post-construction	Permittee	
55	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 this 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 the 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.	ITP Condition # 7.7	Post-construction and after completion of mitigation	Permittee	



# Attachment 5: Credit Purchase Confirmation




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## TRANSMITTAL

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TO: Mark J. Sedlacek, Director of Environmental Affairs Charles C. Holloway, Manager of Environmental Planning and Assessment	FROM: Julie Maddox, Inside Sales Manager Heron Pacific, LLC dba WILDLANDS
COMPANY: Los Angeles Department of Water & Power	VIA: U.S. Mail
ADDRESS: 111 N. Hope Street, Room 1044 Los Angeles, CA 90012-2607	PROJECT : North Haiwee Dam No. 2 2081-2017-073-06
RE: Bill of Sale for Task Order #6; Agreement No. 47431-7	DATE: February 21, 2020

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URGENT   
  FOR REVIEW   
  FOR YOUR USE   
  PLEASE REPLY   
  ACTION REQUIRED

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Enclosed for your records please find the original executed Bill of Sale and Payment Receipt for the purchase of 44.76 Conservation Credits at the Black Mountain Conservation Bank associated with the above-referenced project.

Notification of the transaction will also be sent to the California Department of Fish and Wildlife for their records.

Thank you for your business. Please let me know if there are any questions or if there is anything else you need.

Thank you,

Julie Maddox  
WILDLANDS

cc: Nadia Parker, LADWP (via Electronic Mail)

**Exhibit "B"**

**BILL OF SALE**  
**Contract #BMCB-20-10**  
**CDFW ITP No. 2081-2017-073-06**

In consideration of \$335,700.00, receipt of which is hereby acknowledged, Heron Pacific, LLC, a Delaware limited liability company, doing business as Wildlands ("**Wildlands**"), does hereby bargain, sell and transfer to The City of Los Angeles Department of Water and Power, a municipal corporation ("**Project Proponent**") 44.76 Conservation Credits, for the North Haiwee Dam No. 2 Project, from the Black Mountain Conservation Bank in San Bernardino County, California, developed and approved under the authority of the California Department of Fish and Wildlife.

Wildlands represents and warrants that it has good title to the Conservation Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Wildlands covenants and agrees with the Project Proponent to warrant and defend the sale of the Conservation Credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: February 21, 2020

Heron Pacific, LLC, a Delaware limited liability company

By:  \_\_\_\_\_

Name: Mark Heintz

Its: Manager

**Exhibit "C"**

**BLACK MOUNTAIN CONSERVATION BANK  
CONSERVATION CREDITS: PAYMENT RECEIPT**

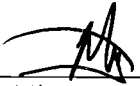
PARTICIPANT INFORMATION

Name: City of Los Angeles Department of Water and Power  
Address: 111 North Hope Street, Room 1044, Los Angeles, CA 90012  
Telephone: (213) 367-4969  
Contact: Mr. Charles C. Holloway, Utility Services Manager

PROJECT INFORMATION

Project Description: North Haiwee Dam No. 2 Project  
CDFW File Number(s): 2081-2017-073-06  
Species/Habitat Affected: Desert Tortoise and Mohave Ground Squirrel  
Credits Required: 44.76 Conservation Credits  
Payment Amount: \$335,700.00  
Project Location: Approximately 1.1 miles southeast of the community of Olancho and  
0.9 mile north of the community of Haiwee, north of the existing dam  
County: Inyo

PAYMENT INFORMATION

Payee: Heron Pacific, LLC  
Payer: City of Los Angeles  
Amount: Three Hundred Thirty-Five Thousand Seven Hundred and No/100ths  
Dollars (\$335,700.00)  
Method of Payment: Cash  Check# 700235712 Other   
Received By:   
(Signature)  
Name: Mark Heintz  
Title: Manager  
Date: February 21, 2020

## Attachment 6. Credit Purchase Agreement




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**TRANSMITTAL**


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TO:	Katherine Rubin	FROM:	Julie Maddox
COMPANY:	Los Angeles Department of Water and Power	VIA:	Electronic and USPS First Class Mail
ADDRESS:	111 North Hope Street, Room 1044 Los Angeles, CA 90012	PROJECT :	North Haiwee Dam No. 2 ITP No. 2081-2017-073-06
RE:	Western Joshua Tree Credit Purchase Confirmation (Antelope Valley CB)	DATE:	July 27, 2023

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URGENT   
 FOR REVIEW   
 FOR YOUR USE   
 PLEASE REPLY   
 ACTION REQUIRED

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Enclosed for your records please find a complete copy of the Credit Sale and Transfer Agreement, including the original signed Bill of Sale and Payment Receipt, for the purchase of 356.39 western Joshua tree credits at the Antelope Valley Conservation Bank for the above-referenced project.

Notification of the purchase will also be sent to CDFW for their records and in accordance with our banking agreement.

Thank you for working with Wildlands! Please let me know if there are any questions or if there is anything else you need.

Thank you,

Julie Maddox  
WILDLANDS

cc: James Howe and Jane Hauptman, LADWP (via Electronic Mail)

## Credit Sale and Transfer Agreement

(North Haiwee Dam No. 2 Project)

This Credit Sale and Transfer Agreement (“**Agreement**”) is entered into this 27<sup>th</sup> day of June, 2023, by and between **WILDBERON HOLDINGS, LLC**, a California limited liability company (“**Bank Sponsor**”) and the **CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER**, a municipal corporation (“**Purchaser**”), jointly referred to as the “**Parties**,” as follows:

### RECITALS

- A. The Bank Sponsor has developed the Antelope Valley Conservation Bank located in Kern County, California (“**Bank**”); and
- B. The Bank has been developed pursuant to that certain Antelope Valley Conservation Bank, Conservation Bank Enabling Instrument (“**CBEI**”) entered into by and among Bank Sponsor and the California Department of Fish and Wildlife (“**CDFW**” and sometimes referred to as “**Signatory Agency**”) on September 23, 2022; and
- C. The Bank is currently in good standing with the Signatory Agency; and
- D. The Bank Sponsor previously received approval from the Signatory Agency to offer western Joshua tree credits (“**WJT Credits**”) and stream habitat credits (“**Stream Credits**”) (collectively, the “**Credits**”) from the Bank for Sale (defined below) pursuant to the terms of the CBEI and any amendments thereto; and
- E. The CBEI defines “**Sale**” as the sale of Credits by the Bank Sponsor, and a “**Transfer**” as the use or application of Credits to mitigate for a particular project’s impacts by a person or entity seeking the Transfer (the “**Permittee**”); and
- F. Pursuant to the terms of the CBEI, a Transfer may occur only if Bank Sponsor has received (i) a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the specified purchased Credits; and (ii) written notice from the Permittee that it is electing to use the specified purchased Credits toward the permit(s)/approval(s)/authorization(s) obligation (“**Notice**”); and Bank Sponsor has accepted the legal responsibility for providing the required compensatory mitigation of such permit(s)/approval(s)/authorization(s), if required; and
- G. The Purchaser, as Permittee, is seeking to implement the project described in Exhibit A attached hereto (“**Project**”), which would unavoidably and adversely impact western Joshua tree, and seeks to compensate for the loss of western Joshua tree by purchasing 356.39 WJT Credits (“**Specified Credits**”); and

- H. The Purchaser and the Bank Sponsor wish to complete a Sale of the Specified Credits; and
- I. The Purchaser, as Permittee, wishes to Transfer the Specified Credits and to effect the Transfer, has provided to Bank Sponsor a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the Specified Credits, identified in Exhibit A, copies of which are attached hereto as Exhibit B and incorporated herein by reference, to compensate for impacts resulting from the Project.
- J. Requests for Credit Transfers associated with a CDFW permit or authorization must first be approved by CDFW, as indicated on page 6 below, prior to full execution of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Purchase Price. The purchase price for the Specified Credits shall be \$8,909,750.00 (the "**Purchase Price**"). The Purchase Price shall be paid by means acceptable to the Bank Sponsor on the Closing Date (defined below).
2. Acknowledgement of Sale and Transfer. On the Closing Date, Bank Sponsor shall deliver to Purchaser a fully executed Bill of Sale (Exhibit C) and Payment Receipt (Exhibit D).
3. Closing; Closing Date. The closing will occur within thirty (30) days after the Effective Date this Agreement (the "**Closing Date**"). On the Closing Date, the Purchaser shall pay the Purchase Price to the Bank Sponsor and, upon receipt of the Purchase Price, the Transfer of the Specified Credits to mitigate for the Project shall occur and the Bank Sponsor shall deliver the fully executed Bill of Sale and Payment Receipt to Purchaser.
4. Submission to Signatory Agency. Upon the Sale and Transfer of the Specified Credits, the Bank Sponsor shall submit to the Signatory Agency copies of: a) this Agreement; b) the Bill of Sale; c) the Payment Receipt; and d) an updated ledger as required by the terms of the CBEI.
5. Transfer. The Transfer of the Specified Credits shall be only for compensatory mitigation of the Project, and the Specified Credits may not be used as compensatory mitigation for any other project or purpose, except as set forth herein.
6. Responsibility for Compensatory Mitigation. Except for any permit/approval/authorization issued by CDFW, upon Transfer, the Bank Sponsor accepts the legal responsibility for providing the compensatory mitigation specified in the permit(s)/approval(s)/authorization(s) identified in Exhibit A and attached as Exhibit B. The Purchaser, as Permittee, retains responsibility for providing the

compensatory mitigation specified in any permit/approval/authorization issued by CDFW, identified in Exhibit A, and attached as Exhibit B.

7. Notice. This Agreement constitutes the notice provided for in Recital F.
8. Integration. The Parties agree that all negotiations, discussions, understandings, and agreements heretofore made between them, or their respective agents or representatives are merged in this Agreement and the Exhibits attached hereto, and this written Agreement alone fully and completely expresses their agreement with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties relating to the subject matter of this Agreement.
9. Termination. In the event the Purchaser has not delivered the Purchase Price to the Bank Sponsor on or before the Closing Date, this Agreement shall automatically terminate without the need for any further action by the Bank Sponsor, and the Bank Sponsor shall have no further obligations to the Purchaser under this Agreement. In addition, the Parties agree that if this Agreement terminates as set forth in this section, no Sale or Transfer of the Specified Credits shall have occurred.
10. Amendments and Modifications. This Agreement may not be amended or modified except by an agreement in writing signed by the Parties. Promptly after execution of this Agreement, the Bank Sponsor shall provide the Signatory Agencies a copy of each amendment or modification. All amendments and modifications shall be appended to this Agreement.
11. Counterparts. This Agreement may be executed and delivered in any number of identical counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5.
12. Effective Date. This Agreement will become effective when signed by the last Party.
13. Miscellaneous.
  - A. The Sale and Transfer herein is not intended as a sale or transfer to the Purchaser of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.
  - B. The Specified Credits shall be non-transferable and non-assignable and shall not be used as compensatory mitigation except as set forth in this Agreement.

- C. By reason of the Sale and Transfer of the Specified Credits, Purchaser shall not assume the obligations of Bank Sponsor or Property Owner under the CBEI.
- D. Any notice or other written communication given pursuant to this Agreement shall be delivered to the other Party by first class U.S. mail, certified or registered U.S. mail, facsimile mail, or electronically, with mailed copy as follows:

Bank Sponsor: WildHeron Holdings, LLC  
6558 Lonetree Boulevard  
Rocklin, California 95765  
Attention: Julie Maddox, Director of Sales  
Telephone: (916) 435-3555  
Email: [jmaddox@heronpacific.com](mailto:jmaddox@heronpacific.com)

Purchaser: Los Angeles Department of Water and Power  
111 North Hope Street, Room 1044  
Los Angeles, California 90012  
Attention: Katherine Rubin  
Telephone: (213) 367-0436  
Email: [jane.hauptman@ladwp.com](mailto:jane.hauptman@ladwp.com)

- E. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has authority to bind that Party and that the Party's execution of this Agreement is not in violation of any bylaw, covenants, and/or other restrictions placed upon them by their respective entities.

[SIGNATURES ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**BANK SPONSOR:**

**WILDBERON HOLDINGS, LLC**, a  
California limited liability company

By: Karen Mayfield

Its: VP of Finance

Date: 6/21/2023

**PURCHASER:**

**CITY OF LOS ANGELES DEPARTMENT  
OF WATER AND POWER**, a municipal  
corporation

By: Katherine Rubin Digitally signed by Katherine Rubin  
Date: 2023.06.13 19:43:55 -07'00'

Its: Director of Environmental Affairs

Date: 6/13/2023

**APPROVED AS TO FORM AND LEGALITY  
HYDEE FELDSTEIN SOTO, CITY ATTORNEY**


**MAY 08 2023**

BY JOHN A. CARVALHO  
DEPUTY CITY ATTORNEY

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE APPROVAL**

The CDFW verifies that the Antelope Valley Conservation Bank is in good standing as of the date of the signature below.

This Agreement fulfills a portion of the Project Applicant's proposed western Joshua tree conservation measures, as described in CDFW's Permit; Incidental Take Permit No. 2081-2017-073-06 Amendment No. 1 dated March 15, 2022.

DocuSigned by:  
  
By: CAEE4779B63E4A3...

Date: 6/27/2023

Printed Name: Heidi Calvert

Title: Regional Manager

California Department of Fish and Wildlife

Region 6

**Exhibit "A"**  
Description of Project to be Mitigated

A. Project information:

Project Name: North Haiwee Dam No. 2 Project

Project Address and County: Located at the north end of North Haiwee Reservoir 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, north of the community of Haiwee in Inyo County.

Project Type/Description: Replacement dam construction and associated components

Amount and Type of Specified Credits being used: 356.39 acres Western Joshua Tree

B. Permit(s)/Approval(s)/Authorization(s) File Information:

Agency Name	Permit/Approval Number	Date of Permit/Approval	Compensatory Mitigation Obligations
<input checked="" type="checkbox"/> CDFW	2081-2017-073-06	3/15/2022	356.39 acres of Western Joshua Tree "Covered Species" Credits

**Exhibit "B"**

Copy(ies) of Permit(s)/Approval(s)/Authorization(s)

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

INLAND DESERTS REGION

3602 INLAND EMPIRE BOULEVARD, SUITE C-220

ONTARIO, CA 91764



**AMENDMENT NO. 1**

(A Major Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2017-073-06

Los Angeles Department of Water and Power

North Haiwee Dam No. 2 in Inyo County

**INTRODUCTION**

On April 2, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-073-06 (ITP) to the Los Angeles Department of Water and Power (LADWP; Permittee) authorizing take of Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) (collectively, the Covered Species) associated with and incidental to the North Haiwee Dam No. 2 Project (Project) in Inyo County, California. The Project as described in the ITP originally issued by CDFW includes improving the seismic reliability of the existing North Haiwee Dam (NHD) by constructing North Haiwee Dam No. 2 (NHD2). The Project consists of the following components: 1) Construction of NHD2; 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; and 4) Construction of the diversion channel and NHD modifications. In issuing the ITP, CDFW found, among other things, that the Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On October 9, 2020, the California Fish and Game Commission determined that listing of the western Joshua tree (*Yucca brevifolia*) as threatened or endangered under the California Endangered Species Act (CESA) may be warranted. This commences a one-year status review of the species, and the Commission will make a final decision at a future meeting. During the status review, western Joshua tree is protected under CESA as a candidate species pursuant to Fish and Game Code 2085.

On September 16, 2021, CDFW received a request from the Permittee for a major amendment to the ITP and corresponding fee payment on November 12, 2021. The request included adding western Joshua tree as a Covered Species under the ITP and extending the expiration date of the ITP from December 31, 2026, to December 31, 2028.

On February 2, 2022, CDFW received additional information from the Permittee describing additional impact areas for (1) the placement of temporary power poles, (2) realignment of the Los Angeles aqueduct service road, (3) addition of one area south of the staging area, and (4) placement of permanent chain link fencing around the Project area. Impacts to the covered species are depicted in Figure 1.

This Major Amendment No. 1 (Amendment) makes the following changes to the existing ITP:

1. This Amendment includes the addition of the western Joshua tree (*Yucca brevifolia*) as a Covered Species.
2. This Amendment will add the impact of 108.13 acres of western Joshua tree habitat.
3. This Amendment specifies additional take minimization measures to reduce Project impacts to western Joshua tree.
4. This Amendment requires 356.39 acres of compensatory mitigation for impacts to western Joshua tree.
5. This Amendment requires a security for the compensation of permanent protection and funding for perpetual management if compensatory habitat cannot be completed before starting Covered Activities that will impact western Joshua tree.
6. This Amendment extends the expiration date of the ITP to December 31, 2028.

## AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

The Project Description shall be amended to read:

1. **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,
5. Installation of 19 power poles,
6. Permanent road closures and their revegetation,
7. Installation of permanent chain link fencing, and
8. Installation of security cameras.

### **Temporary Power for Project**

Temporary power will be provided for the Project. For this work, power poles will be installed 230' apart, using a 24" auger. Poles will be installed with minimal disturbance by driving a vehicle to the pole location, drilling the 24" diameter hole, and returning to the roadway. Power will be brought in from both the north and the south of the Project. Disturbance to western Joshua trees will be avoided and no western Joshua tree will be within 40' of a pole location.

**North Leg:** A total of 15 temporary power poles will be installed to bring power to Area A. Three of these power poles will be installed on private property. Six power poles will be installed along a disturbed dirt road. The remaining six poles will be installed along Cactus Flats Road.

**South Leg:** Four poles will be installed along existing dirt roads (all in disturbed locations) to bring power from the Aqueduct and Reservoir Keeper's residence area near area G to construction water pumps at the northwest corner of North Haiwee Reservoir.

### **Road Closures and Revegetation**

The proposed road closures will be performed to abandon the redundant or unauthorized dirt roads by ripping the compacted road area with a bulldozer to facilitate plant recruitment. Seeding with approved seed mixes will follow to hasten revegetation. In order to disguise the disturbed road surface, vertical mulching will be applied with vegetative material salvaged from previous clear and grubbing activities.

### **Permanent Fencing**

Permanent chain link fencing will be installed around the perimeter of the Project area. A 15' wide disturbance path will be cleared to install the fencing.

### **Camera Locations**

Poles will be installed at two locations with minimal disturbance by driving a vehicle to the pole location, drilling a 24" diameter hole, and returning to the

**roadway for the purpose of mounting cameras at the Project site for security and progress monitoring purposes.**

The Covered Species Subject to Take Authorization Provided by this ITP shall be amended to read:

2. This ITP covers the following species:

Name	CESA Status <sup>3</sup>
1. Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> )	Threatened <sup>3a</sup>
2. Desert tortoise ( <i>Gopherus agassizii</i> )	Threatened <sup>3b</sup>
<b>3. Western Joshua tree (<i>Yucca brevifolia</i>)</b>	<b>Candidate<sup>4</sup></b>

3. 'Impacts of the Taking on Covered Species' section shall be amended to include impacts to western Joshua tree: ***Project activities and their resulting impacts are expected to result in the incidental take of individuals and suitable habitat of western Joshua tree. The activities described above are expected to result in incidental take of individuals and associated seedbank of western Joshua tree including removal of individuals and roots; clearing vegetation, general operation of vehicles and heavy equipment; grading of the site; staging equipment; compacting dirt; paving and constructing infrastructure; temporary fencing and construction (Covered Activities).***

***Incidental take of individuals of western Joshua tree in the form of mortality ("kill") may occur as a result of Covered Activities such as removing mature and emergent individuals; eliminating and modifying habitat; removing seedbank and crushing and/or burying living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.***

***The Project is expected to cause the permanent loss of 108.13 acres of suitable habitat for western Joshua tree including the permanent removal of 610 individual western Joshua trees, up to 69 individual western Joshua trees will be translocated to suitable habitat.***

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

<sup>3a</sup> See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(A).

<sup>3b</sup> See *Id.*, (b)(4)(A)

<sup>4</sup> See 2020 Cal. Reg. Notice Register, No. 44-Z, pp. 1445-1446 (October 30, 2020).

The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species.



***Impacts of the authorized taking also include adverse impacts to western Joshua tree related to temporal losses, increased habitat fragmentation, reduction in seed bank, edge effects, and the Project's incremental contribution to cumulative and indirect impacts. These impacts include increased competition from non-native invasive plants; increased fire risk; increased vulnerability to disease; and stress or damage to individuals of western Joshua tree due to changes to habitat.***

***Impacts to western Joshua tree's obligate pollinating moth (*Tegeticula synthetica*) may also occur while it is dormant in the soil, or while it is in its flight phase, which would impact the ability of remaining western Joshua tree to sexually recruit new individuals. Destruction or modification of habitat may disrupt the seed dispersal behavior of rodents, which is the primary way that western Joshua tree seeds are buried at a soil depth required for successful germination. Destruction or modification of habitat may eliminate nurse plants that are critical for western Joshua tree seedling survival.***

4. Section 7, Monitoring, Notification and Reporting Provisions:

7.3 Compliance Monitoring. The Designated Biologist shall be on-site daily during all ~~initial ground-disturbing activities~~ **Project 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 **daily** 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 **as indicated in the ITP application**. ~~During initial ground-disturbing activities,~~ The Designated Representative or Designated Biologist shall prepare daily written observations and inspection records **submitted to CDFW every Friday**, summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, **number of western Joshua trees removed and overview photographs**, survey results, **project photographs from established photo points**, 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.~~

5. Section 8, Take Minimization Measures, shall be amended to include new minimization measures for western Joshua tree:

## **Western Joshua Tree**

**8.16 Worker Environmental Awareness Training (WEAT). Prior to ground-disturbing activities, Permittee shall conduct a mandatory WEAT for all construction personnel about western Joshua tree identification, status, protection, consequences of violation, and protective measures of western Joshua tree on the Project. Upon completion of the WEAT, employees shall sign a form stating they attended and understand all protection measures.**

**8.17 Environmentally Sensitive Area (ESA), Permanent Chain Link Fencing or staking. Prior to ground-disturbing activities, and for the duration of the construction, Permittee shall fence a maximum 25-foot buffer around the perimeter of the active section of the Project area with temporary, high-visibility Environmentally Sensitive Area (ESA) fencing or permanent chain link fencing and mark the ESA with signage to prevent unintended take of western Joshua trees outside of the Project area. Alternate exclusion methods such as staking may be used in lieu of the above fencing types in consultation with and after approval by CDFW. Fencing of area G (Figure 2) and the portion of the Project adjacent to the face of the existing North Haiwee Dam is not required. Permittee shall protect the area facing the existing North Haiwee Dam by installing staking and high visibility flagging spaced every 50 feet. No access to the ESA is permitted except as indicated in Figure 1 to close/rehabilitate existing dirt roads, to install cameras and to install temporary power poles. During compliance monitoring the Designated Biologist shall ensure that the ESA fencing or staking is intact and ensure any repairs to the ESA fencing or staking are made immediately.**

6. Section 9, Habitat Management Land Acquisition shall be amended to include additional habitat compensation for western Joshua tree:

### **9. Habitat Management Land Acquisition:**

**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 of western Joshua tree 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 either purchase 356.39 acres of western Joshua tree credits from a CDFW-approved conservation bank pursuant to section 9.5 below OR shall provide for both the permanent protection and**

**management of 356.39 acres of Habitat Management (HM) land that is within the range of the western Joshua tree and has western Joshua tree present on site, pursuant to Condition of Approval 9.6 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 compensatory habitat 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 10.1 below.**

**9.4 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 as follows:**

**9.4.1 Land acquisition costs for HM lands identified in Condition of Approval 9.6, estimated at \$4,200/acre for 356.39 acres: \$1,496,838.00. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements.**

**9.4.2 All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 9.6.1 and 9.6.2 below: \$3,400.**

**9.4.3 Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.6.5, estimated at \$1,500.00/acre for 356.39 acres: \$534,585.00.**

**9.4.4 Interim management period funding as described in Condition of Approval 9.6.6, estimated at \$1,500/acre for 356.39 acres: \$534,585.00**

**9.4.5 Long-term management funding as described in Condition of Approval 9.7, estimated at \$3,500/acre for 356.39 acres: \$1,247,365.00. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.**

**9.4.6 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 9.6, estimated at \$6,000.**

**9.4.7 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.***

***9.5 Covered Species Credits Permittee shall purchase 356.39 acres of western Joshua tree credits from a CDFW-approved conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.***

**OR:**

***9.6 Habitat Acquisition and Protection To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:***

***9.6.1. Fee Title. Transfer fee title to 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.***

***9.6.2 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.***

***9.6.3 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.***

- 9.6.4 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.***
- 9.6.5 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.***
- 9.6.6 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.***
- 9.6.7 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, and vegetation and invasive species management.***

**9.7 Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.6, 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 9.6.5. 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.**

**9.7.1. 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).**

**9.7.2. 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.**

**9.7.2.1. 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.**

**9.7.2.2 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:**

**9.7.2.2.1 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.**

**9.7.2.2.2 Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.**

**9.7.2.2.3 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.***

***9.7.3. 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.***

***9.7.4 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.***

***9.8 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.***

7. Section 10 Performance Security shall be amended to include a security for impacts to western Joshua tree:

***10.1 Security Amount. The Security for western Joshua tree shall be in the amount of \$3,897,773.00. This amount is based on the cost estimates identified in***



**Condition of Approval 9.4 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.**

8. Effective Date and Expiration date of this ITP shall be amended to read:

Unless renewed by CDFW, this ITP authorization to take the Covered Species shall expire on ~~December 31, 2026~~ **December 31, 2028**.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

## **FINDINGS**

*Issuance of this Amendment will increase the number of species covered for take compared to the Project as originally approved; however, by implementing the additional take minimization (i.e., avoidance) and mitigation measures (i.e., habitat compensation for the loss of 108.13 acres of western Joshua tree habitat), it is not expected that this Amendment will increase Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).*

Discussion: This Amendment reflects a change in the addition of a candidate species which will be impacted by Project activities, though the area of disturbance remains the same. This change in take assessment is based on (1) surveys conducted in 2017 and 2018 cataloging all western Joshua trees within the Project area which documented a total of 608 western Joshua tree individuals are within the Permanent Impact Area of the Project; (2) western Joshua tree became a candidate species October 9, 2020 thereby requiring the applicant to request take of these 608 trees; (3) habitat compensation for the direct impacts to the Covered Species in the form of 356.39 acres. This Amendment will not increase other Project impacts on the Covered Species because, in all other respects, the types of remediation activities authorized by the ITP remain unchanged.

*Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).*

Discussion: CDFW determined in April 2019 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the amount or severity of Project impacts on

the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

*None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.*

Discussion: CDFW issued the ITP in April 2019 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Environmental Impact Report certified by LADWP as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

*CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).*

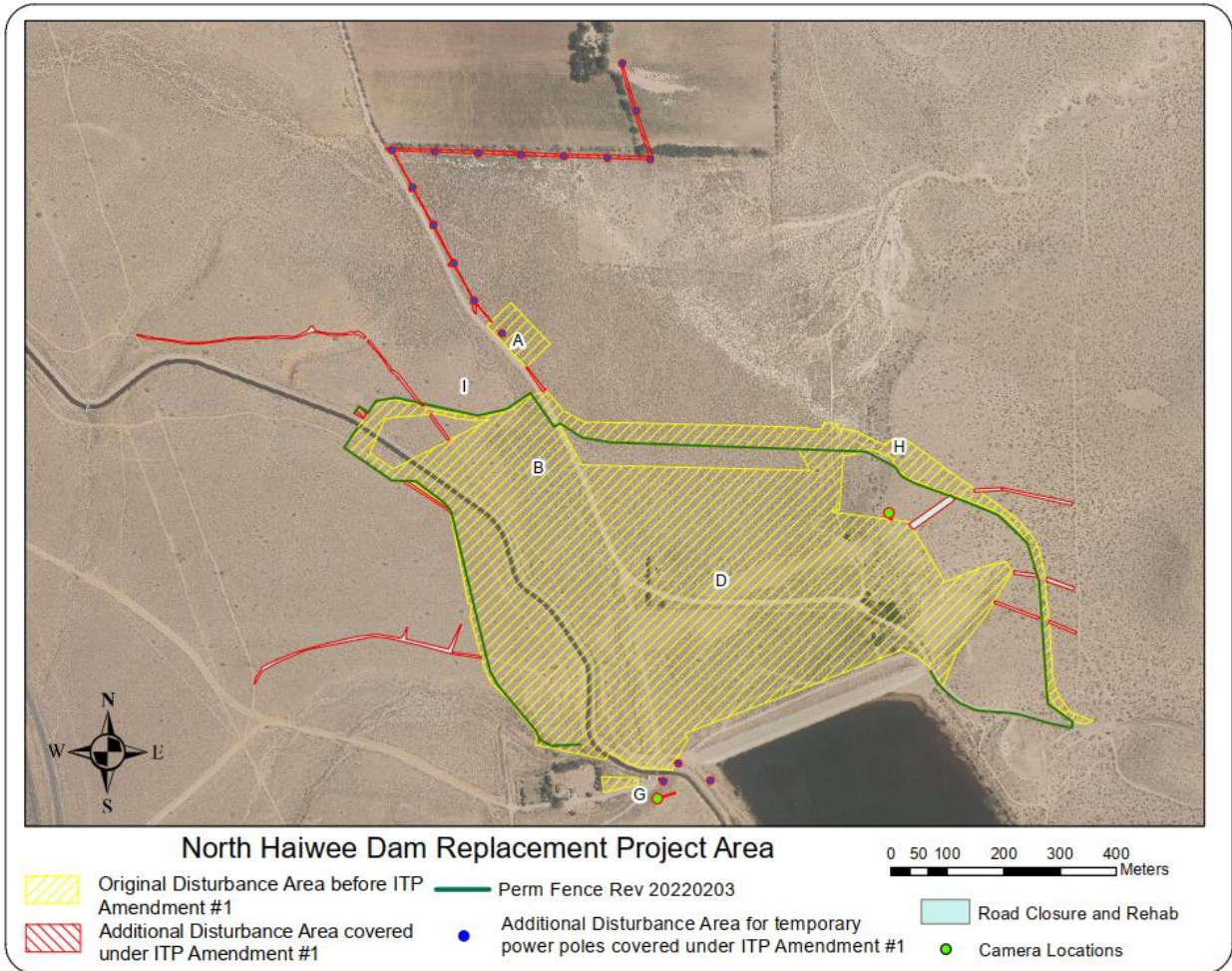
Discussion: This Amendment authorizes take of an additional Covered Species. As described above, this change constitutes an increase in take, as well as an increase in take minimization, monitoring, and mitigation measures in the ITP. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

Major Amendment No. 1  
Incidental Take Permit 2081-2017-073-06  
LOS ANGELES DEPARTMENT OF WATER AND POWER  
North Haiwee Dam No. 2 Project

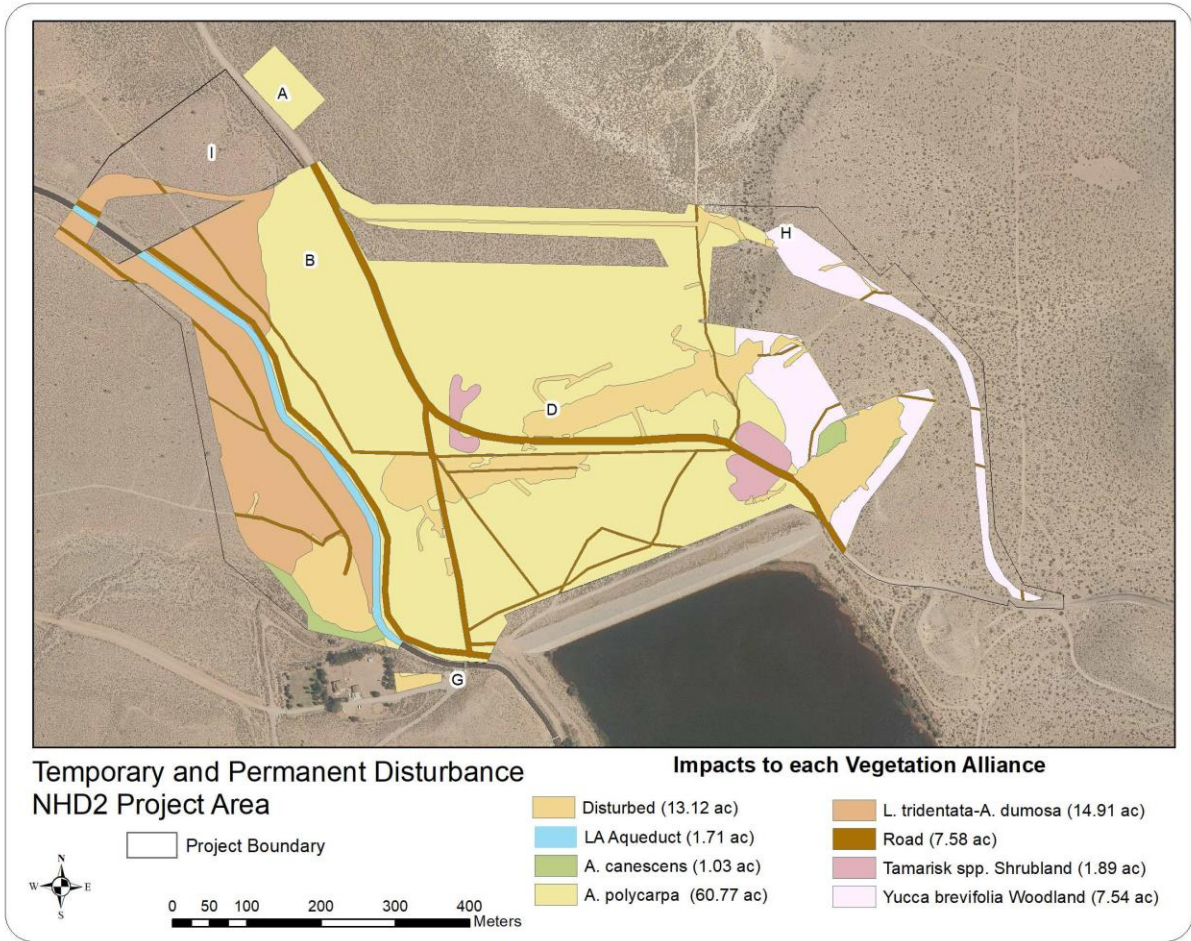


**FIGURE 1: Project Area**



Major Amendment No. 1  
Incidental Take Permit 2081-2017-073-06  
LOS ANGELES DEPARTMENT OF WATER AND POWER  
North Haiwee Dam No. 2 Project

**FIGURE 2: Project Map Depicting Area G**



Major Amendment No. 1  
Incidental Take Permit 2081-2017-073-06  
LOS ANGELES DEPARTMENT OF WATER AND POWER  
North Haiwee Dam No. 2 Project

**Exhibit "C"**

**ANTELOPE VALLEY CONSERVATION BANK  
BILL OF SALE**

Contract # AVCB-23- 15

In consideration of Eight Million Nine Hundred Nine Thousand Seven Hundred Fifty and No/100ths Dollars \$8,909,750.00, receipt of which is hereby acknowledged, **WILDBERON HOLDINGS, LLC**, a California limited liability company ("**Bank Sponsor**") does hereby recognize that the **CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER**, a municipal corporation ("**Purchaser**"), has acquired 356.39 western Joshua tree credits from the Antelope Valley Conservation Bank ("**Specified Credits**") in Kern County, California.

The Bank Sponsor represents and warrants that it has good title to the Specified Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Bank Sponsor has received: (i) a copy of the permit(s)/approval(s)/authorization(s) by the agency approving the use of the Specified Credits identified in Exhibit A and attached as Exhibit B to the Sale and Transfer Agreement entered into by and between the Parties on 6/27/2023 (the "**Agreement**"); (ii) written notice from the Purchaser, as permittee, that it is electing to use the Specified Credits toward the permit(s)/approval(s)/authorization(s) obligation; and (iii) Bank Sponsor has accepted the legal responsibility for providing the required compensatory mitigation of such permit(s)/approval(s)/authorization(s), if required.

The Bank Sponsor covenants and agrees to warrant and defend the Sale and Transfer (as defined in the Agreement) of the Specified Credits hereinbefore described against all and every person and persons whomsoever lawfully claiming the same.

The Bank Sponsor hereby Transfers the Specified Credits to compensate for impacts resulting from the project described in Exhibit A to satisfy the permit(s)/approval(s)/authorization(s) obligation identified in Exhibit A and attached as Exhibit B to the Agreement.

**BANK SPONSOR:**

**WILDBERON HOLDINGS, LLC,**  
a California limited liability company

By: Karen Mayfield

Its: VP Finance

Date: 7/27/2023

Exhibit "D"

ANTELOPE VALLEY CONSERVATION BANK  
PAYMENT RECEIPT

PURCHASER INFORMATION

Name: City of Los Angeles Department of Water and Power

Address: 111 N. Hope Street, Room 1044  
Los Angeles, CA 90012

Telephone: (213) 367-0436

Contact: Katherine Rubin

PAYMENT INFORMATION

Payee: WildHeron Holdings, LLC

Payer: City of Los Angeles

Amount: \$ 8,909,750

Method of payment:  Check No. \_\_\_\_\_

Wire Transfer: 7/27/2023

Received by: Karen Mayfield  
(Bank Sponsor Signature)

Date: July 27, 2023

Print Name: Karen Mayfield

Title: VP Finance