



California Natural Resources Agency  
**DEPARTMENT OF FISH AND GAME**  
South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
(858) 467-4201  
[www.dfg.ca.gov](http://www.dfg.ca.gov)

*ARNOLD SCHWARZENEGGER, Governor*  
*JOHN McCAMMAN, Director*



November 29, 2010

Ms. Pam Fair  
San Diego Gas and Electric Company  
8315 Century Park Court, CP21G  
San Diego, California 92123-1548

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2009-0365-R5  
Sunrise Powerlink Project

Dear Ms. Fair:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the Sunrise Powerlink Project (Project). Before the Department of Fish and Game (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the final Environmental Impact Report the lead agency prepared for the Project.

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

If you have any questions regarding this matter, please contact Ms. Kelly Fisher at (858) 467-4207 or [kfisher@dfg.ca.gov](mailto:kfisher@dfg.ca.gov).

Sincerely,

Edmund J. Pert  
Regional Manager  
South Coast Region 5

CALIFORNIA DEPARTMENT OF FISH AND GAME  
SOUTH COAST REGION  
4949 VIEWRIDGE AVENUE  
SAN DIEGO, CALIFORNIA 92123



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION No. 1600-2009-0365-R5

SAN DIEGO GAS AND ELECTRIC COMPANY  
SUNRISE POWERLINK

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Pam Fair (Permittee), representing San Diego Gas and Electric Company.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on December 9, 2009, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

**PROJECT LOCATION**

The project is located within the bed, channel, bank, and associated wetland and/or riparian vegetation ("stream zone") of various streams, including desert washes, tributary to the Salton Sea, Carrizo Creek, Cottonwood Creek-Tijuana River, and San Diego River watersheds, in San Diego and Imperial counties, State of California; (USGS Maps: Alpine, Barrett Lake, Cameron Corners, Carrizo Mountain, Coyote Wells, El Cajon, El Cajon Mountain, In-ko-Pah Gorge, Jacumba, Live Oak Springs, Morena Reservoir, Mount Laguna, Mount Signal, Plaster City, Poway, San Vicente Reservoir, Sombrero Peak, Viejas Mountain, and Yuha Basin). Each location is individually listed on the *Project Impacts Table* included as Attachment 2 of the Streambed Alteration Notification and dated August 26, 2010.

**PROJECT DESCRIPTION**

The project is limited to those individual project locations identified in the *Project Impacts Table* included as Attachment 2 of the Streambed Alteration Notification and

dated August 26, 2010. The Sunrise Powerlink project consists of a transmission line which will be constructed over approximately 120 miles from the Imperial Valley Substation near the City of El Centro, California to the Sycamore Canyon Substation near the City of Poway, California. The Sunrise Powerlink project is separated into five different links that will be built concurrently over a five-year period. Approximately six of the 120 miles of transmission line will be laid underground between mileposts 92.8 and 99. The remaining portion will consist of overhead lines supported by 436 tower structures. Forty-four miles of new access roads will be constructed, and approximately 90 miles of existing access roads will be upgraded to assist in access to tower structure pad sites during and after construction. Temporary and permanent construction pads will be located adjacent to the structure tower pads. In areas of rugged and remote terrain, permanent helicopter pads will be required for tower construction and maintenance. Temporary pull sites will be used to accommodate the equipment necessary to add tension to transmission wires between the towers. Three system upgrades will be required for existing transmission lines between the existing Sycamore Canyon Substation, located on Marine Corps Air Station Miramar, to the existing Scripps, Pomerado, and Elliot substations, located in Scripps Ranch, Poway, and Tierra Santa, respectively. Project activities within the stream zone include: crushing, grading and/or grubbing; installation of new, and repair or replacement of existing, culverts and, dip crossings; filling channels to create pads; and staging and storage.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect, if present, include: INVERTEBRATES - Quino checkerspot butterfly (*Euphydryas editha quino*); AMPHIBIANS - coast range newt (*Taricha torosa torosa*), large-blotched salamander (*Ensatina eschscholtzii klauberi*), western spadefoot toad (*Spea hammondi*), western toad (*Bufo boreas*), arroyo toad (*Bufo californicus*); REPTILES - barefoot banded gecko (*Coleonyx switaki*), Long-nosed leopard lizard (*Gambelia wislizenii*), coast (San Diego) horned lizard (*Phrynosoma coronatum blainvillei*), flat-tailed horned lizard (*Phrynosoma mcallii*), side-blotched lizard (*Uta stansburiana*), western fence lizard (*Sceloporus occidentalis*), zebra-tailed lizard (*Callisaurus draconoides*), Coronado skink (*Eumeces skiltonianus inerpaietalis*), Belding's orange-throated whiptail (*Aspidoscelis hyperythra beldingi*), silvery legless lizard (*Anniella pulchra pulchra*), coastal rosy boa (*Charina trivirgata roseofusca*), San Diego mountain kingsnake (*Lampropeltis zonata pulchra*), gopher snake (*Pituophis catenifer*), coast patch-nosed snake (*Salvadora hexalepis virgultea*), San Diego ringneck snake (*Diadophis punctatus similis*), common garter snake (*Thamnophis sirtalis*), two-striped garter snake (*Thamnophis hammondi*), western rattlesnake (*Crotalus viridis*), red-diamond rattlesnake (*Crotalus exsul*); BIRDS - California quail (*Callipepla californica*), white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), Swainson's hawk (*Buteo swainsoni*), red-tailed hawk (*Buteo jamaicensis*), ferruginous hawk (*Buteo regalis*), American kestrel (*Falco sparverius*), prairie falcon (*Falco mexicanus*), killdeer (*Charadrius vociferous*), mountain plover (*Charadrius montanus*), mourning dove (*Zenaida macroura*), yellow-billed cuckoo (*Coccyzus americanus*), burrowing owl

(*Athene cunicularia*), long-eared owl (*Asio otus*), black swift (*Cypseloides niger*), Anna's hummingbird (*Calypte anna*), rufous hummingbird (*Selasphorus rufus*), acorn woodpecker (*Melanerpes formicivorus*), southwestern willow flycatcher (*Empidonax traillii extimus*), black phoebe (*Sayornis nigricans*), ash-throated flycatcher (*Myiarchus cinerascens*), loggerhead shrike (*Lanius ludovicianus*), least Bell's vireo (*Vireo bellii pusillus*), gray vireo (*Vireo vicinior*), western scrub-jay (*Aphelocoma californica*), California horned lark (*Eremophila alpestris actia*), oak titmouse (*Baeolophus inornatus*), bushtit (*Psaltriparus minimus*), cactus wren (*Campylorhynchus brunneicapillus*), Bewick's wren (*Thryomanes bewickii*), California gnatcatcher (*Poliophtila californica californica*), northern mockingbird (*Mimus polyglottos*), Bendire's thrasher (*Toxostoma bendirei*), California thrasher (*Toxostoma redivivum*), Crissal thrasher (*Toxostoma crissale*), Le Conte's thrasher (*Toxostoma lecontei*), yellow warbler (*Dendroica petechia*), yellow-breasted chat (*Icteria virens*), summer tanager (*Piranga rubra*), spotted towhee (*Pipilo maculatus*), California rufous-crowned sparrow (*Aimophila ruficeps canescens*), black-throated sparrow (*Amphispiza bilineata*), Bell's sage sparrow (*Amphispiza belli belli*), grasshopper sparrow (*Ammodramus savannarum*), tricolored blackbird (*Agelaius tricolor*), western meadowlark (*Sturnella neglecta*); MAMMALS - Mexican long-tongued bat (*Choeronycteris mexicana*), California leaf-nosed bat (*Macrotus californicus*), Townsend's big-eared bat (*Corynorhinus townsendii*), small-footed myotis (*Myotis ciliolabrum*), long-legged myotis (*Myotis volans interior*), fringed myotis (*Myotis thysanodes thysanodes*), Yuma myotis (*Myotis yumanensis saturatus*), long-eared myotis (*Myotis evotis evotis*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), pocketed free-tailed bat (*Nyctinomops femorosaccus*), big free-tailed bat (*Nyctinomops macrotis*), Audubon's cottontail (*Sylvilagus audubonii*), San Diego black-tailed jackrabbit (*Lepus Californicus bennettii*), western gray squirrel (*Sciurus griseus*), California ground squirrel (*Spermophilus beecheyi*), Botta's pocket gopher (*Thomomys bottae*), Stephen's kangaroo rat (*Dipodomys stephensi*), Jacumba little pocket mouse (*Perognathus longimembris internationalis*), northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*), pallid San Diego pocket mouse (*Chaetodipus fallax pallidus*), Dulzura pocket mouse (*Chaetodipus californicus femoralis*), California vole (*Microtus californicus*), southern grasshopper mouse (*Onychomys torridus ramona*), western harvest mouse (*Reithrodontomys megalotis*), San Diego desert woodrat (*Neotoma lepida intermedia*), gray fox (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), ringtail (*Bassariscus astutus*), raccoon (*Procyon lotor*), American badger (*Taxidea taxus*), striped skunk (*Mephitis mephitis*), bobcat (*Lynx rufus*), mule deer (*Odocoileus hemionus*), Peninsular bighorn sheep (*Ovis canadensis nelsoni*); PLANTS - San Diego thornmint (*Acanthomintha ilicifolia*), willow monardella (*Monardella linoides ssp. viminea*); and all other aquatic and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include: temporary impacts to 0.90 acres unvegetated/upland vegetated stream, 0.01 acre southern coast live oak riparian habitat, and 7.29 acres desert wash habitats and permanent impacts to 0.08 acre wetlands, 0.35 acre unvegetated/upland vegetated

stream, 2.36 acres southern coast live oak riparian forest, and 2.72 acres desert wash habitats, for a total impact area within the stream zone of 13.71 acres.

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

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Notification Prior to Work. The Permittee shall notify DFG, in writing, at least five days prior to initiation of construction (project) activities and at least five days prior to completion of construction (project) activities. Notification shall be sent to DFG's South Coast Office at the address above, ATTN: Streambed Alteration Program – SAA # 1600-2009-0365-R5.

### **2. Avoidance and Minimization Measures**

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

#### **Resource Protection**

- 2.1 Qualified Biologist. A qualified biologist shall be on-site to monitor all activities that result in the clearing or grading of sensitive habitat as well as grading, excavation, and/or other ground-disturbing activities within the stream zone. The monitor shall:
  - 1) ensure that the limits of grading, grubbing, crushing or other ground-disturbing activities within the stream zone are delineated at the site as shown on the

construction drawings and the maps submitted in the notification; 2) perform necessary surveys and take photographs during the construction process, as required by this Agreement; 3) halt construction activities if threatened or endangered species are identified and notify the appropriate agencies immediately; 4) oversee vegetation salvage operations, if any; and 5) notify the project owner and DFG of any non-compliance with this Agreement.

- 2.2 Worker Environmental Awareness Program. Permittee shall develop a worker environmental awareness program that meets the approval of DFG that shall be implemented during all phases of the project (e.g., site mobilization, ground disturbance, grading, construction, operation, site clean up, and restoration activities). The worker environmental awareness program shall identify biological resources and Best Management Practices (BMPs) for minimizing impacts to fish and wildlife resources. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their working onsite. The names of all onsite personnel (e.g., surveyors, construction engineers, employees, contractors, contractor's employees, subcontractors) who have participated in the education program shall be kept on file and made available to DFG at the project field construction office. The program shall include but not be limited to the following: photographs and habitat descriptions for all special status species that may occur on the project site and information on their distribution, general behavior and ecology; the sensitivity of these species to human activities; legal protections afforded these species; BMPs for protecting species; penalties for violation of state and federal laws; worker responsibilities for trash disposal and safe/humane treatment of any special status species found on the project site, associated reporting requirements, and any specific measures required of workers to prevent taking of threatened or endangered species; handout materials summarizing all the contractual obligations and protective requirements specified in project permits and approvals; and requirements and penalties regarding adherence to speed limits on the project site.
- 2.3 Personnel Compliance on Site. The Permittee, its contractors, subcontractors, employees, and visitors to the site are prohibited from 1) feeding wildlife, 2) bringing domestic pets to the project site, 3) collecting native plants, or 4) harassing wildlife. It shall be the responsibility of the Permittee to ensure compliance.
- 2.4 Minimize Disturbance to Stream Zone. Disturbance or removal of vegetation shall not exceed the limits approved by DFG. Within the stream zone, the area of disturbance shall be confined to the smallest practical area considering topography; placement of facilities; locations of burrows, nesting sites or dens; public health and safety; and other limiting factors. The development of all access and right-of-way roads shall be minimized and constructed without the clearing of vegetation and blading where feasible. Wherever possible, rather than clearing vegetation and grading the right-of-way, equipment and vehicles shall use existing surfaces or previously disturbed areas. The Designated Biologist shall ensure that

blading is conducted only where necessary. All new roadways not necessary for continued facility maintenance shall be blocked, ripped, and revegetated following completion of construction to restore habitat and prevent public use. Where grading is necessary, surface soils shall be stockpiled and replaced following construction to facilitate habitat restoration. To the extent possible, disturbance of shrubs and surface soils due to stockpiling shall be minimized.

- 2.5 Delineate Work Area. Work area boundaries shall be delineated by posting signs, staking, flagging, erecting temporary fencing, or otherwise clearly marking to minimize surface and vegetation disturbance. No paint or permanent discoloring agents shall be applied to rocks or vegetation to indicate limits of survey or construction activity where any sensitive biological resources occur. All temporary fencing and flagging shall be removed at the conclusion of construction activities.
- 2.6 Location of Surface-Disturbance Activities. To the extent possible, previously disturbed areas within the project sites shall be used for stockpiling excavated materials, vegetation, equipment storage, borrow pits, locations of trailers, parking, and any other surface-disturbing activity.
- 2.7 Native Amphibian Eggs and Larvae. To the extent practicable, the Permittee shall avoid the disturbance or destruction of eggs and larvae of native amphibians.
- 2.8 Cover Trenches and Other Hazards. All steep-walled trenches or excavations used during the project shall be covered at all times except when being actively used, to prevent entrapment of wildlife (e.g. reptiles and small mammals). If trenches can not be covered, exclusion fencing shall be installed around the trench or excavation. Open trenches, or other excavations, shall be inspected by the qualified biologist a minimum of three times per day and immediately before backfilling. All employees, contractors, or visitors shall look under their vehicles and equipment before movement. If wildlife is observed, no vehicles or equipment would be moved until the animal has left the area voluntarily or can be moved by a qualified biologist.
- 2.9 Secure Work Area. The work area shall be secured from trespass when (as determined by DFG) fish or wildlife resources are vulnerable to damage from unsupervised public access.

### **Protected Species**

- 2.10 Protected Species Defined. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (Fish & G. Code § 2050 *et seq.*) and/or Endangered Species Act (16 U.S.C. § 1531 *et seq.*); a species identified by DFG as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall

occur to any protected species, except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.

- 2.11 Survey Completed by Qualified Biologist. The Permittee shall have a qualified biologist survey the proposed work area within the stream zone to verify the presence or absence of protected species. The results of these surveys shall be provided to DFG, along with copies of all field notes, prior to the initiation of work. The surveys shall be conducted pursuant to protocol survey guidelines established by the United States Fish and Wildlife Service (USFWS) or, if no protocol exists, the survey technique shall be approved by DFG in writing. The biologist shall have all required permits.
- 2.12 Protected Species Plan. If a protected species is found in the proposed work area, or is in a location which could be directly or indirectly affected by the work proposed, the Permittee shall submit a plan to DFG for review and approval prior to the initiation of work to ensure impacts to the species are avoided. The Permittee shall have a qualified biologist onsite daily to ensure that no impacts occur to protected species.
- 2.13 California Native Species Field Survey Form. If any protected species are observed in project surveys, the Permittee shall cause a California Native Species Field Survey Form and survey map to be submitted to the Natural Diversity Database within 5 working days of the sightings. The form is available online at <http://www.dfg.ca.gov/whdab/natspec.pdf>. Instructions for completing and submitting the form are available at <http://www.dfg.ca.gov/whdab/fsfinst.pdf>.
- 2.14 Dead or Injured Protected Species. Any dead or injured protected species found along roads or in project areas shall be reported to DFG within 48 hours. The biologist shall report the location, cause of death, species found, and any other relevant information.
- 2.15 Southwestern Pond Turtle.
  - 2.15.1 Areas that contain standing water where impacts will occur shall be surveyed for southwestern pond turtles ("turtles") in accordance with United States Geological Survey protocols. If the proposed impact area is surrounded by upland habitat, efforts shall be made to reduce or eliminate the impact to the south-facing slope of the upland habitat. A qualified turtle biologist shall also walk the proposed impact area prior to construction to identify potential breeding areas or existing nests. If turtles are shown to be on or near the proposed site, impacts to drainages and the surrounding area shall take place outside the breeding period (i.e., from April 1 to August 31). The Permittee shall avoid work in flowing or ponded areas within 1,500 feet of known locations of turtles. Where such activities must occur, a qualified biologist shall implement a turtle exclusion and relocation program within the construction zone. This program shall be approved



by the Department, and shall provide for the erection of turtle barriers and regular surveys of the construction area to capture and relocate turtles from within the project work area to the adjacent, unaffected habitat areas. Non-native reptiles and amphibians captured during these efforts shall not be returned to the wild.

## 2.16 Least Bell's Vireo.

2.16.1 Consult with DFG. Prior to removing, trimming, brushing, or damaging vegetation in the stream zone in areas containing habitat suitable for least Bell's vireo (vireo), the Permittee shall consult with DFG in accordance with the procedures described in FGC section 2080 *et seq.* and associated regulations. Requirements included in any take authorization issued as a result of that consultation shall be incorporated into this Agreement by reference.

2.16.2 Seasonal and Other Restrictions. The Permittee shall not conduct any grading or brushing activities within the stream zone in vireo-occupied habitat during the vireo breeding season, defined as March 15 through September 15. When conducting all other construction activities during the breeding season within 500 feet of occupied or suitable habitat, a biologist approved by DFG shall survey for vireos within 10 days prior to initiating activities in the construction area. The results of the survey shall be submitted to DFG for review and approval prior to initiating any construction activities.

2.16.3 Site Monitoring and Restrictions. If vireos are present, a qualified biologist shall survey daily for nesting vireos within 500 feet of the construction area, for the duration of the activity in that area during the breeding season. If an active nest is located, a 300-foot no-construction buffer zone shall be established around each nest site; however, there may be a reduction of this buffer zone depending on site-specific conditions or the existing ambient level of activity. The Permittee shall contact DFG to determine the appropriate buffer zone. No construction shall take place within this buffer zone until the nest has fledged or is no longer active. If construction must take place within the buffer, a qualified acoustician shall monitor noise as construction approaches the edge of the occupied vireo habitat as directed by the permitted biologist. If the noise meets or exceeds the 60 dB(A) Leq threshold, or if the biologist determines that construction activities are disturbing nesting activities, the biologist shall have the authority to halt construction and shall consult with DFG to devise methods to reduce the noise and/or disturbance. This may include methods such as, but not limited to, turning off vehicle engines and other equipment whenever possible to reduce noise, installing a protective noise barrier between the nesting birds and the activities, and working in other areas until the young have fledged. The DFG-approved biologist shall monitor the nest daily until activities are not longer within 300 feet of the nest, or the fledglings become independent of their nest or the nest has failed.

## 2.17 Flat-Tailed Horned Lizard.

- 2.17.1 Flat-Tailed Horned Lizard Plan. If flat-tailed horned lizard is found in the proposed work area, or is in a location which could be impacted by the work proposed, the Permittee shall submit a plan to DFG for review and approval to ensure this species is protected.
- 2.17.2 Mitigation Measures for the Flat-tailed Horned Lizard. Mitigation measures for impacts to the flat-tailed horned lizard shall follow all applicable measures in the Flat-Tailed Horned Lizard Rangewide Management Strategy (Flat-Tailed Horned Lizard Interagency Coordinating Committee, 2003).
- 2.17.3 Role and Responsibility of the Qualified Biologist. The qualified biologist shall at a minimum perform the following functions: 1) ensure that all project-related activities are in compliance with the Flat-Tailed Horned Lizard Rangewide Management Strategy mitigation measures; 2) examine construction areas periodically (at least hourly when surface temperatures exceed 30 degrees Celsius for the presence of flat-tailed horned lizards. In addition, all hazardous sites (e.g., open pipeline trenches, holes, or other deep excavations) shall be inspected for the presence of flat-tailed horned lizards prior to backfilling; 3) work with the construction supervisor to take steps, as necessary, to avoid disturbance to flat-tailed horned lizards and their habitat. If avoiding disturbance to a flat-tailed horned lizard is not possible or if a flat-tailed horned lizard is found trapped in an excavation, the affected lizard shall be captured by hand and relocated; and 4) follow recommendations for relocation of the flat-tailed horned lizard. The biologist shall be allowed some judgment and discretion to ensure that survival of flat-tailed horned lizards found in the project area is likely. The biological monitor shall have the authority and responsibility to halt activities that are in violation of these terms and conditions
- 2.17.4 Handling of Flat-tailed Horned Lizard. Only persons authorized by DFG shall be permitted to handle flat-tailed horned lizards.

## 2.18 Barefoot Banded Gecko.

- 2.18.1 Consult with DFG. Prior to ground-disturbing project activities in the stream zone in areas containing habitat suitable for barefoot banded gecko, the Permittee shall consult with DFG in accordance with the procedures described in FGC section 2080 *et seq.* and associated regulations. Requirements included in any take authorization issued as a result of that consultation shall be incorporated into this Agreement by reference.
- 2.18.2 Survey Guidelines. The Permittee shall have a qualified biologist conduct a pre-construction DFG protocol survey for the barefoot banded gecko in all areas of the project within suitable barefoot banded gecko habitat (DFG 2009, Barefoot Banded Gecko Survey Protocol).

- 2.18.3 Night Driving. Driving at night, either on paved roads, unpaved roads, or off road, shall not be permitted in areas with known barefoot banded gecko habitat, with the exception of emergency situations. Construction roads and service roads shall be secured at night to prevent unauthorized use.
- 2.18.4 Secure Open Holes and Trenches. Open holes and trenches shall be secured at the end of the work day. The gecko is adept at squeezing into small cracks, so covering hazards with boards will not likely be effective. Hazards shall be surrounded by exclusion fencing with ¼ inch or finer mesh and the lower edge shall be completely buried. Inspect open pits and trenches daily at the start of the work day for the presence of barefoot banded gecko.
- 2.18.5 Handling of Barefoot Banded Gecko. Only persons authorized by DFG shall be permitted to handle barefoot banded gecko.
- 2.19 Arroyo Toad.
- 2.19.1 Riparian Vegetation Removal Restrictions. The Permittee shall not remove riparian breeding habitat of the arroyo toad within the stream zone except during the period of October through December to minimize potential impacts to breeding adults, toad eggs, and dispersing juveniles.
- 2.19.2 Translocation Monitoring Program. The Permittee shall develop an arroyo toad translocation monitoring program to be implemented during all construction activities that have the potential to adversely affect the arroyo toad.
- 2.19.3 Night Driving Restrictions. To avoid and minimize impacts to arroyo toads, access road construction and use in areas of potential arroyo toad habitat, with the exception of emergency situations, shall occur during daylight hours (from 2 hours after sunrise to 2 hours before sunset) when amphibian movement is less frequent.
- 2.19.4 Breeding Season Restrictions. No construction activities shall take place within potential arroyo toad habitat during the arroyo toad breeding season (March 15 - July 31) within suitable arroyo toad breeding habitat.

### **Biological Surveys and Time Restrictions**

- 2.20 Vegetation Removal Seasonal Restrictions. The Permittee shall not remove vegetation within the stream zone from January 15 to September 15 to avoid impacts to nesting birds. However, the Permittee may remove vegetation during this time if a qualified biologist conducts a survey for nesting birds within three days prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, a buffer shall be established between the project activities and the nest such that nesting activities are not interrupted. The buffer shall be a minimum width of 50 feet (300 feet for least

Bell's vireo, and 500 feet for most raptors), shall be delineated by temporary fencing, and shall be in effect as long as project activities are occurring or until the nest is no longer active. The Permittee shall submit the mapped survey results to DFG for review and approval prior to vegetation removal to ensure full avoidance measures are in place.

- 2.21 Weather Restrictions. The Permittee shall monitor the five day weather forecast. If any precipitation is forecasted, work activities shall involve the securing of the site so as no materials may enter or be washed into the stream. The site shall be completely secured one day prior to precipitation, unless prior written approval has been provided by DFG. During period of precipitation, no construction activities may occur; activities involving the preventing of materials from entering the stream or being washed downstream may be conducted. In the event that one inch of precipitation is accumulated within the watershed, no activities shall occur on site for two weeks, or until the flows have receded and the moisture content of the soils has stabilized.

### **Fill**

- 2.22 Movement of Rock, Gravel and Other Materials. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream except as otherwise addressed in this Agreement.
- 2.23 Certified Weed Free. All gravel and fill material shall be certified weed free by the San Diego Agricultural Commissioner's Office.
- 2.24 Temporary Fills. Temporary fills shall be constructed of nonerodible materials and shall be removed immediately upon work completion.

### **Structures**

- 2.25 Authorized Structures. This Agreement does not authorize the construction of any temporary or permanent dam, structure, flow restriction or fill except as described in the Permittee's notification.
- 2.26 Impairment of Water Flow. Installation of bridges, culverts, dip crossings, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be placed at or below stream channel grade.
- 2.27 Fish Passage. Any structure/culvert placed within a stream where fish (as defined in FGC section 45) do/may occur, shall be designed, constructed and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish that impedes their upstream or downstream movement. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and

downstream fish migration. If any aspect of the proposed project results in a long-term reduction in fish movement, the Permittee shall be responsible for all future activities and expenditures necessary (as determined by DFG) to secure passage of fish across the structure.

- 2.28 Storm Drains and Culverts. Storm drain lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.

### **Flow Diversions**

- 2.29 Flow Diversions. When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area by a barrier, temporary culvert, new channel, or other means approved by DFG. Location of the upstream and downstream diversion points shall be approved by DFG. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and removal shall normally proceed from downstream in an upstream direction. The Permittee shall obtain all written approvals from DFG prior to initiation of construction activities.
- 2.30 Protect Water Quality and Downstream Flow. Flow diversions shall be done in a manner that shall prevent pollution and/or siltation and which shall provide flows to downstream reaches. Flows to downstream reaches shall be provided during all times that the natural flow would have supported aquatic life. Said flows shall be sufficient quality and quantity, and of appropriate temperature to support fish and other aquatic life both above and below the diversion. Diversions shall be engineered, installed, and maintained to assure resistance to washout and erosion of the streambed and banks. Normal flows shall be restored to the effected stream immediately upon completion of work at that location.

### **Equipment and Access**

- 2.31 Stay on Roads. Access to the work site shall be via existing roads and access ramps, to the extent practicable. Cross-country vehicle traffic is prohibited.
- 2.32 Speed Limit. A 15-mile per hour speed limit shall be observed on dirt access roads to reduce dust and allow reptiles and small mammals to disperse.

- 2.33 Equipment and Vehicle Spills and Contaminants. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. The Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze, hydraulic fluid, grease, or other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. The Permittee shall be responsible for spill material removal and disposal to an approved offsite landfill and spill reporting to the permitting agencies. Service construction equipment shall be stored at designated areas only. Service/maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills. A spill containment kit shall be available onsite for all fueling, maintenance, and construction activities.
- 2.34 Drip Pans. Stationary equipment such as cranes, motors, pumps, generators, and welders located within or adjacent to the stream shall be positioned over drip pans.

### **Pollution, Sedimentation, and Litter**

- 2.35 Keep Polluted Water from Entering Stream Zone. Water containing mud, silt, or other pollutants for aggregate washing or other activities shall not be allowed to enter a flowing stream or placed in locations that may be subject to high storm flows.
- 2.36 Keep Pollutants Out of Stream Zone. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products, or any other substances/materials associated with any project-related activity shall be allowed to contaminate the soil and/or enter into or be placed where they may be washed by rainfall or runoff into a stream or lake. Any of these substances/materials, placed within or where they may enter a stream or lake, by the Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately upon observation of their presence. When operations are completed, any excess materials or debris shall be removed from the work area.
- 2.37 150-Foot High Water Mark. No rubbish shall be deposited within 150 feet of the high water mark of any stream zone.
- 2.38 Location of Storage/Staging Areas. Staging/storage areas for equipment and materials shall be located outside of the stream zone.
- 2.39 Minimize Water Use for Dust Control. If application of water is needed to abate dust in construction areas and on dirt roads, the Permittee shall use the least amount needed to meet safety and air quality standards and prevent the formation of puddles, which could attract wildlife to construction sites.

- 2.40 Weed-free Straw or Hay Bales. Any straw or hay bales used for sediment barriers must be certified weed free by the San Diego Agricultural Commissioner's Office.
- 2.41 Litter and Pollution Control. The Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of the Permittee to ensure compliance. All trash and food-related items shall be disposed in self-closing, sealable containers with lids that latch to prevent wind and wildlife from opening containers. Trash containers shall be emptied daily and removed from the project site when construction is complete.
- 2.42 No Equipment Maintenance in Stream Zone. No equipment maintenance shall be done within or near any stream/lake where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.43 Stabilize Disturbed Areas. Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential.
- 2.44 Erosion Control. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.45 Halt Activities if High Turbidity/Siltation Occurs. Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective Department approved control devices are installed, or abatement procedures are initiated.

### **Restoration of Temporary Impacts**

- 2.46 Restoration of Stream Zone to Pre-Project Conditions. The Permittee shall restore all areas within the stream zone temporarily impacted by construction, such as tower construction sites, laydown/staging areas, temporary access and spur roads, and existing tower locations where towers are removed. If a stream channel has been altered during the operations, its low flow channel shall be returned as nearly as possible to pre-project conditions without creating a possible future bank erosion problem, or a flat wide channel or sluice-like area. If a lake margin has been altered, it shall be returned as nearly as possible to pre-project conditions without creating a future bank erosion problem. The gradient of the streambed or lake margin shall be returned to pre-project grade unless such operation is part of a restoration project, in which case, the change in grade must be approved by DFG prior to project commencement.

- 2.47 Restoration Specialist. The Permittee shall identify a qualified habitat restoration specialist to be approved by DFG. The habitat restoration specialist shall prepare and implement the Habitat Restoration Plan.
- 2.48 Habitat Restoration Plan. The Permittee shall prepare and implement a Habitat Restoration Plan for all temporarily impacted project areas within the stream zone. The Habitat Restoration Plan must be approved in writing by DFG prior to the initiation of any vegetation disturbing activities. Restoration involves planting seed and/or container stock, and maintaining (i.e., weeding, replacement planting, supplemental watering, etc.) and monitoring the restored area for a period of five years (or less if the restoration meets all success criteria). The plan shall include, at a minimum: 1) recontouring the land; 2) measures to alleviate soil compaction; 3) pitting or imprinting the surface to allow small areas where seeds and rain water can be captured (where appropriate); 4) the native plant species to be used, container sizes, and seeding rates; 5) collection, storage and replacement of the topsoil (if it was collected); 6) seed collection procedures and permits needed; 7) planting schedule; 8) a description of the irrigation methodology; 9) measures to control exotic vegetation on site; 10) specific success criteria; 11) a detailed monitoring program; 12) contingency measures should the success criteria not be met; and 13) identification of the party responsible for meeting the success criteria and providing for restoration .
- 2.49 Date of Completion. The Permittee shall restore temporary impacts to the stream zone by the end of the first October following completion of project activity at individual projects and locations.
- 2.50 Protect Intact Vegetation. Disturbance of existing perennial shrubs during restoration shall be minimized, even if such shrubs have been crushed by construction activities.
- 2.51 Eliminate Trench Hazards. Restoration shall include eliminating any hazards to reptiles, amphibians, and other wildlife created by construction, such as holes or trenches in which wildlife might become entrapped.
- 2.52 Restoration Maintenance and Monitoring. The restoration of habitat shall be maintained and monitored for five years after installation by an experienced, licensed habitat restoration contractor, or until established success criteria identified in the Restoration Plan are met. Maintenance, monitoring, and reporting shall be conducted following a prescribed schedule to assess progress and identify potential problems with the restoration. Remedial action (e.g., additional planting, weeding, erosion control, use of container stock, supplemental watering, etc.) shall be taken by an experienced, licensed Habitat Restoration Contractor during the maintenance and monitoring period if necessary to ensure the success of the restoration. If the restoration fails to meet the established success criteria after the maintenance and monitoring period, maintenance and monitoring will extend



beyond the five-year period until the criteria are met or unless otherwise approved by DFG.

### **3. Compensatory Measures**

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

- 3.1 Mitigation for Impacts to Unvegetated/Upland Vegetated Streams. The Permittee shall mitigate the temporary impacts to 0.90 acre unvegetated/upland vegetated stream at a 2:1 replacement-to-impact ratio and the permanent impacts to 0.35 acre unvegetated/upland vegetated stream at a 3:1 replacement-to-impact ratio through the restoration or creation of 0.35 acre unvegetated/upland vegetated stream and the enhancement (or any combination of enhancement, restoration, and creation) of 2.50 acres unvegetated/upland vegetated stream at a location and in a manner to be approved by DFG. The on-site restoration of temporary impacts is included in this total. In lieu of the enhancement component, DFG may consider preservation of unvegetated/upland vegetated stream at a higher ratio.
- 3.2 Mitigation for Impacts to Riparian Vegetated Streams. The Permittee shall mitigate the permanent impacts to 2.36 acres southern coast live oak riparian forest and the temporary impacts to 0.01 acre southern coast live oak riparian forest at a 3:1 replacement-to-impact ratio through the restoration or enhancement of 7.11 acres southern coast live oak riparian forest at a location and in a manner to be approved by DFG. In lieu of the enhancement component, DFG may consider preservation of riparian vegetated stream at a higher ratio.
- 3.3 Mitigation for Impacts to Dry Washes. The Permittee shall mitigate the temporary impacts to 7.29 acres desert wash habitats at a 2:1 preservation-to-impact ratio and the permanent impacts to 2.72 acres desert wash habitats at a 3:1 preservation-to-impact ratio through the placement of a conservation easement or its equivalent on 22.74 acres desert wash at a location and in a manner to be approved by DFG.
- 3.4 Mitigation for Impacts to Wetlands. The Permittee shall mitigate the permanent impacts to 0.08 acre wetlands at a 3:1 replacement -to-impact ratio through the enhancement, restoration, and/or creation of 0.24 acre wetlands. In lieu of the restoration or creation of wetlands, DFG may consider preservation of wetlands at a higher ratio.
- 3.5 Mitigation for Unauthorized Impacts. The Permittee shall mitigate at a minimum 5:1 ratio for impacts beyond those authorized in this Agreement. In the event that additional mitigation is required, the type of mitigation shall be determined by DFG and may include creation, restoration, enhancement and/or preservation.

### Selection and Approval of Mitigation Sites

3.6 Conceptual Mitigation Proposal. The Permittee submitted a conceptual Habitat Mitigation and Monitoring Plan, prepared by WRA, Inc. and dated October 2010 ("HMMP") to DFG which describes the mitigation activities that will be conducted at five locations: Chocolate Canyon, Lightner, Long Potrero, Suckle, and Desert Cahuilla. The activities described in the HMMP include preservation of 87.56 acres desert dry wash, 2.21 acres stream, 11.11 acres wetland, and 38.70 acres riparian, enhancement of 4.04 acres desert dry wash, 2.14 acres stream, 7.52 acres wetland, and 4.88 acres riparian, and restoration of 0.04 acres stream and 3.43 acres riparian (see table below for more detail).

Habitat Type	Activity	Desert Cahilla	Suckle	Lightner	Long Potrero	Chocolate Canyon	Totals
Desert Dry Wash	Preserve	84.13	3.43				87.56
	Enhance		4.04				4.04
Stream	Preserve			0.54	1.39	0.28	2.21
	Enhance			0.10	0.96	1.08	2.14
	Restore			0.04			0.04
Wetland	Preserve			0.20	9.92	0.99	11.11
	Enhance		0.88	0.63	5.99	0.02	7.52
Riparian	Preserve			15.83	12.62	10.25	38.70
	Enhance			0.63	3.95	0.30	4.88
	Restore			3.43			3.43
Totals		84.13	8.35	21.40	34.83	12.92	161.63

3.7 Approval of Proposed Mitigation Sites. DFG has tentatively agreed that the mitigation activities described in the HMMP adequately compensate for the project's impacts within the stream zone. Final approval of the mitigation sites will occur following DFG's receipt and review of the following, for each site:

- 1) current Preliminary Title Report;
- 2) County Assessor's Parcel Map;
- 3) Phase One Environmental Site Assessment Report;
- 4) Plat map showing pre-existing easements encumbering the mitigation areas;
- 5) copies of any Williamson Act contracts and Farmland Security Zone contracts that exist on the mitigation areas; and
- 6) identification of the long-term property owners and written commitment of their willingness and ability to manage the mitigation areas within the property in a manner consistent with the conservation purposes of the mitigation sites and in

accordance with the allowed and prohibited uses detailed in DFG's conservation easement template.

- 3.8 Required Documentation. The Permittee shall, within 120 days of signing this Agreement, provide DFG with the following for each proposed mitigation site: Preliminary Title Report, Phase One Environmental Site Assessment Report, Final Mitigation Plan, and any required technical reports (e.g. hydrology studies) for sites proposed for creation, restoration, and/or enhancement activities. The Permittee shall receive written Department approval prior to initiation/impacts.
- 3.9 Project and Mitigation Phasing. The Permittee shall be allowed to proceed with activities in portions of the project in phases as long as any pre-impact requirements in this Agreement have been satisfied in one or more of the proposed mitigation areas as necessary to meet the mitigation requirements set forth in Sections 3.1 to 3.4 for the portion of the project where impacts are occurring. The Permittee shall receive written approval from DFG prior to initiating each phase.

### **Creation, Restoration, and/or Enhancement Mitigation**

- 3.10 Time Restrictions and Consequences. All mitigation shall be installed by the end of the first April following project energization. Any delay in the installation of mitigation will require an amendment to this Agreement and may result in the application of higher mitigation ratios than are currently required by this Agreement to offset the additional temporal loss of habitat function.
- 3.11 Final Mitigation Plan. The Permittee shall submit a Final Mitigation and Monitoring Plan (plan) for "waters" for Department review within 120 days of signing this Agreement. The plan shall be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. The plan shall include, at a minimum: 1) the location of the mitigation site; 2) the native plant species to be used, container sizes, and seeding rates; 3) a schematic depicting the mitigation area; 4) replacement of topsoil 5) seedbed preparation, 6) planting schedule; 7) a description of the irrigation methodology; 8) measures to control exotic vegetation on site; 9) specific success criteria; 10) a detailed monitoring program; 11) contingency measures should the success criteria not be met; and 12) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Disturbance of existing perennial shrubs during restoration shall be minimized, even if such shrubs have been crushed by construction activities. Periodic inspection of the restored area shall be conducted by the project proponent.
- 3.12 Success Criteria. Unless other success criteria are agreed to in writing by DFG, areas identified as creation, restoration, or enhancement mitigation for impacts to the stream zone ("mitigation site") shall meet the following requirements. All plants shall be monitored and maintained as necessary for five years. All mitigation planting shall have a minimum of 75% survival the first year and 80% survival

thereafter. Percent cover of native, woody perennial plant species will be compared to a DFG-approved reference location adjacent to the mitigation site and shall be at least 70% of the cover of the reference site in three years and 90% in five years. If the survival and cover requirements have not been met, the Permittee is responsible for replacement planting to achieve these requirements.

Replacement plants shall be monitored with the same survival and growth requirements for five years after planting. At the completion of the monitoring period, the mitigation site shall have received NO supplemental irrigation for a period of two consecutive years, nonnative perennial plants shall not make up more than 5% of the entire cover of the mitigation site, and the mitigation site shall be free of all California Invasive Plant Council (Cal IPC; <http://www.cal-ipc.org/ip/inventory/weedlist.php>) non-native, invasive perennial plant species listed as having a severe or moderate (A or B) invasive impact, including salt cedar (*Tamarix ramosissima*) and giant reed (*Arundo donax*), and non-grass annual plant species including tocalote (*Centaurea melitensis*) and Saharan mustard (*Brassica tournefortii*). Within the buffer areas surrounding the mitigation site, non-native, annual grass species are allowed, to the extent that the percent cover in the buffer area is consistent with that of the reference site.

- 3.13 Semiannual Wildlife Surveys. The Permittee shall have a qualified biologist conduct semiannual surveys of all mitigation areas to document the bird, wildlife, and fish use of the site. The surveys shall be conducted in the spring and fall of each year, and at appropriate times of the day. The surveys shall be initiated after the revegetation has occurred and shall continue until the monitoring of the mitigation site is completed or a minimum of five years. Semiannual summary reports shall be submitted to DFG along with, and/or as a component of, the annual mitigation monitoring report.
- 3.14 Annual Mitigation Monitoring Report. An annual mitigation monitoring report shall be submitted to DFG for each mitigation site by January 1 of each year for five years after the restoration/planting. This report shall include an evaluation of the site as compared to the success criteria identified in the Habitat Restoration Plan or Final Revegetation/Mitigation Plan. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photographs from designated photograph stations shall be included.
- 3.15 Release Criteria. The Permittee shall not be released from these maintenance and monitoring obligations until such time as the Permittee has requested and received written concurrence from DFG that the success criteria have been met.

## **Securities**

- 3.16 Letter of Credit. The Permittee shall, within 180 days of signing this Agreement, establish in favor of DFG one or more irrevocable letters of credit in a principal aggregate sum sufficient to pay for the cost of the Permittee's mitigation

obligations under this Agreement. Within 30 days of the effective date of this Agreement, the Permittee shall submit to DFG a cost estimate for its approval, including an explanation of any costs expended to date that the Permittee requests to be excluded from the Letter of Credit. After DFG approves the cost estimate, the Permittee shall prepare each draft letter of credit and submit it to DFG for its approval. Each letter of credit shall allow DFG to immediately draw on the letter of credit if DFG determines in its sole discretion that the Permittee has failed to meet its mitigation obligations. After DFG approves the draft letter of credit, it will notify the Permittee, after which the Permittee's bank may finalize and execute the letter of credit.

- 3.17 Renewal or Replacement of Letter of Credit. If the Permittee has not met its mitigation obligations within 60 days prior to the letter of credit's expiration date, the Permittee shall confirm with its bank that the expiration date will be extended. If the bank elects not to extend the expiration date, the Permittee shall establish a new letter of credit to replace the original in the same principal sum, unless DFG agrees otherwise. The new letter of credit shall be subject to DFG's approval following the same procedure described above. The Permittee shall have in place a letter of credit as described above until it has met its mitigation obligation.
- 3.18 Reduction of Letter of Credit. As discrete mitigation activities are completed to the satisfaction of DFG, the Permittee may request that the letter of credit be reduced accordingly. The Permittee shall provide DFG with the activities that it believes have been completed and the basis for the request for a reduction of the letter of credit. Once approved by DFG, the amount may be reduced and a new letter of credit provided to DFG.
- 3.19 Release of Letter of Credit. Once all of the activities covered by a particular letter of credit have been completed to DFG's satisfaction, the Permittee may request the release of that letter of credit. DFG shall promptly review the request and release the letter of credit, if appropriate.
- 3.20 Other Security Instruments. If the Permittee is unable to establish a letter of credit, it shall arrange a different security instrument with DFG, but that instrument may not be a performance bond or any other type of bond.

### **Preservation and Management of Compensatory Mitigation Sites**

- 3.21 Habitat Management Plan. The Permittee shall prepare a Habitat Management Plan, for each mitigation property, that follows the criteria in Biological Opinion (BO, FWS-2008B0423-2009F0097) Measure G-CM-17 which includes: 1) legal description of all parcels, 2) management specifications, 3) baseline biological data for all parcels, 4) designation of land management entity, 5) a Property Analysis Record, or equivalent, with assumptions specified, and 6) designation of responsible parties. In addition each land management plan shall provide: 1) information on public uses and facilities and operations found on the property; 2)

CEQA documentation for any management practices or activities which are not exempt; 3) avoidance measures under CESA for any state-listed species found on the property; 4) a complete description of the management goals needed to protect, enhance, manage and conserve the habitat values for which the property was acquired which includes long-term as well as immediate management goals; 5) general operations and maintenance staffing and equipment and associated costs; 6) start-up or infrastructure costs; 7) management constraints (physical or political); 8) acceptable public uses; 9) anticipated public use or natural resource conflicts; and 10) document any additional agreements, memoranda of understanding, Department internal coordination for state listed species or Section 7 consultations under the federal Endangered Species Act, or cooperative management agreements.

- 3.22 Conservation Easement. A wildlife conservation easement or its equivalent shall be recorded or prepared on each mitigation site to protect existing fish and wildlife resources in perpetuity. The Grantee named shall be approved by DFG. Where a conservation easement is used, the Department shall be named as a third party beneficiary. The easement or its equivalent shall be completed prior to energizing the transmission line. The form and content of the easement or its equivalent shall be approved by DFG's Office of the General Counsel prior to its execution. Where a conservation easement is used, DFG's review can be expedited through the use of the most current Conservation Easement Template, available by contacting Kelly Fisher at (858) 467-4207 or [kfisher@dfg.ca.gov](mailto:kfisher@dfg.ca.gov). The submittal shall include an electronic version of the Easement, with changes to the template shown in redline/strikeout format, as well as a clean version and all applicable exhibits, and shall be sent to DFG at 4949 Viewridge Avenue, San Diego, CA 92123, Attn: Streambed Alteration Program – SAA # 1600-2009-0365-R5. Arrangements to submit the entire package electronically can be made through Kelly Fisher (see contact information, above).
- 3.23 Transfer to Federal/State/or Local Government. If a conservation easement is not possible or practicable due to a transfer of the property to a federal, state, or local jurisdiction, the Permittee shall notify DFG of the entity to which the property will be transferred and the manner under which it will be held by that entity. The Permittee shall receive written approval from DFG for any such exemptions from Section 3.23.
- 3.24 Conservation Easement Requirements. The Permittee shall cause the conservation easement or its equivalent to be conveyed such that the easement's position in title shall not be inferior to any existing monetary liens on the land (e.g., deeds of trust are to be subordinate to the conservation easement, etc.). A plat drawn to scale that depicts the conservation easement, and delineates the metes and bounds easement description shall be prepared by, or under the supervision of a professional certified land surveyor or civil engineer, and the plat shall be attached to the conservation easement as an exhibit.

- 3.25 Documents Required. The Permittee shall include with the submission of the conservation easement or its equivalent: 1) a completed Proposed Land for Acquisition Form (PLFAF); 2) a County Assessor's Parcel Map(s) for the subject property; 3) a site location map; 4) a Phase One Environmental Site Assessment Report (no more than 6 months old); 5) a current (no more than 6 months old) Preliminary Title Report, together with 5a) copies of documents supporting the title exceptions, 5b) copies of documents regarding title encumbrances and/or analysis of those encumbrances, and (if applicable) 5c) include a plat showing pre-existing easements encumbering the conservation easement area; 6) copies of any Williamson Act contracts and Farmland Security Zone contracts that exist on the parcels, and a copy(ies) of all Notification of Public Acquisition of Williamson Act Land memo(s) (if applicable); 7) digital spatial data compatible with ESRI software (shapefile or coverage with appropriate metadata) or geo-referenced CAD files depicting the boundaries of the conservation easement area; and 8) the SAA permit number 1600-2009-0365-R5.
- 3.26 Right to Deny. The Department has the right to deny the proposed mitigation site/conservation easement if, on review of the preliminary title report or Phase One Environmental Assessment, DFG determines the site does not have suitable conservation value.
- 3.27 Expenses. The Permittee is responsible for all land/easement acquisition costs, including title document cost, escrow fees, recording fees, title insurance premiums, Phase One Environmental Site Assessment Report, and any other escrow-related fees and cost. If a grantee that is acceptable to DFG can not be found, and DFG will be the grantee, DFG's Habitat Conservation Branch does require cost reimbursement for staff time (including overhead) associated with processing this conservation easement. The Permittee agrees to reimburse DFG for such expense.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 4.1 Notification Number. All reports shall include the Streambed Alteration Agreement Notification Number 1600-2009-0365-R5.
- 4.2 Photographs, Surveys, and/or Videos. The Permittee shall submit pre-construction surveys and photograph- (or video) documentation showing the condition and boundaries of the temporarily impacted streams and associated habitat, and identifying their specific location(s).
- 4.3 Post-Compliance Report. The Permittee shall submit a post-compliance Report to the department within thirty (30) days from the date construction is completed. The post-compliance report shall include: 1) A comparison including map overlays of and a discussion on the pre- and post-construction conditions (with supporting

photograph documentation) within the stream zone and 2) a summary of project compliance (including noncompliance and corrective actions taken to achieve compliance).

- 4.4 Annual Mitigation Monitoring Report. The Permittee shall submit an annual mitigation monitoring report to DFG for each of the mitigation sites by January 1 of each year for 5 years after the restoration/planting. This report shall include an evaluation of the site as compared to the success criteria identified in the Habitat Restoration Plan or Final Revegetation/Mitigation Plan. The number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters shall also be included. Photographs from designated photograph stations shall be included.
- 4.5 Wildlife Use Survey Report. The semiannual wildlife use survey reports shall be submitted to DFG along with, and/or as a component of, the annual mitigation monitoring report.

## **CONTACT INFORMATION**

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

### To Permittee:

Pam Fair  
San Diego Gas and Electric Company  
8315 Century Park Court, CP21G  
San Diego, California 92123-1548  
Fax: (858) 637-3731

### To DFG:

Department of Fish and Game  
South Coast Region  
4949 Viewridge Avenue  
San Diego, California 92123  
Attn: Lake and Streambed Alteration Program  
Notification #1600-2009-0365-R5  
Fax: (858) 467-4299

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers,



employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

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

## **SUSPENSION AND REVOCATION**

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

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

## **ENFORCEMENT**

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

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

## **OTHER LEGAL OBLIGATIONS**

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

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

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

## **AMENDMENT**

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements

under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall expire on March 31, 2015, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

## **AUTHORIZATION**

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

**CONCURRENCE**

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

**FOR SAN DIEGO GAS AND ELECTRIC  
COMPANY**



Pam Fair

Vice President,  
Environmental, Safety and Support Services

11/23/10

Date

**FOR DEPARTMENT OF FISH AND GAME**



Helen Birss

Environmental Program Manager

11/29/10

Date