



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

# State Water Resources Control Board

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## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterboards.ca.gov/waterrights](http://www.waterboards.ca.gov/waterrights)



**Arnold Schwarzenegger**  
*Governor*

## NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a  
Public Hearing to Consider

**Water Right Application 30358A filed by the  
City of Davis and the University of California, Davis and  
Application 30358B filed by the City of Woodland**

The hearing will be held during  
the State Water Board's scheduled meeting  
on

**Tuesday, January 18, 2011,  
at 9 a.m.**

and continued, if necessary, on  
**Wednesday, January 19, 2011**

in the Coastal Hearing Room  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

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### **PURPOSE OF HEARING**

The State Water Resources Control Board (State Water Board or Board) intends to conduct an evidentiary hearing on the pending water right applications described below at the Board meeting scheduled on January 18, 2011.

The purpose of this hearing is to receive evidence relevant to determining whether the State Water Board should approve, subject to terms and conditions, water right Applications 30358A, for the City of Davis (Davis) and University of California at Davis (UCD), and Application 30358B, for the City of Woodland (Woodland).

A quorum of the Board may be present during the hearing.

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*California Environmental Protection Agency*

## **BACKGROUND**

Application 30358 was filed with the State Water Board on April 19, 1994 by the Yolo County Flood Control and Water Conservation District (District). On March 1, 2002, the application was re-assigned from the District to Davis, UCD, and Woodland. The application was also split into two filings as follows: Application 30358A was assigned to Davis and UCD, and Application 30358B was assigned to Woodland.

## **WATER RIGHT APPLICATIONS**

Under Application 30358A, Davis and UCD, apply to divert 30,000 acre-feet per year (ac-ft/yr) from the Sacramento River which is a tributary to Suisun Bay. Under Application 30358B, Woodland applies to divert 15,000 ac-ft/yr, also from the Sacramento River. Under both Applications, the season of diversion is January 1 through December 31 of each year. The purpose and place of use are Municipal and Irrigation in Davis, at UCD, and in Woodland, and Fisheries and Aquaculture Research at UCD. The maximum total amount to be diverted under both Applications shall not exceed 45,000 ac-ft/yr.

## **PROTESTS**

The status of the protests on Applications 30358A and 30358B is listed in Table 1.

Table 1: Protest Status

<b>Protestant(s)</b>	<b>Status</b>
State Water Contractors (Contractors) United States Department of the Interior (Reclamation)	The protests filed by the Contractors and Reclamation were dismissed, with the understanding that standard permit term 91 be included in any permits issued on Applications 30358A and 30358B.
Department of Water Resources (DWR) Westlands Water District (Westlands)	The protests filed by DWR and Westlands were resolved with the understanding that standard permit terms 80, 90, and 91 be included in any permits issued on Applications 30358A and 30358B. The Applicants will need to demonstrate an alternate source of water supply for use when term 91 is in effect.
Department of Fish and Game (CDFG)	The protest filed by CDFG was dismissed with the understanding that certain terms, will be included in any permits issued on Applications 30358A and 30358B.

Table 1 Protest Status (continued)

Protestant(s)	Status
City of Sacramento Reclamation District 2035 Reclamation District 2068 Reclamation District 1004 Reclamation District 108 Pelger Mutual Water Company Sutter Mutual Water Company Natomas Central Mutual Water Company (These Protestants are referred to cumulatively as "Protestants".)	The protests filed by the Protestants are based on both prior rights and agreements in prior contracts. All prior rights protests have been resolved through inclusion of permit terms.
Vincent De Dominico	Not accepted by the Division
California Sportfishing Protection Alliance (CSPA)	Outstanding

**THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Final Environmental Impact Report (EIR) was completed and certified in October 2007 by the City of Davis, as the lead agency under the California Environmental Quality Act (CEQA). The Davis City Council also adopted: 1) findings on the feasibility of reducing or avoiding significant environmental impacts (CEQA Guidelines, Section 15091 (a)); 2) a statement of overriding considerations identifying the project benefits that outweigh the project's significant unavoidable effects; and 3) a Mitigation Monitoring and Reporting Program. The EIR identified significant and unavoidable effects and impacts to: (1) land use and agriculture; (2) air quality; (3) noise; and (4) aesthetic resources. These significant and unavoidable impacts are associated with the construction of the project and are issues outside the jurisdiction of the State Water Board.

The EIR also identifies as significant and unavoidable: 1) the need to construct a new wastewater treatment plant in the future; and 2) the project's cumulative contribution to loss of fish species. The EIR states that the project, in combination with other future projects, would cause minimal impacts to overall aquatic habitat and quality and there is not expected to be a substantial reduction in fish populations or the quality or quantity of aquatic habitat in the Sacramento River-Delta system as a result of the proposed project. Therefore, the EIR concludes that the proposed project is not likely to adversely affect special-status fish or their habitats. The impact to fisheries resulting from project-related changes to Sacramento River and Delta hydrology would therefore not be significant.

Several future projects however, listed in Table 6-1 of the EIR, have the potential to impact special-status fish species. The Sacramento River, in the vicinity of the project, contains sensitive habitats and species and it is unknown at this time the extent to which other future planned or under construction projects would result in cumulatively considerable impacts. The EIR concludes that the impacts of the project, in combination with other projects, may cause cumulatively considerable adverse effects on sensitive fish species. The Davis City Council adopted a Statement of Overriding Considerations in response to these unavoidable impacts.

### **KEY ISSUES**

The State Water Board's decision to approve Applications 30358A and 30358B must be based upon evidence in the record. Parties to the hearing should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

1. Is there water available for appropriation by each of the applicants? If so, when is water available and under what circumstances?
2. Will approval of any of the applications result in any significant adverse impacts to water quality, the environment or public trust resources? If so, what adverse impact or impacts would result from the project or projects? Can these impacts be avoided or mitigated to a level of non-significance? If so, how? What conditions, if any, should the State Water Board adopt to avoid or mitigate any potential adverse impacts on fish, wildlife, or other public trust resources that would otherwise occur as a result of approval of the applications?
3. Is each of the proposed projects in the public interest? If so, what conditions, if any, should the State Water Board adopt in any permits that may be issued on the pending applications, to best serve the public interest?
4. Will adoption of certain terms in draft Permits for Applications 30358A and 30358B (attached at the end of this Notice) be sufficient to dismiss the outstanding protest?

### **HEARING OFFICER AND HEARING TEAM**

State Water Board Vice-Chair Frances Spivy-Weber will preside as the hearing officer. State Water Board staff hearing team members will include Nathan Jacobsen, Staff Counsel; Jane Farwell and Kathleen Groody, Environmental Scientists. The hearing team will assist the hearing officer and other members of the State Water Board throughout these proceedings.

### **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, anyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If the California Sportfishing Protection Alliance fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board may cancel the protests by CSPA to Applications 30358A and 30358B. If the City of Davis and/or the University of California at Davis fail to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board may cancel**

**Application 30358A. If the City of Woodland fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board may cancel Application 30358B.**

The State Water Board will mail a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only those parties and other participants authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and a statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12 Noon, Thursday, November 18, 2010**

Deadline for receipt of Notice of Intent to Appear.

**12 Noon, Friday, December 17, 2010**

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service

### **SUBMITTALS TO THE WATER BOARD**

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board

Attention: Jane Farwell  
P.O. Box 2000, Sacramento, CA 95812-2000 (by mail)  
1001 I Street, 2nd Floor, Sacramento, CA 95814 (by hand delivery)  
Phone: (916) 341-5349; Fax: (916) 341-5400

Email: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)

With Subject of "**CITY OF DAVIS AND UCD, AND CITY OF WOODLAND HEARING**"

### **IF YOU HAVE ANY QUESTIONS**

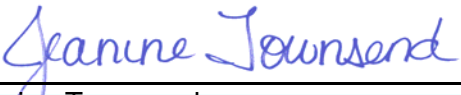
During the pendency of these proceedings, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to either Environmental Scientist Jane Farwell at (916) 341-5349 (email: [jfarwell@waterboards.ca.gov](mailto:jfarwell@waterboards.ca.gov)) or Staff Counsel Nathan Jacobsen at (916) 341- 5181 (email: [njacobsen@waterboards.ca.gov](mailto:njacobsen@waterboards.ca.gov)).

**PARKING, ACCESSIBILITY AND SECURITY**

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm>. For security purposes, all visitors are required to sign in and receive a badge prior to entering the building. Valid picture identification may be required due to the security level so please allow up to 15 minutes for this process.

The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

November 5, 2010  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

Enclosures

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

- 1. HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Unless otherwise determined by the hearing officer(s), each party may make an opening statement, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. At the discretion of the hearing officer, parties may also be afforded the opportunity to present closing statements or submit briefs. The State Water Board encourages parties with common interests to work together to make the hearing process more efficient. The hearing officer reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Parties must file any requests for exceptions to procedural requirements in writing with the State Water Board and must serve such requests on the other parties. To provide time for parties to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

- 2. SETTLEMENTS:** In water right enforcement hearings, a State Water Board staff member or team prosecutes an alleged violation. In such enforcement cases, the prosecution and a party who is the subject of the proposed enforcement action may at their discretion engage in private settlement discussions, or may include any other persons in those discussions. Although other persons may be authorized to participate in the hearing as parties, such a designation does not constitute a ruling that those persons must be allowed to engage in any settlement discussions between the prosecution and the party against whom the agency action is directed. The consent of other parties is not required before the State Water Board, or the Executive Director under State Water Board [Resolution No. 2002-104](#), can approve a proposed settlement agreement between the prosecution and a party subject to a proposed enforcement action. However, all parties will be given the opportunity to comment on any settlement submitted to the State Water Board or the Executive Director for approval.

In non-enforcement hearings involving an unresolved protest between a protestant and a water right applicant or petitioner, those persons will be designated as parties in the hearing. (Cal. Code Regs., tit. 23, § 648.1, subd. (b).) Other persons who file a Notice of Intent to Appear in the hearing, may also be designated as parties. In such cases, the parties whose dispute originates the action may at their discretion meet privately to engage in settlement discussions, or may include other persons. If the original parties resolve the dispute, the hearing officer will determine whether or not to continue the hearing, after allowing all remaining parties the opportunity to comment on any proposed settlement. The Executive Director or the State Water Board may approve a settlement in the absence of a hearing, notwithstanding the lack of consent of parties besides the protestant and the applicant or petitioner.

3. **PARTIES:** The current parties to the hearing are **City of Davis and University of California, Davis, City of Woodland and California Sportfishing Protection Alliance.**

Additional parties may be designated in accordance with the procedures for this hearing. Except as may be decided by specific rulings of the hearing officer, any person or entity who timely files a Notice of Intent to Appear indicating the desire to participate beyond presenting a policy statement shall be designated as a party. The hearing officer may impose limitations on a party's participation. (Gov. Code, § 11440.50, subd. (c).) Persons or entities who do not file a timely Notice of Intent to Appear may be designated as parties at the discretion of the hearing officer, for good cause shown, and subject to appropriate conditions as determined by the hearing officer. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence.

4. **INTERESTED PERSONS:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not designated as parties. A person or entity that appears and presents only a policy statement is not a party and will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. Interested persons will not be added to the service list and will not receive copies of written testimony or exhibits from the parties, but may access hearing documents at the website listed in the hearing notice.

Policy statements are subject to the following provisions in addition to the requirements outlined in regulation. (Cal. Code Regs., tit. 23, § 648.1, subd. (d).)

- a. Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons are requested to file a Notice of Intent to Appear, indicating clearly an intent to make a policy statement only.
- b. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 7, for details regarding electronic submittal of policy statements.

5. **NOTICE OF INTENT TO APPEAR:** Persons and entities who seek to participate as parties in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear in a timely manner may be interpreted by the State Water Board as intent not to appear. If the party requesting the hearing fails to file a timely Notice of Intent to Appear, this may be deemed a withdrawal of the request for hearing. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

Interested persons who will not be participating as parties, but instead presenting only non-evidentiary policy statements should also file a Notice of Intent to Appear.

The Notice of Intent to Appear must state the name and address of the participant. Except for interested persons who will not be participating as parties, the Notice of Intent to Appear must also include: (1) the name of each witness who will testify on the party's behalf; (2) a brief description of each witness' proposed testimony; and (3) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of his or her prior-submitted written testimony. (See section 6, below.) Parties who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so



indicate on the Notice of Intent to Appear.<sup>1</sup> Parties who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other parties as soon as possible.

Parties who are not willing to accept electronic service of hearing documents should check the appropriate box on the Notice of Intent to Appear. (See section 7, below.)

The State Water Board will mail a service list of parties to each person who has submitted a Notice of Intent to Appear. The service list will indicate if any party is unwilling to accept electronic service. If there is any change in the hearing schedule, only those parties on the service list, and interested persons that have filed a Notice of Intent to Appear expressing their intent to present a policy statement only, will be informed of the change.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each party proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>2</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A party who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each party shall submit to the State Water Board **10 paper copies** and **one electronic copy** of each of its exhibits. With its exhibits, each party must submit a completed Exhibit Identification Index. Each party shall also serve a copy of each exhibit and the exhibit index on every party on the service list. A statement of service with manner of service indicated shall be filed with each party's exhibits.

The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other parties no later than the deadline prescribed in the Hearing Notice**. The State Water Board may interpret failure to timely submit such documents as a waiver of party status.

All hearing documents that are timely received will be posted on the hearings program webpage identified in the hearing notice.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officer has discretion to receive into evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of

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<sup>1</sup> A party is not required to present evidence as part of a case-in-chief. Parties not presenting evidence as part of a case-in-chief will be allowed to participate through opening statements, cross-examination, and rebuttal, and may also present closing statements or briefs, if the hearing officer allows these in the hearing.

<sup>2</sup> The hearing officer may make an exception to this rule if the witness is adverse to the party presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement.

the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A party offering an exhibit by reference shall advise the other parties and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the party relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

- c. A party seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other parties prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a party waives the opportunity to obtain a copy of the exhibit, the party sponsoring the exhibit will not be required to provide a copy to the waiving party. Additionally, with the permission of the hearing officer, such exhibits may be submitted to the State Water Board solely in electronic form, using a file format readable by Microsoft Office 2003 software.
- d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- e. Parties submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, parties may supply, for the hearing record, a reduced copy of a large format original if it is readable.

- 7. ELECTRONIC SUBMISSIONS:** To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to submit hearing documents to the State Water Board in electronic form and parties are encouraged to agree to electronic service.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a format supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "**CITY OF DAVIS AND UCD, AND CITY OF WOODLAND HEARING**". Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be submitted on a compact disk (CD). Each electronically submitted exhibit must be saved as a separate PDF file, with the name in lower case lettering.

- 8. PRE-HEARING CONFERENCE:** At the hearing officer's discretion, a pre-hearing conference may be conducted before the proceeding to discuss the scope of the hearing, the status of any protests, and any other appropriate procedural issues.
- 9. ORDER OF PROCEEDING:** Hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, for good cause.
- a. **Policy Statements Within the Evidentiary Hearing:** Policy statements will be heard at the start of the hearing, before the presentation of cases-in-chief. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.

- b. **Presentation of Cases-In-Chief:** Each party who so indicates on a Notice of Intent to Appear may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement, oral testimony, introduction of exhibits, and cross-examination of the party's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a motion of the party after completion of the case-in-chief.
- i. **Opening Statements:** At the beginning of a case-in-chief, the party or the party's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per party. A party may submit a written opening statement before the hearing or during the hearing, prior to their case-in-chief. Any policy-oriented statements by a party should be included in the opening statement.
  - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to **20 minutes** to summarize or emphasize their written testimony on direct examination. Each party will be allowed up to **two hours total** to present all of its direct testimony.<sup>3</sup>
  - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Ordinarily, only a party or the party's representative will be permitted to examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to examine a witness.
  - iv. **Redirect and Recross Examination:** Redirect examination may be allowed at the discretion of the hearing officer. Any redirect examination and recross examination permitted will be limited to the scope of the cross-examination and the redirect examination, respectively. The hearing officer may establish time limits for any permitted redirect and recross examination.
  - v. **Questions by State Water Board and Staff:** State Water Board members and staff may ask questions at any time and may cross-examine any witness.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented by another party.

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<sup>3</sup> The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is averse to the party presenting the testimony and the hearing officer is satisfied that the party could not produce written direct testimony for the witness.

Rebuttal testimony and exhibits need not be submitted prior to the hearing, although the hearing officer may require submittal of rebuttal testimony and exhibits before they are presented in order to improve hearing efficiency. Rebuttal evidence is limited to evidence that is responsive to evidence presented in connection with another party's case-in-chief, and it does not include evidence that should have been presented during the case-in-chief of the party submitting rebuttal evidence. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times, if appropriate, the hearing officer may allow oral closing statements or legal arguments or set a schedule for filing legal briefs or written closing statements. If the hearing officer authorizes the parties to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A party shall not attach a document of an evidentiary nature to a brief unless the document is already in the evidentiary hearing record or is the subject of an offer into evidence made at the hearing.

**10. EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications with State Water Board members or State Water Board hearing team staff and supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) **Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service.** Parties may accomplish this by submitting a proof of service or by other verification, such as correct addresses in an electronic-mail carbon copy list, or a list of the parties copied and addresses in the carbon copy portion of a letter. Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: [http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).

**11. RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

**CITY OF DAVIS AND UCD, AND CITY OF WOODLAND HEARING  
scheduled to commence  
JANUARY 18, 2011**

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we decline electronic service.
- I/we plan to call the following witnesses to testify at the hearing.

<b>NAME</b>	<b>SUBJECT OF PROPOSED TESTIMONY</b>	<b>ESTIMATED LENGTH OF DIRECT TESTIMONY</b>	<b>EXPERT WITNESS (YES/NO)</b>

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_



**JANUARY 18, 2011  
CITY OF DAVIS AND UCD, AND CITY OF WOODLAND HEARING  
MAILING LIST**

Allan Lilly  
Bartkiewicz, Kronick & Shanahan  
1011 22<sup>nd</sup> Street  
Sacramento, CA 95816  
[ABL@bkslawfirm.com](mailto:ABL@bkslawfirm.com)

Chris Shutes  
California Sportfishing Protection Alliance  
1608 San Francisco Street  
Berkeley, CA 94703  
[cshutes@calsport.org](mailto:cshutes@calsport.org)

U.S. Bureau of Reclamation  
MP-440  
2800 Cottage Way  
Sacramento, CA 95825

Mr. Larry Week, Chief  
Native Anadromous Fish and  
Watershed Branch  
California Department of Fish & Game  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Nancee Murray, Senior Staff Counsel  
California Department of Fish & Game  
Office of General Counsel  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

U.S. Fish & Wildlife Service  
Ecological Division  
2800 Cottage Way, Room E1803  
Sacramento, CA 95825

California Environmental  
Protection Agency  
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Secretary for Environmental Protection  
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California Department of Fish and Game  
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Calif Department of Fish and Game  
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**STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD**

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT XXXXX**

Application **30358A** of

**City of Davis and University of California, Davis  
c/o City of Davis  
Public Works Department  
23 Russell Blvd.  
Davis, CA 95616**

filed on **April 19, 1994**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

Tributary to:

**Sacramento River**

**Suisun Bay**

within the County of **Yolo**.

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<b>North 2,008,338 feet and East 6,667,208 feet</b>	<b>SE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>27</b>	<b>10N</b>	<b>3E</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
<b>Municipal</b>	<b>City of Davis and University of California, Davis, and City of Woodland.</b>		<b>8N 9N 10N</b>	<b>1E, 2E, 3E 2E, 3E 2E, 3E</b>	<b>MD</b>	
<b>Irrigation</b>	<b>City of Davis and University of California, Davis, and City of Woodland.</b>		<b>8N 9N 10N</b>	<b>1E, 2E, 3E 2E, 3E 2E, 3E</b>	<b>MD</b>	<b>168,600</b>
<b>Fisheries and Aquaculture Research</b>	<b>University of California, Davis</b>	<b>16, 21</b>	<b>8N</b>	<b>2E</b>	<b>MD</b>	

The place of use is shown on map dated (to be determined) filed with the State Water Board.

Abbreviations used in this permit:

California Department of Fish and Game – CDFG  
 United States Fish and Wildlife Service – USFWS  
 National Marine Fisheries Service – NMFS  
 Division of Water Rights - Division

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **53.3 cubic feet per second** (30-day average diversion rate) to be diverted from **January 1 to December 31** of each year. The maximum amount diverted under this permit shall not exceed **30,000** acre-feet per year.

(0000005A)

The total amount of water appropriated under this permit, together with that diverted under the permit issued pursuant to Application 30358B, shall not exceed **80.3 cubic feet per second** (30-day average diversion rate) and also shall not exceed **100 cubic feet per second** (instantaneous diversion rate). The maximum total amount diverted under the permits on Applications 30358A and 30358B shall not exceed **45,000** acre-feet per year.

(0000114)

6. No water shall be diverted under this permit until Permittee obtains a long-term water supply covering those periods when water is not available for diversion pursuant to this permit. Permittee shall submit documentation subject to review and approval by the Deputy Director for Water Rights that an alternate water supply has been secured for the development period under this permit. The alternate water supply must be equivalent to the diversion quantities scheduled for use under this permit.

(0360900)

7. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2052.

(0000009)

8. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and

adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.  
All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

9. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall, at its expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights.

(0000030)

10. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

11. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

12. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Board shall notify Permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise Permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

13. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.

(0000203)
14. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

(0000215)
15. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the instantaneous rate of diversion, the amounts of water diverted each day, and the cumulative quantity of water diverted under this permit. Permittee shall make daily readings of these measuring devices and record these readings. Records of all such measurements shall be maintained by the Permittee, and made available to interested parties upon reasonable request. Permittee also shall, subject to any applicable Homeland Security restrictions, post such records on a publicly accessible website within 48 hours after the measurements are made. Copies of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee" and Permittee shall submit copies of these records to the CDFG each year when these records are submitted to the State Water Board.

Permittee shall allow the CDFG, or a designated representative, reasonable access to measuring devices for the purpose of verifying measurement readings.

Although water may be diverted by both Permittee and Reclamation District 2035 ("RD 2035") at the same intake facility on the Sacramento River, the water pumped by Permittee and the water pumped by RD 2035 must be pumped through separate pumps and pipes, with separate meters, and may not be commingled after pumping.

(000000R)
16. The right to divert water under this permit is junior in priority to the following prior rights:
  - (a) City of Sacramento under any valid pre-1914 appropriative right and appropriation issued pursuant to Permits 992, 11358, 11359, 11360 and 11361 (Applications 1743, 12140, 12321, 12622, and 16060);
  - (b) Conaway Preservation Group, LLC under any valid riparian rights and Licenses 904, 905, and 5487 (Applications 1199, 1588 and 12073);
  - (c) Reclamation District No. 2068 to divert water under Licenses 6103 and 9339 (Applications 2318 and 19229), and Permit 19205 (Application 24961);
  - (d) Reclamation District No. 1004 under any valid riparian rights and License 3165

(Applications 27), and Permit 16771 (Application 23201);

- (e) Reclamation District No. 108 under any valid riparian rights, Licenses 3065, 3066, 3067 and 7060 (Applications 576, 763, 1589 and 11899);
- (f) Pelger Mutual Water Company under Licenses 613A and 8547 (Applications 1765A and 12470);
- (g) Natomas Central Mutual Water Company under any valid riparian rights, Licenses 1050, 2814, 3109, 3110, 9794, and 9989 (Applications 534, 1056, 1203, 1413, 15572 and 22309), Permit 19400 (Application 25727); and
- (h) Sutter Mutual Water Company, under any valid riparian rights and Licenses 547, 552, 657, 882, 1110, 2240, 2817, 2818, 2819, 2820-a, 2821, 2822, 2823, 4562, 5432, 8220 and 8547 (Applications 1769, 1758, 1772, 3195, 1763, 7886, 581, 878, 879, 880, 9760, 1160, 10658, 11953, 14584, 16677, and 12470).

(000000T)

17. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the CDFG, USFWS, and NMFS to protect species of fish listed as endangered or threatened species under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) or the federal Endangered Species Act (16 U.S.C. sections 1531 to 1544) that are in effect on November 4, 2009. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.

(0140500)

18. The following mitigation measures in paragraphs 19 through 31 shall be complied with by Permittee. All certifications or reports necessary for approval by the Deputy Director for Water Rights shall be submitted together in one report prior to construction activities. The report shall also include the status of measures requiring approval by other agencies. Inasmuch as the diversion facilities will be jointly developed under the permits on Applications 30358A and 30358B, both Permittees may file joint compliance documentation for development under the permits on Applications 30358A and 30358B inasmuch as both permits contain the same conditions. Separate compliance documentation is required for any conditions not found in both permits.

19. To minimize potential impacts on drainage and floodplains, Permittee shall:

- a. Prior to construction, obtain a 401 Certification issued by the State Water Board or the Regional Water Quality Control Board, or waiver thereof and provide a copy of the 401 Certification or waiver to the Division. Permittee shall also consult with the CDFG regarding the proposed upland sites where spoil material from trenching will be stockpiled. After making this consultation, Permittee shall provide the CDFG with a map of these proposed sites and Permittee's proposed conditions for using these sites.
- b. Test any trench and tunnel spoils that are stockpiled at any upland site before replacement back into any excavated area or transportation to offsite disposal. Spoils containing high volumes of water shall be detained and allowed to settle at an upland site to reduce turbidity before the spoils are tested. If any such spoils are found to be contaminated by lubrication or hydraulic fluids, then such spoils will be collected and disposed of at a permitted waste disposal facility.

(0400500)

20. To minimize potential impacts on agriculture, Permittee shall:

- a. Install the water conveyance pipeline and transmission pipelines at a depth (to the top of the pipe) ranging from four to seven feet below the ground surface. Installation at this depth should be sufficient to avoid conflict with expected agricultural production activities. Final depths shall be established in consultation with an agricultural specialist and landowners to ensure no conflict with future agricultural practices.
- b. Establish permanent Prime Farmland agricultural conservation easement at a ratio of 2:1 for the acreage of Prime Farmland that would be permanently displaced with Project development.

(0400500)

21. To minimize potential impacts on biological resources, Permittee shall:

- a. Prior to construction, evaluate impacts to trees within the City of Davis city limits and submit the evaluation to the City and Deputy Director for Water Rights for review. If deemed necessary by the City, Permittee shall apply for a permit and abide by any permit requirements for tree pruning or removal. In addition, sensitive habitats and wildlife shall be identified and protected for projects within the City of Davis, under the HAB 1.1 policy.
- b. Conform project design, construction, and operation plans with, to the greatest extent possible, biological conservation goals fundamental to the ongoing Yolo County NCCP/HCP development process.
- c. Prepare and implement a Stormwater Pollution Prevention Plan (SWPPP), acceptable to the Central Valley Regional Water Quality Control Board, for all Project construction activities, including:
  - (1) Conduct all instream construction activities during the low-flow period of May 30 through October 15.
  - (2) Place sediment curtains around the construction or maintenance zone to prevent sediment disturbed during trenching activities from being transported and deposited outside of the construction zone.
  - (3) Install silt fencing, including appropriate setbacks, where feasible, in all areas where construction occurs within 100 feet of known or potential steelhead habitat. Silt fencing will be installed adjacent to all aquatic habitat.
  - (4) Isolate fresh concrete from wetted channels for a period of 30 days after it is poured. If a 30-day curing period is not feasible, a concrete sealant approved for use in fisheries habitat may be applied to the surfaces of the concrete structure. If a sealant is used, the manufacturer's guidelines for drying times will be followed before reestablishing surface flows within the work area.
  - (5) Locate spoil sites (concrete wash areas) so as to prevent drainage into the Sacramento River. If a spoil site drains towards the Sacramento River, then lined catch basins will be constructed to intercept sediment before it reaches the channel and removal of spoils will be conducted daily during routine maintenance of work sites. Spoil sites will be graded to reduce the potential for erosion.
  - (6) Not leave disturbed surfaces without erosion control measures (consistent with the SWPPP) in place during the wet season from October 15 through April 30. Erosion protection shall be provided on all cut and graded slopes and vegetative cover shall be established on each construction site as soon as possible after disturbance of the site.

- d. In consultation with CDFG, prepare and implement a Revegetation Program Plan that provides for the establishment and ongoing maintenance of native riparian species in all disturbed bank-side construction areas.
- e. Conduct site preparation and installation of the sheet pile cofferdam during the summer and fall. A pre-construction Giant Garter snake (GGS) survey shall be conducted at the intake site prior to any cofferdam staging activity. GGS survey shall be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights in accordance with USFWS survey protocols, and findings shall be reported to CDFG, USFWS and the Division. As appropriate, follow-up inspections for presence of GGS individuals shall be conducted within 24 hours of initiating activity.
- f. Offset the permanent loss of 0.1 acres of channel margin habitat or shallow water habitat because of installation of the diversion/intake facility, by purchasing off-site mitigation habitat in a ratio agreeable to CDFG, the Deputy Director for Water Rights and other agencies consulted. Permittee will work in consultation with CDFG, USFWS and NMFS to characterize functionally equivalent habitat for channel margin loss, and to identify the appropriate ratio of in-kind riparian corridor habitat suitable for use by wildlife species known to reside within two river miles of the intake construction site.
- g. During installation of a cofferdam and dewatering, ensure that a qualified fisheries biologist acceptable to the Deputy Director for Water Rights will design and conduct a fish rescue and relocation effort to collect fish from the area within the cofferdam involving the capture and return of those fish to suitable habitat within the Sacramento River. To ensure compliance, the fisheries biologist will observe the initial dewatering activities within the cofferdam. The fish rescue plan will be provided for review and comment to NMFS, USFWS, CDFG and the Division prior to implementation.  
  
The success of this dewatering measure will be the effective capture and removal of fish from the area to be dewatered with a minimum of capture and handling mortality for those fish returned to the Sacramento River.
- h. Install sheet piles and beams during construction of the cofferdam for the intake structure using a vibrating method. Prior to pile driving by any technique other than the vibrating method, Permittee will provide to CDFG, and the Deputy Director for Water Rights, a scientifically supported analysis to demonstrate that effects of the method will be limited to thresholds below that which could create sound pressure injury to juvenile salmonids in the vicinity.

(0400500)

22. In order to prevent impacts to special status plant species (Alkali milk-vetch, brittlescale, San Joaquin spearscale (saltbrush), palmate-bracted bird's beak, Heckard's peppergrass, Ferris milk-vetch, heartscale, rose mallow, Sanford's arrowhead, and Brazilian watermeal), Permittee shall:
- a. Perform a pre-construction survey for rare plants at the selected diversion/intake site and conveyance pipeline route. The survey shall be conducted by a qualified botanist acceptable to the Deputy Director for Water Rights during the appropriate season for identification, according to California Native Plant Society Botanical Survey Guidelines, included in Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR. Data shall be compiled and reported to CDFG before initiating any construction.
  - b. Identify populations of palmate-bracted bird's beak that would be directly affected by project construction. Temporary preservation fencing shall be installed to protect individuals, and fencing shall provide a minimum 25-foot distance exclusion area. Indirect effects due to changes in hydrology or other ecological requirements for this

species shall be evaluated and modifications to the project design/construction shall be incorporated to minimize indirect effects to palmate-bracted bird's beak.

- c. Avoid specimens as feasible, or identify and protect with orange fencing, individual Ferris's milk-vetch, alkali milk-vetch, heartscale, brittlescale, San Joaquin saltbush, Heckard's pepper-grass, rose-mallow, Sanford's arrowhead, Brazilian watermeal, or other special-status species without state or federal status that are detected within the proposed project area during the pre-construction survey, and notify CDFG. Where these sensitive plants cannot be avoided, additional mitigation measures shall be implemented by Permittee in consultation with CDFG, prior to construction. These measures may include, but are not limited to the following:
- (1) Minimizing impacts by restricting removal of plants to a few individuals of a relatively large population;
  - (2) Preparing a plan to relocate plants to suitable habitat outside the proposed Project area to a CDFG-approved site;
  - (3) Restoring or enhancing occupied habitat at an off-site location with appropriate ecological conditions to support the affected sensitive species.
  - (4) Locating the pipelines entirely underground and returning the ground surface to pre-project grade and contours.
  - (5) Locating Pipeline alignments according to paragraph 6 of this agreement.
  - (6) Consulting with CDFG on constraints and opportunities for viable off-site habitat enhancement/creation for the species concerned and implement a plan for restoration and enhancement. The plan shall include a five-year monitoring and maintenance program to evaluate and support the establishment of the sensitive species, and shall include contingencies for additional recruitment, planting and monitoring, as necessary, if survivorship falls below 75%.
  - (7) Preserving occupied habitat for the species on-site or at another regional location.

(0400500)

23. To prevent impacts to vernal pool and seasonal wetland species (Conservancy fairy shrimp, vernal pool fairy shrimp, vernal pool tadpole shrimp, California tiger salamander, and western spadefoot), Permittee shall:
- a. Prior to project construction, survey the selected diversion/intake pipeline corridor area and assess the potential to support vernal pool and seasonal wetlands. All vernal pools and wetlands within 250 feet of the selected diversion/intake pipeline corridor shall be included in the assessment.
  - b. Undertake one of the following two actions for all vernal pool and seasonal wetland habitats identified during the wetland delineation:
    - (1) Survey for presence or absence of vernal pool crustaceans according to USFWS survey protocol (in the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field Office, California, (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR),



where those pools found to contain vernal pool crustaceans shall be mitigated by (c), (d), and (e) below. All other pools shall be mitigated at a 1:1 compensation ratio, or

(2) Assume that the vernal pool is occupied by vernal pool crustaceans and measures (c), (d), and (e) shall be implemented for all pools.

- c. Avoid completely all identified vernal pool and seasonal wetland habitats. The USFWS considers disturbance within 250 feet of all vernal pool wetlands to be an impact. Therefore, all wetlands shall be avoided by 250 feet and protected within that buffer. Protective measures may consist of temporary fencing such as silt fencing and plastic construction fencing. Also, Best Management Practices (BMPs) and Stormwater Pollution Prevention Plan methods shall be implemented during construction to avoid indirect water quality impacts to wetlands. These pools shall be considered "avoided" and no further mitigation is necessary.
- d. If impacts to vernal pool and seasonal wetlands cannot be avoided but can be protected from direct fill or ground disturbance, the wetlands shall be identified and protected using temporary fencing, which shall take the form of silt fencing and temporary plastic construction fencing placed no closer than 25 feet from the edge of the pool. The distance between the pool and protective fencing shall be maximized wherever possible. These pools will be considered as "indirectly affected" by project activities and shall be mitigated in accordance with the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field Office, California (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). Some pools may be considered avoided if it can be shown that the proposed project activity would not adversely impact their surface and subsurface hydrology. This shall be considered on a case-by-case basis by a qualified biologist and hydrologist acceptable to the Deputy Director for Water Rights.
- e. Calculate the area of impacts for pools that will be directly impacted by project activities. For the purpose of this calculation, any portion of a pool that is directly impacted by project activities would result in the entire pool being identified as being permanently impacted. Impacted pools shall then be mitigated in accordance with the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans within the Jurisdiction of the Sacramento Field Office, California (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).
- f. Conduct a pre-construction survey of the selected diversion/intake pipeline corridor area to assess the potential to support vernal pool and seasonal wetlands which may support California tiger salamander (CTS) and western spadefoot. The survey shall include the entire project footprint and all areas within 1.24 miles of proposed project activities (where site access allows) for the presence of CTS using the protocol provided in the October 2003 Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). Should CTS be detected in the area, all ground squirrel burrows and vernal pools shall be mapped within 1.24 miles of the project, and all vernal pools areas shall be calculated within this area.
- g. Identify vernal pools and burrows that can be protected from project activities and protect these sites from disturbance using temporary fencing. Temporary fencing shall take the form of silt fencing and temporary plastic construction fencing placed no closer than 25 feet from the edge of the habitat. The distance between the habitat and protective fencing shall be maximized wherever possible. Protective fencing around vernal pools identified

as potential habitat for special-status amphibians shall be constructed in a way that allows CTS and western spadefoot to access these wetlands.

- h. Quantify impacts to vernal pools and occupied CTS burrows, impacted vernal pools and burrow habitat and mitigate and compensate in accordance with (c) above. Burrows that cannot be avoided shall be excavated by a biologist approved by USFWS and the Deputy Director for Water Rights prior to construction using hand tools. Excavated CTS shall be relocated off the project site to a USFWS-approved site.

(0400500)

24. To prevent impacts to Valley elderberry longhorn beetle, Permittee shall:

- a. Survey the selected diversion/intake pipeline corridor area prior to construction for the presence of elderberry shrubs. The survey shall be conducted according to USFWS's July 9, 1999 Conservation Guidelines for Valley Elderberry Longhorn Beetle (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). The survey may be conducted concurrently with the rare plant surveys.
- b. Avoid identified elderberry shrubs by a minimum of 100 feet during construction of the diversion/intake pipeline corridor. If complete avoidance is not feasible, USFWS shall be consulted regarding impacts to valley elderberry longhorn beetle. Compensation for disturbance within 100 feet of shrubs will be implemented in a manner approved by USFWS, CDFG, and the Deputy Director for Water Rights, and may include transplanting elderberry shrubs into a conservation area for valley elderberry longhorn beetle. The conservation area must be at least 1,800 square feet and should be planted with five additional elderberry plants plus five native associated plants for every one transplanted/impacted elderberry shrub. Refer to USFWS's July 9, 1999 Conservation Guidelines for Valley Elderberry Longhorn Beetle (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR), for details.

(0400500)

25. To prevent impacts to giant garter snake and western pond turtle, Permittee shall:

- a. Conduct a pre-construction survey of the selected diversion/intake and pipeline siting option for giant garter snake habitat suitability within one year of anticipated construction. The survey area shall include up to 200 feet of upland habitat surrounding potential aquatic habitat for giant garter snake according to the USFWS November 13, 1997 programmatic biological opinion for giant garter snake. Habitat assessments shall follow CDFG guidelines Appendix D: Protocols for Pre-Project Surveys to Determine Presence or Absence for the Giant Garter Snake and to Evaluate Habitats, as cited in the USFWS Draft Recovery Plan for the Giant Garter Snake (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).
- b. If suitable giant garter snake habitat is present, implement the following mitigation measures in accordance with the USFWS programmatic biological opinion for giant garter snake which pertain to Level 3 impacts.

(1) Construction activity within giant garter snake habitat shall occur between May 1 and October 1, which is the active period for the snake. Between October 2 and April 30, the USFWS Sacramento Fish and Wildlife Office and CDFG, North Central Region, shall be consulted to determine if additional measures are necessary to minimize and avoid take. Such measures might include, but are not limited to, requiring a biological monitor on site during construction within giant garter snake habitat.

(2) Any dewatered habitat must remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of the dewatered habitat.

- (3) Construction personnel shall participate in a Service-approved worker environmental awareness program. Under this program, workers shall be informed about the presence of giant garter snakes and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is a violation of the Act. Prior to construction activities, a qualified biologist approved by the USFWS and the Deputy Director for Water Rights shall instruct all construction personnel about giant garter snake as directed in the USFWS programmatic biological opinion for giant garter snake. Proof of this instruction shall be submitted to the USFWS, Sacramento Fish and Wildlife Office, CDFG, North Central Region and the Division.
- (4) Pre-construction surveys for the giant garter snake shall be conducted by a biologist approved by USFWS and the Deputy Director for Water Rights within 24 hours prior to ground disturbance. Giant garter snake encounters and field reports shall be addressed per the USFWS programmatic biological opinion for giant garter snake.
- (5) Clearing of wetland vegetation will be confined to the minimal area necessary to excavate toe of bank for riprap or fill placement. Excavation of channel for removal of accumulated sediments will be accomplished by using equipment located on and operated from top of bank, with the least interference practical for emergent vegetation.
- (6) Movement of heavy equipment to and from the project site shall be restricted to established roadways to minimize habitat disturbance.
- (7) Preserved giant garter snake habitat shall be designated as Environmentally Sensitive Areas and shall be flagged by a qualified biologist approved by CDFG, USFWS and the Deputy Director for Water Rights and shall be avoided by all construction personnel.
- (8) After completion of construction activities, any temporary fill and construction debris shall be removed and, wherever feasible, disturbed areas shall be restored to pre-project conditions. Restoration work may include replanting emergent vegetation as directed in the USFWS programmatic biological opinion for giant garter snake.
- (9) Impacts to giant garter snake habitat shall be mitigated in accordance with USFWS mitigation compensation ratios, based on described levels of impact in the programmatic biological opinion. More than two season duration and temporary or permanent losses of habitat shall be compensated at 3:1 or the ratios described in Table 1 on page 7 of the USFWS November 13, 1997 programmatic biological opinion for giant garter snake (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR) and shall meet the criteria listed in the USFWS programmatic biological opinion for giant garter snake.
- (10) All wetland and upland acres created and provided for the giant garter snake shall be protected in perpetuity by a Service-approved conservation easement or similarly protective covenants in the deed and comply with provisions in the USFWS programmatic biological opinion for giant garter snake. Documentation of such land preservation shall be provided to CDFG and the Deputy Director for Water Rights.
- (11) The Reporting Requirements shall be fulfilled in compliance with the USFWS programmatic biological opinion for giant garter snake and the reports shall be submitted to the USFWS, CDFG and the Deputy Director for Water Rights.
- (12) Replacement of affected giant garter snake habitat at a 3:1 ratio.

(13) All replacement habitat must include both upland and aquatic habitat components. Upland and aquatic habitat components must be included in the replacement habitat at a ratio of 2:1 upland acres to aquatic acres.

(14) If restoration of habitat is a component of the replacement habitat, one year of monitoring restored habitat with a photo documentation report due one year from implementation of the restoration with pre- and post-project area photos.

- c. Five years of monitoring replacement habitat with photo documentation report due each year to CDFG, USFWS and the Division. (0400500)

26. To prevent impacts to Swainson's Hawk, Permittee shall:

- a. Conduct a pre-construction breeding-season survey (between March 1 and September 15) in the year when construction is scheduled to commence. The survey will be conducted by a qualified biologist, acceptable to CDFG and the Deputy Director for Water Rights, and according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, prepared by the Swainson's Hawk Technical Advisory Committee, dated May 31, 2000, (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).

The survey area shall include all lands with a one quarter-mile radius around any Project construction activities scheduled to occur during that breeding season. If any nesting Swainson's Hawks are detected, Permittee shall implement the following:

- b. Establish a buffer zone of one-quarter mile around the nest site, within which there will be no construction unless one of the following has occurred:

(1) Based on ongoing monitoring of the nest site by a qualified biologist, and subsequent consultation with the CDFG, it is determined by the CDFG that work can occur within the buffer zone, along with the conditions under which such work may be carried out. Depending on conditions specific to each nest, it may be possible to allow construction activities within the buffer zone without impacting breeding behavior. In these cases, the nest will be monitored by a qualified biologist acceptable to CDFG. The monitor will have all stop authority. If, in the professional opinion of the monitor, project activities are negatively affecting the nesting or breeding behavior of the birds, then the monitor shall stop all construction activity within the designated buffer zone, and construction activities within this designated buffer zone shall not resume until either the monitor has determined that the young have fledged and the nest is empty or as otherwise approved by CDFG; or,

(2) Monitoring has demonstrated, and CDFG has concurred, that adults are no longer utilizing the nest area and/or birds of the year have fully fledged;

- c. Mitigate for permanent loss of Swainson's Hawk foraging habitat associated with the construction of the Water Treatment Plant facility. Compensation shall follow guidance in the May 2, 2002 Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County entered into between CDFG and the Yolo County HCP/NCCP Joint Powers Agency (Habitat JPA), with the mitigation fee increase described in the January 26, 2004 staff report regarding this agreement. This agreement requires that:

(1) Urban development Permittees shall pay an acreage-based mitigation fee in an amount, as determined by the Habitat JPA Board, sufficient to fund the acquisition,

enhancement and long-term management of one (1) acre of Swainson's Hawk foraging habitat for every one (1) acre of foraging habitat that is lost to urban development.

(2) A calculated fee of \$5,800.00 per acre is sufficient to fund the acquisition and preservation as of January 2004. This fee amount may be adjusted to reflect updated costs for acquisition of habitat.

(3) With written approval of and subject to conditions determined by CDFG, an urban development Permittee may transfer fee simple title or a conservation easement over Swainson's Hawk foraging habitat, along with appropriate enhancement and management funds, in lieu of paying the acreage-based mitigation fee.

(0400500)

27. To prevent impacts to western yellow-billed cuckoo, Cooper's hawk, white-tailed kite, yellow warbler, loggerhead shrike, northern harrier and short-eared owl, Permittee shall:

- a. Implement 25a. and 25b. above for Swainson's Hawk, and apply them to western yellow-billed cuckoo. Apply these measures, but modify survey area to include 500 feet around the construction activities, and modify buffer areas to include 500 feet around any Cooper's hawk, white-tailed kite, yellow warbler or loggerhead shrike nest.
- b. Implement 25a. and 25b. for Swainson's Hawk and apply them to northern harrier and short-eared owl, but modify survey area to include 500 feet around the construction activities; and modify buffer areas to include 500 feet around a nest.

(0400500)

28. To prevent impacts to Burrowing Owl, Permittee shall:

- a. Survey the entire route of the chosen siting diversion/intake pipeline corridor and WTP footprint for burrowing owls according to the October 17, 1995 CDFG Staff Report on Burrowing Owl Mitigation (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR), which includes survey guidelines for burrowing owl. The surveys must be conducted prior to project construction and shall be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights. Data shall be compiled and reported to CDFG before initiating any construction activities. The guidelines include the following:
  - (1) Conduct a winter survey (to be conducted between December 1 and January 31) and a survey during the breeding season (to be conducted April 15 to July 15).
  - (2) Conduct the survey beginning one hour before sunrise and two hours after, OR two hours before sunset and one hour after.
  - (3) The survey area shall include suitable habitat within a 500-foot radius around the Project construction zone.
- b. If occupied burrows are identified, implement the measures included in the October 17, 1995 CDFG Staff Report on Burrowing Owl Mitigation (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). These include but are not limited to the following measures:
  - (1) Owls shall not be disturbed from February 1 through August 31. Establish an avoidance buffer of 160 feet (September 1 through January 31) or 250 feet (February 1 through August 31) and monitor the nest burrow during construction activity. Any indication of impacts to the breeding pair as a result of construction shall be reported to

CDFG whereby CDFG may have the authority to halt construction until the young have fledged from the nest.

(2) If impacts to owls cannot be avoided, then CDFG shall be consulted on minimization measures such as using passive relocation techniques during the non-breeding season (September 1 through January 31).

(3) A minimum of 6.5 acres of foraging habitat must be preserved for every occupied burrow potentially impacted (within 160 feet or 250 feet of the construction activity, depending on the season). Foraging habitat shall be preserved according to CDFG guidelines.

(0400500)

29. To prevent impacts to tricolored blackbird, white-faced ibis, western snowy plover, and bank swallow, Permittee shall:

a. Implement 25a. and 25b. for Swainson's hawk and apply them to the above-listed species, but modify survey area to include 500 feet around the construction activities; and modify buffer areas to include 500 feet around nesting colonies/locations.

(0400500)

30. To prevent impacts to riparian habitat or other sensitive natural communities, Permittee shall:

a. Prior to construction, conduct an assessment within the project area to provide the basis of a vegetation mitigation plan. A vegetation mitigation plan will be developed in consultation with CDFG and the Deputy Director for Water Rights. The plan shall contain species expected to be found in the vicinity of project sites. Details about the species and their past occurrence shall be included in the plan. Permittee shall comply with all terms and conditions of the plan, including additional mitigation provisions to be implemented. Permittee would follow performance standards in developing the plan. The requirements would consist of one or more of the following provisions:

(1) Establish an oak tree conservation easement in coordination with Yolo County to protect and preserve trees commensurate with the removal of large oaks as a result of project implementation.

(2) Replace and maintain trees, for seven years, at a rate of 1 tree per 1-inch of tree diameter removed as measured at diameter breast height. Because this measure would only fulfill one-half of the required mitigation for the project, one or more of the other provisions would need to be implemented to fulfill the remaining mitigation requirements.

(3) Contribute funds to a suitable oak woodland conservation fund, as established in accordance with § 1363 of the Fish and Game Code

(4) Consult with Yolo County and CDFG to determine and agree to implement other suitable measures consistent with the Yolo County Oak Woodland Conservation and Enhancement Plan 2007 and § 21083.4(a) of the California Public Resources Code.

b. For any drainage that would be crossed using trenchless construction techniques, the bore pits will be excavated at least 50 feet outside the edge of riparian vegetation to minimize impacts to waterways and adjacent areas.

c. All new project-related groundwater wells within water sellers' service areas shall be sited in areas that are not within 0.25 mile of wetlands and other sensitive biological resources that could be affected by groundwater drawdown.

(0400500)

31. To prevent impacts to federally protected wetlands, Permittee shall:
- a. Prior to construction, conduct and submit for approval a formal wetland delineation report for the proposed Project area for verification through the ACOE. Permittee shall obtain a Section 404 (Clean Water Act) permit for impacts to jurisdictional wetlands from the ACOE and/or a Section 401 permit from the RWQCB or State Water Board and shall comply with all conditions of permits received. In association with either or both permits, compensatory mitigation for impacts to jurisdictional wetlands may be required. ACOE mitigation guidelines emphasize on-site mitigation preference, but in the potential case that on-site mitigation is not available, Permittee shall either purchase wetland mitigation credits from an ACOE -approved mitigation bank that services the area containing the proposed project or prepare a plan to implement mitigation at an off-site location.
  - b. For open trench construction crossing minor wetland ditches (less than 15 feet in width), the following measures shall be implemented:
    - (1) Implement compliance measures, described in Section 3.7, Geology, Soils, and Seismicity for Impact 3.7-1, to reduce indirect impacts to wetlands and other waters during open trench construction;
    - (2) Conduct trenching and construction activities across drainages during low-flow or dry periods as feasible;
    - (3) If working in active channels, install cofferdam upstream and downstream of stream crossing to separate construction area from flowing waterway;
    - (4) Place sediment curtains upstream and downstream of the construction zone to prevent sediment disturbed during trenching activities from being transported and deposited outside of the construction zone;
    - (5) Locate spoil sites such that they do not drain directly into the drainages and/or seasonal wetlands;
    - (6) Store equipment and materials away from the drainages and wetland areas. No debris will be deposited within 250 feet of the drainages and wetland areas.
  - c. Prepare and submit to CDFG and the Deputy Director for Water Rights for approval, a revegetation implementation plan to restore vegetation in all temporarily disturbed wetlands and other waters using native species seed mixes and container plant material that are appropriate for existing hydrological conditions. All disturbed drainages will be restored to pre-construction conditions

(0400500)

**ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.

(0000010)

C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)



- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit. (0000014)
- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605. (0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game. (0000063)

DRAFT

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*Barbara Evoy*  
*Deputy Director for Water Rights*

Dated:

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT XXXXX

Application **30358B** of

City of Woodland  
Public Works Department  
655 North Pioneer Ave.  
Woodland, CA 95776-6112

filed on **April 19, 1994**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

Tributary to:

Sacramento River

Suisun Bay

within the County of **Yolo**.

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<b>North 2,008,338 feet and East 6,667,208 feet</b>	<b>SE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub></b>	<b>27</b>	<b>10N</b>	<b>3E</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
<b>Municipal</b>	<b>City of Davis and University of California, Davis, and City of Woodland.</b>		<b>8N 9N 10N</b>	<b>1E, 2E, 3E 2E, 3E 2E, 3E</b>	<b>MD</b>	
<b>Irrigation</b>	<b>City of Davis and University of California, Davis, and City of Woodland.</b>		<b>8N 9N 10N</b>	<b>1E, 2E, 3E 2E, 3E 2E, 3E</b>	<b>MD</b>	<b>168,600</b>
<b>Fisheries and Aquaculture Research</b>	<b>University of California, Davis</b>	<b>16, 21</b>	<b>8N</b>	<b>2E</b>	<b>MD</b>	

The place of use is shown on map (to be determined) filed with the State Water Board.

Abbreviations used in this permit:

California Department of Fish and Game – CDFG  
 United States Fish and Wildlife Service – USFWS  
 National Marine Fisheries Service – NMFS  
 Division of Water Rights - Division

- The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **26.8 cubic feet per second** (30-day average diversion rate) to be diverted from **January 1 to December 31** of each year. The maximum amount diverted under this permit shall not exceed **15,000** acre-feet per year.

(000005A)

The total amount of water appropriated under this permit, together with that diverted under the permit issued pursuant to Application 30358A, shall not exceed **80.3 cubic feet per second** (30-day average diversion rate) and also shall not exceed **100 cubic feet per second** (instantaneous diversion rate). The maximum total amount diverted under the permits on Applications 30358A and 30358B shall not exceed **45,000** acre-feet per year.

(0000114)

- No water shall be diverted under this permit until Permittee obtains a long-term water supply covering those periods when water is not available for diversion pursuant to this permit. Permittee shall submit documentation subject to review and approval by the Deputy Director for Water Rights that an alternate water supply has been secured for the development period under this permit. The alternate water supply must be equivalent to the diversion quantities scheduled for use under this permit.

(0360900)

- Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2052.

(0000009)

8. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

9. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, Permittee shall, at its expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of the California Code of Regulations, Title 23. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights.

(0000030)

10. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

11. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

12. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.
  - a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
  - b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Board shall notify Permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise Permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

13. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.

(0000203)

14. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

(0000215)

15. Permittee shall install and maintain devices satisfactory to the State Water Board to measure the instantaneous rate of diversion, the amounts of water diverted each day, and the cumulative quantity of water diverted under this permit. Permittee shall make daily readings of these measuring devices and record these readings. Records of all such measurements shall be maintained by the Permittee, and made available to interested parties upon reasonable request. Permittee also shall, subject to any applicable Homeland Security restrictions, post such records on a publicly accessible website within 48 hours after the measurements are made. Copies of the records shall be submitted to the State Water Board with the annual "Progress Report by Permittee" and Permittee shall submit copies of these records to the CDFG each year when these records are submitted to the State Water Board.

Permittee shall allow the CDFG, or a designated representative, reasonable access to measuring devices for the purpose of verifying measurement readings.

Although water may be diverted by both Permittee and Reclamation District 2035 ("RD 2035") at the same intake facility on the Sacramento River, the water pumped by Permittee and the water pumped by RD 2035 must be pumped through separate pumps and pipes, with separate meters, and may not be commingled after pumping.

(000000R)

16. The right to divert water under this permit is junior in priority to the following prior rights:

- (a) City of Sacramento under any valid pre-1914 appropriative right and appropriation issued pursuant to Permits 992, 11358, 11359, 11360 and 11361 (Applications 1743, 12140, 12321, 12622, and 16060);
- (b) Conaway Preservation Group, LLC under any valid riparian rights and Licenses 904, 905, and 5487 (Applications 1199, 1588 and 12073);
- (c) Reclamation District No. 2068 to divert water under Licenses 6103 and 9339 (Applications 2318 and 19229), and Permit 19205 (Application 24961);
- (d) Reclamation District No. 1004 under any valid riparian rights and License 3165 (Applications 27), and Permit 16771 (Application 23201);
- (e) Reclamation District No. 108 under any valid riparian rights, Licenses 3065, 3066, 3067 and 7060 (Applications 576, 763, 1589 and 11899);
- (f) Pelger Mutual Water Company under Licenses 613A and 8547 (Applications 1765A and 12470);
- (g) Natomas Central Mutual Water Company under any valid riparian rights, Licenses 1050, 2814, 3109, 3110, 9794, and 9989 (Applications 534,1056, 1203, 1413, 15572 and 22309), Permit 19400 (Application 25727); and
- (h) Sutter Mutual Water Company, under any valid riparian rights and Licenses 547, 552, 657, 882, 1110, 2240, 2817, 2818, 2819, 2820-a, 2821, 2822, 2823, 4562, 5432, 8220 and 8547 (Applications 1769,1758, 1772, 3195, 1763, 7886, 581, 878, 879, 880, 9760, 1160, 10658, 11953, 14584, 16677, and 12470).

(000000T)

17. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the CDFG, USFWS, and NMFS to protect species of fish listed as endangered or threatened species under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) or the federal Endangered Species Act (16 U.S.C. sections 1531 to 1544) that are in effect on November 4, 2009. Construction, operation, and maintenance costs of the required facility are the responsibility of the permittee.

(0140500)

The following mitigation measures shall be complied with by Permittee. Inasmuch as the diversion facilities will be jointly developed under the permits on Applications 30358A and 30358B, both Permittees may file joint compliance documentation for development under the permits on Applications 30358A and 30358B inasmuch as both permits contain the same conditions. Separate compliance documentation is required for any conditions not found in both permits, such as the diversion rates and limitations. All certifications or reports necessary for approval by the Deputy Director of Water Rights shall be submitted together in one report prior to construction activities.

18. The following mitigation measures in paragraphs 19 through 31 shall be complied with by Permittee. All certifications or reports necessary for approval by the Deputy Director for Water Rights shall be submitted together in one report prior to construction activities. The report shall also include the status of measures requiring approval by other agencies. Inasmuch as the diversion facilities will be jointly developed under the permits on Applications 30358A and 30358B, both Permittees may file joint compliance documentation for development under the permits on Applications 30358A and 30358B inasmuch as both permits contain the same conditions. Separate compliance documentation is required for any conditions not found in both permits..

19. To minimize potential impacts on drainage and floodplains, Permittee shall:

a. Prior to construction, obtain a 401 Certification issued by the State Water Board or the Regional Water Quality Control Board, or waiver thereof and provide a copy of the 401 Certification or waiver to the Division. Permittee shall also consult with CDFG regarding the proposed upland sites where spoil material from trenching will be stockpiled. After making this consultation, Permittee shall provide CDFG with a map of these proposed sites and the Permittee's proposed conditions for using these sites.

b. Test any trench and tunnel spoils that are stockpiled at any upland site before replacement back into any excavated area or transportation to offsite disposal. Spoils containing high volumes of water shall be detained and allowed to settle at an upland site to reduce turbidity before the spoils are tested. If any such spoils are found to be contaminated by lubrication or hydraulic fluids, then such spoils will be collected and disposed of at a permitted waste disposal facility.

(0400500)

20. To minimize potential impacts on agriculture, Permittee shall:

a. Install the water conveyance pipeline and transmission pipelines at a depth (to the top of the pipe) ranging from 4 to 7 feet below the ground surface. Installation at this depth should be sufficient to avoid conflict with expected agricultural production activities. Final depths shall be established in consultation with an agricultural specialist and landowners to ensure no conflict with future agricultural practices.

b. Establish permanent Prime Farmland agricultural conservation easement at a ratio of 2:1 for the acreage of Prime Farmland that would be permanently displaced with Project development.

(0400500)

21. To minimize potential impacts on biological resources, Permittee shall:

a. Prior to construction, evaluate impacts to trees within the City of Davis city limits and submit the evaluation to the City and the Deputy Director for Water Rights for review. If deemed necessary by the City, Permittee shall apply for a permit and abide by any permit requirements for tree pruning or removal. In addition, sensitive habitats and wildlife shall be identified and protected for projects within the City of Davis, under the HAB 1.1 policy.

b. Conform project design, construction, and operation plans with, to the greatest extent possible, biological conservation goals fundamental to the ongoing Yolo County NCCP/HCP development process.



- c. Prepare and implement a Stormwater Pollution Prevention Plan (SWPPP), acceptable to the Central Valley Regional Water Quality Control Board, for all Project construction activities, including:
- (1) Conduct all instream construction activities during the low-flow period of May 30 through October 15.
  - (2) Place sediment curtains around the construction or maintenance zone to prevent sediment disturbed during trenching activities from being transported and deposited outside of the construction zone.
  - (3) Install silt fencing, including appropriate setbacks, where feasible, in all areas where construction occurs within 100 feet of known or potential steelhead habitat. Silt fencing will be installed adjacent to all aquatic habitat.
  - (4) Isolate fresh concrete from wetted channels for a period of 30 days after it is poured. If a 30-day curing period is not feasible, a concrete sealant approved for use in fisheries habitat may be applied to the surfaces of the concrete structure. If a sealant is used, the manufacturer's guidelines for drying times will be followed before reestablishing surface flows within the work area.
  - (5) Locate spoil sites (concrete wash areas) so as to prevent drainage into the Sacramento River. If a spoil site drains towards the Sacramento River, then lined catch basins will be constructed to intercept sediment before it reaches the channel and removal of spoils will be conducted daily during routine maintenance of work sites. Spoil sites will be graded to reduce the potential for erosion.
  - (6) Not leave disturbed surfaces without erosion control measures (consistent with the SWPPP) in place during the wet season from October 15 through April 30. Erosion protection shall be provided on all cut and graded slopes and vegetative cover shall be established on each construction site as soon as possible after disturbance of the site.
- d. In consultation with CDFG, prepare and implement a Revegetation Program Plan that provides for the establishment and ongoing maintenance of native riparian species in all disturbed bank-side construction areas.
- e. Conduct site preparation and installation of the sheet pile cofferdam during the summer and fall. A pre-construction Giant Garter snake (GGS) survey shall be conducted at the intake site prior to any cofferdam staging activity. GGS survey shall be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights in accordance with USFWS survey protocols, and findings shall be reported to CDFG, USFWS and the Division. As appropriate, follow-up inspections for presence of GGS individuals shall be conducted within 24 hours of initiating activity.
- f. Offset the permanent loss of 0.1 acres of channel margin habitat or shallow water habitat because of installation of the diversion/intake facility, by purchasing off-site mitigation habitat in a ratio agreeable to CDFG, the Deputy Director for Water Rights, and other agencies consulted. Permittee will work in consultation with CDFG, USFWS and NMFS to characterize functionally equivalent habitat for channel margin loss, and to identify the appropriate ratio of in-kind riparian corridor habitat suitable for use by wildlife species known to reside within 2 river miles of the intake construction site.

- g. During installation of a cofferdam and dewatering, ensure that a qualified fisheries biologist acceptable to the Deputy Director for Water Rights will design and conduct a fish rescue and relocation effort to collect fish from the area within the cofferdam involving the capture and return of those fish to suitable habitat within the Sacramento River. To ensure compliance, the fisheries biologist shall observe the initial dewatering activities within the cofferdam. The fish rescue plan will be provided for review and comment to NMFS, USFWS, CDFG and the Deputy Director for Water Rights prior to implementation.

The success of this dewatering measure will be the effective capture and removal of fish from the area to be dewatered with a minimum of capture and handling mortality for those fish returned to the Sacramento River.

- h. Install sheet piles and beams during construction of the cofferdam for the intake structure using a vibrating method. Prior to pile driving by any technique other than the vibrating method, Permittee will provide to CDFG a scientifically supported analysis to demonstrate that effects of the method will be limited to thresholds below that which could create sound pressure injury to juvenile salmonids in the vicinity.

(0400500)

22. In order to prevent impacts to special status plant species (Alkali milk-vetch, brittlescale, San Joaquin spearscale (saltbrush), palmate-bracted bird's beak, Heckard's peppergrass, Ferris milk-vetch, heartscale, rose mallow, Sanford's arrowhead, and Brazilian watermeal), Permittee shall:

- a. Perform a pre-construction survey for rare plants at the selected diversion/intake site and conveyance pipeline route. The survey shall be conducted by a qualified botanist acceptable to the Deputy Director for Water Rights during the appropriate season for identification, according to California Native Plant Society Botanical Survey Guidelines, included in Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR. Data shall be compiled and reported to CDFG before initiating any construction.
- b. Identify populations of palmate-bracted bird's beak that would be directly affected by project construction. Temporary preservation fencing shall be installed to protect individuals, and fencing shall provide a minimum 25-foot distance exclusion area. Indirect effects due to changes in hydrology or other ecological requirements for this species shall be evaluated and modifications to the project design/construction shall be incorporated to minimize indirect effects to palmate-bracted bird's beak.
- c. Avoid specimens as feasible, or identify and protect with orange fencing, individual Ferris's milk-vetch, alkali milk-vetch, heartscale, brittlescale, San Joaquin saltbush, Heckard's pepper-grass, rose-mallow, Sanford's arrowhead, Brazilian watermeal, or other special-status species without state or federal status that are detected within the proposed project area during the pre-construction survey, and notify CDFG. Where these sensitive plants cannot be avoided, additional mitigation measures shall be implemented by Permittee in consultation with CDFG, prior to construction. These measures may include, but are not limited to the following:

- (1) Minimizing impacts by restricting removal of plants to a few individuals of a relatively large population;

- (2) Preparing a plan to relocate plants to suitable habitat outside the proposed Project area to a CDFG-approved site;
- (3) Restoring or enhancing occupied habitat at an off-site location with appropriate ecological conditions to support the affected sensitive species.
- (4) Locating pipelines entirely underground and returning the ground surface to pre-project grade and contours.
- (5) Pipeline alignments shall be located according to paragraph 6 of this agreement.
- (6) Consulting with CDFG on constraints and opportunities for viable off-site habitat enhancement/creation for the species concerned and implementing a plan for restoration and enhancement. The plan shall include a five-year monitoring and maintenance program to evaluate and support the establishment of the sensitive species, and shall include contingencies for additional recruitment, planting and monitoring, as necessary, if survivorship falls below 75%.
- (7) Preserving occupied habitat for the species on-site or at another regional location.

(0400500)

23. To prevent impacts to vernal pool and seasonal wetland species (Conservancy fairy shrimp, vernal pool fairy shrimp, vernal pool tadpole shrimp, California tiger salamander, and western spadefoot), Permittee shall:
- a. Prior to project construction, survey the selected diversion/intake pipeline corridor area and assess the potential to support vernal pool and seasonal wetlands. All vernal pools and wetlands within 250 feet of the selected diversion/intake pipeline corridor shall be included in the assessment.
  - b. Undertake one of the following two actions for all vernal pool and seasonal wetland habitats identified during the wetland delineation:
    - (1) Survey for presence or absence of vernal pool crustaceans according to USFWS survey protocol (in the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field Office, California, (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR), where those pools found to contain vernal pool crustaceans shall be mitigated by (c), (d), and (e) below. All other pools shall be mitigated at a 1:1 compensation ratio, or
    - (2) Assume that the vernal pool is occupied by vernal pool crustaceans and measures (c), (d), and (e) shall be implemented for all pools.
  - c. Avoid completely all identified vernal pool and seasonal wetland habitats. The USFWS considers disturbance within 250 feet of all vernal pool wetlands to be an impact. Therefore, all wetlands shall be avoided by 250 feet and protected within that buffer. Protective measures may consist of temporary fencing such as silt fencing and plastic construction fencing. Also, Best Management Practices (BMPs) and Stormwater Pollution Prevention Plan methods shall be implemented during construction to avoid indirect water quality impacts to wetlands. These pools shall be considered "avoided" and no further mitigation is necessary.

- d. If impacts to vernal pool and seasonal wetlands cannot be avoided but can be protected from direct fill or ground disturbance, the wetlands shall be identified and protected using temporary fencing, which shall take the form of silt fencing and temporary plastic construction fencing placed no closer than 25 feet from the edge of the pool. The distance between the pool and protective fencing shall be maximized wherever possible. These pools will be considered as "indirectly affected" by project activities and shall be mitigated in accordance with the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans Within the Jurisdiction of the Sacramento Field Office, California (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). Some pools may be considered avoided if it can be shown that the proposed project activity would not adversely impact their surface and subsurface hydrology. This shall be considered on a case-by-case basis by a qualified biologist and hydrologist acceptable to the Deputy Director for Water Rights.
- e. Calculate the area of impacts for pools that will be directly impacted by project activities. For the purpose of this calculation, any portion of a pool that is directly impacted by project activities would result in the entire pool being identified as being permanently impacted. Impacted pools shall then be mitigated in accordance with the February 28, 1996 Programmatic Formal Endangered Species Act Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans within the Jurisdiction of the Sacramento Field Office, California (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).
- f. Conduct a pre-construction survey of the selected diversion/intake pipeline corridor area to assess the potential to support vernal pool and seasonal wetlands which may support California tiger salamander (CTS) and western spadefoot. The survey shall include the entire project footprint and all areas within 1.24 miles of proposed project activities (where site access allows) for the presence of CTS using the protocol provided in the October 2003 Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). Should CTS be detected in the area, all ground squirrel burrows and vernal pools shall be mapped within 1.24 miles of the project, and all vernal pools areas shall be calculated within this area.
- g. Identify vernal pools and burrows that can be protected from project activities and protect these sites from disturbance using temporary fencing. Temporary fencing shall take the form of silt fencing and temporary plastic construction fencing placed no closer than 25 feet from the edge of the habitat. The distance between the habitat and protective fencing shall be maximized wherever possible. Protective fencing around vernal pools identified as potential habitat for special-status amphibians shall be constructed in a way that allows CTS and western spadefoot to access these wetlands.
- h. Quantify impacts to vernal pools and occupied CTS burrows, impacted vernal pools and burrow habitat and mitigate and compensate in accordance with (c) above. Burrows that cannot be avoided shall be excavated by a biologist approved by USFWS and the Deputy Director for Water Rights prior to construction using hand tools. Excavated CTS shall be relocated off the project site to a USFWS-approved site.

(0400500)

24. To prevent impacts to Valley elderberry longhorn beetle, Permittee shall:
- a. Survey the selected diversion/intake pipeline corridor area prior to construction for the presence of elderberry shrubs. The survey shall be conducted according to USFWS's July 9, 1999 Conservation Guidelines for Valley Elderberry Longhorn Beetle (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). The survey may be conducted concurrently with the rare plant surveys.
  - b. Avoid identified elderberry shrubs by a minimum of 100 feet during construction of the diversion/intake pipeline corridor. If complete avoidance is not feasible, USFWS shall be consulted regarding impacts to valley elderberry longhorn beetle. Compensation for disturbance within 100 feet of shrubs will be implemented in a manner approved by USFWS, CDFG and the Deputy Director for Water Rights. It may include transplanting elderberry shrubs into a conservation area for valley elderberry longhorn beetle. The conservation area must be at least 1,800 square feet and should be planted with 5 additional elderberry plants plus 5 native associated plants for every one transplanted/impacted elderberry shrub. Refer to USFWS's July 9, 1999 Conservation Guidelines for Valley Elderberry Longhorn Beetle (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR), for details.

(0400500)

25. To prevent impacts to giant garter snake and western pond turtle, Permittee shall:
- a. Conduct a pre-construction survey of the selected diversion/intake and pipeline siting option for giant garter snake habitat suitability within one year of anticipated construction. The survey area shall include up to 200 feet of upland habitat surrounding potential aquatic habitat for giant garter snake according to the USFWS November 13, 1997 programmatic biological opinion for giant garter snake. Habitat assessments shall follow CDFG guidelines Appendix D: Protocols for Pre-Project Surveys to Determine Presence or Absence for the Giant Garter Snake and to Evaluate Habitats, as cited in the USFWS Draft Recovery Plan for the Giant Garter Snake (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).
  - b. If suitable giant garter snake habitat is present, implement the following mitigation measures in accordance with the USFWS programmatic biological opinion for giant garter snake which pertain to Level 3 impacts.
    - (1) Construction activity within giant garter snake habitat shall occur between May 1 and October 1, which is the active period for the snake. Between October 2 and April 30, the USFWS Sacramento Fish and Wildlife Office and CDFG, North Central Region, shall be consulted to determine if additional measures are necessary to minimize and avoid take. Such measures might include, but are not limited to, requiring a biological monitor on site during construction within giant garter snake habitat.
    - (2) Any dewatered habitat must remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of the dewatered habitat.

(3) Construction personnel shall participate in a Service-approved worker environmental awareness program. Under this program, workers shall be informed about the presence of giant garter snakes and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is a violation of the Act. Prior to construction activities, a qualified biologist approved by the USFWS and the Deputy Director for Water Rights shall instruct all construction personnel about giant garter snake as directed in the USFWS programmatic biological opinion for giant garter snake. Proof of this instruction shall be submitted to the USFWS, Sacramento Fish and Wildlife Office, CDFG, North Central Region and the Division.

(4) Pre-construction surveys for the giant garter snake shall be conducted by a biologist approved by USFWS and the Deputy Director for Water Rights within 24 hours prior to ground disturbance. Giant garter snake encounters and field reports shall be addressed per the USFWS programmatic biological opinion for giant garter snake.

(5) Clearing of wetland vegetation will be confined to the minimal area necessary to excavate toe of bank for riprap or fill placement. Excavation of channel for removal of accumulated sediments will be accomplished by using equipment located on and operated from top of bank, with the least interference practical for emergent vegetation.

(6) Movement of heavy equipment to and from the project site shall be restricted to established roadways to minimize habitat disturbance.

(7) Preserved giant garter snake habitat shall be designated as Environmentally Sensitive Areas and shall be flagged by a qualified biologist approved by CDFG, USFWS and the Deputy Director for Water Rights and shall be avoided by all construction personnel.

(8) After completion of construction activities, any temporary fill and construction debris shall be removed and, wherever feasible, disturbed areas shall be restored to pre-project conditions. Restoration work may include replanting emergent vegetation as directed in the USFWS programmatic biological opinion for giant garter snake.

(9) Impacts to giant garter snake habitat shall be mitigated in accordance with USFWS mitigation compensation ratios, based on described levels of impact in the programmatic biological opinion. More than two season duration and temporary or permanent losses of habitat shall be compensated at 3:1 or the ratios described in Table 1 on page 7 of the USFWS November 13, 1997 programmatic biological opinion for giant garter snake (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR) and shall meet the criteria listed in the USFWS programmatic biological opinion for giant garter snake.

(10) All wetland and upland acres created and provided for the giant garter snake shall be protected in perpetuity by a Service-approved conservation easement or similarly protective covenants in the deed and comply with provisions in the USFWS programmatic biological opinion for giant garter snake. Documentation of such land preservation shall be provided to CDFG and the Deputy Director for Water Rights.

(11) The Reporting Requirements shall be fulfilled in compliance with the USFWS programmatic biological opinion for giant garter snake and the reports

shall be submitted to the USFWS, CDFG and the Deputy Director for Water Rights.

(12) Replacement of affected giant garter snake habitat at a 3:1 ratio.

(13) All replacement habitat must include both upland and aquatic habitat components. Upland and aquatic habitat components must be included in the replacement habitat at a ratio of 2:1 upland acres to aquatic acres.

(14) If restoration of habitat is a component of the replacement habitat, one year of monitoring restored habitat with a photo documentation report due one year from implementation of the restoration with pre- and post-project area photos.

c. Five years of monitoring replacement habitat with photo documentation report due each year to CDFG, USFWS and the Division.

(0400500)

26. To prevent impacts to Swainson's hawk, Permittee shall:

a. Conduct a pre-construction breeding-season survey (between March 1 and September 15) in the year when construction is scheduled to commence. The survey will be conducted by a qualified biologist, acceptable to CDFG and the Deputy Director for Water Rights, and according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, prepared by the Swainson's Hawk Technical Advisory Committee, dated May 31, 2000, (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR).

The survey area shall include all lands with a one quarter-mile radius around any Project construction activities scheduled to occur during that breeding season. If any nesting Swainson's Hawks are detected, Permittee shall implement the following:

b. Establish a buffer zone of one-quarter mile around the nest site, within which there will be no construction unless one of the following has occurred:

(1) Based on ongoing monitoring of the nest site by a qualified biologist, and subsequent consultation with the CDFG, it is determined by the CDFG that work can occur within the buffer zone, along with the conditions under which such work may be carried out. Depending on conditions specific to each nest, it may be possible to allow construction activities within the buffer zone without impacting breeding behavior. In these cases, the nest will be monitored by a qualified biologist acceptable to CDFG. The monitor will have all stop authority. If, in the professional opinion of the monitor, project activities are negatively affecting the nesting or breeding behavior of the birds, then the monitor shall stop all construction activity within the designated buffer zone, and construction activities within this designated buffer zone shall not resume until either the monitor has determined that the young have fledged and the nest is empty or as otherwise approved by CDFG; or,

(2) Monitoring has demonstrated, and CDFG has concurred, that adults are no longer utilizing the nest area and/or birds of the year have fully fledged.

c. Mitigate for permanent loss of Swainson's hawk foraging habitat associated with the construction of the Water Treatment Plant facility. Compensation shall follow

guidance in the May 2, 2002 Agreement Regarding Mitigation for Impacts to Swainson's Hawk Foraging Habitat in Yolo County entered into between CDFG and the Yolo County HCP/NCCP Joint Powers Agency (Habitat JPA), with the mitigation fee increase described in the January 26, 2004 staff report regarding this agreement. This agreement requires that:

(1) Urban development Permittees shall pay an acreage-based mitigation fee in an amount, as determined by the Habitat JPA Board, sufficient to fund the acquisition, enhancement and long-term management of one (1) acre of Swainson's hawk foraging habitat for every one (1) acre of foraging habitat that is lost to urban development.

(2) A calculated fee of \$5,800.00 per acre is sufficient to fund the acquisition and preservation as of January 2004. This fee amount may be adjusted to reflect updated costs for acquisition of habitat.

(3) With written approval of and subject to conditions determined by CDFG, an urban development Permittee may transfer fee simple title or a conservation easement over Swainson's hawk foraging habitat, along with appropriate enhancement and management funds, in lieu of paying the acreage-based mitigation fee.

(0400500)

27. To prevent impacts to western yellow-billed cuckoo, Cooper's hawk, white-tailed kite, yellow warbler, loggerhead shrike, northern harrier and short-eared owl, Permittee shall:

a. Implement 25a. and 25b. above for Swainson's hawk, and apply them to western yellow-billed cuckoo. Apply these measures, but modify survey area to include 500 feet around the construction activities, and modify buffer areas to include 500 feet around any Cooper's hawk, white-tailed kite, yellow warbler or loggerhead shrike nest.

b. Implement 25a. and 25b. above for Swainson's hawk, and apply them to northern harrier and short-eared owl, but modify survey area to include 500 feet around the construction activities; and modify buffer areas to include 500 feet around a nest.

(0400500)

28. To prevent impacts to Burrowing Owl, Permittee shall:

a. Survey the entire route of the chosen siting diversion/intake pipeline corridor and WTP footprint for burrowing owls according to the October 17, 1995 CDFG Staff Report on Burrowing Owl Mitigation (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR), which includes survey guidelines for burrowing owl. The surveys must be conducted prior to project construction and shall be conducted by a qualified biologist acceptable to the Deputy Director for Water Rights. Data shall be compiled and reported to CDFG before initiating any construction activities. The guidelines include the following:

(1) Conduct a winter survey (to be conducted between December 1 and January 31) and a survey during the breeding season (to be conducted April 15 to July 15).

(2) Conduct the survey beginning one hour before sunrise and two hours after, OR two hours before sunset and one hour after.



(3) The survey area shall include suitable habitat within a 500-foot radius around the Project construction zone.

b. If occupied burrows are identified, implement the measures included in the October 17, 1995 CDFG Staff Report on Burrowing Owl Mitigation (see Appendix C2 of the Davis-Woodland Water Supply Project Draft EIR). These include but are not limited to the following measures:

(1) Owls shall not be disturbed from February 1 through August 31. Establish an avoidance buffer of 160 feet (September 1 through January 31) or 250 feet (February 1 through August 31) and monitor the nest burrow during construction activity. Any indication of impacts to the breeding pair as a result of construction shall be reported to CDFG whereby CDFG may have the authority to halt construction until the young have fledged from the nest.

(2) If impacts to owls cannot be avoided, then CDFG shall be consulted on minimization measures such as using passive relocation techniques during the non-breeding season (September 1 through January 31).

(3) A minimum of 6.5 acres of foraging habitat must be preserved for every occupied burrow potentially impacted (within 160 feet or 250 feet of the construction activity, depending on the season). Foraging habitat shall be preserved according to CDFG guidelines.

(0400500)

29. To prevent impacts to tricolored blackbird, white-faced ibis, western snowy plover, and bank swallow Permittee shall:

a. Implement 25a. and 25b. above for Swainson's hawk, and apply them to the above-listed species, but modify survey area to include 500 feet around the construction activities; and modify buffer areas to include 500 feet around nesting colonies/locations.

(0400500)

30. To prevent impacts to riparian habitat or other sensitive natural communities, Permittee shall:

a. Prior to construction, conduct an assessment within the project area to provide the basis of a vegetation mitigation plan. A vegetation mitigation plan will be developed in consultation with CDFG and the Division. The plan shall contain species expected to be found in the vicinity of project sites. Details about the species and their past occurrence shall be included in the plan. Permittee shall comply with all terms and conditions of the plan, including additional mitigation provisions to be implemented. Permittee would follow performance standards in developing the plan. The requirements would consist of one or more of the following provisions:

(1) Establish an oak tree conservation easement in coordination with Yolo County to protect and preserve trees commensurate with the removal of large oaks as a result of project implementation.

(2) Replace and maintain trees, for seven years, at a rate of 1 tree per 1-inch of tree diameter removed as measured at diameter breast height. Because this measure would only fulfill one-half of the required mitigation for the project, one or more of the other provisions would need to be implemented to fulfill the remaining mitigation requirements.

(3) Contribute funds to a suitable oak woodland conservation fund, as established in accordance with § 363 of the Fish and Game Code.

(4) Consult with Yolo County and CDFG to determine and agree to implement other suitable measures consistent with the Yolo County Oak Woodland Conservation and Enhancement Plan 2007 and §21083.4(a) of the California Public Resources Code.

- b. For any drainage that would be crossed using trenchless construction techniques, the bore pits will be excavated at least 50 feet outside the edge of riparian vegetation to minimize impacts to waterways and adjacent areas.
- c. All new project-related groundwater wells within water sellers' service areas shall be sited in areas that are not within 0.25 mile of wetlands and other sensitive biological resources that could be affected by groundwater drawdown.

(0400500)

31. To prevent impacts to federally protected wetlands, Permittee shall:

- a. Prior to construction, conduct and submit for approval a formal wetland delineation report for the proposed Project area for verification through the ACOE. Permittee shall obtain a Section 404 (Clean Water Act) permit for impacts to jurisdictional wetlands from the ACOE and/or a Section 401 permit from the RWQCB or State Water Board and shall comply with all conditions of permits received. In association with either or both permits, compensatory mitigation for impacts to jurisdictional wetlands may be required. ACOE mitigation guidelines emphasize on-site mitigation preference, but in the potential case that on-site mitigation is not available, Permittee shall either purchase wetland mitigation credits from an ACOE -approved mitigation bank that services the area containing the proposed project or prepare a plan to implement mitigation at an off-site location.
- b. For open trench construction crossing minor wetland ditches (less than 15 feet in width), the following measures shall be implemented:
  - (1) Implement compliance measures, described in Section 3.7, Geology, Soils, and Seismicity for Impact 3.7-1, to reduce indirect impacts to wetlands and other waters during open trench construction;
  - (2) Conduct trenching and construction activities across drainages during low-flow or dry periods as feasible;
  - (3) If working in active channels, install cofferdam upstream and downstream of stream crossing to separate construction area from flowing waterway;
  - (4) Place sediment curtains upstream and downstream of the construction zone to prevent sediment disturbed during trenching activities from being transported and deposited outside of the construction zone;
  - (5) Locate spoil sites such that they do not drain directly into the drainages and/or seasonal wetlands;

- (6) Store equipment and materials away from the drainages and wetland areas. No debris will be deposited within 250 feet of the drainages and wetland areas;
- c. Prepare and implement a revegetation plan to restore vegetation in all temporarily disturbed wetlands and other waters using native species seed mixes and container plant material that are appropriate for existing hydrological conditions. All disturbed drainages will be restored to pre-construction conditions. (0400500)

**ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State

Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*Barbara Evoy*  
*Deputy Director for Water Rights*

Dated: