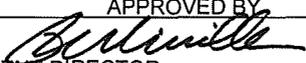
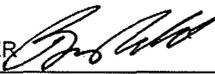
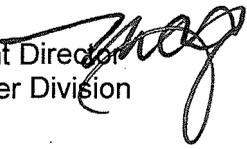


February 14, 2013

AGENDA ITEM NO.	1H
COUNCIL MEETING:	02/14/13
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER 	

FROM: PATRICK N. WIEMILLER, Director
Department of Public Utilities

BY: MARTIN A. QUERIN, P.E., Assistant Director 
Department of Public Utilities – Water Division

SUBJECT: APPROVE STREAMBED ALTERATION AGREEMENT WITH CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE FOR CONSTRUCTION OF 60 INCH DIAMETER UNDERGROUND PIPELINE UNDER BIG DRY CREEK DIVERSION CHANNEL IN FRESNO COUNTY FOR THE RAW WATER PIPELINE PROJECT AND AUTHORIZE THE DIRECTOR OF PUBLIC UTILITIES OR HIS DESIGNEE TO SIGN ON BEHALF OF THE CITY

RECOMMENDATIONS

Staff recommends that the City Council:

1. Approve the Streambed Alteration Agreement with the California Department of Fish and Wildlife for construction of a 60-inch diameter underground pipeline under Big Dry Creek Diversion Channel in Fresno County for the Raw Water Pipeline Project, and
2. Authorize the Director of Public Utilities or his designee to sign on behalf of the City of Fresno.

EXECUTIVE SUMMARY

On April 10, 2007, the City began the Raw Water Pipeline Project with the issuance of a Notice to Proceed to Provost & Pritchard Engineering Group for engineering design services for the construction of a pipeline that will deliver contract Central Valley Project water from the Friant-Kern Canal to the Northeast Surface Water Treatment Facility (NESWTF). The City and the California Department of Fish and Wildlife (CDFW) are required to enter into an agreement intended to help safeguard existing fish or wildlife resources within the area of the creek crossing. This project is vital to the City's long-term water supply strategy, and will improve raw water quality delivered to the NESWTF, as well as, reduce energy and chemical costs associated to treatment.

BACKGROUND

The City's Central Valley Project (CVP) surface water, contracted with the United States Bureau of Reclamation (USBR), travels nearly 55 miles in open canals from Friant Dam (Millerton Lake) to the NESWTF. The proposed Project consists of the construction and operation of a 5.6-mile underground raw water supply pipeline, which will eliminate nearly 47 miles from the conveyance distance. The Project will: improve reliability of water delivery service to the treatment facility; assist in reducing groundwater overdraft; provide redundancy of supply conveyance; improve water quality protection, including protection from both inadvertent contamination and intentional malicious acts; reduce chemical treatment costs and power

REPORT TO THE CITY COUNCIL

Approve Streambed Alteration Agreement for the Raw Water Pipeline Project

February 14, 2013

Page 2

consumption costs. The pipeline will be constructed through unincorporated Fresno County property and connected to the City's existing NESWTF. Future plans at the NESWTF include the installation of a hydropower plant which will be capable of generating power because of the elevational difference between the Friant-Kern Canal and the water treatment facility.

Development of the project design, compliance with the California Environmental Quality Act (CEQA) and other environmental assessments has determined the resulting pipeline alignment route. The optimal location for raw water pipeline route requires construction to cross under the Big Dry Creek Diversion Channel, which is a seasonal flood control drainage waterway. The waterway was built by and under the jurisdiction of the US Army Corp of Engineers (USACOE) since its construction in 1940. However, the Fresno Metropolitan Flood Control District (FMFCD) has been given operational and maintenance responsibilities for the Channel by the USACOE.

The planned construction of the raw water pipeline across the Big Dry Creek Diversion requires the City coordinate with the USCOE, Fresno Metropolitan Flood Control District, and the California Department of Fish and Wildlife. The CDFW has to meet certain US Army Corp of Engineers requirements and enter into agreements with entities that would alter the streambed. The USACOE require responsible entities that would alter the streambed, namely the City, to enter into an agreement with them that helps safeguard against impacts to environmental concerns possibly resulting from this Project. Therefore, the Department of Public Utilities, Water Division has completed an application and provided fees to the CDFW to secure authority to excavate and make alterations in the channel, thus allowing for the construction of the raw water pipeline under the creek. The CDFW responded with the attached agreement which will allow for the pipeline construction.

The Agreement has been reviewed by staff, 'approved as to form' by the City Attorney's Office, and approved for insurance requirements by the Risk Management Division. Upon City Council approval of this agreement, the California Department of Fish and Wildlife will forward the agreement to the US Army Corp of Engineers for review and concurrence. Upon USACOE concurrence, CDFW will execute the agreement.

ENVIRONMENTAL FINDING

The City has prepared a Mitigated Negative Declaration (MND) supported by the environmental analysis contained in an Initial Study on both the proposed and alternative pipeline alignments to address the potential environmental effects of the proposed City of Fresno Raw Water Pipeline Project (Project). This document was prepared in accordance with CEQA, California Public Resources Code Section 21000 et seq; the California CEQA guidelines (California Code of Regulations, Title 14, Section 15000 et seq); and the rules, regulations, and procedures for implementing CEQA as adopted by the City of Fresno.

Based on the Public Comments for the Initial Study, Mitigated Negative Declaration (MND), and Mitigation, Monitoring and Reporting Plan (MMRP), staff has determined the project will not have a significant impact on the environment and that the filing of a MND is appropriate in accordance with the provisions of Public Resources Code, Section 21080(c)(2) and CEQA Guidelines Sections 15071(e) and 15369.5. On June 14, 2012, the City Council adopted the Resolution to adopt the MND and the MMRP for the City of Fresno Raw Water Pipeline Project and it was recorded with the County Clerk as required.

The Water Division has also been working with several Federal agencies to meet the requirements of the National Environmental Policy Act (NEPA). Efforts are still underway with the USBR and the United States Fish and Wildlife Service to approve the Biological Opinion (BO) for this Project. The USFWS approved BO will be then submitted to the US Bureau of Reclamation for their review and acceptance. Once accepted the

REPORT TO THE CITY COUNCIL

Approve Streambed Alteration Agreement for the Raw Water Pipeline Project

February 14, 2013

Page 3

USBR it is anticipated they will issue a Finding of No Significant Impact (FONSI) and give authorization for the City to begin construction on the Friant Kern Canal portion to the Project.

FISCAL IMPACT

All costs for this agreement and other permits were originally included in Water Division's approved FY10 Water Capital Improvement Program budget within the Water Enterprise Fund (40101, WC00038). The construction of the Friant-Kern Raw Water Pipeline was included DPU capital improvement bonds that were authorized by City Council on June 17, 2010 (Resolution 2010-125). Subsequent fiscal year budgeting and CIP reprioritization provided the opportunity to reallocate sufficient funding for this project in the adopted FY13 Budget. The Water Division FY13 budget includes \$20,472,500 for development of the associated improvements necessary to complete the project. The Project construction is expected to start in Fall 2013. No additional funding relative to this report is anticipated.

This page intentionally left blank.

CALIFORNIA DEPARTMENT OF FISH AND GAME
REGION 4-CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2012-0156-R4
BIG DRY CREEK - FRESNO COUNTY

BROCK BUCHE
CITY OF FRESNO
PUBLIC UTILITIES, WATER DIVISION
1910 EAST UNIVERSITY AVENUE
FRESNO, CALIFORNIA 93702

RAW WATER PIPELINE BIG DRY CREEK CROSSING (PROJECT)

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Brock Buche, representing City of Fresno (referred to as Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on August 14, 2012, that Permittee intends to complete the Project described herein.

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

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

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

PROJECT LOCATION

The Project is located in Northern Fresno County, south of the City of Friant. The Project construction will occur across the Big Dry Creek Diversion Channel. NW ¼ of Section 5, Township 12S, Range 21E, MDB&M; Latitude 36.917 N, Longitude -119.704 W.

PROJECT DESCRIPTION

The Project includes the installation of a raw water pipeline beneath the Big Dry Creek Diversion Channel. The pipe will be a 60-inch diameter concrete cylinder pipe, installed

at a depth of approximately 10 feet below the bottom of the channel, and the width of the trench will be approximately 10 feet. The trench will be excavated through open-cut trenching and any material removed from the trench will be backfilled. The trench surface and creek bed will be stabilized by placing rip-rap composed of large broken rock along the channel for approximately 35 feet upstream and 35 feet downstream of the pipeline. All work will occur during naturally dry channel conditions, and no trees will be removed during Project implementation. Equipment that will be used during this Project includes an excavator and crane.

PROJECT IMPACTS

This Agreement is intended to avoid, minimize, and mitigate adverse impacts to the fish and wildlife resources that occupy the Big Dry Creek Diversion Channel, and the immediate adjacent riparian habitat. Absent implementation of the protective measures required by this Agreement, the Federally and State threatened California tiger salamander (*Ambystoma californiense*), the State species of special concern western spadefoot (*Spea hammondi*), the State species of concern burrowing owl (*Athene cunicularia*), the Federally threatened valley elderberry long horn beetle (*Desmocerus californicus*), the Federally threatened and State endangered succulent owl's clover (*Castilleja campestris succulenta*) and other species of birds, mammals, fish, reptiles, amphibians, invertebrates, and plants that comprise the local riparian ecosystem could potentially be impacted within the area covered by this Agreement.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to DFG personnel or personnel from another State, Federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Measures. Permittee shall notify DFG if Permittee determines or learns that a Measure in the Agreement might conflict with a Measure imposed on the Project by another local, State, or Federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the Project site at any time to verify compliance with the Agreement.

- 1.5 Legal Obligations. This Agreement does not exempt the Permittee from complying with all other applicable local, State, and Federal law, or other legal obligations.
- 1.6 Unauthorized Take. This Agreement does not authorize the "take" (defined in Fish and Game Code Section 86 as to hunt, pursue, catch, capture, or kill; or attempt to hunt, pursue, catch, capture, or kill) of State- or Federally-listed threatened or endangered species. Any such "take" shall require separate permitting as may be required.
- 1.7 Water Diversion. To the extent that the Measures of this Agreement provide for the diversion of water, they are agreed to with the understanding that the Permittee possesses the legal right to so divert such water.
- 1.8 Trespass. To the extent that the Measures of this Agreement provide for activities that require the Permittee to trespass on another owner's property, they are agreed to with the understanding that the Permittee possesses the legal right to so trespass.
- 1.9 Construction/Work Schedule. The Permittee shall submit a construction/work schedule to DFG (mail, or fax to (559) 243-4020, with reference to Agreement 2012-0156-R4) prior to beginning any activities covered by this Agreement. The Permittee shall also notify DFG upon the completion of the activities covered by this Agreement.
- 1.10 Training. Prior to starting any activity within the stream, all employees, contractors, and visitors who will be present during Project activities shall receive training from a qualified individual on the contents of this Agreement, the resources at stake, and the legal consequences of non-compliance.

2. Avoidance and Minimization Measures

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

- 2.1 Construction/Work Hours. All non-emergency work activities during the construction phase will be confined to daylight hours. For purposes of this Agreement, "daylight hours" are defined as that daytime period between sunrise and sunset.
- 2.2 Flagging/Fencing. Prior to any activity within the stream, the Permittee shall identify the limits of the required access routes and encroachment into the stream. These "work area" limits shall be identified with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of the Project. All areas beyond the identified work area limits shall be considered Environmentally Sensitive Areas (ESA) and shall not be disturbed.

2.3 Listed and Other Special Status Species.

- (a) This Agreement does not authorize "take," or "incidental take," of any State- or Federally-listed threatened or endangered, or fully-protected species. Liability for any "take," or "incidental take," of such listed species remains the responsibility of the Permittee for the duration of the Project. Any unauthorized "take" of such listed species may result in prosecution and nullify this Agreement.
- (b) The Permittee affirms that no "take" of listed species will occur as a result of this Project and will take prudent measures to ensure that all "take" is avoided. The Permittee acknowledges that they fully understand that they do not have State "incidental take" authority. If any State- or Federally-listed threatened or endangered species occur within the proposed work area or could be impacted by the work proposed, and thus "taken" as a result of Project activities, the Permittee is responsible for obtaining and complying with required State and Federally threatened and endangered species permits or other written authorization before proceeding with this Project.
- (c) The Permittee shall immediately notify DFG of the discovery of any such rare, threatened, or endangered species prior to and during construction.
- (d) Pre-activity surveys for potential rare, listed, or other sensitive species shall be conducted by a qualified biologist within 30 days prior to commencement of Project activities except as specified in species-specific measures below. Surveys must be conducted on the work area and all access routes to avoid and minimize "incidental take," confirm previous observations, identify any areas occupied by listed or sensitive species, and clearly mark all resources to be avoided by Project activities. If any State- or Federally-listed threatened or endangered animal species are found or could be impacted by the work proposed, the Permittee shall notify DFG of the discovery prior to commencement of construction. A new Agreement and/or a State Incidental Take Permit may be necessary and a new CEQA analysis may need to be conducted, before work can begin.
- (e) California Tiger Salamander: Project activities shall occur only during naturally dry conditions. In addition, Project activities may proceed according to the following options: 1) Within all areas of suitable upland habitat, all rodent burrows shall be flagged and avoided by a minimum 50-foot no-disturbance buffer. A qualified biologist shall be present during all ground disturbing activities during the active season of the species and shall halt Project activities if a California tiger salamander is detected in or adjacent to the Project area, until the individual leaves of its own volition. DFG shall be notified immediately if a salamander is detected. Or, 2) Protocol-level surveys (which could require two (2) years to complete) to detect presence shall be conducted, and results shall be submitted to DFG for review well in advance of Project initiation. If any individuals are detected, Permittee shall acquire an Incidental Take Permit from DFG for California tiger salamander prior to initiating Project activities.

- (f) Western Spadefoot: If any individuals of this species are found during Project activities, a qualified biologist who holds a Scientific Collecting Permit for the species shall move the animal(s) to suitable habitat immediately upstream of downstream from Project site.
- (g) Burrowing Owl: A qualified biologist shall survey for burrowing owl within a 500-foot radius of the Project site. If any active burrowing owl burrows are observed, these burrows shall be designated an ESA, protected, and monitored by a qualified biologist (while occupied) during Project-related activities. A minimum 250-foot avoidance buffer shall be established and maintained around each owl burrow during the nesting season (February 1 through August 31). If active burrowing owl burrows are observed outside of the nesting season, a minimum 150-foot no disturbance buffer shall be established around each burrow. Implementation of passive relocation with one-way doors is not authorized by DFG in this Agreement.
- (h) Valley Elderberry Longhorn Beetle: No elderberry bushes (*Sambucus mexicana*) shall be trimmed or removed without appropriate regulatory agency approval. Ground-disturbing Project activity shall avoid elderberry shrubs by 100 feet. If this buffer cannot be maintained or elderberry bushes will be impacted, then the Permittee shall provide DFG with a Biological Opinion or other documentation from the US Fish and Wildlife Service (USFWS) authorizing the Permittee to transplant, remove, or otherwise impact elderberry bushes that are considered habitat for the Federally-threatened valley elderberry longhorn beetle.
- (i) Sensitive Plant Species: Sensitive plants (including but not limited to succulent owl's clover) have the potential of existing in the vicinity of the proposed Project footprint; therefore, if suitable habitat is present, Permittee shall conduct focused Plant Surveys for these plants and natural communities on the Project site well in advance of any planned ground disturbing activities. Repeated floristic surveys shall be conducted by a qualified botanist multiple times during the appropriate floristic period(s) in order to adequately assess the potential Project-related impacts to listed plant species. If sensitive plant species are found, Permittee shall identify them with flagging and avoid with a 25-foot no-disturbance buffer during Project activities. If any State-listed threatened or endangered plant species are found within the work area or could be impacted by the work proposed, a new Agreement and/or a 2081(b) State Incidental Take Permit may be necessary and a new CEQA analysis may need to be conducted, before work can begin.

2.4 General Wildlife.

- (a) If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.
- (b) All pipes with inside diameter openings smaller than 12-inches shall be capped or otherwise covered prior to being left overnight. If an animal is

found in a pipe, the pipe shall be avoided and the animal(s) left to leave of their own accord. If a listed species is found occupying a pipe, all potentially disturbing activities shall be suspended immediately. Work shall not resume without DFG concurrence.

- (c) Pursuant to FGC Sections 3503 and 3503.5, it is unlawful to "take," possess, or needlessly destroy the nest or eggs of any bird or bird-of-prey. To protect nesting birds, no construction shall be completed from March 1 through August 31 unless the following surveys are completed by a qualified biologist within 30 days prior to Project initiation.

Raptors: Survey for nesting activity of raptors within a 500-foot radius of the construction site. Surveys shall be conducted at appropriate nesting times and concentrate on mature trees. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected by a 500-foot radius until the young have fledged and are no longer reliant on the nest tree or parental care.

Other Avian Species: Survey for nesting activity within a 250-foot radius of the Project boundaries. If any active nests are observed, these nests and nest trees shall be designated an ESA and protected with a minimum 250-foot buffer until the young have fledged and are no longer reliant on the nest tree or parental care.

DFG may consider variances from these construction buffers when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. Any proposed variance from these buffers shall be supported by a qualified biologist and approved in advance by DFG in writing.

2.5 Vegetation.

- (a) Vegetation removal shall not exceed the minimum necessary to complete operations and shall only occur within the defined work area. The disturbed portions of the stream bed, banks, or channel shall be restored to as near their original condition as possible.
- (b) Vegetation or material removed from the stream areas shall not be stockpiled in the streambed or on its banks.

2.6 Vehicles.

- (a) Vehicles shall not be operated in areas where surface water is present; vehicles shall only operate in the channel during naturally dry conditions.
- (b) Construction vehicle access to the stream's banks and bed shall be limited to predetermined ingress and egress corridors on existing roads. All other areas adjacent to the work site shall be considered an ESA and shall remain off-limits to construction equipment.

- (c) Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic and terrestrial life.
- (d) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans. Vehicles shall be moved away from the stream prior to refueling and lubrication.

2.7 Structures. The Permittee confirms that any and all structures and constructed features shall be properly aligned and otherwise engineered, installed, and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill and that they will not cause long-term changes in water flows that adversely modify the existing upstream or downstream stream bed/bank contours or increase sediment deposition.

2.8 Fill/Spoil.

- (a) Spoil storage sites shall not be located within the stream, where spoil will be washed into the stream. Rock, gravel, and/or other materials shall not be imported into or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.
- (b) Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Excess fill material shall be moved off-site at Project completion.

2.9 Erosion.

- (a) No work within the banks of the stream shall be conducted during or immediately following large rainfall events. For purposes of this Agreement, a "large rainfall event" is defined as rainfall totaling one quarter of 1-inch (1/4-inch) of rain in any 24-hour period.
- (b) All disturbed soils within the Project site shall be stabilized to reduce erosion potential, both during and following construction. Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. Any installation of non-erodible materials not described in the original Project description shall be coordinated with DFG.

2.10 Pollution.

- (a) During construction, the Permittee shall not dump any litter or construction debris within the stream zone. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.

- (b) Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream, shall be positioned over drip-pans.
- (c) Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish or wildlife resulting from Project-related activities, shall be prevented from contaminating the soil and/or entering the "Waters of the State".
- (d) The Permittee and all contractors shall be subject to the water pollution regulations found in the FGC Sections 5650 and 12015.

3. Compensatory Measures

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

3.1 Material and Debris. Excess material and debris shall be removed from the Project site.

3.2 Revegetation and Restoration.

- (a) Exposed slopes or exposed areas created by the Project on the stream banks shall be seeded (with weed-free straw or mulch) with a blend of a minimum of three (3) locally native grass species. One (1) or two (2) sterile non-native perennial grass species may be added to the seed mix provided that amount does not exceed 25 percent of the total seed mix by count. Locally native wildflower and/or shrub seeds may also be included in the seed mix. The seeding shall be completed as soon as possible, but no later than November 15 of the year construction ends. A seed mixture shall be submitted to DFG for approval prior to application. At the discretion of DFG, all exposed areas where seeding is considered unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon.
- (b) Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials shall be used for such stabilization. Any installation of non-erodible materials not described in the original Project description shall be coordinated with DFG. Coordination may include the negotiation of additional Agreement Measures for this activity.

3.3 Structures and Recontouring.

- (a) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high-water mark before such flows occur.

- (b) The Permittee shall remove and recontour any Project-constructed access corridors to the stream bottom to the original contour.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Obligations of the Permittee.

- (a) The Permittee shall have primary responsibility for monitoring compliance with all protective measures included as "Measures" in this Agreement. Protective measures must be implemented within the time periods indicated in the Agreement and the program described below.
- (b) The Permittee (or the Permittee's designee) shall ensure the implementation of the Measures of the Agreement, and shall monitor the effectiveness of these Measures.

4.2 Reports. The Permittee shall submit the following Reports to DFG:

- Construction/work schedule, submitted to DFG prior to Project commencement (Administrative Measure 1.9).
- Pre-activity survey results, submitted to DFG at least five (5) days prior to the start of Project activities (Avoidance and Minimization Measure 2.3(d)).
- If necessary, surveys results for California tiger salamander (Avoidance and Minimization Measures 2.3(e)).
- Results of surveys for burrowing owls, submitted to DFG at least five (5) days prior to Project initiation (Avoidance and Minimization Measure 2.3(g)).
- Results of plant surveys, submitted to DFG at least five (5) days prior to the start of Project activities (Avoidance and Minimization Measure 2.3(i)).
- Results of avian surveys for nesting birds if any construction is scheduled during the avian nesting season, submitted to DFG at least five (5) days prior to Project initiation (Avoidance and Minimization Measure 2.4(c)).
- A seed mixture to be used to control erosion (Compensatory Measure 3.2(a)).
- A Final Project Report to be submitted within 30 days after the Project is completed. The final report shall summarize the Project construction, including any problems relating to the protective measures of this Agreement. "Before and after" photo documentation of the Project site shall be required.

CONTACT INFORMATION

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

To Permittee:

Brock Buche
City of Fresno Water Division
1910 East University Avenue
Fresno, California 93703
Phone: (559) 621-5323
brock.buche@fresno.gov

To DFG:

Department of Fish and Game
Region 4 – Central Region
1234 East Shaw Avenue
Fresno, California 93710
Attn: Lake and Streambed Alteration Program – Kyle Stoner
Notification #1600-2012-0156-R4
Phone: (559) 243-4014 ext. 352
Fax: (559) 243-4020
kstoner@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

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

SUSPENSION AND REVOCATION

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

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee

an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

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

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

OTHER LEGAL OBLIGATIONS

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

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

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

AMENDMENT

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

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

TRANSFER AND ASSIGNMENT

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

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

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one (1) extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., Title 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

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

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall remain in effect for five (5) years beginning on the date signed by DFG, unless it is terminated or extended before then. All Measures in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any Measures specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

In approving this Agreement, the DFG is independently required to assess the applicability of CEQA. The features of this Agreement shall be considered as part of the overall Project description.

The Permittee's concurrence signature on this Agreement serves as confirmation to DFG that the activities conducted under the terms of this Agreement are consistent with the Project as described in the CEQA Mitigated Negative Declaration prepared by the City of Fresno as the Lead Agency on August 19, 2011 (State Clearinghouse No. 2011081073) and for which a Notice of Determination was filed on June 19, 2012 for the Raw Water Pipeline Project. A copy of the Mitigated Negative Declaration was provided to DFG by the Permittee.

DFG, as a CEQA Responsible Agency, shall make findings and submit a Notice of Determination to the State Clearinghouse upon signing this Agreement.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

Figure 1. Project Location USGS Quad Map.

AUTHORITY

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

AUTHORIZATION

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

CONCURRENCE

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

FOR CITY OF FRESNO

Brock Buche

Date

FOR DEPARTMENT OF FISH AND GAME

Jeffrey R. Single, Ph.D.
Regional Manager – Central Region

Date

Prepared by: Kyle Stoner
Environmental Scientist

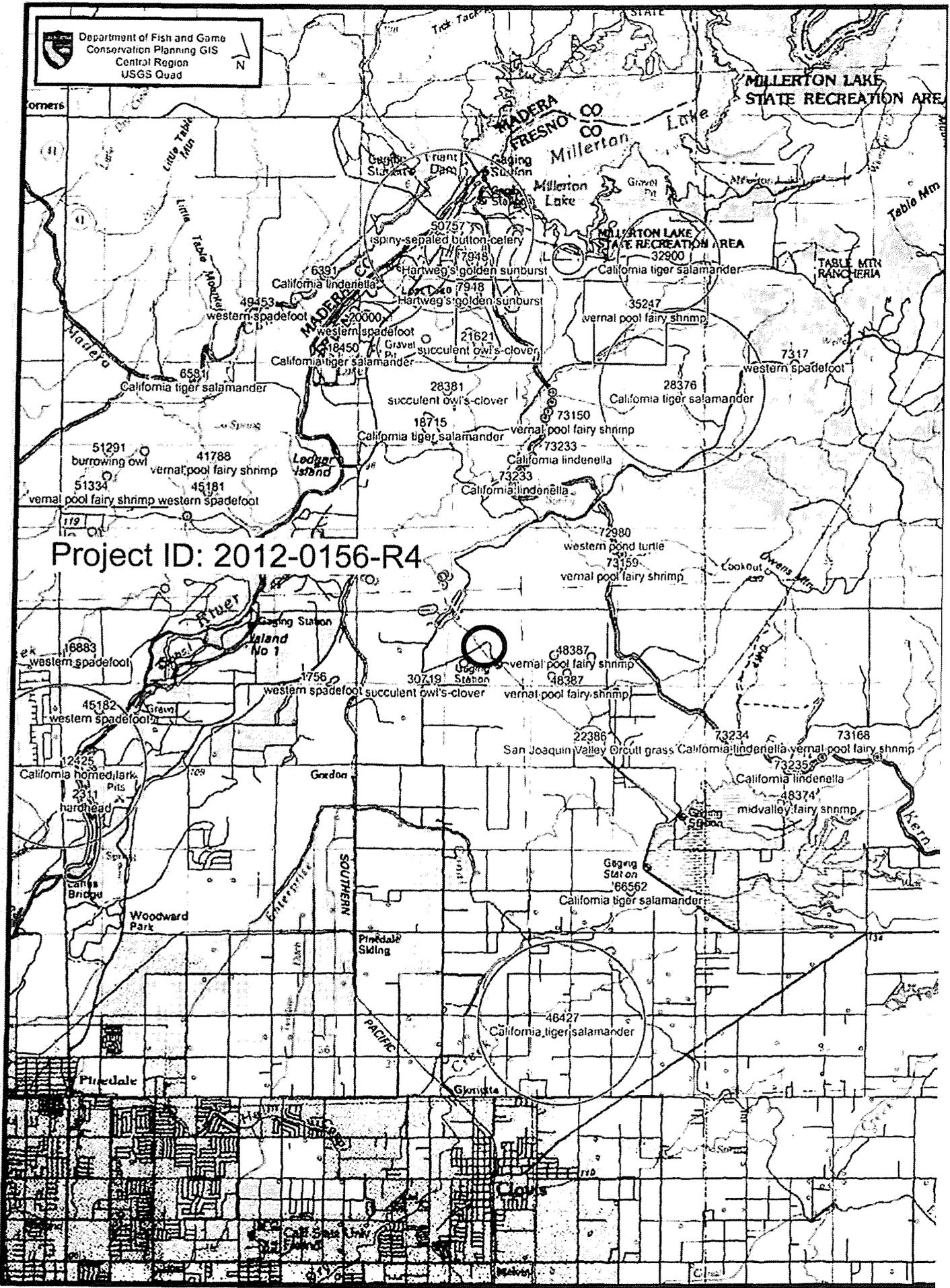
APPROVED AS TO FORM: *per A12-08798*
CITY OF FRESNO
CITY ATTORNEY'S OFFICE
BY: *[Signature]* *12/13/12*
SENIOR DEPUTY *Nancy A. Abies*

Figure 1

Exhibit A

This page intentionally left blank.

Department of Fish and Game
Conservation Planning GIS
Central Region
USGS Quad



Project ID: 2012-0156-R4

This page intentionally left blank.