

## AGENDA

Natomas Basin Conservancy  
Board of Directors  
Regular Meeting Agenda  
Wednesday, March 05, 2014, 4:00 pm - 7:00 pm  
2150 River Plaza Drive



### Item

#### A. Call to Order of the Regular Meeting of the Board of Directors

ADMIN: The Board President will call the meeting to order if a quorum is present. Announcements by the Board President or Executive Director may be made at this time.

#### B. Approval of the Minutes

CONSENT: The Board President will request approval of the minutes of the Board of Directors meeting of February 5, 2014.

#### C. Authorization to amend signature cards and related financial institution authorizations

CONSENT: Documents necessary for the Conservancy to conduct business with its financial institutions need to be updated from time-to-time, especially when officers are elected.

As has been done in prior years, this action authorizes the Conservancy's President, Vice President, Chief Financial Officer, Secretary and Assistant Secretary to sign bank signature cards and related authorizing documents for the Conservancy's Wells Fargo Bank, Wells Fargo Investments, Wells Fargo Advisors, City of Sacramento Treasurer's Office, U.S. Bank, American Century Investments, and T. Rowe Price accounts. (Some accounts are effectively closed, but there is often post-close activity that may require officer signature authority.)

#### D. Amending the Employment Agreement between the Conservancy and its Executive Director

ACTION: The Conservancy Board is asked to authorize the Board President to execute and deliver an amendment to the existing employment agreement between the Conservancy and its Executive Director. The Executive Director requests that his right to a cost of living increase and merit increase be waived so that no compensation adjustment is anticipated. The amendment would extend the agreement for a three-year period beginning March 15, 2014.

The Board is required to determine that changes to a chief executive officer's compensation, including the term of an employment agreement, are "just and reasonable." See excerpt from California Government Code, Section 12586(g):

The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

This item requests the Board of Directors authorize the Board President to execute and deliver an amendment to the Employment Agreement between the Conservancy and its Executive Director, John Roberts.

#### E. Receipt of bids for Ph. 4 portion of the BKS No. Course Project. Selection of contractor

ACTION: The Conservancy continues its program of systematically maintaining managed marsh complexes on Conservancy preserves in order to keep them fully functional, as is required by the NBHCP and MAPHCP. The present schedule of managed marsh maintenance projects is as follows:

Betts, Kismat and Silva tracts (BKS)  
North Course Channel Maintenance Schedule\*

- Phase One (completed in 2011)  
Ponds D, H, L, O and P
- Phase Two (completed in 2012)  
Ponds M and N
- Phase Three (completed for 2013)  
Pond Q
- Phase Four (proposed for 2014)  
Pond R

\*The BKS South Course channel maintenance was completed in 2009.

In considering the contracting arrangements to conduct the Phase 4 work, staff recommended the project be let for bid after determining that the Board's conditions for the 2011 selected contractor (CalSierra Construction, Inc.) being eligible for annual contract renewals could no longer be met.

Accordingly, at the February 5, 2014 Board of Directors meeting, the Board authorized Conservancy staff, working with its construction management consultant, Westervelt Ecological Services, LLC, to seek bids from preferred contractors so that staff could bring back to the Board bids to move forward with conducting the Pond R work. Staff and Westervelt will present the results of the bidding as well as a recommendation for the Board to consider for bid award.

This item requests that the Board of Directors consider the bids for the Pond R work, consider the recommended contractor resulting from those bids, select a contractor, and authorize its Executive Director to execute and deliver an agreement to engage the selected contractor to conduct the Pond R work.

**F. City of Sacramento report**

DISCUSSION: Report from the City of Sacramento regarding HCP-related activity and other topics.

**G. Financial statement review**

DISCUSSION: A financial statement update will be provided for the period ended January 31, 2014 (unaudited). Additional financial information will be provided. Staff will also update the Board on the progress of the audit of the Conservancy's December 31, 2013 financial statement.

**H. Update: Board request for a quantitative illustration showing Natomas Basin acreage allocations**

DISCUSSION: At its December 4, 2013 Board meeting, the Board requested that staff prepare an exhibit which articulates how the Natomas Basin's 53,537 acres are allocated in the NBHCP. Specifically, the Board wished to see how many acres were allocated for Permitted Development, how many were allocated for NBHCP and MAPHCP mitigation, how much was grandfathered, and how much was to remain in agriculture as committed by the Land Use Agencies, among other allocations.

Conservancy staff has worked with consulting economists Economic and Planning Systems (EPS) to present the requested information. The exhibits and illustrations provided to the Board at its February 5, 2014 Board meeting are a work in progress, and not final. However, the major land use and acreage allocations shown in the information are definite. The information provided the Board at the February meeting were based on the best available to date.

At the February 5, 2014 Board meeting, Board members requested that the matter be continued for lack of time for full consideration. This item returns the matter to the Board for continued consideration and discussion.

**I. Drought impact on Conservancy property**

DISCUSSION: Staff will share with the Board the situation with regard to the extended drought facing California and its impact on the Conservancy. Staff will also discuss the impact the drought is having on the Conservancy's groundwater wells and the costs of maintaining, servicing and operating them. These costs will be discussed with respect to the approved 2014 budget and whether budget adjustments should be agenda'd for the Board's action at the next Board meeting.

**J. Update: property tax research**

DISCUSSION: Staff will update the Board on the progress made in obtaining property tax relief.

- K. Federal Farm Bill: initial discussion on its possible implications for the Conservancy**  
DISCUSSION: Staff will have a brief discussion with the Board of Directors about the passage and signing into law the new federal farm legislation, which ends direct payments to growers and replaces it with an insurance-based program.
- L. Public Comments**  
Opportunity for members of the public to address the Conservancy's Board of Directors.
- M. Executive Session**  
Executive Session is scheduled to initiate discussion on performance review and evaluation of the Executive Director. Executive Session for the performance review is pursuant to Government Code Section 54957, Employee performance evaluation.
- N. Executive Director's Report**  
Various matters for Board members' general information will be presented by the Conservancy's Executive Director.
- O. Adjournment**  
Official adjournment of the meeting.
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**Minutes of a Regular Meeting<sup>1</sup>**  
of  
**The Natomas Basin Conservancy**

February 5, 2014  
Offices of the Natomas Basin Conservancy  
2150 River Plaza Drive, Suite 460  
Sacramento, CA  
4:00 p.m.

**BOARD MEMBERS  
PRESENT:**

= attended  
 = did not attend

- Mike Bradbury
- George Carpenter
- David Christophel
- William Edgar
- Kevin McRae (arrived 4:20 pm)
- Kay Backer
- Dan Silva
- Danelle Stylos
- Steven Willey

**STAFF/LEGAL COUNSEL  
PRESENT:**

Kim Burns, Valerie Huezo, Jeremy Lor, John Roberts, and Ed Quinn, Legal Counsel

**GUESTS:**

Nick Avdis, Attorney; Scott Mende, City of Sacramento; Isabel Domeyko, New Economics & Advisory; Vince Minto, Minto Appraisal & Consulting; Mark Young; Westervelt Ecological Services

**TAC:**

None

**CALL TO ORDER**

Christophel called the Regular Meeting of the Board of Directors to order, noting a quorum was present.

**ANNOUNCEMENTS**

Roberts announced that guests were present and wanted to get through their presentation first. Three board members needed to leave at 5:00 p.m.

**ACTION-REGULAR SESSION**

Approval of minutes and consent items. The Board President requested approval of the minutes of the Board of Directors meeting of December 4, 2013 and the consent items (see below).

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<sup>1</sup> Notice of meeting posted on TNBC website and front office marquee.

<p><b>B</b></p>		<p>Approval of the minutes</p>	<p>Consent</p>	<p>①</p>	<p>⊕ The Board President will request approval of the minutes and consent items of the Board of Directors meeting of December 4, 2013.</p>
<p><b>C</b></p>		<p>Natomas Central Mutual Water Company Annual Meeting of Shareholders</p>	<p>Consent</p>	<p>①</p>	<p>⊕ The Natomas Mutual Water Company's Annual Meeting of Shareholders will be held Tuesday, February 11, 2014, at the Four Points by Sheraton, 4900 Duckhorn Dr., Sacramento, CA 95834. Authorization for the Conservancy's Executive Director to vote the Conservancy's shares in the Board Election is requested. There are seven incumbent candidates for the Board's seven open seats, so that no board seat is contested.</p>
<p><b>D</b></p>		<p>Authorization for Farm Air to utilize landing strip on TNBC's Bianchi West tract</p>	<p>Consent</p>	<p>①</p>	<p>⊕ The only remaining agricultural aircraft operator in the Natomas Basin is Farm Air Flying Service, Inc. TNBC and its tenants use Farm Air, and without the firm operating in the Basin, costs would likely rise, and delays in planting crops could also result. (Rice is frequently seeded by air.) Farm Air has requested permission to use TNBC's Bianchi West tract landing strip for use in serving its customers, including TNBC and its tenants.</p> <p>Before acquiring the Bianchi West tract, TNBC completed Phase One and Phase Two environmental testing on the airstrip. This was done in order to ascertain the level, if any, of toxicants in the soil at the landing strip site. (The studies revealed acceptable levels, so TNBC moved forward with its acquisition of the tract.) With this baseline data, TNBC can keep track of the status of soils on and around the runway.</p> <p>Staff requests authorization to enter into an agreement with Farm Air Flying Service, Inc. to allow it to utilize TNBC's Bianchi West landing strip. The authorization would include the following restrictions, among others:</p> <ol style="list-style-type: none"> <li>1.) the authorization terminates December 31, 2014,</li> <li>2.) only seed and fertilizer are permitted to be used on the landing strip,</li> <li>3.) no pesticides may be used on the strip without the written authorization of TNBC's Executive Director,</li> <li>4.) only in-Basin sites may be served by Farm Air from the landing strip, and</li> <li>5.) a properly executed right-of-entry (ROE) agreement must be in TNBC's office prior to Farm Air's use of the landing strip, and that the ROE contain TNBC's standard indemnification, hold harmless protections, and that TNBC be named as an additional insured on the relevant Farm Air insurance policy or policies.</li> </ol> <p>The Executive Director expects no authorization</p>

				request for pesticide use on the landing strip. However, there could be special occasions that might warrant such authorization, but only for the use by TNBC or its contractors and tenants.
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(Res. 14.02.01) On a motion by Silva and a second by Stylos, the Board unanimously approved the minutes of the December 4, 2013 Board meeting and the consent items presented.

Board members

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Kay Backer        | <input checked="" type="checkbox"/> Kevin McRae    |
| <input checked="" type="checkbox"/> Mike Bradbury     | <input checked="" type="checkbox"/> Dan Silva      |
| <input checked="" type="checkbox"/> George Carpenter  | <input checked="" type="checkbox"/> Danelle Stylos |
| <input checked="" type="checkbox"/> David Christophel | <input checked="" type="checkbox"/> Steven Willey  |
| <input checked="" type="checkbox"/> William Edgar     |  |

Vote symbols

- = "aye" vote
- = "no" vote
- = not present
- = abstain or recuse

Release of bid package for Phase 4 portion of the BKS North Course Channel Maintenance Project. The Conservancy continues its program of systematically maintaining managed marsh complexes on Conservancy preserves in order to keep them fully functional, as is required by the NBHCP and MAPHCP. The present schedule of managed marsh maintenance projects is as follows:

Betts, Kismat and Silva tracts (BKS)  
North Course Channel Maintenance Schedule\*

- **Phase One** (completed in 2011)  
Ponds D, H, L, O and P
- **Phase Two** (completed in 2012)  
Ponds M and N
- **Phase Three** (completed for 2013)  
Pond Q
- **Phase Four** (proposed for 2014)  
Pond R

\*The BKS South Course channel maintenance was completed in 2009.

Following discussions at recent Board meetings with regard to contracting matters, the Board adopted a process for managed marsh channel maintenance projects and other construction projects that:

- 1.) adequately and appropriately manages costs,
- 2.) obtains reasonable certainty for the Conservancy, and
- 3.) fulfills the desire of the Conservancy to continue to have "tested the market," especially on significant contract items.

In considering the contracting arrangements to conduct the Phase 4 work, staff recommends the project be let for bid. Staff believes that the Board's conditions for the 2011 selected contractor (CalSierra Construction, Inc.) being eligible for annual contract renewals based on certain conditions can no longer be met. The conditions that staff believes cannot be met by the original 2011 bid from CalSierra include the movement of soil for \$2.25 per yard or lower. Therefore, since



staff believes the Board's terms and conditions for annual renewal cannot be met, solicitation of bids from qualified bidders is indicated.

A fresh bidding process would have the ancillary benefit of allowing the Conservancy to seek bids on the variable and unique soil structure at Pond R, to reflect substantially-changed fuel prices since the initial bid selection, as well as reflect changes in the economy which impact contractor availability and pricing.

This item requests that Conservancy staff, working with its construction management consultant, Westervelt Ecological Services, LLC, seek bids from preferred contractors so that staff can bring back to the Board bids to move forward with conducting the Pond R work.

(Res. 14.02.02) On a motion by MacRae and a second by Silva, the Board unanimously approved the proposed to release the bid package for Phase 4 of the BKS North Course Channel Maintenance Project.

Board members

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Kay Backer        | <input checked="" type="checkbox"/> Kevin McRae    |
| <input checked="" type="checkbox"/> Mike Bradbury     | <input checked="" type="checkbox"/> Dan Silva      |
| <input checked="" type="checkbox"/> George Carpenter  | <input checked="" type="checkbox"/> Danelle Stylos |
| <input checked="" type="checkbox"/> David Christophel | <input checked="" type="checkbox"/> Steven Willey  |
| <input checked="" type="checkbox"/> William Edgar     |  |

Vote symbols

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- = not present
- = abstain or recuse

Update policy regarding Board member meeting fees - alignment with City of Sacramento meeting fees. Since its inception, the Conservancy has provided a per-meeting fee to Board members attending official meetings of the Conservancy's Board of Directors or committees of the Board. In its resolution of August 4, 2004, the Board of Directors linked the amount of the per-fee payment with that of the City of Sacramento Planning Commission. The newly-named Planning and Design Commission has since seen its per-meeting fee adjusted.

If approved, this resolution would bring Board meeting fees in line with the existing policy. It also updates certain policies and procedures associated with the Board's per-meeting fee.

(Res. 14.02.03) On a motion by Backer and a second by Silva. The Board approved to update the policy regarding Board member meeting fees.

Board members

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Kay Backer        | <input checked="" type="checkbox"/> Kevin McRae    |
| <input checked="" type="checkbox"/> Mike Bradbury     | <input checked="" type="checkbox"/> Dan Silva      |
| <input checked="" type="checkbox"/> George Carpenter  | <input checked="" type="checkbox"/> Danelle Stylos |
| <input checked="" type="checkbox"/> David Christophel | <input checked="" type="checkbox"/> Steven Willey  |
| <input checked="" type="checkbox"/> William Edgar     |  |

Vote symbols

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George Carpenter, Dan Silva, Danelle Stylos, left the meeting at 5:15 p.m.

## DISCUSSION

City of Sacramento report. Mende gave a report regarding the HCP related activities and other topics.

Financial statement review. Burns provided a financial statement update for the period ended December 31, 2013 (unaudited).

Resolution of long-term receivable regarding Metro Air Park fee. After extensive consultation and research, Conservancy staff previously determined the need to record a long-term receivable on the Conservancy's financial statements in the amount of \$318,186.16 for Metro Air Park Tier 1 development. This action has been extensively discussed with Metro Air Park officials and the Conservancy's accountants and auditors. The Board has been briefed on the matter on several occasions.

The matter has been resolved with Metro Air Park officials determining that it wished to fully fund its entire Tier 1 mitigation obligation on a up-front basis.

Update: City Pool A funds re-allocation process. At its last several Board meetings, the Board discussed the Conservancy's reserve funds being held in a depository other than a financial institution. The Board's Finance Committee recommended that Conservancy management investigate this matter and make a recommendation as to disposition of these funds.

Staff recommended to the Committee and the Board that the funds in this reserve account be transferred into one or two of two traditional financial institution options. The first is with U.S. Bank and the second is with American Century Funds. No action was proposed that would place any of these funds in equities or other at-risk instruments. Rather, the funds would be invested in fixed income securities and cash. The Board authorized staff to execute this plan for reserve fund reallocation.

Staff updated the Board on the transition of these funds.

Conservancy endowment funds investment manager. The Conservancy's endowment funds are managed by T. Rowe Price. Representative Phil Burger of T. Rowe Price met with the Board for the purposes of providing the Board with the 2013 annual report on the Conservancy's endowment funds accounts.

Update: Board request for a quantitative illustration showing Natomas Basin acreage allocations. At its December 4, 2013 Board meeting, the Board requested that staff prepare an exhibit which articulates how the Natomas Basin's 53,537 acres are allocated in the NBHCP. Specifically, the Board wished to see how many acres were allocated for Permitted Development, how many were allocated for NBHCP and MAPHCP mitigation, how much was grandfathered, and how much was to remain in agriculture as committed by the Land Use Agencies, among other allocations. Conservancy staff has worked with consulting economists Economic and Planning Systems (EPS) to present the requested information. The exhibit and illustration provided to the Board is a work in progress, as in one or more cases there is conflicting information from source material. However, the major allocations shown in the information are definite. The information provided the Board at this meeting is based on the best available to date. The Board requested the matter be carried over to the next month's Board meeting.

Drought impact on Conservancy property. Staff shared with the Board the situation with regard to the extended drought facing California and its impact on the Conservancy. Special attention will be given to the impact the drought is having on the Conservancy's groundwater wells and the costs of maintaining, servicing and operating them. These costs were discussed with respect to the approved 2014 budget and whether budget adjustments should be made. The Board did not recommend adjusting the budget at this time.

Update: property tax research. Domeyko and Minto updated the Board on the progress made in obtaining property tax relief.

Update: request to City Council for adjustment to NBHCP fee for 2014. Staff updated the Board on the City Council's decision with respect the Conservancy request to adjust the NBHCP fee for 2014 in keeping with the Conservancy's 2014 budget and the NBHCP Finance Model update.

Announcement of election of officers at the March 5, 2014 Board of Directors meeting. Staff announced the Annual Meeting of the Corporation at the March 5, 2014 Board of Directors meeting. This meeting typically is used to elect officers for the year.

## **PUBLIC COMMENTS**

There were no public comments heard.

## **EXECUTIVE SESSION**

No Executive Session was scheduled.

## **EXECUTIVE DIRECTOR'S REPORT**

Various matters for Board members' general information was presented by the Conservancy's Executive Director.

## **ADJOURNMENT**

(Res.14.02.04) On a motion by Edgar and a second by Backer, the Board voted unanimously to adjourn the meeting at 6:20 p.m.

### Board members

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Kay Backer        | <input checked="" type="checkbox"/> Kevin McRae    |
| <input checked="" type="checkbox"/> Mike Bradbury     | <input checked="" type="checkbox"/> Dan Silva      |
| <input checked="" type="checkbox"/> George Carpenter  | <input checked="" type="checkbox"/> Danelle Stylos |
| <input checked="" type="checkbox"/> David Christophel | <input checked="" type="checkbox"/> Steven Willey  |
| <input checked="" type="checkbox"/> William Edgar     |  |

### Vote symbols

- = "aye" vote
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- = abstain or recuse

**ATTEST:**

\_\_\_\_\_  
Danelle Stylos, Secretary

\_\_\_\_\_  
date

**RESOLUTION NO. 14.03. \_\_**

**ADOPTED BY THE BOARD OF DIRECTORS OF  
THE NATOMAS BASIN CONSERVANCY  
A CALIFORNIA NON-PROFIT PUBLIC BENEFIT CORPORATION,  
ON MARCH 5, 2014**

**A RESOLUTION AUTHORIZING CONSERVANCY OFFICERS TO SIGN ON ALL  
CONSERVANCY FINANCIAL ACCOUNTS**

I, \_\_\_\_\_, Secretary of The Natomas Basin Conservancy, A California Non-Profit Public Benefit Corporation (hereinafter "Corporation"), hereby certify:

1. I am a duly elected, qualified and acting Secretary of the Corporation and am charged with maintaining the records, minutes and seal of the Corporation.

2. Pursuant to the Corporation's By-Laws, as amended, the following named individuals were designated and appointed to the office(s) indicated below, and continue to hold such office(s) at this time, and the signature(s) set forth opposite the name(s) are genuine signatures.

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
VICE PRESIDENT

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TREASURER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
SIGNATURE

John Roberts  
\_\_\_\_\_  
ASSISTANT SECRETARY

\_\_\_\_\_  
SIGNATURE

IN WITNESS WHEREOF, I have signed this certificate (and affixed the seal of the Corporation) on the date shown below:

\_\_\_\_\_  
, SECRETARY

\_\_\_\_\_  
DATE

Corporate Seal:



February 21, 2014

**MEMO**

**TO:**

David Christophel, Board President  
George Carpenter, Chair, Compensation and Governance Committee

**FROM:** John Roberts 

**RE:** Update on CEO's employment agreement; 2014

Background. In the past, on or about the anniversary of my employment with the Conservancy, the Conservancy's Board of Directors has set in motion the process of conducting a performance evaluation of its Executive Director. At the same time, it has also considered the Employment Agreement ("Agreement") that exists between the Conservancy and its Executive Director. It is that time again this year for any evaluation the Conservancy's Board of Directors may wish to conduct.

Request for renewal of Employment Agreement. I would like to renew the Agreement between the Conservancy and me. Since the beginning of my employment with the Conservancy, the usual term of the Agreement has been for three (3) years.

Waiver request on the Agreement's merit and cost of living increase. Last year was the first time since 2007 that I did not request that the Board waive my right for consideration of a merit and cost of living increase, as provided for by the Agreement. Accordingly, the Board authorized that the Agreement be amended to include a four percent (4%) increase to my compensation. This year, I request that we amend the Agreement between me and the Conservancy and that that portion of the Agreement that calls for consideration of a merit and cost of living increase be waived.

Request on support for continuing education. Prior employers encouraged me to participate in executive education programs and industry organizations. In previous years, we discussed this and the Board agreed that executive education was appropriate. While I did not participate in any such educational activities during the past year, I am hopeful that the Board will continue to support my efforts to get and remain current with industry issues in this context, especially in the areas of non-profit corporation law, corporate governance, organizational leadership and risk management.

Conclusion.

Thanks for giving me the opportunity to help the Conservancy serve its mission. Please call on me if more information is needed.

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March 15.



February 20, 2014

## **The Natomas Basin Conservancy**

Natomas Basin Habitat Conservation Plan (NBHCP)

*Betts-Kismat-Silva (BKS) Preserve*

*Phase 4 – Pond R Giant Garter Snake (GGS) Habitat Maintenance*

### **Pre-Bid Meeting Agenda**

- Contractor Sign-in
- Introductions
- BKS Preserve & NBHCP Overview
- Coordination with on-going maintenance
- Pond R Packet
  - Scope of Work
  - Bid Item Sheet
  - Permit Conditions
  - Contracting / Schedule
- Questions

A site tour around Pond R may be done after the meeting for Contractors wishing to view the habitat.



# TABLE OF CONTENTS

Information for Bidders

## EXHIBITS

- A: Project Description & Scope of Work
- B: Drawings
- C: Bid Form & Items
- D: Contract Agreement (SAMPLE)
- E: Accident Prevention Rules
- F: Performance Bond
- G: Acknowledgement & Issued Permits

## **INFORMATION FOR BIDDERS**

### **I. The process for submitting expressions of interests and bids**

The Conservancy is asking a few of its knowledgeable and experienced contractors to demonstrate an interest in the giant garter snake (GGS) habitat maintenance project and to propose a cost to conduct the work. The Conservancy seeks an itemized bid submittal that will then be a lump sum bid with a not-to-exceed contract amount. Estimates and information on the site provided by the Conservancy are not to be construed as definitive, and contractors making a proposal are encouraged to conduct their own calculations and formulate their own estimates of job costs and conditions. No additional payment will be made to the contractor selected to do the work beyond the contractor's bid.<sup>1</sup>

Contractors that are selected to conduct this work are contractors that have demonstrated:

- 1.) their ability to work well with the Conservancy in previous projects,
- 2.) their awareness of the sensitive environment the Conservancy works in,
- 3.) their ability to adequately train, or have cooperated in training, its workers so they are mindful of Conservancy issues,
- 4.) their ability to appropriately manage issues that arise during construction and have demonstrated they can creatively deal with these,
- 5.) in the course of previous work for the Conservancy, they have not burdened the Conservancy with excessive or unreasonable change orders,
- 6.) their ability to understand the requirements in the provided bid materials, and,
- 7.) their charges to the Conservancy on previous jobs have been fair and reasonable.

### **II. Documentation from the Conservancy to initiate work**

Documents include, at a minimum:

1. this document, and
2. a standard agreement providing for and naming the Conservancy, its Board of Directors and staff, and its design consultant(s) as additional insured, providing for indemnification, and hold harmless. Insurance coverage is requested at \$2,000,000.00 (two million dollars) to be presented to the firm whose proposal and bid are accepted by the Conservancy.

### **III. Performance**

The Conservancy will withhold 15 percent of the final contract amount pending verification by a third-party expert of the Conservancy's choosing that the depths of the channels meet the minimum required in this agreement (per plan, e.g., a minimum of five feet below static water line), that channel-side roads have been compacted to an acceptable degree (to minimize chances of post-maintenance sloughing and settling) and that fill has been placed and finished acceptably.

<sup>1</sup> The Conservancy discourages any expectations it will accept a change order.

The Conservancy will complete its final review of this work no longer than 30 days from contractor's notification the work has been completed.

#### **IV. Timing**

The Conservancy requests that hard-copy proposals with a completed bid be returned **by March 4, 2014 on or before 3:00 p.m. Pacific Daylight Savings Time at the Conservancy's office.** Proposals with bids received after that time and date will not be considered for this project. The Conservancy retains the right to reject any and all bids, and the decision of the Conservancy on the selection of the contractor is final. The Conservancy's Board of Directors (Board) meets on Wednesday, March 5, 2014, at which time it will approve the decision on contractor selection or reject all bids and proposals.

If funding issues relating to the current drought are not resolved before the Board meeting, then the Conservancy reserves the right to cancel the bid / award for 2014 and to possibly re-bid the project in 2015. No compensation will be given to contractors for preparing or submitting a bid. Bids submitted will be considered property of the Conservancy, but will not be subject to public review until an award contract with the most responsive bidder is completed.

#### **V. Contact Information**

The Conservancy staff is available for extended walking tour of the project site with prospective contractors prior to bid submittals. Simply contact John Roberts at the Conservancy to arrange for a site visit.

**John Roberts**  
**The Natomas Basin Conservancy**  
**2150 River Plaza Drive, Suite 460**  
**Sacramento, CA 95833**  
**916.649.3331**  
**[jroberts@natomasbasin.org](mailto:jroberts@natomasbasin.org)**

**Betts-Kismat-Silva (BKS) Preserve**  
**Giant Garter Snake (GGS) Habitat Maintenance Activity**  
**The Natomas Basin Conservancy (Conservancy)<sup>1</sup>**  
**February 2014**

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**Project Location**

The Betts-Kismat-Silva (BKS) pond and maintenance activity is located on the 338-acre preserve in Sacramento and Sutter Counties, California. The project is located west of the East Levee Road, with the closest cross streets being Riego Road to the north and Elverta Road to the south. The project is in sections 11 and 12, Township 10 North, Range 4 East, Mt. Diablo Meridian, and in Taylor Monument and Rio Linda Quadrangles. The property is owned and managed by the Conservancy.

Irrigation drainage ditches bound the BKS Habitat Preserve (“Preserve”) on the north, west and a portion of the southern property boundaries. The Natomas East Main Drainage Canal is located to the east of the portion area. Access to the Preserve is along an easement from the southeastern corner of the property off, of East Levee Road, and runs north to the pasture fence, then west between the pasture and the rice field on the adjoining property. Stolt Sea Farm is located to the northeast and discharges well water into a drainage ditch that enters the site on the east.

From Sacramento, drive north on Interstate 5 toward Highway 99; proceed onto Highway 99 North from Interstate 5; exit right onto Elverta Rd. and go 2.8 miles; turn left onto East Levee Rd.; travel seven-tenths of a mile before making a slight left onto a private drive that slopes down and to left from the East Levee Rd.; follow the private drive to the project entrance.

**Description of Preserve Area**

The Betts, Kismat and Silva (BKS) property tracts make up the Preserve. This Preserve was created in 2001 to provide habitat for endangered, threatened and sensitive plant and animal species listed in the Natomas Basin Habitat Conservation Plan (NBHCP). The two main species of concern are the giant garter snake (GGS) and the Swainson’s hawk. 134 acres of new wetlands (also known as, managed marsh) were created in 2001 from the original 8 acres, and were excavated in existing, upland pasture to provide aquatic habitat (i.e., managed marsh) for the GGS. These created wetlands are filled via drainage from the adjacent fish farm’s business, which uses groundwater wells for operations. The remaining upland area and irrigated pasture are managed for the Swainson’s hawk.

**Pond R Scope of Work**

The purpose of the habitat maintenance activity is to comply with the NBHCP’s requirement to provide optimal habitat features for the GGS by periodically maintaining overgrown marsh vegetation and maintaining adequate water depths in the created GGS managed marsh. The actual work has been conducted in phases and is currently planned only on selected portions of the “north course” portion of the preserve. The scope of work area is designated as Pond R (see attached maintenance plan / diagram, or the “Plan”) and is referred to as Phase 4 – Pond R of the BKS north course channel clearing project.

*Site Preparation*

Prior to construction, the staging area will be prepared to handle the potential pollutants that could spill from equipment and materials. This preparation will include best management practices (BMPs) consistent with the Storm Water Pollution Prevention Plan (SWPPP), state, federal and local laws, and permit requirements. BMPs may include, but are not limited to, containment areas for fuel, portable lavatory & wash station, drip pans, covered trash receptacles, gravel entry, and straw wattles between staging and the habitat area(s).

### *Earthwork*

The earthwork will include topsoil salvage and marsh/open water excavation in the habitat waterway. The topsoil will be collected from the new seasonal wetlands and re-applied on the new upland peninsulas and spoil areas.

In general, the habitat waterway on the north course is to be excavated on average to a depth of five feet below current static water level (or as shown on the plans), but not deeper than 5.5 feet, unless designated otherwise on the Plan. The water 'channel' features in the ponds will have 22-foot or 16-foot wide bottoms as indicated on the Plan, and the bottoms will be flat from side-to-side, and may be tapered slightly towards the outfall structure in order to facilitate drainage. The channel bank cut slopes vary, use cross sections as reference. Excess cut dirt would be placed in primary and secondary areas. The primary areas are to re-construct tule benches or upland peninsulas and secondary areas are in uplands adjacent to and east of the Pond R marsh to enhance the upland features. The new upland slope shall vary between a 2:1 and 3:1 slope. The upland slope is to create conditions for snakes to easily escape predators. The top of the fill on any channel-side bank should not exceed eight (8) feet above the design water line. The steep slope is to promote ground squirrel burrow creation that would provide future GGS use.

If a sand lens is discovered in the excavation area, the sand will be removed to 12 inches and spoiled in the upland area, and suitable native material cut from Pond R will be used to re-pack the area. The area will be reviewed by the Conservancy prior to any authorization of work.

### *Habitat Rock & Stone Fill*

There are multiple locations that need Habitat Rock as part of the maintenance. These locations are for slope protection and habitat enhancement. The Habitat Rock size will be 6" - 15" rip-rap and will be needed in the following locations:

- (1) Three existing water control structures (WCS) of Ponds O, P & R
- (2) One-replacement WCS on Pond Q,
- (3) Fetch prevention locations (see plans for location)
- (4) Habitat enhancement mound

At the four WCSs, the Habitat Rock will be placed on the marsh side of Pond R. Rock at each WCS will be placed to create a "stepping-down" pattern for maintenance workers to more easily access and adjust flashboards and inspect structures.

Fetch prevention rock will be placed up the slope from the edge of the tule bench (roughly 15-foot wide x 5-foot tall) to minimize the erosion caused by wave action (fetch) and to provide GGS refugia.

The habitat mound (roughly 8-foot diameter x 4-foot high center) is to create additional basking and hibernacula areas for the GGS and will be placed along the high water / upland edge.

Stone fill will be used to rebuild the existing spillway from Pond Q to Pond R. The stone fill material will be mixed with native clay soil collected during the GGS maintenance at roughly a 5:1 rock to soil ratio, applied over a geotechnical fabric and wheel-rolled compacted. New geotechnical fabric will be Marafi 500x or equivalent.

The Habitat Rock and Stone Fill will be from Nordic Industries' quarry.

### *Tule Salvage*

Tule salvage will be from existing perennial marsh ground located in Ponds O, P, Q and / or R at locations designated after water draw-down. The tule salvage will be to collect intact tule clumps (i.e., soil and rhizomes) at a minimum 24"x24"x24" size and plant collected clumps on the new tule benches at roughly 15-foot, triangular spacing. Tule clumps will be half buried (i.e., 12 inches below and above the respective tule bench grade). Tule clumps will be watered until Pond R flood-up to prevent desiccation. Tule clump collection, transport and installation shall be done to have minimum transplant damage. Specific locations will be field verified with the Client's representative before collection occurs.

### *Pipe Structure*

The replacement pipe for the southern Pond Q WCS and the pipe extension on the western Pond Q WCS will be corrugated, high-density polyethylene (HDPE) pipe and will match the existing, respective pipe diameters. The existing WCS & pipe stub on the southern Pond Q outlet will be reused. Contractor is responsible for 100% replacement of the WCS & stub if this is damaged during demolition. The HDPE pipe will be connected to the existing pipe ends using water tight poly-seals (a.k.a. 'sticky bands') and installed per manufacture's requirements. Inspection of the installed seals by the Conservancy is required before backfilling pipe. Backfill of the pipes will use native clay soil excavated from the marsh complex and shall be free of organic material. Backfill will be done in 6-inch lifts, compacted with either a 'jumping jack' or 'sheep's foot roller' and done without vibrating pipe to create a gap under the pipe. Contractor is responsible for any re-installation resulting from leaking pipe bedding broken seals.

*Erosion Control*

In addition to rock, dust control water and construction timing, the erosion control measures include installing fiber rolls, seed and straw. The fiber roll will be an 8-inch diameter straw tube or 'wattle' wrapped with a degradable natural fiber netting (e.g., burlap). Secured with 1" x 1" x 18" wood stakes at maximum 4-foot on-center and at ends. Provide 12-inch overlap fiber rolls at joints. Follow the specific installation directions per the manufacture's recommendations, as modified by field observations to account for actual site conditions.

The seed will be installed by both mechanical (drill seed) and broadcast (hand-placed) processes. The drill seeding application will be done from the tops of the new upland banks (roughly 10 feet upslope from the designed water edge) and the upland spoils areas. The hand-placed seeding will be from the designed water edge to the 10-foot line). The seed will be composed of the following species and quantities for each respective area:

**DRILL SEED MATERIALS**

Seed Source: Hedgerow Farms			Pounds Per Acre
Item	Common Name	Botanical Name	
a	California brome	<i>Bromus carinatus</i>	5
b	blue wildrye	<i>Elymus glaucus</i>	3
c	California meadow barley	<i>Hordeum brachyantherum ssp. Californicum</i>	5
d	purple needlegrass*	<i>Stipa pulchra</i>	3
e	one-sided bluegrass	<i>Poa secunda ssp. secunda</i>	2
			18

\*Seed to be fungicide treated for smut control, contractor's crew will need appropriate gloves when handling seed

**HAND-PLACED MATERIALS**

Seed Source: Hedgerow Farms			Pounds Per Acre
Item	Common Name	Botanical Name	
f	blue wildrye	<i>Elymus glaucus</i>	12
g	California meadow barley	<i>Hordeum brachyantherum ssp. Californicum</i>	14
			26

Straw will be certified noxious weed-free, native grass and applied at 1,000 pounds per acre on the drill seed areas and at 1,500 pounds per acre on the hand-place seed areas. The straw may be mechanically applied in the drill seed area but shall be hand applied in the hand seed area. Native grass straw may be obtained from Hedgerow Farms. The specific species will be determined two-weeks prior to seeding. Seeding and straw applications will be done after October 15<sup>th</sup> and before October 31<sup>st</sup>.

*Schedule*

The primary best management practice (BMP) to minimize the potential impacts to waters of the United States will be timing. The Conservancy will open up the Pond R outlet and pump out surplus water to a point where pond water can no longer be discharged. The managed marsh will be drained and checked for snakes, by the Conservancy's representative, for a minimum of 14 days before any maintenance activities begin. The Contractor shall be responsible of any supplemental dewatering after this point through the end of construction. Salvaged of tule clumps will be planted where appropriate after the earthwork is completed. The allowable construction window is anticipated to be between May 1, 2014 and October 31, 2014. The Project is scheduled to begin on, or shortly thereafter, May 1<sup>st</sup>, with grading, structure & rock work to be completed as soon as possible to reduce impacts on GGS utilization of the Preserve.

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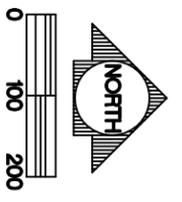
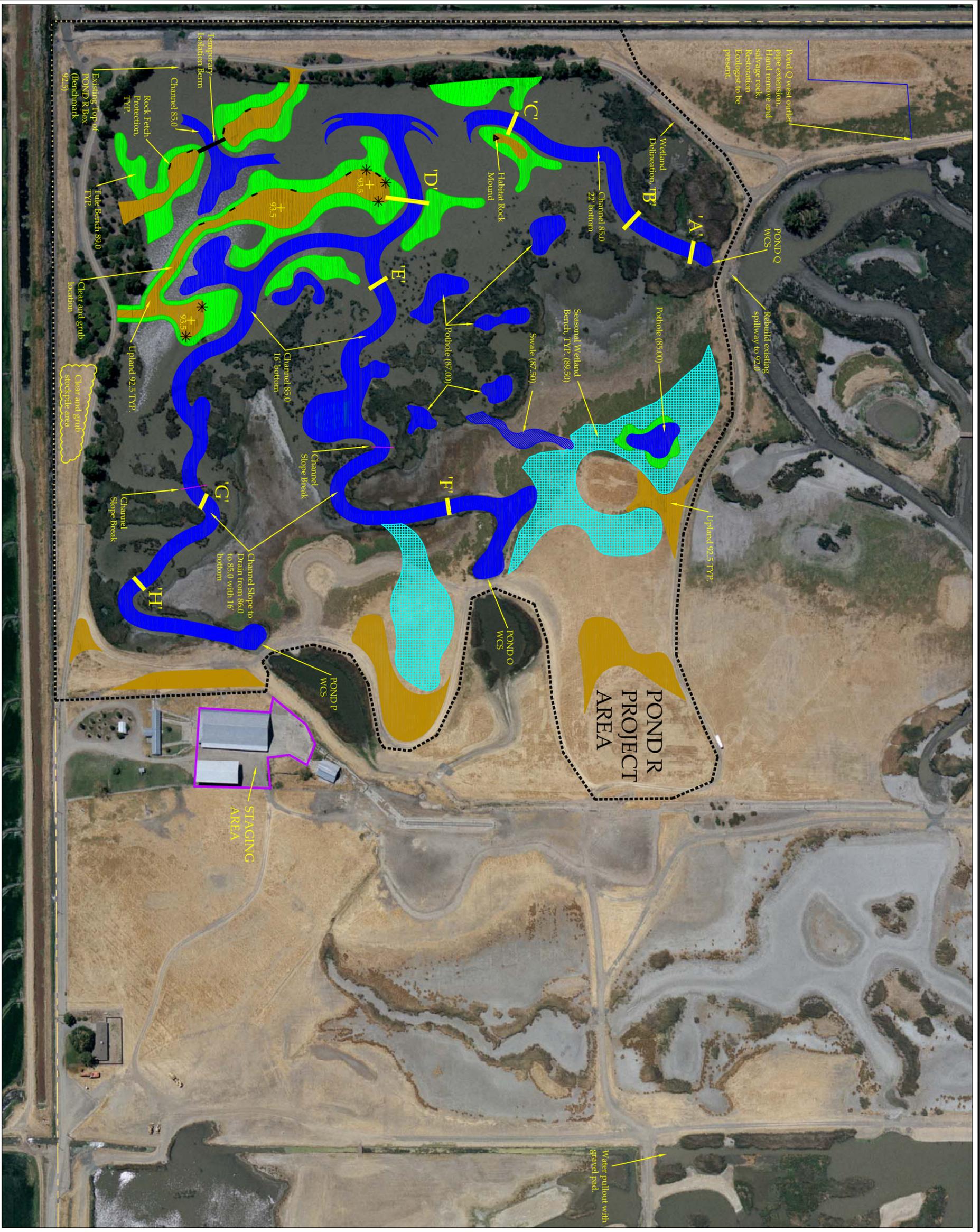
1 The Natomas Basin Conservancy  
Contact: John Roberts  
2150 River Plaza Drive, Suite 460  
Sacramento, CA 95833  
916.649.3331  
jroberts@natomasbasin.org

## **B. DRAWINGS**

**Drawings prepared by Westervelt Ecological Services, LLC**

**Plan Set Dated: February 2014**

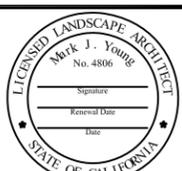
The attached exhibits include the Plan, cross-sections and detail that highlights the general project work areas and structures that are to be completed.



- Uplands 'Spoils Area'
- New Tule Bench
- Open Water
- New Seasonal Wetland
- Shallow Swale
- Tree Placement
- Habitat Rock Mound
- Erosion Protection Rock

## BKS - POND R MAINTENANCE

Sacramento County, California



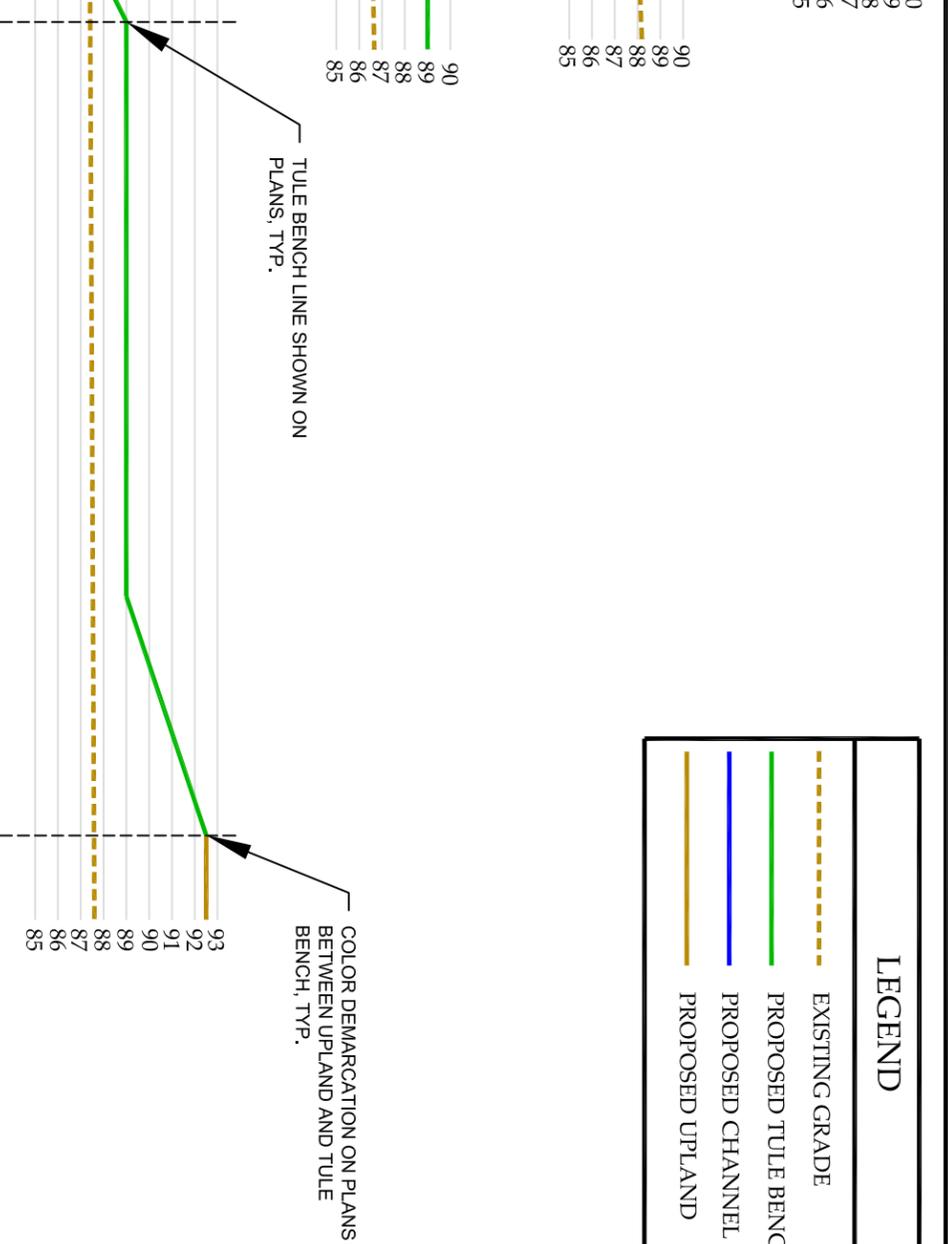
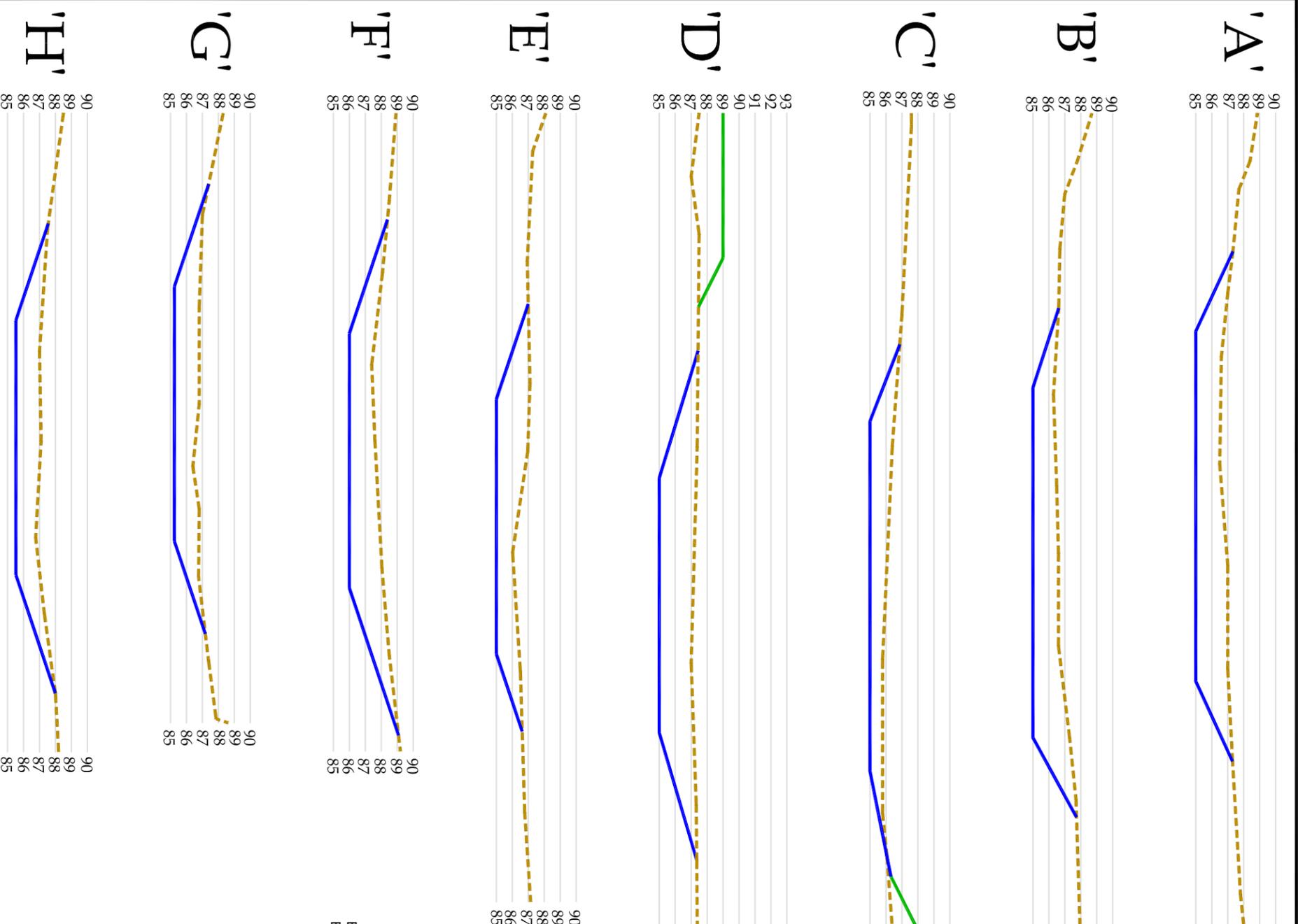
600 N. Market Blvd, Ste 3  
 Sacramento, CA 95834  
 Phone: (916) 646-3644  
 Fax: (916) 646-3675  
 www.westervelt.com

Drawing Number:	Checked By:	Drawn By:	Date:
			2-18-2014

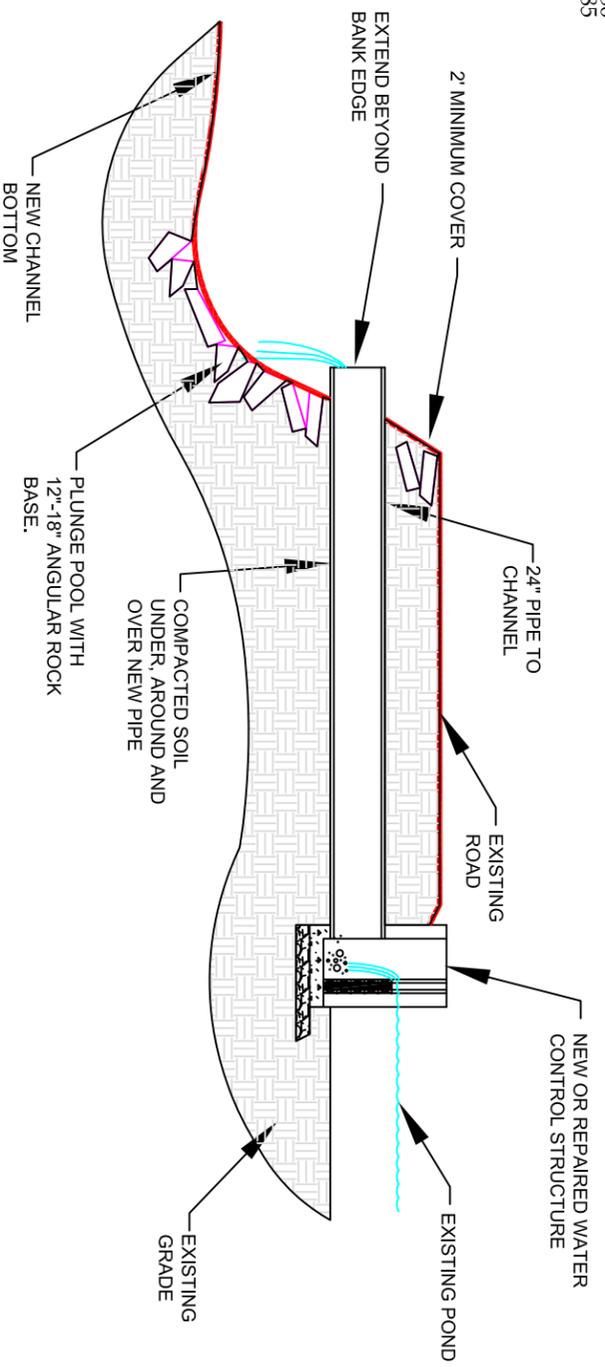
### REVISIONS

Revision Number:	Description:

Sheet Number



LEGEND	
	EXISTING GRADE
	PROPOSED TILING BENCH
	PROPOSED CHANNEL
	PROPOSED UPLAND



**Water Control Structure**

For Reference Only  
Not to Scale

**BKS - POND R MAINTENANCE**

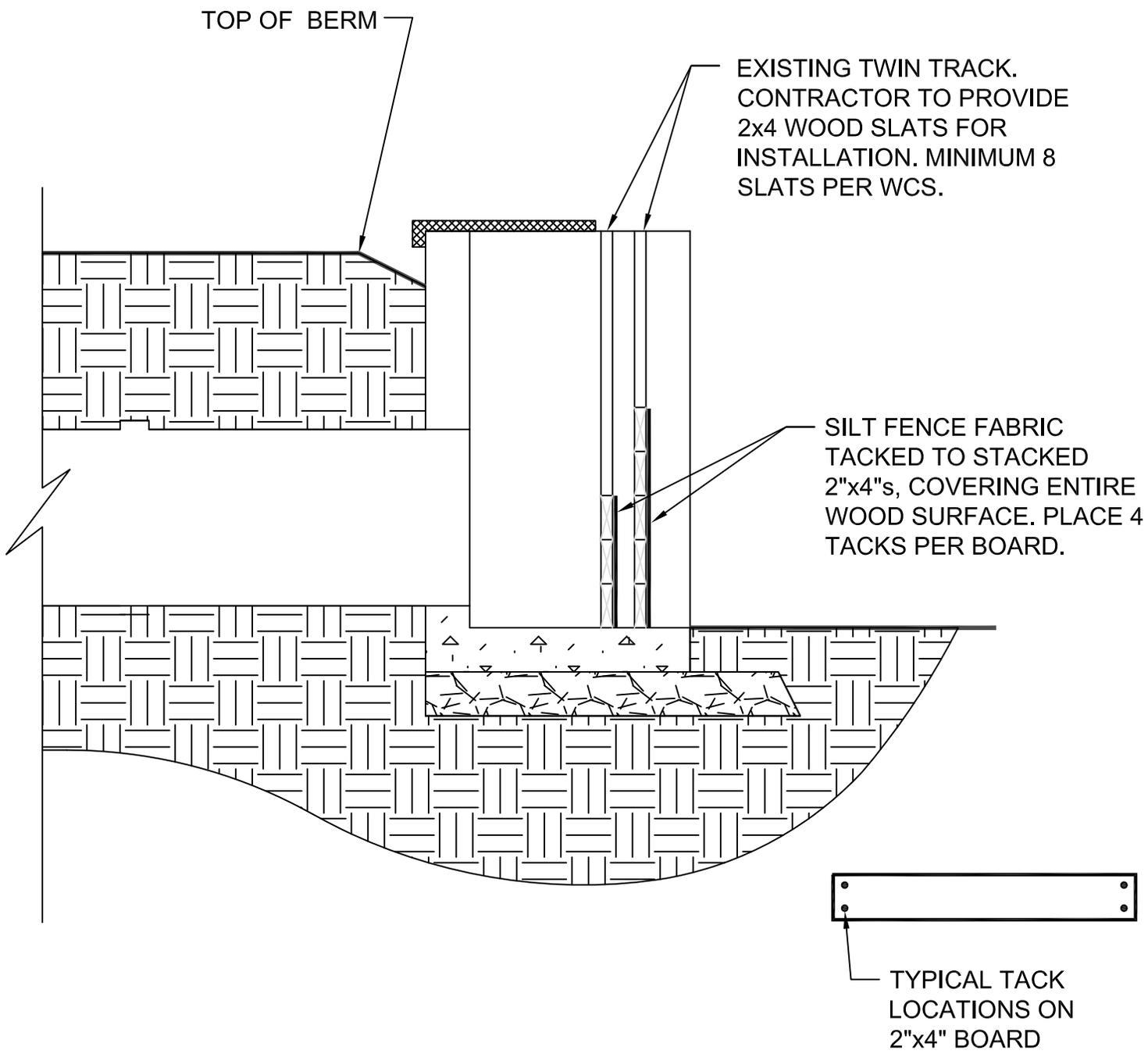
Sacramento County, California



600 N. Market Blvd, Ste 3  
Sacramento, CA 95834  
Phone: (916) 646-3644  
Fax: (916) 646-3675  
www.westervelt.com

Drawing Number:	
Checked By:	
Drawn By:	
Date:	2-18-2014
REVISIONS	

Sheet Number	
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# SILT FENCE ASSEMBLY AT WCS OUTLET

**C. BID**

**REFER TO & COMPLETE ATTACHED BID TABLE**

**RESPECTFULLY SUBMITTED:**

Name of Company: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

California License No. \_\_\_\_\_ Expires: \_\_\_\_\_

Bid Limit: \_\_\_\_\_ Classification: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Bond Company: \_\_\_\_\_ Limit: \_\_\_\_\_

Project Name: BKS North Course: Phase 4 - Pond R

# CONSTRUCTION BID ESTIMATE

Prepared Date: \_\_\_\_\_  
 Prepared By: \_\_\_\_\_  
 Company: \_\_\_\_\_

Pond R Re-Habilitated Wetland Area  
 55 Size (AC)  
 Channel (LF)

ITEM	POND R QTY	DESCRIPTION	UNIT	UNIT COST	POND R ITEM COST	REMARKS
<b>MOBILIZATION &amp; PROJECT START-UP</b>						
1	1	Mobilization / Demobilization	%	\$ -	\$ -	Incl staging area prep & maintenance
2	1	Performance Bond	%	\$ -	\$ -	Bond for construction implementation
3				\$ -	\$ -	
<b>SITE PREPARATION</b>						
4	540	Tule Salvage, 24-IN min clump (incl replanting)	EA	\$ -	\$ -	Incl temp irrigation during pre-flood-up period
5	1	Clear & Grub (incl deposit in debris pile)	LS	\$ -	\$ -	Wood & vegetation only, remove other material
6	1390	Salvage 4-IN seasonal wetland topsoil (incl haul)	CY	\$ -	\$ -	Apply to upland fill areas as finish grade topsoil
<b>EXCAVATION &amp; FILL MATERIAL</b>						
7	9049	Channel Excavation Top (incl haul)	CY	\$ -	\$ -	Incl fill placement & rough grading, avg. 2.0-FT cut
8	5781	Channel Excavation Bottom (incl haul)	CY	\$ -	\$ -	Incl fill placement & rough grading, avg. 1.5-FT cut
9	2304	Pothole Excavation (incl haul)	CY	\$ -	\$ -	Incl fill placement & rough grading, avg. 2.0-FT cut
10	3240	Seasonal Wetland Bench and Swales (incl haul)	CY	\$ -	\$ -	Incl fill placement & rough grading, avg. 1.0-FT cut
11				\$ -	\$ -	
12				\$ -	\$ -	
13	51	6"x15"- Rock Repair - WCS (incl haul)	TN	\$ -	\$ -	Existing WCS (O, P & R), size approx. 15x12x1.5
14	17	6"x15"- Rock Habitat Mound (incl haul)	TN	\$ -	\$ -	Habitat Mound size approx. 8x8x4
15	78	6"x15"- Rock Repair - Fetch (incl haul)	TN	\$ -	\$ -	Erosion Protection, size approx. 15x5x1.5
16	17	1.5"x5" Stonefill mixed with clay (incl haul)	TN	\$ -	\$ -	Rebuild Pond Q Spillway, size approx. 12x45x0.5
17				\$ -	\$ -	
18				\$ -	\$ -	
19	4	Seedbed Preparation / Finish Grading	AC	\$ -	\$ -	Disc & ring roll seed areas
<b>STRUCTURES &amp; WATER SUPPLY</b>						
20	1	Replace Pond Q's south HDPE Pipe (incl demo)	LS	\$ -	\$ -	30-IN x 40-FT incl new 6"x15" rock & pipe disposal
21	1	Salvage Rock (incl re-application to new slope)	LS	\$ -	\$ -	Existing rock at Pond Q west outlet
22	1	Extend Pond Q's west HDPE Pipe (incl soil work)	LS	\$ -	\$ -	24-IN x 20-FT
23					\$ -	
24					\$ -	
25					\$ -	
26					\$ -	
27					\$ -	
<b>PLANTING &amp; EROSION CONTROL</b>						
28	40	Straw Wattles	LF	\$ -	\$ -	Toe of fill slopes on exterior of berm at debris area
29	1	Silt Fence Assembly at WCS Outlet (Pond R)	EA	\$ -	\$ -	Install per detail
30	3	Native Seed (inc drill seed installation)	AC	\$ -	\$ -	Upland spoils & haul routes, > 10' from water
31	3	Native Straw (1,000 # / AC)	AC	\$ -	\$ -	On areas over seed, no tacifier
32	1	Native Seed & Straw - hand-placed on uplands	AC	\$ -	\$ -	0-10' up from water, rake in & cover w/ straw
33	5	Tree Planting Assembly installation, 1-gal plant	EA	\$ -	\$ -	Soil prep, tree planting & rabbit protection 'cage'
<b>MISCELLANEOUS ITEMS</b>						
34	1	Dust Control (incl rock/gravel at stand pipe)	LS	\$ -	\$ -	To meet SWPPP & air quality requirements
35					\$ -	
36					\$ -	
37					\$ -	
<b>ALTERNATIVE BID ITEMS</b>						
38	1500	Sand Lense Sealing, min. 12-IN (incl compact)	CY	\$ -	\$ -	Estimate, excavate & repack Pond R native soil
39	1	Build & Remove Temporary Isolation Berm	LS	\$ -	\$ -	See Plan for location
40					\$ -	
41					\$ -	
42		<b>CONSTRUCTION PROPOSAL TOTAL</b>			<b>\$ -</b>	

## D. CONTRACT AGREEMENT

### BETTS, KISMAT & SILVA (BKS) PRESERVE NORTH COURSE PHASE 4 - POND R

This Agreement ("Agreement") is made as of **ADD DATE**, 2014, ("Effective Date") by and between The Natomas Basin Conservancy, hereinafter referred to as "Owner," whose address is 2150 River Plaza Drive, Suite 460, Sacramento, CA 95833, and **ADD CONTRACTOR NAME**, hereinafter referred to as "Contractor," whose address is **ADD**. Owner and Contractor are individually referred to herein as "Party" and collectively as "Parties."

#### 1. Description of the Work:

Contractor shall furnish all work, labor, tools, materials and equipment to construct and complete in a workmanlike manner the following improvements: channel clearing, grading, re-planting, water control structure, and related work for the North Course of the Owner's habitat preserve known as the Betts, Kismat and Silva Tracts (collectively referred to as "BKS Preserve"), hereinafter referred to as "the Work," in Sacramento County, California. The Work is further described in **Exhibit A**, which is attached hereto and incorporated herein by this reference.

#### 2. Plans and Scope:

The Work shall be performed in strict accordance with the plans provided under separate cover, and the scope of work described in **Exhibit A** and the Plans attached as **Exhibit B**, which are incorporated herein by reference. The Contractor shall follow all the best management practices as shall be described in the Storm Water Pollution Prevention Plan (SWPPP) for the projectWork, and also Section 401 and Section 404 of the Clean Water Act as well as provisions in the 2003 Natomas Basin Habitat Conservation Plan.

#### 3. Contractor's Duties and Status:

By signing this Agreement, Contractor represents that it is qualified and possesses the proper licensure to perform the Work. As of the Effective Date Contractor possesses a Class **■** State contractor's license. Contractor shall maintain such license throughout the duration of this Agreement. **Contractor shall perform all Work under this Contract Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.** Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that

such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the Owner, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Contractor agrees to furnish efficient superintendence and to use its best efforts to furnish at all times an adequate supply of workers and materials, and to perform the Work in a workmanlike manner consistent with the terms of this Agreement. Contractor acknowledges that it is an independent contractor, and not an agent or employee of Owner.

**4. Time of Commencement and Substantial Completion:**

Time is of the essence of this Agreement. The Work shall begin as soon as possible but in no event earlier than a written Notice to Proceed from the Owner, following the provision of the required insurance certificates from the Contractor to the Owner. Mobilization of equipment may occur before the GGS construction work-window start date of May 1<sup>st</sup>.

The Work shall be performed in phases consisting of non-disturbance and disturbance Work, as defined in Exhibit A. Non-disturbance Work may commence on the date this Agreement is made effective as evidenced above following the receipt of the written Notice to Proceed from the Owner. Soil disturbance (or grading) work shall commence on or after May 1, 2014, and shall be completed as soon as possible following the permit conditions. The Work is subject to authorized adjustments, including all earth moving, with completion no later than October 1, 2014, seeding/erosion control by October 31, 2014 and all Work completed no later than December 31, 2014. To the extent that Contractor does not complete the Work by December 31, 2014, or as may be modified by written change order as contemplated herein, Contractor shall be liable to Owner for liquidated damages, and not as a penalty, in an amount equal to five hundred dollars (\$500) per day beyond the agreed-upon completion date.

**5. Contract Price:**

Owner shall pay Contractor for performance of the Work, subject to additions and deductions by written change order as provided in this Agreement, the Lump Sum contract price of \_\_\_\_\_ (\$\_\_\_\_\_) ("Contract Price"). Unit prices provided by Contractor during the bidding phase (Exhibit C) are for Owner's information only and are not a part of this Agreement.

The above lump sum price includes all applicable federal and/or state sales, use, franchise, excise, and other taxes which may now or hereafter be levied.

**6. Payment:**

Contractor shall submit written applications for progress payments in a form satisfactory to Owner, on account of the estimated value of Work completed during each month. The Contractor shall certify that the Work for which payment is requested has been done. Contractor may be required to furnish a detailed schedule of values upon request of the Owner and in such detail and form as the Owner shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments. Within 15 days of Owner's receipt of each such application for payment, Owner shall verify the accuracy of the estimated value or values stated on the application for progress payment, correct the value or values where appropriate, and make payment to Contractor in an amount equal to 85% of such application, as verified or corrected by Owner. The remaining 15% due Contractor shall be paid to Contractor within 35 days after final completion of the Work.

In addition to the obligations of Contractor as set forth in Section 11, below, Contractor agrees to furnish in connection with each payment application statutory lien waiver and release forms which conform to Civil Code section 3262 as Owner may request, for work, labor, equipment, and material used in performance of this Agreement, executed by Contractor and all other individuals, firms, or entities performing work or furnishing equipment or materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the Work shall not be construed as evidence of acceptance of any part of the Work.

**7. Supervision of Construction:**

Contractor shall supervise and direct the Work using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. Contractor shall be responsible to Owner for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the Work under a contract with Contractor. **Any employee who is determined by the Owner to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the Owner, shall be promptly removed from the Work by the Contractor and shall not be re-employed on the Work.**

**8. Review of Project Plans and Specifications:**

By executing this Agreement, Contractor represents that it has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed, and has correlated its observations with the requirements of this Agreement and the plans and specifications.

Contractor shall at all times keep one record copy of all plans and specifications at the site in good and clean order and annotated to show all changes made during the course of the Work. Such record copy shall be available to Owner at all reasonable times, and Contractor shall deliver a copy of same to Owner promptly upon completion of the Work.

**9. Compliance with Laws and Regulations:**

At its sole cost and expense, Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work, including but not limited to, those relating to safety, hazardous materials, stormwater, dust control, and equal employment opportunities; obtain all permits and licenses necessary for performance of the Work; pay all local, state, and federal taxes; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Contractor's employees. Upon Owner's request, Contractor shall furnish evidence satisfactory to Owner that any or all of the foregoing obligations have been fulfilled.

Without limiting the foregoing, Contractor shall immediately notify Owner of any spill, release or discharge of any toxic or hazardous material caused by or brought to the attention of Contractor or any of Contractor's affiliated entities, employees, agents, subcontractors, customers, invitees or suppliers, whether such spill, release or discharge is the result of an intentional act, negligence, accident or misfortune. Contractor shall immediately take all reasonable and necessary actions to prevent the further spread of any spill, release or discharge of any toxic or hazardous material which is brought to the attention of Contractor.

**10. Changes / Extra Work:**

Owner, without invalidating this Agreement, may order changes in the Work within the general scope thereof, consisting of additions, deletions, or other revisions. The contract priceContract Price and the time for performance of the Work shall be adjusted accordingly. All such changes in the Work, including changes in the contract priceContract Price and the time for performance of the Work, shall be authorized only by written change order, signed by Owner or authorized by e-mail from Owner. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the Owner.

**11. Liens:**

Contractor shall defend, indemnify, and hold Owner, Owner's officers, directors, employees, consultants, and inspectors and its representatives harmless from and against: (1) any and all claims, liabilities, loss, damage, costs, or expenses, including reasonable attorneys' fees, awards, and judgments, arising by reason of any claims,

liens, stop notices, or bond claims for labor, materials, or equipment used or furnished to be used on the Work, or union trust fund payments arising from or relating to Contractor's work on the Work; and (2) all incidental or consequential damages resulting to Owner from such claims, liens, stop notices or bond claims. Contractor shall cause the effect of any such claim, suit, stop notice, or lien to be removed from the Work within ten days after written demand to do so is made by Owner. If Contractor fails to do so, Owner may use whatever means it deems appropriate to cause the suit, stop notice or lien to be removed or dismissed, including the posting of a release bond, which bond cost may be withheld from the Contract Price. Any and all resulting cost and expense, including Owner's reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor or may be deducted by Owner from the Contract Price. Contractor may litigate any such suit, stop notice or lien provided Contractor first causes its effect to be removed from the Work.

## 12. Insurance:

(a) Casualty Insurance. Contractor shall, at its expense, procure and maintain insurance on all of its operations, in companies admitted and qualified in California, and acceptable to Owner, and satisfying all requirements of this Agreement, as follows.

(b) Worker's Compensation and Employer's Liability Insurance. **By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work.** Worker's compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than the following limits: \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit for bodily injury by disease; and \$1,000,000 each employee for bodily injury by disease. The policy shall contain a waiver of subrogation in favor of the Contractor and Owner and all parties Contractor is required to indemnify or name as additional insureds under this Agreement.

(c) General Liability Insurance. Contractor shall carry Commercial General Liability insurance, on ISO CGL Form No. CG 00 01, covering all operations by or on behalf of Contractor and providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- premises and operations;
- products and completed operations;
- contractual liability insuring the obligations assumed by Contractor in this Agreement in a form at least as broad as ISO CG 0001;
- broad form property damage (including completed operations);
- explosion, collapse and underground hazards; and

- personal injury liability.

(1) Contractor's Commercial General Liability policy(ies) shall have limits of liability not less than:

\$2,000,000 each occurrence (combined single limit for bodily injury and property damage);  
\$2,000,000 for personal injury liability;  
\$2,000,000 aggregate for products-completed operations; and  
\$2,000,000 general aggregate.

The limits described above shall be project-specific limits dedicated solely to Contractor's ongoing and completed operations on this project.

(2) Additional Insured Requirements. Owner and all parties required to be indemnified by Contractor under this Agreement shall be named as additional insureds under the Commercial General Liability insurance, including Owner's directors, officers, employees, agents, and representatives.

(d) Automobile Liability Insurance. Contractor shall procure and maintain automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be no less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

(e) Evidence of Insurance. Certificates of insurance, including copies of the Additional Insured endorsement(s), as evidence of the insurance required by this Agreement, shall be furnished by Contractor to Owner or as required by Owner. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days' prior written notice to Owner. Contractor shall have a continuing duty to provide evidence of current insurance coverage compliant with this Agreement.

(f) Contractor shall be responsible for all premiums, deductibles, and self-insured retention applicable to the insurance it is required to procure under this Agreement.

(g) All policies of insurance provided by Contractor under this Agreement shall contain a waiver of subrogation in favor of Owner and any parties required by this agreement to be named as additional insureds. Contractor will be required to defend and indemnify Owner and any parties required to be named as additional insureds from any actions or claims caused by Contractor's failure to ensure that such policies contain a waiver of subrogation.

(h) Failure of Owner to enforce in a timely manner any of the requirements of these insurance provisions shall not act as a waiver to enforcement of any of these provisions at a later date.

(i) Contractor's indemnity and other obligations shall not be limited by these insurance provisions and shall survive the expiration of this Agreement and the insurance provisions of this Agreement shall likewise not be limited by the indemnity provisions of this Agreement.

**13. Default By Contractor:**

The Owner may terminate this Agreement by written notice if the Contractor: (1) refuses or fails to supply enough properly skilled workers or proper materials; (2) fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; (3) disregards laws, ordinance, or rules, regulations or orders of a public authority having jurisdiction; or (4) otherwise is guilty of substantial breach of a provision of this Agreement. Upon receipt of such notice, Contractor shall terminate its work immediately and the Owner may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Agreement.

When the Owner terminates this Agreement for one of the reasons stated in this Section 13, the Contractor shall not be entitled to receive further payment until the Work is finished.

If the unpaid balance of the contract priceContract Price exceeds costs of finishing the Work, including compensation for the consultant's or engineer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of this Agreement.

**14. Indemnity:**

To the fullest extent permitted by law, Contractor shall, with respect to all work which is covered by or incidental to this Agreement, defend, indemnify, and hold harmless Owner and all of Owner's officers, directors, employees, consultants, and inspectors and all of their respective successors and assigns ("Indemnified Parties") from and against any and all claims, liability, loss, damage, costs, or expenses, including reasonable attorneys' fees, awards, fines, or judgments, arising by reason of the death or bodily injury to persons, injury to property, design defects (if design originated by Contractor), or other loss, damage, or expense arising from the Work or this Agreement. However, Contractor shall not be obligated under this Agreement to indemnify Owner or its consultants and inspectorsindemnify the Indemnified Parties with respect to the Indemnified Parties' active sole negligence, gross negligence or willful misconduct of

Owner or its consultants, inspectors, agents, or servants other than Contractor. Contractor shall reimburse the Indemnified Parties, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

**15. Warranty:**

All materials, equipment, and work furnished by Contractor shall strictly comply with all requirements of this Agreement, including but not limited to, and the plans and specifications identified in Section 2, be of good and workmanlike quality, and free from defects, and shall be subject to inspection and approval by Owner. This warranty is in addition to, and shall not reduce, exclude or limit, Contractor's liability under any other provisions of applicable state law, any warranties implied by law, or for latent defects. No inspection, failure of inspection, or payment to Contractor shall be deemed a waiver of the foregoing.

**16. Correction of Work:**

In addition to Contractor's obligations under Section 15, if, within one year after acceptance of the Work by Owner, any of the Work is found to not be in accordance with the requirements of this Agreement, Contractor shall, at Owner's option, repair or replace any defective or nonconforming materials, equipment, or work at Contractor's sole expense immediately upon notification thereof, to the satisfaction of Owner. The cost to repair any adjacent materials, equipment, or work disturbed or damaged during or as a result of any such corrective work, shall also be paid by Contractor. All corrective materials, equipment, and work are guaranteed in accordance with Section 15. If Contractor fails, neglects, or refuses, within seven days after written demand is made by Owner, to correct any defective materials, equipment, or work, Owner may, without further notice or demand, cause such defective materials, equipment, or work to be repaired or replaced by others. Contractor shall immediately reimburse Owner for the cost of such repair or replacement.

Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under this Agreement. Establishment of the one-year period for correction of the Work relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

**17. Protection of Work and Workers:**

Contractor shall secure and protect all Work done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner. Contractor further agrees to protect the workers of Contractor, Owner and subcontractors from Contractor's operations.

**18. Assignment of Contract:**

Contractor shall not assign or transfer Contractor's rights or obligations under this Agreement.

**19. Cleanup:**

Contractor shall perform the Work so as to maintain the site in a clean, safe, and orderly condition. Upon completion or termination of the Work, Contractor shall remove from the site all temporary structures, debris, and waste incident to its operation and clean all surfaces, fixtures, equipment, and the like. Owner may order Contractor to clean up its areas at any time Owner deems such action necessary.

**20. Notices:**

All notices required or permitted under this Agreement shall be in writing and may be accomplished by personal delivery, first-class regular mail of the United States Postal Service, or Federal Express next day delivery, sent to the party at the address shown in this agreement, or by facsimile sent to the facsimile number shown in this Agreement. Any such written notice shall be effective upon the date of receipt.

All notices to Owner required or permitted under this Agreement shall be sent concurrently to Owner:

**THE NATOMAS BASIN CONSERVANCY**

Attn: John Roberts  
2150 River Plaza Drive, Suite 460  
Sacramento, CA 95833  
916-649-3322 (fax)  
Email: jroberts@natomasbasin.org

**CONTRACTOR**

ADD CONTRACTOR NAME  
Attn: ADD CONTACT  
ADD ADDRESS  
ADD CITY, STATE, ZIPCODE  
(Fax) ADD  
(Cell) ADD  
E-mail: ADD

**21. Acceptance:**

This Agreement is intended by the parties as a final expression of their agreement, and supersedes any prior oral or written statements, and is intended also as a complete and exclusive statement of the terms of their agreement. No revisions to this Agreement shall be valid unless accepted in writing and signed by an authorized representative of

Owner. No condition stated by Contractor in accepting this Agreement shall be binding upon Owner unless expressly agreed to in writing by Owner.

**22. Governing Law and Venue:**

This Agreement shall be governed and construed in accordance with the laws of the State of California. All disputes between Owner and Contractor shall be brought in the Superior Court of the County in which the Project is situated, or the County of Sacramento, unless otherwise agreed by Owner.

**23. Contractor Licensing:**

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

**24. Counterparts:** This Agreement may be executed in counterparts, each of which shall constitute an original.

**25. Successors:** The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Agreement.

**26. Attorneys' Fees.** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such action shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

**27. Authority to Enter Agreement:** Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform the Contract. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

**28. Entire Contract; Modification:** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

**OWNER:**

The Natomas Basin Conservancy  
Phase 4 – Pond R: Giant Garter Snake  
Habitat Maintenance  
82581.00001\8611377.1

D-10

**THE NATOMAS BASIN CONSERVANCY**

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

Its: Executive Director \_\_\_\_\_

**CONTRACTOR:  
ADD COMPANY NAME**

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

Its: \_\_\_\_\_

California Contractors License No. \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

## E. ACCIDENT PREVENTION RULES

1. Hard hats must be worn at all times.
2. Each Employee shall maintain appropriate housekeeping in his area and shall keep the premises free of all waste material and rubbish.
3. All trash, broken bottles, waste materials and rubbish must be disposed of in waste receptacles designated for such purposes.
4. Appropriate clothing for the job shall be worn at all times.
5. Employees are restricted to those areas within the Owner's premises on which work is being performed.
6. Horseplay and practical jokes are prohibited at all times on company premises.
7. Running is prohibited except in emergency situations.
8. All employees should be informed of the location of emergency equipment and fire extinguishers in their work areas.
9. The vehicle speed (as indicated by signs) shall be observed at all times when driving on company premises.
10. All employees are required to report immediately all injuries on the job to their supervisors, including any illness, dizziness or other physical impairment that might affect the employee's safety. All reports must be documented on the appropriate forms.
11. Employees are prohibited from blowing compressed air on themselves or others.
12. Employees are required to wear such clothing and other protective devices as are necessary for their safety.
13. Employees using heavy equipment and other rolling stock shall observe the following safety precautions: bulldozers and front-end loaders should be parked with the blade or bucket in the down position; unmanned lift trucks are to be left with the forks on the ground; forks should be kept as close to the floor level as possible. Personnel should ride only on the seats provided for that purpose on all rolling stock.
14. All smoking is prohibited except in designated areas.
15. It shall be the responsibility of the employee to determine what is or has been in any pipes or containers before cutting.
16. Employees using electrical equipment should inspect the equipment to make sure it is properly grounded, particularly portable equipment and temporary installations of line, switches, linestarters, pushbuttons, welding machines and motors.
17. All electrical equipment must be secured before the contractor crew the work area.
18. Holes and trenches, areas subject to falling debris from demolition, and areas where danger of slipping or tripping exists must be roped off or barricaded to prevent injury.
19. All excavations must be properly shored or sloped before employees work in them.
20. These safety rules are not intended to be all inclusive. The Contractor and his employees will be expected to add the rules and regulations he deems necessary for any particular task. Additionally, the Contractor and his employees will be responsible for abiding by any OSHA or other governmental safety regulations.

**F. PERFORMANCE BOND**

[NOTE: The Performance Bond shall be in the form of this Attachment F or such other form as is approved by the Conservancy, in its sole and absolute discretion.]

KNOW ALL PERSONS BY THESE PRESENTS: that

NAME OF CONTRACTOR \_\_\_\_\_

ADDRESS OF CONTRACTOR \_\_\_\_\_

a \_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

NAME OF SURETY: \_\_\_\_\_

ADDRESS OF SURETY: \_\_\_\_\_

hereinafter called Surety, are held and firmly bound unto:

NAME OF OWNER: The Natomas Basin Conservancy

ADDRESS OF OWNER: **2150 River Plaza Drive, Suite 460, Sacramento, CA 95833**

hereinafter called OWNER, in the penal sum of

\_\_\_\_\_  
Dollars, \$(\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_ 2014, a copy of which is hereto attached and made a part hereto for the construction of:

**BETTS, KISMAT & SILVA (BKS) PRESERVE**  
**NORTH COURSE PHASE 4 - POND R**

NOW, THEREFORE, if the Principal shall well, truly and faithful perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the

one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good and default, then this obligation shall be void; otherwise to remain.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder to the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall bridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 2 counterparts, each one of which shall be deemed an original, this, the \_\_\_\_ day of \_\_\_\_\_ 2014.

PRINCIPAL \_\_\_\_\_

BY \_\_\_\_\_

ADDRESS \_\_\_\_\_

SURETY \_\_\_\_\_

**ATTEST**  
WITNESS AS TO PRINCIPAL \_\_\_\_\_

ADDRESS \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
ATTORNEY IN FACT \_\_\_\_\_

ADDRESS \_\_\_\_\_

ATTEST:

(SURETY) SECRETARY \_\_\_\_\_

WITNESS TO SURETY \_\_\_\_\_

ADDRESS \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

**G: ACKNOWLEDGMENT & ISSUED PERMITS**

- **United States Army Corps of Engineers, Nationwide Permit 27 (March 18, 2013)**
  - **Permit ID: SPK #2001-00016**
  
- **Central Valley Region Water Quality Control Board, 401 Water Quality Certification & California Environmental Quality Act (CEQA) Determination (May 6, 2013)**
  - **Permit ID: WDID#5A34CR00577**
  
- **Central Valley Region Water Quality Control Board, NPDES for Construction Activities, Storm Water Pollution Prevention Plan (SWPPP, April 15, 2013)**
  - **Permit ID: WDID#5S34C366159**
  
- **U.S. Fish & Wildlife Service, ESA Section 7 Consultation Letter (May, 2, 2011)**
  
- **CA Department of Fish & Game (now Wildlife), No Permit Required E-Mail (May 25, 2011)**

I have read and understand the requirements of the attached permits and will abide by the requirements throughout construction.

Contractor: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_ 2014

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

RECEIVED  
MAR 21 2013

REPLY TO  
ATTENTION OF

March 18, 2013

Regulatory Division (SPK-2001-00016)

Mr. John Roberts  
The Natomas Basin Conservancy  
2150 River Plaza Drive, Suite 460  
Sacramento, California 95833

Dear Mr. Roberts:

We are responding to your February 19, 2013, request for a Department of the Army permit for the Natomas Basin Conservancy Betts-Kismat-Silva Restoration Phase 3 project. This approximately 110.82-acre project involves activities, including discharges of dredged or fill material, in waters of the United States to adaptively manage restored giant garter snake (*Thamnophis gigas*) habitat. The project is located near North Main Canal, Sections 11 and 12, Township 10 North, Range 4 East, Mount Diablo Meridian, Latitude 38.73247°, Longitude -121.50226°, Sacramento County, California.

Based on the information you provided, the proposed activity, resulting in the permanent loss of approximately 0.44 acre of marsh and 1.66 acres of open water and temporary impacts to approximately 3.29 acres of open water, and creation of 4.08 acres of marsh and enhancement of 3.95 acres of marsh and 10.5 acres of open water, is authorized by Nationwide Permit Number 27, Aquatic Habitat Restoration, Establishment and Enhancement Activities. However, until Section 401 Water Quality Certification for the activity has been issued or waived, our authorization is denied without prejudice. Once you have provided us evidence of water quality certification, the activity is authorized and the work may proceed subject to the conditions of certification and the Nationwide Permit. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets and regional conditions, and the following special conditions:

Special Conditions

1. Within 60 days following completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, you shall submit as-built drawings and a description of the work conducted on the project site to this office for review. The drawings shall be signed and sealed by a registered professional engineer and include the following:
  - a. The Department of the Army Permit number.
  - b. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings. The drawing should show all "earth disturbance," wetland impacts, structures, and the boundaries of any avoidance areas.
  - c. Ground photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.

d. A description and list of all deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings the location of any deviations that have been listed.

2. You and your authorized contractor shall allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this verification.

3. To ensure avoidance of impacts beyond the permit limits, the project permit limits shall be clearly identified in the field with highly visible markers such as construction fencing or silt barriers prior to initiation of any construction activities within waters of the U.S. Such identification shall be properly maintained until construction is completed and the soils have been stabilized. Equipment, materials, or any other substances or activities that impact waters of the U.S. outside the permit limits (as shown on Figures 6 and 6a *Phase 3, Habitat Maintenance*, of the February 19, 2013, Pre-Construction Notification produced by Westervelt Ecological Services) are prohibited.

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid until March 18, 2017, when the existing Nationwide Permits are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions. Failure to comply with the General and Regional Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2001-00016 in any correspondence concerning this project. If you have any questions, please contact me at 1325 J Street, Room 1350, email [Marc.A.Fugler@usace.army.mil](mailto:Marc.A.Fugler@usace.army.mil), or telephone 916-557-5255. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Sincerely,



Marc A. Fugler  
Senior Project Manager  
California South Branch

Enclosures

Copy Furnished without enclosures:

Ms. Elizabeth Lee, Storm Water and Water Quality Certification Unit, Central Valley Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho Cordova, California 95670-6289  
Ms. Tina Bartlett, California Department of Fish and Wildlife, Region 2, 1701 Nimbus Drive, Rancho Cordova, California 95670-4599

## COMPLIANCE CERTIFICATION

**Permit File Number:** SPK-2001-00016

**Nationwide Permit Number:**

**Permittee:** John Roberts  
The Natomas Basin Conservancy  
2150 River Plaza Drive, Suite 460  
Sacramento, California 95833

**County:** Sutter

**Date of Verification:** March 14, 2013

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Sacramento District

*DLL-CESPK-RD-Compliance@usace.army.mil*

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the Corps of Engineers.

\* \* \* \* \*

*I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.*

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



U S Army Corps of  
Engineers  
Sacramento District

## Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – March 19, 2012

**27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to

wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

**Reversion.** For enhancement, restoration, and establishment activities conducted:

- (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies;
- (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities).

The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the

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**U.S. ARMY CORPS OF ENGINEERS – SACRAMENTO DISTRICT**

1325 J ST. – SACRAMENTO, CA 95814

[www.spk.usace.army.mil](http://www.spk.usace.army.mil)

[www.facebook.com/sacramentodistrict](http://www.facebook.com/sacramentodistrict)

[www.youtube.com/sacramentodistrict](http://www.youtube.com/sacramentodistrict)

[www.twitter.com/USACE\\_Sacramento](http://www.twitter.com/USACE_Sacramento)

[www.flickr.com/photos/sacramentodistrict](http://www.flickr.com/photos/sacramentodistrict)

determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

**Reporting.** For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of:

- (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map;
- (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or
- (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats.

These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 31), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency. However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

**Note:** This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

**A. Regional Conditions**

**1. Regional Conditions for California, excluding the Tahoe Basin**

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-CA.pdf>

**2. Regional Conditions for Nevada, including the Tahoe Basin**

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-NV.pdf>

**3. Regional Conditions for Utah**

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-UT.pdf>

**4. Regional Conditions for Colorado.**

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp/2012-nwps/2012-NWP-RC-CO.pdf>

**B. Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

- 1. Navigation.**
  - (a) No activity may cause more than a minimal adverse effect on navigation.
  - (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
  - (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable

obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to

demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at

<http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. **Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has

no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. **Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NHPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NHPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NHPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan

that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate

form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

- (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
- 24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. **Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. **Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification

(PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2)..

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property

may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: the standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant

loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

### C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic

environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWP's do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

**E. Definitions**

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by

strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.  
**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 May 2013

John Roberts  
The Natomas Basin Conservancy  
2150 River Plaza Drive, Suite #460  
Sacramento, CA 95833

CERTIFIED MAIL  
7010 1670 0002 0652 9806

**CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; THE NATOMAS BASIN CONSERVANCY, BETTS-KISMAT-SILVA PRESERVE GIANT GARTER SNAKE (GGS) HABITAT MAINTENANCE ACTIVITIES, PHASE 3 PROJECT (WDID#5A34CR00577), SACRAMENTO AND SUTTER COUNTIES**

This Order responds to the 20 February 2013 application submitted by The Natomas Basin Conservancy (Applicant) for the Water Quality Certification of a habitat maintenance project permanently impacting 2.10 acres and temporarily impacting 3.29 acres of waters of the United States.

This Order serves as certification of the United States Army Corps of Engineers' Nationwide Permit# 27 (SPK# 2001-00016) under § 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act.

**WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to § 13330 of the California Water Code and § 3867 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to § 3855(b) of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under § 3860(c) of the California Code of Regulations.

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER  
11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

4. This Certification is no longer valid if the project (as described) is modified, or coverage under § 404 of the Clean Water Act has expired.
5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) shall be signed by a person described below or by a duly authorized representative of that person.
  - (a) For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (b) For a partnership or sole proprietorship: by a general partner or the proprietor.
  - (c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
6. Any person signing a document under Standard Condition number 5 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### TECHNICAL CERTIFICATION CONDITIONS:

In addition to the above standard conditions, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in writing seven (7) days in advance of the start of any work within waters of the United States. The notification shall include the name of the project and the WDID number, and shall be sent to the Central Valley Water Board Contact indicated in this Certification.
2. Except for activities permitted by the United States Army Corps of Engineers under § 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.

3. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed project shall be adequately informed and trained regarding the conditions of this Certification.
4. The Applicant shall perform surface water sampling:
  - a) when performing any in-water work;
  - b) in the event that project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters. The monitoring requirements in Table 1 shall be conducted by taking a sample of the ambient conditions before work begins in the work area, and sampling during work in the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Settleable Material	mL/L	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Visible construction related pollutants <sup>(3)</sup>	Observations	Visual Inspections	Continuous throughout the construction period	—

<sup>(1)</sup> Grab samples shall not be collected at the same time each day to get a complete representation of variations in the receiving water.  
<sup>(2)</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff.  
<sup>(3)</sup> Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

Surface water monitoring shall occur at mid-depth. A surface water monitoring report shall be submitted to the Central Valley Water Board Contact indicated in this Certification within two weeks of initiation of sampling and every two weeks thereafter. In reporting the monitoring data, the Applicant shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no monitoring is conducted, the Applicant shall submit a written statement to the Central Valley Water Board Contact indicated in the Certification stating, "No monitoring was required."

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Activities shall not cause turbidity increases in surface water to exceed:
- i. where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;
  - ii. where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
  - iii. where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
  - iv. where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs; and
  - v. where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior approval of the Central Valley Water Board staff.

- b) Activities shall not cause settleable matter to exceed 0.1 mL/L in surface waters as measured in surface waters within the work area
6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, or other water quality objectives are exceeded.
7. In-water work shall occur during periods of low water level and no precipitation.
8. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If critical equipment must be refueled within 300 feet of the waterway, spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a waterway. The Applicant must perform frequent inspections of construction equipment prior to utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.

9. The Applicant shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the project. The Plan must detail the project elements, construction equipment types and location, access and staging and construction sequence. The Plan must also address the potential of responding to a spill or prevention of spills occurring within the project site.
10. Silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States through the entire duration of the project.
11. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the project area.
12. All areas disturbed by project activities shall be protected from washout or erosion.
13. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
14. Hydroseeding shall be performed with California native seed mix.
15. All materials resulting from the project shall be removed from the site and disposed of properly.
16. This Certification does not allow permanent water diversion of flow from the receiving water. This Certification is invalid if any water is permanently diverted as a part of the project.
17. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the receiving water. The Applicant shall notify the Central Valley Water Board immediately of any spill of petroleum products or other organic or earthen materials.
18. If unanticipated discharges to the waters of the United States and/or soil occur, the Applicant shall notify the Central Valley Water Board Contact indicated in this Certification in writing within five (5) calendar days of occurrence. Unanticipated discharges may include, but are not limited to, any construction materials, hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete, asphalt, paint, coating material, drilling fluids, or other construction-related potentially hazardous substances.
19. The Applicant shall obtain coverage under the National Pollution Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.

20. The Conditions in this Certification are based on the information in the attached "Project Information Sheet." If the actual project, as described in the attached Project Information Sheet, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
21. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. The applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
- (a) If the Applicant or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability, for each day of violation, and/or criminal liability.
  - (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
  - (c) The Applicant shall allow the staff(s) of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the project.
22. The Applicant shall provide a Notice of Completion (NOC) no later than 30 days after the project completion. The NOC shall demonstrate that the project has been carried out in accordance with the project description in the Certification and in any amendments approved. The NOC shall include a map of the project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.

**CENTRAL VALLEY WATER BOARD CONTACT:**

Marisa Van Dyke, Environmental Scientist  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-8114  
marisa.vandyke@waterboards.ca.gov  
(916) 464-4644

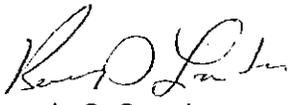
**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

The Central Valley Water Board has determined that this project meets the Categorical Exemption, under § 15301, 15302, 15303, and 15304 of the California Code of Regulations. Section 15301 exempts operation, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing structures, facilities, mechanical equipment, or topographical features, not expanding existing uses. Section 15302 exempts replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Section 15303 exempts construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Section 15304 exempts minor alterations in the conditions of land, water, and/or vegetation and does not involve the removal of healthy, mature scenic trees.

**WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that any discharge from the Natomas Basin Conservancy, Betts-Kismat-Silva Preserve GGS Habitat Maintenance Activities, Phase 3 Project (WDID#5A34CR00577) will comply with the applicable provisions of § 301 ("Effluent Limitations"), § 302 ("Water Quality Related Effluent Limitations"), § 303 ("Water Quality Standards and Implementation Plans"), § 306 ("National Standards of Performance"), and § 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with the conditions of this Certification, the Applicant's application package, and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011.

  
for Pamela C. Creedon  
Executive Officer

Enclosure: Project Information Sheet

Attachment: Figure 1 – Project Location Map

cc: Distribution List, page 13



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



In reply refer to:  
81420-2011-TA-0512-1

RECEIVED  
MAY 03 2011

MAY 2 2011

Mr. John Roberts  
Executive Director  
The Natomas Basin Conservancy  
2150 River Plaza Drive, Suite 460  
Sacramento, California 95833

Subject: Request for Confirmation that the U.S. Army Corps of Engineers Obligations under Section 7 of the Endangered Species Act have been met for Preserve Maintenance at The Natomas Basin Conservancy's Betts-Kismat-Silva Preserve, Sacramento County, California

Dear Mr. Roberts:

This letter is in response to the U.S. Fish and Wildlife Service's (Service) April 18, 2011 receipt of your April 15, 2011 letter notifying the Service of the upcoming preserve maintenance at The Natomas Basin Conservancy's (TNBC) Betts-Kismat-Silva Preserve (Preserve). Your letter also stated TNBC is submitting an application to the U.S. Army Corps of Engineers (Corps) for a permit under section 404 of the Clean Water Act for these activities. Since the Corps has determined that they have jurisdiction over the created marsh habitat, and therefore the proposed Preserve maintenance activities, you have requested confirmation that the Corps' obligations under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), have been met under a previous consultation with the Service.

Maintenance is necessary because vegetation and sediment have accumulated over the Preserve's 10-year operational history, resulting in a decrease of open water areas and compromising the functionality of the marsh complex. Clearing of open water channels will be accomplished by drying the marshes and placing excavated sediment on marsh side-slopes and adjacent uplands. All appropriate conservation measures, as outlined in the Natomas Basin Habitat Conservation Plan (NBHCP), will be implemented to reduce effects on federally listed species.

Maintenance activities at the Preserve are consistent with TNBC's *Betts-Kismat-Silva Site-Specific Plan*, which describes construction and maintenance of this parcel and was previously approved by the Service. Incidental take of federally listed species, including the threatened giant garter snake (*Thamnophis gigas*), associated with Preserve construction and



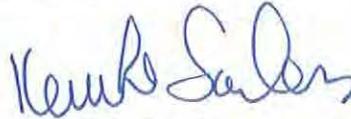
Mr. John Roberts

2

maintenance is covered under the NBHCP. The Service issued the Corps a separate biological opinion for TNBC's construction and maintenance of the Preserve in July 2001 (Service File # 1-1-01-F-0128). Therefore, the Corps' obligations under section 7 of the Act for permitting TNBC's Preserve maintenance activities has been met, and no further consultation with the Service is necessary.

If you have any questions regarding this correspondence, please contact Ben Watson, Staff Biologist, or Kellie Berry, the Sacramento Valley Branch at (916) 414-6645.

Sincerely,



Kenneth D. Sanchez  
Assistant Field Supervisor

cc:

Ms. Kathleen Dadey, U.S. Army Corps of Engineers, Sacramento, California

**From:** Kent Smith <KSMITH@dfg.ca.gov>  
**To:** John Roberts <jroberts@natomasbasin.org>  
**CC:** Todd Gardner <TGARDNER@dfg.ca.gov>, Young Mark <myoung@westervelt.com>  
**Date:** 5/25/2011 8:59 AM  
**Subject:** Re: permitting for BKS marsh maintenance

John,

This e-mail confirms that the Department of Fish and Game fully supports the Conservancy's BKS North Course Channel and Marsh Maintenance Project and that no Lake and Streambed Alteration Agreement is required for conducting such work. If you have any questions, or need any additional information, just let me know!

Kent

Kent A. Smith  
Regional Manager  
CA Department of Fish & Game  
North Central Region  
Phone: (916) 358-2382  
Cell: (916) 215-1031

>>> John Roberts <jroberts@natomasbasin.org> 5/24/2011 11:21 AM >>>

Kent: We've joked around about the CDFG letter you have drafted stating that with respect to the Conservancy's BKS North Course channel and marsh maintenance project, a Section 1600 stream and lake bed alteration permit is not need. But now we actually need such a communication.

It looks like the Conservancy will be able to obtain a Regional Water Quality Control Board permit based on the maintenance nature of the work. But to make sure it continues headed in that direction, we are being asked for evidence from CDFG that CDFG agrees this is maintenance as well, and that the maintenance is prescribed in the 2003 NBHCP, and that keeping the marsh complexes maintained and fully functional is an essential part of the Plan Operator's (that's the Conservancy) responsibility. Could you send me an email to that effect? Or a letter?

Time is of the essence here since we are quickly losing summer (pre-September 30) work calendar.

Thanks!

John Roberts  
jroberts@natomasbasin.org

# January 2014 Unaudited Financial Statements

# January 2014 Financial Dashboard

## Total Assets

Asset Category	Asset Value
Current Assets	\$30,511,628
Receivables	\$304,539
Fixed Assets	\$34,180,291
<b>Total assets</b>	<b>\$64,996,458</b>

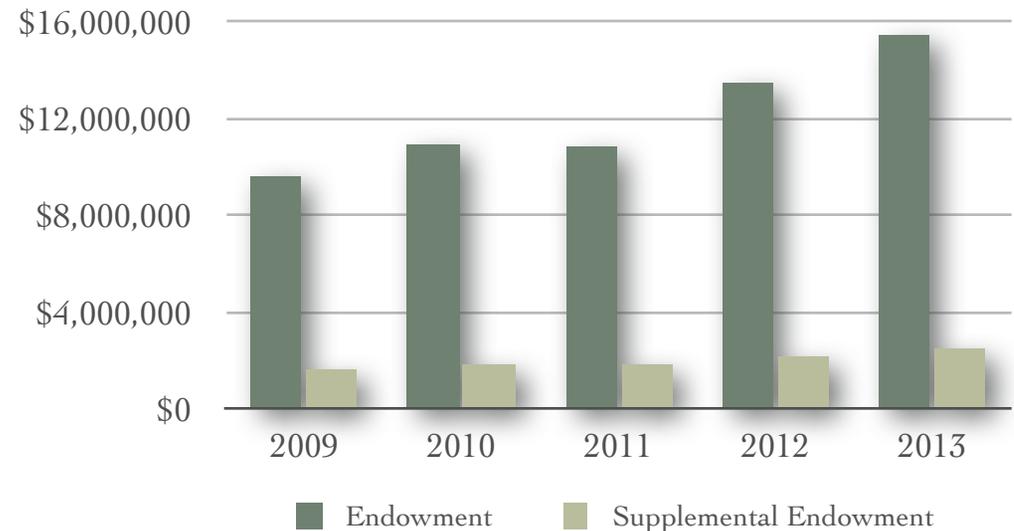
## Total Liabilities & Fund Balances

Category	Value
Liabilities	\$332,474
Fund Balances	\$64,663,984
<b>Total liabilities and fund balances</b>	<b>\$64,996,458</b>

## Total Revenue & Expenses

Category	Jan	YTD	2014B	2013A
Total Revenue	\$138,478	\$138,478	\$1,858,252	\$4,308,088
Total Expenses	\$243,448	\$243,448	\$3,517,808	\$3,422,505
<b>Change in fund balance</b>	<b>-\$104,970</b>	<b>-\$104,970</b>	<b>-\$1,659,556</b>	<b>\$885,583</b>

## Endowment & Supplemental Endowment Funds 5-year Fund Balance Analysis



## Interesting Tidbits

### Adequacy of Resources Ratio

*Defensive interval* reflects how many months the organization could operate if no additional funds were received.

$$\frac{\text{Cash} + \text{Marketable Securities} + \text{Receivables}}{\text{Average Monthly Expenses}}$$

TNBC = 49 months (4 years)<sup>1</sup>

<sup>1</sup> Endowment funds were excluded from this calculation.



**The Natomas Basin Conservancy**  
**Statement of Net Assets**  
**Unaudited as of January 31, 2014**

	NBHCP Funds				Non-HCP Funds		Total
	Administration	Restoration & Enhancement	Land Acquisition	Endowment	Supplemental Endowment	SAFCA NLIP	
<b>ASSETS</b>							
<i>Current Assets:</i>							
Checking - Wells Fargo Bank	175,050	51	436	272	21	58,908	234,738
PayPal Account	604	-	-	-	-	-	604
Investments - City of Sacramento	1,528,201	782,282	1,566,580	-	-	-	3,877,063
Investments - Wells Fargo Investments	3,788,460	908,089	949,570	139,816	31,643	879,083	6,696,661
Investments - American Century Investments	1,000,033	-	-	-	-	-	1,000,033
Investments - U.S. Bank	1,000,000	-	-	-	-	-	1,000,000
Investments - T. Rowe Price	-	-	-	15,206,813	2,495,716	-	17,702,529
Subtotal Cash	<b>7,492,348</b>	<b>1,690,422</b>	<b>2,516,586</b>	<b>15,346,901</b>	<b>2,527,380</b>	<b>937,991</b>	<b>30,511,628</b>
<i>Receivables:</i>							
Accounts Receivable <sup>1</sup>	109,011	12,959	18,918	1,137	257	107,847	250,129
Due from Other Funds	29,800	-	-	-	-	9,402	39,202
Prepaid Items	15,208	-	-	-	-	-	15,208
Subtotal Receivables	<b>154,019</b>	<b>12,959</b>	<b>18,918</b>	<b>1,137</b>	<b>257</b>	<b>117,249</b>	<b>304,539</b>
<i>Fixed Assets:</i>							
Land	-	-	32,488,567	-	-	-	32,488,567
Land Improvements - Habitat & Bldgs, Net	129,005	-	1,548,665	-	-	-	1,677,670
Office Equipment & Machinery, Net	14,054	-	-	-	-	-	14,054
Subtotal Fixed Assets	<b>143,059</b>	<b>-</b>	<b>34,037,232</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>34,180,291</b>
Total Cash and Assets	<b>7,789,426</b>	<b>1,703,381</b>	<b>36,572,736</b>	<b>15,348,038</b>	<b>2,527,637</b>	<b>1,055,240</b>	<b>64,996,458</b>
<b>LIABILITIES &amp; FUND BALANCES</b>							
<i>Liabilities <sup>2</sup></i>							
Accounts Payable	213,273	-	-	15,209	2,496	4,796	235,774
Accrued Vacation	56,498	-	-	-	-	-	56,498
Due to Other Funds / Conditional Deposits	10,402	-	-	-	-	29,800	40,202
Subtotal Liabilities	<b>280,173</b>	<b>-</b>	<b>-</b>	<b>15,209</b>	<b>2,496</b>	<b>34,596</b>	<b>332,474</b>
<i>Equity:</i>							
Investment in General Fixed Assets	143,059	-	34,037,232	-	-	-	34,180,291
Fund Balances:	-	-	-	-	-	-	-
Reserved for Endowment - Permanent	-	-	-	9,341,092	-	-	9,341,092
Reserved for Endowment - Temporary	-	-	-	5,991,737	-	-	5,991,737
Designated <sup>5</sup>	1,218,382	-	2,308,080	-	-	-	3,526,462
Undesignated	6,147,812	1,703,381	227,424	-	2,525,141	1,020,644	11,624,402
Subtotal Fund Balances	<b>7,509,253</b>	<b>1,703,381</b>	<b>36,572,736</b>	<b>15,332,829</b>	<b>2,525,141</b>	<b>1,020,644</b>	<b>64,663,984</b>
Total Liabilities & Fund Balances	<b>7,789,426</b>	<b>1,703,381</b>	<b>36,572,736</b>	<b>15,348,038</b>	<b>2,527,637</b>	<b>1,055,240</b>	<b>64,996,458</b>

**The Natomas Basin Conservancy  
Statement of Activities  
Unaudited as of January 31, 2014**

	NBHCP Funds					Non-HCP Funds	Total	Budget	Variance
	Administration	Restoration & Enhancement	Land Acquisition	Endowment	Supplemental Endowment	SAFCA NLIP			
<b>REVENUES</b>									
Mitigation Fees									
City of Sacramento	-	-	-	-	-	-	-	233,878	233,878
County of Sutter	-	-	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-	50,000	50,000
Rent Revenue	9,100	-	-	-	-	-	9,100	450,000	440,900
Investment Income - Realized	11,023	3,304	3,722	16,301	2,759	837	37,947	750,814	712,867
Investment Income - Unrealized	(7,172)	(1,719)	(1,798)	(208,108)	(34,458)	(213)	-253,468	-	253,468
Other / Reimbursement	137,796	-	-	-	-	207,102	344,898	373,560	28,662
<b>Total Revenue</b>	<b>150,747</b>	<b>1,585</b>	<b>1,924</b>	<b>-191,807</b>	<b>-31,699</b>	<b>207,727</b>	<b>138,478</b>	<b>1,858,252</b>	<b>1,719,774</b>
<b>EXPENDITURES - PROGRAM</b>									
Property Tax	-	-	-	-	-	-	-	208,051	208,051
Water District & Drainage	-	-	-	-	-	-	-	386,931	386,931
Property Maintenance	3,697	-	-	-	-	-	3,697	718,000	714,303
Electricity	2,065	-	-	-	-	-	2,065	50,000	47,935
Biological Monitoring	136,073	-	-	-	-	-	136,073	298,196	162,123
Contract Work	28,029	-	-	-	-	-	28,029	844,066	816,037
<b>Subtotal Program</b>	<b>169,864</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>169,864</b>	<b>2,505,244</b>	<b>2,335,380</b>
<b>EXPENDITURES - ADMINISTRATION</b>									
Staff & Staff Expenses	44,868	-	-	-	-	-	44,868	525,751	480,883
Board Expense	-	-	-	-	-	-	-	10,000	10,000
Office Lease	6,039	-	-	-	-	-	6,039	72,613	66,574
Telecommunications	5,894	-	-	-	-	-	5,894	35,000	29,106
Office Supplies	1,759	-	-	-	-	-	1,759	38,000	36,241
Office Equipment	272	-	-	-	-	-	272	25,000	24,728
Vehicle Expense	1,866	-	-	-	-	-	1,866	25,200	23,334
Insurance	4,142	-	-	-	-	-	4,142	45,000	40,858
Professional Services	5,000	-	-	-	-	2,170	7,170	131,000	123,830
Fees and Taxes	1,380	-	-	-	-	192	1,573	105,000	103,427
<b>Subtotal Program</b>	<b>71,222</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,362</b>	<b>73,584</b>	<b>1,012,564</b>	<b>938,980</b>
<b>Total Expenditures</b>	<b>241,086</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,362</b>	<b>243,448</b>	<b>3,517,808</b>	<b>3,274,360</b>
Excess (deficiency) of revenues over (under) expenditures	(90,339)	1,585	1,924	(191,807)	(31,699)	205,365	(104,971)	(1,659,556)	(1,554,585)
Fund Balances, beginning of period	7,599,591	1,701,798	36,570,813	15,524,636	2,556,840	815,279	64,768,957		
Fund Balances, end of period	7,509,252	1,703,383	36,572,737	15,332,829	2,525,141	1,020,644	64,663,986		

**Footnotes to January 31, 2014 Unaudited Financial Statements:**

1 – **Accounts Receivable** – The funds listed in Accounts Receivable are comprised of:

<u>Accounts Receivable</u>	
Accounts Receivable	155,673
City of Sacramento - Pool A	39,767
Wells Fargo - Investment Management Account	47,318
Wells Fargo - SAFCA NLIP	7,373
<b>Total</b>	<b>250,131</b>

2 – **Liabilities** – As the managed marsh construction component follows and lags acquisition, approximately 4.8% of the 25% managed marsh target remains in process and is not yet completed. Accordingly, the Conservancy will need to construct managed marsh on approximately 176 acres. At an average cost of \$8,750 per acre of managed marsh construction costs, this results in an on-going managed marsh R&E obligation of approximately \$1,542,473.

UPDATE: 110.372 acres of Frazer South are planned for managed marsh construction in 2016 and 80 acres of Bianchi West are planned for managed marsh construction in 2017.

3 – **Designated - NBHCP Funds** – The funds in this category may be derived from HCP fees. Board designation is required for use of HCP Designated funds. Source of funding is as follows:

<u>Designated - NBHCP Funds</u>	
GGS	204,808
Supplemental-HCP Donations	11,130
Supplemental-HCP Elderberry Mitigation	69,506
Tree/Shrub Mitigation	53,195
Fixed Assets Reserve	879,743
<b>Total</b>	<b>1,218,382</b>

**Designated - Non-HCP Funds** – The funds in this category are not derived from HCP fees or NBHCP/MAPHCP related sources. Board designation is required for use of non-HCP funds. Source of funding is as follows:

<u>Designated - Non-HCP Funds</u>	
SAFCA NLIP	1,020,643
<b>Supplemental Mitigation (Land Acquisition)</b>	
SAFCA Settlement - Huffman West	810,110
SAFCA Settlement - Atkinson	229,810
SAFCA Settlement - Natomas Farms	1,268,160
<b>Total</b>	<b>3,328,723</b>

**The Natomas Basin Conservancy  
NBHCP Cash Flow Projections**

OPERATING INCOME	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total	
Admin - Mitigation fees	-	-	-	-	-	-	-	-	114,687	-	-	-	-	114,687	114,687
Admin - Rent revenue	9,100	-	-	-	-	-	-	440,900	-	-	-	-	-	450,000	450,000
Admin - Investment income	11,023.46	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	11,075.50	132,854	132,906	
Admin - Marketable Securities	(7,172)	-	-	-	-	-	-	-	-	-	-	-	-	(7,172)	-
Admin - Other & Misc.	137,795.95	-	-	-	-	-	-	-	-	-	-	-	-	137,796	50,000
R&E and Land Acq - Mitigation fees	-	-	-	-	-	-	-	-	109,618	-	-	-	-	109,618	109,618
R&E and Land Acq - Inv Income	3,508.94	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	6,036.25	69,908	72,435	
<b>Total</b>	<b>154,256</b>	<b>17,112</b>	<b>17,112</b>	<b>17,112</b>	<b>17,112</b>	<b>17,112</b>	<b>17,112</b>	<b>458,012</b>	<b>241,417</b>	<b>17,112</b>	<b>17,112</b>	<b>17,112</b>	<b>1,007,690</b>	<b>929,646</b>	

USES OF CASH	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total
Administration	71,222.01	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	82,297.00	976,489	987,564
Program	169,863.86	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	158,890.33	1,917,658	1,906,684
BKS North Course channel clearing	-	-	-	-	-	100,000	100,000	100,000	-	-	-	-	300,000	300,000
R&E	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Land Acquisition Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>241,086</b>	<b>241,187</b>	<b>241,187</b>	<b>241,187</b>	<b>241,187</b>	<b>341,187</b>	<b>341,187</b>	<b>341,187</b>	<b>241,187</b>	<b>241,187</b>	<b>241,187</b>	<b>241,187</b>	<b>3,194,147</b>	<b>3,194,248</b>
Excess (deficiency) of revenue over	(86,830)	(224,076)	(224,076)	(224,076)	(224,076)	(324,076)	(324,076)	116,824	229	(224,076)	(224,076)	(224,076)	(2,186,456)	(2,264,602)

Budget-to-actual cash balances	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total
Beginning cash balance (Operating)	11,834,970	11,748,140	11,524,065	11,299,989	11,075,913	10,851,838	10,527,762	10,203,687	10,320,511	10,320,741	10,096,665	9,872,589	9,648,514	9,648,514
Ending cash balance (Operating)	11,748,140	11,524,065	11,299,989	11,075,913	10,851,838	10,527,762	10,203,687	10,320,511	10,320,741	10,096,665	9,872,589	9,648,514	9,648,514	9,648,514

2014 budget cash balances	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total
Beginning cash balance (Operating)	11,834,970	11,610,895	11,386,820	11,162,745	10,938,670	10,714,595	10,390,521	10,066,446	10,183,271	10,183,501	9,959,426	9,735,351	9,511,276	9,511,276
Ending cash balance (Operating)	11,610,895	11,386,820	11,162,745	10,938,670	10,714,595	10,390,521	10,066,446	10,183,271	10,183,501	9,959,426	9,735,351	9,511,276	9,511,276	9,511,276

RESTRICTED INCOME *	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total	
Endowment - Mitigation Fees	-	-	-	-	-	-	-	-	59,574	-	-	-	-	59,574	59,574
Endowment - Investment Income	19,060.40	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	43,642.50	499,128	523,710	
Endowment - Marketable Securities	(242,566)	-	-	-	-	-	-	-	-	-	-	-	-	(242,566)	
Restricted gifts, grants & related	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Total</b>	<b>(223,506)</b>	<b>43,643</b>	<b>103,217</b>	<b>43,643</b>	<b>43,643</b>	<b>43,643</b>	<b>316,136</b>	<b>583,284</b>							

Budget-to-actual cash balances	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total
Beginning cash balance (Restricted)	18,081,476	17,857,970	17,901,613	17,945,255	17,988,898	18,032,540	18,076,183	18,119,825	18,163,468	18,266,684	18,310,327	18,353,969	18,397,612	18,397,612
Ending cash balance (Restricted)	17,857,970	17,901,613	17,945,255	17,988,898	18,032,540	18,076,183	18,119,825	18,163,468	18,266,684	18,310,327	18,353,969	18,397,612	18,397,612	18,397,612

2014 budget cash balances	Actual Jan	Projected Feb	Projected Mar	Projected Apr	Projected May	Projected Jun	Projected Jul	Projected Aug	Projected Sep	Projected Oct	Projected Nov	Projected Dec	Projected Total	Budget Total
Beginning cash balance (Restricted)	18,081,476	18,125,119	18,168,761	18,212,404	18,256,046	18,299,689	18,343,331	18,386,974	18,430,616	18,533,833	18,577,475	18,621,118	18,664,760	18,664,760
Ending cash balance (Restricted)	18,125,119	18,168,761	18,212,404	18,256,046	18,299,689	18,343,331	18,386,974	18,430,616	18,533,833	18,577,475	18,621,118	18,664,760	18,664,760	18,664,760

Restoration & Enhancement	Acres	Total
Est. funds necessary to balance 25/25/50 - at \$8,750/acre		
Acres planned but not yet constructed	190	\$ 1,662,500

	Summer 2014 possible mitigation				
	Acres	Full fee	Non-Acq Fee	Fees paid	Total (\$)
City of Sac.	7	233,877.75	-	-	233,878
	-	-	-	-	-
	-	-	-	-	-
	<b>7</b>	<b>233,878</b>	<b>-</b>	<b>-</b>	<b>233,878</b>

Big events & issues-revenue
1. NBHCP fees received between May-Sep
2. Farm rent is received in December
Big events & issues-expense
Surprise potential
1. Legal expense

These Cash Flow Projections include only NBHCP funds (excludes SAFCANLIP project funds).  
\* Restricted income includes the Endowment Fund and the Supplemental Endowment Fund.

The Natomas Basin Conservancy

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Register: 1001 · TNBC Checking  
 From 01/01/2014 through 01/31/2014  
 Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/01/2014			1003 · Cash & Inv - WFI	Funds Transfer		X	100,000.00	329,517.00
01/06/2014			-split-	Deposit		X	106,090.00	435,607.00
			Reimbursements / Other	2013 Water Re...			19,305.00	
			Reimbursements / Other	2013 Water Re...			29,410.00	
			Reimbursements / Other	2013 Water Re...			49,075.00	
			Rent - Real Property	2014 Land Rent			8,300.00	
01/06/2014	8147	Butte Sand & Gravel	2100.1 · A/P - Admin	Inv # 0014790	1,574.40	X		434,032.60
01/06/2014	8148	Christine Quenga	2100.1 · A/P - Admin	Inv # 029	100.00	X		433,932.60
01/06/2014	8149	cSpot Interworks, Inc.	2100.1 · A/P - Admin	Inv # 33624	29.00	X		433,903.60
01/06/2014	8150	Federal Express	2100.1 · A/P - Admin	Acct # 2555-33...	19.27	X		433,884.33
01/06/2014	8151	South Natomas Trans...	2100.1 · A/P - Admin	Inv # 630	350.00	X		433,534.33
01/06/2014	8152	Westervelt Ecologica...	2100.1 · A/P - Admin		11,100.00	X		422,434.33
01/06/2014	8153	California Chamber ...	2100.1 · A/P - Admin	Inv # 10755486	96.89	X		422,337.44
01/06/2014	8154	Sacramento County ...	2100.1 · A/P - Admin	Acct # 500005...	147.02	X		422,190.42
01/06/2014	8155	Natomas Mutual Wat...	2100.1 · A/P - Admin		114,679.62	X		307,510.80
01/06/2014	8156	Roberts, John R.	6304 · Health Insurance	Dec 13 - Expen...	1,106.69	X		306,404.11
01/06/2014	8157	Arkfeld, Sherry	6402 · Cellular Phones	Jan 14 - Reimb...	48.12	X		306,355.99
01/06/2014	8158	Wells Fargo	2100.1 · A/P - Admin	Acct#....6339	1,437.74	X		304,918.25
01/07/2014			-split-	Deposit		X	834.50	305,752.75
			Reimbursements / Other	Reimburse for ...			9.50	
			Rent - Real Property	Jan 14 Rent SLV			800.00	
			Reimbursements / Other	Late Fee for Ja...			25.00	
01/07/2014	8159	Bode & Bode Lock ...	2100.1 · A/P - Admin	Inv # 49388	132.50	X		305,620.25
01/07/2014	8160	Odell's Pump & Mot...	2100.1 · A/P - Admin		6,388.13	X		299,232.12

The Natomas Basin Conservancy

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Register: 1001 - TNBC Checking

From 01/01/2014 through 01/31/2014

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/07/2014	8161	Wells Fargo	2100.1 · A/P - Admin	Acct#....9604	9.50	X		299,222.62
01/07/2014	8162	Wells Fargo	2100.1 · A/P - Admin	Acct#....9604	9.50	X		299,213.12
01/07/2014	8163	Lake WebWorks	2100.1 · A/P - Admin	Deposit on web...	4,620.00	X		294,593.12
01/07/2014	8164	Fidelity Investments	2100.1 · A/P - Admin	Acct # 484-679...	969.58	X		293,623.54
01/07/2014	8165	T. Rowe Price	2100.1 · A/P - Admin	VOID: Acct # ...		X		293,623.54
01/07/2014	8166	Wells Fargo HBS	2100.1 · A/P - Admin	HSA Contribut...	1,375.00	X		292,248.54
01/10/2014		Paychex	6306 · Payroll Fees	Payroll fees for...	90.86	X		292,157.68
01/10/2014	8129	Lor, Jeremy	6422 · Mileage Expense	VOID: Dec 13 ...		X		292,157.68
01/15/2014	Payroll		6301 · Salaries [split]	01/15/14 Payroll	12,696.34	X		279,461.34
01/15/2014	Payroll		6301 · Salaries [split]	01/15/14 Payroll	6,363.89	X		273,097.45
01/16/2014			-split-	Deposit		X	19,290.41	292,387.86
			Reimbursements / Other	Water & Electr...			5,056.41	
			Reimbursements / Other	Water & Electr...			14,234.00	
01/17/2014	8167	Dan L. Silva	2100.1 · A/P - Admin	4Q13 Board M...	100.00	X		292,287.86
01/17/2014	8168	Danelle Stylos	2100.1 · A/P - Admin	4Q13 Board M...	200.00	X		292,087.86
01/17/2014	8169	David B. Christophel	2100.1 · A/P - Admin	4Q13 Board M...	200.00			291,887.86
01/17/2014	8170	Frances Kay Backer	2100.1 · A/P - Admin	4Q13 Board M...	200.00	X		291,687.86
01/17/2014	8171	Michael A. Bradbury	2100.1 · A/P - Admin	4Q13 Board M...	200.00	X		291,487.86
01/17/2014	8172	Michael Kevin McRae	2100.1 · A/P - Admin	4Q13 Board M...	100.00	X		291,387.86
01/17/2014	8173	Steven D.H. Willey	2100.1 · A/P - Admin	4Q13 Board M...	100.00	X		291,287.86
01/17/2014	8174	William H. Edgar	2100.1 · A/P - Admin	4Q13 Board M...	200.00	X		291,087.86

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Register: 1001 · TNBC Checking

From 01/01/2014 through 01/31/2014

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/17/2014	8175	Baker Williams Engi...	2100.1 · A/P - Admin		1,400.00	X		289,687.86
01/17/2014	8176	Chipman Relocations	2100.1 · A/P - Admin	Order # 49IA-4...	200.00	X		289,487.86
01/17/2014	8177	cSpot Interworks, Inc.	2100.1 · A/P - Admin	Inv # 33718	953.70	X		288,534.16
01/17/2014	8178	Economic & Plannin...	2100.1 · A/P - Admin		3,780.00	X		284,754.16
01/17/2014	8179	ICF Jones & Stokes ...	2100.1 · A/P - Admin	Inv # 0098376	9,605.94	X		275,148.22
01/17/2014	8180	Knutsen Pump Testing	2100.1 · A/P - Admin	Inv # 454	200.00	X		274,948.22
01/17/2014	8181	Marketing by Design	2100.1 · A/P - Admin	Inv # 4885	150.00	X		274,798.22
01/17/2014	8182	Sprint	2100.1 · A/P - Admin	Inv # 1258400...	121.10	X		274,677.12
01/17/2014	8183	SureWest	2100.1 · A/P - Admin	Acct ID: 71258...	288.45	X		274,388.67
01/17/2014	8184	Unum	2100.1 · A/P - Admin	Bill # 0144773...	349.99	X		274,038.68
01/17/2014	8185	Westervelt Ecologica...	2100.1 · A/P - Admin		7,047.50	X		266,991.18
01/17/2014	8186	Xerox Corp.	2100.1 · A/P - Admin	Inv # 071931375	537.08	X		266,454.10
01/17/2014	8187	PG&E	2100.1 · A/P - Admin		9,546.93	X		256,907.17
01/17/2014	8188	SMUD	2100.1 · A/P - Admin		2,831.47	X		254,075.70
01/17/2014	8189	Sopwith Farms	2100.1 · A/P - Admin		33,177.50	X		220,898.20
01/17/2014	8190	Lor, Jeremy	6422 · Mileage Expense	Jan 14 - Reimb...	493.81	X		220,404.39
01/17/2014	8191	T. Rowe Price	2100.1 · A/P - Admin	Acct # 124104...	1,835.19	X		218,569.20
01/21/2014			-split-	Deposit		X	20,681.04	239,250.24
			Reimbursements / Other	2013 Water & ...			10,340.52	
			Reimbursements / Other	2013 Water & ...			10,340.52	
01/27/2014		Intuit	6383 · Office Supplies	Check order	200.70	X		239,049.54

The Natomas Basin Conservancy

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Register: 1001 · TNBC Checking  
 From 01/01/2014 through 01/31/2014  
 Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/27/2014	8192	Huezo, Valentina V	6422 · Mileage Expense	Jan 14 - Expen...	28.56	X		239,020.98
01/27/2014	8193	Blue Shield	2100.1 · A/P - Admin	Cust # 4325412	3,515.00	X		235,505.98
01/27/2014	8194	Butte Sand & Gravel	2100.1 · A/P - Admin	Inv # 0015214	1,648.81	X		233,857.17
01/27/2014	8195	Danelle Stylos	2100.1 · A/P - Admin	4Q13 Mileage	81.93	X		233,775.24
01/27/2014	8196	Hines VAF II Sacra...	2100.1 · A/P - Admin	Inv # 13001682	25.00	X		233,750.24
01/27/2014	8197	Reclamation District ...	2100.1 · A/P - Admin	4Q13 Security	4,500.00			229,250.24
01/27/2014	8198	Sopwith Farms	2100.1 · A/P - Admin		26,517.50			202,732.74
01/27/2014	8199	Sutherland Construct...	2100.1 · A/P - Admin	Inv # 891063	250.00	X		202,482.74
01/27/2014	8200	Valley Fresh Cleanin...	2100.1 · A/P - Admin	BTS 012114	1,282.00	X		201,200.74
01/27/2014	8201	Wells Fargo	2100.1 · A/P - Admin	Acct #...6339	1,308.78	X		199,891.96
01/31/2014			6321 · Service Charges	Service Charge	28.50	X		199,863.46
01/31/2014	8202	Lor, Jeremy	6422 · Mileage Expense	VOID: Mileage		X		199,863.46
01/31/2014	8203	Hines VAF II Sacra...	2100.1 · A/P - Admin	Feb 14 - Rent	6,039.35			193,824.11
01/31/2014	8204	Burns, Kimberli S.	-split-	Jan 14 - Reimb...	100.31			193,723.80
			Software Purchases	Software	-25.00			
			Cellular Phones	Cell phone	-75.31			
01/31/2014	8205	Lor, Jeremy	6422 · Mileage Expense	Jan 14 - Reimb...	493.81	X		193,229.99
01/31/2014	Payroll		6301 · Salaries [split]	01/31/14 Payroll	11,434.93	X		181,795.06
01/31/2014	Payroll		6301 · Salaries [split]	01/31/14 Payroll	5,964.12	X		175,830.94



**Natomas Basin Conservancy**

PayPal Account : kburns@natomasbasin.org

2150 River Plaza Dr #460, Sacramento, 95833 CA

**Financial Statement for the month of January 2014**

	Amounts in USD	
	Beginning	Ending
Total balance	603.94	603.94
Available balance	603.94	603.94
Payables balance	0.00	0.00

Note: This is not an actual bill.

# THE NATOMAS BASIN CONSERVANCY

## MONTHLY REVIEW - JANUARY 2014

### STRATEGY

The TNBC funds are invested in the City of Sacramento's Pool A investment fund. The Fund seeks to maximize the level of current income consistent with the preservation of principal while meeting the liquidity needs of the City and the pooled investors. The Fund is invested pursuant to the prudent person standards and the California Code Section 53601 (GC 53601).

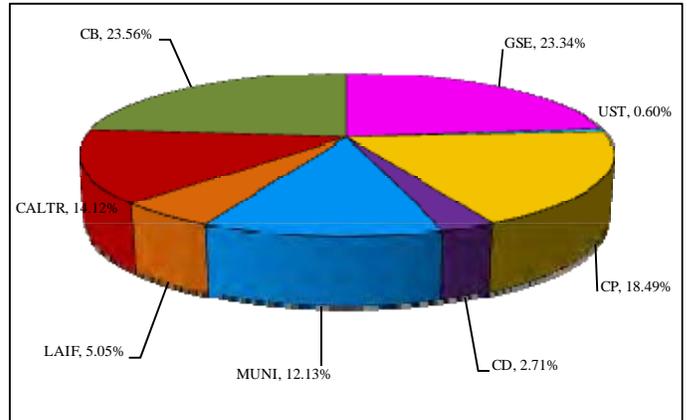
### PORTFOLIO STATISTICS

Portfolio's Beginning Balance	4,912,678
Contributions	0
Withdrawals	(1,000,000)
Interest Earned	4,152
Month-End Market Value	3,916,830

### PERFORMANCE

Earned Interest Yield for the Month	1.06
Laif Rate of Return (book value)	0.24
ML Ready Asset	-
90 Day T-Bill	0.04
Federal Funds	0.08

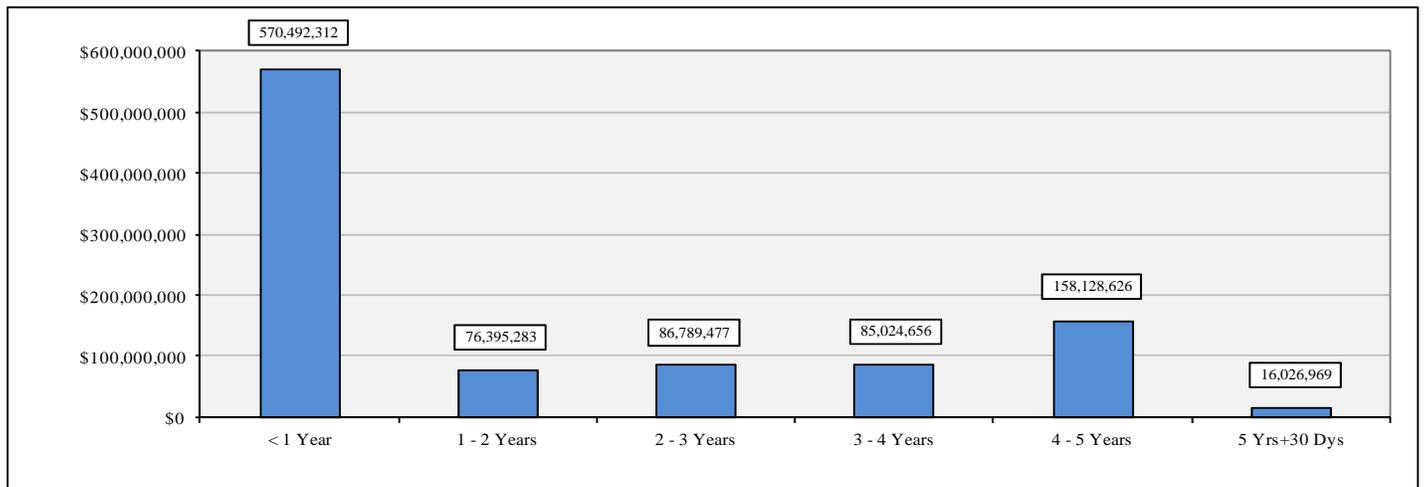
### POOL A BY ASSET CLASS



### POOL A MATURITY SCHEDULE

Maturity	Market Value	%
< 1 Year	570,492,312	57.47%
1 - 2 Years	76,395,283	7.69%
2 - 3 Years	86,789,477	8.74%
3 - 4 Years	85,024,656	8.56%
4 - 5 Years	158,128,626	15.93%
5 Yrs+30 Dys	16,026,969	1.61%
<b>Total</b>	<b>992,857,323</b>	<b>100.00%</b>

Investment Description	Portfolio at Cost	Yield at Month End
US Agency Notes (GSE)	23.34%	1.05%
Treasuries	0.60%	1.04%
Commercial Paper (CP)	18.49%	0.22%
Certificates of Deposit (CD)	2.71%	0.49%
Municipals	12.13%	1.74%
LAIF	5.05%	0.24%
CalTrust	14.12%	0.47%
Corporate Bonds (CB)	23.56%	1.71%





PERFORMANCE SUMMARY

	ENDING MARKET VALUE <sup>2</sup>	CURRENT PORTFOLIO ALLOCATION	YEAR TO DATE	LAST 3 MONTHS	LAST 12 MONTHS	LAST 3 YEARS <sup>1</sup>	LAST 5 YEARS <sup>1</sup>	SINCE INCEPTION <sup>1</sup>
<b>CASH &amp; EQUIVALENTS</b>	184,354	3.14%	0.00%	0.00%	0.01%	0.03%	0.14%	1.57%
<i>Lipper Money Market Index</i>			0.00%	0.00%	0.01%	0.01%	0.05%	1.44%

<sup>1</sup> Annualized Return

<sup>2</sup> Values include Accrued Income.

## PORTFOLIO OVERVIEW

NATOMAS BASIN CONSERVANCY ENDOWMENT

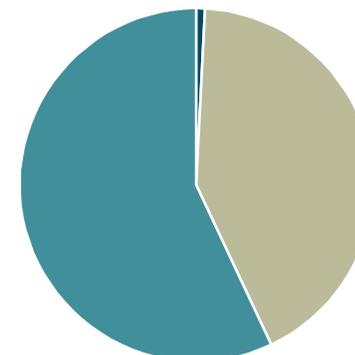
JANUARY 31, 2014



### PORTFOLIO ASSET ALLOCATION

CURRENT HOLDINGS	COST*	ESTIMATED ANNUAL INCOME	ESTIMATED YIELD AT MARKET**	MARKET VALUE***	PERCENT
Reserves	\$125,873.19	\$125.87	0.10%	\$125,873.19	0.83%
Fixed Income	6,524,601.86	179,142.18	2.79	6,413,596.65	42.18
Equities	7,112,583.48	66,274.90	0.76	8,667,342.75	57.00
<b>Total Account</b>	<b>\$13,763,058.53</b>	<b>\$245,542.95</b>	<b>1.61%</b>	<b>\$15,206,812.59</b>	<b>100.00%</b>

### ASSET ALLOCATION CHART



Reserves	0.83%
Fixed Income	42.18
Equities	57.00

### INVESTMENT GUIDELINES

	MINIMUM	MAXIMUM
Reserves	0%	20%
Fixed Income	30	60
Equities	35	60

### YEAR-TO-DATE INFORMATION

REALIZED GAIN/(LOSS)	AMOUNT
Short-Term	N/A
Long-Term	N/A
<b>Net Realized Gain/(Loss)</b>	<b>N/A</b>

EARNED INCOME	AMOUNT
Past Three Months	\$73,533.52
Year-to-Date	\$14,999.23

\*Amortized cost will be reflected where applicable.

\*\*Estimated Yield at Market is calculated by multiplying the number of shares/units held by the income rate and dividing by the Market Value. Data is supplied by T. Rowe Price Associates, Inc. to existing clients as an update on their current holdings and portfolio.

\*\*\*Market values include accrued income where applicable.

Note: T. Rowe Price strongly encourages you to reconcile this statement to the statements you receive directly from your custodian, broker, or the Price Funds, as applicable, to ensure consistency. If you have any questions with respect to this statement, please contact your T. Rowe Price Portfolio Manager.

## PORTFOLIO OVERVIEW

NATOMAS BASIN CONSERVANCY SUPPLEMENTAL ENDOWMENT

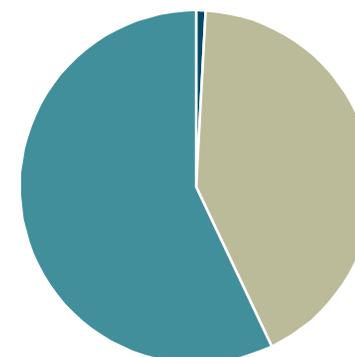
JANUARY 31, 2014



### PORTFOLIO ASSET ALLOCATION

CURRENT HOLDINGS	COST*	ESTIMATED ANNUAL INCOME	ESTIMATED YIELD AT MARKET**	MARKET VALUE***	PERCENT
Reserves	\$21,964.28	\$21.96	0.10%	\$21,964.28	0.88%
Fixed Income	1,066,608.93	29,464.37	2.81	1,049,893.05	42.07
Equities	1,167,397.64	10,815.97	0.76	1,423,858.96	57.05
<b>Total Account</b>	<b>\$2,255,970.85</b>	<b>\$40,302.30</b>	<b>1.61%</b>	<b>\$2,495,716.29</b>	<b>100.00%</b>

### ASSET ALLOCATION CHART



Reserves	0.88%
Fixed Income	42.07
Equities	57.05

### INVESTMENT GUIDELINES

	MINIMUM	MAXIMUM
Reserves	0%	20%
Fixed Income	30	60
Equities	35	60

### YEAR-TO-DATE INFORMATION

REALIZED GAIN/(LOSS)	AMOUNT
Short-Term	N/A
Long-Term	N/A
<b>Net Realized Gain/(Loss)</b>	<b>N/A</b>

EARNED INCOME	AMOUNT
Past Three Months	\$12,110.82
Year-to-Date	\$2,464.43

\*Amortized cost will be reflected where applicable.

\*\*Estimated Yield at Market is calculated by multiplying the number of shares/units held by the income rate and dividing by the Market Value. Data is supplied by T. Rowe Price Associates, Inc. to existing clients as an update on their current holdings and portfolio.

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The Natomas Basin Conservancy

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Register: 1020 · SAFCA NLIP - Checking

From 01/01/2014 through 01/31/2014

Sorted by: Date, Type, Number/Ref

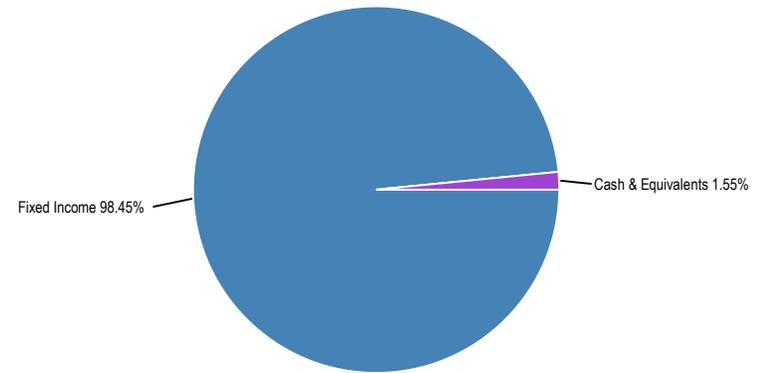
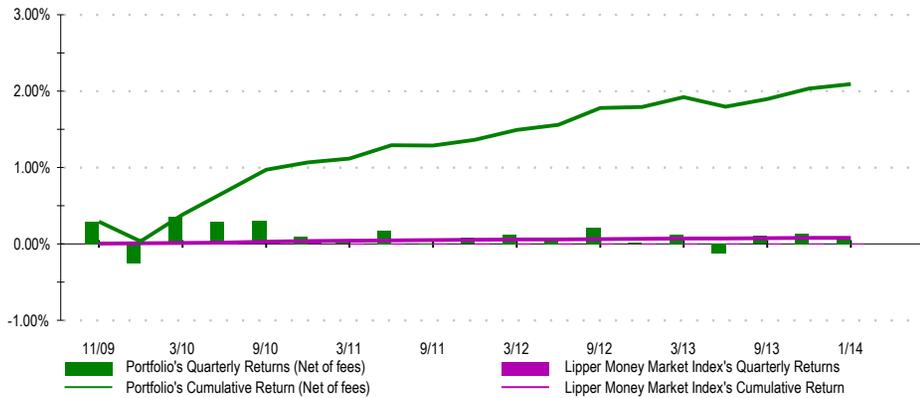
<u>Date</u>	<u>Number</u>	<u>Payee</u>	<u>Account</u>	<u>Memo</u>	<u>Payment</u>	<u>C</u>	<u>Deposit</u>	<u>Balance</u>
01/06/2014	2051	Butte Sand & Gravel	2120 · Accounts Payab...		1,042.54	X		58,962.43
01/06/2014	2052	Federal Express	2120 · Accounts Payab...	Acct # 2555-33...	54.75	X		58,907.68

**PORTFOLIO ALLOCATION & PERFORMANCE SUMMARY - REPORT PERIOD: 11/1/09 TO 1/31/14**

**NATOMAS BASIN CONSERVANCY NLIP - IMA**

**PORTFOLIO RETURNS**

**ALLOCATION (BY CLASS)**



**PORTFOLIO SUMMARY**

	<b>YEAR TO DATE</b>	<b>LAST 3 MONTHS</b>	<b>LAST 12 MONTHS</b>	<b>LAST 3 YEARS</b>	<b>SINCE INCEPTION</b>
Beginning Value <sup>1</sup>	776,004	765,195	866,363	752,780	744,385
Net Contributions & Withdrawals <sup>2</sup>	110,019	120,382	18,708	126,131	126,131
Investment Gain or Loss <sup>1</sup>	432	879	1,383	7,544	15,939
Ending Value <sup>1</sup>	886,455	886,455	886,455	886,455	886,455

**PERFORMANCE SUMMARY**

	<b>ENDING MARKET VALUE<sup>1</sup></b>	<b>CURRENT PORTFOLIO ALLOCATION</b>	<b>YEAR TO DATE</b>	<b>LAST 3 MONTHS</b>	<b>LAST 12 MONTHS</b>	<b>LAST 3 YEARS<sup>3</sup></b>	<b>SINCE INCEPTION<sup>3</sup></b>
<b>TOTAL PORTFOLIO (Net of fees)<sup>2</sup></b> <i>Lipper Money Market Index</i>	<b>886,455</b>	<b>100.00%</b>	<b>0.06%</b> <i>0.00%</i>	<b>0.12%</b> <i>0.00%</i>	<b>0.18%</b> <i>0.01%</i>	<b>0.32%</b> <i>0.01%</i>	<b>0.49%</b> <i>0.02%</i>
<b>FIXED INCOME</b> <i>Lipper Money Market Index</i>	<b>872,712</b>	<b>98.45%</b>	<b>0.09%</b> <i>0.00%</i>	<b>0.20%</b> <i>0.00%</i>	<b>0.55%</b> <i>0.01%</i>	<b>0.67%</b> <i>0.01%</i>	<b>0.84%</b> <i>0.02%</i>
<b>CASH &amp; EQUIVALENTS</b> <i>Lipper Money Market Index</i>	<b>13,744</b>	<b>1.55%</b>	<b>0.00%</b> <i>0.00%</i>	<b>0.00%</b> <i>0.00%</i>	<b>0.01%</b> <i>0.01%</i>	<b>0.02%</b> <i>0.01%</i>	<b>0.05%</b> <i>0.02%</i>

<sup>1</sup> Values include Accrued Income.

<sup>2</sup> Starting November 2009, management fees have been incorporated into performance calculations.

<sup>3</sup> Annualized Return

## MEMORANDUM

To: John Roberts and Kim Burns, The Natomas Basin Conservancy

From: Allison Shaffer and Tim Youmans

Subject: Natomas Basin Habitat Conservation Plan Estimated Acres Distribution; EPS #132155

Date: January 30, 2014

*The Economics of Land Use*



At the request of The Natomas Basin Conservancy (TNBC), Economic & Planning Systems, Inc. (EPS) estimated the distribution of acres located within the boundaries of the Natomas Basin. EPS estimated the acreage distribution both at the time the Final Natomas Basin Habitat Conservation Plan (NBHCP) was adopted in 2003 and currently. **Table 1** summarizes the estimated acres, and **Table 2** details the estimates. **Figure 1** shows the information graphically.

Note that the data in these tables represent EPS's best estimates to date, given the information available. If new information is obtained, there could be changes in the distribution of acres estimates. In developing the acres estimates, EPS consulted and obtained information from the following sources:

- Final NBHCP (April 2003)
- NBHCP Final Environmental Impact Report/Environmental Impact Statement (April 2003)
- Federal Court Decision CIV-S-04-0579 DFL JFM (September 7, 2005)
- Biological and Conference Opinion on Issuance of Incidental Take Permits to the City of Sacramento and Sutter County for Urban Development in the Natomas Basin, Sacramento and Sutter Counties, California (June 24, 2003)
- Implementation Agreement for the NBHCP (2003)
- City of Sacramento Staff
- County of Sacramento Staff
- TNBC

*Economic & Planning Systems, Inc.  
2295 Gateway Oaks Drive, Suite 250  
Sacramento, CA 95833-4210  
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[www.epsys.com](http://www.epsys.com)

**Table 1** and **Table 2** show the change in the Natomas Basin acres distribution since the 2003 NBHCP was implemented. The NBHCP Area consists of approximately 53,500 acres in total. When the NBHCP was adopted, 17,500 acres were designated for development (referred to as the Permit Area), 8,750 acres were required for habitat mitigation for this development (referred to as Permit Area Mitigation), and an estimated 12,200 acres of existing development were exempt from the requirements of the NBHCP, nearly completely because it was already urbanized. The remaining 15,100 acres were to be committed for agriculture. As stated in the September 2005 Federal court decision listed above and frequently discussed elsewhere:

*"The NBHCP, BiOp, EIR/EIRS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use." (p.30, footnote 13)*

Since adoption of the NBHCP, however, some of the approximately 15,100 acres committed for agriculture have been developed or used for supplemental mitigation beyond the Permit Area Mitigation. This development and mitigation can be divided into three categories as summarized below and shown in the tables and chart:

- **Development Outside the HCP's "Permit Area":** Urban development that has occurred in Sacramento County in areas that are not part of the 17,500-acre NBHCP and Metro Air Park Habitat Conservation Plan (MAPHCP) Permit Area.
- **Supplemental Mitigation:** Required mitigation for development outside the 17,500-acre Permit Area approved by the Wildlife Agencies.
- **Sacramento Area Flood Control Agency Natomas Levee Improvement Project:** Levee construction for the Natomas Levee Improvement Project (NLIP) and required mitigation acreage for this construction.

**Table 1** estimates that approximately 2,300 acres of the base 15,100 acres committed for agriculture have been converted to other uses, leaving approximately 12,800 acres currently committed for agriculture.

This conversion of acres previously designated for agriculture will result in fewer acres remaining as habitat for the major Covered Species. All of the documents discussed above consistently mention that their findings are based on 16,000 acres of Giant Garter Snake habitat and between 13,000 acres and 15,000 acres of Swainson's Hawk habitat remaining after development of the Permit Area is completed. EPS did not have enough information, however, to estimate the extent of the loss of species habitat because of the conversion of acres out of agriculture, so such estimates are not included in this analysis.

**Table 1**  
**Natomas Basin Habitat Conservation Plan Acreage Calculations by Type**  
**Summary of Estimated NBHCP Area Acres Distribution**

Land Use	Distribution of Acres [1]		
	Base (2003 NBHCP)	Current Estimated (2014)	Difference
<b>NBHCP Committed Acres (Excluding Agriculture)</b>			
Permit Area Development	17,500.0	17,500.0	0.0
Permit Area Mitigation	8,750.0	8,750.0	0.0
Exempt Development	12,192.5	12,192.5	0.0
Development Outside HCP's Permit Area	0.0	434.5	434.5
Supplemental Mitigation	0.0	233.0	233.0
SAFCA Natomas Levee Improvement Project	0.0	1,600.0	1,600.0
<b>Total Acres Excluding Agriculture</b>	<b>38,442.5</b>	<b>40,710.0</b>	<b>2,267.5</b>
<b>Land Committed to Agriculture [2]</b>	<b>15,094.5</b>	<b>12,827.1</b>	<b>(2,267.5)</b>
<b>Total Acres in NBHCP Area</b>	<b>53,537.0</b>	<b>53,537.0</b>	<b>0.0</b>

*sum*

[1] See **Table 2** for detail.

[2] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states:  
 "The NBHCP, BiOp, EIR/EIRS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use." (p.30, footnote 13). Similar references are found throughout the referenced documents.

**Table 2**  
**Natomas Basin Habitat Conservation Plan Acreage Calculations by Type**  
**Estimated NBHCP Acres Distribution**

Item	Source	Estimated Distribution of Acres		
		Base (2003 NBHCP)	Current (2014)	Difference
<b>Permit Area Development</b>				
City of Sacramento	Final NBHCP (April 2003)	8,050.0	8,050.0	0.0
Metro Air Park	Final NBHCP (April 2003)	1,983.0	1,983.0	0.0
Sutter County	Final NBHCP (April 2003)	7,467.0	7,467.0	0.0
<b>Subtotal Permit Area Development</b>		<b>17,500.0</b>	<b>17,500.0</b>	<b>0.0</b>
<b>Permit Area Mitigation</b>				
City of Sacramento	Final NBHCP (April 2003)	4,025.0	4,025.0	0.0
Metro Air Park	Final NBHCP (April 2003)	991.5	991.5	0.0
Sutter County	Final NBHCP (April 2003)	3,733.5	3,733.5	0.0
<b>Subtotal Permit Area Mitigation</b>		<b>8,750.0</b>	<b>8,750.0</b>	<b>0.0</b>
<b>Exempt Development (Dev. Before 1997)</b>				
City of Sacramento	City of Sacramento	4,168.0	4,168.0	0.0
Sutter County [1]	Final NBHCP (April 2003); p. II-3	898.0	898.0	0.0
<b>Sacramento County</b>				
Panhandle Industrial Area	City and County of Sacramento	838.0	838.0	0.0
49er Truck Stop and Driving Range	City and County of Sacramento	31.2	31.2	0.0
Tomato Patch	City and County of Sacramento	12.3	12.3	0.0
Leona Circle	City and County of Sacramento	33.0	33.0	0.0
Teal Bend Golf Course	City and County of Sacramento	259.0	259.0	0.0
Airport & Airport Buffer Lands	City and County of Sacramento	5,953.0	5,953.0	0.0
<b>Subtotal Sacramento County</b>		<b>7,126.5</b>	<b>7,126.5</b>	<b>0.0</b>
<b>Total Exempt Development</b>		<b>12,192.5</b>	<b>12,192.5</b>	<b>0.0</b>
<b>Development Outside HCP's Permit Area</b>				
Development Since 1997 [2]	TNBC	0.0	54.5	54.5
Proposed High School in Natomas Unified School District	City and County of Sacramento	0.0	40.0	40.0
Additional Airport Lands	City of Sacramento	0.0	340.0	340.0
<b>Subtotal Sacramento County</b>		<b>0.0</b>	<b>434.5</b>	<b>434.5</b>
<b>Supplemental Mitigation</b>				
Existing Supplemental Mitigation [3]	NBHCP Fee Update- 2013	0.0	205.7	205.7
Mitigation for County Development Since 1997 [4]	Estimated	0.0	27.3	27.3
<b>Subtotal</b>		<b>0.0</b>	<b>233.0</b>	<b>233.0</b>
<b>SAFCA Natomas Levee Improvement Project [5]</b>	SAFCA	<b>0.0</b>	<b>1,600.0</b>	<b>1,600.0</b>
<b>Total Committed Acres Excluding Agriculture</b>		<b>38,442.5</b>	<b>40,710.0</b>	<b>2,267.5</b>
<b>Land Committed to Agriculture [6]</b>		<b>15,094.5</b>	<b>12,827.1</b>	<b>(2,267.5)</b>
<b>TOTAL NBHCP Area Acres</b>		<b>53,537.0</b>	<b>53,537.0</b>	<b>0.0</b>

acres

- [1] The NBHCP may contain conflicting information concerning Sutter County exempt land. The total acres shown in this table is the sum of the Highways and Urban acres shown in Table II-1 on page II-3 of the Final NBHCP (April 2003). On page III-17 of the Final NBHCP, it is stated that "Prior to 1997, a total of 146 acres of urban development and 291 acres of roads and highways existed in Sutter County," resulting in a total of 437 exempt acres, approximately 400 fewer acres than shown in this table.
- [2] From current TNBC Schedule of Subject Acreage and Fees Paid.
- [3] Metro Air Park mitigation (200 acres) plus 2 RD1000 easements (5.7 acres).
- [4] Estimated as 0.5 \* 54.5 acres of County development that paid NBHCP mitigation fees since 1997.
- [5] 1,380 current acres + 220 additional acres estimated for Federal phase of project.
- [6] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states:  
 "The NBHCP, BiOp, EIR/EIRS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining lands will remain in agricultural use." (p.30, footnote 13)

**Figure 1**  
**Estimated Distribution of NBHCP Area Acres**

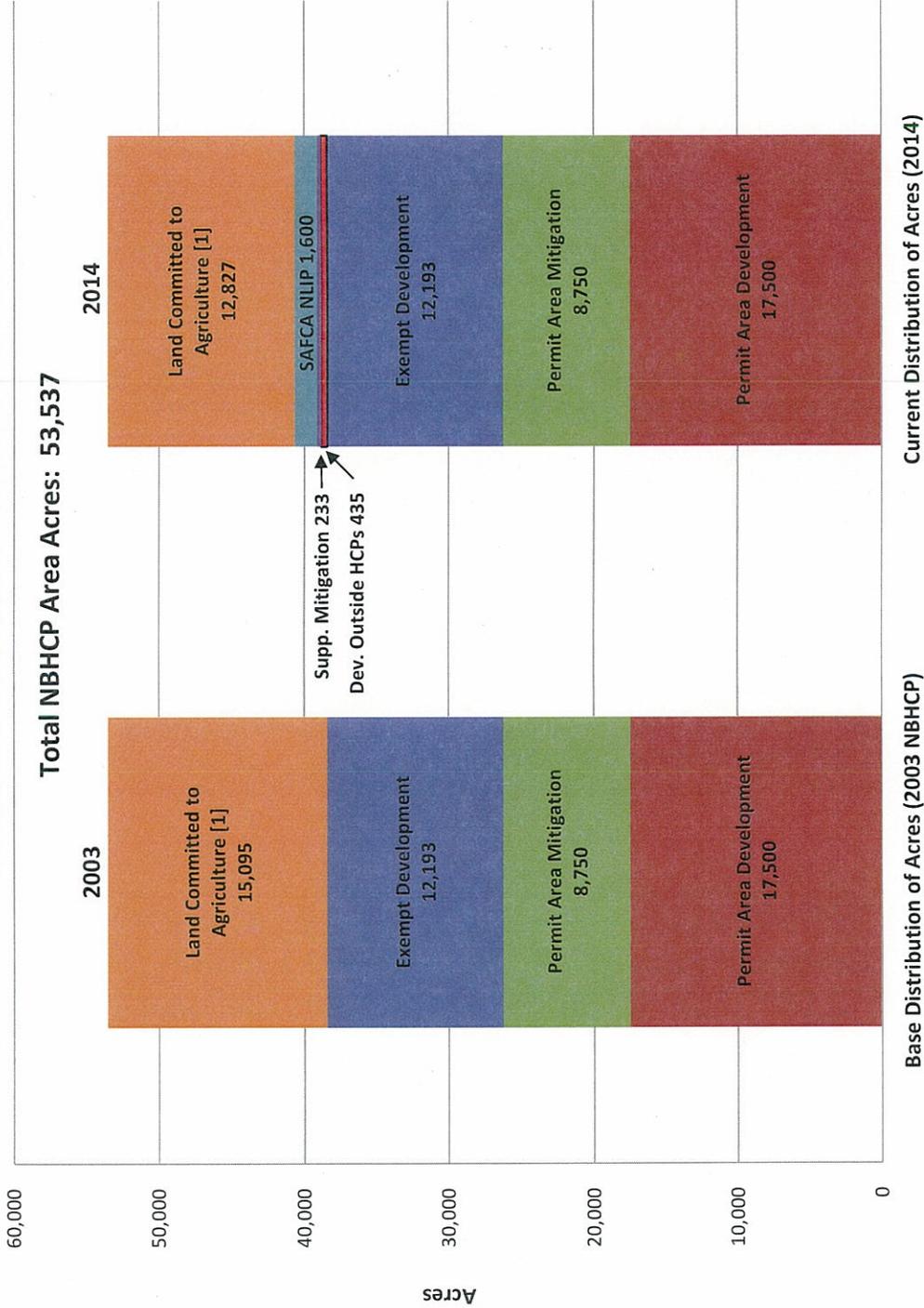


chart1

[1] The most recent Federal court decision regarding the NBHCP, dated September 7, 2005, states: "The NBHCP, BiOp, EIR/EIRS, and Findings and Recommendations are all predicated on the assumption that development in the Basin will be limited to 17,500 acres and that the remaining land will remain in agricultural use." (p.30, footnote 13)



February 19, 2014

RECEIVED  
FEB 25 2014

RE: Bureau of Reclamation Reduction of 2014 Water Supply

Dear Customer:

On February 15<sup>th</sup> the Bureau of Reclamation (BOR) notified us of a water supply reduction for the 2014 water year. Based on the inflow to Shasta Dam our supply has been reduced to 40% of the contract amount which equates to 48,080 acre-feet for the 2014 water year, April to October. This could cause a reduction in available water for Natomas Mutual Water Company Shareholders. We will be receiving monthly updates from the BOR. If more rainfall occurs, the allocation could increase above the 40%. The Natomas Mutual Water Company is evaluating this reduction along with past water usage to determine the impact on the 2014 water season. We are also working to understand how the Bureau of Reclamation determined this reduction and what their future actions may be.

We will keep you informed of any changes as they occur. If you have any questions or concerns please contact me at 916-419-5936.

Sincerely,

Brett Gray  
Assistant General Manager  
Natomas Central Mutual Water Company  
(916) 419-5936  
bgray@natomaswater.com



# United States Department of the Interior

## BUREAU OF RECLAMATION

Northern California Area Office  
16349 Shasta Dam Boulevard  
Shasta Lake, California 96019-8400

IN REPLY REFER TO:

February 15, 2014

RECEIVED  
FEB 18 2014

NC-100  
WTR-4.00

Mr. John Roberts  
Natomas Basin Conservancy  
2150 River Plaza, Suite 460  
Sacramento, California 95833-4135

Subject: 2014 Notice of Water Supply Conditions and Availability, Critical Year Water Supply Reduction, Natomas Basin Conservancy, Contract No. 14-06-200-1364A-R-1, Central Valley Project (CVP), California, Water Year 2014

Dear Mr. Roberts:

Current water supply conditions throughout the state of California are uncharacteristically dry, with a very low probability of full recovery to normal conditions this water year. This is evidenced by the declaration of a Drought State of Emergency announced by Governor Edmund G. Brown Jr. on January 17, 2014, and the zero (0) percent allocation announcement by the California Department of Water Resources (DWR) made on January 31, 2014, for all of its 29 public water agencies serviced by the State Water Project.

The State is entering the third consecutive year of below average precipitation and snowmelt runoff. The year 2013 proved to be one of the driest years on record for many areas of California, and 2014 is one of the driest to date. Many of the State and Federal natural resource agencies are implementing unprecedented measures in response to this severe drought condition. It is imperative that management of the record low-storage levels is carried out in a manner that maximizes conservation throughout the year.

The following is just a snapshot of the actions the Bureau of Reclamation has taken in response to the 2013-2014 drought:

- On December 31, 2013, created a Reclamation drought team to track and address all water resource areas affected by the drought and to timely communicate status to the public.
- On January 29, 2014, filed a joint petition with DWR to the California State Water Resources Control Board (SWRCB) requesting a Temporary Urgency Change in License and Permit Terms.
- On or about January 29, 2014, sent letters to all CVP Municipal and Industrial users requesting updated information for purposes of calculating unmet public health and safety water demands.
- On February 4, 2014, Reclamation released the 2014 Water Plan which identifies specific measures that are being undertaken in response to the current drought conditions.
- Convened weekly meetings with DWR to identify all opportunities for facilitating water transfers and exchanges between the State and Federal water projects.

- Partnered with the Natural Resource Conservation Service to secure Federal funding for water districts to conserve water and improve water management.

Pursuant to Contract No. 14-06-200-1364A-R-1, Reclamation is required to provide notification of a Critical Year as defined in the contract. As of February 1, 2014, the full natural inflow to Shasta Reservoir was approximately 697,000 acre-feet (af), well below the critical level. Due to the current and projected hydrologic conditions, Reclamation can only allocate 40 percent of the Contract Total at this initial stage of the water year which equals 196 af. Reclamation intends to remain available to you and your representatives to discuss how the timing of water deliveries can be accomplished to satisfy the needs of water users while maintaining the objective of conserving storage for this year and into the next. At your request, Reclamation will also provide you with status reports of the hydrology to date including explanations of our operations.

On January 17, 2014, the SWRCB sent out informational letters to all water right holders in the state of California (including Reclamation), providing advance notice of possible curtailments in water use pursuant to each water right due to the lack of sufficient water supply available in the watersheds of the State. Final notices are anticipated to be issued by the end of February 2014. In addition, the SWRCB will be conducting workshops to obtain additional up-to-date information on the operations of the State and Federal water projects. Based on the uncertainty of these actions, Reclamation, along with other junior and possibly senior water right appropriators, may be compelled to comply with the curtailment notices and other orders from the SWRCB. This could further complicate Reclamation's ability to service all CVP users, including deliveries under your contract.

The extent of the current dry conditions is difficult to predict at best, as well as its impact on water users and the environment. In response, Reclamation is assigning all of our available resources to address the impacts the drought is causing our water users. We appreciate your efforts to work with us, the State, and other water users to identify actions that can be taken to mitigate, to the extent possible, this unprecedented low water supply year. We will provide ample notice of water allocation and operational meetings, and will continue to monitor hydrologic conditions and will immediately notify you if allocations change.

Please continue to implement all required contingency plans and water conservation measures within your water service areas. If you have any questions regarding this letter, please contact Mr. Rich Robertson at 530-934-1363 or RRobertson@usbr.gov.

Sincerely,



Brian Person  
Area Manager

# EXECUTIVE DIRECTOR'S REPORT

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WEDNESDAY, FEBRUARY 2ND, 2014

## State and Feds Drained Northern California Reservoirs

by Dan Bacher | Elk Grove News (<http://newsle.com/article/0/120536792/>)

The Bureau of Reclamation and Department of Water Resources systematically drained northern California reservoirs last summer, resulting in low flows and endangering salmon and steelhead in the Sacramento, Feather and American rivers, while filling water banks and Southern California reservoirs.

Last summer, high water releases down the Sacramento, Feather and American rivers left Shasta, Oroville and Folsom reservoirs at dangerously low levels. Shasta is at 36 percent of capacity and 54 percent of average; Oroville, 36 percent of capacity and 54 percent of average; and Folsom, 17 percent of capacity and 34 percent of average. Castaic Lake as of Friday, January 31, 2014.



<http://earthfirstjournal.org/newswire/wp-content/uploads/sites/3/2014/02/castaic-lake.jpg>  
Castaic Lake, in Southern California, remains at 86% of capacity, while Lake Oroville and Lake Shasta are at 36% of capacity.

Yet Pyramid Lake in Southern California is at 98 percent of capacity and 105 percent of average, while Castaic Reservoir is 86 percent of capacity and 105 percent of average.

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The state and federal water agencies exported massive quantities of water to agribusiness interests and Southern California water agencies, endangering local water supplies and fish populations as the ecosystem continues to collapse.

Bill Jennings, Executive Director of the California Sportfishing Protection Alliance, explained how the water was mismanaged.

“We entered 2013 with Shasta, Oroville and Folsom reservoirs at 115 percent, 113 percent, and 121 percent of historical average storage. In April, they were still at 101 percent, 108 percent and 96 percent of average,” said Jennings.

“With no rainfall and little snowpack, the Department of Water Resources and the Bureau (of Reclamation) notified their contractors that water deliveries would be reduced. But they didn’t reduce deliveries. Instead, they actually exported 835,000 acre-feet more water than they said they would be able to deliver,” said Jennings.

Ironically, the Metropolitan Water District of Southern California will have enough water in 2014, 2015 and 2016 to supply its users while Sacramento, Folsom and other cities have been forced to cut water use by 20 percent.

“We’ll have plenty of water in 2015,” Jeffrey Kightlinger, Metropolitan’s general manager, told the Sacramento Bee. “And even if it’s still a drought, we’ll still have enough water in 2016.”

Jennings said the present crisis could have been avoided, and is a “direct result of egregious mismanagement of the state’s water supply system by the state and federal water projects.”

“Excessive water exports and the failure to prepare for inevitable drought have created a decades-long disaster for fisheries, and placed the people and economic prosperity of northern California at grave risk. The State’s obsession with tunneling under the Delta does nothing to address drought, or put us on a path to correct the misuse of limited water supplies,” he added.

The proposed peripheral tunnels will undoubtedly kill the sensitive Delta, a delicate mix of salt and freshwater, that is vital to the life cycle of Central Valley Chinook salmon, as well as thousands of other fish and species, according to the Winnemem Wintu Tribe.

“There is no precedent for the killing of an estuary of this size, so how could any study be trusted to protect the Delta for salmon and other fish? How can they even know what the effects will be?” said Winnemem Wintu Chief and Spiritual Leader Caleen Sisk. “The end of salmon would also mean the end of Winnemem, so the BDCP is a threat to our very existence as indigenous people.”

**Failure to plan ahead contributed to water shortage**

John Herrick, Restore the Delta board member and Counsel and Manager of the South Delta Water Agency, said the failure of the state and federal water projects to plan ahead contributed to the current water shortage.

“Last winter and spring the projects were concerned about not having enough water to meet fishery or agricultural standards, and so sought changes in their permits to allow for the relaxation of those standards,” he said.

“At the same time, they projected the amount of water available for export. As soon as the projections were released, they began to pump MORE water than they projected; thus taking the water needed for fish and endangering future allocations for all purposes. If this had not been

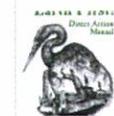


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allowed, the reservoirs would have 800+ TAF more storage in them than they currently do," he noted.

"The Urgency Petition process is for actual, unforeseeable emergencies," said Herrick. "The State has known since at least September that we might be facing a horrible water supply year due to the lack of precipitation during the first 9 months of 2013. Knowing that reservoir levels were getting very low, and that the prior year had insufficient water for fish and water quality standards, the projects simply waited to see what would happen. Not until the very last minute did they file their Urgency Petition."

"Urgency Petitions require no public notice or input, but must be based on a finding that the petitioner exercised due diligence in getting the permit change under the normal petition process if possible. Since the projects have known for months that this scenario was facing them, they should have made their petition months ago. But that would have resulted in public notice, public hearing and input by the interests who depend on the current standards being met.

It appears that, as in the past, the projects manipulated the process to make sure there was no official opposition to their requests to violate the water quality standards. Worse, it appears the regulators (SWRCB staff) were working with the regulated projects outside of the public purview to make sure the petition remained unknown. Therefore, there was no contrary data submitted to contradict the pre-agreed to order granting the petition. What would have been the findings of the SWRCB Board if the information of the projects taking too much water last season were in the record?"

For more information, go to: <http://www.restorethedelta.org> (<http://www.restorethedelta.org/>)

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**From:** Randy Moore Randy-M@calsierra.net  
**Subject:** RE: checking in  
**Date:** February 7, 2014 at 7:36 AM  
**To:** John Roberts jroberts@natomasbasin.org

---

Hi John, we are sorry to say due to the conditions at the site we will not be able to hold our price of \$2.25 a cubic yard. Thanks for the opportunity.

Thanks

Randy Moore  
Vice President  
Cal Sierra Construction  
485-3909 (Office)  
416-7908 (Cell)

---

**From:** John Roberts [mailto:jroberts@natomasbasin.org]  
**Sent:** Thursday, February 06, 2014 12:14 PM  
**To:** Randy Moore  
**Subject:** checking in

Randy: Looking forward to the Conservancy's Pond R project for 2014, we needed to know for certain if CalSierra Construction could do the project for the previous project price of \$2.25 a cubic yard as it relates to soil movement. If CalSierra can adhere and promise that number, then we need to start work on making preparations for the project. If not, we need to get back to the Conservancy's Board.

Could you let me know ASAP?

Thanks!

John Roberts  
Natomas Conservancy



# COUNTY OF SUTTER...established 1850

**Donna M. Johnston**

*County Clerk-Recorder – Registrar of Voters – Clerk of the Board of Supervisors*

February 26, 2014

Mr. Dan Silva  
200 Wilkie Avenue, Route 3  
Yuba City, CA 95991

Dear Mr. Silva: *DANNY*

It is a pleasure to officially advise you that on February 25, 2014, the Sutter County Board of Supervisors re-appointed you to serve on the Natomas Basin Conservancy Board of Directors, as a Sutter County Representative.

Sutter County has always considered itself most fortunate in being able to obtain the services of capable persons such as you. We trust that your re-appointment will provide you with a very unique opportunity to contribute to your County's continued efforts to provide the public with local governmental services of the best quality and conduct.

On behalf of the Board of Supervisors and myself, may we take this opportunity to express our genuine appreciation for your willingness to serve on the board.

Sincerely,

*Donna M. Johnston*

Donna M. Johnston, County Clerk  
& Ex-Officio Clerk of the Board

cc: John Roberts, Executive Director

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