



State of California – Natural Resources Agency
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June 13, 2019

Governor's Office of Planning & Research

JUNE 14 2019

STATE CLEARINGHOUSE

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City Planner
City of Rancho Cucamonga
10500 Civic Center Drive
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Etiwanda Heights Neighborhood and Conservation Plan (EHNCP)
Draft Environmental Impact Report (DEIR)
State Clearinghouse # 2017091027

Dear Ms. Burnett:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from City of Rancho Cucamonga for the Etiwanda Heights Neighborhood and Conservation Plan (EHNCP) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

Thank you for the opportunity to provide comments and recommendations regarding the EHNCP Project (herein termed 'Project') activities that may impact California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

The Project involves the following objectives: 1. Conserve the natural resources and open space character of this unique foothill area. 2. Establish local control by annexing this area to the City and adopting a community-based plan that meets the City's high-quality standards. 3. Develop an economically feasible, fiscally responsible plan that pays its own way without levying new taxes on existing residents. 4. Respect the rights of existing property owners. 5. Provide a range of open space and park areas offering a range of recreation opportunities. 6. In the Neighborhood Area, provide for the development of high-quality, single-family neighborhoods with a range of housing opportunities- including equestrian-oriented housing - that are compatible in character with the existing surrounding neighborhoods. 7. Improve access to the existing and new foothill neighborhoods by extending, connecting and improving Wilson Avenue, Rochester Avenue, and Milliken Avenue, and providing a network of walkable and bikeable neighborhood streets. 8. Enhance fire safety throughout the Plan Area, in particular reduce wildfire hazard to existing and new neighborhoods. 9. Provide a limited amount of small-scale neighborhood shops and restaurants to meet the daily needs of residents in the existing and future foothill neighborhoods. 10. Develop a land use plan for the Neighborhood Area that provides the County with an opportunity for meeting their fiduciary responsibility of selling their surplus land for a reasonable price.

The Etiwanda Heights Neighborhood and Conservation Plan (EHNCP) would permit the development of up to 3,000 dwelling units, 180,000 sq./ft. commercial development, 85.15 acres of park encompassing 4,393 acres and 100 homes with 630 acres of development within the Resource Conservation Area.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Rancho Cucamonga in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The DEIR did not adequately address CDFW's comments to the Notice of Preparation (NOP) (See Enclosure 1). The DEIR indicates on page, 4.3-43, "No focused surveys for burrowing owl were conducted on either the Neighborhood Area (NA) or Resource Conservation Area (RCA) sites, and no burrowing owls were observed incidentally during other surveys." CDFW specifically stated within the NOP comments; "Habitat

assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed Projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503 and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project activity or non-CEQA Project.”

The DEIR did not adequately address CDFW comments to the NOP regarding Defensible space. Section 4.8 Hazards and Hazardous Materials indicates “Impacts related to fire would be addressed by the proposed Project and other Projects in the cumulative scenario on a Project-specific basis, and the overall cumulative impact would not be significant. Therefore, the Plan’s contribution to cumulative impacts related to fire hazards would be less than considerable.” However, fuel breaks and fuel reduction impacts can have significant impacts to natural areas. An analysis of impacts due to the reduction of hazardous conditions in the wildland-urban interfaces communities for the plan should be included within the DEIR. Potential impacts include habitat fragmentation, edge effects, non-native invasive species type conversion, degradation of wildlife habitat values (Shinneman et al. 2018). CDFW is concerned that without the analysis of defensible space, including acres of impact for the overall EHNCP, the DEIR analysis is incomplete and the significance of these impacts can not be determined as required under CEQA.

The DEIR did not address CDFW comments to the NOP regarding potential impacts from noise. Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e. hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Construction noise can also cause indirect impacts to special-status animals and nesting birds that are protected by Fish and Game Code, and these impacts should be adequately addressed. CDFW is concerned that without the analysis of noise impacts, both temporary and permanent for the overall EHNCP, the DEIR analysis is incomplete and the significance of these impacts can not be determined as required under CEQA.

The DEIR did not address CDFW comments to the NOP regarding potential impacts of human activity, wildlife-human interactions created by zoning of development Projects or other Project activities adjacent to natural areas, and exotic and/or invasive species. Vehicle traffic and roads are known to increase the spread of invasive species (Ansong and Pickering 2013). Road use can also result in wildlife mortality, altered abundances and diversity of wildlife, and modification of animal behavior (Trombulak and Frissell 2000). Recreation including hiking, jogging, and mountain biking can have negative

ecological impacts to adjacent habitats including trampling, soil compaction, erosion, edge effects, disturbance, pollution, nutrient loading, and introduced non-native invasive species (Jordan 2000). CDFW is concerned that without the analysis of impacts from human activity and invasive species for the overall EHNCP, the DEIR analysis is incomplete and the significance of these impacts can not be determined as required under CEQA.

The DEIR did not address CDFW comments to the NOP regarding lighting. Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). CDFW is concerned that without the analysis of lighting impacts for the overall EHNCP, the DEIR analysis is incomplete and the significance of these impacts can not be determined as required under CEQA.

The DEIR did not address CDFW comments to the NOP regarding fully protected species. In particular, ringtails (*Bassariscus astutus*) live in a variety of habitats within their range, but they have a decided preference for chaparral, rocky hillsides and riparian areas (Belluomini 1980) and have the potential to be found within the Project site. White-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) are also known to occur, with potential nesting habitat present within the Project site. CDFW is concerned that without an analysis of the Projects' potential indirect, direct, and cumulative impacts to these species, the DEIR analysis is incomplete and the significance of these impacts can not be determined as required under CEQA.

Page ES-10, discusses MM BIO-2, specifically stating "A Conservation Management Plan (CMP) will be prepared that specifically identifies required resource management activities and the entities that will be responsible for managing those activities in perpetuity. In compliance with Chapter 3, Conservation Plan, Section 3.5, Conservation Objectives, Strategy 5.2, the CMP shall, at a minimum address the following issues: Non-Native Plant Management, Post-Flood Management, Public Access and Trail Management, Seed Collection and Dispersal Program, SBKR Habitat Management Program, and Fire Management/Fuel Modification Buffer Zones." CDFW appreciates the proposal of a comprehensive plan identifying the required resource management activities needed for the proposed mitigation area, however several of these land uses identified in MM BIO-2 and within Chapter 3, diminish conservation values. In particular areas that require Post-Flood Management, Public Access and Trail Management, Fire Management /Fuel Modification Buffer Zones need to be identified and impacts analyzed within the CEQA analysis. Additionally, the City of Rancho Cucamonga should consider removing or reducing these activities or exclude the area where the impacts will occur from the proposed mitigation acreage.

Page 4.3-6 and 4.3-7 states "The Conservation Management Plan required to be established under the EHNCP would integrate the management of all conservation lands in the EHNCP. It is expected that the Land Manager would propose updating the management plan to include a restoration program for the North Etiwanda Preserve. Funds for these and other restoration would come from NA development." CDFW has concerns and would like to understand more about the following:

1. Since the North Etiwanda Preserve (NEP) was already set aside as mitigation, as such, funding for restoration would not be considered acceptable for the loss of habitat without documentation that the proposed restoration was not previously mitigated for within the existing NEP Management Plan and
2. If the funding of the EHNCP will be phased as the development is proposed to in nine phases over approximately 13 years.

Page 4.3-17 of the Biological Resources section identifies the "NA contains two vegetation communities identified as sensitive by CDFW: (1) scale broom scrub and (2) white sage scrub. Specifically, Table 4.3-1 identifies 373.20 acres of scalebroom scrub and 3.01 acres of white sage scrub will be removed during the development of the NA. The proposed three northern mitigation areas within the RCA including, the San Bernardino County Flood Control 137-acre property, City of Rancho Cucamonga property, and Inland Empire Resources Conservation District properties have very little of these sensitive vegetation communities, and as a result are not adequate mitigation for Project impacts. The proposed Etiwanda Heights Preserve area was previously set aside as mitigation for the Day Creek Dam Project and is not appropriate to count towards mitigation required to reduce sensitive habitat loss due to Project impacts to a less than significant level.

Page 4.3-66 of the Biological Resources section of the DEIR states, "Mitigation for significant impacts to sensitive vegetation communities would occur through the acquisition of lands within the RCA (mitigation measure (MM- BIO-1), The EHNCP recommends creation of a new 337-acre preserve—the Etiwanda Heights Preserve within the RCA. This 337-acre area is a portion of the surplus property that the County of San Bernardino proposes to sell to the developer of the NA and is located immediately north of the NA. The proposed Etiwanda Heights Preserve is composed of two areas: A) 200-acres of property currently encumbered with an Open Space Easement as noted in Section 3.6 of the Plan, which the DEIR purports allows for intense recreational uses such as sport parks, golf courses, and equestrian centers. The EHNCP recommends that these 200-acres be permanently conserved as habitat, rather than subject to any number of "recreational uses" that would remove existing habitat; and B) 137-acres of adjoining area directly to the west." The 200 acres identified within the DEIR as proposed mitigation has been already recognized as mitigation for the CDFW agreement (V-87-72) Day Creek Dam Project (Enclosure 2). Additionally, clarification regarding the 200 acres is given within the letter from United States Fish and Wildlife Service (SPLCO-R-86-125-RC), dated June 19, 1986 (Enclosure 3). Specifically, it states, "The area shall be reserved for low-intensity

recreation and other non-consumptive uses and managed to maintain the present vegetative community." Finally, the Army Corps of Engineers permit (86-125-RC) Special Condition c (Enclosure 4) states "The permittee shall set aside the area shown and described in the attached sheets (sheet 7 of 8, and 8 of 8) as an area of natural alluvial scrub environment, within which only low impact recreation use can be permitted (horse trails, nature trails, etc.)". Clearly intense recreational uses were not allowed nor anticipated within San Bernardino County Flood Control District's (SBCFCD) 200-acre open space mitigation for the Day Creek Dam Project. CDFW appreciates the City's proposal to convert the conservation easement to conservation as habitat, however, we are concerned this will not meet the mitigation need for the loss of sensitive habitats. As the proposed mitigation would not meet the Project's needs as identified within the DEIR, the impact remains significant, and the DEIR needs to be reevaluated.

SBCFCD's Day Creek Spreading Ground facility is within the proposed 200-acre Etiwanda Heights Preserve. SBCFCD is currently pursuing maintenance permits to maintain the spreading grounds annually. As such, this flood control facility would not serve as adequate mitigation for impacts to sensitive habitats. As the proposed mitigation would not meet the Project's needs as identified within the DEIR, the impact remains significant and the DEIR needs to be reevaluated.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife; therefore, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Etiwanda Heights Neighborhood and Conservation Plan Project DEIR. CDFW recommends the City of Rancho Cucamonga address CDFW comments and concerns and modify the EIR adequately to reduce Project impacts to a level less than significant. CDFW recommends the City of Rancho Cucamonga consider recirculating the revised DEIR to ensure disclosure to the public and opportunity to comment on revisions to the DEIR impacts and mitigation measures.

Please direct questions regarding this letter or further coordination to Brandy Wood, Environmental Scientist at 909-483-6319 or brandy.wood@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager
Inland Deserts Region

Enclosures

- Enclosure 1 – California Department of Fish and Wildlife comment letter in response to the Notice of Preparation dated January 29, 2018.
- Enclosure 2 – California Department of Fish and Wildlife Agreement V-87-72 for the Day Creek Dam Project
- Enclosure 3 – United States Fish and Wildlife Service consultation letter in regard to the Day Creek Dam Project (SPLCO-R-86-125-RC).
- Enclosure 4 – United States Department of Army Permit (86-125-RC) for the Day Creek Dam Project.

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Brandy Wood, Environmental Scientist
California Department of Fish and Wildlife

REFERENCES

- Ansong, M., and C. Pickering. 2013. Are weeds hitchhiking a ride on your car? A systematic review of seed dispersal on cars. PLoS ONE 8:e80275.
- Belluomini, L. 19803 Status of the Ringtail in California. State of California Department of Fish and Game, Nongame Wildlife Investigations.
- Francis, C. D., C. P. Ortega, and A. Cruz. 2009. Noise pollution changes avian communities and species interactions. Current Biology 19:1415–1419.
- Gillam, E. H., and G. F. McCracken. 2007. Variability in the echolocation of *Tadarida brasiliensis*: effects of geography and local acoustic environment. Animal Behaviour 74:277–286.
- Jordan, M. 2000. Ecological Impacts of Recreation Use of Trails; A Literature Review. The Nature Conservancy.
<https://www.parks.ca.gov/pages/795/files/ecologicalimpactsrecreationalusers.pdf>
- Kight, C. R., and J. P. Swaddle. 2011. How and why environmental noise impacts animals: An integrative, mechanistic review. Ecology Letters 14:1052–1061.
- Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.
- Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
- Patricelli, G., and J. J. L. Blickley. 2006. Avian communication in urban noise: causes and consequences of vocal adjustment. Auk 123:639–649.
- Quinn, J. L., M. J. Whittingham, S. J. Butler, W. Cresswell, J. L. Quinn, M. J. Whittingham, S. J. Butler, W. Cresswell, and W. Noise. 2017. Noise, predation risk compensation and vigilance in the chaffinch *Fringilla coelebs*. Journal of Avian Biology 37:601–608.
- Rabin, L. A., R. G. Coss, and D. H. Owings. 2006. The effects of wind turbines on antipredator behavior in California ground squirrels (*Spermophilus beecheyi*). Biological Conservation 131:410–420.
- Shinneman, D.J., Aldridge, C.L., Coates, P.S., Germino, M.J., Pilliod, D.S., and Vaillant, N.M., 2018, A conservation paradox in the Great Basin—Altering sagebrush landscapes with fuel breaks to reduce habitat loss from wildfire: U.S. Geological Survey Open-File Report 2018–1034, 70 p., <https://doi.org/10.3133/ofr20181034>.

- Slabbekoorn, H., and E. A. P. Ripmeester. 2008. Birdsong and anthropogenic noise: Implications and applications for conservation. *Molecular Ecology* 17:72–83.
- Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127. Elsevier Ltd.
- Sun, J. W. C., and P. M. Narins. 2005. Anthropogenic sounds differentially affect amphibian call rate. *Biological Conservation* 121:419–427.
- Trombulak, S. C., and C. A. Frissell. 2000. Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology* 14:18–30.



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January 29, 2018
Sent via email

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Subject: Notice of Preparation of a Draft Environmental Impact Report
(RECIRCULATED)
Rancho Cucamonga North Eastern Sphere Annexation Specific Plan
State Clearinghouse No. 2017091027

Dear Mr. Grahn:

The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Rancho Cucamonga North Eastern Sphere Annexation Specific Plan Project (project) [State Clearinghouse No. 2017091027]. The Department submitted previous comments on the NOP via a letter dated October 10, 2017. The Department is responding to the NOP as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project involves pre-zoning and annexation of approximately 4,388 acres of land under the jurisdiction of the County of San Bernardino into the City of Rancho Cucamonga (City). 3,176 acres of the 4,388 acres has been identified by the City as Conservation Priority Area and the remaining 1,212 acres is identified as Development Priority Area. Other key components include, but are not limited to the development of approximately 598 acres, involving the construction of approximately 3,800 residential units and associated infrastructure within the Development Priority Area; and the development of a conservation program over the remaining acreage. The project is located along the northeastern edge of the City at the base of the San Gabriel

Mountains and generally lies west of Interstate 15 (I-15), north of I-210, and north of residential development within the City.

COMMENTS AND RECOMMENDATIONS

The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources); and administers the Natural Community Conservation Planning Program (NCCP Program). The Department offers the comments and recommendations presented below to assist the City (the CEQA lead agency) in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable the Department to adequately review and comment on the proposed project with respect to impacts on biological resources.

The Department recommends that the forthcoming DEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable Department staff to adequately review and comment on the project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The Department recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. The Department recommends that floristic, alliance- and/or association based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. The Department's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed project. The Department recommends that CNDDDB Field

Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>

Please note that the Department's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. The Department recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the project footprint and within offsite areas with the potential to be effected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service, where necessary. Note that the Department generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if the project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Based on the Department's local biological knowledge of the project area, and review of CNDDDB, the project site has a high potential to support both nesting and foraging habitat for burrowing owl (*Athene cunicularia*), a California Species of Special Concern. As such, the Department recommends that City, during preparation of the DEIR, follow the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012); available for download from the Department's website at:
<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>

The Staff Report on Burrowing Owl Mitigation specifies that project impact evaluations include:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the *Staff Report on Burrowing Owl Mitigation*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing

owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following the Department's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://www.wildlife.ca.gov/Conservation/Plants>);
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).
6. A full accounting of all mitigation lands within and adjacent to the project.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the project. To ensure that project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity, defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address project-related changes on drainage patterns and water quality within, upstream, and downstream of the project site, including: volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site.

With respect to defensible space: please ensure that the DEIR fully describes and identifies the location, acreage, and composition of defensible space *within* the proposed Development Priority areas. Please ensure that any graphics and descriptions of defensible space associated with this project comply with San Bernardino County Fire/Rancho Cucamonga Fire (or other applicable agency) regulations/ requirements. The City, through their planning processes, should be ensuring that defensible space is provided and accounted for *within proposed development areas*, and not transferred to adjacent open space or conservation

lands. Please note that lands proposed to be managed for defensible space purposes will have lower conservation resource value as they require in-perpetuity vegetation management.

2. A discussion of potential indirect project impacts on biological resources, including resources in areas adjacent to the project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or conservation/mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).
3. An evaluation of impacts to adjacent open space lands from both the construction of the project and long-term operational and maintenance needs.
4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

Note that the DEIR must describe and analyze a range of reasonable alternatives to the project that are potentially feasible, would "feasibly attain most of the basic objectives of the project," and would avoid or substantially lessen any of the project's significant effects (CEQA Guidelines § 15126.6[a]).

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the project. When proposing measures to avoid, minimize, or mitigate impacts, the Department recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area. The Department also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. The Department recommends that the Lead Agency include in the

analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: The Department considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

Scale broom scrub, has an overall rarity ranking of G3 S3, however, some associations within the scale broom scrub alliance (i.e., Riversidean alluvial fan sage scrub) are listed as rare as G1 S1.1. Based on the Department's understanding of the project, the Development Priority Area supports Riversidean alluvial fan sage scrub (RAFSS). Please note that the Department considers all associations with state ranks of S1-S3 to be highly imperiled.

3. *Mitigation*: The Department considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted from the project, the Department recommends that the City include specific mitigation in the DEIR. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact

assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

The Department recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the project. Furthermore, in order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

The Department is concerned by cumulative impacts to RAFSS habitat and associated species within the San Bernardino valley area. Because of cumulative impacts, the Department is concerned that the project will be unable to adequately mitigate for the impacts to RAFSS habitat proposed within the Development Priority Area. As the Department has previously articulated to the City, the conservation of California Sage Scrub habitat will not provide appropriate compensatory mitigation to offset impacts to RAFSS habitat. At a minimum, the DEIR will need to include a mitigation strategy that identifies long-term conservation for a similar diversity and abundance of species as those being impacted on the project site.

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum:
(a) the location of restoration sites and assessment of appropriate reference sites;
(b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

The Department recommends that local onsite propagules from the project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

5. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The Department recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the DEIR, the Department recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

6. *Moving out of Harm's Way*: The proposed project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the Department recommends that the lead agency condition the DEIR to require that a Department-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., the Department does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective

mitigation for the purposes of offsetting project impacts associated with habitat loss.

7. *Translocation of Species*: The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

California Endangered Species Act

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). The Department recommends that a CESA Incidental Take Permit (ITP) be obtained if the project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

The Department encourages early consultation, as significant modification to the proposed project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. Please note that the proposed avoidance, minimization, and mitigation measures must be sufficient for the Department to conclude that the project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard. Revisions to the California Fish and Game Code, effective January 1998, require that the Department issue a separate CEQA document for the issuance of a CESA ITP unless the Project CEQA document addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit.

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify the Department prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, the Department determines if the proposed project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA

Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your project that would eliminate or reduce harmful impacts to fish and wildlife resources.

The Department's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.


Additional Comments and Recommendations

To ameliorate the water demands of this project, the Department recommends incorporation of water-wise concepts in project landscape design plans. In particular, the Department recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts, and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Rancho Santa Ana Botanic Garden in Claremont). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <http://saveourwater.com/>

Further Coordination

The Department appreciates the opportunity to comment on the recirculated NOP of a DEIR for the Rancho Cucamonga North East Sphere Annexation Specific Plan Project (SCH No. 2017091027) and recommends that City of Rancho Cucamonga address the Department's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Joanna Gibson at (909) 987-7449 or at Joanna.gibson@wildlife.ca.gov.

Sincerely,


Leslie MacNair
Regional Manager

Fon

Literature Cited

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California.
<http://vegetation.cnps.org/>

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and RUDEN V. MONTES-CO. OF SAN BERNARDINO FLOOD CONTROL of SAN BERNARDINO State of CA., hereinafter called the operator, is as follows:

WHEREAS, pursuant to Section 1601-1603 of California Fish and Game Code, the operator, on the 13 day of MARCH, 1987, notified the Department that he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: UNNAMED TRIBUTARY TO SANTA ANA RIVER, in the County of SAN BERNARDINO State of California, S 19 T 1N R 6W

WHEREAS, The Department (represented by J. L. PEEST) has made an inspection of subject area on the 26 day of MARCH, 1987, and has determined that such operations may substantially adversely affect existing fish and wildlife resources including: ALL BIRDS AND ANIMALS IN AND AROUND THE TRIBUTARY.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during the operator's work. The operator hereby agrees to accept the following recommendations as part of his work: Numbers 1, 3, 19, 20, 21 & 22. from the list of recommendations on the back of this page and the following special recommendations:

1. All work in or near the stream or lake shall be confined to the period 04/01/87 TO 06/01/88.
2. THIS PROJECT RELATES TO THE DAY CREEK SPREADING GROUNDS WHICH IS LOCATED ADDRESS 1 AND IMMEDIATELY TO THE WEST OF THE DAY CREEK DEGRASS DAM - REFER TO V-85-589.
3. ALL CONTRACTORS SHALL BE MADE AWARE AND FAMILIAR WITH THIS AGREEMENT AND A COPY KEPT AT THE WORK SITE.
4. THE MEASURES AGREED TO BY THE COUNTY, U.S. FISH AND WILDLIFE SERVICE, INCLUDING THE PROVISION OF AN OPEN SPACE EASEMENT, ON 200 ACRES SHOULD ADEQUATELY MITIGATE FOR ANY LOSSES INCURRED DURING THE PROJECTS CONSTRUCTION AND OPERATION.

If the operator's work changes from that stated in the notification specified above, this agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes the operator to trespass on any land or property, nor does it relieve the operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated agreement does not necessarily constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This agreement becomes effective on DATE OF OPERATIONS and terminates 06/01/88

Operator Kent Miller for Michael G. Walker

Title San Bernardino Co Transportation/Flood

Organization Director

Date April 1, 1987

J. L. PEEST #214

Department Representative
Title GAME WARDEN

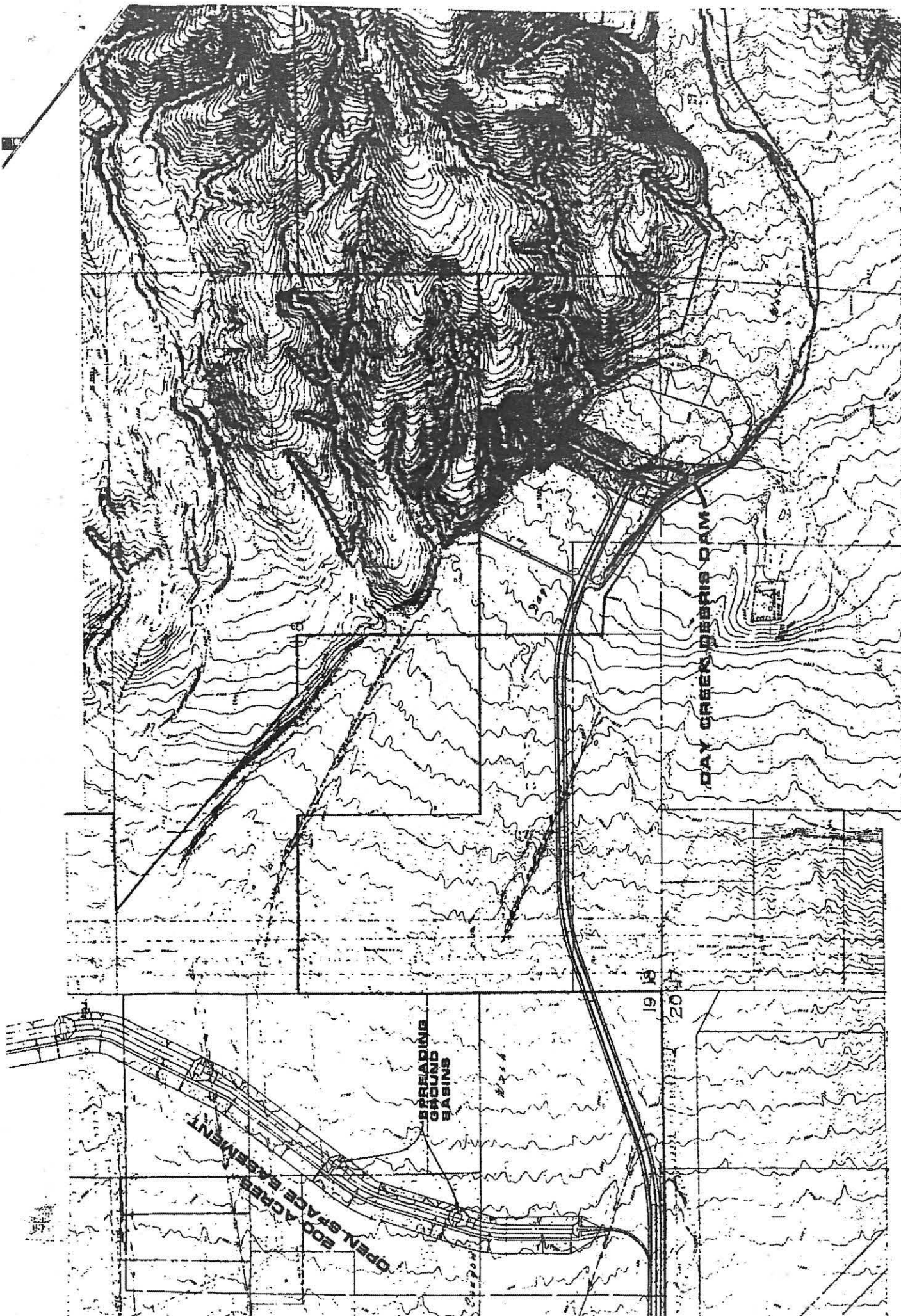
Department of Fish and Game, State of California

Date 03-26-87

* If inspection was not made, cross out words within parentheses.

RECOMMENDATIONS

1. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. The disturbed portions of any stream channel or lake margin within the high water mark of the stream or lake shall be restored to as near their original condition as possible.
2. Restoration shall include the revegetation of stripped or exposed areas.
3. Rock, riprap, or other erosion protection shall be placed in areas where vegetation cannot reasonably be expected to become reestablished.
4. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired and upstream or downstream passage of fish is assured at all times. Bottoms of temporary culverts shall be placed at or below stream channel grade. Bottoms of permanent culverts shall be placed below stream channel grade.
5. Plans for design of concrete sills and other features that could potentially impede fish migrations must be approved by Department engineers.
6. When any dam (any artificial obstruction) is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain fishlife below the dam.
7. An adequate fish passage facility must be incorporated into any barrier that obstructs fish passage.
8. Any temporary dam (any artificial obstruction) constructed shall only be built from material such as clean gravel which will cause little or no siltation.
9. No equipment will be operated in live stream channels.
10. Equipment shall not be operated in the stream channels of flowing live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
11. When work in a flowing stream is unavoidable, the entire streamflow shall be diverted around the work area by a barrier, temporary culvert, and/or a new channel capable of permitting upstream and downstream fish movement. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock riprap, or other protective material. The enclosure and the supportive material shall be removed when the work is completed and the removal shall normally proceed from downstream in an upstream direction.
12. Temporary fills shall be constructed of nonerodible materials and shall be removed immediately upon work completion.
13. Equipment shall not be operated in the lake or its margin except during excavation and as may be necessary to construct barriers or fills. If work in the lake is unavoidable, a curtain enclosure to prevent siltation of the lake beyond the immediate working area shall be installed. The enclosure and any supportive material shall be removed when the work is completed.
14. Silt settling basins shall be located away from the stream or lake to prevent discolored, silt-bearing water from reaching the stream or lake.
15. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
16. Wash water containing mud or silt from aggregate washing or other operations shall not be allowed to enter a lake or flowing streams.
17. a) A silt catchment basin shall be constructed across the stream immediately below the project site. This catchment basin shall be constructed of gravel which is free from mud or silt.
b) Upon completion of the project and after all flowing water in the area is clear of turbidity, the gravel along with the trapped sediment shall be removed from the stream.
18. If operations require moving of equipment across a flowing stream, such operations shall be conducted without substantially increasing stream turbidity. For repeated crossings, the operator shall install a bridge, culvert, or rock-fill crossing as specified in comments below.
19. If a stream channel has been altered during the operations, its low flow channel shall be returned as nearly as possible to its natural state without creating a possible future bank erosion problem, or a flat wide channel or sluice-like area. If a lake margin has been altered, it shall be returned as nearly as possible to its natural state without creating a future bank erosion problem. The gradient of the streambed or lake margin shall be as nearly as possible the same gradient as existed prior to disturbance.
20. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
21. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
22. The operator will notify the Department of Fish and Game of the date of commencement of operations and the date of completion of operations at least five days prior to such completion.





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Laguna Niguel Field Office
24000 Avila Road
Laguna Niguel, California 92656

June 19, 1986

Colonel D. Fred Butler
U.S. Army Engineer District
ATTN: SPLCO-R-86-125-RC
P.O. Box 2711
Los Angeles, California 90053-2325

Dear Colonel Butler:

The Fish and Wildlife Service (FWS) has reviewed the referenced public notice for the construction of a flood control channel with a debris basin and spreading grounds in and adjacent to the Day Creek channel in San Bernardino County, California. The project consists of a water percolation basin requiring the placement of approximately 4,650 (cubic) feet of concrete; a debris basin and dam requiring the placement of approximately 389,000 cubic yards of dirt fill and 3,100 cubic yards of concrete; and a lined flood control channel with approximately 79,800 cubic yards of dirt back fill.

The public fish and wildlife resources present in the Day Creek channel below the location of the proposed debris basin and in the Wineville, Riverside, and Day Creek Basins are generally low in value. However, the boulder-strewn flood plain in the vicinity of the proposed debris dam and basin and the alluvial fan scrub community where the water percolation basins are to be constructed contain much higher wildlife value. This assessment is based on visits to the site on 17 December 1985 and 4 February 1986 by Ray Bransfield of the FWS. The FWS is particularly concerned about impacts to the alluvial fan scrub habitat. This community type has been identified as having a high priority for preservation by the California Natural Diversity Data Base. The FWS has received further information on the proposed project through review of environmental documents prepared for the County of San Bernardino (County) on Day Creek and through numerous conversations with personnel from the County and their consultants in the course of the County's application for a Bureau of Reclamation (BR) Small Project Loan.

In an on-site meeting on 4 February 1986 with Bransfield, Cheryl Hill of the Corps of Engineers (Corps), Ron McKown of the BR, and Ruben Montes and Lloyd Zola representing the County, the FWS, in consultation with the BR and Corps, determined measures to mitigate the environmental impacts of the proposed project. These included maintaining the berms of the percolation basins within the alluvial fan scrub habitat in as natural a condition as possible and dedicating the remainder of the alluvial plain between Day and Deer Creeks as a natural area in perpetuity. Therefore, the FWS would have no objections to the issuance of this permit, provided the following special conditions are

included:

1. The alluvial fan scrub community, bounded by the Day Creek flood control channel on the east, the levee adjacent to Deer Creek on the west and south, and the San Gabriel Mountains on the north (see enclosure), shall be dedicated as a natural area in perpetuity by the County of San Bernardino. The area shall be reserved for low-intensity recreation and other non-consumptive uses and managed to maintain the present vegetative community.

2. The berms of the water percolation basins to be constructed in the alluvial fan scrub community shall be built using native soils found on-site (i.e., with soils removed from the basins immediately uphill of the berms). The berms shall be seeded with native herbaceous plants and shrubs currently found on-site. Grading plans showing the exact locations of the berms and the species of plants to be seeded shall be submitted to the Corps and FWS for review prior to project construction.

3. No concrete shall be used in the construction of the above water percolation basins. (We request this special condition because item 1 of the "Proposed Activity" section of the public notice states that "4,650 feet of concrete" will be required to construct the basin, although previous project plans did not mention any use of concrete within the percolation basin.)

If you have any questions concerning these comments, please call Ray Bransfield at FTS 796-4270.

Sincerely yours,



Nancy M. Kaufman

cc: County of San Bernardino (Attn: R. Montes)
Bureau of Reclamation (Attn: R. McKown)
California Department of Fish and Game (Attn: T. Paulek)
California Department of Fish and Game, Region 5

losure. Approximate location of
alluvial fan scrub mitigation area.



Application No. 86-125-RC
Name of Applicant San Bernardino County
Effective Date October 8, 1986
Expiration Date (If applicable) October 8, 1989

**DEPARTMENT OF THE ARMY
PERMIT**

Referring to written request dated March 13, 1986 for a permit to:

() Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

(X) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344);

() Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (36 Stat. 1052; P.L. 92-532);

San Bernardino County
Environmental Public Works Agency
ATTENTION: Ruben Montes
825 East Third Street
San Bernardino, California 92415

is hereby authorized by the Secretary of the Army:

to 1) construct a water percolation basin placing approximately 4,650 feet of concrete; 2) construct a debris basin dam, and basin, placing approximately 389,100 cubic yards of dirt fill and approximately 3,100 cubic yards of concrete; and 3) line an existing flood control channel with approximately 79,800 cubic yards of concrete with approximately 180,000 cubic yards of dirt back fill///

in Day Creek///

at the intersection of Interstate 10 and Interstate 15, near the city of Rancho Cucamonga, San Bernardino County, California///

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings, give file number or other definite identification marks.)

"DAY CREEK WATER PROJECT"

SHEET: 1 THROUGH 6

DATED: APRIL 1986

///

subject to the following conditions:

1. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, or any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in reasonable accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

j. That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

k. That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially false, materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not completed on or before day of , 19 , (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

u. That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. Special Conditions: *(Here list conditions relating specifically to the proposed structure or work authorized by this permit):*

a. That this permit is not valid until the State of California, Regional Water Quality Control Board, Lahontan Region certifies that the activities permitted herein meet all applicable State water quality standards.

b. The permittee shall revegetate all areas both upstream and down stream of the debris dam that has been impacted due to construction practices. This revegetation shall consist of only native plants that are presently found in the work area. The density of the new vegetation shall be similar to the pre-construction vegetation. If after two years the revegetation has a greater than 20% mortality, the permittee shall once again perform a revegetation program with needed modifications.

c. The permittee shall set aside the area shown and described in the attached sheets (sheet 7 of 8, and 8 of 8) as an area of natural alluvial scrub environment, within which only low impact recreational use can be permitted (horse trails, nature trails, etc.).

d. The permittee shall only dispose of debris trapped by the permitted Day Canyon debris dam in the area shown on drawing (sheet 7 of 8). This shall only occur if an emergency is declared by the county. The disturbed disposal site shall be revegetated in the same manner listed in condition "b".///

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

- a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.
- b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.
- c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
- d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
- e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

- a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for 1111 years from the date of issuance of this permit (ten years unless otherwise indicated);
- b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

- a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230;
- b. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts;
- c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

DISPOSAL OF DREDGED MATERIAL INTO OCEAN WATERS:

- a. That the disposal will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.
- b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

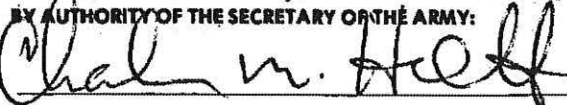
Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.



PERMITTEE
MICHAEL G. WALKER, DIRECTOR - TRANSPORTATION/FLOOD CONTROL/AIRPORTS
BY AUTHORITY OF THE SECRETARY OF THE ARMY:

10-2-86

DATE



CHARLES M. HOLT, Chief, Regulatory Branch
DISTRICT ENGINEER,
U.S. ARMY, CORPS OF ENGINEERS

October 8, 1986

DATE

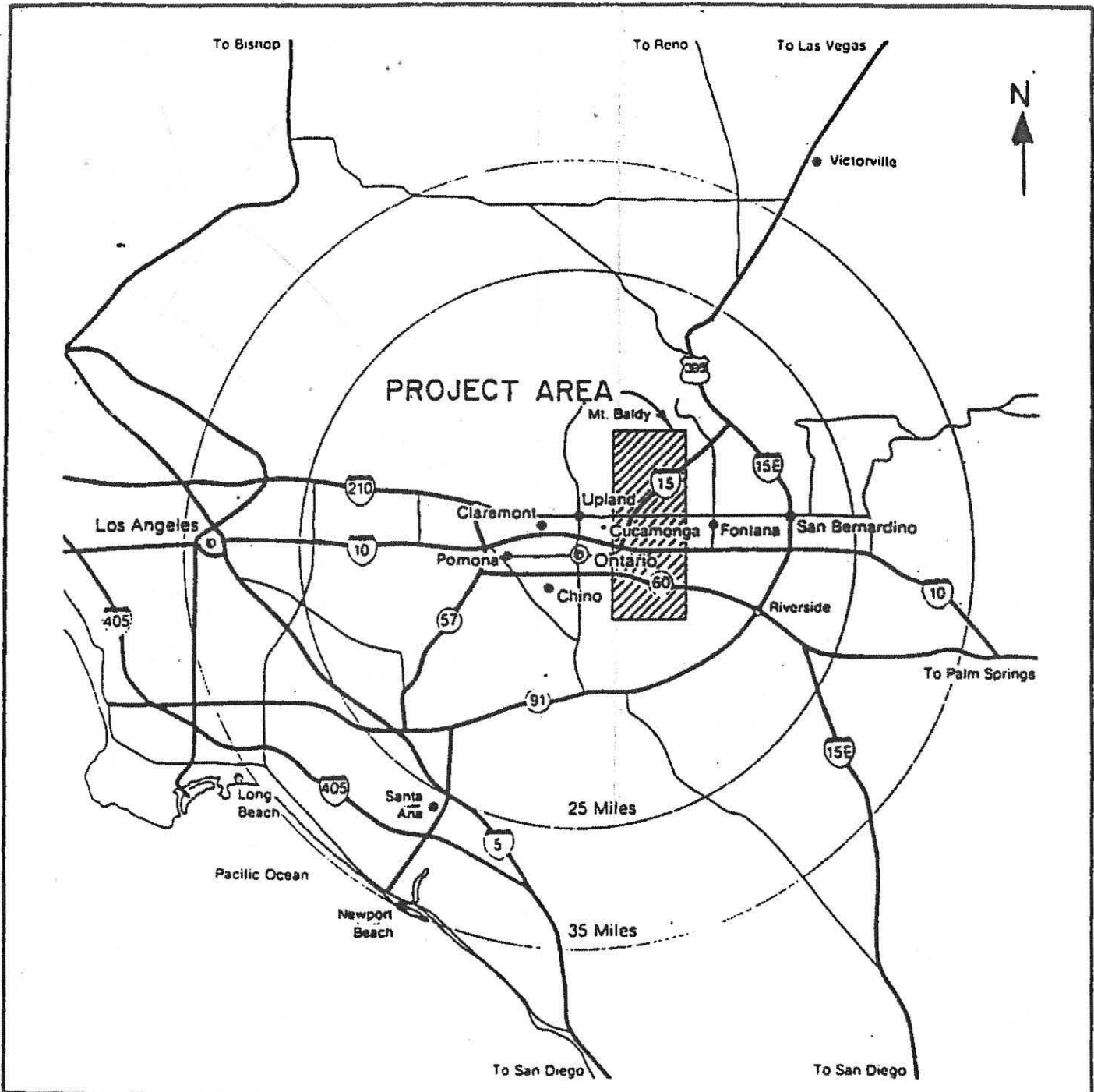
CHARLES M. HOLT, Chief, Regulatory Branch
FOR DISTRICT ENGINEER,
U.S. ARMY, CORPS OF ENGINEERS

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFEEE

DATE

SAN BERNARDINO COUNTY



DAY CREEK WATER PROJECT VICINITY MAP

SHEET 1 of 8

MATCH LINE 1-1

SEE SHEET 3 OF 8



STREET

SAN BERNARDINO AVE

INTERSTATE

10

DAY CREEK

CHANNEL

CREEK

LOWER ETIWANDA
ALREADY COMPLETED

WINEVILLE
BASIN

BERNARDINO

COUNTY

PATTON ROAD

RIVERSIDE
BASIN

BLVD

HIGHWAY

60

SCALE: 1" = 3000'

Channel width n.r.s.

PLAN OF PROPOSED
DAY CREEK WATER PROJECT

MATCH LINE 2-2

SEE SHEET 4 OF 6

HIGHWAY 1

AVENUE

DAY CREEK
BASIN

DAY

CREEK CHANNEL

S.P.R.R.

BASE

LIVE ROAD

B

FOOTHILL BLVD.

INTERSTATE 15

ARROW

HIGHWAY

AT & C F

R.R.

MATCH LINE 1-1

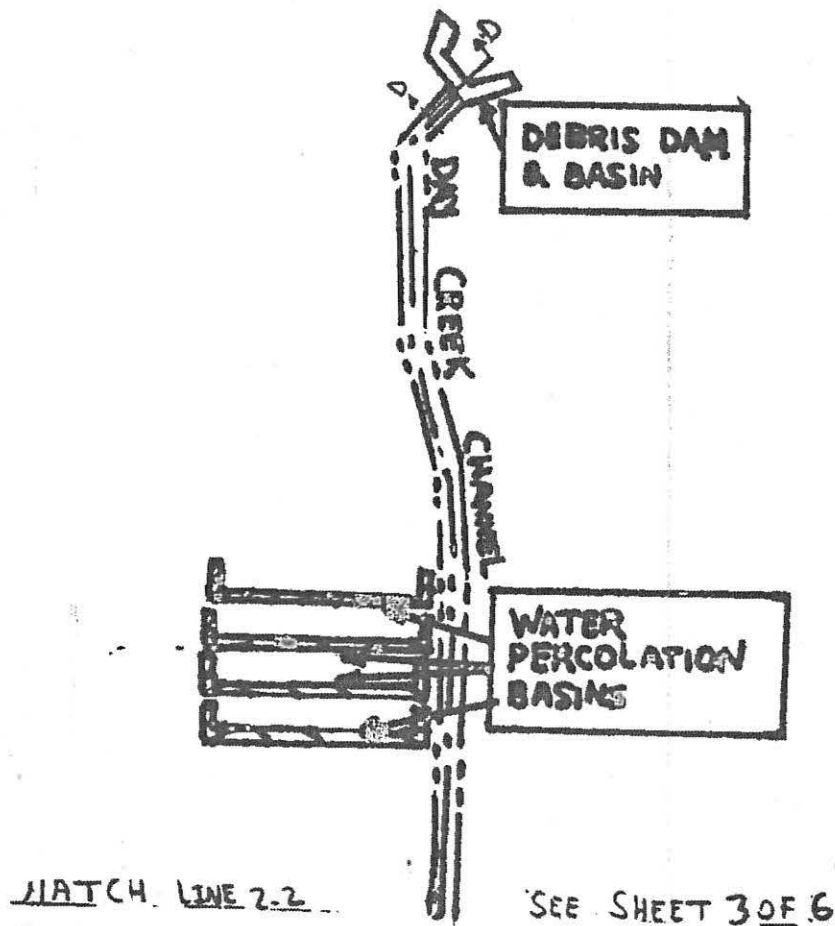
SEE SHEET 2 OF 6



Scale 1" = 3000' ±
Channel width N.T.S.

PLAN OF PROPOSED
DAY CREEK WATER PROJECT

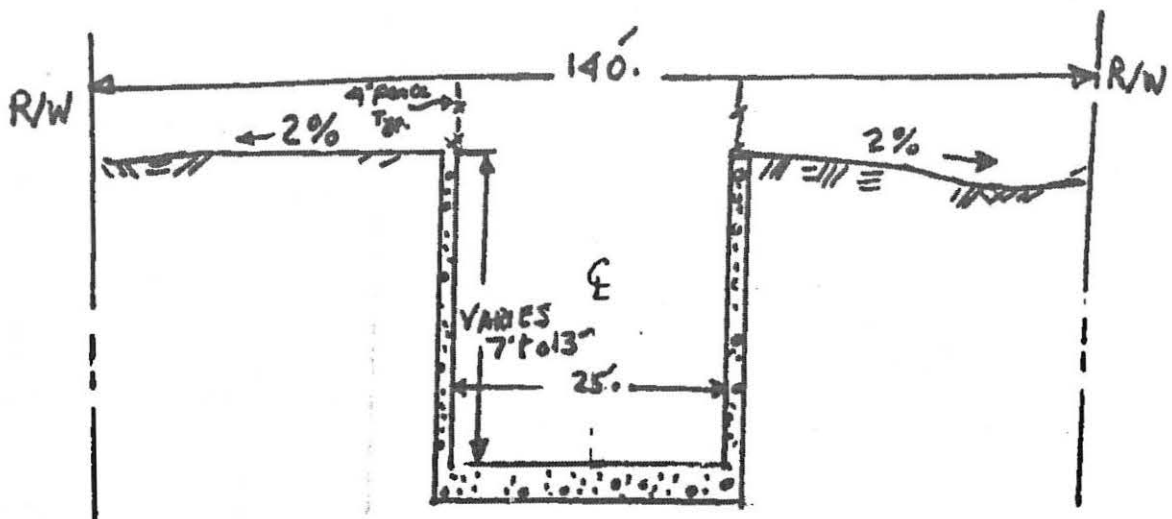
SHEET 3 OF 8



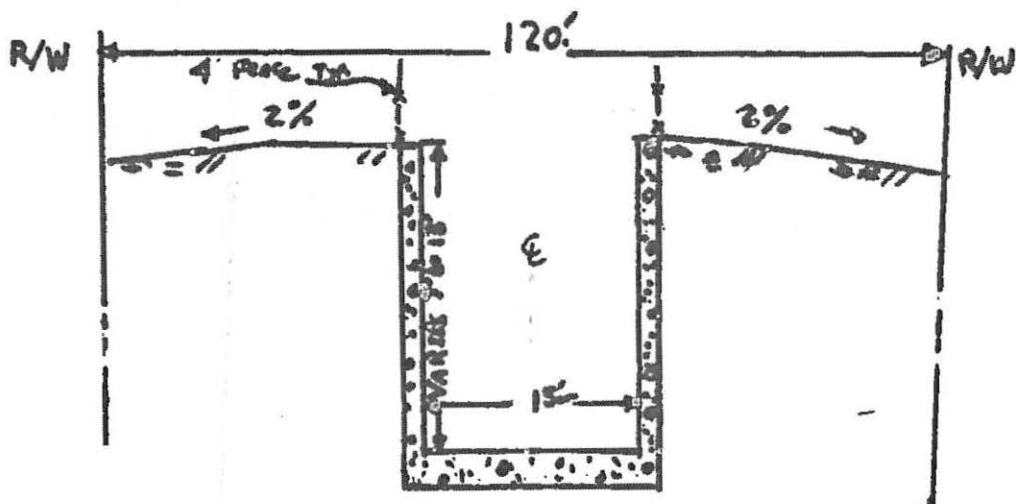
Scale 1" = 3000'
Channel width N.T.S.

PLAN OF PROPOSED
DAY CREEK WATER PROJECT

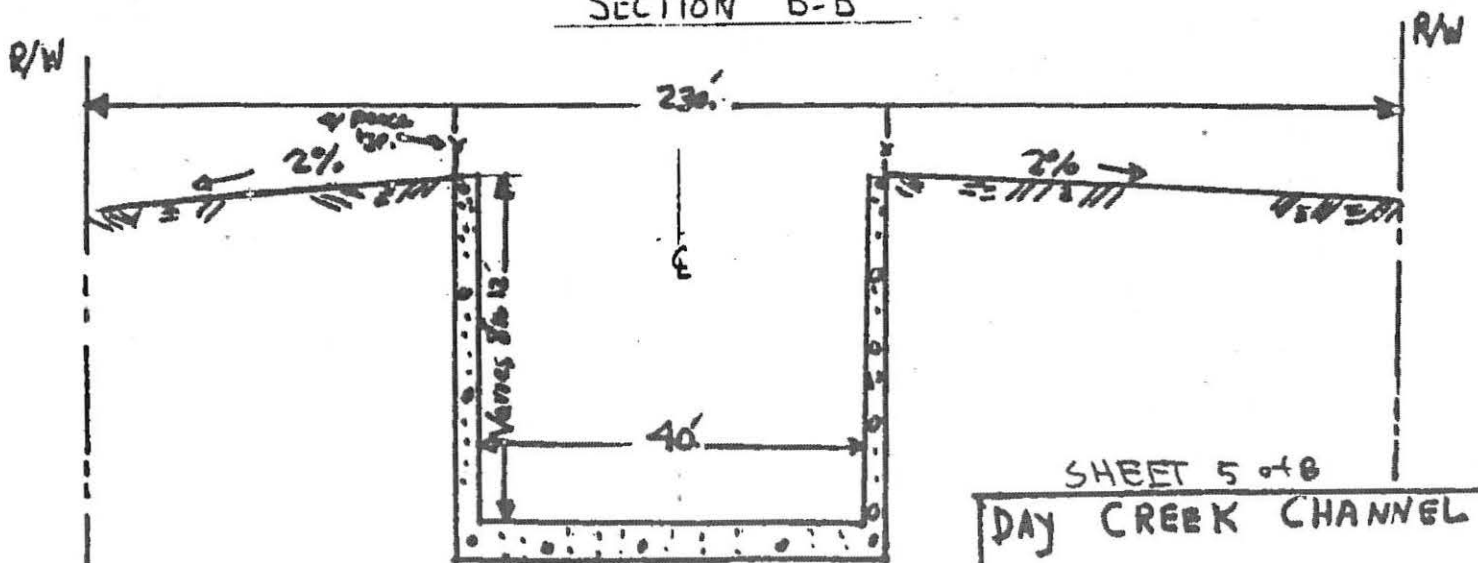
SHEET 4 OF 8



SECTION A-A



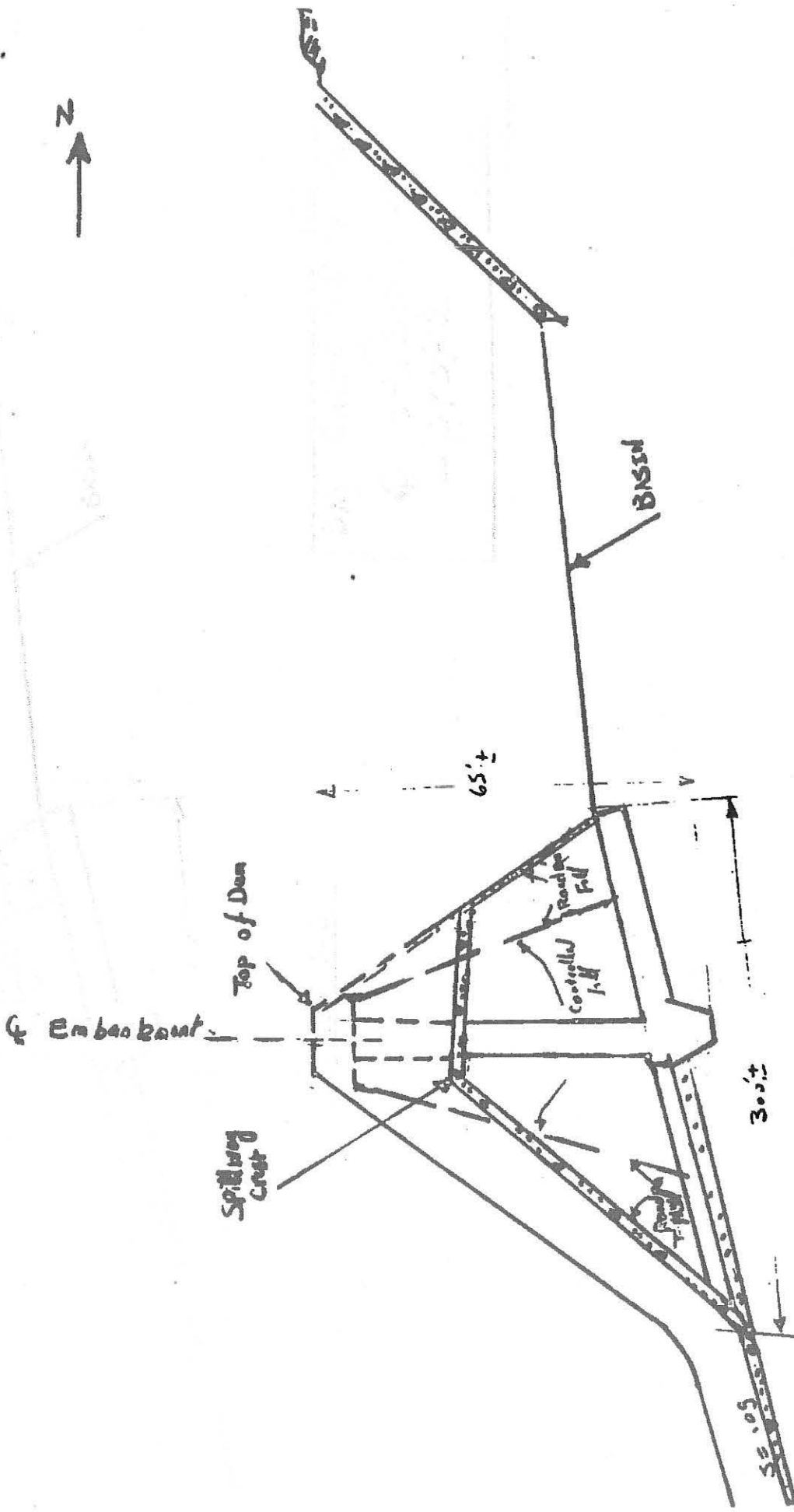
SECTION B-B



SECTION C-C

SHEET 5 of 8

DAY CREEK CHANNEL
TYPICAL CROSS
SECTIONS



SHEET 6 of 8

DAY CREEK WATER PROJECT
 & OF A ^{DAM} SPILLWAY
 -profile

SECTION D-D

NOT TO SCALE

