STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the

Browns Valley Irrigation District
Dry Creek Recapture Project

SOURCE: French Dry Creek

COUNTY: Yuba

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

I. Project Background

Browns Valley Irrigation District (BVID or Applicant) is an irrigation district in northern California serving over 1,500 customers and 55,000 acres. BVID is proposing to re-capture irrigation tailwater that flows back to French Dry Creek (Dry Creek) in lieu of diverting the same amount of water from the Yuba River. The water will be used to irrigate rice fields. BVID delivers water stored in Merle Collins Reservoir for irrigation during the irrigation season, which typically runs from April through October. Tailwater from irrigation deliveries returns to Dry Creek, a Yuba River tributary. This irrigation tailwater accounts for a significant portion of the flow in Dry Creek between Virginia Ranch Dam, at Merle Collins Reservoir, and the Yuba River (approximately a 12-mile stretch). Re-capturing warmer irrigation tailwater would decrease the amount of sediment and nutrients that reach the Yuba River, and benefit the rice crops with higher temperature irrigation water. BVID simultaneously applied for: (1) a water quality certification (certification) under section 401 of the Clean Water Act; and (2) an amendment to its Water Right License (License) 13608 to construct and operate the proposed re-diversion. The conditions included in this certification will ensure beneficial uses are protected and water quality objectives are met during and after construction of the proposed re-diversion facilities.

II. Project Description

License 13608 permits BVID to collect for storage in Merle Collins Reservoir (Virginia Ranch Dam) up to 20,000 acre feet (AF) per year from Dry Creek from October 1 through April 30 for domestic, irrigation, and recreational purposes. License 13608 also authorizes BVID to withdraw from storage up to 20,000 AF annually for irrigation and domestic uses within the boundaries of BVID.

BVID filed a petition for change to its License 13608 (Application No. 13130) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on September 4, 2013, seeking to add a new point of re-diversion in order to implement a tailwater recapture project. BVID's petition for change to License 13608 (Application No. 13130) is under consideration by the Division.

BVID is proposing the Dry Creek Recapture Project (Project), which will replace up to 10 cubic feet per second (cfs) of BVID's current diversions from the Yuba River[1] with an equal amount of irrigation tailwater return flows pumped from Dry Creek. The proposed point of rediversion and underground pipeline are located between State Highway 20 and the Yuba River in the Browns Valley area of Yuba County (see Attachment A – Figure 1). The warmer reclaimed water will be pumped from Dry Creek at the proposed point of re-diversion, located near the Highway 20 Bridge, to BVID's Pumpline Canal and applied on other lands within the authorized place of use of Water Right License 13608. BVID has developed an operating and monitoring program to ensure that water recaptured is accounted for as irrigation tailwater supplied under License 13608.

The Project proposes the construction of a tailwater recovery system at Dry Creek consisting of a pump station, a removable brushed cone screen inlet structure, and installation of approximately 11,000 linear feet of buried 24-inch pipeline with its terminus in an existing conveyance facility known as Pumpline Canal, which is serviced by BVID's existing Yuba River pumping station.

The removable brushed cone inlet structure will be installed at the beginning of the irrigation season on a permanent 12-foot square concrete pad in Dry Creek. In the fall of each year, once recapture is no longer required for irrigation purposes, the brushed cone screen will be removed from the concrete pad in Dry Creek. While not in use, the screen opening will be sealed and no elevated structures or depressions will be left within the streambed that could result in flow attenuation or scour. The brushed cone screen will stay sealed and off the streambed during the storage diversion period (October 1 through April 30) until irrigation season starts the following year. Installation of the intake pipe will require a 100-foot construction corridor from Dry Creek to the pump station. The pump station will consist of two electric pumps housed in an enclosed structure. Installation of the underground 24-inch pipeline will require a 30-foot wide construction zone with selective removal of trees and other native and non-native vegetation along the pipeline route. The Project will traverse one seasonal wetland, three seasonal swales, two seasonal creeks[2], an existing private recreational vehicle campground, and private ranches. The owners of the private campground require that construction through their property occur during the winter months (November through March) to minimize exposure of their guests to disruption associated with construction activities. The total area disturbed by the Project is estimated to be 7.58 acres.

III. Legal Authority and Requirements

Water Quality Certification and Related Authorities

The Federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 101 of the Clean Water Act (33 U.S.C. § 1251 (g)) requires federal agencies to "co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources."

Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified

[1] Statement of Water Diversion and Use S020580.
[2] The seasonal creeks are used to carry supplemental irrigation water and typically have lower winter flows outside of storm events.

provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act. (33 U.S.C. § 1313.) Section 401 of the Clean Water Act directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 of the Clean Water Act further provides that state certification conditions shall become conditions of any federal license or permit for the project. The State Water Board is designated as the state water pollution control agency for all purposes stated in the Clean Water Act and any other federal act. (Wat. Code, § 13160.) The State Water Board's Executive Director has been delegated the authority to issue a decision on a water quality certification application. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

Water Quality Control Plans and Related Authorities

The California Regional Water Quality Control Boards (Regional Water Boards) adopt, and the State Water Board and United States Environmental Protection Agency (USEPA) approves, water quality control plans, also known as basin plans, for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the Clean Water Act. (33 U.S.C. § 1313.) The State Water Board may also adopt water quality control plans. The beneficial uses together with the water quality objectives that are contained in the basin plans and state water quality control plans, and state and federal anti-degradation requirements constitute California's water quality standards.

The *Sacramento River and the San Joaquin River Water Quality Control Plan for the Central Valley Region* (Central Valley Basin Plan) designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses for the lower Yuba River and its tributaries, including Dry Creek.

The Central Valley Basin Plan identifies existing beneficial uses for the Yuba River (from Englebright Dam to Feather River) as: agriculture irrigation and stock watering; hydropower generation; water contact recreation, canoeing and rafting, and other non-contact water recreation; warm and cold freshwater habitat; warm and cold migration of aquatic organisms; warm and cold spawning habitat; and wildlife habitat. The Central Valley Basin Plan identifies water quality objectives to protect these beneficial uses, including: biostimulatory substances; chemical constituents; oil and grease; pesticides; salinity; sediment; settleable material; suspended material; temperature; and turbidity.

Construction General Permit

The State Water Board has adopted a Construction General Permit, which is required for activities that disturb one or more acres of soil with activities such as clearing, grading, stockpiling or excavation. (Construction General Permit; Water Quality Order 2009-0009-DWQ and National Pollutant Discharge Elimination System [NPDES] No. CAS000002, as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ). The Construction General Permit authorizes the discharge of stormwater runoff to surface waters from construction activities that result in the disturbance of one or more acres of land, provided that the discharger satisfies all conditions set forth in the permit.

The Project will disturb one or more acres of soil and, as a condition of this certification, must obtain coverage under the Construction General Permit.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires environmental review of most public agencies' discretionary actions that have the potential to negatively affect the environment. BVID is the lead agency for the purpose of CEQA compliance, meaning that it is primarily responsible for environmental review. The State Water Board is a responsible agency, which must advise the lead agency on potential environmental effects within its purview and also must independently consider and impose mitigation measures within its area of responsibility.

IV. Discussion

This Project has an overall benefit to the cold water fishery and migration uses on the lower Yuba River, as it diverts and makes beneficial use of a source of warm water from Dry Creek that would otherwise enter the Yuba River. Using the tailwater recaptured from Dry Creek for irrigation will reduce BVID's demand for water diverted directly from the Yuba River. Therefore, the Project will balance the reduction in inflow to the Yuba River from Dry Creek with an equivalent reduction in direct diversions from the Yuba River. The Project also benefits the irrigation uses, as it provides warmer water to rice fields, which can increase production under certain circumstances.

Conditions of an amended License will ensure that BVID's overall water diversions from the Yuba River do not increase, and protect sensitive wetland and oak habitat.

The construction activities associated with this Project have the potential to increase sediment and the discharge of foreign matter (e.g., concrete, oil, and diesel) into Dry Creek and the Yuba River leading to water quality degradation, both during and after construction. This certification imposes additional permitting requirements, best management practices (BMP), construction timing requirements, and reclamation requirements to minimize construction impacts. The certification also requires monitoring to be sure that the conditions are effective.

Additionally, Project construction has the potential to negatively impact seasonal swales and wetlands. The certification imposes construction timing requirements, additional sediment controls, siting requirements, fencing requirements, and monitoring for restoration success.

Within the vicinity of the Project construction area there is a pond (see Attachment A – Figure 1) that could potentially provide suitable habitat for Northwestern Pond Turtle (NWPT), a California species of special concern. There is a potential for the NWPT to occur on or near the construction area because the pond is approximately 50 feet outside the limits of the construction boundary. Additionally, the Project will take place in an area that has habitat for the California Black Rail (a California threatened species, and a federal species of special concern), and the Valley Elderberry Longhorn Beetle (a federally threatened species). The certification requires monitoring for these species or their habitats, and requires specific measures to minimize construction impacts.

In order to ensure that the Project meets water quality standards and other appropriate requirements of state law throughout the life of the Project, this certification imposes conditions regarding monitoring, enforcement, and potential future revisions. Additionally, California Code of Regulations, title 23, section 3860 requires imposition of certain mandatory conditions for all certifications, which are included in this certification.

Notice of Water Quality Certification Application

On July 11, 2013, the State Water Board provided notice of receipt of a complete certification application for the Project to the Applicant, USEPA, California Department of Fish and Wildlife (CDFW; formerly the California Department of Fish and Game), United States Army Corps of Engineers (ACOE), and Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board). (Cal. Code of Regs., tit. 23, sec 3835.) The State Water Board provided public notice of the certification application pursuant to California Code of Regulations, title 23, section 3858(a) by posting information describing the Project on the State Water Board's website on July 11, 2013, and by sending notification of receipt of the application to a list of parties interested in State Water Board actions on certifications on July 12, 2013. No comments were received.

Prior to the State Water Board receiving the certification application, it was sent to the Central Valley Regional Water Board on December 14, 2012. The State Water Board forwarded the portions of the application that have the potential to cause adverse water quality impacts other than specific impacts resulting from alterations to instream flows to the Central Valley Regional Water Board on December 19, 2013. (See Cal. Code Regs., tit. 23, sec. 3855, subd. (b)(2)(B)). Central Valley Regional Water Board staff responded with no comments on December 19, 2013.

Other Agencies' Permits

ACOE determined that the Project qualifies for authorization under Department of the Army Nationwide Permit (NWP) No. 12 for Utility Line Activities, pursuant to Section 404 of the Clean Water Act. The ACOE identification number for the Project is SPK-2009-00158. On November 1, 2013, the ACOE issued verification that the Project is authorized by NWP No. 12, pending issuance of certification by the State Water Board. The verification requires the Applicant to comply with NWP No. 12 general terms and conditions as well as Project-specific conditions described in the verification. The ACOE's NWP verification is valid until March 18, 2017.

CDFW determined that a Lake and Streambed Alteration (LSA) Agreement will be required, and is proposing to permit the proposed work under LSA Agreement # 160020120224 following the State Water Board's certification.

CEQA Compliance

In December 2009, BVID's Board of Directors approved a CEQA Mitigated Negative Declaration (MND)[3] for the Project and filed a notice of determination (NOD) finding that the proposed Project will not have a significant effect on the environment. A CEQA Addendum[4] was prepared in December 2012 to assess the environmental impacts of changing the design of the collection system that was originally evaluated and approved in the 2009 MND. The CEQA Addendum was circulated for public review and was approved by BVID's Board of Directors on January 24, 2013.[5]

[3] Browns Valley Irrigation District Mitigated Negative Declaration – Dry Creek Recapture Project, December 2009.
[4] CEQA Addendum – Browns Valley Irrigation District Dry Creek Recapture Project Change to Collection System Design, December 2012.
[5] Notice of Determination, State Clearinghouse No. 2008122105 - CEQA Addendum – Browns Valley Irrigation District Dry Creek Recapture Project Change to Collection System Design, January 25, 2013.

The MND includes mitigation measures to ensure that potentially significant impacts to air quality, biological resources, cultural resources, hydrology and water quality, and noise will result in less-than-significant impacts with mitigation incorporated.

The State Water Board considered the MND and Addendum in connection with the issuance of this certification. Additionally, the State Water Board is adopting a Mitigation Monitoring and Reporting Plan (MMRP) for mitigation measures within its purview. The State Water Board will file a NOD within five days of issuance of this certification.

V. Conclusion

State Water Board staff have reviewed and considered a wide range of information in analyzing BVID's certification application, including the plans and submissions of the Applicant, the Central Valley Basin Plan, the existing water quality conditions, Project-related controllable factors, and the Project's CEQA documents. Any proposed changes incorporated into the Project as mitigation under CEQA are required as a condition of approval to avoid significant effects to the environment. The State Water Board finds that, with the conditions and limitations imposed by this certification, the proposed Project will be protective of state water quality standards and other appropriate requirements of state law.

All documents and other information that constitute the public record for this Project shall be maintained by the Division and shall be available for public review at the following address: State Water Board, Division of Water Rights, 1001 I Street, Sacramento, CA 95814.
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES THAT THE BROWNS VALLEY IRRIGATION DISTRICT DRY CREEK RECAPTURE PROJECT will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if BVID complies with the following terms and conditions during the Project activities certified herein.

1. The Applicant shall obtain coverage under and comply with the Construction General Permit and any amendments thereto.

2. If dewatering is found to be necessary during construction, the Applicant shall use a method of water disposal other than disposal to surface waters (such as land disposal) approved by the Central Valley Regional Water Board or the Applicant shall apply for coverage under Order No. R5-2013-0074, NPDES No. CAG995001, Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters in the Central Valley Region or an individual NPDES permit. The Applicant shall obtain coverage under the general or an individual NPDES permit from the Central Valley Regional Water Board or State Water Board prior to dewatering activities to surface waters.

3. The Applicant shall comply with all terms of License 13608, and amendments thereto.

4. Waters shall be free of changes in turbidity (due to Project activities) that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to Project controllable water quality factors shall not exceed the following limits as defined in the Central Valley Basin Plan:

    - Where natural turbidity is less than 1 nephelometric turbidity unit (NTU), controllable factors shall not cause downstream turbidity to exceed 2 NTUs.
    - Where natural turbidity is between 1 and 5 NTUs, increases in turbidity shall not exceed 1 NTU.
    - Where natural turbidity is between 5 and 50 NTUs, increases in turbidity shall not exceed 20 percent.
    - Where natural turbidity is between 50 and 100 NTUs, increases in turbidity shall not exceed 10 NTUs.
    - Where natural turbidity is greater than 100 NTUs, increases in turbidity shall not exceed 10 percent.

    In determining compliance with the above limits, a 24-hour averaging period may be applied provided that three consecutive samples do not exceed the given turbidity limits. Minimum sampling frequency shall be three times per day during disturbance to the bed and bank of Dry Creek associated with installation of the Project intake and other construction work within creek crossings and watercourses. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The Applicant shall monitor turbidity levels 50 feet upstream of Project activities (i.e., natural background) and 300 feet downstream of the point of river's edge construction activities. If an increase in turbidity caused by Project activities is observed between the upstream and downstream sampling locations, monitoring frequency shall be a minimum of every hour during this period. If three consecutive sample results or a 24-hour average turbidity indicate that turbidity levels exceed the limits shown above, the associated Project activities shall cease immediately. In addition, any and all actions shall be implemented immediately to reduce and maintain turbidity at or

below the given thresholds. Turbidity shall be measured using nephelometry and in accordance with Condition 5 requirements. A hand-held field meter may be used, provided the meter uses a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. For each meter used for monitoring, a calibration and maintenance log shall be maintained onsite and provided to State Water Board staff upon request.

The Deputy Director for the Division (Deputy Director) and the Central Valley Regional Water Board Executive Officer (Executive Officer) shall be notified promptly and in no case more than 24 hours after monitoring results indicate an averaged turbidity limit exceedance. Activities associated with these exceedances may not resume without approval from the Deputy Director.

5. All water quality compliance monitoring shall be conducted using the State Water Board Surface Water Ambient Monitoring Program methods and procedures described in Code of Federal Regulations Title 40, Chapter I, Subchapter D, Part 136 (40 C.F.R. § 136), unless approved by the Deputy Director.

6. Monitoring reports, which contain turbidity sampling results and any other required monitoring, shall be submitted in a tabular format to the State Water Board's designated Project Manager within two weeks of initiation of monitoring and every two weeks thereafter for the remainder of the Project construction period.

7. Disturbance to the bed and bank of Dry Creek associated with installation of the Project intake shall occur during the dry season (approximately May 15 – October 15). If necessary, and upon approval of CDFW, Dry Creek flows regulated by Merle Collins Reservoir will be temporarily reduced during in-channel construction activities to the minimum flows required by CDFW and License 13608, and amendments thereto. Dry Creek flows will then be diverted around the construction zone, which is estimated to be approximately 50 feet long. The construction zone shall be limited to a 50-foot corridor within the streambed. Sandbags shall be placed across the active channel above and below the construction zone and shall be lined with plastic to ensure flows are adequately blocked and diverted. Immediately downstream of the downstream diversion barrier, an appropriate sediment control BMP shall be installed to ensure any inadvertent release of sediment is filtered out before entering the stream system below the construction site. Once construction is complete, and the bed and bank have been restored and stabilized, the diversion structures and sediment control BMP shall be removed.

8. The Applicant shall submit an on-site re-vegetation plan (Plan) to address on-site mitigation measures for permanent and temporary Project impacts to jurisdictional wetlands and riparian vegetation. See Condition 25 for more on riparian habitat re-vegetation. The Plan shall be submitted to the Deputy Director for review and approval at least one month prior to the proposed construction start date. At a minimum, the Plan shall include a planting plan, planting palette, implementation schedule, invasive species control plan, and a proposed reporting schedule to the Deputy Director. The Plan must incorporate criteria for the plantings to become established and achieve a minimum of 85 percent survival rate at the end of five years. The Applicant will be responsible for implementation of the approved Plan and monitoring and reporting responsibilities. Project construction shall be prohibited until the Plan has been reviewed and approved by the Deputy Director.

9. The two seasonal creek crossings within the private campground may be constructed during the winter months from November through March. Construction of the crossings shall be subject to the following measures:

    a. No construction within the creek zone (including bed and bank) shall occur within 24 hours of a forecasted storm event. Additionally, prior to any storm event, any disturbed soils shall be stabilized or covered to prevent sediment from entering the stream.

    b. Prior to construction activities, a temporary diversion pipe shall be placed 15 feet above and below the pipeline alignment to reroute any existing flows around the construction zone to ensure that disturbed soils will not enter flows and impact water quality.

    c. The bed and bank of the creeks shall be restored and stabilized consistent with conditions of this certification prior to removing the diversion pipe and restoring flows to the channel.

10. The pond (see Attachment A – Figure 1) that occurs approximately 50 feet outside the limits of the construction corridor boundary shall be protected by placing distinctive orange construction fencing and signage to prevent inadvertent impacts to potential NWPT habitat. The fencing shall be placed 10 feet from the edge of the pond in order to avoid impacts to the shoreline of the pond and the potential NWPT habitat. Construction personnel and visitors shall be made aware of the location of the pond and advised of its status.

    A preconstruction survey for NWPTs shall be conducted by a qualified biologist in the Dry Creek part of the Project area and in the vicinity of the pond. This survey shall be conducted within the construction boundary no more than two days prior to the start of construction activities. If NWPTs are detected, the biologist shall relocate them to a suitable location outside of the construction boundary. If construction is to occur during the nesting season for NWPT (generally late June through July), a minimum of one survey for NWPT nests shall be conducted by a qualified biologist at the proposed intake site within Dry Creek. If a NWPT nest is found, the biologist shall flag the site and determine whether construction activities can avoid affecting the nest. If the nest cannot be avoided, the nest shall be excavated by the biologist and reburied at a suitable location outside of the construction limits.

    In the event that a NWPT is observed within the Project limits during construction activities, the Applicant shall temporarily halt construction until a qualified biologist has moved the NWPT to a safe location within suitable habitat outside of the construction limits. Any trapped, injured, or killed NWPTs shall be reported immediately to CDFW.

11. The Applicant shall conduct a pre-construction survey for the presence of California Black Rails prior to ground-disturbing activities. The survey shall be performed using recorded vocalization and shall occur no more than 14 days prior to construction activities. If active nests are found, the Applicant shall ensure that species-specific measures designed to protect reproductive success be prepared by a qualified biologist, and that these measures are implemented to prevent abandonment of the active nest(s). The Applicant shall ensure that the perimeter of any nest-setback zone(s), as determined by the qualified biologist, be fenced or adequately demarcated with staked flagging, and construction personnel and equipment be restricted from the area.

12. Elderberry bushes occurring within 50 feet of the limits of the construction areas and corridors shall be protected by placing distinctive orange fencing and signage to prevent inadvertent impacts to the bushes. The fencing shall be placed 10 feet from the drip line[6] of each elderberry bush in order to avoid impacts to the root system. Construction personnel and visitors shall be made aware of the location of all elderberry bushes and advised of their status.

13. Prior to ground-disturbing activities, adequate erosion and sediment control BMPs shall be installed around the periphery of all tributaries, swales, and wetlands within the construction area, and managed at least weekly to avoid sediment or other materials from entering these areas. If soils or other materials build up along the erosion and sediment controls, these materials shall be graded away from the tributaries, swales and wetlands routinely and prior to a storm event. Removed sediment must be contained and not allowed to enter any surface waters or sensitive habitats.

14. Aside from the activities on the private campground, to the maximum extent practicable, activities that increase the erosion potential within the Project area shall be restricted to the relatively dry summer and early fall period (approximately May 15 to October 15) to minimize the potential for rainfall events to transport sediment to Dry Creek, Yuba River, and other surface water features. If construction activities must take place during the late fall, winter, or spring, then temporary erosion and sediment control structures must be in place and operational at the end of each construction day and maintained until permanent erosion control measures are in place (e.g., successful re-vegetation).

15. Prior to a rain event or when there is greater than 50 percent possibility of rain forecasted by the National Weather Service during the next 24 hours, erosion control BMPs shall be applied to all exposed areas upon completion of the day's activities.

16. Location of spoil sites shall be free of vegetation and upland such that they do not drain directly into a surface water feature. If a spoil site drains into a surface water feature, catch basins shall be constructed to intercept sediment before it reaches the feature. After Project construction is completed, spoil sites shall be graded and vegetated to reduce the potential for erosion. Drainage patterns shall be preserved by maintaining original land contours when possible. Spoil sites that are to remain on-site through the rainy season (October 16 to May 14 of the following year) shall be protected with appropriate BMPs to prevent erosion.

17. Sediment control measures shall be in place prior to the onset of the first forecasted rain event or October 16, whichever comes first. Sediment control measures shall be monitored and maintained in good working condition until vegetation becomes established within all disturbed areas.

18. No unset cement, concrete, grout, damaged concrete, concrete spoils, or wash water used to clean concrete surfaces shall contact or enter surface waters. No leachate from truck or grout mixer cleaning stations shall percolate into Project area soils. Cleaning of concrete trucks or grout mixers shall be performed in designated washout areas of sufficient size to completely contain all liquid and waste concrete or grout generated during washout procedures. All wash water and hardened concrete or grout shall be disposed of at an authorized landfill or other disposal site, in compliance with State and local laws, ordinances and regulations.

[6] The drip line refers to the projection of the outermost circumference of the elderberry bush canopy onto the ground.

19. Construction material, debris, spoils, or earthen material, and any other substances from any Project-related activity shall be prevented from entering surface waters. All construction debris and trash shall be contained and regularly removed from the work area to the staging area during construction activities. Upon completion, all Project-generated debris, building materials, excess material, waste, and trash shall be removed from all the Project sites for disposal at an authorized landfill or other disposal site in compliance with State and local laws, ordinances, and regulations.

20. All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter.

21. Staging areas shall be established for all construction equipment and refueling operations to avoid pollutants from entering any surface waters or sensitive habitats. Staging areas shall be away from all surface waters, including seasonal swales and wetlands, and free of vegetation. Fueling construction equipment shall be done at a fixed fueling station to reduce the area exposed to the potential for fuel spills. Secondary containment, such as a drain pan or drop cloth, shall be used to catch spills or leaks when removing or changing fluids. Spill containment materials shall be kept onsite at all times to contain any accidental spill. Absorbent materials shall be used on small spills. The absorbent material shall be promptly removed and disposed of properly.

22. Onsite vehicles and equipment shall be regularly inspected for leaks and repaired immediately. If vehicle and equipment maintenance must occur onsite, it shall be done in designated areas, located away from drainage courses, to prevent the run-on of stormwater and the run-off of spills.

23. Onsite containment for storage of chemicals classified as hazardous shall include secondary containment and appropriate management as specified in California Code of Regulations, title 27, section 20320.

24. All equipment and materials shall be stored at least 50 feet away from all surface water features.

25. Riparian habitat that includes vegetation greater than six inches in diameter at four feet in height and is damaged or removed during Project construction shall be replaced. The amount of vegetation restored shall occur within the area of riparian habitat disturbed by Project construction and shall be at least equal to the amount lost due to Project implementation (1:1 ratio, new plantings of vegetation greater than 6-inches in diameter at 4 feet in height that are destroyed) or as needed to achieve no net loss and long-term riparian habitat vegetation net gain.

26. The Applicant shall take all necessary measures in preconstruction planning to minimize construction impacts on riparian habitat. Prior to construction, the Applicant will install construction fencing along the outer edges of the construction zone, where necessary, to prevent accidental entry into riparian habitat. All stockpiling of materials and equipment will occur outside of riparian habitat. Upon completion of construction activities, any impacted areas, within the riparian corridor will be reseeded with native plants or grasses.

27. Following Project construction, areas of disturbed soil, including locations of buried pipe, temporary staging areas, and areas containing excess soil, shall be secured with sterile straw mulch and seeded with a native plant mix either manually or through hydroseeding.

Revegetation efforts must prevent soil erosion during the subsequent rainy season and ensure revegetation during the following growing season.

28. The Applicant shall monitor erosion control methods at revegetation sites during the rainy season to ensure their efficacy and to ensure that erosional runoff is not occurring.

29. The Applicant, including its contractor and subcontractors, shall report any noncompliance to the conditions of this certification to the Deputy Director within 24 hours of the time when the Applicant, or its contractor, or subcontractors become aware of the circumstances of noncompliance.

30. The State Water Board's approval authority includes the authority to withhold approval or to require modification of a proposal or plan prior to approval. The State Water Board may take enforcement action if the Applicant fails to provide or implement a required plan in a timely manner.

31. The State Water Board reserves the authority to add to or modify the conditions of this certification to incorporate changes in technology, sampling, or methodologies and/or load allocations developed in a total maximum daily load developed by the State Water Board or a Regional Water Board.

32. This certification requires compliance with all applicable requirements of the Central Valley Basin Plan. If at any time an unauthorized discharge to surface waters (including river or streams) occurs or monitoring indicates that the Project has or could soon be in violation with water quality objectives, the associated Project activities shall cease immediately and the Deputy Director and the Executive Officer shall be notified. Associated activities may not resume without approval from the Deputy Director.

33. Notwithstanding any more specific conditions in this certification, the Project shall be operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act and to section 303 of the Clean Water Act. The Applicant must take all reasonable measures to protect the beneficial uses of waters of the Yuba River and tributaries. The State Water Board reserves authority to modify this certification if monitoring results indicate that continued operation of the Project could violate water quality objectives or impair beneficial uses.

34. This certification does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish & Game Code §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531 - 1544). If a "take" will result from any act authorized under this certification or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this certification.

35. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation is subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure

compliance with the water quality standards and other pertinent requirements incorporated into this certification.

36. In response to a suspected violation of any condition of this certification, the State Water Board or Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports (California Water Code sections 1051, 13165, 13267, and 13383). The State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

37. Unless otherwise specified in this certification or at the request of the State Water Board, data and/or reports must be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with California Water Code section 13167.

38. The Applicant shall comply with the attached State Water Board's MMRP (Attachment B).

39. The Applicant is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of construction activities.

40. A copy of this certification shall be provided to all contractors and subcontractors conducting work related to the Project, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractors or subcontractors.

41. The Deputy Director and the Executive Officer shall be notified one week prior to the commencement of ground disturbing activities. Upon request, a construction schedule shall be provided to agency staff.

42. The Deputy Director and the Executive Officer shall be notified within one week of completion of construction.

43. Any requirement in this certification that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another state or federal agency, will apply equally to the successor agency.

44. The Applicant must submit any changes to the Project, including Project operation, which would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the State Water Board for prior review and written approval. If the State Water Board is not notified of a significant change to the Project, it will be considered a violation of this certification.

45. The Applicant shall provide State Water Board and Regional Water Board staffs access to Project sites to document compliance with this certification.

46. The State Water Board shall provide notice and an opportunity to be heard in exercising its authority to add to or modify any of the conditions of this certification.

47. This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code, section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).

48. This certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent water quality certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

49. Certification is conditioned upon total payment of any fee required under article 4, title 23 of the California Code of Regulations.

50. Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action if necessary to prevent any unauthorized or threatened unauthorized diversions of water.

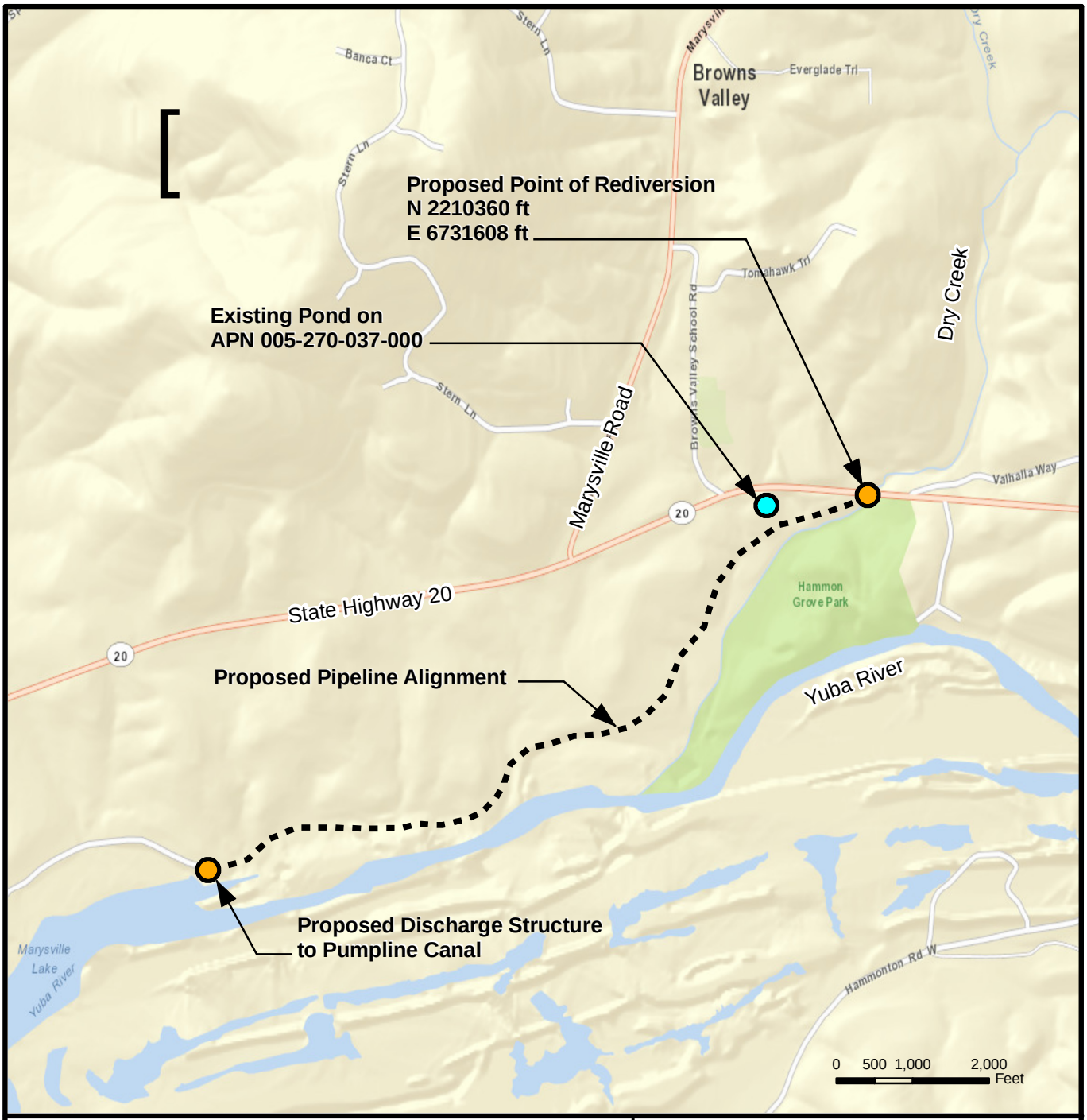
51. The Applicant shall not divert water from the proposed point of re-diversion, which is under consideration by the Division, until approved by the State Water Board. This certification does not guarantee or otherwise grant approval of the Applicant's petition for change to License 13608 (Application No. 13130).

Tom Howard

Thomas Howard
Executive Director

9/8/15
Date

Attachments: Attachment A – Figure 1 – Project Map
Attachment B – Mitigation Monitoring and Reporting Plan



APPLICANT BROWNS VALLEY IRRIGATION DISTRICT	STATE OF CALIFORNIA CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS
SOURCE DRY CREEK	
POINT OF REDIVERSION	
WITHIN SE 1/4 OF NW 1/4	ATTACHMENT A
SECTION 22, T17N, R5E, MDB&M	
COUNTY OF YUBA	FIGURE 1 - PROJECT MAP WATER QUALITY CERTIFICATION
SCALE: 1" = 2000'	DATE: 12-17-2013 DRAWN: OEB CHECKED: JHW

Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.

Attachment B

Mitigation Monitoring and Reporting Plan
Browns Valley Irrigation District Dry Creek Recapture Project

Browns Valley Irrigation District (BVID) is the California Environmental Quality Act (CEQA) (Pub. Resources Code section 21000 et seq.) lead agency for the Dry Creek Recapture Project (Project). Under Public Resources Code section 21002.1, subdivision (d), the lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project.

CEQA Guidelines, section 15097, requires an agency to adopt monitoring and/or reporting programs to ensure implementation of mitigation measures when a project is approved under a mitigated negative declaration. (Cal. Code Regs., tit. 14, sec. 15097.) BVID has incorporated mitigation into its Project and issued and approved a mitigated negative declaration (MND) for the Project in December 2009 and an addendum to the MND in December 2012.

The State Water Board is charged with issuing water quality certification (WQC) for the Project. The State Water Board prepared this Mitigation Monitoring and Reporting Plan (MMRP) to address Project impacts to: 1) Hydrology and Water Quality (Mitigation Measure 1); and 2) Biological Resources (Mitigation Measure 2) that will have less than significant effects with mitigation incorporation, as identified in BVID's MND and addendum.

Mitigation Measure 1: Water Quality Monitoring and Protection
The construction activities associated with this Project have the potential to increase sediment and the discharge of foreign matter (e.g., concrete, oil, and diesel) into Dry Creek and the Yuba River leading to water quality degradation, both during and after construction. To ensure water quality is not degraded by the Project, BVID must comply with monitoring and reporting requirements specified in Conditions 1 through 7, 9, and 13 through 29 of the water quality certification.

Mitigation Measure 2: Biological Resources, Seasonal Swales, and Wetlands Protection
Project construction has the potential to negatively impact seasonal swales and wetlands. Within the vicinity of the Project construction area there is a pond that could potentially provide suitable habitat for Northwestern Pond Turtle (NWPT), a California species of special concern. Additionally, the Project will take place in an area that has habitat for the California Black Rail (a California threatened species, and a federal species of special concern), and the Valley Elderberry Longhorn Beetle (a federally threatened species, which has been proposed for delisting). The certification imposes construction timing requirements, additional sediment controls, siting requirements, fencing requirements, and monitoring for restoration success. To ensure biological resources and related resources are protected, BVID must comply with monitoring and reporting requirements specified in Conditions 1, 8, 10 through 13, and 29 of the water quality certification for the Project.