

CALIFORNIA DEPARTMENT OF FISH AND GAME
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD., SUITE C-220
ONTARIO, CA 91764



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2011-0192-R6 (REVISION 2)

OCOTILLO EXPRESS LLC
OCOTILLO WIND ENERGY FACILITY (OWEF) PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Ocotillo Express LLC (Permittee), represented by Dyann Blaine.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee notified DFG on July 21, 2011 that the Permittee intends to complete the project described herein.

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

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

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

PROJECT LOCATION

The Ocotillo Wind Energy Facility (OWEF) is located within Palm Canyon, Myer Creek, and Coyote Wash along with several unnamed streams that cross the facility. The OWEF is located on approximately 12,500 acres, the majority of which are Bureau of Land Management (BLM) administered lands. One private parcel consisting of 26 acres located near the center of the project is also included in the project area. In addition, approximately 173 acres of public and private land will be utilized for road access and collection line right-of-ways. The OWEF is located on two sites: Site 1 (approximately 11,300 acres) is located north of Interstate 8 (I-8) on the western edge of the Imperial/San Diego County border and approximately 1.5 miles northeast of the town of Ocotillo, Site 2 (approximately 1,200 acres) is located approximately one mile south of the town of Ocotillo and south of State Route (SR) 98 in the County of Imperial, State of California, Latitude: 32.74683 N, Longitude: -116.04423 W.

PROJECT DESCRIPTION

The OWEF will consist of construction, operation, and maintenance of up to a 315 megawatt (MW) wind energy facility on approximately 12,500 acres, 96 percent of which is land managed by BLM. The Permittee will construct the OWEF in one construction phase with an expected operational life of 30 years. Facilities will consist of 112 wind turbine generators (WTG), above-ground and below-ground electrical transmission/collection systems for collecting power, an electrical substation, switchyard, access roads, up to 3 meteorological towers, a biological monitoring observation tower, and an Operations and Maintenance (O&M) building. Each WTG will range from 2.3 to 3.0 MW's and will include a hub height of approximately 262 feet and a rotor diameter ranging from 351 to 371 feet. The new 25 acre substation/switchyard will be located adjacent to the new San Diego Gas & Electric (SDG&E) Sunrise Powerlink 500 kV transmission line in the middle of Site 1. An approximately 1.7 to 2.2 acre temporary work area will be needed at each of the WTG sites for foundation construction, turbine assembly, and turbine erection. The biological tower will be approximately 50 ft tall and located at the project's O&M facility. Construction at each turbine location will include foundation construction, crane pad construction, wind turbine component unloading and laydown, and turbine erection. All wind turbines will be placed outside of drainages larger than 8 ft across and road crossings have been designed at right angles. A network of 20-foot-wide permanent roads will be built throughout the Facility to provide access to each WTG site, and a 30-foot wide, asphalt paved, and permanent road will be built to the SDG&E switchyard. During construction, all of the roads will be up to 46 feet wide to allow large vehicle travel throughout the site and storage of salvage topsoil. Once construction is completed the roads will be de-compacted, stabilized, and revegetated to the permanent 20 foot roadway with the exception of the SDG&E switchyard access road, which will be restored to the permanent 30 foot roadway. Low water crossings compacted and filled with aggregate base or rock base will be constructed for access roads crossing larger and deeper drainage courses. The Facility will not be fenced except for a permanent security fence around the substation/switchyard, meteorological towers, and the O& M building. Erosion and sediment control measures will be implemented during construction in disturbed areas to control or divert runoff.

PROJECT IMPACTS

Existing fish and wildlife resources within the OWEF could potentially be impacted by the project features described above. These species include but are not limited to: BIRDS – Swainson's hawk (*Buteo swainsoni*), Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), golden eagle (*Aquila chrysaetos*), brant goose (*Branta bernicla*), ferruginous hawk (*Buteo regalis*), Vaux's swift (*Chaetura vauxi*), northern harrier (*Circus cyaneus*), burrowing owl (*Athene cunicularia*), yellow warbler (*Dendroica petechia*), loggerhead shrike (*Lanis ludovicianus*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), American peregrine falcon (*Falco peregrinus anatum*), Brewer's sparrow (*Spizella breweri*), Le Conte's thrasher

(*Toxostoma lecontei lecontei*), American kestrel (*Falco sparverius*); REPTILES – flat-tailed horned lizard (*Phrynosoma mcallii*), barefoot banded gecko (*Coleonyx switaki*) rosy boa (*Charina trivirgata*); PLANTS – Wolf's cholla (*Cylindropuntia wolfii*), little San Bernardino Mountains linanthus (*Linanthus maculatus*), Haydon's lotus (*Lotus haydonii*), mountain springs bush lupine (*Lupinus excubitus* var. *medius*), Harwood's milk-vetch (*Astragalus insularis* var. *harwoodii*), jack-ass clover (*Wislizenia refracta* ssp. *refracta*), deboltia (*Cynanchum utahense*), desert unicorn plant (*Proboscidea althaeifolia*), and thurber's pilostyles (*Pilostyles thurberi*); and all other fish and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish and wildlife resources identified above include the disturbance to and/or alteration of foraging, refuge, and nesting/breeding habitat. The construction of the project will result in temporary (22.79) and permanent (4.18) impacts that total 26.97 acres of DFG jurisdictional areas. Impacts will occur from streambank erosion and stream sedimentation, vegetation removal within the streambed, and filling of non-wetland waters to construct the network of roads through the site. Impacts are broken down to 0.73 acres of Allscale scrub, 17.05 acres of Cheesebush scrub, 0.58 acres of Creosote bush-allscale scrub, 0.26 acres of Creosote bush-fourwing saltbush scrub, 0.09 acres of Fourwing saltbush, 0.01 acres of Mesquite thicket, 2.88 acres of Smoke tree woodland, and 5.37 acres of streambed. If any additional unanticipated impacts occur to riparian habitat and/or streambed during project activities, the Permittee shall submit an application for an amendment to this Agreement to authorize those impacts.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

The Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. The Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times to present to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. The Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of the Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. The Permittee shall notify DFG if the Permittee determines or learns that a provision in the Agreement might conflict

with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact the Permittee to resolve any conflict.

- 1.4 Project Site Entry. The Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Take of Listed Species. The issuance of this Agreement does not authorize the take of any state and/or federally listed threatened, endangered, or fully protected species.
- 1.6 Take of Nesting Birds. Sections 3503, 3503.5, and 3513 of the FGC prohibit take of all birds and their nests, including raptors and other migratory non-game birds (as listed under the Migratory Bird Treaty Act).

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to the fish and wildlife resources identified above, the Permittee shall implement each measure listed below. Except as otherwise specified, the measures below are applicable to the DFG-jurisdictional areas impacted by the project.

- 2.1 Biological Monitor. A qualified biologist shall be onsite to monitor all activities that result in the clearing of sensitive habitat as well as grading, excavation, and/or other ground-disturbing activities in jurisdictional areas. The Permittee shall flag or otherwise mark (e.g., pinflags, lath, or stakes) the limits of grading and the jurisdictional areas, and perform surveys as required by this Agreement. The biological monitor is required to halt construction activities if threatened or endangered species are identified within the areas to be disturbed and notify the appropriate agencies immediately.
- 2.2 Worker Education Awareness Program (WEAP). Permittee shall implement a BLM-approved WEAP for all phases of construction. The WEAP shall be available to all personnel onsite and administered by the lead Biological Monitor assigned to the project site.
- 2.3 Lighting Impacts. Except as necessary for safety or security purposes or as required by Imperial County, no lighting shall be allowed to impact jurisdictional areas, and the lighting and fencing for infrastructure adjacent to jurisdictional areas shall be designed or reviewed by a qualified biologist to allow wildlife to move within the jurisdictional areas without hindrance. Night lighting may be used during the construction phase of the project and may be temporarily located adjacent to jurisdictional areas as necessary for safety and security.
- 2.4 Nesting Bird Surveys. The Permittee shall prepare a Nesting Bird Mitigation and Monitoring Plan (NBMMP) to describe the methods for conducting pre-construction nesting bird surveys and the setback distances necessary for avian nests if

vegetation clearing is to occur during the breeding season. The NBMMP shall be submitted to BLM and DFG for review and approval prior to the start of construction. The Permittee shall not remove vegetation from the project site from February 15 to September 1 to avoid impacts to nesting birds. If project construction cannot be avoided during the period of February 15 through September 1, Permittee shall have a qualified biologist survey all potential nesting vegetation within the project site for nesting birds, prior to commencing project activities (including construction and/or site preparation). Surveys shall be conducted in accordance with NBMMP at the appropriate time of day during the breeding season and surveys shall end no more than 15 days prior to vegetation removal and/or disturbance. If no nesting birds were observed, project activities may begin. If an active bird nest is located, the setback distance specified in the NBMMP shall be flagged, fenced, or otherwise marked in all directions within the site, and this area shall not be disturbed until after September 1 or until the nest becomes inactive. If threatened or endangered species are observed nesting in the area, no work shall occur within the delineated buffers during the breeding season (March 15 through September 1) or until the nest becomes inactive to avoid direct or indirect (noise) take of listed species.

- 2.5 Nonnative plant species. DFG recommends the use of native plants to the greatest extent feasible in the mitigation areas within or adjacent to stream channels and open space. The Permittee shall not plant, seed, or otherwise introduce invasive nonnative plant species to the mitigation areas within or adjacent to stream channels and open space (minimum 150 foot setback from stream channels and 150 foot setback from open space). Invasive nonnative plant species not to be used include those species listed on the "California Invasive Plant Inventory, February 2006" and the "February 2007 Inventory Update", (which are updates to Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999"). This list includes: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, bush lupine, sweet alyssum, English ivy, French broom, Scotch broom, Spanish broom, and pepperweed. A copy of the complete list can be obtained by contacting the California Invasive Plant Council by phone at (510) 843-3902, at their website at www.cal-ipc.org, or by email at info@cal-ipc.org.
- 2.6 Best Management Practices. The Permittee shall actively implement best management practices (BMPs) to prevent erosion and the discharge of sediment into any river or stream during project activities. BMPs shall be monitored in accordance with the storm water pollution prevention plan (SWPPP) for the project and repaired or replaced if necessary to ensure maximum erosion and sediment control. The Permittee shall have a FRAC out plan in place prior to any directional drilling underneath jurisdictional areas.

- 2.7 Pollution and Litter. The Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of the Permittee to ensure compliance.
- 2.7.1 The Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.7.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.7.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. These materials, placed within or where they may enter a lake, streambed, or flowing stream by the Permittee or any party working under contract or with the permission of the Permittee, shall be removed immediately.
- 2.7.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be 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 lake, streambed, or flowing stream.
- 2.7.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.

3. Mitigation Measures

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

- 3.1 Habitat Restoration. The Permittee shall restore temporary impact areas to pre-impact conditions. Restoration activities shall include recontouring of the streambed and utilizing salvaged native plants for revegetation, if appropriate. The

Permittee will develop a Habitat Revegetation plan for all temporary impacted areas within the project footprint.

- 3.2 Plant Palette. All plant species installed within the restoration and creation sites shall include only **local California native** container plants, cuttings, and/or seed mix, and shall be typical of the existing native plant species present in the existing riparian areas within and adjacent to the project site and/or proposed mitigation site. DFG encourages the Permittee to use riparian plant material that were trimmed, limbed, or otherwise removed during project activities for restoration purposes. DFG recommends that plant material be installed between October 1 and April 30 to maximize the benefits of the winter rainy season.
- 3.3 Mitigation Measures. To mitigate for all project impacts, the Permittee shall restore a total of 318 acres of Carrizo Marsh within the Anza Borrego State Park. Of that 318 acres, the Permittee is required to restore 70.66 acres at a ratio of 6:1 for permanent impacts and 3:1 (2:1 off-site and 1:1 on-site) for temporary impacts to State jurisdictional waters. On-site mitigation will consist of 22.79 acres of revegetation to streambeds within the project footprint. Mitigation will consist of removal of dense stands of salt cedar (*Tamarix* spp.). The Permittee has developed and submitted a draft habitat restoration plan to DFG for review; a final draft will need to be approved by DFG. The restoration will include at least 5 years of maintenance and/or until the success criteria are met. The final success criteria will be 0 percent cover of tamarisk in the shrub layer; less than 5 percent cover of tamarisk in the herb layer; less than 5 percent cover by other noxious weed species; and less than 20 percent cover by other non-native species at the end of the 5 years of maintenance.
- 3.4 Endowment. The Permittee shall provide a fund for long-term management of the 70.66 acres of lands being restored to mitigate for impacts to State jurisdictional waters. The management fund will consist of an interest-bearing account with the amount of capital necessary to generate sufficient interest to fund all monitoring, management, and protection of the restored lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, and other actions designed to improve the habitat of the conserved lands. The Permittee shall obtain a written cost estimate from the land owner (State of California, Department of Parks and Recreation), which shall be reviewed and approved by DFG, to determine the management needs and costs described above, which then will be used to calculate the amount of capital needed for the management fund. This management fund will be held and managed by an entity approved by DFG.

4. Reporting Measures

The Permittee shall meet each reporting requirement described below.

- 4.1 Habitat Restoration Plan. The Habitat Restoration Plan (HRP) shall reflect site-specific enhancement measures for the drainages on the compensation lands. The objective of the HRP shall be to enhance the wildlife value and the aquatic functions of the drainages and may include enhancement actions such as weed control, fencing to exclude OHVs, or erosion control. At a minimum, the HRP shall include the following information: (a) a description of the existing physical conditions of the site, including water resources and habitat types, and a map that identifies the location of the sites; (b) a plan for the preparation of the site, including the removal of non-riparian and/or non-native plant species (if necessary) and grading or recontouring of the streambed (if appropriate); (c) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the mitigation site and a nonnative plant removal plan (if applicable); and (d) success standards and contingency measures. The plan shall be submitted for approval to DFG.
- 4.2 Notification to CNDDDB. If any sensitive species are observed on or in proximity to the project site, or during project surveys, the Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB within five working days of the sightings, and provide the regional DFG office with copies of the CNDDDB forms and survey maps. The CNDDDB form is available online at: www.dfg.ca.gov/whdab/pdfs/natspec.pdf. **This information shall be mailed within (5) days to:** DFG Natural Diversity Data Base, 1807 13th Street, Suite 202, Sacramento, CA 95814, Phone (916) 324-3812. A copy of this information shall also be mailed within five days to DFG Inland Deserts Region at the address below under Contact Information. **Please reference SAA # 1600-2011-0192-R6 (Revision 2).**
- 4.3 Notification of Start of Construction. The Permittee shall notify DFG, in writing, at least five (5) days prior to initiation of project activities in jurisdictional areas, and at least five (5) days prior to completion of project activities in jurisdictional areas. Notification should be mailed to DFG Inland Deserts Region at the address below under Contact Information. **Please reference SAA # 1600-2011-0192-R6 (Revision 2).**

CONTACT INFORMATION

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

LIABILITY

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

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

SUSPENSION AND REVOCATION

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

Before DFG suspends or revokes the Agreement, it shall provide the Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide the Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

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

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

OTHER LEGAL OBLIGATIONS

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

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

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

AMENDMENT

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

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

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective,

unless the transfer or assignment is requested by the Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

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

EXTENSIONS

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

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

EFFECTIVE DATE

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

TERM

This Agreement shall expire on **April 12, 2017**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. The Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

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

AUTHORIZATION

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

CONCURRENCE

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

REDACTED STAFF CONTACT INFORMATION