

CALIFORNIA DEPARTMENT OF FISH AND GAME

BAY DELTA REGION
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STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2010-0346-R3
Kellogg Creek

CONTRA COSTA WATER DISTRICT
LOS VAQUEROS RESERVOIR EXPANSION

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and Contra Costa Water District (Permittee) as represented by Jerry Brown, General Manager.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on October 11, 2010 that Permittee intends to complete the project described herein.

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

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

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

PROJECT LOCATION

The project site is located at Kellogg Creek and the Los Vaqueros Reservoir, in the County of Contra Costa, State of California; Township 1S, Ranges 2E and 3E, Sections 12 (unsectioned), 18 and 33; U.S. Geological Survey (USGS) maps Byron Hot Springs and Tassajara; Assessors Parcel Numbers 00717003, 005120001, 005110001, 005110003, 005100001, 005100002, 005010005, 005020003, 005030001, 005030007, 005030002, 005090004, 005030008, 005030005, 005040005, 005040006, 005040003, 005040007, 005080001, and 00504008.

Impacts associated with the Los Vaqueros Reservoir Expansion Project would occur in several locations at the Kellogg Creek watershed; however, the terms of this Agreement apply only to the areas specified below.

"Work areas" include the construction footprint and staging areas around the existing dam and two temporary stream crossings. The first crossing (Latitude 37° 51' 27.86 N, Longitude 121° 41' 55.14 W) will be approximately one mile south of the intersection of Marsh Creek Road and Walnut Boulevard and approximately 100 yards west of Walnut Boulevard and Kellogg Creek near an existing CCWD equipment warehouse. The second crossing (Latitude 37° 50' 51.95 N, Longitude 121° 41' 53.41 W) will be approximately one half mile to the south on the south side of Kellogg Creek and Walnut Boulevard.

In addition to the work areas specified above, the project will result in inundation of 341 acres of land on the banks of the existing Los Vaqueros Reservoir. "Inundated areas" subject to coverage under FGC section 1602 will include bank habitat, drainages, wetlands and ponds surrounding the existing reservoir.

PROJECT DESCRIPTION

The project is limited to construction activities associated with expansion of the capacity of the existing Los Vaqueros Reservoir from 100 to 160 thousand acre-feet (TAF) and inundation of lands associated with this expansion. Project activities that are subject to FGC section 1602 include: installation of stream crossings for access roads, raising the height of the existing dam, relocation of existing recreation facilities and roadways to the upper banks of the reservoir, and inundation of developed and undeveloped lands.

Stream Crossings

Materials used for dam construction will be quarried from two borrow areas north of the reservoir. To allow transportation of materials and equipment to and from the borrow areas, two temporary access roads up to 1,000 feet in length and two temporary crossings will be installed at Kellogg Creek. The temporary crossings will be 8- to 12-foot clear-span bridges, installed on pre-cast concrete footings. Minor excavation of the upper bank will be required to install the bridge footings, and the bridges will be lowered into place by cranes operated from above the top of bank. Up to two clear-span bridges will be installed at one crossing site to allow for two-way traffic, and a single clear-span bridge will be installed at the second site. Following completion of work at the borrow areas, the bridges and footings will be removed from the banks, and disturbed areas will be restored to pre-project conditions.

No equipment will operate in the wetted portion of the creek during installation or removal of stream crossings. Flows will not be diverted, and the channel will not be dewatered during installation of the bridges.

Dam Construction

Dam construction involves raising the crest of the existing 192-foot-tall earthfill dam by adding fill on top of the existing shell, primarily on the downstream (outboard) side of the reservoir. Following construction, the dam will be 230 feet tall and will have a crest

elevation of 523 feet above mean sea level (msl). The existing vertical central core and filter/drainage system will also be raised. The dam axis will move about 20 feet downstream, but the existing dam footprint will not be increased. A retaining wall on the eastern side of the dam (on the upstream/inboard side) will be raised in elevation, and new riprap will be installed above the spillway on the western side of the dam. Existing paved parking lots and roads will be used for staging and access during construction.

Staging and spoils areas for dam construction will be located around the dam footprint, at least 100 feet from Kellogg Creek. Any earthen materials left over after construction will be disposed of at the core borrow site.

Relocation of Facilities

Several existing recreational facilities surrounding the reservoir, including a marina, a boat ramp, and fishing piers, will be relocated to higher ground prior to inundation, resulting in additional construction around the reservoir. New and/or expanded upland facilities at the marina complex will include parking facilities, restrooms, picnic areas, a marina building with an outdoor amphitheater, and other small ancillary facilities. These facilities will result in development of no more than 28 acres of undeveloped land. Approximately 13 miles of unpaved multi-purpose service roads/hiking trails will also be installed to provide expanded access on the western side of the reservoir.

Inundation

Following completion of dam construction and relocation of facilities, Permittee will begin filling the reservoir to its expanded 160 TAF capacity, raising the water surface elevation 35 feet. As the water surface rises, approximately 341 acres of land will be inundated, including 4.11 acres of riparian woodland, 0.69 acres (12,163 linear feet) of ephemeral drainages, and 1.31 acres (7,259 linear feet) of intermittent drainages.

PROJECT IMPACTS

Existing fish, wildlife and/or plant resources the project could substantially adversely affect include: California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*) and other amphibians, Alameda whipsnake (*Masticophis lateralis euryxanthus*), San Joaquin kit fox (*Vulpes macrotis mutica*), riparian habitat, nesting birds, roosting bats, and fish.

Without implementation of the Measures to Protect Fish and Wildlife Resources (see below), the project could have a number of adverse impacts on fish and/or wildlife resources. Construction impacts, which would be limited in duration and which would result in relatively sudden disturbances, include: direct take of individuals, disturbance due to noise and human presence, temporary and permanent habitat modification, and water quality impacts. Habitat inundation will occur at a rate of no more than 1 inch per day. Although inundation impacts will occur more gradually, habitat modification associated with these impacts will be permanent.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG Bay Delta Region if 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 such an event, Permittee shall contact DFG to resolve any conflict.
- 1.4 Inspections. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement. As a result of field inspection, DFG may require that additional conditions be applied to protect sensitive biological resources. Such conditions may be amended into this Agreement with the agreement of both parties.
- 1.5 Consistency with Plans. All work shall be completed in accordance with the plans and drawings submitted with the project notification (Exhibit A).
- 1.6 Access to Property Not Owned by Permittee. This agreement does not grant the Permittee authority to enter, use, or otherwise encroach upon on the property rights of individuals or organizations not party to this Agreement. Permittee shall obtain written authorization from outside parties, in accordance with applicable laws, if access to property not owned by Permittee is necessary.
- 1.7 Notification of Construction Initiation/Completion. Permittee will notify DFG Bay Delta Region 48 hours prior to the initiation, and following completion, of construction.

2. Avoidance and Minimization Measures

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

- 2.1 Unauthorized Take. The project site has been identified as an area that is potentially occupied by special-status species. This agreement does not authorize the take, including incidental take, of any State or federally listed threatened or endangered listed species. The Permittee is required, as prescribed in the California and U.S. Endangered Species Acts, to consult with the appropriate agency prior to commencement of the project. Any unauthorized take of listed species may result in prosecution and nullification of this agreement.
- 2.2 Incidental Take of Listed Species. Permittee shall follow all measures in the Los Vaqueros Reservoir Expansion Project Incidental Take Permit (DFG Incidental Take Permit 2081-2011-002-3) and the Biological Opinion on the Los Vaqueros Reservoir Expansion (Biological Opinion 81420-2009-F-0201) for San Joaquin kit fox (*Vulpes macrotis mutica*), California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*).
- 2.3 Biological Monitoring. A qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) shall be onsite during construction and shall have the authority to stop construction work if any special-status species are found. The biologist shall notify DFG within 24 hours of any cessation of work. Each morning prior to commencement of project work, the biologist shall inspect active work areas, including excavated areas, to ensure that special-status species identified as potentially present are not present.
- 2.4 Education Program. Permittee shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The training will include a discussion of sensitive biological resources within the project area and the potential presence of special-status species, special-status species' habitats, and protection measures to ensure species are not impacted by project activities and project boundaries. All employees should be familiar with the avoidance measures in this Agreement. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite offices and shall be made available to DFG upon request.

2.5 Exclusion Fencing. An exclusion fence, keyed into the ground approximately 3-6 inches, shall be installed around the perimeter of the construction footprint at each of the temporary stream crossing sites to prevent red-legged frogs and other sensitive species from entering the work area.

2.6 Riparian Bird Surveys and Avoidance. If construction activities are scheduled to occur between February 15 and September 1, a qualified biologist shall conduct pre-construction surveys for nesting birds no more than two weeks prior to initiation of construction in each work area. No more than one week shall lapse between completion of surveys and initiation of construction activities to minimize the potential for establishment of new nests.

If nesting birds are found, a 50-foot radius buffer should be established around the nest, or a 300-foot radius buffer in the case of hawks and owls. The buffer area should be fenced off from construction activities and avoided until the young have fledged, as determined by a qualified biologist. Active nests found within the vicinity of the work area shall be monitored by the project biologist during all construction activities for changes in bird behavior. Should birds indicate unusual or distressed behavior that could be indicative of future nest abandonment, the biologist shall stop construction immediately and consult DFG Bay Delta Region on how to proceed.

2.7 Western Pond Turtle Surveys and Avoidance. A qualified biologist shall conduct a pre-construction survey for the western pond turtle prior to the commencement of construction at each work area. If turtles are found, the qualified biologist will capture and relocate as many turtles as possible. Nests may also be moved, or, upon approval of DFG, the eggs taken to an appropriate location for incubation and the hatchlings later released to the creek system. Relocation will be consistent with the Sensitive Species Relocation Plan approved by DFG prior to project construction. DFG reserves the right to provide additional provisions to this agreement in the event that western pond turtles are discovered. Embedded pieces of large woody debris or stumps that potentially serve as basking sites or that encourage pool formation shall be left in place whenever possible.

2.8 Photographic Documentation of Work. Prior to commencement of work, the Permittee shall flag four (4) vantage points at each Kellogg Creek crossing location that offer representative views of preconstruction conditions. The Permittee shall photograph the crossings from each of the flagged points, noting the direction and magnification of each photo. Upon completion of construction, the Permittee shall photograph post-project conditions from the flagged photo points using the same direction and magnification as pre-project photos. Labeled digital copies of pre- and post-project photographs shall be sent to DFG within one month of the removal of the temporary bridges, following re-contouring and revegetation.

- 2.9 Wildfire Prevention. If National Oceanic and Atmospheric Administration weather forecasts indicate a high fire danger, Permittee shall mow access pathways, staging areas and work areas before allowing heavy equipment and vehicles to access the site. Non-living vegetative debris shall be cleared from around the work area, and basic fire suppression supplies shall be kept onsite at all times.
- 2.10 Staging and Spoils. Staging and spoils shall be located above the top of bank, at least 100 feet from drainages.
- 2.11 Removal of Trash and Debris. Except as described in the Project Description of this Agreement, the removal of native soils, rock, gravel, vegetation, and vegetative debris from the stream bed or stream banks is prohibited. Embedded pieces of large woody debris or stumps that potentially serve as basking sites or that encourage pool formation shall be left in place whenever possible.
- Permittee shall remove all raw construction materials and wastes from the project site following the completion of construction. Food-contaminated wastes generated during construction shall be removed on a daily basis to avoid attracting predators to work sites. All temporary fences, barriers, and/or flagging shall be completely removed from work sites and properly disposed of upon completion of construction. Permittee or its contractors shall not dump any litter or construction debris within the riparian/stream zone.
- 2.12 Fill Soils. Any soils imported to the site for bank fill shall be similar in pH to native soils. Soils should be cleansed of pathogens and weed seeds prior to use through heating, solarization, or other appropriate methods.
- 2.13 Hardscape (Riprap, Rocks, Boulders, etc.). Riprap (rock slope protection) shall not be placed in the natural channel of Kellogg Creek. Any riprap used at the dam construction work area shall not be grouted or mortared. Only rocks and boulders free of organic material and soil shall be used for the project. Riprap shall be properly keyed into the bank and be of sufficient size to remain in place and withstand repetitive wave action.
- 2.14 Excavation around Bridge Footings. Permittee shall limit excavation for installation of temporary bridge footings to the minimum amount necessary. Excavation shall not occur below the top of bank. The total disturbed area around each bridge footing shall not exceed 500 square feet.
- 2.15 Erosion Control Best Management Practices (BMPs). All exposed soils within the work areas shall be stabilized immediately following the completion of earthmoving activities or vegetation removal to prevent erosion into the stream channel. Erosion control BMPs, such as silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be

used. Erosion control BMPs shall be monitored during and after each storm event for effectiveness. Modifications, repairs and improvements to erosion control BMPs shall be made as needed to protect water quality. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

Construction shall not be initiated if installation of erosion control measures cannot be completed prior to the onset of a storm event predicted by 72-hour weather forecasts from the National Weather Service. If an unanticipated storm event occurs, the Permittee shall inspect all sites currently under construction and scheduled to begin construction within 72 hours for indications of bank erosion and/or channel sedimentation; if noticeable erosion or sedimentation has occurred, the Permittee shall implement additional erosion control features and consult with DFG Bay Delta Region regarding corrective actions.

- 2.16 Equipment in Stream. Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing, or wetland areas) except as described in the Project Description.
- 2.17 Vehicle/Equipment Maintenance. Any equipment or vehicles driven and/or operated in proximity to the stream shall be maintained in good working order to prevent the release of contaminants that if introduced to water could be deleterious to aquatic life, wildlife, or riparian habitat.
- 2.18 Equipment Storage and Stationary Operation. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located adjacent to the stream, shall be positioned over drip-pans. Any equipment or vehicles driven and/or operated in proximity to the stream must be checked and maintained daily. Vehicles must be moved away from the stream prior to refueling and lubrication.
- 2.19 Emergency Spill Response Plan. An emergency response plan shall be prepared and submitted to DFG prior to the start of construction. The plan shall be limited to no more than five (5) pages in length and may be presented in prose, table or bulleted list format. The plan shall identify the actions which would be taken in the event of spill of petroleum products, sediment or other material harmful to aquatic or plant life. The plan shall also identify the emergency response materials which will be kept at the site to allow the rapid containment and clean-up of any spilled material.
- 2.20 Storage and Handling of Hazardous Materials. Any hazardous or toxic materials that could be deleterious to aquatic life shall be contained in watertight containers or removed from the project site. Such materials

include, but are not limited to, debris soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, and oil or other petroleum products. These materials shall be prevented from contaminating the soil and/or entering the waters of the State. Any such materials, placed within or where they may enter a stream or lake, by Permittee or any party working under contract, or with permission of Permittee, shall be removed immediately. Best Management Practices (BMPs) shall be employed to accomplish these requirements.

- 2.21 Clean Up Prior to Onset of Wet Weather. Upon completion of construction and prior to the onset of wet weather, all construction material and/or debris, including removed vegetation, shall be removed from the stream channel to an area not subject to inundation.
- 2.22 Pesticide and Fertilizer Use. In general, since the toxicological properties of various pesticides (including herbicides, insecticides and rodenticides) cannot be predicted under all conditions, DFG discourages pesticide application near open water wherever and whenever possible. Integrated pest management solutions that emphasize non-chemical pest management shall be used over chemical pesticides to the extent feasible. Chemical fertilizers and rodenticides shall not be used under this Agreement, and insecticides shall not be used in the stream zone without prior written permission from DFG Bay Delta Region. Herbicides may be used at the Permittee's discretion with implementation of the following protective measures:
- Permittee shall use caution to apply the least practicable amount of herbicides necessary to effectively control nuisance plants.
 - Permittee shall use the least concentrated formulation of herbicide possible and practicable to accomplish his/her task.
 - All herbicides shall be applied by a certified pesticide applicator in accordance with regulations set by the California Department of Pesticide Regulation and according to labeled instructions.
 - Permittee shall use extreme caution to not to apply any herbicide directly to water. If herbicides must be applied next to water, Permittee shall use preventative BMPs to ensure that the chemical does not accidentally flow into or stream through the air into the water.
 - Herbicides shall only be applied on calm days with winds below 5 miles per hour.
 - Care shall be taken to avoid spraying native vegetation with herbicides. Spraying within 100 feet of existing mitigation sites shall be done by hand.

- Should any fish or animal kills occur following application of herbicides, such kills shall be reported to DFG Bay Delta Region within 24 hours.
- Chemicals subject to the injunction under Case No.: 02-1580-JSW, Northern California U.S. District Court, Center for Biological Diversity v. Environmental Protection Agency (April 2, 2002), shall not be used unless the U.S. EPA has issued a finding of "No Effect" for the California red-legged frog. Refer to the U.S. EPA website for further information (<http://www.epa.gov/espp/litstatus/redleg-frog/rlf.htm>).
- Permittee shall use Milestone, rather than Weedestroy (or other 2,4,D product) wherever and whenever possible. Weedestroy is not to be applied within 10 feet of open water.
- Regardless of the contents of this Agreement, Permittee is responsible for any environmental damage caused by the application or use of substances that prove harmful to fish and aquatic wildlife.

2.23 Vegetation Removal. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete construction. Precautions shall be taken to avoid other damage to vegetation by people or equipment. Branches and/or limbs overhanging access routes shall be properly pruned.

3. Compensatory Measures

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

- 3.1 Tree Replacement. Any and all trees removed as a result of installation of the temporary stream crossings on Kellogg Creek shall be replaced at a 3:1 ratio (replacement trees to removed trees) to mitigate for permanent net loss of canopy cover where such plantings would not create a barrier to San Joaquin kit fox movement. Replacement trees shall consist of 5-gallon saplings (or, with DFG's written approval, an appropriately sized substitute) and shall be native species adapted to the lighting, soil and hydrological conditions at the replanting site. Live stakes (i.e. willow, dogwood) may be substituted for one of every three replacement trees if desired. Stakes taken from donor plants shall be cut after the donor plant is dormant (usually after December 31st). If replanting within the immediate work area is unfeasible due to slope steepness or other physical constraints, replacement trees may be planted at an alternate location along the stream corridor. This condition does not apply to trees that would be impacted by inundation.
- 3.2 Vegetation Replacement. All exposed/ disturbed areas and access points left barren of vegetation following construction activities shall be revegetated or seeded with a blend of erosion control grass seeds. Nonnative grass species

shall not exceed 25% of the total seed mix by count, and all nonnative grass seed shall be sterile. Seeded areas shall be mulched. All other areas of disturbed soil which drain towards the stream channel shall be seeded with native erosion control grass seeds. Revegetation shall be completed immediately (within two weeks) after construction activities cease. Seeding placed after October 15 must be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket. Erosion control blankets with monofilament or woven plastic strands shall not be used. Stakes (i.e. willow, dogwood) taken from donor plants should be cut after the donor plant is dormant (usually after December 31st).

- 3.3 Revegetation Survivorship and Monitoring. To ensure a successful revegetation effort, all plants shall be monitored and maintained as necessary for five years. All planting shall have a minimum of 80% survival at the end of 5 years. If survivorship is not projected to meet these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice necessary to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Revegetation monitoring shall be conducted annually for a period of five (5) years to determine whether these goals have been met. If the survival and/or cover requirements are not projected to meet these goals, based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice(s) that would to achieve these requirements.

- 3.4 Compensation for Permanent Habitat Loss. The project described in this Agreement represents a piece of the larger Los Vaqueros Reservoir Expansion Project. Compensation for habitat loss for the Los Vaqueros Reservoir Expansion Project, which encompasses habitat loss described in this Agreement, is required in Incidental Take Permit 2081-2011-002-3.

Habitat compensation required by Incidental Take Permit 2081-2011-002-3 includes 20.01 acres of wetland mitigation, including 4 acres of seasonal wetland creation at the core borrow area, restoration of 0.68 acres of seasonal wetland and 0.60 acres of freshwater permanent emergent wetlands on habitat management lands, and preservation and enhancement of a minimum of 14.73 acres of wetland habitat (seasonal wetland, freshwater permanent emergent and ponds) on habitat management lands. Compensation for impacts described in this Agreement shall be consistent with the *Los Vaqueros Reservoir Expansion Project Draft Wetland*

Compensatory Mitigation Plan,¹ with written approval of DFG Bay Delta Region.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 Notification to the California Natural Diversity Database. If any sensitive species are observed in project surveys, the Permittee shall submit California Natural Diversity Database (CNDDDB) forms to the CNDDDB for all preconstruction survey data within five working days of the sightings, and provide DFG Bay Delta Region with copies of the CNDDDB forms and survey maps.
- 4.2 Annual Mitigation Monitoring Reports. A monitoring report shall be submitted to DFG annually for a five-year period describing the success of revegetation plantings within the project site. At a minimum, the report shall discuss the success of the revegetation effort in terms of the survivorship criterion listed under Measure 3.3, above. The report shall be limited to fifteen (15) pages in length including tables and figures.

CONTACT INFORMATION

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

To Permittee:

Contra Costa Water District
1331 Concord Avenue, PO Box H20
Concord, CA 94524-2099
Attn: Fran Garland
Fax (925) 688-8142
fgarland@ccwater.com

To DFG:

Department of Fish and Game
Bay Delta Region
Post Office Box 47
Yountville, California 94599
Attn: Lake and Streambed Alteration Program – Randi Adair

¹ Prepared for Contra Costa Water District by ESA, January 2011.

Notification #1600-2010-0346-R3
Fax (707) 944-5553
radair@dfg.ca.gov

LIABILITY

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

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

SUSPENSION AND REVOCATION

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

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

ENFORCEMENT

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

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

OTHER LEGAL OBLIGATIONS

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

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and

subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

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

AMENDMENT

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

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

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

EXTENSIONS

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

EFFECTIVE DATE

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

TERM

This Agreement shall expire on December 31, 2013, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. 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.

EXHIBITS

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

- A. Notification of Streambed Alteration and supporting project plans.

AUTHORITY

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

AUTHORIZATION

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

CONCURRENCE

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

FOR CONTRA COSTA WATER DISTRICT



Jerry Brown
General Manager

2/17/11
Date

FOR DEPARTMENT OF FISH AND GAME



Scott Wilson
Environmental Program Manager

February 28, 2011
Date

Prepared by: Randi Adair
 Environmental Scientist

Date Prepared: January 25, 2011
Date Revised: February 14, 2011