



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
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www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



SEP 22 2017

Date

Kevin Thomas Environmental Program Manager
Department of Fish & Wildlife
North Central Region Fisheries Program
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
Kevin.Thomas@wildlife.ca.gov

Dear Mr. Thomas:

**Final Lake or Streambed Alteration Agreement, Notification No. 1600-2017-0298-R2,
Kelsey Creek Fish Ladder Enhancement Project**

Enclosed is the final Streambed Alteration Agreement (Agreement) for the Kelsey Creek Fish Ladder Enhancement Project (Project). Before the California Department of Fish and Wildlife (CDFW) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, CDFW determined your Project is exempt from CEQA and filed a Notice of Exemption (NOE) on the same date it signed the Agreement.

Under CEQA, the filing of an NOE triggers a 35-day statute of limitations period during which an interested party may challenge the filing agency's approval of the Project. You may begin the Project before the statute of limitations expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Tanya Sheya, Environmental Scientist at (916) 358-2953 or Tanya.Sheya@wildlife.ca.gov.

Sincerely,


Tina Bartlett
Regional Manager

ec: Tanya Sheya, Tanya.Sheya@wildlife.ca.gov
Ben Ewing, Ben.Ewing@wildlife.ca.gov
Department of Fish and Wildlife

Conserving California's Wildlife Since 1870

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2017-0298-R2
KELSEY CREEK

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
KELSEY CREEK FISH LADDER ENHANCEMENT- VERSION 2

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and California Department of Fish and Wildlife- North Central Region (the Permittee) as represented by Kevin Thomas of the North Central Region's Fisheries Branch.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on September 12, 2017, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW 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 is located at Kelsey Creek north of Kelseyville at the Kelsey Creek Detention Structure, in the County of Lake, State of California; Section 3, Township 13N Range 9W, U.S. Geological Survey (USGS) map Kelseyville or Lucerne, Mt. Diablo base and meridian; Latitude 39°00'00.49"N, Longitude 122°50'37.04"W (see Exhibit A).

PROJECT DESCRIPTION

The project is limited to the repairs and improvements to the east fish ladder at the Kelsey Creek Detention Structure. This project will provide improved passage for Clear Lake hitch to move upstream for spawning.

When Kelsey Creek is dry in the late summer, early fall, the project will remove 40 feet of the existing concrete, rock fish ladder with hand tools such as a rotary hammer or pneumatic jack, shovels, picks, and pry-bars. Deleterious materials will be properly disposed off-site. Wet concrete will be poured at various locations creating "pools". The concrete be dry prior to water inundation. The project is expected to take less than a week to complete.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: amphibians and other semi-aquatic and terrestrial plant and wildlife species.

The adverse effects the project could have on the fish or wildlife resources identified above include: creation of predatory fish habitat; direct take of fish and other aquatic species, including redds; disruption to nesting birds and other wildlife; and disturbance from project activity.

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 and shall be presented to CDFW 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 CDFW 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, CDFW shall contact the Permittee to resolve any conflict.
- 1.4 Project Site Entry. The Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.
- 1.5 Notification of Project Modification. The Permittee agrees to notify CDFW of any modifications made to the project plans submitted to CDFW.

- 1.6 Change of Conditions and Need to Cease Operations. If conditions arise, or change, in such a manner as to be considered deleterious to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken.

2. Avoidance and Minimization Measures

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

- 2.1 Work Period. Work within the active channel of Kelsey Creek shall be confined to the period July 15 to October 31, in the year(s) the Agreement is valid.
- 2.2 Work Period Modification. If the Permittee needs more time to complete the project activity, the work may be permitted outside of the work period and extended on a day-to-day basis (or for some other set period of time) by a CDFW representative who reviewed the project, or if unavailable, through contact with the Regional office (see Contact Information). The Permittee shall submit a written request for a work period variance to CDFW. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. The work period variance request should consider the effects of increased stream levels, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period. CDFW will have ten calendar days to review the proposed work period variance. CDFW reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the variance.
- 2.3 Work Period in Dry Weather Only. Work within Kelsey Creek shall be restricted to periods of no stream flow and dry weather. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Construction activities shall cease and all necessary erosion control measures shall be implemented prior to the onset of precipitation. Construction activities halted due to precipitation may resume when precipitation ceases and the National Weather Service 72 hour weather forecast indicates a 20% or less chance of precipitation, provided no work occurs in the stream bed if water is flowing. No work shall occur during a dry-out period of 24 hours after the above referenced wet weather. Weather forecasts shall be documented upon request by CDFW.
- 2.4 Vegetation Removal. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. No native trees shall be removed or during construction. Using hand tools (clippers, chain saw, etc.), trees may be trimmed to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian zone and stream channel.

- 2.5 **Bird Nests.** It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the FGC. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a CDFW representative. If construction is scheduled during the breeding season (approximately February 15th to August 31st) then a breeding bird survey will be conducted no more than 15 days prior to the start of construction by a CDFW approved biologist. All active bird nests will be marked following the survey to avoid destruction by equipment. If nesting raptors or migratory birds are identified within the area, a non-disturbance buffer will be established around the nest site. The size of the non-disturbance buffer and any other restrictions will be determined, before project activities commence, through consultation with CDFW following completion of the survey.
- 2.6 **Stream Materials.** Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream except as otherwise addressed in this Agreement.
- 2.7 **Bank Stabilization.** Permittee shall construct bank stabilization with suitable non-erodible materials that will withstand wash out. The bank stabilization material shall extend above the normal high-water mark. Only clean material such as, rock riprap that is free of trash, debris and deleterious material shall be used as bank stabilization. Asphalt shall not be considered an acceptable material.
- 2.8 **Sediment Control.** Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. **Products with plastic monofilament or cross joints in the netting that are bound/stitched (such as found in straw wattles/fiber rolls and some erosion control blankets) which may cause entrapment of wildlife, shall not be allowed.**

Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. Upon CDFW's determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective CDFW approved control devices are installed or abatement procedures are initiated.

- 2.9 **Removal of Silt Barrier.** The Permittee is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas

have been stabilized with erosion control vegetation (usually after the first growing season).

- 2.10 Heavy Equipment. No heavy equipment shall operate, or any excavation take place, in the portion of the stream where flowing water is present. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat. If maintenance or refueling of vehicles or equipment must occur on-site, use a designated area and/or a secondary containment, located away from drainage courses to prevent the runoff of storm water and the runoff of spills. Place drip pans or absorbent materials under vehicles and equipment when not in use. Equipment shall be stored in areas that any possible contamination from the equipment would not flow or be washed back into the channel.
- 2.11 Hazardous Materials. Debris, soil, silt, sand, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated work related activity shall not be stored where it could be washed back into the channel or where it will cover aquatic or riparian vegetation. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located more than twenty (20) feet from the stream and banks. Ensure that all construction areas have proper spill clean-up materials (absorbent pads, sealed containers, booms, etc.) to contain the movement of any spilled substances. All debris shall be disposed of properly. Best Management Practices (BMPs) shall be employed to accomplish these requirements. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding clean-up procedures.
- 2.12 Invasive Species. Permittee shall conduct project activities in a manner that prevents the introduction, transfer, and spread of aquatic, riparian, and terrestrial invasive species from one work site and/or water body to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>. Permittee shall notify CDFW immediately if an invasive species not previously known to occur within the work site is discovered during work activities by contacting CDFW's Invasive Species Program by email at Invasives@wildlife.ca.gov.
- 2.13 Remove Structures. Project related structures and associated materials not designed to withstand high water flows or placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life, wildlife, or riparian habitat shall be moved to areas above high water before such flows occur.

- 2.14 **Removal of Debris, Materials and Rubbish.** The Permittee shall remove all Project generated debris, building materials and rubbish from the stream and from areas within one hundred and fifty (150) feet of the high water mark, where such materials could be washed into the stream following completion of Project activities.
- 2.15 **Site Restoration.** All exposed/disturbed areas and access points within the stream left barren of vegetation as a result of the construction activities, such as staging areas, shall be restored using locally native grass and/or forb seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass/forb seeds. Seeded areas shall be covered with broadcast straw and/or seeded erosion control blankets.

3. Reporting Measures

The Permittee shall meet each reporting requirement described below.

- 3.1 The Permittee shall notify CDFW within two working days of beginning work within the channel. Notification shall be submitted as instructed in Contact Information section below. Email notification is preferred.
- 3.2 Upon completion of the project activities described in this Agreement, the work area shall be digitally photographed. Photographs and notification of project completion shall be submitted to CDFW within 30 days of completion as instructed in Contact Information section below. Email submittal is preferred.

CONTACT INFORMATION

Any communication that the Permittee or CDFW 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 CDFW specifies by written notice to the other.

To the Permittee:

Kevin Thomas
Department of Fish and Wildlife
1701 Nimbus Road
Rancho Cordova, CA 95670
Phone: (916) 358-2845
Email: kevin.thomas@wildlife.ca.gov

CC:

Ben Ewing
ben.ewing@wildlife.ca.gov

To CDFW:

Department of Fish and Wildlife
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Attn: Lake and Streambed Alteration Program
Notification #1600-2017-0298-R2
Phone: (916) 358-2900 or 916-358-2885
Fax: (916) 358-2912
Email: R2LSA@wildlife.ca.gov

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 CDFW'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

CDFW 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 CDFW 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 CDFW 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 CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW 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 CDFW'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

CDFW may amend the Agreement at any time during its term if CDFW 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 CDFW and the Permittee. To request an amendment, the Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW'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 CDFW 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 CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW'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 CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW 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 CDFW's signature, which shall be: 1) after the Permittee's signature; 2) after CDFW 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 <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire five years from the date signed by CDFW, 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.

EXHIBITS

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

A. Exhibit A. Map of Project Location

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 CDFW in accordance with FGC section 1602.

CONCURRENCE

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

FOR DEPARTMENT OF FISH AND WILDLIFE- NORTH CENTRAL REGION FISHERIES PROGRAM




Kevin Thomas
Environmental Program Manager

9/22/17

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Tina Bartlett
Regional Manager

9/22/17

Date

Prepared by: Tanya Sheya
Environmental Scientist

Exhibit A. Map of Project Location

