



DEPARTMENT OF FISH AND GAME

North Central Region

1701 Nimbus Road, Suite A

Rancho Cordova, CA 95670

(916) 358-2900



"NOTICE OF DETERMINATION"

The Department will file a Notice of Determination for your project. The Notice will be filed with the Office of Planning and Research, as required by CEQA. The Department's compliance with CEQA may be legally challenged for 35 days following the filing of the Notice of Determination.

This completes the Department's agreement process. You may proceed with your project according to the terms and provisions of your Streambed Alteration Agreement if you have obtained all other permits required from local, other State, and Federal agencies.

(12/01/03)

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Westervelt Ecological Services of Sacramento, State of California, hereafter called the Operator, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1602, the Operator, on June 29th, 2009, notified the Department that he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: Cosumnes River, in the County of Sacramento, State of California, Township 5 E, Range 5 E, of the Bruceville and Thornton USGS Quadrangle, MDB&M.

WHEREAS, the Department, represented by Amy Kennedy, has determined that such operations may substantially adversely affect existing fish and wildlife resources including: salmonids and other fresh water fish species, amphibians, and other aquatic and terrestrial plant and wildlife species.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during the Operator's work. The Operator hereby agrees to accept the following recommendations as part of his work:

Project Description: Project Description: The applicant proposes to build a 492-acre mitigation bank along side the Cosumnes River near its confluence with the Mokelumne Rivers. The project proposes to modify farmed land (wine grapes and row crops) and turn it into a tidally influenced floodplain area. The modified area will then support riparian floodplain habitat including wetlands. Approximately 21,286 linear feet of channels will be constructed to increase inundation of the riparian habitat, a total footprint of 13.4 acres.

The project will be accomplished by breaching the farm levee on the Cosumnes River, an area totaling 0.23 acres. Constructing the breach will require an extraction of approximately 12,200 cubic yards of material. Impacts above the OHWM within the Departments jurisdiction (including riparian habitat) total 0.207 acres.

No in-channel work will be required to complete breach activities. Upon fully breaching the farm berm, the breach slopes and new channel bottom will be armored with 530 cubic yards of 6-inch rounded cobble to minimize erosion. Construction of a network of channels from the breach location through the interior of the property will extend regular freshwater-tidal inundation in the restored floodplain areas, provide drainage during seasonal flood events, and support establishment of riparian habitat in the interior of the property. The channels will be graded in such a manner as to avoid the ponding of water and prevent the stranding of fish. Monitoring will be done annually for the first five years to document floodplain function, including surface water hydrology, sediment balance, organic carbon export, and native plant survivorship and recruitment. Additionally, fisheries monitoring will take place to assess anadromous salmonid utilization and stranding, and to evaluate post-construction water quality.

Stream Zone Defined: The stream zone is that portion of the stream channel that restricts lateral movement of water. The stream zone is delineated at the top of the bank or the outer edge of any riparian vegetation, whichever is more landward.

1. The notification, together with all supporting documents submitted with the notification,

including the 2009 Grading Plans and The Biological Data Report for the Cosumnes Floodplain Mitigation Bank are hereby incorporated into this agreement to describe the location and features of the proposed project. The Operator agrees that all work shall be done as described in the notification and supporting documents, incorporating all project modifications, wildlife resource protection features, mitigation measures, and provisions as described in this agreement. Where apparent conflicts exist between the notification and the provisions listed in this agreement, the Operator shall comply with the provisions listed in this agreement. The Operator further agrees to notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, this agreement will be amended to accommodate modifications to the project plans submitted to the Department and/or new project activities. Please see the current fee schedule to determine the appropriate amendment fee.

2. Documents, plans, surveys, notifications, and requests pertaining to this project or required by this agreement may be sent to Amy Kennedy via email at akennedy@dfg.ca.gov or delivered to the Department of Fish and Game at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670. Refer to Notification Number 1600-2009-0040-R2 when submitting documents to the Department.
3. The time period for completing the work at the levee breach, occurring within the stream zone of Cosumnes and Mokelumne River, shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of June 15th to October 15th. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream zone shall cease until all reasonable erosion control measures, inside and outside of the stream zone, have been implemented prior to all storm events. No work will occur during wet weather. Wet Weather is defined as when there has been ¼ inch of rain in a 24-hour period. In addition, no work will occur during a dry out period of 24 hours after the above referenced wet weather. Revegetation, restoration and erosion control work is not confined to this time period.
4. If the Operator finds more time is needed to complete the authorized activity, the Operator shall submit a written request for a work period time extension to the Department. The work period extension request shall provide the following information: 1) Describe the extent of work already completed; 2) Provide specific detail of the activities that remain to be completed within the stream zone; and 3) Detail the actual time required to complete each of the remaining activities within the stream zone. The work period extension request should consider the effects of increased stream conditions, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Time extensions are issued at the discretion of the Department. The Department will review the written request to work beyond the established work period. The Department will have ten calendar days to approve the proposed work period extension. The Department reserves the right to require additional measures designed to protect natural resources.
5. The Operator is responsible for obtaining all required permits and authorizations from local, state and federal agencies. The Operator shall notify the Department where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, the Operator shall comply with the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.

6. A copy of this agreement shall be provided to the Contractor(s) who works within the stream zone of this project. A copy of this agreement and a copy of the original notification, including the project description, as submitted to the Department, must be available upon request at the work site. The Contractor(s) shall sign this agreement prior to working within the stream zone. The Contractor(s) or a designated crew supervisor(s) shall be on site the entire time a work crew is working near the stream zone. The supervisor(s) shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Department reserves the right to enter the project site at any time to ensure that there is compliance with the terms/conditions of this Agreement.
7. The Operator shall notify the Department within two working days of beginning work within the stream zone of the Cosumnes and Mokelumne Rivers. In addition, the Operator/Contractor shall notify the Department within two working days of the completion of work within the stream zone on this project. Notification shall be submitted to the Department as instructed in item number 2 above.
8. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the Fish and Game Code. 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 Department representative.
9. If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds (March 1 to August 31), a focused survey for active nest of such birds shall be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) within 15 days prior to the beginning to project-related activities. The results of the survey shall be faxed to 916-358-2912 or emailed to Akennedy@dfg.ca.gov. Refer to Notification Number R2-2009-0040-R2 when submitting the survey to the Department. If active nest are found, the Operator shall consult with the Department and the United States Fish & Wildlife Service (USF&WS) regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the Fish & Game Code of California. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with the Department and USF&WS, will be required before project work can be reinitiated.
10. The project site has been identified as an area that is potentially inhabited by threatened or endangered species. This agreement does not allow for the take, or incidental take of any State or Federal listed threatened or endangered listed species. The Operator is required, as prescribed in the state or federal endangered species acts, to consult with the appropriate agency prior to commencement of the project. Any unauthorized take of such listed species may result in prosecution and cancellation of this agreement.
11. The Operator will remove the mesh or netting used to contain coir logs or rolls once the disturbed area has been stabilized if these logs or rolls are to left in the field to decompose. This netting poses an entrapment risk to native snake and raptor species that may be present in the area.

12. Species composition and presence of juvenile anadromous salmonids will be determined by using beach seines to sample a minimum of five locations on the Project site. The locations will include areas within and outside of the dendritic channels. If any piscivorous fishes (e.g., Sacramento pikeminnow, largemouth bass, sunfishes) are captured during these monthly samplings, stomach contents will be sampled to determine if predation on juvenile anadromous salmonids is occurring. In addition, during each sampling the entire Project will be assessed for stranding potential. If areas of pooled water are located, beach seines will be used to determine if any fishes, including juvenile anadromous salmonids, are stranded. Constructed channels shall be monitored bi-weekly during the juvenile salmonid rearing period (February 1 to March 30) to ensure no stranding occurs. If the grade of the channel proves to be insufficient the applicant shall consult with the Department to work out a contingency plan to address stranding. A monitoring report via email shall be sent to AKennedy@dfg.ca.gov by April 30th for each of the two years monitoring occurs.
13. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the vegetation specifically identified for trimming and/or removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a Department representative. 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/stream zone.
14. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. To minimize the potential for turbidity/siltation entering the Cosumnes or Mokelumne Rivers following the breach of the levee, the Operator shall plant the interior of the project site, including the channels, a minimum of one growing season before the breach. Exposed or disturbed soils shall be planted or seeded with native or naturalized species to encourage sufficient root establishment and soil retention prior to the introduction of tidal and seasonal flood waters into the restoration area. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. Should additional measures such as silt barriers or erosion control material be installed to enhance topsoil retention, the Operator 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). Upon Department 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 Department approved control devices are installed or abatement procedures are initiated.
15. 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 aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake by the Operator or any party working under contract or with the permission of the Operator, shall be removed immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.
16. If any listed species are found within the proposed work area, or is in a location which could be

impacted by the work proposed, the Operator shall consult with the Department to ensure this species is protected. If the work requires that the species be removed, disturbed or otherwise impacted, the Operator shall obtain the appropriate state and federal endangered species permits.

17. The Operator shall remove any invasive, non-native vegetation from the restoration area and shall dispose of it in a manner and location which prevents its reestablishment. Removal shall be done annually, as needed, for a minimum period of five years to ensure removal is successful. No re-growth shall occur for a minimum of two consecutive years for the restoration to be considered successful. If success criteria have not been met for exotic removal, the mitigation and monitoring may be extended with each extension of the agreement in order to fulfill the success criteria.
18. During construction, the contractor shall not dump any litter or construction debris within the stream zone. All construction debris and associated materials shall be removed from the work site upon completion of this project.
19. No material of any nature from grading and filling existing levee roads shall be sidecast onto the stream side of the levee.
20. All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the construction activities shall be restored using locally native grass seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jut netted (monofilament erosion blankets are not authorized).
21. The Operator may repair damage to any existing bank protection features, such as rip-rap for the life of this agreement. Such repairs shall employ the same type materials used in the original construction and shall occur only in the locations of existing bank protection. New sites requiring bank protection, expansions in the size of protected sites, or changes in the materials to be used, are not covered by this Agreement. As such a separate notification and Agreement would be needed for such work. Repair work shall be accomplished without damaging vegetation or altering the stream bed or stream banks more than (15) feet in any direction beyond the area of the original bank protection. Where heavy equipment is required, the work area limit is extended to (50) feet.
22. An annual monitoring report shall be submitted to the Department by August 15th each year for 7 years after the commencement of operations. The report shall discuss the mitigation performance as it relates to the success criteria. The monitoring shall state corrective actions recommended or to be taken when mitigation measures do not meet the proposed success criteria. Refer to Notification Number 1600-2009-0040-R2 when submitting the monitoring report to the Department.
23. This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game. Stream alteration work authorized by this agreement expires on December 31, 2014. This agreement shall remain in effect for that time necessary to satisfy all required mitigation and monitoring measures.
24. Requests for Extensions (agreement renewal), Minor Amendments, and Major Amendments

must be submitted in writing prior to expiration of the agreement or commencement of work on modified project plans. Extensions and Amendments are issued at the discretion of the Department. Please see the current fee schedule to determine the appropriate fee.

25. The Department may take enforcement action and reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require these Department actions include, but are not limited to, the following: A) Failure to comply with the terms/conditions of this agreement. B) The information provided by the operator in support of the agreement/notification is determined by the Department to be incomplete, or inaccurate. C) When new information becomes available to the Department representative(s) that was not known when preparing the original terms/conditions of this agreement. D) The project as described in the notification, agreement, or amendment has changed, or conditions affecting fish and wildlife resources change.
26. If, in the opinion of the Department, conditions arise or change in such a manner as to be considered deleterious to aquatic life, operations shall cease until corrective measures are taken.
27. It is understood that the Department enters into this agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator. The Operator agrees to hold harmless and defend the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or other damage.

SIGNATURE PAGE

The Operator, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractor and subcontractors and must be in their possession at the work site.

Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances.

This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game.

Operator: GREG DEYOUNG Date 8/27/09
Print & Sign Name Greg DeYoung
Title: VICE PRESIDENT
Organization: WESTERVELT ECOLOGICAL SERVICES

Contractor: _____ Date _____
Print & Sign Name _____
Title: _____
Company: _____

Department Representative:  Date 8/28/09
Sandra Morey, Regional Manager