



**California Department of Fish and Wildlife
Region 2/North Central Region
1701 NIMBUS ROAD, SUITE A
RANCHO CORDOVA, CA 95670**

California Endangered Species Act
Amended Incidental Take Permit No. 2081-2017-050-02
(Amendment No. 2)

GREENHORN PLANT GRAVEL EXTRACTION PROJECT

Authority: This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

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|---------------------------|---|
| Permittee: | Hansen Bros. Enterprises |
| Principal Officer: | Jeff Hansen |
| Mailing Address: | PO Box 1599 Grass Valley, CA 95945 |

Amended ITP³ Background:

On April 24, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-050-02 (ITP) to Hansen Bros. Enterprises (Permittee) authorizing take of Foothill yellow-legged frog (*Rana boylei*) (the Covered Species) associated with and incidental to the Greenhorn Plant Gravel Extraction Project in Nevada County, California (Project). The Project as described in the ITP originally includes aggregate material extraction within Greenhorn Creek, consisting of stream diversion and side-channel construction (channelization), berm construction, temporary culvert placement, temporary road construction, exclusionary fence placement, side-channel enhancement which includes the placement of logs, undulations, meanders, gravel extraction, and gate and sign placement and removal. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate

¹Pursuant to Fish and Game Code section 86, "take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take" ... means to catch, capture or kill].)

²The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

³When this incidental take permit and attachments refer to the "ITP", it means the "Amended ITP" unless the context dictates otherwise.

impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On November 11, 2019, Hansen Bros. Enterprises requested an extension of the ITP expiration date, from December 31, 2019, until December 31, 2024, in the form of a minor Amendment. In addition to the extension, the Permittee requested minor changes to the Mitigation and Monitoring Report (MMRP). On February 7, 2020, CDFW granted the extension request, changed the extension of time to the work period language in Condition of Approval 7.9, and made minor corrections to the MMRP through Amendment No. 1.

On June 16, 2023, Hansen Bros. Enterprises requested a second amendment of the ITP. The major Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

- First, this Amendment extends the expiration date from December 31, 2024, to December 31, 2044.
- Second, this Amendment adds a 5-year compliance report as a condition of the extended permitted term.
- Third, this Amendment makes minor edits to the MMRP, to be incorporated as permanent changes.

CDFW now reissues this ITP including the revised provisions in this second amendment, first major amendment (Collectively, the Amended ITP). The Amended ITP includes all the edits as of the effective date of this Amended ITP. Attachment 5 to this Amended ITP shows the specific red-line changes made to the ITP as a result of this major amendment.

Effective Date and Expiration Date of this ITP:

The original ITP was executed in duplicate original form and became effective when a duplicate original was acknowledged by signature of the Permittee on the last page of the original ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. The original ITP's expiration date was December 31, 2019, then amended to December 31, 2024, on February 7, 2020. This Amended ITP shall be executed in the same manner and shall become effective when CDFW's Habitat Conservation Planning Branch receives this signed Amended ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2044**, so long as the Permittee satisfies the 5-year review process described in the Permit Term section below.

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Permit Term:

Permittee is required to prepare and submit to CDFW a 5-year compliance report at least 180 days prior to each 5-year anniversary of the effective date of this amended ITP (Condition of Approval 6.9). Permittee shall meet and confer with CDFW within 60 days after the 5-year compliance report submittal to discuss the report and any potential ITP compliance issues.

Within 30 days following that meeting, if CDFW determines that there are any outstanding ITP compliance issues, CDFW shall provide a letter describing the outstanding ITP compliance issues and what actions are necessary for the Permittee to remain in or come into compliance. Within 30 days of receiving CDFW's letter, the Permittee shall provide CDFW a response in writing listing actions taken or proposed to show how the compliance issues will be resolved. Permittee shall work with CDFW to confirm the resolution proposed meets the needs to bring the ITP into compliance. If the Permittee fails to provide the required written response or fails to complete the necessary actions to remain in or come into compliance, CDFW may revoke or suspend the permit as provided under California Code of Regulations, Title 14, section 783.7.

Permittee shall include in their 5-year compliance report, at a minimum, the following:

1. A list of activities (including both construction and maintenance activities) completed over the prior 5-year period, including activities that are currently in progress;
2. Current and previous aerial mapping depicting impacts to Covered Species habitat(s);
3. Number of individuals of the Covered Species taken during the last 5-year period and the current status of the Foothill yellow-legged frog population on site;
4. An assessment of the long-term effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing, and mitigating impacts associated with the Greenhorn Plant Gravel Extraction Project (Project);
5. An assessment of whether the Covered Activities and Project Description, as described in this ITP, for Operations and Maintenance (O&M) are still valid;
6. A summary of the results of monitoring and Foothill yellow-legged frog relocations associated with Project Operations over the prior 5-year period, including number and location(s), and an assessment of whether monitoring and Foothill yellow-legged frog relocations are likely to be necessary during the next 5 years; and
7. Any new information relevant to the conservation of the Covered Species and/or to the Project Area, as defined in the impact analysis section of this ITP.

If during the 5-year compliance review process, CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species, or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the

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Covered Species are minimized and fully mitigated, the Permittee shall submit a request for an amendment pursuant to Title 14, Section 783.6 of the California Code of Regulations and associated fee based on the fee schedule at time of submittal.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 6.6 of this ITP.

Project Location:

The Greenhorn Plant Gravel Extraction Project (Project) is located at 12865 Mule Canyon Road within the City of Grass Valley, Nevada County (See Figure 1).

The Project is located approximately 9 miles east of Grass Valley at approximately 39°11' 35.38" N, 120°56' 06.54" W.

Project Description:

The Project includes aggregate material extraction within Greenhorn Creek. Project activities include the stream diversion and side-channel construction (channelization), berm construction, temporary culvert placement, temporary road construction, exclusionary fence placement, side-channel enhancement which includes the placement of logs, undulations, and meanders, gravel extraction, and gate and sign placement and removal.

Aggregate material extraction is a seasonal activity that begins in the spring by channelizing Greenhorn Creek to one side of the streambed and ends with winter storms that inundate the Project area. Channelization efforts vary from year-to-year depending on the amount of aggregate material that was moved during the winter high water storm periods and the amount of material that was extracted the prior year. Each year, the realignment of the channel is expected to be approximately five miles long.

During channelization, a berm will be constructed between the side-channel and the aggregate extraction area. Project activities also include the temporary placement of culverts where the creek transitions from one side of the streambed to the other and frequent crossing of vehicles and equipment is necessary. Vehicles and equipment travel on a haul road that is typically constructed at the same time as the side-channel, each year. The haul road is constructed from native streambed aggregate material, and is generally parallel to the side-channel.

Each year prior to aggregate material extraction, the three "no work zones" areas will be established. Environmental Sensitive Area (ESA) fencing and/or exclusionary fencing will be placed as necessary to prevent access by equipment to the areas.

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Aggregate material extraction is typically completed using self-loading scrapers operating in the dry streambed. Later in the year, typically in the fall and prior to the rain season, the scraper extraction is augmented by an excavator loading off-highway haul trucks. The haul road is watered as needed to control dust using a nearby well or the creek as a water source. The aggregate material is hauled to an onsite material processing plant located outside of the Project Area.

The total operational area of the Project is approximately 185 acres. Each year, the Project activities are conducted on approximately 71 acres which is composed of approximately 24 acres of haul road (40 feet wide and 5 miles long), 12 acres of creek channelization (20 feet wide and 5 miles long), and 35 acres of extraction area. Aggregate extraction areas are selected each season based on winter movement of aggregate material and economic demand for material. The impact area varies as material may be harvested deeper one year and wider in another year. The volume of material moved during the trenching process is approximately 110,000 cubic yards of sand and gravel. Depending on the year, the volume and length could be slightly more or substantially less.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

| Name | CESA Status |
|--|--------------------|
| 1. Foothill yellow-legged frog (<i>Rana boyii</i>) | Threatened |

This species and only this species is the "Covered Species" for the purposes of this ITP.

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species and include temporary water diversion and stream dewatering, temporary channel and berm construction, equipment operations, culvert installation, temporary road construction, gravel extraction, gate and sign placement and removal and Covered Species relocation (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as water diversion and dewatering, relocation of tadpoles and/or adults from stream into temporary channel, potential crushing of individuals during equipment operations and gravel extraction and installation of other Project features as described above. Incidental take of individuals of the Covered Species may also occur

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from the Covered Activities in the form of “pursue, catch, capture, or attempt to do so” of the Covered Species during relocation of individual adults and tadpoles out of the Project Area. The areas where authorized take of the Covered Species is expected to occur include areas within and adjacent to the Greenhorn Creek channel (collectively, the Project Area).

The Project is not expected to cause the permanent loss of any habitat for the Covered Species. Implementation of this Project is expected to cause the temporary loss of up to 71 acres of habitat over a two year period, for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project’s incremental contribution to cumulative impacts (indirect impacts). These impacts include: long-term effects due to increased water pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for ingress and egress, staging and parking. CDFW’s issuance of this ITP and Permittee’s authorization to take the Covered Species are subject to Permittee’s compliance with and implementation of the following Conditions of Approval:

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration (SCH No.: 2017032040) and Environmental Impact Report (Hansen Bros. Enterprises Gravel Processing Plant EIR-1974) certified by the County of Nevada as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

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- 3. LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration Agreement (LSAA) (Notification No. 1600-2017-0074-R2) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
- 4. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
- 5. General Provisions:**
 - 5.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 5.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
 - 5.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
 - 5.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information

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about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 5.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction monitoring notebook is available for review at the Project site (hard copy or electronic) upon request by CDFW.
- 5.6. Delineation of Habitat. Permittee shall clearly delineate the constructed channel as the habitat of the Covered Species within the Project Area with berms, posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 5.7. Project Access. Project-related personnel shall access the Project Area using routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species until the habitat protection berm is in place and water outside the channel has dried up or the area has been cleared by a biologist that there are no occurrences of FYLF on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 5.8. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area.

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5.9. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.

5.10. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

5.11. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

6. Monitoring, Notification and Reporting Provisions:

6.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.

6.2. Notification of Non-Compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.

6.3. Compliance Monitoring. The Designated Biologist shall be on-site daily during the initial in-stream work. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area, and outside of the boundaries of the realigned channel. A Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

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- 6.4. Quarterly Compliance Report. The Designated Representative or Designated Biologist shall submit an updated copy of the MMRP table with notes showing the current implementation status of each mitigation measure for each quarter of the work period. The MMRP table shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative can be contacted by emailing R2CESA@wildlife.ca.gov or calling 916-358-2900 and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 6.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) amounts of gravel extracted; (2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure and date of implementation; (3) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (4) all available information about Project-related incidental take of the Covered Species; (5) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (6) information about other Project impacts on the Covered Species.
- 6.6. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 6.7. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project.

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The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at 916-358-2900. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

- 6.8. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 30 days of the final visual encounter survey for that year, and the Designated Biologist shall include copies of the submitted forms with the next ASR.
- 6.9. 5-Year Compliance Report. Permittee shall prepare and submit to CDFW a 5-year compliance report at least 180 days prior to each 5-year anniversary of the effective date of this ITP, as described in the Permit Term section of this ITP.

7. Take Minimization Measures:

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

- 7.1. Work Period. Work within Covered Species habitat shall be confined to the period April 1 to December 1. Requests for an extension of the time frame may be submitted in writing to CDFW at least two weeks prior to the work period end date identifying reasons for the requested extension.
- 7.2. Designated Biologist. The Designated Biologist will be onsite daily within the Project Area when dewatering and diversion of Greenhorn Creek occurs. If the biologist encounters any Covered Species adults, tadpoles, egg masses, or any life forms the biologist shall capture and move them into the newly constructed side channel, or tributary where no work will occur.
- 7.3. Work According to Mitigation and Monitoring Plan. Covered Species mitigation and monitoring will be done according to the *March 21, 2018 Mitigation and Monitoring Plan* found in Attachment 2 as well as all additional conditions listed in this ITP.
- 7.4 Pre-Construction Egg Mass Surveys. Prior to stream diversion and gravel extraction, the Permittee is responsible for surveying for Covered Species (including egg masses, tadpoles, sub-adults and adults). The purpose of the survey shall be to

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determine if and where the Covered Species are breeding in the Project Area. The Designated Biologist shall prepare and submit to the CDFW for review a written report of the survey results before beginning work. If Covered Species egg masses are found, the Designated Biologist or Permittee shall submit a breeding area avoidance plan and/or relocation plan to CDFW for approval prior to initiation of mining in the vicinity of the breeding area. The plan shall demonstrate how the Project activities shall be altered or redesigned to avoid negative impact to breeding areas.

7.5. Enhance Habitat in Realigned Channel. The realigned channel shall be designed to mimic a meandering channel to provide a more suitable and diverse breeding and rearing habitat throughout the breeding and/or operational season. The realigned channel shall be constructed as follows:

- a. Where the channel would be straight for more than 500 feet, create meanders to provide varying flow velocities in the channel
- b. Clusters of three to five medium to large size cobbles (2.5 to 10.1 inches in diameter) will be placed approximately 300 feet apart within the ± 5 mile long reconstructed channel where cobbles are not already present
- c. Placement of large logs or tree limbs will be placed within the reconstructed channel to provide shade and cover or substrate for FYLF to attach egg masses
- d. The depth of the channel shall vary between 5 and 7 feet deep to provide varying flow velocities and mimic natural creek conditions
- e. The width of the channel shall vary between 5 and 15 feet wide.

7.6 Relocation. If Covered Species are found during Covered Activities, they shall be relocated either to the realigned channel or to a nearby tributary outside of the Project limits.

7.7 Invasive Aquatic Species Removal. Permittee will implement annual opportunistic invasive aquatic species removal of potential predator species (i.e. American bullfrog (*Lithobates catesbeianus*), invasive nongame fish species, crayfish, etc.). Predator removal will be conducted under the direction of the Designated Biologist during the channelization process and in the area this is proposed for work during each operational season. Identification and quantity of invasive species encountered and removed will be recorded in the construction monitoring notebook and included in the quarterly and annual reports.

7.8 Visual Encounter Surveys. Visual encounter surveys (VES) will be conducted following construction of the new channel, to monitor breeding success of Covered Species. Surveys will be conducted in accordance with the *Visual Encounter Survey Protocol for Rana Boylii in Lotic Environments* and will be focused in areas where suitable habitat and/or enhancement features exist (i.e., logs, cobbles, meanders).

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Surveys will be scheduled as follows:

- a. Immediately following the construction of the new channel to verify the site is ready for aggregate extraction to begin
- b. During the first month following the completion of the new channel: weekly (4x per month)

Breeding in the newly constructed channel will be confirmed. Data collection to document the effectiveness of the habitat enhancement measures in the channel shall be conducted. This information will be included in a final Mitigation and Monitoring Report to be submitted to CDFW.

7.9 No Work Zones. Three Environmentally Sensitive Areas (ESAs), or “no-work zones” shall be established to provide safe refuge for Covered Species in specific areas where suitable Covered Species breeding habitat exists and will be avoided during the duration of the ITP (Figure 2). Aggregate extraction, stream channelization, culvert installation, material stockpile, and vehicle/equipment entry are prohibited in the “no-work zones”. Access points to the “no-work zones” will be clearly marked with exclusionary fencing or berms at the beginning of each aggregate extraction season and personnel will be trained to avoid the areas. The three no work zones are at the following locations:

1. Zone No.1 consists of approximately 1.2 acres of habitat and is located approximately 1600 feet east of Greenhorn Creek in a canyon adjacent to Red Dog Road and surrounds an unnamed tributary to Greenhorn Creek (Figure 3)
2. Zone No. 2 consists of approximately 6.5 acres of habitat and is located immediately west of Greenhorn Creek in a canyon between Red Dog Road to the north and Missouri Canyon to the south and surrounds an unnamed tributary to Greenhorn Creek (Figure 4)
3. Zone No. 3 consists of approximately 15 acres of habitat and is located approximately 2700 feet east of Greenhorn Creek in Missouri Canyon and surrounds an unnamed tributary to Greenhorn Creek (Figure 5).

The “no-work zones” that include tributaries that feed directly into the Project Area will include a temporary culvert(s) that will be installed at the confluence of the tributary and the channel which will allow water from that tributary to reach the reconstructed channel where necessary. Where applicable, exclusionary fencing will be placed in a “V” shape to guide Covered Species from the tributary into and through the culvert to reach the channel. Culverts and exclusionary fencing or aggregate berms will be removed from the Project Area and properly stored or disposed of at the end of each aggregate extraction season. Photographs will be taken of the exclusionary berms, fencing and culverts at each “no work zone” and this information will be included in a final Mitigation and Monitoring Report.

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7.10 Vehicle Trespassing Plan. Control of unauthorized/illicit vehicle trespassing within the Project Area to prevent further impacts to Covered Species via public use of the area during the aggregate extraction season has been developed. The proposed plan includes installation or maintenance of new or existing signs, installation of seasonal gates, and seasonal placement of large boulders, concrete blocks, K-rail, fencing, or other effective barricade across the Greenhorn Creek streambed as necessary to control public access in the non-public portions of the Project Area. Unless otherwise required by United States Forest Service or other agency, the northern border of the Project Area would not include a gate as access in or out of the Tahoe National Forest.

A minimum of 25, 18-inch by 24-inch, "No Trespassing" signs are proposed to be located at each common public access location and periodically throughout the Project Area. A map of the proposed sign locations is included in Figure 6.

In addition, the Permittee will implement security patrols throughout the Project Area during operational months to control trespassing. Security patrol will take place daily during the aggregate extraction season. Trespassers will be asked to leave. If trespassers are not willing to leave, law enforcement will be notified. Records shall be maintained of any enforcement actions.

8. Habitat Restoration and Enhancement:

CDFW has determined that restoration, enhancement and monitoring of Covered Species and their habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat. CDFW has determined that the Permittee shall do all of the following to comply with this requirement:

- 8.1. Cost Estimates. Restoration and enhancement of riparian habitat as described in Condition of Approval 8.2 and 8.3 is estimated at **\$26,355.00** (Attachment 3).
- 8.2. Monitoring. Additional monitoring of relocated Covered Species, and/or Covered Species success within the relocated channel as described in Condition of Approval 7.7 above.
- 8.3. No Trespassing. No trespassing signs and barriers will be erected at the beginning of each construction season. Signs and barriers that are anticipated to be mobilized by winter creek flows will be removed at the end of each season.

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9. Performance Security

The Permittee may continue with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 8. Permittee shall provide Security as follows:

- 9.1 Security Amount. The Security shall be in the amount of **\$26,355**. This amount is based on the cost estimates identified in Condition of Approval 8 above.
- 9.2 Security Form. The Security shall be in the form of a funding assurance letter (Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel. The funding assurance letter shall reference the estimated security and provide a commitment to the full cost of all ITP measures.
- 9.3 Security Timeline. The Security shall be provided to CDFW prior to the start of any Covered Activities.

Even if Security is provided, the Permittee must complete the enhancement required in Condition 8.2. and 8.3 no later than 18 months from the effective date of the ITP. CDFW may require the Permittee to provide additional mitigation and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and

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revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

Notices:

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1266
Sacramento, CA 95814

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2017-050-02) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Regional Manager
California Department of Fish and Wildlife
1701 Nimbus Road
Rancho Cordova, CA 95817
Telephone: (916) 358-2900
Fax: (916) 358-2912

and a copy to:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1266
Sacramento, CA 95814

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Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

CESA Desk
 1701 Nimbus Road
 Rancho Cordova, CA 95817
 Telephone: (916) 358-2900
 R2CESA@wildlife.ca.gov

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Nevada County (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's environmental review of the Project is set forth in the Hansen Bros. Enterprises Greenhorn Creek Aggregate Mining Expansion Project, (SCH No.: 2017032040) dated June 13, 2017, the by County of Nevada. At the time the lead agency adopted the Mitigated Negative Declaration and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval. Prior environmental review of the Project was set forth in the Hansen Bros. Enterprises Gravel Processing Plant EIR, certified on July 31, 1975, by the County of Nevada.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Mitigated Negative Declaration/EIR for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

Findings Pursuant to CESA:

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, the Hansen Bros.

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Enterprises Greenhorn Creek Aggregate Mining Expansion Project, Hansen Bros. Enterprises Gravel Processing Plant EIR, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

1. CDFW finds that this Amendment will significantly modify the scope or nature of the permitted project or activity or the minimization, mitigation, or monitoring measures, as compared to the Original ITP, and is thus a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

2. Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP
3. Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) additional biological monitoring; (2) establishment of "no work zones"; (3) realigned side channel enhancement; (4) aquatic invasive species removal; (5) no trespassing signs, gates and security; (6) Quarterly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat. Based on this evaluation, CDFW determined that enhancement of the relocated side channel, additional monitoring, no trespassing signs, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project
4. The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP
5. The measures required by this ITP maintain Permittee's objectives to the greatest extent possible
6. All required measures are capable of successful implementation
7. This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114
8. Permittee has ensured adequate funding to implement the measures required by this

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ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project

9. Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

| | |
|--------------|--|
| FIGURE 1 | Project Location Area |
| FIGURE 2 | "No Work Zone" Overview Map |
| FIGURE 3 | "No Work Zone" 1 |
| FIGURE 4 | "No Work Zone" 2 |
| FIGURE 5 | "No Work Zone" 3 |
| FIGURE 6 | No Trespassing Sign/Gate and Barricade Location Map |
| ATTACHMENT 1 | Mitigation Monitoring and Reporting Program |
| ATTACHMENT 2 | Stantec's <i>March 21, 2018 Mitigation and Monitoring Plan</i> |
| ATTACHMENT 3 | Monitoring and Restoration Cost Estimate |
| ATTACHMENT 4 | Letter of Credit Form |
| ATTACHMENT 5 | Amended Track Changes |
| ATTACHMENT 6 | Revised MMRP |

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10/3/2023

DocuSigned by:
Kevin Thomas
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Kevin Thomas
Deputy Director of Regional Operations

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions.

DocuSigned by:
Jeff Hansen
61F5DBA2BCF4437...

By: _____ Date: 2/7/2024

Printed Name: Jeff Hansen Title: Pres. / G.M.

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