

**[Include one or both of the following headings:]**

STREAMBED ALTERATION AGREEMENT  
(NO. \_\_\_\_\_)

TAKE AUTHORIZATION PURSUANT TO CALIFORNIA ENDANGERED SPECIES ACT  
(NO. \_\_\_\_\_)

## **DEPARTMENT OF FISH AND WILDLIFE**

### **OFFICIAL INSTRUMENT SURETY BOND**

**[Include one or both of the following references:]**

FISH AND GAME CODE SECTION 1603  
FISH AND GAME CODE SECTION 2081

BOND NO. \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, THAT THE UNDERSIGNED

\_\_\_\_\_  
(Name of Entity — Permittee and Principal, whose address for service is:)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

a \_\_\_\_\_ organized and existing under the laws of the  
(Form of Entity: Corporation, LLC, LLP, Partnership)

State of \_\_\_\_\_, as Principal, and \_\_\_\_\_,  
(Name of Surety Company, whose address for service is:)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

a \_\_\_\_\_ organized and existing under the laws of the  
(Form of Entity: Corporation, LLC, LLP, Partnership)

State of \_\_\_\_\_ and admitted to transact surety business in the State of California, as Surety, are held and firmly bound to the California Department of Fish and Wildlife

SAA No. \_\_\_\_\_

Take Authorization No. \_\_\_\_\_

(“CDFW”) in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum Principal and Surety hereby jointly and severally bind ourselves and our respective heirs, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. Principal has been issued [**include one or both of the following references:** Streambed Alteration Agreement No. \_\_\_\_\_ (“SAA”) pursuant to Fish and Game Code Section 1603[and] take authorization pursuant to the California Endangered Species Act, Fish and Game Code Section 2081 (“Take Authorization”)] for the [*insert name of project*] project (the “Project”) on the following described real property in \_\_\_\_\_ County, California:

*[Insert or attach legal description of Project location]*

2. [**Include one or both of the following sentences:**] The SAA, which is by this reference made a part of this bond, requires Principal to furnish security to CDFW, in form and amount acceptable to CDFW, to ensure compliance with the mitigation measures contained in paragraph nos. \_\_\_\_\_ of the SAA (individually and collectively, the “SAA Secured Obligations”); and this bond is executed and tendered to comply with that requirement. The Take Authorization, which is by this reference made a part of this bond, requires Principal to furnish security to CDFW, in form and amount acceptable to CDFW, to ensure compliance with the mitigation measures contained in paragraph nos. \_\_\_\_\_ of the Take Authorization (individually and collectively, the “Take Authorization Secured Obligations”); and this bond is [*also*] executed and tendered to comply with that requirement.

3. The term “Official Instrument” as used in this Bond shall mean and refer [**include the following terms if both SAA and Take Authorization: individually and collectively**] to [**include one or both of the following terms:** the SAA [*and*] the Take Authorization]. The term “Secured Obligations” as used in this bond shall mean and refer [**include the following terms if both SAA and Take Authorization: individually and collectively**] to [**include one or both of the following terms:** the SAA Secured Obligations [*and*] the Take Authorization Secured Obligations].

4. The Surety, on behalf of itself and its successors and assigns, hereby guarantees and shall be jointly and severally liable with the Principal for the performance and completion of each and all of the Secured Obligations in accordance with the Official Instrument and Fish and Game Code [**if SAA:** Section 1603] [**if Take Authorization:** Section 2081] [**if SAA and Take Authorization:** Sections 1603 and 2081], and agrees to indemnify and hold harmless CDFW from the failure, if any, of the Principal to perform and complete the Secured Obligations as specified in the Official Instrument, subject to the penal sum of this bond.

5. Obligations guaranteed by this bond shall be in effect for the following described real property upon which the Secured Obligations are to be carried out:

*[Insert or attach legal description of property on which Secured Obligations are to be performed<sup>1</sup>]*

6. This bond shall be deemed a term bond, the initial term of which shall be \_\_\_ years [*insert term of three years or longer<sup>2</sup>*], commencing on the date of issuance of the Official Instrument [*or*

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<sup>1</sup> See Instruction 4 for further information.

SAA No. \_\_\_\_\_

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*insert specific effective date*] and continuing through [*insert date*] (the “Initial Expiration Date”), after which time this obligation shall be void unless continued by a Continuation Certificate or new bond issued by the Surety for a term not less than the term first set forth in this Section 6; otherwise this bond shall remain in full force and effect, and run concurrently with the term of the Official Instrument, including any modifications or extensions thereof and thereafter until CDFW determines that the Principal has performed and completed all of the Secured Obligations in accordance with the Official Instrument.

The Surety shall notify CDFW at least 90 days prior to the Initial Expiration Date of this bond whether or not the Surety elects to issue either a Continuation Certificate or a new bond, and shall furnish any Continuation Certificate or new bond to CDFW at least 60 days prior to the expiration of the term of this bond. Should the Surety fail to furnish any Continuation Certificate or new bond to CDFW within such period, or elect not to issue either a Continuation Certificate or a new bond, the Principal shall be deemed to be without bond coverage in violation of the Official Instrument. Any such violation of the Official Instrument that continues uncured for 15 days shall constitute a default of the Secured Obligations for which the Surety shall become liable on this bond. Within 30 days after CDFW notifies the Surety of such default the Surety shall tender payment to CDFW of the full amount of this bond. In no event shall the liability of the Surety under this bond be considered to be cumulative; the bond shall not exceed the face amount herein stated, regardless of the number of years or terms this bond is in effect. No liability incurred while this bond is in effect shall be released or reduced by the giving of notice by Surety pursuant to this Section 6.

7. NOW, THEREFORE, if the Principal faithfully performs and completes all of the Secured Obligations in accordance with the Official Instrument, then this obligation shall be void; otherwise, it shall remain in full force and effect beginning on the date of issuance of the Official Instrument [*or insert specific effective date from Section 6*] and extending until:

(a) all Secured Obligations have been completed to the satisfaction of CDFW and the bond is released by CDFW; or

(b) the bond is replaced with a bond or other security in form and amount acceptable to CDFW; or

(c) the Official Instrument has been transferred in accordance with its terms and substitute security has been provided to and approved by CDFW.

8. The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the Official Instrument or to the mitigation measures to be performed thereunder shall in any way affect the Surety’s obligation on this bond, and the Surety hereby waives notice of any such change, extension of time, alteration or addition to the Official Instrument or to the Secured Obligations. Surety further stipulates and agrees that the provisions of Section 2845 of the Civil Code are not a condition precedent to Surety’s obligations hereunder and Surety hereby waives any right or defense to enforcement of this bond which may be provided under that section.

9. The failure of the Principal to fulfill the Secured Obligations in accordance with the Official Instrument shall constitute a breach of the Secured Obligations. In the event of a breach, CDFW shall follow the procedure specified in the Official Instrument to notify the Principal and give the Principal an opportunity to perform the Secured Obligations. The failure of the Principal to perform the Secured Obligations after CDFW has notified the Principal and given the Principal an opportunity to

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<sup>2</sup> See Instruction 8 for further information.

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perform the Secured Obligations in accordance with the procedure specified in the Official Instrument shall constitute a default of the Secured Obligations. The Surety shall become liable on this bond upon a determination by CDFW that the Principal is in default of the Secured Obligations. Within 30 days after CDFW notifies the Surety of CDFW's default determination, the Surety shall at the election of CDFW:

- (a) Agree in writing to perform and complete the Secured Obligations promptly in accordance with the Official Instrument; or
- (b) Tender payment to CDFW all amounts for which the Surety is liable under this bond.

If the Surety does not proceed as provided above then CDFW shall be entitled to enforce any remedies available to it without further notice to Surety. If the Surety proceeds as provided in (b) above and CDFW refuses the payment tendered, then CDFW shall be entitled to enforce any remedies available to it without further notice to Surety.

10. Where the Surety under this bond is two or more companies acting as co-sureties, the obligations of Surety shall be joint and several as well as several for the purpose of allowing a joint action or actions against any or all of the companies comprising the Surety. CDFW may bring suit against such companies, jointly and severally, or against any one or more of them, or against less than all of them, without impairing the rights of CDFW against the other(s). If the Surety under this bond is one company and that company has issued more than one bond for the performance of the Secured Obligations then CDFW may exercise its rights under any one or more of the bonds so issued by the Surety at such time(s) and in such manner as CDFW may determine, without impairing the rights of CDFW under this or any other bond for the performance of the Secured Obligations.<sup>3</sup>

11. The Surety will give prompt notice to the Principal and to CDFW of any notice received or action filed alleging the insolvency or bankruptcy of the Surety, or alleging any violation of regulatory requirements which could result in suspension or revocation of the Surety's license to do business.

12. In the event that the Surety becomes unable to fulfill its obligations under the bond for any reason, the Surety shall immediately give notice of that inability to CDFW and the Principal. Upon such notice by the Surety, or the incapacity of the Surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the Principal shall be deemed to be without bond coverage in violation of the Official Instrument and shall furnish CDFW with substitute security acceptable to CDFW within 30 days of such notice by or incapacity of the Surety. *Provided, however,* that if CDFW determines in its sole discretion that exigent circumstances over which Principal has no control (*e.g.*, general unavailability of bonds due to an event of regional, national or international significance) prevent the Principal from furnishing such substitute security within the 30-day period, CDFW may extend the 30-day period or make some other security arrangement with Principal acceptable to CDFW in its sole discretion.

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<sup>3</sup> See Instruction 7 for further information.

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13. Notice to the Surety or the Principal shall be mailed or personally delivered to the address set forth in the introductory paragraph of this bond. Notice to CDFW shall be mailed or delivered to the following addresses:

California Department of Fish and Wildlife  
[Region Name] \_\_\_\_\_  
[Address] \_\_\_\_\_  
[City, State, ZIP] \_\_\_\_\_  
Attn: Regional Manager

California Department of Fish and Wildlife  
Office of General Counsel  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814  
Attn: General Counsel

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their signatures and seals as of the dates set forth below.

Date \_\_\_\_\_

\_\_\_\_\_  
(Entity – Permittee [Principal])

(Corporate Seal)

By: \_\_\_\_\_

(Signature of Authorized Individual)

\_\_\_\_\_  
Typed or Printed Name

Title \_\_\_\_\_

I declare, under penalty of perjury, under the laws of the State of California, that I have executed the foregoing bond under an unrevoked Power of Attorney.

\_\_\_\_\_  
(Surety Company)

By: \_\_\_\_\_

(Signature of Attorney-in-Fact for Surety)

\_\_\_\_\_  
Typed or Printed Name

Title: \_\_\_\_\_

Executed in \_\_\_\_\_ on \_\_\_\_\_ under the laws of the State of  
(City) (Date)

\_\_\_\_\_  
(State)

***[Note: Where one signs by virtue of a Power of Attorney for a Surety Company, such fully executed Power of Attorney must be filed with this bond.]***

SAA No. \_\_\_\_\_  
Take Authorization No. \_\_\_\_\_

ACKNOWLEDGMENT OF CORPORATION – PERMITTEE

State of \_\_\_\_\_ ss.

County of \_\_\_\_\_

On this \_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature L.S.  
My Commission Expires: \_\_\_\_\_

ACKNOWLEDGMENT OF SURETY

State of \_\_\_\_\_ ss.

County of \_\_\_\_\_

On this \_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_ (name and title of officer), personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature L.S.  
My Commission Expires: \_\_\_\_\_

NOTE: Please identify the agent acting on behalf of the Surety, if applicable.

Agent \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

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## INSTRUCTIONS

1. Surety bonds must be in a form approved by the Attorney General. The Attorney General has approved this bond form for use in connection with an Official Instrument (as defined in the bond) in the following limited circumstances:

a. The estimated cost to complete the Secured Obligations (including any such obligations to be performed in phases) in accordance with the Official Instrument is a combined total of \$500,000 or more; or

b. The U.S. Army Corps of Engineers (the “Corps”) has issued a permit for the Project under Section 404 of the Clean Water Act, and the Corps permit requires a surety bond as financial assurance for the performance of the Principal under the permit.

2. A bond furnished in accordance with Paragraph 1 of these Instructions may continue until all Secured Obligations have been completed to the satisfaction of CDFW and the bond is released by CDFW.

3. The bond must set forth the correct Official Instrument number(s) at the top of each page.

4. The bond form must be completely filled out and executed, without any blank spaces. The full legal description of the real property on which the Project is located must be set forth in Section 1, or attached, and the full legal description of the real property on which the Secured Obligations are to be performed must be set forth in Section 5, or attached. If a full legal description of the real property on which the Secured Obligations are to be performed is unavailable, CDFW in its sole discretion may, but shall have no obligation to, authorize the use of an alternate form of property description. Any such alternate description must be sufficiently specific and detailed to enable a third party to accurately identify and locate the boundaries of the described real property. Each attachment must be labeled and include the Official Instrument number and bond number at the top of each page.

5. The full legal name and business address of the Principal must be set forth in the space designated “Principal” on the face of the form. The name of the Principal must agree exactly with that shown on the Official Instrument. The person signing the bond must be duly authorized to do so, and must furnish evidence of such authority to CDFW.

6. The full legal name and business address of the Surety must be set forth in the space designated “Surety” on the face of the form. The Surety must be an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, and appear on the list of companies holding certificates of authority as acceptable sureties published by the United States Department of the Treasury. Please refer to the following web sites to determine whether or not a surety meets these criteria:

California Department of Insurance – List of Authorized Insurers

[http://interactive.web.insurance.ca.gov/webuser/ncdw\\_alpha\\_co\\_line\\$.startup](http://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line$.startup)

(choose “Fidelity & Surety” and sort alphabetically)

U.S. Treasury Department – Circular 570

<http://fms.treas.gov/c570/c570.html>

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7. The bond must be for a sum which CDFW reasonably determines shall be adequate for it to perform (directly or through a third party) the Secured Obligations in accordance with the Official Instrument including a reasonable amount to cover administrative and contingency costs. The sum must be stated in words and numerals in the place provided on page one. Principal must furnish a single bond in the required amount unless CDFW in its sole discretion authorizes Principal to provide more than one bond. If the amount of the bond exceeds the Surety's underwriting limits set forth in the U.S. Treasury Department Circular 570 the bond will be acceptable only if the amount which exceeds the specified limit is coinsured or reinsured and the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer. Any coinsurance or reinsurance agreement must be executed and submitted to CDFW for approval with the proposed bond.

8. The bond shall remain in effect for the term stated in Section 6 (which shall not be less than three years unless CDFW, in its discretion, authorizes a shorter term) and shall not be released until CDFW notifies the Principal that all of the Secured Obligations have been completed in accordance with the Official Instrument or the bond has been replaced with a bond or other security in form and amount acceptable to CDFW. A bond containing a cancellation clause at the option of the Principal or Surety is not acceptable.

9. If the Official Instrument is assigned or transferred to another person (which assignment or transfer shall be subject to the requirements of the Official Instrument), the bond shall remain in effect and shall not be released until new financial assurances have been secured by the successor and delivered to and approved by CDFW.