



State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
Sacramento Valley - Central Sierra Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900

ARNOLD SCHWARZENEGGER, Governor



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APR 6 2006

ADMINISTRATION

"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 Alterations Agreement if you have obtained all other permits required from local, other State, and Federal Agencies.

(12/02/03)

California Department of Fish & Game

Sacramento Valley - Central Sierra Region (2)
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900

F A C S I M I L E

To: Mr. Kent McClain
Organization: Three Rivers Levee
Improvement Authority
Fax Number: (530) 749-7312
Business Phone: (530) 749-7575
Date: March 23, 2006

From: **Ian Drury**
Fax Number: (916) 358-2912
Business Phone: (916) 358-2030

Pages: 9 Total

Subject: **Streambed Alteration Agreement No. 1600-2005-0410-R2**

Dear Mr. McClain:

Attached is a draft copy of Streambed Alteration Agreement number 1600-2005-0410-R2 for the Feather-Bear-WPIC Levee Project (Stage 2). Please review the agreement with the appropriate parties. If you have any questions regarding the proposed provisions please contact me at (916) 358-2030. Let me know if you would like me to mail a copy of this agreement to you.

If you agree with the provisions set forth in the agreement, please have the person who has been designated as the Operator sign the agreement. Please **mail or deliver** the agreement with original signature to: Department of Fish & Game, Environmental Services Desk, 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670.

Upon receipt of the signed agreement, the Department will fulfill its obligation as a Responsible Agency as defined in the California Environmental Quality Act (CEQA). The project description and the signed agreement are of prime consideration as the Department files its Notice of Determination (Section 21108 of Public Resources Code). The Department will not be able to sign the agreement until after the CEQA review process is completed. **You may begin your proposed project, as conditioned in the streambed alteration agreement, after the Department signs the streambed alteration agreement and returns a copy of the agreement to you.** If you have any questions regarding the CEQA process or the status of the CEQA review after you have submitted the signed agreement, please phone Dale Watkins at (916) 358- 2842.

Sincerely,

Ian Drury
Environmental Scientist
SV-CS Region

Notification No. R2-2005-0410**AGREEMENT REGARDING PROPOSED STREAM ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and the Three Rivers Levee Improvement Authority (TRLIA) of Yuba County, State of California, hereafter called the **Operator**, is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code, the **Operator**, on December 16, 2005, notified the Department of the intent 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: Bear River, Feather River, Clark Slough, and unnamed drainage, in the County of Yuba, State of California, Section Various, Township 13 North, Range 4 East (GPS Coordinates: Latitude 38° 04' 72" / Longitude 121° 57' 09" [general location of Bear-Feather rivers confluence]).

WHEREAS, the Department (represented by Mr. Ian Drury) has determined that such operations may substantially adversely affect existing fish and wildlife resources including: Chinook salmon, Central Valley steelhead trout, Sacramento splittail, white sturgeon, green sturgeon, giant garter snake, Northwestern pond turtle, striped bass, warm water fish species, invertebrates, amphibians, valley longhorn elderberry beetle, Swainson hawk, riparian and/or freshwater marsh habitat, and other aquatic and terrestrial plant, fish 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

This agreement pertains only to those activities specifically described in Streambed Alteration Notification No. R2-2005-0410 pertaining to Stage 2 of the Feather-Bear-WPIC Levee Project (Project) which includes four primary components designed to meet the Project's objectives, which are summarized as follows: (1) Construction of the lower Bear River setback levee embankment. (2) Degradation of portions of the existing lower Bear and Feather river levees. (3) Removal of approximately 166 acres of orchard in the lower Bear River floodway, and (4) Restoration of native habitat types in the Bear River floodway, and recontouring and restoration of native habitat types on agricultural and developed lands in the levee setback area, including construction of a floodplain swale. Alteration Agreement No. R2-2005-0410 pertains only to Stage 2 components of the proposed Project, and an additional Alteration Agreement will be necessary for any work needed to complete additional components of the proposed Project.

Definitions

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

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Work Periods

- 1) The time limit for completing the work within the stream zone of the project area, hereafter called the stream zone, shall be restricted to periods of low stream flow and dry weather and shall be confined to the periods of July 1, 2006 to October 15, 2006, annually through July 1, 2008 to October 15, 2008. Revegetation work is not confined to this time period.
- 2) In-water project activities outside this work period will require consultation with the Department's Sacramento Valley - Central Sierra Region (contact Mr. Ian Drury). Although the granting of an extension for work within the stream zone is unlikely due to the nature of the project and the species it may impact, the **Operator** may submit a written request for a time extension to the Department 7 to 10 days before the above date is reached. The time extension request shall detail the extent of work already completed and the scope of work remaining and time required to complete operations within the stream zone. Time extensions are issued at the discretion of the Department. The Department, within 14 days of the receipt of a request to modify the work period, shall provide to the **Operator** its response to the request.
- 3) The **Operator** is advised that the Army Corps of Engineers also regulates in-water activities in the Sacramento-San Joaquin River Delta and its tributaries. The Corps may apply regulations that greatly restrict the "in-water" work periods. The **Operator** is advised to contact the Army Corp of Engineers Regulatory Section at (916) 557-5250.

Project Modifications

- 4) In-water work shall be done at the location and as described in the plans submitted to the Department. Project plans shall include all recommendations in this agreement. The **Operator** shall notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, minor plan modifications may require an amendment to this agreement. At the discretion of the Department, if substantial modifications are made to the original plans, this agreement becomes void and the **Operator** must submit a new application. The Department, within 21 days of receipt of such plan modifications or within a time determined by mutual agreement, shall provide to the **Operator** its proposals as to measures necessary to protect fish and wildlife.
- 5) In the event that the project scope, nature, or environmental impact is altered by the imposition of subsequent permit conditions by any lead agency, special district or federal regulatory authority, the **Operator** may be required to resubmit a notification to the Department and seek a new agreement to proceed. (See condition number 4 above for handling of modification made to the project plans.)

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Notifications and On-Site Documentation

- 6) The **Operator/Contractor** shall notify the Department **two working days** prior to beginning work within the stream zone of this project. Notification may be made to Mr. Ian Drury by phone at 916-358-2030, by FAX transmittal to (FAX # 916-358-2912) or by mail to the **Department of Fish and Game, 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670, Attention Mr. Ian Drury**. Refer to Streambed Notification Number R2-2005-0410 when notifying the Department.
- 7) A copy of this agreement shall be provided to all work crew supervisors who are working in or near the stream zone of this project. **A copy of this agreement must be available upon request at the work site.** Supervisors shall ensure that all employees who work in or near the stream zone are completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Contractor selected for this project shall sign a copy of this agreement and return it to the Department prior to any in-water work.

Pollution Prevention Measures

- 8) Prior to working within the stream zone, all heavy equipment shall be closely examined for oil and fuel discharges. All equipment operated within or adjacent to the waterway shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Petroleum products, and 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 the river, by **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.
- 9) 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 **Operator** or any party working under contract, or with the permission of the **Operator**, shall be removed immediately.
- 10) Adequate erosion control and water pollution control measures shall be adopted and maintained for the duration of the project in order to prevent deleterious materials from entering the waterway. The **Operator/Contractor** shall install when practical a siltation curtain in close proximity to the project site. The siltation curtain shall be of effective design to limit and abate heavily silted materials from impacting the stream zone.

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- 11) Turbidity levels in the Bear River, Feather River, Clark Slough; as well as the unnamed drainage resulting from project related activities shall not exceed 20% of the natural turbidity levels as measured 200 feet upstream of the project site. 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.
- 12) Rock slope protection shall be appropriately sized and engineered in place to resist washout. The **Operator** shall seek appropriate Rip-Rap Guidelines from the State Reclamation Board, the Army Corps of Engineers or other appropriate agency. Only clean material that is free of trash, debris and deleterious material, such as, rock rip-rap or broken concrete free of exposed rebar shall be used as bank stabilization. Asphalt is prohibited. All rock slope protection work shall be done from the top of the stream bank unless otherwise authorized. Equipment shall not be operated in the flowing portion of the river without the prior approval of the Department.
- 13) The bank stabilization material shall extend above the **normal high-water mark**.
- 14) Equipment and Material staging and storage areas shall be located away from the water side of the levee. All equipment, maintenance materials and other items considered to be pollutants shall be stored away from the water. Any spills of hazardous materials, petroleum products or other pollutant shall be reported immediately to the appropriate agency without delay.
- 15) During construction, the **Operator/Contractor** shall not dump any litter or construction debris within the **stream zone**. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site. All construction related materials shall be removed from the work site upon completion of the project.
- 16) Creosote treated wood products shall not be used in State Waters. Alternatives that may be appropriate include steel, concrete, plastic or wood products treated with EPA approved preservatives that are not deleterious to aquatic life.

Native Plant Protection and Vegetation Removal

- 17) Disturbance or removal of terrestrial and aquatic vegetation shall not exceed the minimum necessary to complete operations. The disturbed portions of the stream channel within the high water mark of the stream shall be restored to as near their original condition as possible. Areas vegetated by blackberries shall be cleared using mowers, pruners, brush saws, or other hand tools. No bulldozer/backhoe type equipment shall be used to remove vegetation. No trees with trunks in excess of three (3) inches in diameter at breast height (DBH) shall be removed. The root zone of the existing vegetation shall not be disturbed.

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- 18) Elderberry bushes shall be flagged and fenced too prevent damage and destruction. No Elderberry bushes shall be trimmed, moved or destroyed without the **Operator** first consulting the US Fish and Wildlife Service for the appropriate clearances, permits and protocols.
- 19) The upper two-third of the stream bank areas receiving rock slope protection (rip-rap) shall be back-filled with appropriate topsoil. The topsoil fill should be placed to fill the voids in the rock slope protection and provide a substrate for revegetation efforts. The soil shall consist of soil free of clay lumps or other deleterious materials. Hand tools and directed water spray may be needed to achieve filling of the voids.
- 20) The top soil covered rip-rap areas shall be restored to a natural state by seeding with a blend native and non-native erosion control grass seeds. Placement of cuttings of surrounding plant species shall be worked into the topsoil and rock. Cuttings should be placed at approximately 10 foot centers. Revegetation shall be completed after construction activities in those areas cease. Seed areas should be covered with broadcast straw.
- 21) There shall be no net loss of riparian habitat and/or freshwater marsh habitat acreage or value. If the **Operator** is placing rock slope protection on a vegetated levee, the **Operator** shall be responsible for mitigating for the loss of habitat. The **Operator** may either prepare and implement a revegetation plan near the project site (at a habitat replacement ratio of 2:1, mature tree replacement at a minimum ratio of 3:1) or acquire mitigation credits at an approved mitigation bank (mitigation credits shall be purchased at a ratio of 1:1). A revegetation plan shall include species, numbers, size of plantings and location. Monitoring shall be for five years. The plan shall discuss maintenance, a success criteria, monitoring & reporting program and corrective actions to be taken if success criteria are not met.

Bank Protection and Erosion Control Measures

- 22) All exposed/disturbed areas and access points within the stream zone left barren of vegetation due to project related activities, shall be restored to its natural state by seeding with a blend of native and non-native erosion control grass seeds. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeded areas shall be covered with anchored jute netting, coconut fiber blanket or similar erosion control blanket. The **Operator/Contractor** shall be required to maintain the area until the grass seeds have successfully become established.
- 23) All exposed banks that will not be seeded shall be erosion protected with rip-rap materials meeting US Army Corps, and State Reclamation Board minimum requirements. All materials used shall be free of pollutants, silt, fines, oils, paint and other pollutants. If broken concrete is used, it shall be free of exposed or broken rebar. All broken concrete used shall be free of rebar prior to being placed on the levee bank. Reasonable efforts shall

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be made to set, place and secure rip-rap material in place to prevent slippage, movement, sloughing and loss of material into the waterway.

Standard Administrative Streambed Alteration Agreement Provisions

- 24) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination is agreed to in writing by both parties.
- 25) The Department reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require a reevaluation 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 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. If the **Operator/Contractor or Other any party** working under contract violates any of the terms of this agreement, project operations shall cease and the Department shall be notified immediately. **DFG 24-hour Dispatch: (916) 445-0045.**
- 27) Stream alteration construction work authorized by this agreement expires on **October 15, 2008**. This agreement shall remain in effect for that time necessary to satisfy the terms/conditions of the agreement including mitigation measures.
- 28) **Requests for Renewals, Extensions, or Amendments** must be submitted in writing to the Department prior to expiration of the agreement, conclusion of the work period, or commencement of changed work design, respectively. **Renewals, Extensions and Amendments are issued at the discretion of the Department.**
- a. **Renewals** - A renewal is a request to complete a project during next year's construction season. Renewals are for projects that have no changes in the work period (dates) or scope of work described in the original notification. The cost of a renewal is \$127.25 (subject to change without notice).
- b. **Extensions** - An extension is a request to allow work on the project to extend beyond the work period (dates) described in the agreement and there are no changes in the scope work described in the original notification. The Department may require changes or additions to the list of conditions in the original agreement to protect fish and wildlife. The cost of the extension is \$127.25 (subject to

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change without notice).

- c. **Amendments** - An amendment is a modification to the original agreement that considers changes in the project's scope or design which would have impacts to fish and wildlife thereby requiring changes or additions to the list of conditions in the original agreement. The cost of an amendment is 50% of the fee of the original agreement.

Levee Work Project Specific Provisions

- 29) At this time, the provisions of the following agency permits is unknown, however, their permit requirements and restrictions shall be incorporated into this agreement upon their completion: (a) Regional Water Quality Control Board- Central Valley Region, adoption of Waste Discharge Requirements and (b) The U.S. Army Corps of Engineers- permit consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The **Operator** shall provide copies of these permits to the Department as soon as they become available. Failure to comply with these permits shall be considered violations of this agreement.

Threatened and Endangered Species Specific Provisions

- 30) Species designated by the State and Federal Governments as Threatened or Endangered may be present at this site. Any and all impacts to these species are strictly prohibited. For this agreement, the word "impact" in reference to a species includes but is not limited to the following: any impact on habitats used, species numbers and/or distribution, migration, water quality or reproductive success.
- 31) The **Operator** may be required to have a qualified biologist survey the proposed work area to verify the presence or absence of any of the following threatened or endangered species: **winter-run Chinook salmon, spring-run Chinook salmon, delta smelt, Central Valley steelhead trout, Sacramento splittail, giant garter snake, Swainson's hawk**. The results of these surveys shall be provided to the Department, in report form, prior to initiation of work.
- 32) If **winter-run Chinook salmon, spring-run Chinook salmon, Delta smelt, Central Valley steelhead trout, Sacramento splittail, giant garter snake, Swainson's hawk** are found in the proposed work area, or it 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 first obtain the appropriate State and Federal endangered species permits.

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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 INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL BE PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

This agreement becomes effective on receipt of signed agreement by all parties. This agreement terminates on October 15, 2008, for project construction activities only. This agreement shall remain in effect for that time necessary to satisfy the terms/conditions of the agreement including mitigation measures.

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

Operator: *Charles K. McClain* Date: *30 Mar 06*
Print & Sign Name

Title: *Executive Director*

Organization: *Three Rivers Levee Improvement Authority*

Contractor: _____ Date: _____

Title: _____

Company: _____

Department Representative: *Sandra Morey* Date: *4/3/06*
for Sandra Morey, Regional Manager

Operator's Initials: _____