



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922



REPLY TO
ATTENTION OF

July 15, 2014

Regulatory Division (SPK-2009-01335)

Gary Antone
Tehama County Public Works
9380 San Benito Avenue
Gerber, California 96035

Dear Mr. Antone:

We are responding to your March 19, 2014, request and additional information provided on April 14, 2014, and June 26, 2014, for a Department of the Army permit for the Thomes Creek Bridge project. This approximately 35-acre project involves activities, including discharges of dredged or fill material, in waters of the United States to replace the Highway 99W bridge over Thomes Creek. The project is located on Thomes Creek, Section 3, Township 24 North, Range 3 West, Mount Diablo Meridian, Latitude 39.9792905437028°, Longitude -122.176728844643°, Corning, Tehama County, California.

Based on the information you provided, the proposed activity, resulting in the permanent loss of approximately 0.03 acres of intermittent stream and riparian forest and temporary impacts to approximately 2.34 acres of intermittent stream and riparian forest, is authorized by Nationwide Permit Number NWP 14, Linear Transportation Projects. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets and regional conditions, and the following special conditions:

Special Conditions

1. Within 10 days prior to initiation of construction activities within waters of the U.S., you shall submit to the Corps pre-construction site photographs, which have been taken no more than 60 days prior to initiation of construction activities. Within 30 days following construction activities, you shall submit post-construction site photographs, showing the work conducted, to the Corps. The camera positions and view angles of post-construction photographs shall be identified on a map, aerial photo, or project drawing. Construction locations shall include all major project features and waters of the U.S., including mitigation areas.

2. To ensure your project complies with the Federal Endangered Species Act, you must implement all of the mitigating measures proposed as part of your project description, which are identified in the National Marine Fisheries Service letter of

concurrence (Number 2013/9454, dated November 22, 2013). If you are unable to implement any of the proposed measures, you must immediately notify the Corps and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

3. This Corps permit does not authorize you to take an endangered species, in particular valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service Biological Opinion (Number 81420-2009-F-0363-3, dated September 17, 2013), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

4. To ensure your project complies with the Magnuson-Stevens Fishery and Consultation Act, you must implement all of the mitigating measures and Essential Fish Habitat Recommendations identified in the above National Marine Fisheries document, including those ascribed to the Corps therein.

5. You and your authorized contractor shall allow representatives from the Corps to inspect the authorized activity and all avoidance and restoration areas at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this verification.

6. You shall notify the Corps of the start and completion dates for each phase of the authorized work within 10 calendar days prior to initiation of construction activities within waters of the U.S. and 30 calendar days following completion of construction activities.

7. To off-set the temporary impacts to Thomes Creek and restore the associated habitat, you shall plant and maintain regionally appropriate native riparian trees at a 3:1 replacement ratio, and extending from the low water line to the top of the bank along the affected reach of Thomes Creek. Native riparian trees shall be planted to shade the entire stream reach. You shall complete all plantings by March 1 of the first growing season following the completion of construction.

In order to ensure compliance with this condition, you shall:

a. Prior to initiation of any construction activities within waters of the U.S., submit to the Corps, for review and approval, a plan for the restoration of temporary impact areas. You shall include the following information within this plan:

(1) A description of and drawings showing the existing contours (elevation) and existing vegetation of the temporary impact areas. This information shall include site photographs taken of the temporary impact area. For linear projects, these photographs shall be taken from the alignment, in both directions;

(2) The methods used to restore the site to the original contour and conditions, as well as a plan for the revegetation of the site following construction activities;

(3) The proposed schedule for the restoration activities, and;

(4) A mitigation and monitoring plan, to be approved by the Corps, for the temporary impact area to ensure success of the restoration. Monitoring shall be conducted for a minimum of 10 growing seasons after completion of restoration activities. The plan shall be presented in the format of the Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines, dated December 30, 2004.

b. Within 30 days following completion of restoration activities, submit to the Corps a report describing the restoration activities including color photographs of the restored area. The compass angle and position of all photographs shall be similar to pre-construction photographs.

c. Submit to the Corps a Monitoring Report by October 1 of each year of required monitoring period. This report shall be submitted in the format shown on the enclosed Regulatory Guidance Letter 08-03, dated 10 October 2008, or subsequent guidance as appropriate. Reports may be submitted in hard copy or electronically.

8. You shall conduct all work when the project area is naturally dewatered, or is dewatered in accordance with the 404 Permit Continuation Document, dated March 17, 2014. No work shall be conducted in flowing water.

9. You shall restore all temporary impacts to waters of the U.S. and adjacent upland areas within 50 feet of waters of the U.S. to their original contour and condition within 30 days following completion of construction activities. You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid until March 18, 2017, when the existing Nationwide Permits are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions. Failure to comply with the General and Regional Conditions

of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2009-01335 in any correspondence concerning this project. If you have any questions, please contact Matthew Kelley at Redding Regulatory Office, 310 Hemsted Drive, Suite 310, Redding, California 96002, by email at Matthew.P.Kelley@usace.army.mil, or telephone at 530-223-9534. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,



Matthew Kelley
Chief, Redding Regulatory Office

Enclosures

cc: (w/o encls)

Mr. Jason Brush, USEPA, Region IX, Wetlands Regulatory Office (WTR-8), 75 Hawthorne Street, San Francisco, California 94105-3901

Mr. Scott Zaitz, California Regional Water Quality Control Board, 415 Knollcrest Drive, Suite 100, Redding, California 96002-0129

Mr. Dylan VanDyne, National Marine Fisheries Service, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814-4706

Ms. Lily Douglas, Endangered Species Division, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2605, Sacramento, California 95825-3901

COMPLIANCE CERTIFICATION

Permit File Name: Thomes Creek Bridge

Permit File Number: SPK-2009-01335

Nationwide Permit Number: NWP 14 Linear Transportation Projects.

Permittee: Gary Antone
Tehama County Public Works
9380 San Benito Avenue
Gerber, California 96035

County: Tehama

Date of Verification: July 15, 2014

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Sacramento District
310 Hemsted Drive, Suite 310
Redding, California 96002
DLL-CESPK-RD-Compliance@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

Signature of Permittee

Date



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 08-03

Date: 10 October 2008

SUBJECT: Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources.

1. Purpose and Applicability

a. Purpose. This Regulatory Guidance Letter (RGL) provides the Districts and regulated public guidance on minimum monitoring requirements for compensatory mitigation projects, including the required minimum content for monitoring reports. This RGL replaces RGL 06-03.

b. Applicability. The final Mitigation Rule published on April 10, 2008, states that the submission of monitoring reports to assess the development and condition of compensatory mitigation projects is required, but the content and level of detail for those reports must be commensurate with the scale and scope of the compensatory mitigation projects as well as the compensatory mitigation project type (see 33 CFR 332.6(a)(1)).

This RGL applies to all Department of the Army (DA) permit authorizations under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act that contain special conditions requiring compensatory mitigation provided through aquatic resource restoration, establishment and/or enhancement. This guidance also applies to monitoring reports that are prepared for mitigation bank sites and in-lieu-fee project sites.

This RGL supports the Program Analysis and Review Tool (PART) program goals for the Regulatory Program. Specifically, this RGL supports the PART performance measures for mitigation site compliance and mitigation bank/ in-lieu-fee compliance. These measures apply to active mitigation sites, mitigation banks, and in-lieu-fee project sites that still require monitoring.

2. Background

Recent studies by the Government Accountability Office (GAO) and National Research Council (NRC) indicated that the U.S. Army Corps of Engineers (Corps) was not providing adequate oversight to ensure that compensatory mitigation projects were successfully replacing the aquatic resource functions lost as a result of permitted activities. For example, the GAO study determined that many project files requiring

mitigation lacked monitoring reports despite the fact that such reports were required as a condition of the permit. Similarly, the NRC study documented that a lack of clearly stated objectives and performance standards in the approved compensatory mitigation proposals made it difficult to ascertain whether the goal of no net loss of wetland resources was achieved.

On April 10, 2008, the Corps and Environmental Protection Agency published the “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule” (Mitigation Rule) which governs compensatory mitigation for activities authorized by permits issued by the Department of the Army (33 CFR Parts 325 and 332). This RGL complements and is consistent with the final Mitigation Rule.

3. Discussion

Inconsistent approaches to monitoring compensatory mitigation projects are one of several factors that have affected the ability of Corps project managers (PMs) to adequately assess achievement of the performance standards of Corps-approved mitigation plans. Standardized monitoring requirements will aid PMs when reviewing compensatory mitigation sites, thereby allowing the Corps to effectively assess the status and success of compensatory mitigation projects.

This RGL addresses the minimum information needed for monitoring reports that are used to evaluate compensatory mitigation sites. Monitoring requirements are typically based on the performance standards for a particular compensatory mitigation project and may vary from one project to another.

Monitoring reports are documents intended to provide the Corps with information to determine if a compensatory mitigation project site is successfully meeting its performance standards. Remediation and/or adaptive management used to correct deficiencies in compensatory mitigation project outcomes should be based on information provided in the monitoring reports and site inspections.

4. Guidance

a. Monitoring guidelines for compensatory mitigation.

i. Performance Standards. Performance standards, as defined in 33 CFR 332.2, and discussed in more detail at 33 CFR 332.5, will be consistent with the objectives of the compensatory mitigation project. These standards ensure that the compensatory mitigation project is objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. The objectives, performance standards, and monitoring requirements for compensatory mitigation projects required to offset unavoidable impacts to waters of the United States must be provided as special conditions of the DA permit or specified in the approved final mitigation plan (see 33 CFR 332.3(k)(2)). Performance standards may be based on functional, conditional, or other suitable assessment methods and/or criteria and may be incorporated into the

special conditions to determine if the site is achieving the desired functional capacity. Compensatory mitigation projects offset the impacts to diverse types of aquatic resources, including riverine and estuarine habitats. Special conditions of the DA permits will clearly state performance standards specific to the type and function of the ecosystem in relation to the objectives of the compensatory mitigation project.

ii. Monitoring Timeframe. The special conditions of the DA permit (or the mitigation plan as referenced in the special conditions) must specify the length of the monitoring period (see 33 CFR 332.6(a)(1)). For mitigation banks, the length of the monitoring period will be specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. For in-lieu fee projects, the length of the monitoring period will be specified in either the DA permit or the approved in-lieu fee project plan.

The monitoring period must be sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years (see 33 CFR 332.6(b)). The District determines how frequently monitoring reports are submitted, the monitoring period length, and report content. If a compensatory mitigation project has met its performance standards in less than five years, the monitoring period length can be reduced, if there are at least two consecutive monitoring reports that demonstrate that success. Permit conditions will support the specified monitoring requirement and include deadlines for monitoring report submittal. Longer monitoring timeframes are necessary for compensatory mitigation projects that take longer to develop (see 33 CFR 332.6(b)). For example, forested wetland restoration may take longer than five years to meet performance standards.

Annual monitoring and reporting to the Corps is appropriate for most types of compensatory mitigation projects, though the project sponsor may have to monitor progress more often during the project's early stages. Certain compensatory mitigation projects may require more frequent monitoring and reporting during the early stages of development to allow project managers to quickly address problems and/or concerns. Annual monitoring can resume once the project develops in accordance with the approved performance standards. In cases where monitoring is required for longer than five years, monitoring may be conducted on a less than annual timeframe (such as every other year), though yearly monitoring is recommended until the project becomes established as a successful mitigation project. In this case, off-year monitoring should include some form of screening assessment such as driving by the mitigation site, telephone conversations regarding condition of the mitigation site, etc. On-site conditions, the complexity of the approved mitigation plan, and unforeseen circumstances will ultimately determine whether the monitoring period should be extended beyond the specified monitoring time frame for a particular project. Complex and/or ecologically significant compensatory mitigation projects should have higher priority for site visits.

As discussed above, the remaining monitoring requirements may be waived upon a determination that the compensatory mitigation project has achieved its performance standards. The original monitoring period may be extended upon a determination that

performance standards have not been met or the compensatory mitigation project is not on track to meet them (e.g., high mortality rate of vegetation). Monitoring requirements may also be revised in cases where adaptive management or remediation is required.

iii. Monitoring Reports. Monitoring requirements, including the frequency for providing monitoring reports to the District Commander and the Interagency Review Team (IRT), will be determined on a case-by-case basis and specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. The content of the monitoring reports will be specified in the special conditions of the DA permit so that the requirements are clearly identified for the permittee or third-party mitigation sponsor. In addition, the monitoring reports should comply with the timeframes specified in the special conditions of the DA permit. Monitoring reports will not be used as a substitute for on site compliance inspections. The monitoring report will provide the PM with sufficient information on the compensatory mitigation project to assess whether it is meeting performance standards, and to determine whether a compliance visit is warranted. The party responsible for monitoring can electronically submit the monitoring reports and photos for review.

Visits to mitigation sites will be documented in the administrative record and will count toward District performance goals. An enforcement action may be taken if the responsible party fails to submit complete and timely monitoring reports.

b. Contents of Monitoring Reports. Monitoring reports provide the PM with a convenient mechanism for assessing the status of required compensatory mitigation projects. The PM should schedule a site visit and determine potential remedial actions if problems with the compensatory mitigation project are identified in a monitoring report.

The submittal of large bulky reports that provide mostly general information should be discouraged. While often helpful as background, reiteration of the mitigation and monitoring plan content, lengthy discussions of site progress, and extensive paraphrasing of quantified data are unnecessary. Monitoring reports should be concise and effectively provide the information necessary to assess the status of the compensatory mitigation project. Reports should provide information necessary to describe the site conditions and whether the compensatory mitigation project is meeting its performance standards.

Monitoring reports will include a Monitoring Report Narrative that provides an overview of site conditions and functions. This Monitoring Report Narrative should be concise and generally less than 10 pages, but may be longer for compensatory mitigation projects with complex monitoring requirements. Monitoring Report Narratives may be posted on each District's Regulatory web site.

Monitoring reports will also include appropriate supporting data to assist District Commanders and other reviewers in determining how the compensatory mitigation project is progressing towards meeting its performance standards. Such supporting data may include plans (such as as-built plans), maps, and photographs to illustrate site

conditions, as well as the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

c. Monitoring Report Narrative:

i. Project Overview (1 page)

- (1) Corps Permit Number or Name of the Mitigation Bank or In-Lieu Fee Project
- (2) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted.
- (3) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
- (4) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTM's, state plane coordinate system, etc.).
- (5) Dates the compensatory mitigation project commenced and/or was completed.
- (6) Short statement on whether the performance standards are being met.
- (7) Dates of any recent corrective or maintenance activities conducted since the previous report submission.
- (8) Specific recommendations for any additional corrective or remedial actions.

ii. Requirements (1 page)

List the monitoring requirements and performance standards, as specified in the approved mitigation plan, mitigation banking instrument, or special conditions of the DA permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

iii. Summary Data (maximum of 4 pages)

Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8 ½" x 11" piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

iv. Maps and Plans (maximum of 3 pages)

Maps should be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s), which will assist PMs in locating the mitigation area(s) during subsequent site inspections. Each map or diagram should be formatted to print on a standard 8 ½" x 11" piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

v. Conclusions (1 page)

A general statement should be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the permittee or sponsor, including a timetable, should be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

d. Completion of Compensatory Mitigation Requirements. For permittee-responsible mitigation projects, compensatory mitigation requirements will not be considered fulfilled until the permittee has received written concurrence from the District Commander that the compensatory mitigation project has met its objectives and no additional monitoring reports are required. PMs will review the final monitoring reports to make this determination. A final field visit should be conducted to verify that on-site conditions are consistent with information documented in the monitoring reports.

e. Special Condition. The following condition should be added to all DA permits that require permittee-responsible mitigation. This condition does not apply to mitigation banks or in-lieu-fee programs:

Your responsibility to complete the required compensatory mitigation as set forth in Special Condition X will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

5. Duration

This guidance remains in effect unless revised or rescinded.



STEVEN L. STOCKTON, P.E.
Director of Civil Works



U S Army Corps of
Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits – March 19, 2012

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

A. Regional Conditions

1. Regional Conditions for California, excluding the Tahoe Basin

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CA.pdf

2. Regional Conditions for Nevada, including the Tahoe Basin

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-NV.pdf

3. Regional Conditions for Utah

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-UT.pdf

4. Regional Conditions for Colorado.

http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CO.pdf

B. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters,

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the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

- 2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
- 4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- 10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
- 13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- 15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
- 16. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
- 17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 18. **Endangered Species.**
 - (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to

demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. **Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified

historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or

ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.
- (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification.

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification

(PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2)..

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;

- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property

may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

- (c) Form of Pre-Construction Notification: he standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.
- (d) Agency Coordination:
- (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.
- (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where

there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining

whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWP's do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in

which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

Final Sacramento District Nationwide Permit
Regional Conditions for California, excluding the Lake Tahoe Basin
(Effective March 19, 2012 until March 18, 2017)

1.* When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

2. For all Nationwide Permits (NWP), the permittee shall submit a PCN in accordance with General Condition 31 and Regional Condition 1, in the following circumstances:

a. For all activities that would result in the discharge of fill material into any vernal pool;

b. For any activity in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and the immediate tributaries of these waters;

c. For all crossings of perennial waters and intermittent waters;

d. For all activities proposed within 100 feet of the point of discharge of a known natural spring source, which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel; and

e.* For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.

3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property for areas (1) designated to be preserved as part of compensatory mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed or placed in or adjacent to navigable waters. The recordation shall also include a map showing the surveyed location of the preserved area or authorized structure.

* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

4. For all waters of the U.S. proposed to be avoided on a site, unless determined to be impracticable by the Corps, the permittee shall:

a. Establish and maintain, in perpetuity, a preserve containing all avoided waters of the U.S. to ensure that the functions of the aquatic environment are protected;

b. Place all avoided waters of the U.S. and any upland buffers into a separate parcel prior to discharging dredge or fill material into waters of the U.S., and

c. Establish permanent legal protection for all preserve parcels, following Corps approval of the legal instrument;

If the Corps determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to the waters of the U.S.

5. For all temporary fills, the PCN shall include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts is not practicable.

In addition, for all activities resulting in temporary fill within waters of the U.S., the permittee shall:

a. Utilize material consisting of clean and washed gravel. For temporary fills within waters of the U.S. supporting anadromous fisheries, spawning quality gravel shall be used, where practicable, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;

b. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and

c. Remove all temporary fill within 30 days following completion of construction activities.

6. In addition to the requirements of General Condition 2, unless determined to be impracticable by the Corps, the following criteria shall apply to all road crossings:

a.* For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;

b. Road crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria listed in Regional Condition 6(a). Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be authorized for waters that do not contain suitable habitat for Federally listed fish species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife passage or expected high flows;

c. No construction activities shall occur within standing or flowing waters. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plans must be approved, in writing, by the Corps prior to commencement of construction activities; and

* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

d. All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.

In no case shall stream crossings result in a reduction in the pre-construction bankfull width or depth of perennial streams or negatively alter the flood control capacity of perennial streams.

7.* For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, pursuant to 50 CFR Part 402.07, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), pursuant to 50 CFR 600.920(b) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the lead Federal agency shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

8. For all NWP's which require a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30:

a. As-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s). The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the appropriate Corps office prior to impacts; and

b. Numbered and dated post-construction color photographs of the work conducted within a representative sample of the impacted waters of the U.S., and within all avoided waters of the U.S. on and immediately adjacent to the proposed project area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Regional Condition 1(c) and shall be identified on the plan-view drawing(s) required in subpart a of this Regional Condition.

9. For all activities requiring permittee responsible mitigation, the permittee shall develop and submit to the Corps for review and approval, a final comprehensive mitigation and monitoring plan for all permittee responsible mitigation prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the *Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004, and in compliance with the requirements of 33 CFR 332.

10.* The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

11. The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of the permit authorization. The permittee shall ensure

that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.

12. The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).

13. For all activities in which a PCN is required, the permittee shall notify the appropriate district office of the start date for the authorized work within 10 days prior to initiation of construction activities.

14. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

15. For all activities located in the Mather Core Recovery Area in Sacramento County, as identified in the U.S. Fish and Wildlife Service's *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* dated December 15, 2005, NWPs 14, 18, 23, 29, 39, 40, 42, 43 and 44 are revoked from use in vernal pools that may contain habitat for Federally-listed threatened and/or endangered vernal pool species.

16. For activities located in the Primary or Secondary Zone of the Legal Delta, NWPs 29 and 39 are revoked.

17. For all activities within the Secondary Zone of the Legal Delta, the permittee shall conduct compensatory mitigation for unavoidable impacts within the Secondary Zone of the Legal Delta.

18. For NWP 12: Permittees shall ensure the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation. The permittee shall submit a PCN for utility line activities in the following circumstances:

a. The utility line crossing would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs;

b. The utility line activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.;

c. The utility line installation would include the construction of a temporary or permanent access road, substation or foundation within waters of the U.S.; or

d. The proposed activity would not involve the restoration of all utility line trenches to pre-project contours and conditions within 30 days following completion of construction activities.

19. For NWP 13 and 14: All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design

techniques, unless specifically determined to be impracticable by the Corps. The permittee shall submit a PCN for any bank stabilization activity that involves hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S. The request to utilize non-vegetated techniques must include information on why the sole use of vegetated techniques is not practicable.

20. For NWP 23: The permittee shall submit a PCN for all activities proposed for this NWP, in accordance with General Condition 31 and Regional Condition 1. The PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with ESA, EFH and NHPA, in accordance with General Conditions 18 and 20 and Regional Condition 7.

21. For NWP 27: The permittee shall submit a PCN for aquatic habitat restoration, establishment, and enhancement activities in the following circumstances:

a. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or

b. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.

22. For NWPs 29 and 39: The channelization or relocation of intermittent or perennial drainages is not authorized, except when, as determined by the Corps, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

23.* Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31 and Regional Condition 1;

c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.

24. For NWPs 29, 39, 40, 42, and 43: The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 23(f). Except in unusual circumstances, as determined by the Corps, vegetated buffers shall be at least 50 feet in width.

25. For NWP 46: The discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless specifically waived in writing by the Corps.

26. All NWPs except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs and peatlands and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, the permittee shall submit a PCN to the Corps in accordance with General Condition 31 and Regional Condition 1. This condition does not apply to NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 or 36, as these NWPs either apply to Section 10 only activities or do not authorize impacts to special aquatic sites.



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 – Northern
601 Locust Street
Redding, CA 96001
(530) 225-2300
www.wildlife.ca.gov

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



July 2, 2014



Mr. Kevin Rosser
Tehama County Public Works
9380 San Benito Avenue
Gerber, CA 96035

Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2014-0072-R1
99W Thomes Creek Bridge Project

Dear Mr. Rosser:

Enclosed is the final Lake or Streambed Alteration Agreement (Agreement) for the 99W Thomes Creek Bridge Project (Project). Before the California Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Mitigated Negative Declaration the lead agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 30-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Tobi Freeny at 530-225-2867 or Tobi.Freeny@wildlife.ca.gov.

Sincerely,

Tobi Freeny
Environmental Scientist

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTHERN REGION
601 LOCUST STREET
REDDING, CA 96001



LAKE or STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2014-0072-R1
THOMES CREEK

TEHAMA COUNTY PUBLIC WORKS DEPARTMENT
99W THOMES CREEK BRIDGE PROJECT

This Lake or Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Tehama County Public Works Department (Permittee) as represented by Mr. Gary Antone, PEPLS.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on March 24, 2014 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located at Thomes Creek, tributary to the Sacramento River in the County of Tehama, State of California; Section 35, Township 25N, Range 03W; U.S. Geological Survey (USGS) map Corning, Mount Diablo Base and Meridian.

Latitude [39° 58' 45"N], Longitude [122° 10' 36"W]

PROJECT DESCRIPTION

The project is limited to the replacement of an existing 31 foot wide by 619 foot – 3 inch long bridge with a 43 foot – 6 inch wide by 609 foot long bridge over Thomes Creek at

99W. The new bridge will be a five-span pre-stressed box girder with cast-in-drilled-hole piles and with driven steel piles. Specific work includes:

- a) Temporary relocation of utility facilities by trench and bore;
- b) Demolition of the existing bridge. Includes the removal of the deck and the removal of eight (8) piers;
- c) Construction of two (2) abutments consisting of the excavation and placement of fill and driven pile along with the installation of rock slope protection;
- d) Construction of four (4) piers with driven steel piles used for the installation;
- e) Installation of the falsework supported by pile driven or vibrated steel pipes or H piles for construction of the superstructure;
- f) Installation of a temporary crossing consisting of an open channel with bridge or culverts using onsite gravel, if necessary;
- g) Removal of the falsework and culverts/bridge associated with any temporary crossing along with grading and breaching the spawning gravel left in place for unrestricted flow;
- h) Removal of the least amount of riparian vegetation in order to complete the project; and
- i) Revegetation activities as per the 99W at Thames Creek Bridge Project MND/IS.

PROJECT IMPACTS

CDFW has determined that without implementation of the conditions contained within this Agreement, such activities could substantially adversely affect existing fish or wildlife resources within and downstream of the project area including, but not limited to: chinook salmon (*Oncorhynchus tshawytscha*), steelhead trout (*O. mykiss*), Northwestern Pond Turtle (*Actinemys marmorata marmorata*), California red-legged frog (*Rana draytonii*), Swainson's hawk (*Buteo swainsoni*), Stony Creek spurge (*Chamaesyce ocellata ssp. Rattanii*), multiple species of special concern bats, other fishes, amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include: disturbance to fish and wildlife resources from project activities; short-term release of contaminants (e.g., incidental from construction, concrete); increased turbidity causing respiratory problems in aquatic species due to suspended sediment and the smothering and/or shading of egg masses, submerged aquatic vegetation, and benthic communities due to settled sediment.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site.** Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site.** Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Other Agency Permitting Requirements.** The U.S. Army Corps of Engineers (Corps) has permitting requirements for certain instream projects under Section 404 of the Federal Clean Water Act. If this project features the placement of dredged or fill materials into the channels of streams (below the ordinary high water mark) that are waters of the United States, a permit may be required by the Corps. If your project needs a permit from the Corps, you will also need to obtain a Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act from the Regional Water Quality Control Board (Regional Water Board). In addition, if your project will involve disturbance within or discharges of pollutants to waters of the State of California, the Regional Water Boards may require a permit, whether or not the Corps requires a permit. If there is any question regarding the possibility of the project meeting the above limitations, the Permittee should contact the Corps and the Regional Water Board prior to beginning work. This Agreement in no way represents permitting requirements by the Corps or the Regional Water Board. It is the responsibility of the Permittee to contact the Corps, and to comply with the provisions of any Section 404 permit issued, if required by the Corps. Similarly, it is the responsibility of the Permittee to contact the Regional Water Board and to comply with the provisions of any Section 401 Certification, Regional Water Board Waste Discharge Requirements or waiver of Waste Discharge Requirements issued by the Regional Water Board.
- 1.4 Notification of Conflicting Provisions.** Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.5 Project Site Entry.** Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement, provided CDFW: a)

provides 24 hours advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring.

- 1.6 Permittee's notification (Notification of Lake or Streambed Alteration) together with all maps, plans, photographs, drawings, and all other supporting documents submitted with the notification to describe the activity (including but not limited to the Mitigated Negative Declaration and Initial Study (MND/IS) for the 99W at Thomes Creek Bridge Project and Construction Plans) is hereby incorporated by reference into this Agreement. Permittee shall conduct project activities within the work areas and using the mitigative features described in the notification and supporting documents, unless such project activities, work areas or mitigative features are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.
- 1.7 The Permittee shall notify CDFW, see contact information on page 16 of this Agreement, at least five (5) days prior to initiation of project activities and at least five (5) days prior to completion of project activities. Verbal or written notification is acceptable.

2. Avoidance and Minimization Measures

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

PROJECT TIMING AND COORDINATION

- 2.1 All work conducted outside of the low flow channel, where dewatering is not necessary AND is ≥ 50 feet from the flowing stream, may occur anytime within the calendar year. See measure 2.3 below.
- 2.2 All work conducted within the low flow channel, where dewatering is necessary OR is < 50 feet from the flowing stream, shall be confined to the period commencing May 15 and ending October 15, provided the stream is dry or at its lowest flow. If weather conditions permit and the stream is dry or at its lowest flow, the Permittee may perform work within the stream channel or on the banks outside of the above referenced work window, provided a written request is made to CDFW at least five (5) days before the proposed work period variance. Written approval from CDFW for the proposed work period variance must be received by the Permittee prior to the start or with the continuation of work outside of the above referenced work window. See measure 2.3 below.
- 2.3 Due to the expanded work windows above, the Permittee shall do all of the following when work is implemented outside of the May 15 to October 15 work window.
 - a. Stage erosion and sediment control materials at the work site; and

- b. Cease work and implement erosion control measures when there is a forecast of more than 30% chance of rain, or at the onset of any precipitation. Monitoring of the 72 hour forecast from the National Weather Service is recommended.
- 2.4 Notwithstanding measures 2.1 and 2.2 above, all plant installations shall occur between November 1, when there has been sufficient rainfall, and April 1.
- 2.1 Notwithstanding measures 2.1 and 2.2 above, all vegetation removal along the streambanks or within the floodplain shall be confined to the period commencing September 1 and ending February 14, of any year in which this Agreement is valid, provided the banks and floodplain are above stream flow levels. Work may continue during precipitation events provided stream flows have not risen into work areas and sediment delivery will not result.
- 2.2 The Permittee shall instruct all persons who will be completing any ground disturbing activity at a worksite to comply with the measures set forth in this Agreement and shall inspect each work site before, during, and after completion of any ground-disturbing activity at the work site.

HABITAT AND SPECIES PROTECTION

- 2.3 Permittee shall conduct an education program for all persons employed or otherwise working on the project site prior to performing any work. The program shall consist of a presentation that includes a discussion of the sensitive resources existing within and adjacent to the work area as well as the protective measures required in this Agreement.
- 2.4 If any special status species are observed in project surveys, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms to the CNDDDB (https://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp) for the survey data within five (5) working days of the sightings and provide to the Department's Regional office one (1) copy of forms and survey maps.
- **Vegetation**
- 2.5 All work areas described in this Agreement shall be flagged or fenced with appropriate marking materials to prohibit unauthorized and unnecessary disturbance of vegetation. The work area shall be identified to all workers, as represented in the plans. All marking materials shall be maintained throughout the life of the project and shall be removed at completion of the project activities.
- 2.6 Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Whenever possible, root systems shall be left intact to facilitate more rapid recovery following temporary construction impacts.
- 2.7 Prior to the onset of any construction activities focused botanical surveys shall be conducted for the presence Stony Creek spurge (*Chamaesyce ocellata* ssp.

Rattanii) identified as having a potential to be present. These surveys shall be at the appropriate time of year when the target species would be in flower (May to October). If any special status plant species are discovered CDFW shall be notified to determine appropriate avoidance measures. If no plants are observed project activities may begin. The Permittee does not need to resurvey the site unless the project area is left inactive and undisturbed for more than a year. Plan surveys shall be submitted to CDFW prior to implementation of project activities.

- 2.8 Giant Reed (*Arundo donax*), a bamboo-like grass, regenerates prolifically. Plant fragments in many cases are still viable and capable of rerooting and resprouting; these fragments, if left onsite or carried downstream by high flows, can easily spread this plant. For this reason care needs to be taken when removing and handling this non-native invasive species. The removal process that allows the cane to be removed from the stream system and remain in one single piece, not broken into many small pieces, is the process that should be used (e.g. NO brush whackers, weed eaters, etc.). Furthermore, care needs to be taken with the disposal of this plant. Disposal shall be in accordance with State and local laws and ordinances, in a manner which prevents its reestablishment in the stream and so it does not negatively affect other sensitive native habitat. However, do to the viability of fragments, the best forms of disposal are burning or composting.
- 2.9 Many non-native species [e.g. Tree of Heaven (*Allanhus altissima*), Black Locust (*Robinia pseudoacacia*)] regenerate prolifically from root sproutings. These species produce multiple sprouts from their extensive root system when the main stem is cut. This allows the non-native species to dominate an area if they are not treated properly. The Permittee shall apply herbicide to the cut stump of all non-native species immediately after cutting to ensure the uptake of the herbicide before the plant seals off the cut area.
- 2.10 Any herbicide shall be handled and applied by a licensed applicator in accordance with all applicable, federal, State, local laws, regulations, procedures, and guidelines,
- 2.11 The Permittee shall relocate all removed vegetation and debris outside of the normal high-water mark prior to inundation by water and shall dispose of them in a legal manner which prevents them from re-entering waters of the State, and in such a manner so that they do not negatively affect aquatic species and/or other sensitive native habitat communities.
- **Amphibians/Reptiles**
- 2.12 Prior to the onset of any construction activities the Permittee shall have a qualified biologist conduct surveys for the presence of any Northwestern Pond Turtle (*Actinemys marmorata marmorata*) and California red-legged frog (*Rana draytonii*). Any turtles that are discovered shall be captured and moved to suitable habitat areas outside the construction area. Any frogs that are discovered shall be handled according to the US Fish and Wildlife Service.

- **Birds**

- 2.13 The Permittee shall not conduct site preparation or construction activities in the project area between February 15th and August 31st to avoid impacts to breeding/nesting birds. OR, two (2) weeks prior to construction or site preparation the Permittee shall have a qualified biologist conduct preconstruction surveys to determine the presence of breeding/nesting pairs. If project activities are delayed or suspended for more than 15 days after the pre-construction survey the site shall be resurveyed. All bird surveys shall be submitted to CDFW prior to implementation of project activities.

These surveys shall include a general survey within 500 feet of the project area and a species specific survey for Swainson's hawk (*Buteo swainsoni*) within one half (0.5) mile of the project area. If no breeding/nesting birds are observed site preparation and construction activities may begin. If active nests are found, a minimum 200 foot no-disturbance buffer (500 foot for raptors and 0.5 mile for Swainson's hawk) shall be maintained around the nest site. No habitat removal or any other work shall occur within the buffer zone as long as the nest continues to be active meaning until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. The actual size of the buffer may be modified based on an evaluation by a qualified biologist of the sensitivity of the birds to the level of project disturbance and/or the no-disturbance buffer lifted prior to August 31, if it is determined safe to do so by a qualified biologist and approved by CDFW in writing.

- 2.14 If it is not possible to schedule bridge removal to avoid swallow nesting, any existing unoccupied and inactive nests shall be removed from the existing bridge before March 1 of the construction year. Active nests may not be removed during the nesting season, March 1 through September 1, without a nesting survey conducted by a qualified biologist to determine the activity of the nests. All bird surveys shall be submitted to CDFW prior to implementation of project activities.

During the nesting season removal of empty or unfinished nests should be repeated as frequently as necessary to prevent nest completion. Swallows are strongly attracted to old nests or to the remnants of deteriorated nests, so all traces of mud should be removed. A nest exclusion device can be installed if desired prior to March 1 or after September 1. Exclusion efforts should be continued until actual removal of the bridge structure.

- **Bats**

- 2.15 The Permittee shall not remove any trees (alive, dying, or standing snag with a diameter at breast height (DBH) of sixteen inches or greater (≥ 16) until after a qualified biologist has conducted a survey to determine the presence or absence of breeding/roosting bats. Surveys shall be conducted no more than two (2) days prior to the removal of the trees. If active bats are discovered, CDFW shall be

contacted to work in consultation with the qualified biologist to determine appropriate avoidance measures. All bat surveys shall be submitted to CDFW prior to implementation of project activities

2.16 The Permittee shall not begin bridge demolition activities until after a qualified biologist determines if the structure is supportive of day or night roosting by bats. If so, the qualified biologist shall conduct preconstruction surveys to determine the presence or absence of breeding/roosting bat colonies. If active bats/colonies are discovered, CDFW shall be contacted to work in consultation with the qualified biologist to determine appropriate avoidance measures. All bat surveys shall be submitted to CDFW prior to implementation of project activities.

- **Fish**

2.17 Instream work shall occur only when one of the following occurs:

- a. Thomes Creek is not actively flowing (dry);
- b. The average daily water temperature is above 75° F (24°C); or
- c. Prior to the onset of any construction activities, that occur within 50 feet of the flowing stream, the Permittee shall have a qualified biologist conduct surveys for salmonids 50 feet upstream and downstream of the project site. If any salmonids are discovered the Permittee shall contact CDFW immediately. All fish surveys shall be submitted to CDFW prior to implementation of project activities.

2.18 Gravels used for temporary crossings shall be from onsite material, if available; or spawning gravel shall be used that is clean, pre-washed, uncrushed natural river rock. Gravel must be washed at least once and have cleanliness value of 85 or higher (California Test No. 227). Particle size shall be graded with at least 98% passing a three (3) inch screen, 60-80% passing a two (2) inch screen, and 0-5% passing a half (½) inch screen (% by dry wt) or approved by CDFW. Gravel must be completely free of oils or any other petroleum based material, clay, debris, and other types of organic matter. Gravel may be stockpiled near the injection site, but mixing with any earthen material is prohibited.

EQUIPMENT ACCESS

2.19 Vehicles shall not be driven, or equipment operated, in water covered portions of a stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed, except as otherwise provided for in the Agreement to complete authorized work.

TEMPORARY CROSSINGS

- 2.20** The Permittee may use either a bridge or culverts, along with onsite or clean spawning gravel, to allow equipment access to the channel for project activities (see measure 2.18 for gravel specifications). The Permittee shall minimize the amount of wetted stream channel that is dewatered by the crossing to the fullest extent possible.
- 2.21** Installation of the temporary crossing shall be such that water flow is not impaired and passage of fish and all aquatic lifeforms is assured at all times.
- 2.22** Either upon completion of work or prior to inundation by high flows the temporary bridge or culverts shall be removed from the temporary crossing. Any dirty, contaminated, or debris laden gravel shall be removed without disturbing the natural stream channel. Only clean spawning size gravel may be left in the channel, breached to return the stream flow back to its original course reinstating fish passage, and spread along the channel bed approximating the original contours. The gravel shall be sloped to ensure all drainage returns to the live channel and no depressions exist that could strand fish.

DEWATERING

- 2.23** Any equipment work within the stream channel shall be performed in isolation from the flowing stream.
- 2.24** A temporary flow barrier, approved by CDFW, shall be constructed to divert the flow around the project site.
- 2.25** Temporary flow barriers shall be constructed of onsite bedload of low silt content, inflatable dams, sand bags, or other materials approved by CDFW. Barriers shall not be made of earth or other substances subject to erosion. The enclosure and the supportive material shall be removed from the work site when the work is completed. Clean bedload may be left in the stream, but the barrier must be breached to return the stream flow to its natural channel and to provide fish passage.
- 2.26** Dewatering shall be done in a manner that prevents the discharge of material that could be deleterious to fish, plant life, or bird life into any river, stream or lake and maintains adequate flows to downstream reaches during all times natural flow would have supported aquatic life. Such flows shall be of sufficient quality and quantity to support fish and other aquatic life above and below the diversion. Normal flows shall be restored to the affected stream immediately upon completion of work at that location.

2.27 Groundwater and subsurface flow encountered during excavation of the streambed shall be pumped to a natural or excavated settling basin. The settling basin can be allowed to drain naturally to the stream, if water is not contaminated and does not create a turbidity issue downstream. If either of these are of concern water shall be placed in a lined settling basin and pumped to the stream once the water is determined not to contain contaminants and is less turbid than the stream flow into which it is released. If water is not able to be returned to the stream channel due to contaminants contact CDFW immediately.

INSTALLATION OF TEMPORARY AND PERMANENT PILES

2.28 CDFW prefers the use of a vibratory hammer for all pile driving activities, if feasible. An impact hammer may be used in place of the vibratory hammer only during dry conditions or in accordance with section 2.30.

2.29 If pile driving activities are to occur while Thomes Creek is flowing through the project area with the average daily water temperature below 75° F (24°C) than percussive work will not occur at night to allow quiet conditions during peak fish migration periods.

2.30 In accordance with measure 2.17 if fish surveys are not completed and Thomes Creek is flowing through the project area with the average daily water temperature below 75° F (24°C) OR fish surveys are completed and salmonids are found the following measures must be followed.

- a) Permittee shall conduct hydroacoustic monitoring to document peak sound pressure levels and cumulative sound exposure levels during all temporary or permanent pile driving activities within 50 feet of the flowing stream. If underwater sound pressure levels for each pile type and size do not vary to a large degree, the Permittee may request written approval from CDFW to discontinue hydroacoustic monitoring. Permittee shall submit a Hydroacoustic Monitoring Plan for review and approval by CDFW 30 days prior to initiation of pile driving activities.
- b) Prior to conducting temporary or permanent pile driving activities within 50 feet of the flowing stream, a qualified biologist, that is authorized by the National Marine Fisheries Service and CDFW to handle listed salmonids, shall exclude, remove and relocate salmonids from coffer dams and those portions of the stream where cumulative sound exposure levels ($SEL_{Cumulative}$) are predicted to exceed the interim injury/stress criteria of 150 dB.
- c) If pile driving activities are expected to exceed interim $SEL_{Cumulative}$ threshold levels for more than two consecutive days, Permittee shall dewater the affected stream reach in lieu of using block nets to exclude fish. Contact CDFW before initiating any channel dewatering activities.

BRIDGES AND INSTREAM STRUCTURES

- 2.31 At least thirty (30) days before the Permittee intends to begin the construction of the bridge finalized, engineered and stamped construction plans shall be submitted to CDFW for written review and approval. The plans should include a site map, plan views, sections, and details.**
- 2.32 The permanent bridge crossing shall be designed to accommodate the estimated 100-year flow including sediment load and debris without diverting, and shall be installed in accordance with submitted plans and diagrams.**
- 2.33 Installation of bridges shall be such that water flow is not impaired and passage of fish and all aquatic life-forms is assured at all times.**
- 2.34 The bridge abutment shall be protected from erosion as appropriate through armoring constructed of rock rip-rap or other non-erodible material approved by CDFW (See rock slope protection measures).**
- 2.35 Woody debris shall not be incorporated into backfill. Backfill soil material shall be layer-placed and machine compacted in one-foot lifts.**
- 2.36 Upon removal of the existing bridge piers, and after completion of the project, excess stream bed material shall be spread back into the gravel bars and channel bed approximating the original contours, with sloping to ensure all drainage returns to the live channel. No depressions that could strand fish shall remain.**
- 2.37 The Permittee may repair or conduct maintenance activities to any instream structure authorized by this Agreement, provided the Permittee notifies CDFW for written approval prior to commencing any activities. Such work shall employ the same type of materials used in the original construction and shall occur only in the locations of existing features unless otherwise specified in the written approval.**

ROCK SLOPE PROTECTION (RSP)

- 2.38 RSP materials shall consist of clean rock, competent for the application, sized and properly installed to resist washout. RSP slopes shall be supported with competent boulders keyed into a footing trench with a depth sufficient to properly seat the footing course boulders and prevent instability (typically at least 1/3 diameter of footing course boulders).**
- 2.39 RSP slopes and footing trenches shall feature an underlayment of appropriate grade geo-textile fabric on slopes less than 1:1 or gravel blanket on slopes greater than 1:1.**

TEMPORARY UTILITY CROSSING (open trench and boring)

- 2.40 Geotechnical assessments and surveys shall be completed prior to initiation of any work covered under this Agreement to ensure proper placement of bore below scour depth and to prevent possible frac-out.**
- 2.41 All materials and equipment needed to implement a spill/frac-out response protocol shall be onsite at all times during directional boring operations.**
- 2.42 A qualified biologist or biological monitor, familiar with the environmental issues of the project, shall be present at all times during boring operations that involve the active pumping of drilling fluid into the bore hole. Visual inspection along the bore alignment for frac-outs shall take place at all times while the drill is in operation. The monitor shall be in radio contact with the boring machine operator at all times.**
- 2.43 The Permittee shall ensure that drilling operations are conducted in such a way as to prevent spills of all types and frac-outs. To reduce down-hole pressure drilling fluids and equipment shall be monitored and maintained at all times. All bore fluids shall be injected at the lowest possible pressure to prevent fracture.**
- 2.44 A boring trench shall be placed at the entrance and exit pits to provide containment for drilling fluids used during the boring operation. Excess fluids will be vacuumed up and removed for proper disposal. In the event that directional boring takes place while the stream is actively flowing, a vacuum truck must be onsite at all times.**
- 2.45 Upon the detection of a frac-out the following shall occur:**
- a. The Permittee shall suspend all drilling operations and implement the frac-out protocol.**
 - b. For terrestrial frac-outs in the project area a berm shall be constructed of sandbags or other non-erodible material around the frac-out area for containment. Contained drilling fluid shall be removed using a vacuum truck for reuse at the entrance pit or for proper disposal. The containment berm shall be removed when the boring is complete.**
 - c. For aquatic frac-outs the Permittee shall immediately notify CDFW (contact information: Tobi Freeny (530) 225-2867) of the extent of the frac-out and for guidance and approval of any containment/clean-up activities. State listed species, may exist in the vicinity of the frac-out and instream work may be considered "take" under the California Endangered Species Act, FGC sections 2050 et seq.**
- 2.46 All material containing bentonite shall be disposed of in a legal manner which prevents it from entering "waters of the State" and in such a way that it does not negatively affect aquatic species and/or other habitat communities.**

- 2.47 All temporary conduits across intermittent streams shall be placed below the scour line of the channel bed unless prevented by bedrock. All conduits across streams shall be installed so as to withstand high winter flows and not to create structures or features that would adversely affect the streambed.**
- 2.48 Significant fish habitat, such as pools, spawning sites, large woody debris structures, and shading vegetation, shall not be disturbed.**
- 2.49 At all times, the Permittee shall avoid wetted and wetland areas of the stream.**
- 2.50 As the stream bed and banks are excavated differing soil strata shall be identified and stockpiled separately where it may not be washed by rainfall or runoff into the river channel. The separate materials shall be placed back into the trench with the correct soil strata for which it was removed and machine compacted in one-foot lifts.**
- 2.51 Project activities shall not result in a feature that will allow for the ponding of water or isolation of aquatic species in a location separate from the main channel during high flows. The streambed shall be left smooth with no pot holes or depressions that can trap salmonids. Natural features of streambed topography outside of the extraction work area shall not be backfilled.**

PETROLEUM, CHEMICAL AND OTHER POLLUTANTS

- 2.52 Structures and associated materials that are deleterious to aquatic life or not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.**
- 2.53 Staging and storage areas for equipment, materials, fuels, lubricants and solvents along with all maintenance and re-fuelling activities for all machinery and equipment shall be no less than one hundred and fifty (150) feet away from the edge of any river, stream, or lake.**
- 2.54 Any equipment or vehicles driven and/or operated within or adjacent to the stream channel shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat.**
- 2.55 Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to a stream or lake shall be positioned over drip pans.**
- 2.56 All activities performed in or near a stream shall have absorbent materials designated for spill containment and clean up activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the clean up activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.**

- 2.57** The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering into the channel outside of those structures.
- 2.58** At all times when the Permittee is pouring or working with wet concrete there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures.
- 2.59** The Permittee shall install a secondary containment structure between the primary containment structures (i.e. abutment and pier forms) and the active channel to prevent wet concrete from entering into the active channel upon leak of primary structures to address water quality concerns.
- 2.60** Concrete and steel rubble from bridge demolition shall be prevented from entering the stream with a containment system to the maximum extent practicable. All bridge waste material shall be removed from the channel, placed in a stable upland location following completion of the demolition, and disposed of in a legal manner.
- 2.61** Excavation spoils shall not be side-cast into the channel nor is any manipulation of the substrate of the channel authorized except as herein expressly provided.
- 2.62** No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, asphalt, paint or other coating material, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into, or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

EROSION AND SEDIMENT CONTROL

- 2.63** The project shall at all time feature adequate erosion and sediment control devices to prevent the degradation of water quality.
- 2.64** The Permittee shall prevent the discharge of sediment, and/or muddy, turbid, or silt-laden waters, resulting from the project, into the stream channel. Where necessary to prevent such discharge, the Permittee shall properly install and maintain sediment barriers (including but not limited to filter fabric fencing, fiber mats, rice straw or fiber wattles or rolls) capable of preventing downstream sedimentation/turbidity. Said devices shall be cleaned of all trapped sediment as necessary to maintain proper function. Recovered sediment shall be disposed of where it shall not return to the waters of the State. Said devices shall be completely removed from the channel, along with all temporary fills, upon completion of operations.
- 2.65** Soils exposed by project operations shall be mulched to prevent sediment runoff and transport. Mulches shall be applied so that not less than 90% of the disturbed

areas are covered. All mulches (except hydro-mulch) shall be applied in a layer not less than two inches deep. All mulches shall be kneaded or tracked-in with track marks parallel to the contour, and tackified as necessary to prevent excessive movement. All exposed soils and fills, including the downstream face of the road prism adjacent to the outlet of culverts, shall be reseeded with a mix of native grasses common to the area, free from seeds of noxious or invasive weed species, and applied at a rate which will ensure establishment.

- 2.66 If necessary to prevent mobilization of loose soils, fiber mats shall be laid over loose soils prior to mulching and tracking.
- 2.67 Soils adjacent to the stream channel that are exposed by project operations shall be adequately stabilized when rainfall is reasonably expected during construction, and immediately upon completion of construction, to prevent the mobilization of such sediment into the stream channels or adjacent wetlands. National Weather Service forecasts shall be monitored by the Permittee to determine the chance of precipitation.
- 2.68 Upon CDFW determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective CDFW approved control devices are installed, or abatement procedures are initiated.

RIPARIAN REVEGETATION

- 2.69 At least thirty (30) days before the Permittee intends to begin the revegetation project, a revegetation plan shall be submitted to CDFW for review and approval. The plan shall be prepared by persons with expertise in northern California Ecosystems and native plant re-vegetation techniques. The plan should include at minimum the following information: (a) the location of the restoration site(s); (b) the number of plants and species to be used at each site; (c) a schematic depicting the site(s); (d) the time of year the plantings will be made; (e) a description of the irrigation methodology and techniques that will be used to maintain the plantings; (f) the success criterion per MND/IS; (g) the monitoring program; and (h) contingency measures that will be implemented if the success criterion is not met.
- 2.70 Any revegetation projects shall be designed and implemented in accordance with the methods specified in the most current edition of CDFW's *California Salmonid Stream Habitat Restoration Manual*. The most current edition of the manual is available at: <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>.
- 2.71 All restoration plantings shall have a success criterion of a 100% survival rate after three (3) years, per MND/IS. So, the recommended mitigation ratio for woody vegetation is 10:1 for Valley Oaks in the riparian area and 3:1 for the oaks in the upland area.

2.72 The final monitoring report (memorandum) shall be submitted to CDFW to provide documentation that survival criterion has been met.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 The Permittee shall follow all mitigation measures outlined in the MND/IS for the 99W at Thomes Creek Bridge Project (see Exhibit A).

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Submit all necessary fish and wildlife surveys one (1) week prior to implementation of project activities.

4.2 If necessary, submit the Hydroacoustic Monitoring Plan for review and approval 30 days prior to initiation of pile driving activities.

4.3 At least thirty (30) days before the Permittee intends to begin the construction of the bridge submit finalized, engineered and stamped construction plans.

4.4 At least thirty (30) days before the Permittee intends to begin the revegetation project submit a revegetation plan.

4.5 Submit the final monitoring report (memorandum) for the revegetation plan.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Tehama County Public Works Dept
9380 San Benito Avenue
Gerber, California 96035
Attn: Kevin Rosser
Fax: (530) 385-1189
krosser@tcpw.ca.gov

To CDFW:

Department of Fish and Wildlife
Northern Region
601 Locust Street
Redding, California 96001
Attn: 1600 Program – Tobi Freeny
Notification No. 1600-2014-0072-R1
Phone: (530) 225-2867
Fax: (530) 225-0324
Tobi.Freeny@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but

not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under CEQA; and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on December 31, 2018, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

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

Exhibit A – Excerpt from the Mitigation Monitoring and Reporting Program, 99W at Thomes Creek Bridge Project

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

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

FOR TEHAMA COUNTY PUBLIC WORKS DEPARTMENT



Date 7-2-14
Gary Antone, PEPLS
Director of Public Works

FOR DEPARTMENT OF FISH AND WILDLIFE



Date 07/02/14
DONNA L. COBB
Aquatic Conservation Planning Supervisor

Prepared by: Tobi Freeny
Environmental Scientist



1600-2014-0072-R1
EXHIBIT A

Excerpt from the Mitigation Monitoring and Reporting Program
99W at Thomes Creek Bridge Project
8 Pages

**Mitigation Monitoring and
Reporting Program**

**99W at Thomes Creek
Bridge Project
County of Tehama,
California**

March 2012

SCH# 2011122036

Prepared for
**County of Tehama
Attention: Kevin Rosser
9380 San Benito Avenue
Gerber, California 96035**

Prepared by
**HDR Engineering, Inc.
2365 Iron Point Road, Suite 300
Folsom, California 95630**

ONE COMPANY | *Many Solutions*™



Appendix A
Mitigation Monitoring and Reporting Program Checklist

No.	Mitigation Measure	Implementation Action	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification/ Approval Party	Mitigation Measure Implemented? (Y/N) & Date	Documentation Location (Monitoring Record)
BIOLOGICAL RESOURCES								
MM BIO-1	<p>The following avoidance and minimization efforts would be implemented for construction operations in the vicinity of elderberry shrubs 2-7, 8-13, 16, 17, 19, and 21-25:</p> <ul style="list-style-type: none"> All areas to be avoided during construction activities, specifically the 100-foot buffer zone around elderberry shrubs, shall be fenced and flagged. In areas where encroachment on the 100-foot buffer has been approved by the US Fish and Wildlife Service (USFWS), high visibility orange fencing and/or k-rails shall be placed at the greatest possible distance from the shrubs. A worker awareness training program for construction personnel shall be conducted by a qualified biologist prior to beginning construction activities. The program shall inform all construction personnel about the life history and status of the beetle, requirements to avoid damaging the elderberry plants, and the possible penalties for not complying with these requirements. Written documentation of the training shall be submitted to the USFWS within 30 days of its completion. Signage shall be erected every 50 feet along the edge of avoidance areas with the following information: "This area is habitat of the valley elderberry longhorn beetle, a federally-threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signage shall be clearly readable from a distance of 20 feet, and shall be maintained for the duration of construction. Pre-construction and post-construction surveys shall be completed for the elderberry shrubs in the project area. Pre-construction surveys shall document compliance with mitigation measures. The post-construction survey shall confirm that there was no additional damage to any of the elderberry shrubs than as described in this document. Temporary construction impacts within the buffer area (area within 100 feet of elderberry shrubs) shall be restored. If any portion of the buffer area is temporarily disturbed during construction, it shall be revegetated with native plants and erosion control shall be provided. Buffer areas shall continue to be protected after construction from adverse effects of the project. The Tehama County Public Works Department shall retain a qualified biologist to prepare a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed. Measures such as fencing, signs, weeding, and trash removal shall be implemented as appropriate. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant shall be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level. All drainage water during and following construction shall be diverted away from the elderberry shrubs. A written description of how the buffer areas are to be restored, protected, and maintained after construction is completed shall be provided to the USFWS. Mowing of grass can occur between July through April to reduce fire hazard, however, no mowing should occur within five feet of elderberry shrub stems. Mowing shall be conducted in such a manner that avoids damaging shrubs. Dirt roadways and other areas of disturbed bare ground within 100 feet of elderberry shrubs shall be watered at least twice a day to minimize dust emissions. Any additional measures required by USFWS after Section 7 consultation is complete shall be implemented. 	<p>It is anticipated that three elderberry shrubs located within the ESL (elderberry shrubs 14, 15, and 18) would be avoided by a buffer zone of 100-foot or greater and would not be impacted by construction activities. Complete avoidance may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. A total of 20 elderberry shrubs occur within 100 feet of the proposed construction activities but are anticipated to be protected on site during construction (shrubs 2-7, 8-13, 16, 17, 19, and 21-25).</p>	Visual inspection by qualified biologist	Director of Public Works	Pre construction	USFWS		Department of Public Works
MM BIO-2	<p>The following measures/procedures shall be implemented during transplantation:</p> <ul style="list-style-type: none"> A qualified biologist (monitor) must be on-site for the duration of the transplanting of the elderberry shrubs to insure that no unauthorized take of VELB occurs. If unauthorized take occurs, construction activities in the area will stop until corrective measures have been completed. The monitor will immediately report any unauthorized take of the beetle or its habitat to the USFWS. Elderberry shrubs should be transplanted when the plants are dormant. 	<p>Each elderberry stem measuring one inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) would be replaced, in the conservation area, with elderberry seedlings or cuttings at a ratio ranging from 1:1 to 8:1 (new plantings to affected stems). The numbers of elderberry seedlings/cuttings and associated riparian native trees/shrubs to be planted as replacement habitat are determined by stem size class of affected elderberry shrubs, presence or</p>	Visual inspection by qualified biologist	Director of Public Works	Pre construction	Director of Public Works		Department of Public Works

Appendix A Mitigation Monitoring and Reporting Program Checklist

No.	Mitigation Measures	Implementation Action	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification/ Approval Party	Mitigation Measure Implemented? (Y/N) & Date	Documentation Location (Monitoring Record)
	<p>approximately November through the first two weeks in February, after they have lost their leaves. If any elderberry shrubs are transplanted outside of the dormant season, a multiplier of 2.0 or 2.5 will be applied (depending on the timing of the transplant) in order to determine the necessary mitigation for elderberry shrubs.</p> <ul style="list-style-type: none"> • The following transplanting procedure will be followed: <ul style="list-style-type: none"> o The plant will be cut back 3 to 6 feet from the ground or to 50 percent of its height (whichever is taller) by removing branches and stems above this height. The trunk and all leaves remaining on the plant will be removed. o A hole will be excavated of adequate size to receive the transplant. o The plant will be excavated using a Vermeer™ spade, backhoe, front end loader, or other suitable equipment, taking as much of the root ball as possible, and will be replanted immediately at the conservation area. The plant will only be moved by the root ball. The root ball will be secured with wire and wrapped with damp burlap. The burlap will be dampened as necessary to keep the root ball wet. Care will be taken to ensure that the soil is not dislodged from around the roots of the transplant. Soil at the transplant site will be moistened prior to transplant if the soil at the site does not contain adequate moisture. o The planting area will be at least 1,800 square feet for each elderberry transplant. The root ball will be planted so that its top is level with the existing ground. Soil will be compacted sufficiently so that settlement does not occur. As many as five additional elderberry plantings (cuttings or seedlings) and up to five associated native species plantings may also be planted within the 1,800 square foot area with the transplant. The transplant and each new planting will have its own watering basin measuring at least three feet in diameter. Watering basins should have a continuous berm measuring approximately eight inches wide at the base and six inches high. o Soil will be saturated with water. Fertilizers or other supplements will not be used, as the effects of these compounds on the beetle are unknown. Shrubs will be monitored and watered as necessary. The use of a drip watering system, water truck, or other apparatus may be used. o A mix of native plants associated with the elderberry shrubs at the project site or similar sites will be planted at a 1:1 ratio. Native plant stock will be obtained from local sources. 	<p>absence of exit holes, and whether the shrub lies in a riparian or non-riparian area. Stock of either seedlings or cuttings would be obtained from local sources. Cuttings may be obtained from the plants to be transplanted if the project site is in the vicinity of the conservation area. Based on requirements contained in the Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USEFWS 1999), elderberry shrubs should be transplanted during the dormant season, approximately November through the first two weeks in February, after they have lost their leaves. The period of April 15 to June 15 coincides with a period in the life history of the VELB when it is in the adult stage and present within the elderberry shrub canopy feeding on elderberry leaves, mating, and when females are depositing eggs on or near elderberry shrubs. This period of time is often referred to as the "flight season" because adult VELB may be active within the immediate vicinity of elderberry shrubs. Any elderberry shrubs that could not be transplanted prior to February 15 would be transplanted prior to March 15 or after June 15 to avoid working within the flight season for the VELB. No elderberry shrubs would be transplanted between March 15 and June 15. Increased mitigation ratios are typically applied during the dormant period. A multiplier is typically applied to the ratio (new plantings to affected elderberry shrubs) of required elderberry mitigation plantings as well as riparian native trees/shrubs to be planted as replacement habitat outside of the dormant season. A multiplier of 2.0 is typically applied to shrubs transplanted between February 16 and March 14. A multiplier of 2.5 is typically applied to shrubs transplanted between June 16 and October 31.</p>	<p>Visual inspection by qualified biologist</p>	<p>Director of Public Works</p>	<p>Pre construction</p>	<p>Director of Public Works</p>		<p>Department of Public Works</p>
MM BIO-3	<p>The following specific avoidance and minimization efforts will be incorporated into the project to reduce potential negative impacts to Thomes Creek and Central Valley Steelhead. The avoidance and minimization efforts implemented for Central Valley Steelhead will also benefit Chinook salmon.</p> <ul style="list-style-type: none"> • The construction window for instream construction activities will be restricted to the period between July 1 and October 15 when listed salmonids would be least likely to occur in the project area. • Clearing will be confined to the minimal area necessary within 200 feet of aquatic habitat to facilitate construction activities. To ensure that construction equipment and personnel do not affect steelhead habitat outside of the project area, orange barrier fencing will be erected to clearly define the habitat to be avoided. This will delineate the environmentally sensitive areas on the project. • Standard construction BMPs, including a Storm Water Pollution Prevention Program and Water Pollution Control Program will be implemented throughout construction. In order to avoid and minimize adverse effects to the water quality within the project impact area, appropriate erosion control measures will be used (e.g., hay bales, filter fences, vegetative buffer strips or other accepted equivalents) to reduce siltation and contaminated runoff from project sites. • Emergent (rising out of water) and submergent (covered by water) vegetation will be retained where feasible. Rapidly sprouting plants, such as willows, should be cut off at ground level and root systems left in tact, when removal is necessary. • Upon completion of construction, disturbed sections of Thomes Creek will be 	<p>Implement avoidance and minimization actions to reduce potential impact to sensitive aquatic habitat for Central Valley steelhead and Chinook salmon.</p>		<p>Director of Public Works</p>	<p>Pre construction</p>	<p>Director of Public Works</p>	<p>Department of Public Works</p>	

Appendix A
Mitigation Monitoring and Reporting Program Checklist

No.	Mitigation Measure	Implementation Action	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification/ Approval Party	Mitigation Measure Implemented? (Y/N) & Date	Documentation Location (Monitoring Record)
MM BIO-4	<p>revegetated with appropriate native vegetation. The Tehama County Public Works Department will retain a qualified consultant to prepare a revegetation plan for submittal to NMFS prior to construction.</p> <ul style="list-style-type: none"> A soil-rock mixture with a ratio of rock to soil (70:30) will be used to facilitate revegetation of the project area. The soil-rock mixture will be used on top of the rock revainment to allow native riparian vegetation to be planted to ensure that shaded riverine aquatic habitat is replaced. Construction personnel will participate in a USFWS-approved worker environmental awareness program. A qualified biologist will inform all construction personnel about the life history of Central Valley steelhead and its potential presence in the project area and explain the state and federal laws pertaining to protecting this species and its habitat. As requested by CDFG, the County will commit that the project will comply with the California Endangered Species Act by avoiding take of a listed species, or if avoidance is not possible, obtaining an Incidental Take Permit from the CDFG. However, it is anticipated that the avoidance measures set forth above will be effective, and consequently that no such "incidental take" will occur. The project will not substantially reduce the number of any listed species. 	<p>Implement avoidance and minimization actions to reduce impacts to water quality and sensitive habitats within the project boundaries to benefit potential California red-legged frog (CRLF) dispersal habitat.</p>	<p>Visual inspection by qualified biologist</p>	<p>Director of Public Works</p>	<p>Pre construction</p>	<p>Director of Public Works</p>		<p>Department of Public Works</p>
MM BIO-5	<p>The following avoidance and minimization efforts would be implemented to prevent impacts to the California red-legged frog (CRLF) potentially dispersing through the project site.</p> <ul style="list-style-type: none"> Preconstruction surveys for CRLF would be conducted within the project site by a qualified biologist no more than two weeks prior to the initiation of construction activities to ensure that this species is not actively using the project site as a dispersal corridor. If CRLF is found in the ESL during preconstruction surveys, the biologist will monitor the area to see if the CRLF leaves the area on its own. The biologist will remain in the area for up to the remainder of the work day to verify that the CRLF leaves the area. If the CRLF does not leave of its own accord within one working day, the USFWS will be consulted to determine the appropriate measures to prevent impacts to the frog in accordance with USFWS regulations, which shall be implemented by Tehama County Public Works. Such measures shall provide, at a minimum, that no "take" of CRLF will occur except as follows: at the permission of the USFWS, a biologist with a valid take permit pursuant to Section 10(a)(1)(A) of the Federal Endangered Species Act will have the authority to capture and/or relocate any CRLF encountered in the project area to a suitable off-site location. If construction activities are delayed or suspended for more than 15 days after completion of the preconstruction survey, the site will be resurveyed. Construction personnel would participate in a USFWS-approved worker environmental awareness program. A qualified biologist would inform all construction personnel about the life history of CRLF and its potential presence in the project area and explain the state and federal laws pertaining to protecting this species and its habitat. Activities conducted in or near active stream channels should be limited to the dry season, July 1 to October 15. During this period creek levels are lower to dry, providing limited dispersal habitat for CRLF. Any additional measures required by USFWS after Section 7 consultation is complete shall be implemented. 	<p>Implement Swainson's hawk nesting surveys during the proper season to ensure compliance with CDFG requirements.</p>	<p>Visual inspection by qualified biologist</p>	<p>Director of Public Works</p>	<p>Pre construction (up to one year prior)</p>	<p>CDFG</p>		<p>Department of Public Works</p>



Appendix A Mitigation Monitoring and Reporting Program Checklist

No.	Mitigation Measure	Implementation Action	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification/ Approval Party	Mitigation Measure Implemented? (Y/N) & Date	Documentation Location (Monitoring Record)
MM BIO-6	<p>status reports to the CDFG, as appropriate, throughout the nesting season. An active nest may only be removed after the young have fledged (based on field verification).</p> <ul style="list-style-type: none"> The contractor would protect migratory birds, their occupied nests, and their eggs as specified in these special provisions. Nesting is typically February 15 to September 1, or as determined appropriate in consultation with the County Biologist. A preconstruction survey for nesting raptors and migratory birds will shall be conducted by a qualified biologist in and within 500 feet of the ESL. The preconstruction survey will shall be conducted no more than one-two weeks prior to commencement of construction. If construction activities are delayed or suspended for more than 15 days after completion of the preconstruction survey, the site will be resurveyed. If no active nests are located, no further mitigation is necessary. Preconstruction surveys to be implemented prior to demolition of the existing bridge shall also be employed prior to removal of the temporary bridge. If an active raptor or migratory bird nest (a nest containing eggs or young) is found, the nest location will be mapped and a qualified biologist in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest. A qualified biologist shall monitor the nest(s) to determine when the young have fledged and submit status reports to the CDFG, as appropriate, throughout the nesting season. An active nest may only be removed after the young have fledged (based on field verification). <p>The following avoidance and minimization measures will be incorporated for nesting swallows and black phoebe. Since nests currently occur on the underside of the bridge, these species are expected to attempt to establish nests under the bridge prior to the work window for construction. Exclusionary netting would be installed around the underside of the bridge before February 15 of the construction year to prevent new nests from being formed, and/or prevent the reoccupation of existing nests. The construction contractor would do the following:</p> <ul style="list-style-type: none"> Adhere to all state and federal laws and regulations pertaining to the protection of migratory birds, their nests, and young birds. Remove all existing unoccupied swallow nests on the bridge. Keep a list of all areas, including the bridge, that are free of swallow nests until notified by the County Contract Manager to cease swallow activities. Inspect the bridge for swallow activity a minimum of three days per week; no two days of inspection would be consecutive. A weekly log would be submitted to the Caltrans responsible biologist. The contractor would continue inspections until notified by the County Contract Manager to stop inspections. If an exclusion device were found to be ineffective or defective, the contractor would complete repairs to the device within 24 hours. If birds were found trapped in an exclusion device, the contractor would immediately remove the birds in accordance with USFWS guidelines. Submit for approval working drawings or written proposals of any exclusion devices, procedures, or methods to the County Biologist before installing them. The method of installing exclusion devices would not damage permanent features of the bridge. Approval by the County Biologist of the working drawings or inspection performed by the authorized Caltrans responsible biologist would in no way relieve the contractor of full responsibility for deterring nesting. Exclusionary measures to be implemented prior to demolition of the existing bridge shall also be employed prior to removal of the temporary bridge. 	<p>Avoidance and minimization measures are to be used when work occurs on or in the vicinity of the 99W at Thomas Creek Bridge or natural areas that may be subject to nesting by migratory birds that may be adversely affected, injured, or killed during construction activities. This is a general Migratory Bird Treaty Act provision. Additional provisions for specific bird species (Swainson's hawk) are discussed above.</p>	<p>Visual inspection by qualified biologist</p>	<p>Director of Public Works</p>	<p>Pre construction</p>	<p>Director of Public Works</p>		<p>Department of Public Works</p>
MM BIO-7	<p>Construction personnel shall participate in a USFWS-approved worker environmental awareness program. A qualified biologist shall inform all construction personnel about the life history of western pond turtle and its potential presence in the project area and explain the state laws pertaining to protecting this species and its habitat.</p>	<p>Preconstruction surveys for western pond turtle shall be conducted within the project site by a qualified biologist no more than two weeks prior to the initiation of construction activities to ensure that this species is not present within the project site. If a western pond turtle is found in the ESL during preconstruction surveys, the biologist shall move it to a</p>	<p>Visual inspection by biologist</p>	<p>Director of Public Works</p>	<p>Pre construction</p>	<p>USFWS</p>		<p>Department of Public Works</p>

Appendix A
Mitigation Monitoring and Reporting Program Checklist

No.	Mitigation Measure	Implementation Action	Monitoring Method	Responsible Monitoring Party	Monitoring Phase	Verification/ Approval Party	Mitigation Measure Implemented? (Y/N) & Date	Documentation Location (Monitoring Record)
	<p>habitat function after three years.</p> <ul style="list-style-type: none"> Emergent (rising out of water) and submergent (covered by water) vegetation will be retained where feasible. Rapidly sprouting plants, such as willows, should be cut off at ground level and root systems left in tact, when removal is necessary. Upon completion of construction, temporarily disturbed sections of Thomas Creek will be revegetated with native grasses and forbs. 							
	<p>CULTURAL RESOURCES</p> <p>MM CUL-1</p> <p>If previously undocumented archaeological materials, such as historic building or structure remains, historic artifact deposits or scatters, or prehistoric artifacts such as stone tool flaking debitage, mortars, pestles, shell, or bone are encountered during project construction, all ground-disturbing activity shall be suspended temporarily within a 100-foot radius of the find (or an appropriate distance determined by a qualified professional archaeologist) based on the potential for disturbance of additional resource-bearing soils. A qualified professional archaeologist shall identify the materials, determine their possible significance, and formulate appropriate mitigation measures. Appropriate mitigation may include no action, avoidance of the resource, and/or potential data recovery. Ground disturbance in the zone of suspended activity shall not recommence without authorization from the archaeologist. Implementing this mitigation measure would ensure proper identification and treatment of any significant cultural resources uncovered as a result of project-related ground disturbance.</p> <p>If human remains are uncovered during project construction, all ground-disturbing activities shall immediately be suspended within a 100-foot radius of the find (or an appropriate distance determined by a qualified professional archaeologist) based on the potential for disturbance of additional remains, and the County or its designated representative shall be notified. The Tehama County Coroner and a qualified professional archaeologist shall be notified immediately. If one is not already on-site, the coroner shall examine the discovery within 48 hours. If the Coroner determines that the remains are those of a Native American, he or she shall contact the Native American Heritage Commission (NAHC) by phone within 24 hours. The NAHC shall contact the most likely descendant (MLD) of the remains. The County or its appointed representative and the archaeologist shall consult with the MLD regarding the removal or preservation and avoidance of the remains, and the parties shall rebury or preserve the remains as appropriate. Ground disturbance in the zone of suspended activity shall not recommence without authorization from the archaeologist.</p>	<p>Prior to construction, construction personnel shall be briefed regarding what to do in the event buried cultural materials are encountered.</p>	<p>Visual inspection by qualified archaeologist</p>	<p>Director of Public Works</p>	<p>Pre and during construction</p>	<p>State Historic Preservation Office (SHPO), Native American Heritage Commission and/or County Coroner</p>		<p>Department of Public Works</p>
	<p>MM CUL-2</p> <p>Worker training may either be prepared and presented by an experienced field archaeologist at the same time as construction worker education on cultural resources, or may be prepared and presented separately by a qualified paleontologist.</p> <p>If paleontological resources are encountered during earthmoving activities, the construction crew shall immediately cease work. The County shall retain a qualified paleontologist to evaluate the resource and prepare a proposed mitigation plan. The proposed mitigation plan may include a field survey, construction monitoring, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations determined by the County to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resources were discovered.</p>	<p>Before the start of construction activities, construction personnel involved with earthmoving activities shall be informed of the possibility of encountering fossils, the appearance and types of fossils likely to be encountered during construction activities, and the proper notification procedures should fossils be encountered.</p>	<p>Visual inspection by qualified archaeologist</p>	<p>Director of Public Works</p>	<p>Pre and during construction</p>	<p>Director of Public Works</p>		<p>Department of Public Works</p>
	<p>HAZARDS AND HAZARDOUS MATERIALS</p> <p>MM HAZ-1</p> <p>Staging areas, welding areas, or other areas slated for construction using spark-producing or intense heat-producing equipment are to be cleared of dried vegetation or other materials that could serve as fuel. The County or its contractor shall keep these areas clear of combustible materials in order to maintain a firebreak. Any construction equipment that normally includes a spark arrester shall be equipped with an arrester in good working order. This includes, but is not limited to, construction equipment and vehicles.</p>	<p>Ensure that all employees handling hazardous materials are trained in the safe handling and storage of hazardous materials and clear areas slated for construction using spark-producing or intense heat-producing equipment.</p>	<p>Visual inspection</p>	<p>Director of Public Works</p>	<p>Pre and during construction</p>	<p>Director of Public Works</p>		<p>Department of Public Works</p>



Notice of Determination

TO: Office of Planning and Research **FROM:** California Department of Fish and Wildlife
Region 1 - Northern
601 Locust Street
Redding, CA 96001
Contact: Tobi Freeny
Phone: (530) 225-2867

For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth Street
Sacramento, CA 95814

LEAD AGENCY (if different from above):
Tehama County Public Works
9380 San Benito Avenue
Gerber, CA 96035
Contact: Kevin Rosser
Phone: (530) 385-1462 ext. 3051

SUBJECT: *Filing of Notice of Determination pursuant to § 21108 of the Public Resources Code*

State Clearinghouse Number: 2011122036

Project Title: Lake or Streambed Alteration Agreement No. 1600-2014-0072-R1

Project Location: The project is located at Thomes Creek, tributary to the Sacramento River in the County of Tehama, State of California; Section 35, Township 25N, Range 03W; U.S. Geological Survey (USGS) map Corning, MDB&M.

Project Description: The project is limited to the replacement of an existing 31 foot wide by 619 foot – 3 inch long bridge with a 43 foot – 6 inch wide by 609 foot long bridge over Thomes Creek at 99W. The new bridge will be a five-span pre-stressed box girder with cast-in-drilled-hole piles and with driven steel piles.

This is to advise that the California Department of Fish and Wildlife (CDFW), acting as the lead agency / a responsible agency approved the above-described project on the date signed below and has made the following determinations regarding the above described project:

1. The project will / will not have a significant effect on the environment. (This determination is limited to effects within CDFW's jurisdiction when CDFW acts as a responsible agency.)
 2. An environmental impact report (EIR) / A negative declaration / A timber harvesting plan was prepared for this project pursuant to CEQA.
 3. Mitigation measures were / were not made a condition of CDFW's approval of the project.
 4. A Statement of Overriding Considerations was / was not adopted by CDFW for this project.
 5. Findings were / were not made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
 6. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
 - Payment is submitted with this notice.
 - A copy of a receipt showing prior payment is on file with CDFW.
 - A copy of the CEQA Filing Fee No Effect Determination Form signed by CDFW is attached to this notice.
- Lead Agency certification: CDFW, as Lead Agency, has made the final EIR with comments and responses and record of project approval, or the Negative Declaration, available to the General Public at the CDFW office identified above.
- Responsible Agency statement: The final EIR, Negative Declaration, or THP that was prepared by the Lead Agency for this project is available to the General Public at the office location listed above for the Lead Agency. CDFW's record of decision is available at the CDFW office identified above.

Signed: Donna L. Cobb
Donna L. Cobb
Aquatic Conservation Planning Supervisor
Northern Region

Date: 07/02/14

Date Received for filing at OPR:

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CEQA FINDINGS FOR THE
AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION
No. 1600-2014-0072-R1**

Introduction

The California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, *et seq.*) and the State CEQA Guidelines (Guidelines) (Section 15000, *et seq.*, Title 14, California Code of Regulations) require that no public agency shall approve or carry out a project for which a mitigated negative declaration (MND) has been completed that identifies one or more significant effects, unless the agency makes the following finding as to each significant effect:

Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

As the lead agency for the project, the Tehama County Public Works (County) adopted the MND for the Project on March 20, 2012. The County found that the Project will not result in significant environmental effects with the mitigation measures required in, or incorporated into the Project.

The California Department of Fish and Wildlife (CDFW) is issuing a Lake or Streambed Alteration Agreement (Agreement) to the project applicant, Mr. Gary Antone representing the County. The project is located at Thomes Creek, tributary to the Sacramento River in the County of Tehama, State of California; Section 35, Township 25N, Range 03W; U.S. Geological Survey (USGS) map Corning, MDB&M.

Because CDFW is issuing the Agreement, it is a "responsible agency" under CEQA for the Project. As a CEQA Responsible Agency, CDFW is required by Guidelines § 15096 to review the environmental document certified by the lead agency approving the projects or activities addressed in the Agreement and to make certain findings concerning a project's potential to cause significant, adverse environmental effects. However, when considering alternatives and mitigation measures approved by the lead agency, a responsible agency is more limited than the Lead Agency. In issuing the Agreement, CDFW is responsible only for ensuring that the direct or indirect environmental effects addressed in the Agreement are adequately mitigated or avoided. Consequently, the findings adopted or independently made by CDFW with respect to the approval of Agreements regarding proposed Lake or Streambed Alterations are more limited than the findings of the lead agency funding, approving, or carrying out the project activities addressed in such Agreements.

Findings

CDFW has considered the MND adopted by the County. CDFW has independently concluded that the Agreement should be issued under the terms and conditions specified therein. In this regard, CDFW hereby adopts any findings of the County as set forth in the MND and record of project approval, insofar as those findings pertain to the project's impacts on biological resources.

Signature



Donna L. Cobb
Aquatic Conservation Planning Supervisor
Northern Region

Date: 07/02/14



Central Valley Regional Water Quality Control Board

19 May 2014

Mr. Kevin Rosser
Tehama County Public Works
9380 San Benito Avenue
Gerber, CA 96035-9701



CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS FOR THE THOMES CREEK BRIDGE AT HIGHWAY 99W REPLACEMENT PROJECT (WDID#5A52CR00129), CORNING, TEHAMA COUNTY

ACTION:

1. Order for Standard Certification
2. Order for Technically-conditioned Certification
3. Order for Denial of Certification

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and §3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action shall be conditioned upon total payment of the full fee required under 23 CCR §3833, unless otherwise stated in writing by the certifying agency.
4. Certification is valid for the duration of the described project. Tehama County Public Works Department shall notify the Central Valley Water Board in writing within 7 days of project completion.

ADDITIONAL TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:

In addition to the four standard conditions, Tehama County Public Works Department shall satisfy the following:

1. Tehama County Public Works Department shall notify the Central Valley Water Board in writing 7 days in advance of the start of any in-water activities.
2. Except for activities permitted by the U.S. Army Corps under §404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. All areas disturbed by project activities shall be protected from washout or erosion.
4. Tehama County Public Works Department shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed project shall be adequately informed and trained regarding the conditions of this Certification.
5. An effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working during all phases of construction.
6. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities.
7. Tehama County Public Works Department shall perform surface water sampling: 1) When performing any in-water work; 2) In the event that project activities result in any materials reaching surface waters or; 3) When any activities result in the creation of a visible plume in surface waters. The following monitoring shall be conducted immediately upstream out of the influence of the project and 300 feet downstream of the active work area. Sampling results shall be submitted to this office within two weeks of initiation of sampling and every two weeks thereafter. The sampling frequency may be modified for certain projects with written permission from the Central Valley Water Board.

Parameter	Unit	Type of Sample	Frequency of Sample
Turbidity	NTU	Grab	Every 4 hours during in water work
Settleable Material	ml/l	Grab	Same as above.
Visible construction related pollutants	Observations	Visible Inspections	Continuous throughout the construction period

8. Activities shall not cause turbidity increases in surface water to exceed:
- (a) where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTU;
 - (b) where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
 - (c) where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
 - (d) where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
 - (e) where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTU over background turbidity as measured in surface waters 300 feet downstream from the working area. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be assessed by prior permission of the Central Valley Water Board.

9. Activities shall not cause settleable matter to exceed 0.1 ml/l in surface waters as measured in surface waters 300 feet downstream from the project.
10. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream. Tehama County Public Works Department shall notify the Central Valley Water Board immediately of any spill of petroleum products or other organic or earthen materials.
11. Tehama County Public Works Department shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, oil/grease, or foam are exceeded.
12. Tehama County Public Works Department shall comply with all Department of Fish and Wildlife 1600 requirements for the project.
13. Tehama County Public Works Department must obtain coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities issued by the State Water Resources Control Board for any project disturbing an area of 1 acre or greater.
14. The Conditions in this water quality certification are based on the information in the attached "Project Information." If the information in the attached Project Information is modified or the project changes, this water quality certification is no longer valid until amended by the Central Valley Water Board.
15. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law and section 401 (d) of the federal Clean Water Act. The applicability of any State law authorizing remedies, penalties, process, or

sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance into this Order.

- a. If Tehama County Public Works Department or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Order, or falsifies any information provided in the monitoring reports, the applicant is subject to civil monetary liabilities, for each day of violation, or criminal liability.
- b. In response to a suspected violation of any condition of this Order, the Central Valley Water Board may require Tehama County Public Works Department to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- c. Tehama County Public Works Department shall allow the staff(s) of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this certification and determining the ecological success of the project.

ADDITIONAL STORM WATER QUALITY CONDITIONS:

Tehama County Public Works Department shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, Tehama County Public Works Department must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
 - (a) the Storm Water Pollution Prevention Plan (SWPPP) must be prepared during the project planning and design phases and before construction;
 - (b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. Tehama County Public Works Department must minimize the short and long-term impacts on receiving water quality from the Thomes Creek Bridge at Highway 99W Replacement Project by implementing the following post-construction storm water management practices:
 - (a) minimize the amount of impervious surface;
 - (b) reduce peak runoff flows;
 - (c) provide treatment BMPs to reduce pollutants in runoff;
 - (d) ensure existing waters of the State (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
 - (e) preserve and, where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;

- (f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads, highways, and bridges);
 - (g) use existing drainage master plans or studies to estimate increases in pollutant loads and flows resulting from projected future development and require incorporation of structural and non-structural BMPs to mitigate the projected pollutant load increases in surface water runoff;
 - (h) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss;
 - (i) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.
3. Tehama County Public Works Department must ensure that all development within the project provides verification of maintenance provisions for post-construction structural and treatment control BMPs. Verification shall include one or more of the following, as applicable:
- (a) the developer's signed statement accepting responsibility for maintenance until the maintenance responsibility is legally transferred to another party; or
 - (b) written conditions in the sales or lease agreement that require the recipient to assume responsibility for maintenance; or
 - (c) written text in project conditions, covenants and restrictions for residential properties assigning maintenance responsibilities to a home owner's association, or other appropriate group, for maintenance of structural and treatment control BMPs; or
 - (d) any other legally enforceable agreement that assigns responsibility for storm water BMP maintenance.
4. Staff of the Central Valley Water Board has prepared total maximum daily load (TMDL) allocations that, once approved, would limit methylmercury in storm water discharges to the Sacramento-San Joaquin Delta. The Central Valley Water Board has scheduled these proposed allocations to be considered for adoption. When the Central Valley Water Board adopts the TMDL and once approved by the Environmental Protection Agency, the discharge of methylmercury may be limited from the proposed project. The purpose of this condition is to provide notice to Tehama County Public Works Department that methylmercury discharge limitations and monitoring requirements may apply to this project in the future and also to provide notice of the Central Valley Water Board's TMDL process and that elements of the planned construction may be subject to a TMDL allocation.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Scott A. Zaitz, R.E.H.S., Redding Branch Office, 364 Knollcrest Drive, Suite 205, Redding, California 96002, szaitz@waterboards.ca.gov, (530) 224-4784

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that any discharge from Tehama County Public Works Department, Thomes Creek Bridge at Highway 99W Replacement Project (WDID# 5A52CR00129) will comply with the applicable provisions of §301 ("Effluent Limitations"), §302

19 May 2014

("Water Quality Related Effluent Limitations"), §303 ("Water Quality Standards and Implementation Plans"), §306 ("National Standards of Performance"), and §307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)."

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with Tehama County Public Works Department's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Water Quality Control Plan *for the Sacramento River and San Joaquin River*, Fourth Edition, revised October 2011 (Basin Plan).

Any person aggrieved by this action may petition the State Water Quality Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Quality Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Quality Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.



(for) PAMELA C. CREEDON
Executive Officer

Enclosure: Water Quality Order No. 2003-0017 DWQ

cc w/o Mr. Matt Kelley, U.S. Army Corp of Engineers, Redding
enclosures: Ms. Donna Cobb, Department of Fish and Wildlife, Region 1, Redding
U.S. Fish and Wildlife Service, Sacramento
Mr. Bill Jennings, CALSPA, Stockton

cc w/o
enclosures
by email: U.S. EPA, Region 9, San Francisco
Mr. Bill Orme, SWRCB, Certification Unit, Sacramento

PROJECT INFORMATION

Application Date: 25 March 2014

Application Complete Date: 15 May 2014

Applicant: Tehama County Public Works Department, Attn: Mr. Kevin Rosser

Project Name: Thomes Creek Bridge at Highway 99W Replacement Project

Application Number: WDID No. 5A52CR00129

U.S. Army Corps File Number: SPK-2009-01335

Type of Project: Replacement of the Highway 99W Bridge over Thomes Creek in Tehama County.

Project Location: Township 25 North, Range 3 West, MDB&M.
Latitude: 39°58'45" and Longitude: -122°10'36"

County: Tehama County

Receiving Water(s) (hydrologic unit): Thomes Creek, which is tributary to Sacramento River. Tehama Hydrologic Unit-Red Bluff Hydrologic Area No. 504.20

Water Body Type: Riparian, Streambed

Designated Beneficial Uses: The Basin Plan for the Central Valley Water Board has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND), Hydropower Generation (POW); Groundwater Recharge, Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and /or Early Development (SPWN); and Wildlife Habitat (WILD).

Project Description (purpose/goal): The Thomes Creek Bridge at Highway 99W Replacement Project consists of constructing a new bridge over Thomes Creek. A two-lane temporary bridge would be constructed immediately west of the existing bridge and traffic would be diverted to the temporary bridge. The temporary bridge would allow the replacement bridge to be constructed within the existing's bridge alignment. The existing bridge would be demolished during the first construction stage. During the second construction phase, falsework would be installed for the bridge superstructure. Once the new bridge and roadway approaches are constructed falsework would be removed and traffic would be transitioned to the new bridge. All traffic would be maintained through the project site during construction.

Preliminary Water Quality Concerns: Construction activities may impact surface waters with increased turbidity and settleable matter.

Proposed Mitigation to Address Concerns: Tehama County Public Works Department will implement Best Management Practices (BMPs) to control sedimentation and erosion. All

temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities. Tehama County Public Works Department will conduct turbidity and settleable matter testing during in-water work, stopping work if Basin Plan criteria are exceeded or are observed.

Fill/Excavation Area: Project implementation will permanently impact 0.01 acres of riparian and 0.02 acres of un-vegetated streambed and temporarily impact 0.12 acres of riparian and 1.22 acres of un-vegetated streambed.

Dredge Volume: Not Applicable

U.S. Army Corps of Engineers Permit Number: Nationwide Permit #14 (Linear Transportation Projects)

Department of Fish and Wildlife Streambed Alteration Agreement: Tehama County Public Works Department applied for a Streambed Alteration Agreement in March 2014. Lake & Streambed Alteration Agreement Number: 1600-2014-0072-R1

Possible Listed Species: None

Status of CEQA Compliance: The Tehama County Board of Supervisors issued a final Notice of Determination approving a Mitigated Negative Declaration on 02 April 2011 in compliance with Section 21108 or 21152 of the Public Resources Code, stating the project will not have a significant effect on the environment. Mitigation measures were made a condition of approval. A mitigation reporting or monitoring plan was adopted for this project. A Statement of Overriding Considerations was not adopted for this project and findings were not made pursuant to the provisions of CEQA. (State Clearinghouse Number 2011122036).

Compensatory Mitigation: Not Applicable

Application Fee Provided: On 24 March 2014 a certification application fee of \$1,201.00 was submitted as required by 23 CCR §3833b(3)(A) and by 23 CCR §2200(e). A remaining certification fee of \$7,076 was received on 24 April 2014 as required by 23 CCR §3833b(2)(A) and by 23 CCR § 2200(e).

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED
STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)**

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814-4700

NOV 22 2013

In response refer to:
2013/9454

Mr. Tom Balkow
Senior Environmental Planner
Department of Transportation
District 2, Office of Local Assistance
1657 Riverside Drive, MS # 5
Redding, California 96001

Dear Mr. Balkow:

This letter is in response to your September 11, 2013, request for initiation of section 7 consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), concerning the Thomes Creek Bridge Replacement Project (project) located in Tehama County, California. The project includes replacing the State Route (SR) 99W bridge over Thomes Creek. Caltrans has determined that the proposed project may affect, but is not likely to adversely affect, the federally listed as endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley (CV) spring-run Chinook salmon (*O. tshawytscha*), threatened California Central Valley (CCV) steelhead (*O. mykiss*), or any of their designated critical habitats. In addition, Caltrans has determined that the proposed project is not likely to adversely affect essential fish habitat (EFH) of Pacific salmon, and has requested initiation of consultation pursuant to provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This letter also serves as consultation under the authority of, and in accordance with, the provisions of the Fish and Wildlife Coordination Act of 1934 (FWCA), as amended. NMFS recognizes that Caltrans is acting in conjunction with the Federal Highway Administration (FHWA) for this project and has assumed FHWA's responsibilities under Federal environmental laws as allowed by the Memorandum of Understanding between FHWA and Caltrans, which became effective on July 1, 2007. This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System at <https://pcts.nmfs.noaa.gov>. A complete record of this consultation is on file at the California Central Valley Area Office of NMFS.

Consultation History

Consultation was initially requested on February 5, 2013. NMFS requested additional information on April 23, 2013, and a site visit took place on August 16, 2013, with Caltrans and



county staff. Based on the outcome of this field meeting, NMFS staff received an amended biological assessment and the additional materials required to initiate consultation on September 25, 2013.

Action Area

The project site is located on SR 99W in Tehama County, just north of the community of Richfield. Specifically, the project site is located within the Saucos Land Grant found in Township 25 North, Range 2 West, of the Corning 7.5 minute United States Geological Survey topographic quadrangle in Tehama County, California. Thomes Creek flows out of the Coast Range near Paskenta. Downstream from this point the stream gradient is gentle and summertime flow is intermittent until fall, when the first heavy rains occur. There are no irrigation or tail water discharges in the action area (Hoover *et al.* 2006). Fish use of this section of stream varies greatly with the season. The channel width of Thomes Creek within the action area is approximately 550 feet wide and has the capacity for a 100-year storm event with water flow at 44,400 cubic feet per second (cfs). In contrast, the May mean flow at the Paskenta gage 30 miles upstream is 354 cfs.

For the purpose of this consultation, the action area includes all areas of potential direct and indirect impacts (bridge construction, staging, and access routes) where people and equipment would be working in the proposed project area and extends 200 feet both up and downstream of in-water construction to the outer limits of dewatering and sedimentary effects in Thomes Creek. The action area encompasses waterways where Sacramento winter-run Chinook salmon, CV spring-run Chinook salmon, and CCV steelhead may be present. Listed salmonids have the greatest potential to occur in the action area primarily between November and May, based on the timing of adult and juvenile migrations in the Sacramento River. During the summertime months the action area is a dry channel disconnected from the Sacramento River.

Project Description

The proposed project consists of constructing a new bridge over Thomes Creek with a five span pre-stressed box girder with either cast-in-drilled-hole (CIDH) piles or driven steel piles. The project will be constructed in one construction season between April and October 2014. All in-water construction work will take place during the dry season from May 15 through October 15. Any water within the construction area will be diverted around the project site and reintroduced downstream through one of the following measures:

- (1) An open channel will be temporarily constructed out of existing gravels within Thomes Creek. This will prevent introducing fill into the creek bed during construction. A temporary simple span bridge, with no supports in water, will span over the open channel to allow construction equipment access to both sides of channel; or
- (2) A temporary pipe channel will be constructed. The temporary pipe channel will be constructed using corrugated steel, concrete, polyvinyl chloride, or high density polyethylene pipes. A temporary gravel road will be placed over pipes to allow construction equipment to access both sides. The length and size of the pipe will be

determined using NMFS guidelines with direct coordination with NMFS and California Department of Fish and Wildlife (CDFW) staff.

The use of a diversion pipe or channel will not require dewatering of in-water work areas as the diversion pipe or channel will be placed in the dry creek bed. Any fish present will not become stranded, trapped, or entrained, as the size of the pipe will comply with NMFS and CDFW fish passage guidelines. As a result no fish rescues will occur, nor will a rescue plan need be developed. The construction area is dry during the summer months and during most other times of the year the active stream is only a fraction of the overall channel. The project is expected to result in the permanent loss of 154 square feet of aquatic habitat and temporarily disturb 1.3 acres or less of open water and bank habitat along Thomes Creek.

Construction will commence with demolition of the existing bridge. Demolition of the existing bridge structure will start with the removal of the metal barriers and concrete deck girders followed by the removal of the concrete bents, abutments and foundations. The existing piles will be cut-off three feet below the streambed. The existing bridge has eight bents that are 11.5 feet wide by 34.50 feet long. Each bent has a footprint of 396.75 square feet with a total footprint area of 3174 square feet for all eight bents. This area will be exposed temporarily during demolition and removal of the existing bridge.

Following demolition, CIDH piles or driven steel piles will be installed and column extensions, bridge abutments, concrete bents, and foundations will be removed. CIDH piles will be installed with a diesel drill rig with a noise limit level around 80 decibels (dB) at 50 feet from the live channel. The driven steel piles will be installed with a vibratory pile driver or impact hammer (with the latter permitted only when the creek bed is in the dry during construction activities) with a noise limit level around 95 dB at 50 feet from the active channel. Steel H-piles or steel pipe piles will be used with an overall dimension between 14 to 18 inches across. Approximately 128 piles will be required within two abutments and three piers. Average installation timing will be 8 piles per day with an estimated 1,000 strikes per pile for a total of 8,000 strikes per day. There will be no in-water pile driving for the duration of the project.

Bridge falsework may be supported on temporary piles that will be installed with a vibratory pile driver or impact hammer (with the latter permitted only when the creek bed is in the dry during construction activities). During the final stage, falsework will be installed for the bridge superstructure. Once the new bridge and roadway approaches are constructed, falsework will be removed. Any construction activities and associated construction equipment within the creek bed will also be removed at this time. In addition, Thomes Creek will be restored to its pre-construction conditions upon completion of construction activities.

Equipment to be used during construction of this project will likely include a backhoe, bobcat, bulldozer, dump truck, excavator, front-end loader, genie man lift, borer, grader, haul truck, roller, scraper, truck with seed sprayer, and water truck. In addition, a drill rig will be used for installing CIDH piles. Falsework will be composed of steel pipes or H-piles driven or vibrated into the ground that will be used to support wood or steel columns to support a steel cap beam that will support the steel beams that span over water. No falsework will be installed in the water. In order to stay out of the water, the contractor will use a temporary manufactured bridge

or railroad car to span over the water so that equipment can travel over the water with no trestle required. The backhoe, loader, or excavator will be used to construct a temporary diversion for water. The project site will not be dewatered. If any water is flowing through the construction site, it will be diverted using one of the two methodologies described above.

Avoidance Minimization & Conservation Measures

Construction activities will be required to follow standard engineering practices that reduce impacts to water quality in Thomes Creek. These practices include reduction of sediment loading and sediment disturbance as well as other standard best management practices (BMPs) for maintaining water quality. With BMPs incorporated into construction activities, no impacts to water quality are anticipated during construction or post-construction. Caltrans will incorporate the following measures into the proposed project to avoid and minimize potential impacts to CCV steelhead, Sacramento winter-run and CV spring-run Chinook salmon. These measures are incorporated into the project design, schedule, and specifications:

- (1) The construction window for in water work in Thomes Creek (work within the wetted width of the channel) will be restricted to the period between May 15 and October 15. Construction activities within the banks of the creek that do not involve in water work (outside of the wetted width of the channel) can occur between October 16 and May 14 with water quality controls in place.
- (2) Shaded riverine aquatic habitat or natural woody riparian habitat will be avoided or preserved to the maximum extent practicable. Any disturbed riparian vegetation will be replanted with native trees and shrubs, with appropriate irrigation, care, and monitoring to ensure that healthy riparian and shaded riverine aquatic habitat is fully established. Successful replanting will be measured at 100 percent or greater replacement of original habitat function after three years.
- (3) Any loss of CCV steelhead and Chinook salmon habitat as a result of the project will be replaced at a minimum 3:1 ratio. Permanent impacts to riparian habitat within the ordinary high water mark (OHWM) will be replaced onsite and at a 3:1 ratio and will be accomplished through stem cuttings and propagation from the existing vegetation onsite.
- (4) Clearing within the environmental study limit (ESL) will be confined to the minimal area necessary within 200 feet of Thomes Creek to facilitate construction activities. To ensure that construction equipment and personnel do not affect steelhead habitat outside of the project area, orange barrier fencing will be erected to clearly define the habitat to be avoided. This will delineate the environmentally sensitive areas of the project.
- (5) Emergent and submergent vegetation will be retained where feasible. Rapidly sprouting plants will be cut off at ground level and root systems will remain intact when removal is necessary.

- (6) Construction personnel will participate in a United States Fish and Wildlife Service (USFWS) approved worker environmental awareness program. A qualified biologist will inform all construction personnel about the life history of listed fish and its' potential presence in the project area and explain state and Federal laws pertaining to protecting these species and their habitat.
- (7) Building materials storage areas containing hazardous or potentially toxic materials such as herbicides and petroleum products will be located outside of the 100 year flood zone, have an impermeable membrane between the ground and hazardous material, and will be bermed to prevent the discharge of pollutants to ground water and runoff water.
- (8) All disturbed soils will undergo erosion control treatment prior to October 31st or immediately after construction is terminated. Appropriate erosion control measures will be used (*e.g.*, hay bales, filter fences, vegetative buffer strips or other accepted BMPs) to reduce siltation and contaminated runoff from project sites. Any disturbed soils on a gradient of over 30 percent will have erosion control blankets installed.
- (9) Equipment will be re-fueled and serviced at designated construction staging areas. All construction material and fill will be stored and contained in a designated area that is located away from channel areas to prevent transport of materials into adjacent streams. The preferred distance will be 100 feet from the wetted width of a stream. In addition, a silt fence will be installed to collect any discharge, and adequate materials will be available for spill clean-up and during storm events.
- 10) Construction vehicles and equipment should be maintained to prevent contamination of soil or water from external grease and oil or from leaking hydraulic fluid, fuel, oil, and grease.
- 11) Discharges of stormwater from the project will comply with the National Pollutant Discharge Elimination System (NPDES) *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* per the Caltrans Storm Water Quality Handbook Construction Site BMP Manual.
- (12) A Storm Water Pollution Prevention Plan (SWPPP) will be prepared for the project. The plan will include BMPs to implement during construction, monitoring and reporting requirements, and any other items required by the Regional Water Quality Control Board (RWQCB) or Caltrans. Typical BMPs include, but are not limited to, temporary soil stabilization measures (*e.g.* hydraulic mulch, hydroseeding, soil binders, straw mulch, or erosion control blankets), temporary sediment control measures (*e.g.* silt fencing, sediment basin, fiber rolls, or straw bales), wind erosion control measures, non-stormwater management practices (*e.g.* water conservation practices, dewatering operations, vehicle and equipment cleaning and fueling, and structure removal over water, and waste management and materials pollution control measures (*e.g.* stockpile management, spill prevention and control, and solid and hazardous waste management).

- (13) Material or waste storage areas will be kept clean, well-organized, and equipped with enough cleanup supplies for the material being stored. Spill and leak prevention procedures will be implemented for chemicals and hazardous substances stored in the work area. As soon as it is safe, spills of petroleum materials and sanitary and septic waste substances will be contained and cleaned up. Measures will be implemented whenever spills or leaks produce hazardous waste, which includes emergency procedures in proper hazardous waste handling.
- (14) Water pollution control practices will be implemented within 72 hours of stockpiling material or before a forecasted storm event, whichever occurs first. If stockpiles are being used, soil, sediment, or other debris will not be allowed to enter storm drains, open drainages, and watercourses. All active and inactive soil stockpiles must be covered with soil stabilization material or a temporary cover and surrounded with a linear sediment barrier.

ESA Section 7 Consultation

NMFS has received all of the information necessary to initiate consultation on federally listed anadromous fish species and their designated critical habitat within the action area. Based on our review of the material provided with your request and the best scientific and commercial information currently available, NMFS concurs that the Thomes Creek Bridge Replacement Project may affect, but is not likely to adversely affect, CCV steelhead, Sacramento winter-run and CV spring-run Chinook salmon, nor any of their designated critical habitats. This concurrence is supported by the following factors:

- (1) All in-channel construction work in Thomes Creek will occur in the dry or low flow season during the summertime months from May 15 to October 15 when listed species are not anticipated to utilize the project area due to warm water temperatures.
- (2) Construction will occur in the dry or during the low flow season where any water remaining in Thomes Creek will be diverted around or through the project area. In addition, flow in Thomes Creek, if any, during the summer months is reduced to small depressional ponded areas scattered throughout the floodplain (TCRCD 2006).
- (3) There will be no in-water pile driving. Underwater sound levels associated with the installation of steel H-piles and CIDH piles will not exceed the peak pressure threshold of 206dB, and all pile driving will be completed via vibratory hammer or impact hammer (with the latter permitted only when the creek bed is in the dry during construction activities).
- (4) BMPs will be incorporated into the proposed project to minimize the potential for water quality impacts due to bridge construction and prevent deleterious materials from entering the channel that could potentially harm anadromous listed fish or their habitat. Erosion control will prevent fine sediment from entering the stream side channel and increasing turbidity.

- (5) Fish passage and hydrology will not be impeded during construction activities and existing riparian corridors will be maintained for cover, shelter, shade, and food for rearing juveniles and migrating adults.
- (6) Bridge column construction will permanently remove 0.01 acres of riparian habitat and 0.02 acres of floodplain habitat; however, there will be a net increase in habitat (0.04 acres), as the existing bridge footings within Thomes Creek occupy a total of 0.07 acres.
- (7) Temporary impacts to riparian and floodplain habitat (2.1 and 1.13 acres, respectively) are attributed to temporary construction zones which include access roads and staging areas, and a buffer around permanent construction areas. All temporarily disturbed areas will be replanted with native vegetation at 100 percent capacity once construction is complete. This effort will restore shaded riverine aquatic habitat, which will maintain the primary constituent elements for freshwater rearing and migration.

Section 7(a) (1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of threatened and endangered species. Conservation recommendations are discretionary agency activities intended to minimize or avoid adverse effects of a proposed project on listed species or critical habitat, to help implement recovery plans, or to develop information. In order to fulfill the requirements of section 7(a)(1), NMFS recommends Caltrans purchase credits at a NFMS approved anadromous fish conservation bank for the following: (1) fish riparian habitat enhancement credits at a 3:1 ratio for the removal of riparian habitat.

This concludes informal ESA consultation for the Thomes Creek Bridge Replacement Project. This concurrence does not provide incidental take authorization pursuant to section 7(b)(4) and section 7(o)(2) of the ESA. Re-initiation of the consultation is required where discretionary Federal agency involvement or control over the proposed project has been retained (or is authorized by law) and if: (1) new information reveals effects of the proposed project that may affect listed species or critical habitat in a manner or to an extent not considered; (2) the proposed project is subsequently modified in a manner that causes adverse effects to listed species or critical habitat; or (3) a new species is listed or critical habitat designated that may be affected by the proposed project.

EFH Consultation

With regards to EFH consultation, the action area has been identified as EFH for Pacific salmon in Amendment 14 of the Pacific Salmon Fishery Management Plan pursuant to the MSA. Federal action agencies are mandated by the MSA (section 305(b)(2)) to consult with NMFS on all actions that may adversely affect EFH, and NMFS must provide EFH conservation recommendations to those agencies (section 305(b)(4)(A)). Based on our review of the material provided, and the best scientific and commercial information currently available, NMFS has determined that the proposed action would adversely affect EFH for Pacific salmon. However, the proposed action includes adequate measures (described in the ESA section 7 Consultation above) to avoid, minimize, or otherwise offset the adverse effects to EFH. Therefore, additional EFH Conservation Recommendations are not being provided at this time and written response as

required under section 305(b)(4)(B) of the MSA and Federal regulations (50 CFR 600.920(k)) will not be required. However, if there are substantial revisions to the project description that could result in adverse effects to EFH, the lead Federal agency will need to re-initiate EFH consultation.

FWCA Consultation

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration and is coordinated with other aspects of water resources development (16 U.S.C. 661). The FWCA establishes a consultation requirement for Federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage (16 U.S.C. 662(a)). Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. The FWCA provides the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under the ESA and MSA. Because the proposed project is designed to avoid environmental impacts to aquatic habitat within the action area, NMFS has no additional FWCA comments to provide.

Please contact Dylan Van Dyne at (916) 930-3725, or via e-mail at Dylan.VanDyne@noaa.gov, if you have any questions or require additional information concerning this project.

Sincerely,



WWS

William W. Stelle, Jr.
Regional Administrator

cc: Copy to File ARN 151422SWR2013SA00030
NMFS-PRD, Long Beach, CA

Literature Cited

Hoover, K., A.J. Gauthier, and E.P. Simmen. 2006. Thomes Creek Sediment Budget. Department of Geological and Environmental Sciences. California State University, Chico. March 2006.

Tehama County Resource Conservation District (TCRCD). 2006. Tehama West Watershed Assessment. Section 10 – Fisheries and Aquatic Resources. April 2006. Available online at: <http://www.tehamacountyrcd.org/programs/twwa/>, accessed November 2, 2012.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In Reply Refer To
81420-2009-F-0363-3

SEP 17 2013

Mr. Chris Fazzari
Associate Environmental Planner, Local Assistance
California Department of Transportation, District 2, MS 5
1657 Riverside Drive
Redding, California 96001

Subject: Consultation on the Proposed 99W at Thomes Creek Bridge Replacement Project,
Tehama County, California (Caltrans Fed. ID#: BRLS-5908 [070])

Dear Mr. Fazzari:

This letter is in response to your June 24, 2013, request for initiation of consultation with the U.S. Fish and Wildlife Service (Service) on the proposed 99W at Thomes Creek Bridge Replacement Project (proposed project) in Tehama County, California. Your request was received by the Service on June 27, 2013. The California Department of Transportation (Caltrans) previously sent an initiation letter on January 31, 2013; however, the supporting documentation provided regarding the proposed project was insufficient for the Service to concur with your determination. On April 3, 2013, the Service requested additional information before consultation could be initiated. The additional information required was received in our office on August 5, 2013. You requested our concurrence that the proposed project may affect, and is likely to adversely affect the federally-listed as threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (beetle) and that the proposed project be appended to the Service's March 11, 1997, *Formal Programmatic Consultation Permitting Projects with Relatively Small Effects on the Valley Elderberry Longhorn Beetle Within the Jurisdiction of the Sacramento Field Office, California* (beetle programmatic) (Service File #1-1-96-F-156). You also requested our concurrence that the proposed project may affect, but is not likely to adversely affect the federally-listed as threatened California red-legged frog (*Rana draytonii*) (frog). The proposed project is not located in proposed or designated critical habitat for any listed species; therefore, none will be affected. This response is in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. §1531 *et seq.*)(Act).

The proposed project is receiving federal funding through the Federal Highway Administration (FHWA), and Caltrans has assumed FHWA's responsibilities under the Act for this consultation in accordance with Section 1313, Surface Transportation Project Delivery Program, of the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012. The MAP-21 is described in the

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National Environmental Policy Act (NEPA) assignment Memorandum of Understanding between FHWA and Caltrans (effective October 1, 2012) and codified in 23 U.S.C. 327.

The Service concurs with your determination that the proposed project is not likely to adversely affect the frog. There are no known occurrences within 10 miles of the proposed project in the California Natural Diversity Database (CNDDDB). The closest known occurrence is the only one in Tehama County, 26 miles west of the proposed project (CNDDDB 2013); however, subsequent surveys at the site have documented only bullfrogs (*Rana catesbeiana*) (Service 2002). During the technical assistance process, the Service evaluated the December 2008, *99W @ Thomes Creek Bridge Replacement Project California Red-Legged Frog Site Assessment* (site assessment) prepared by HDR (consultant). The Service identified the proposed project area as potentially suitable dispersal habitat for the frog and recommended that Caltrans prepare a biological assessment. The January 2013, *99W at Thomes Creek Bridge Project Biological Assessment – Wildlife* (biological assessment) prepared by the consultant describes the proposed project area as severely degraded by human activities associated with dumping of garbage as well as recreational activities such as fishing, swimming, and off-road vehicle use. Frogs were not encountered during the site assessment or biological reconnaissance surveys. In addition, Caltrans has proposed avoidance and minimization measures that will remove the likelihood of adverse effects to the frog, should any be present in the proposed project area. These measures are described on pages 55-58 of the biological assessment.

The Service concurs with your determination that the proposed project is likely to adversely affect the beetle and can be appended to the beetle programmatic. This document represents the Service's biological opinion on the effects of the proposed project on the beetle in accordance with the Act.

The findings and recommendations in this consultation are based on: 1) the *99W at Thomes Creek Bridge Project Biological Assessment – Wildlife* prepared by the consultant, dated January 2013, and received by the Service on January 31, 2013; 2) your June 24, 2013, letter initiating consultation, received by the Service on June 27, 2013; 3) the August 1, 2013, memorandum (memo) prepared by the consultant providing additional information on the proposed project description and effects to the beetle; and 4) email and telephone correspondence between the Service and Caltrans.

Consultation History

- January 31, 2013* The Service received a letter from Caltrans requesting formal consultation on the proposed project, along with the biological assessment.
- April 3, 2013* The Service sent a letter to Caltrans requesting additional information on the construction activities within 100 feet of elderberry shrubs and the effects to the beetle.
- June 27, 2013* The Service received a response letter from Caltrans, along with the memo prepared by the consultant dated June 19, 2013.

- July 3-24, 2013* The Service and Caltrans exchanged email and telephone correspondence regarding the additional information required to initiate consultation.
- August 5, 2013* The Service received a response letter from Caltrans, along with the revised memo prepared by the consultant dated August 1, 2013, providing the information required to initiate consultation.

BIOLOGICAL OPINION

Description of the Proposed Action

The County of Tehama (applicant) proposes to replace the existing scoured and structurally deficient Thomes Creek Bridge along 99W in Tehama County, just north of the community of Richfield. The proposed project consists of constructing a new bridge with a five span pre-stressed box girder with steel piles. Staging of construction vehicles and equipment will occur in an open lot south of the bridge, on the west side of 99W. Construction will require borrow material from the adjacent "Thomes Creek Rock" mine site, owned and operated by the State of California, or another Surface Mine Reclamation Act (SMARA)-approved site. Construction will be completed over two stages:

Stage One

- Install construction area signage and implement best management practices
- Close 99W at the structure and detour traffic onto Interstate 5
- Construct embankment/structural section for the new bridge
- Demolish the existing structure

Stage Two

- Install falsework for the bridge superstructure
- Construct the new bridge
- Complete approach work and stripe new structures for updated lane configuration
- Remove falsework from the new bridge structure
- Open bridge to traffic and remove temporary local detours
- Complete miscellaneous site work, including final grading, drainage work, and roadway signing, striping, and pavement markings
- Restore Thomes Creek to pre-construction conditions

Construction within Thomes Creek, which includes demolishing the existing bridge and the installation of falsework, abutments, and piles, will occur during the dry season. If there is any water within the creek where work is occurring, it will be diverted and reintroduced downstream.

The proposed project site contains 25 elderberry shrubs (*Sambucus* sp.), the sole host plant for the beetle, with at least one stem one inch or greater in diameter at ground level. Nine of the shrubs (numbers 7, 8, 9, 10, 14, 15, 18, 19, and 22 as depicted in the biological assessment) will be avoided by 100 feet or greater and will not be affected by construction activities. Ten shrubs (numbers 6,

11, 12, 13, 16, 17, 21, 23, 24, and 25) occur within 100 feet of proposed construction activities, but will be protected through the implementation of proposed conservation measures. Although shrub number 6 is less than 20 feet from the existing gravel access road on the south end of the construction footprint, the road is currently heavily used by railroad maintenance vehicles and local traffic accessing Thomes Creek. The shrub will be fenced along the road, and additional conservation measures will apply. Shrub number 13 is within the construction staging area, but will be protected using K-rail and fencing 20 feet outside of the shrub's dripline. The remaining six shrubs (numbers 1, 2, 3, 4, 5, and 20) will be directly affected by the proposed project, and will be removed and transplanted to a Service-approved beetle conservation bank.

Conservation Measures

Conservation measures for projects appended to the beetle programmatic involve minimizing the impact of incidental take by transplantation of elderberry shrubs to a Service-approved conservation bank, along with additional plantings of elderberry stems and associated native vegetation, as described in *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (Guidelines) (Service 1999). Caltrans proposes to compensate for the six shrubs removed as described in Tables 1 and 2 below. In addition, Caltrans has proposed avoidance and minimization measures to avoid effects to the remaining shrubs. These measures are described on pages 42-47 of the biological assessment.

Table 1. Directly Affected Elderberry Shrubs: mitigation ratios based on location (riparian vs. non-riparian), stem diameter at ground level, and presence or absence of exit holes

Location ID #	Number of Stems by Diameter Class			Exit Holes?	Riparian Habitat?	Elderberry Seedling Ratio	Associated Native Plant Ratio
	≥ 1" - ≤ 3"	> 3" - < 5"	≥ 5"				
1	2			N	Y	2:1	1:1
2		1		N	Y	3:1	1:1
3		2		N	Y	3:1	1:1
4		1		N	N	2:1	1:1
			1	N	N	3:1	1:1
5		1		N	N	2:1	1:1
			1	N	N	3:1	1:1
20	4			N	Y	2:1	1:1
			4	N	Y	4:1	1:1

Table 2. Estimated Elderberry and Native Plant Conservation Plantings

Location	Stem Diameter at ground level (inches)	Number of Stems Removed	Replacement Elderberry Seedlings/Cuttings	Associated Native Plants
Non-Riparian	> 3'' - < 5''	2	4	4
Non-Riparian	≥ 5''	2	6	6
Riparian	≥ 1'' - ≤ 3''	6	12	12
Riparian	>3'' - <5''	3	9	9
Riparian	≥ 5''	4	16	16
Total		17	47	47

Action Area

The action area is defined in 50 CFR §402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the Service considers the action area to be the approximately 2-acre footprint of the construction area, as well as areas used for borrow, access, and staging totaling approximately 12 acres. The action area also includes all areas outside the construction footprint that will be temporarily impacted by dust and noise during project activities.

Evaluation under the Programmatic Consultation

The Service has determined that it is appropriate to append the proposed 99W at Thomes Creek Bridge Replacement Project to the beetle programmatic. Prior to any ground disturbing activities associated with the proposed project, Caltrans shall fulfill the compensation outlined in Table 2. This letter is an agreement by the Service to append the proposed project to the beetle programmatic and represents the Service’s biological opinion on the effects of the proposed project. Compensation for projects appended to the beetle programmatic involves adhering to the Service’s Guidelines, except as approved by the Service. Compensation implemented through the Guidelines should lead to the development of protected habitat areas distributed across the landscape.

Effects of the Action

Nineteen of the elderberry shrubs in the action area are not likely to be adversely affected based on avoidance of 100 feet or greater and the avoidance and minimization measures proposed by Caltrans. Construction activities will adversely affect the remaining six elderberry shrubs with 17 stems one inch or greater in diameter at ground level. Any beetle larvae occupying the shrubs could be killed when the shrubs are transplanted, since the shrubs may be significantly pruned before transplantation and could experience stress due to changes in soil, hydrology, or microclimate. Mortality of transplanted elderberry shrubs would preclude their future use by the beetle. However, in addition to the transplanting of shrubs, the compensation proposed by Caltrans will provide additional habitat for the beetle that will be protected in perpetuity.

Cumulative Effects

Cumulative effects include the effects of future state, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future federal actions that are unrelated to the proposed project are not considered in this section because they require separate consultation pursuant to section 7 of the Act. The Service is not aware of any reasonably certain future actions that could result in effects in the action area.

Conclusion

After reviewing the current status of the beetle, the environmental baseline in the programmatic, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the 99W at Thomes Creek Bridge Replacement Project, as proposed, is not likely to jeopardize the continued existence of the beetle. The proposed project fits within the parameters of the level of take anticipated in the beetle programmatic and is not likely to cause an appreciable reduction in the likelihood of both the survival and recovery of the beetle in the wild.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harass is defined by Service regulations at 50 CFR 17.3 as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the same regulations as an act which actually kills or injures wildlife. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of the incidental take statement in the beetle programmatic.

The measures described in the incidental take statement of the beetle programmatic are non-discretionary, and must be undertaken by Caltrans so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If Caltrans (1) fails to assume and implement the terms and conditions or (2) fails to require the applicants to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Caltrans or the applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement in the beetle programmatic [50 CFR §402.14(i)(3)].

Amount or Extent of Take

The Service cannot quantify the total number of individuals that will be taken as a result of the proposed project because it is impossible to know how many beetles may inhabit the elderberry stems. The life cycle of the beetle takes one or two years to complete, during which it spends most of its life in the larval stage, living within the stems of elderberry shrubs. In instances in which the number of individuals that may be taken cannot be determined, the Service quantifies take in the number of stems one inch or greater in diameter at ground level. Since take is expected to result from these impacts to the beetles' habitat, the quantification of stems becomes a direct surrogate for the species that will be taken. Therefore, the Service anticipates take incidental to this project as the six affected elderberry shrubs with 17 stems one inch or greater in diameter at ground level that will be transplanted. Upon implementation of the *Reasonable and Prudent Measures* and *Terms and Conditions* considered in the beetle programmatic and the *Conservation Measures* considered herein, incidental take to these elderberry stems due to the proposed 99W at Thomes Creek Bridge Replacement Project will be exempt from the prohibitions described under section 9 of the Act.

Effect of the Take

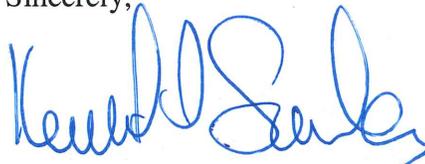
The Service has determined that the level of anticipated take is not likely to result in jeopardy to the beetle.

REINITIATION—CLOSING STATEMENT

This concludes the Service's review of the proposed 99W at Thomes Creek Bridge Replacement Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been maintained (or is authorized by law), and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or, (4) a new species is listed or critical habitat designated that may be affected by the action.

If you have any questions regarding this biological opinion, please contact Lily Douglas, Fish and Wildlife Biologist, or Kellie Berry, Chief, Sacramento Valley Division, at (916) 414-6645.

Sincerely,



Kenneth D. Sanchez
Assistant Field Supervisor

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SEP 20 2003
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LOCAL ASSISTANCE

LITERATURE CITED

California Natural Diversity Database (CNDDB). 2013. Biogeographic Data Branch, Department of Fish and Wildlife. Sacramento, California. Accessed 24 June 2013.

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_____. 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). Region 1, Portland, Oregon. viii + 173 pp.

PERMIT TO ENTER AND CONSTRUCT

(Form #)

Date: 5.8.14

02	TEH	99W
Dist	Co	Rte
BRLS 5908-070		
Old 99 West @ Thomes Creek Bridge		

Mr. Gary Antone
 Director of Public Works
 County of Tehama
 9380 San Benito Avenue
 Gerber, CA 96035-9701

Dear Mr. Antone:

Permission is hereby granted the County of Tehama, or their authorized agents, to enter upon State property as shown in red on the map marked Exhibit A for the purposes of staging equipment and materials and access including temporary utility relocations for the construction of a new bridge over Thomes Creek within the Tehama County Right of Way.

This Permit to Enter and Construct will terminate upon completion of the above referenced bridge project.

Upon completion of construction, the County of Tehama, or their contractors will return the area as shown outlined in red to as good or better condition than exists prior to construction.

County agrees to indemnify and hold harmless the State, insofar as it is legally able to do so, from any liability arising out of Counties operations under this permit. County further agrees to assume responsibility for any damages proximately caused by reason of Counties operations under this agreement and County will, at its option, either repair or pay for such damage.



KAREN E. HAWKINS
 Assistant Chief
 North Region Right of Way
 Redding/Eureka

ACCEPTED:

DEPARTMENT OF PUBLIC WORKS
 COUNTY OF TEHAMA

By: 
 GARY ANTONE
 PLS, PE
 Public Works Director

Find a location



RIGHT OF WAY CERTIFICATION

(Form #)

CITY OF _____	Date: <u>4/18/14.</u>
(OR)	Dist.-Co.-Rte.-KP/PM: <u>2-Tehama-99W</u>
COUNTY OF <u>Tehama</u>	EA (Design Phase No.): <u>N/A</u>
	Const. Fed-Aid No.: <u>BRLS 5908 (070)</u> ¹
	Right of Way Fed-Aid No.: _____ ¹

From: DEPARTMENT OF TRANSPORTATION - DISTRICT 2

Subject: Right of Way Certification No. 1 for the proposed project consisting of the replacement of the existing Thomes Creek Bridge @ 99W (Bridge Number 08C0110). During construction traffic will be detoured around the site on Interstate 5.

1. STATUS OF REQUIRED RIGHT OF WAY: The acquisition of right of way was not required.

- A. Total number of parcels required. 0 ²
1. Parcels acquired (escrow closed or Final Order of Condemnation recorded). _____ ³
 2. Parcels covered by Order for Possession. _____ ³

Parcel No.	Owner	Effective Date
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3. Parcels covered by Right of Entry (RE). _____ ³

Parcel No.	Owner	Type⁴	Effective Date	Date Funds Made Available to Owner⁵
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4. Parcels covered by a Right of Entry executed prior to appraisal. _____ ⁶

Parcel No.	Owner	Effective Date
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¹ Add these words to all Certifications. Must insert number(s) or the word "None" for the Right of Way Fed-Aid No.

² Parcels shown in Items 1-6 should total the number shown in Item A.

³ Detail should be added showing expiration dates with fixed termination dates, such as temporary easements.

⁴ Either RE or RC (possession clause in approved Right of Way Contract).

⁵ If no entry is made in this column, a full explanation is required.

⁶ Attach justification/approval from Local Agency.

RIGHT OF WAY CERTIFICATION (Cont.)

(Form #)

17-Interim (7/2013)

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5. Parcels covered by Resolution of Necessity only. _____ ³
 (Used only rarely in a Cert No. 3 situation where the project must be advertised, the Resolution of Necessity has been approved by the CTC, but the Order for Possession has not yet been served.)

Parcel No.	Owner	Anticipated OR Effective Date
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6. Parcels covered by other acquisition documents as follows: _____ ³
 Explanation:

NOTE: Items 1 through 6 should equal Line A.

B. Construction Permits, etc., required.

KP/PM	Owner	Type Document	Effective Date	Expiration Date
	Caltrans	Permit to Enter and Construct	4/14/14	10/30/16

2. **STATUS OF AFFECTED RAILROAD OPERATING FACILITIES:**
 None affected.

3. **MATERIAL/DISPOSAL SITE(S):**
 None required. (OR)
 Commercial. (OR)
 Optional site(s) secured as follows: (OR)
 Mandatory site(s) secured as follows:

Parcel Agreement No.	Owner	Document Date	Expiration Date
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³ Detail should be added showing expiration dates with fixed termination dates, such as temporary easements.

4. STATUS OF REQUIRED UTILITY RELOCATIONS:

All necessary arrangements have been made in accordance with applicable policy and procedure covering the adjustment of utility facilities for the completion of all remaining utility work required to be coordinated with project construction. Arrangements have been made with the owners of all utility encroachments which will remain within the right of way of the project so that adequate control of the right of way will be achieved. The special provisions in the contract provide for the coordination (see schedule below).

(AND)

The following utilities are located within the project rights of way, but require no relocation:

Company Level 3	Type/Facility Fiber
----------------------------	--------------------------------

The following utilities are in conflict with the project and require relocation as follows:

Right of Way						
Notice No.	Notice Date	Company	Liability % (Owner/State)	Type of Facility	Utility Agmt. Date or N/A	Relocation Schedule
ATT02-2014	3/26/14	AT&T	100% Owner	Telecommunications	N/A	Complete by 7/15/2014
PG&E 03-2014	4/18/14	PG&E	100% Owner	Electric	N/A	Completed by 7/15/14

Additional information required for each bid item (when applicable):

Bid Item No.	Type of Facility	Liability (Owner/State)	Federal Participation⁷
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5. RIGHT OF WAY CLEARANCE:

There are no improvements or obstructions located within the limits of this project.

6. AIRSPACE AGREEMENTS:

There are no airspace lease properties within the limits of this project.

7. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS:

Compliance was not required as there were no displacements for this project.

8. COOPERATIVE AGREEMENTS (Optional Entry):

None Required.

9. ENVIRONMENTAL MITIGATION:

No environmental mitigation parcels are required for this project.

10. The (County) agrees to indemnify, defend, and hold harmless the Department of

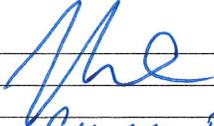
Transportation (Caltrans) from any and all liability which may result in the event the right of way for this project is not clear as certified. The (County) shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to (County) for the orderly performance of the project work.

⁷ If yes, a copy of Specific Authorization to Relocate Utilities memorandum must be attached. (See Form RW 13-15.)

RIGHT OF WAY CERTIFICATION (Cont.)

(Form #)

11. CERTIFICATION			
A. (Use when project is compliant)			
I hereby certify the right of way on this project as conforming to 23 CFR 635.309(C)(1) (OR) (C)(2). The project may be advertised with contract award being made at any time.			

LOCAL AGENCY	NOTE:
	Must be signed by person authorized by resolution of City or County Board of Supervisors.
By:  TIM WOOD	
Title: CHIEF Deputy DIRECTOR	
Date: 4/18/14	
Reviewed and Approved:	
Authorized Right of Way Representative	
Date	

(AND) <i>(If FHWA approval is required for HPP projects and special Certification #3s, add signature block)</i>	
MELANI MILLARD, Realty Officer Federal Highway Administration	