

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Yolo County Planning and Public Works Department of Woodland, State of California, hereafter called the Operator, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1601/03, the Operator, on August 12, 2002, notified the Department that he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: Cache Creek, in the County of Yolo, State of California, Section not indicated, Township not indicated, Range not indicated, USGS Map Woodland/Madison.

WHEREAS, the Department, represented by Warden F.S. Jimenez, has made an inspection of subject area on August 25, 2002. Whereas, the Department has determined that such operations may substantially adversely affect existing fish and wildlife resources including: warm water fish species, amphibians, and other aquatic and terrestrial plant and wildlife species commonly found in the Central Sacramento Valley.

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

This agreement pertains to Cache Creek Channel Realignment, Bank Stabilization and Riparian Habitat Restoration Project in Yolo County.

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

1. The time limit for completing the work within the stream zone of Cache Creek shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of August 30, 2002 to August 30, 2007. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities shall cease and all reasonable erosion control measures shall be implemented prior to all storm events. Weather forecasts shall be documented upon request by the Department. Revegetation work is not confined to this time period.
2. If the Operator finds more time is needed to complete the authorized activity, the Operator shall submit a written request for a work period time extension to the Department. The work period extension request shall provide the following information: 1) Describe the extent of work already completed; 2) Provide specific detail of the activities that remain to be completed within the stream zone; and 3) Detail the actual time required to complete each of the remaining activities within the stream zone. The work period extension request should consider the effects of increased stream conditions, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Time extensions are issued at the discretion of the Department. The Department will review the written request to work beyond the established work period. The Department will have ten calendar days to approve the proposed work

Attachment I

Notification Number R2-2002-251

period extension. The Department reserves the right to require additional measures designed to protect natural resources. The Operator is required to obtain authorization from all other local, state and federal agencies with regulatory authority over this project.

3. The notification, together with all supporting documents (project descriptions and drawings) submitted with the notification, are hereby incorporated into this agreement to describe the location and features of the proposed project. Operator agrees that all work shall be done as described in the notification and supporting documents, incorporating all project modifications, wildlife resource protection features, mitigation measures, and provisions as described in this agreement. The Operator further agrees to notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, minor plan modifications may require an amendment to this agreement. At the discretion of the Department, if substantial modifications are made to the original plans, this agreement becomes void and the Operator must submit a new application. Failure to notify the Department of changes to the original plans or subsequent amendments to this agreement may result in the Department suspending or canceling this agreement. The Operator must then submit a new notification.
4. The Operator shall notify the Department where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, the Operator shall comply to the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.
5. A copy of this agreement shall be provided to the Contractor(s) who works within the stream zone of this project. A copy of this agreement must be available upon request at the work site. The Contractor(s) shall sign this agreement prior to working within the stream zone. If the Contractor is not available at the time this agreement is executed by the Operator, the Operator shall submit, anytime prior to project commencement, a copy of the signature page of this agreement bearing the Contractor's signature to the Department. Fax or mail the signature page to Department of Fish and Game, Environmental Services Desk, FAX No. 916-358-2912. Mailing address, Department of Fish and Game, Sacramento Valley – Central Sierra Region, 1701 Nimbus Road, Rancho Cordova, CA 95670. The Contractor(s) or a designated crew supervisor(s) shall be on site the entire time a work crew is working near the stream zone. The supervisor(s) shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions.
6. The Operator shall notify the Department within two working days of beginning work within the stream zone of Cache Creek. In addition, the Operator/Contractor shall notify the Department within two working days of the completion of work within the stream zone on this project. Notification shall be a FAX transmittal to fax number 916-358-2912. Refer to Notification Number R2-2002-251 when notifying the Department.
7. ~~When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around or through the work area during the excavation and/or construction operations. Stream flow shall be diverted using gravity flow through temporary culverts/pipe's or pumped around the work site with the use of hoses. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code~~

Attachment I

Notification Number R2-2002-251

section 5937. Any temporary dam or other artificial obstruction constructed shall only be built from materials such as sandbags or clean gravel which will cause little or no siltation. No other diversion method shall be used without prior authorization by the Department. If another diversion method is preferred, the operator must submit a plan detailing the desired diversion method. Authorization of any other diversion method shall be at the discretion of the Department.

8. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. The Operator is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation (usually after the first growing season).

9. Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective Department approved control devices are installed, or abatement procedures are initiated. The Department may take enforcement action if appropriate turbidity and siltation control measures are not deployed.

Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.

11. During construction, the contractor shall not dump any litter or construction debris within the stream zone. All construction debris and associated materials shall be removed from the work site upon completion of this project.

All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the construction activities shall be restored to its natural state by seeding with a blend native and non-native erosion control grass seeds. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeded areas shall be covered with broadcast straw, anchored jute netting, coconut fiber blanket or similar erosion control blanket. Supplemental watering may be required to establish plant growth.

13. All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination is agreed to in writing by both parties.

Attachment I

Notification Number R2-2002-251

14. This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game. Stream alteration work authorized by this agreement expires on August 30, 2007. This agreement shall remain in effect for that time necessary to satisfy all required mitigation and monitoring measures.
15. Requests for Renewals, Extensions, or Amendments must be submitted in writing to the Department prior to expiration of the agreement, conclusion of the work period, or commencement of changed work design, respectively. Renewals, Extensions and Amendments are issued at the discretion of the Department. Processing fees may be assessed.
16. The Department reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require a reevaluation include, but are not limited to, the following: A) Failure to comply with the terms/conditions of this agreement. B) The information provided by the operator in support of the agreement/notification is determined by the Department to be incomplete, or inaccurate. C) When new information becomes available to the Department representative(s) that was not known when preparing the original terms/conditions of this agreement. D) The project as described in the notification/agreement has changed, or conditions affecting fish and wildlife resources change.
17. If, in the opinion of the Department, conditions arise or change in such a manner as to be considered deleterious to aquatic life, operations shall cease until corrective measures are taken.
18. This agreement does not constitute or imply the approval or endorsement of a project, or of specific project features, by the Department, beyond the Department's limited scope of responsibility, established by Code Sections 1600 et seq.
19. It is understood that the Department enters into this agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with the project is the sole responsibility of Operator, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of Operator. Operator agrees to hold harmless and defend the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or other damage.
20. The project site has been identified as an area that is potentially inhabited by threatened or endangered species. This agreement does not allow for the take, or incidental take of any State or Federal listed threatened or endangered listed species. The Operator is required, as prescribed in the state or federal endangered species acts, to consult with the appropriate agency prior to commencement of the project. Any unauthorized take of such listed species may result in prosecution and cancellation of this agreement.

Attachment I

Notification Number R2-2002-251

21. The Department enters into this Agreement with the understanding that the project and any related activities will have no detrimental impact upon any other State listed threatened or endangered species.
22. If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds (February 1 to July 31), a focused survey for active nest of such birds shall be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) within 15 days prior to the beginning to project-related activities. The results of the survey shall be faxed to 916-358-2912. Refer to Notification Number R2-2002-251 when submitting the survey to the Department. If active nest are found, the Operator shall consult with the Department and the United States Fish & Wildlife Service (USF&WS) regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the Fish & Game Code of California. If a lapse in project-related work of 15 days or longer occurs, another focused survey and if required, consultation with the Department and USF&WS, will be required before project work can be reinitiated.
23. This site contains typical habitat of the giant garter snake (*Thamnophis Gigas*) listed as threatened by the State. This habitat (broken concrete, irregular shaped rocks) should be replaced upon project completion. If any garter snakes are encountered during construction, the snakes shall not be harmed or handled and be allowed to escape out of the construction area.
24. Beaver dams and other obstructions blocking flow in the stream near the work site may be cleared with the use of hand tools only. Beavers can be discouraged from building a new dam at the same location by placing a length of 12 inch diameter plastic culvert which has been perforated with several holes at the dam site. The perforated pipe is placed at stream grade at the dam site and in line with the stream flow. The beaver will try to plug the opening of the pipe but cannot plug all the small holes along the length of the pipe. Water will continue to pass downstream and will not cause ponding as before. The beaver will eventually get discouraged and will seek a new location for its dam.
25. Species designated by the Department as Species of Special Concern may be present at this site. All and any negative impacts to these species are strictly prohibited. This may include impacts to habitat, species numbers or distribution.
26. An adequate fish passage facility shall be incorporated into any barrier that might obstruct such up or downstream passage of fish.

Attachment I

Notification Number R2-2002-251

27. Culverts shall be installed to allow both up and downstream passage of fish at all times. Failure to comply will result in prosecution or the requirement that the structures be modified or removed at the discretion of the Department.
28. The disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Precautions shall be taken to avoid other damage to vegetation by people or equipment. The disturbed portions of the stream channel within the normal high-water mark of the stream shall be restored to as near their original condition as possible.

Notification Number R2-2002-251

SIGNATURE PAGE

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

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

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

THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL BE PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

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

Operator: John Bencomo John Bencomo Date 8-29-02
Title: Director, Plan. & Parks Dept.
Organization: Yolo County

Contractor: _____ Date _____
Title: _____
Company: _____

Department Representative: [Signature] Date 9/12/02
Banky E. Curtis Regional Manager