

**AGREEMENT REGARDING PROPOSED STREAM ALTERATION**

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and the County of El Dorado, a political subdivision of the State of California, hereafter called the County, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1602, the County, on November 25, 2009, notified the Department that it 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: Tennessee Creek, in the County of El Dorado, State of California, Section 13, 24, Township 10N, Range 9E, USGS Map Shingle Springs, MDB&M.

WHEREAS, the Department, represented by Gary Hobgood, has determined that such operations may substantially adversely affect existing fish and wildlife resources including: California red-legged frog, Northwestern pond turtle, various life stages of fish, other forms of vertebrate and invertebrate aquatic life, amphibians, reptiles and nesting birds and riparian plant species.

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

**Project Description:** The El Dorado County Department of Transportation intends to replace the Green Valley Road Bridge over Tennessee Creek with a larger, wider concrete bridge to improve roadway safety. The project will replace the 29.5-foot long by 19.0-foot wide, two-lane, reinforced concrete girder bridge. The new bridge will be a pre-stressed slab bridge that is 64-foot long by 52-foot wide, three-lane bridge. Replacement of the bridge is scheduled to begin in 2010.

**Stream Zone Defined:** All components of a stream, including the channel, bed, banks, and floodplains. The Stream Zone is the land, including vegetation, that bounds a lake or the channel of a stream and that defines the lateral extent of their waters.

1. The notification, together with all supporting documents submitted with the notification, including the Initial Study/Mitigated Negative Declaration for the Green Valley Road Bridge Replacement at Tennessee Creek/N. Shingle Road Intersection Improvements, dated, October 2008, the Green Valley Road Bridge at Tennessee Creek Replacement Project Natural Environment Study and Jurisdictional Delineation Report dated, April 2008 and the construction plans, are hereby incorporated into this agreement to describe the location and features of the proposed project. The County 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. Where apparent conflicts exist between the notification and the provisions listed in this agreement, the County shall comply with the provisions listed in this agreement. The County further agrees to notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, this agreement will be amended to accommodate modifications to the project plans submitted to the Department and/or new project activities. Please see the current fee schedule to determine the appropriate amendment fee.
2. Documents, plans, surveys, notifications, and requests pertaining to this project or required by this agreement may be sent via email to Gary Hobgood at [ghobgood@dfg.ca.gov](mailto:ghobgood@dfg.ca.gov) or delivered to the Department of Fish and Game at 1701 Nimbus Road, Suite A, Rancho Cordova, CA

95670. Refer to Notification Number 1600-2009-0224-R2 when submitting documents to the Department.

3. The time period for completing the work within the stream zone of Tennessee Creek shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of April 15 to October 15. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream zone shall cease until all reasonable erosion control measures, inside and outside of the stream zone, have been implemented prior to all storm events. No work will occur during wet weather. Wet Weather is defined as when there has been ¼ inch of rain in a 24-hour period. In addition, no work will occur during a dry out period of 24 hours after the above referenced wet weather. Revegetation, restoration and erosion control work is not confined to this time period.
4. If the County finds more time is needed to complete the authorized activity, the County 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. Photographs of the work completed and the proposed work areas are helpful in assisting the Department in its evaluation. 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 period extension. The Department reserves the right to require additional measures designed to protect natural resources.
5. This Agreement does not relieve the County or any person acting on behalf of the County, including its officers, employees, representatives, agents or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code, including, but not limited to, sections 2050 et seq. (California Endangered Species Act), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5931 (fish passage over/around dam), 5937 (sufficient water for fish), and 5948 (obstruction of stream). The County is responsible for obtaining all required permits and authorizations from local, state and federal agencies. The County shall notify the Department where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, the County shall comply with the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.
6. If a private contractor is used for this project, the contractor shall sign County's copy of this agreement prior to working within the stream zone. A copy of this agreement and a copy of the original notification, including the project description, as submitted to the Department, must be available upon request at the work site. The contractor or a designated crew supervisor shall be on site the entire time a work crew is working near the stream zone. The supervisor shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Department reserves the right to inspect the project site to ensure that there is compliance with the terms/conditions of this Agreement.

7. The County shall notify the Department within two working days of beginning work within the stream zone of Tennessee Creek. Upon completion of the project activities described in this agreement, the work area within the stream zone shall be digitally photographed. Photographs shall be submitted to the Department within two days of completion. Photographs and project commencement notification shall be submitted as instructed in item number 2 above.
8. The County will implement the Revegetation Planting and Erosion Control Specification Plan and the Compensatory Mitigation and Monitoring Plan included in the Natural Environment Study as appendix G and I, respectively, to compensate for the unavoidable loss of vegetation along Tennessee Creek. The plan focuses on replanting or enhancing habitat along Tennessee Creek in the construction area. All native trees within 10 ft of the top of bank of Tennessee Creek will be replaced within the riparian zone at a 3:1 ratio and planting willow poles in the rock slope protection. The revegetation plan calls for the planting of locally native riparian tree and shrub species. To the extent practical, riparian mitigation shall be done along and/or near the project site. The revegetation plan includes: a description and map of the site, the species to be planted; a description of the extent and method of irrigation; specifications for site preparation and installation of plant materials; specifications and schedule for installation, including amount and application method of fertilizers; and specifications for a success criteria and the corrective actions recommended or to be taken when mitigation measures do not meet the proposed success criteria. An annual monitoring report will be submitted to the Department. Work within the stream zone shall not begin until the revegetation plan has been approved by the Department.
9. Work within the flowing or standing water portion of Tennessee Creek is not allowed without written authorization from the Department. If flowing water is present or should reasonably be anticipated, the County must submit detailed water diversion plan to the Department. Dewatering and stream crossing structures may include the use of clean removable materials, such as, sand bags, Port-a-dams, water bladder dams, K-rails, driven sheet metal coffer dams and trestles. Temporary culvert(s) and/or temporary bridge(s) must be sized to handle reasonably anticipated flows from unanticipated storm events. The Department will review the proposed water diversion and/or temporary stream crossing plan(s). The Department will have 10 calendar days to approve the plan(s) or provide the requirements for that approval. If the Department does not respond within 10 days, the plan shall be automatically approved. All water dewatering structures shall be removed from the stream zone by October 15 unless otherwise authorized by the Department.
10. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the Fish and Game Code. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative.
11. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the trees specifically identified for removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of three (3) inches shall be removed or damaged without prior consultation and approval of a Department representative. Using hand tools (clippers, chain saw, etc.), trees may be trimmed to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian/stream zone.

12. 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 County 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). 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.
13. Utilize Best Management Practices (BMPs) to prevent spills and leaks into water bodies. If maintenance or refueling of vehicles or equipment must occur on-site, use a designated area and/or a secondary containment, located away from drainage courses to prevent the runoff of storm water and the runoff of spills. Ensure that all vehicles and equipment are in good working order (no leaks). Place drip pans or absorbent materials under vehicles and equipment when not in use. Ensure that all construction areas have proper spill clean up materials (absorbent pads, sealed containers, booms, etc.) to contain the movement of any spilled substances. 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 the County or any party working under contract or with the permission of the County, shall be removed immediately. The Department shall be notified immediately by the County of any spills and shall be consulted regarding clean-up procedures.
14. 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.
15. 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 using locally native grass seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jut netted (monofilament erosion blankets are not authorized).
16. 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 December 31, 2014. This agreement shall remain in effect for that time necessary to satisfy all required mitigation and monitoring measures.
17. Requests for Extensions (agreement renewal), Minor Amendments, and Major Amendments must be submitted in writing prior to expiration of the agreement or commencement of work on modified project plans. Extensions and Amendments are issued at the discretion of the Department. Please see the current fee schedule to determine the appropriate fee.

18. The Department may take enforcement action and reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require these Department actions 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 County 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, or amendment has changed, or conditions affecting fish and wildlife resources change.
19. 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.
20. 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 the County, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of the County's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the County. The County 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.

**SIGNATURE PAGE**

The County, 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.

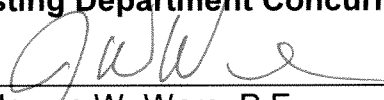
Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

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

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

The County Officer or employee with responsibility for administering this Agreement is Chuck Pazzi, Supervising Civil Engineer, Department of Transportation, or successor.

**Requesting Department Concurrence:**

By:   
James W. Ware, P.E.  
Director of Transportation

Date: 3/25/10

**County:**

By: \_\_\_\_\_  
Board of Supervisors, "County"

Date: \_\_\_\_\_

Attest:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**Contractor:** \_\_\_\_\_  
Print and Sign Name

Date \_\_\_\_\_

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

Company: \_\_\_\_\_

**Department Representative:** \_\_\_\_\_  
Kent Smith, Acting Regional Manager

Date: \_\_\_\_\_