

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, hereinafter called the County, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1602, the County, on November 3, 2008, 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: Weber Creek, in the County of El Dorado, State of California, Section 14, Township 10N, Range 10E, USGS Map Placerville MDB&M.

WHEREAS, the Department, represented by Gary Hobgood, has determined that such operations may substantially adversely affect existing fish and wildlife resources including: rainbow trout, valley elderberry longhorn beetle, northwestern pond turtle, California red-legged frog, and foothill yellow-legged frog, , warm water fish species, amphibians, and other aquatic and terrestrial plant and wildlife 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: U.S. Highway 50 / Missouri Flat Interchange Project - The eastbound Weber Creek bridge would be widened to provide for 1 new auxiliary lane and 1 new ramp lane that would merge with the auxiliary lane just east of the bridge. The westbound Weber Creek bridge would be widened to provide 2 new auxiliary lanes. Both bridges would also be widened to provide standard shoulders and standard bridge railing. Additional footings and columns would be constructed to support the new auxiliary lanes. Six new support piers would be constructed, two of which would be built in the streambed of Weber Creek (see Weber Creek Bridge General Plan No. 1 and Weber Creek Bridge Foundation Plan). Construction would involve diverting expected flows around the construction area, as well as dewatering the streambed to avoid contamination of the creek.

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 notification, together with all supporting documents submitted with the notification, including the Weber Creek Bridge construction plan set, Draft EIR/EA and Final EIR/FONSI U.S. Highway 50/Missouri Flat Interchange Project (SCH 1998092077) and the Final Biological Assessment for the U.S. Highway 50/Missouri Flat Interchange Project, 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 or delivered to the

Department of Fish and Game at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670. Refer to Notification Number **1600-2008-0296-R2** when submitting documents to the Department.

3. To mitigate for impacts to riparian and wetland habitats within and along Weber Creek, the County shall prepare a revegetation plan and plant riparian trees at suitable sites near the project site. To the extent practical, riparian mitigation shall be done at the project site. When complete mitigation is not feasible, the County shall acquire mitigation credits at an approved mitigation bank or a Department approved compensation site. The revegetation plan must include: a description and map of the site, including the soil type and existing vegetation; the species to be planted and/or seeded; 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; specifications for long-term plant care; success criteria; and monitoring & reporting program. To participate in mitigation banking and/or other Department approved compensation, the County shall calculate the acreage of impact (including construction easements) that occurs within the stream zones for this project. The County shall acquire mitigation credits at an approved mitigation bank equal to the impacted acreage. Mitigation credits should be purchased or obtained at a two to one ratio. Work within the stream zone shall not begin until the revegetation plan has been approved by the Department and/or the “bill of sale” from the purchase of mitigation credits or other evidence of compensation has been received and approved by the Department. The Revegetation Plan shall be submitted to the Department as instructed in item number 2 above.
4. 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 or other vegetation that contain active bird nests shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative. It is recommended that the trees that are identified for removal, be removed during the non-nesting period of August 15 to February 15. If tree removal must occur during the period of February 16 and August 14, a qualified biologist shall conduct a pre-construction survey for bird nests or nesting activity in the project area. If any active nests or nesting behaviors are found, the Department must be notified prior to further action. The County’s biologist may recommend for the Department’s consideration, the creation of appropriately sized exclusion zones, depending on the species observed, the specific construction activity, the proximity of the nest to the work and the availability of vegetative screening. The exclusion zone must be maintained until birds have fledged or nest is abandoned. The survey results and recommendations shall be provided to the Department prior to removing any trees. The survey shall be submitted to the Department as instructed in item number 2 above.
5. The time period for completing the work within the stream zone of Weber Creek shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of May 1 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. Revegetation, restoration and erosion control work is not confined to this time period. This provision does not apply to work on the road surface and areas clearly above the stream zone. This provision does not apply to the removal of vegetation with hand tools (including chainsaws) as described in item number 4 above.

6. 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.
7. 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.
8. A copy of this agreement and a copy of the project description, as submitted to the Department, must be available upon request at the work site. 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. The Department reserves the right to enter the project site at any time to ensure that there is compliance with the terms/conditions of this Agreement. If a private contractor is used, the contractor must review and sign the County's copy of the agreement prior to beginning work within the stream zone.
9. The County shall notify the Department within two working days of beginning work within the stream zone of Weber Creek. Upon completion of the construction phase and the installation of erosion control materials, the work area within the stream zone shall be digitally photographed. Photographs and notification shall be submitted to the Department as instructed in item number 2 above.
10. Except for site preparation for the placement of dewatering structures and/or temporary stream bridge (trestle) crossing, no excavation in the live stream (flowing water) is allowed. If flowing water is present or should reasonably be anticipated, the County must submit a detailed water diversion plan to the Department. Diversion structures may include the use of clean removable materials, such as, sand bags, gravel bags, Port-a-dams, water bladder dams, K-rails, driven sheet metal coffer dams and trestles. The importation of crushed gravel and fill material into the stream is prohibited. Temporary culvert(s) and/or bridges must be sized to handle reasonably anticipated flows from unanticipated storm events through the construction season. The water diversion plan must include provisions for fish passage. 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. The plans shall be submitted to the Department as instructed in item number 2 above.

11. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the vegetation specifically identified for trimming and/or removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) 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 vegetation removed as a result of this project shall be identified and compensated for in the Revegetation Plan referenced in items number 3 above.
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. 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 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, 2013. 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 (arising from this agreement) made by any party or parties for personal injury or other damage as a direct result of the Project.

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 Adam Bane, Supervising Civil Engineer, Department of Transportation, or successor.

Requesting Department Concurrence:

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

Date: _____

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: _____
Sandra Morey, Regional Manager

Date _____