



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
7329 Silverado Trail  
Napa, CA 94558  
(707) 944-5500  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*EDMUND G. BROWN JR., Governor*  
*CHARLTON H. BONHAM, Director*



Date: September 12, 2013

Subject: Draft Lake or Streambed Alteration Agreement  
Notification No. 1600-2013-0258-R3  
Lower Putah Creek 2 NAWCA Project

The California Department of Fish and Wildlife (Department) has determined that your project requires a Lake or Streambed Alteration Agreement (Agreement) because it could substantially adversely affect an existing fish or wildlife resource. Enclosed is a draft Agreement that includes measures the Department has determined are necessary to protect existing fish and wildlife resources.

Within 30 days of receipt of this draft Agreement, you must notify the Department in writing whether the measures to protect fish and wildlife resources are acceptable (Fish and Game Code section 1603). **If you agree with the measures set forth in the draft Agreement, you or your authorized representative must return two copies of the draft Agreement with original signatures to the above address.**

If you disagree with any measures in the draft Agreement, please contact the Department staff identified below. In the event that mutual agreement is not reached, you may follow the dispute resolution process described in Fish and Game Code section 1603(a), Part III of the "Notification Instructions and Process." If you fail to respond in writing within 90 days of receiving the draft Agreement, the Department may withdraw the draft Agreement.

Please be advised the Department may not execute the Agreement until it has complied with the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 *et seq.*) as the lead or a responsible agency. Please note that the draft Agreement may be subject to change upon receipt and review of the environmental document for the project.

When acting as a CEQA responsible agency, the Department must first receive the following: 1) a certified or approved environmental document prepared in accordance with CEQA; 2) Notice of Determination, if one is filed; 3) CEQA Findings; and 4) proof that the environmental filing fee required under Fish and Game Code section 711.4 has been paid. If the lead agency determined that the project is exempt under CEQA, please provide a copy of the Notice of Exemption or other information that indicates the basis for the exemption.

*Conserving California's Wildlife Since 1870*

After you receive a final Agreement executed by the Department, you may begin the project the Agreement authorizes provided you have obtained all other necessary local, state, and federal permits or other authorizations.

For more information on the process described above, please refer to Part IV in the "Notification Instructions and Process" included with your notification materials, which is also available at [www.dfg.ca.gov/habcon/1600/notificationpackage.pdf](http://www.dfg.ca.gov/habcon/1600/notificationpackage.pdf).

If you have any questions regarding this letter, please contact Lorie Hammerli, Environmental Scientist at (707) 944-5568 or [lorie.hammerli@wildlife.ca.gov](mailto:lorie.hammerli@wildlife.ca.gov).

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**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

BAY DELTA REGION

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**STREAMBED ALTERATION AGREEMENT**

NOTIFICATION NO. 1600-2013-0258-3

Lower Putah Creek 2 NAWCA Project,

Lower Putah Creek, McCune Creek

Richard Marovich

Solano County Water Agency

810 Vaca Valley Parkway, Suite 203

Vacaville, CA 95688

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Solano County Water Agency (Permittee) as represented by Richard Marovich.

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on July 1, 2013, 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 Lower Putah Creek 2 NAWCA (Project) is located along Lower Putah and McCune Creek, north of Putah Creek Road between Canal Lane to the west and Wintu Way to the east, in the City of Winters, Solano County (Exhibit A). Lower Putah Creek and McCune Creek are tributaries to Libson Slough. U.S. Geological Survey (USGS) 7.5 Minute Quad Map Allendale, Township 8N, Range 1W (projected lines), Sections 28-33 of the Rio De Los Puntos Rancho; Mt. Diablo Meridian. Latitude: 38.498435, Longitude: -121.997056 (Decimal degrees from the centroid). Assessor's Parcel Numbers 0103060090, 0103060190, 0103060200, 0103060110, 0103070040, 0103070050, 0103070110 and 0103070080.

## PROJECT DESCRIPTION

The Lower Putah Creek 2 NAWCA restoration area is approximately 51 acres in size, of which, approximately 35 acres are located within jurisdictional areas and are subject to the terms of this Agreement. The Project is limited to: (1) re-sloping an approximately 6,500-foot-long section of Lower Putah Creek and an approximately 1,500-foot-long section of McCune Creek, (2) removing invasive non-native vegetation, and (3) and revegetating the Project area with native trees and shrubs.

An excavator will be used to pull back (re-slope) the existing south bank of Lower Putah Creek and the north bank of McCune Creek to create a functional floodplain. The design includes selective grading along the low-terrace approximately 100 to 150 feet from the channel to create a gradual two to ten percent slope. Areas within the low-terrace that are more than three feet above or below the surrounding grade will be graded or filled accordingly (Exhibit B). No in-water work will occur and the stream-bed will not be impacted by Project activities. Project equipment may include: bulldozers, water trucks, water tanks, dump trucks, and earth moving equipment.

A total of approximately 168 native and non-native trees ranging in size from 4 to 24 inches trunk diameter at breast height (DBH) will be removed. Native trees that will be removed include California black walnut (*Juglans californica*), box elder (*Acer negundo*), white alder (*Alnus rhombifolia*), Goodding's willow (*Salix gooddingii*), Oregon ash (*Fraxinus latifolia*), and red willow (*Salix laevigata*). A list of trees to be removed, according to species and size, was submitted as part of the Notification package. In addition, invasive exotic plant species, such as *Arundo donax* and *Rubus armenicacus*, growing within the Project area will be eradicated.

A minimum of 1,100 native trees and shrubs will be planted within the Project area. Disturbed areas within the Project area will be stabilized and seeded with native grasses.

## PROJECT IMPACTS

Existing fish or wildlife resources that the Project could substantially adversely affect include:

- Swainson's hawk (*Buteo swainsoni*);
- steelhead trout (*Oncorhynchus mykiss*);
- pacific pond turtle (*Actinemys marmorata*);
- burrowing owl (*Athene cunicularia*);
- valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*);
- nesting birds;
- other aquatic and terrestrial wildlife species.

The adverse effects that the Project could have on the fish or wildlife resources identified above, without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include:

- increase of bank erosion during tree removal;
- loss of riparian habitat;
- temporary loss of natural streambed and banks;
- temporary loss of annual grassland;
- loss of bank stability and increase of bank erosion during work;
- soil compaction or other disturbance to soil layer;
- direct take of aquatic and terrestrial species;
- disruption to nesting birds and other wildlife.

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site(s). 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(s) 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(s). 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(s) behalf of Permittee, including but not limited to contractors, subcontractors, inspectors and monitors.
- 1.3 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.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site(s) any time to verify compliance with the Agreement.
- 1.5 Traversing Another Property. To the extent that any provisions of this Agreement provide for activities that require Permittee to traverse another owner's property, such provisions are agreed to with the understanding that

Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.

## **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.

### **Work Period and Planning**

2.1 Work period. Work within the project area as described in the project description shall be confined to the period of June 15 to October 15 or the first significant rain event (0.25 inches or greater) whichever is later. The project area is defined as the bed, bank, channel, and associated riparian habitat. Revegetation work is not confined to this work period.

2.2 Work Period Modification. If Permittee needs more time to complete Project activities, the work may be permitted outside of the work period and extended on a day-to-day basis by the CDFW representative who reviewed the Project, Lorie Hammerli, at 707-944-5568 or [lorie.hammerli@wildlife.ca.gov](mailto:lorie.hammerli@wildlife.ca.gov), or if unavailable, through contact with the CDFW Bay Delta Regional office by mail, phone (707-944-5500) or fax (707-944-5553).

Permittee shall submit a written request for a work period variance to the CDFW Bay Delta Office. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. Work period variances are issued at the discretion of CDFW. CDFW reserves the right to require additional measures to protect biological resources as a condition for granting the variance. CDFW shall have ten (10) calendar days to review the proposed work period variance.

2.3 Work Start and End Dates. Permittee shall notify CDFW in writing of the dates of commencement and completion of each covered activity within five (5) working days prior to commencement and following completion.

2.4 Work Period in Dry Weather Only- Check Forecast. Work within the stream zone shall be restricted to periods of no or low stream flow and dry weather, as allowed during the work period specified in Measure 2.1. Precipitation forecasts and potential increases in stream flow shall be considered when planning Project activities. Project activities shall cease and all necessary erosion control measures shall be implemented prior to the onset of precipitation. Project activities halted due to precipitation may resume when precipitation ceases and the National Weather Service (NWS) 72-hour

weather forecast indicates a 20 percent or less chance of precipitation. No work shall occur during a dry-out period of 24 hours after the above referenced wet weather. Weather forecasts shall be documented upon request by CDFW.

- 2.5 Work Period in Dry Weather Only- Erosion Control. In accordance with weather restrictions described in Measure 2.4, if a phase of the Project may cause the introduction of sediments into the stream(s), then no phase of the Project shall be started unless all work for that phase and all associated erosion control measures are completed prior to the onset of precipitation.
- 2.6 Work According To Plans. Permittee shall conduct all work within CDFW jurisdiction according to the project description stated above as well as the plans submitted to CDFW in the Notification package entitled, *Lower Putah Creek 2 NAWCA Project*, dated July 1, 2013. Permittee shall notify CDFW of any modifications made to the plans submitted to CDFW that pertain to impacts to streams, wetlands, or the riparian corridor. At the discretion of CDFW, minor plan modifications may require an amendment to this Agreement. At the discretion of the CDFW, if substantial changes are made to the original plans this Agreement becomes void and the Permittee shall submit a new notification.

### **Wildlife Protection and Prevention – Special Status Species**

- 2.7 Unauthorized Take. The Project area has been identified as an area that is potentially inhabited by State or federally-listed species. Permittee is required to comply with all applicable state and federal laws, including the California Endangered Species Act (CESA) and the federal Endangered Species Act. This Agreement does not authorize the take of any State or federal endangered or threatened species. Liability for any take or incidental take of such listed species remains the responsibility of Permittee for the duration of the Project. Any unauthorized take of such listed species may result in prosecution and nullification of the Agreement.
- 2.8 Qualified Biologist. Prior to initiating Project related surveys or Project related activities, Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for the Project biologist(s) (qualified biologist). Permittee shall obtain CDFW's written acceptance of the qualified biologist prior to the commencement of Project activities. The qualified biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources potentially present within and adjacent to the Project area. The qualified biologist shall be responsible for pre-Project activity surveys and monitoring the Project area during Project activities, including any ground- or vegetation-disturbing activities in areas subject to this Agreement.

- 2.9 Qualified Biologist. A qualified biologist is an individual who shall have a minimum of five (5) years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two (2) years conducting surveys for each special-status species that may be present at or adjacent to the Project area. The qualified biologist is not authorized to handle State and/or federally-listed species unless approved and/or permitted by the appropriate agencies.
- 2.10 Qualified Biologist Authority. The qualified biologist shall have the authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid or minimize impacts to fish and wildlife resources. Neither the qualified biologist nor CDFW shall be liable for any costs incurred as a result of compliance with this measure. This includes cease-work orders issued by the CDFW.
- 2.11 Nesting Bird Survey- General. If equipment staging, tree removal, revegetation using heavy equipment or other Project-related activities at or adjacent to the Project area are scheduled during the nesting season of protected raptors and other avian species (see Measure 2.12), a focused survey for active nests of such birds shall be conducted by a qualified biologist (see Measure 2.9). Surveys shall be conducted in all suitable habitat associated with the Project. Nest detection surveys shall be conducted a minimum of 15 days prior to the beginning of Project-related activities. Nest surveys will follow standard biological survey methods, and survey effort will be tailored to detect specific species, with visits planned at appropriate timeframes/intervals to detect nesting activity. If a lapse in Project-related activities of 15 days or longer occurs, another focused survey, and if required, consultation with CDFW and U.S. Fish and Wildlife Service (USFWS) will be required before Project activities can be reinitiated. If an active nest is found, Permittee shall consult with CDFW and the USFWS regarding appropriate action to comply with the Fish and Game Code of California, CESA (if applicable), and the federal Migratory Bird Treaty Act of 1918. See Measures 2.13 and 2.14 for Swainson's hawk and burrowing owl survey guidance, respectively.
- 2.12 Nesting Seasons. Nesting seasons shall typically be defined as follows: i) March 15 to August 30 for small bird species such as passerines; ii) February 1 to August 30 for burrowing owl; iii) March 1 to September 15 for Swainson's hawk; and iv) February 15 to September 15 for other raptors.
- 2.13 Swainson's hawk (State-threatened). If Project-related activities are scheduled during the Swainson's hawk nesting season, a focused survey for active nests shall be conducted by the qualified biologist prior to beginning Project activities. The qualified biologist shall survey for nesting activity of the

- Swainson's hawk in suitable habitat within 0.25 mile of the Project area. Surveys shall follow the Swainson's hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (available at [http://CDFW.ca.gov/wildlife/nongame/docs/swain\\_proto.pdf](http://CDFW.ca.gov/wildlife/nongame/docs/swain_proto.pdf)). Permittee shall submit the Project-specific survey methodology for conducting Swainson's hawk surveys to CDFW for review and written acceptance within at least 15 days prior to initiating surveys.
- 2.14 Burrowing Owl (Species of Special Concern). Prior to beginning Project-related activities, Permittee shall have the qualified biologist survey for burrowing owl nesting activity following the methodology described in the *DFG Staff Report on Burrowing Owl Mitigation, Appendix D: Breeding and Non-breeding Season Surveys* (available at <http://dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>). Permittee shall submit the Project-specific survey methodology for conducting burrowing owl surveys to CDFW for review and written acceptance within at least 15 days prior to initiating surveys.
- 2.15 Aquatic Surveys. Within 48 hours prior to Project-related activities the qualified biologist shall survey suitable habitat at the appropriate time of day for presence of pacific pond turtle other special-status aquatic species. If special-status species are found, Permittee or the qualified biologist shall contact (or leave a message for) CDFW representative, Lorie Hammerli, at 707-944-5568 or [lorie.hammerli@wildlife.ca.gov](mailto:lorie.hammerli@wildlife.ca.gov) or, if unavailable, the CDFW Bay Delta Regional Office at (707) 944-5500, within 24 hours. If federally-listed species are found during surveys or at any time during Project implementation, work shall not start until Permittee or the qualified biologist has contacted the appropriate agency and has been given approval for work to continue. CDFW reserves the right provide additional provisions to this Agreement designed to protect special-status species.
- 2.16 Special-Status Species Encountered During Work. If CDFW determines or Permittee finds, that any special-status species, including State or federally-listed species or State Species of Special Concern, are present at the Project area, Permittee shall stop all Project work, and Permittee or the qualified biologist shall notify CDFW and other agencies such as the USFWS as may be appropriate. If there is imminent danger of injury to special-status species from Project related activities, and the special-status species individual(s) do not move out of the work area on their own, the qualified biologist shall contact the appropriate agency. Through consultation with CDFW, additional measures may be developed to protect special-status species.
- 2.17 Valley Elderberry Longhorn Beetle. Permittee/contractor shall install highly-visible fencing and flagging to protect elderberry plants that are located within

or adjacent to each Project area prior to Project-related activities. Each elderberry plant shall be protected with a minimum 100-foot buffer unless the USFWS provides written authorization of a modified buffer size. At the mitigation site, no tree planting shall occur within a minimum 20-foot buffer surrounding existing elderberry plants.

### **Wildlife Protection and Prevention - General**

- 2.18 Staging Areas. Staging areas shall be located outside the bed, bank and channel.
- 2.19 Pipes and Culverts. All construction pipes, culverts, or similar structures that are stored at a construction site for one or more overnight periods shall be either securely capped prior to storage or thoroughly inspected by project personnel for listed species before the pipe is subsequently buried, capped, or otherwise used or moved in any way.
- 2.20 Allow Wildlife To Leave Unharmd. Permittee shall allow any wildlife encountered during the course of construction to leave the construction area unharmed. This authorization does not allow for the trapping, capture, or relocation of any state or federally listed species.
- 2.21 Demarcate Project Area Boundary. In consultation with the qualified biologist, the Permittee shall demarcate the outer perimeter of the Project area to prevent damage to adjacent habitat and to provide visual orientation to its limits. Marking shall be in place while the work area is in use during construction. All persons employed or otherwise working in the Project area shall be instructed about the restrictions that the marking represents.
- 2.22 Remove Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the Project area upon completion of Project-related activities.

### **Vegetation Protection and Removal**

- 2.23 Tree Removal. Disturbance or removal of vegetation shall be kept to the minimum necessary to complete Project-related activities. Only the 168 trees and vegetation identified on tables and maps submitted to CDFW as part of the Notification shall be removed. Trees and vegetation identified for removal shall be clearly marked with highly visible marking around the entire circumference of the trunk.
- 2.24 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the Project area and deposited where it cannot re-enter jurisdictional waters.

2.25 Herbicides. Permittee shall only use herbicides registered with the California Department of Pesticide Regulation (DPR). All herbicides shall be applied in accordance with regulations set by DPR, and used according to labeled instructions. Herbicide approved for use in an aquatic environment (e.g. Rodeo®) shall be used. Labeled instructions for the herbicide used shall be made available to CDFW upon request. No impacts shall occur to any adjacent native vegetation. Herbicide application shall be conducted on calm days only with wind less than five (5) miles per hour to prevent airborne transfer of herbicides. No herbicides shall be used where State and/or federally-listed species have been documented to occur. Pesticide mixing sites shall be located at existing road sites outside of jurisdictional waters and sensitive habitats.

### **Site Restoration/Stabilization**

2.26 Revegetation Plan. At least thirty (30) days prior to the commencement of the revegetation activities, the Permittee shall submit a Revegetation Plan to CDFW for review and written acceptance. The Revegetation Plan shall include a plant palette of species to be used in revegetation, success criteria (Measure 2.31), monitoring & reporting (Measure 3.2), and corrective actions to be taken when mitigation measures do not meet the proposed success criteria.

2.27 Treat exposed areas. All exposed/disturbed areas and access points within jurisdictional areas left barren of vegetation as a result of Project activities shall be restored by seeding with a blend of native erosion control grass seeds. All other areas of disturbed soil which drain toward the stream channel shall be seeded with erosion control grass seeds.

2.28 Erosion Control Measures. Permittee shall stabilize all exposed/disturbed soils within the Project area to reduce erosion potential, both during and following ground disturbance. Erosion control measures, such as straw wattles, straw hay bales, and broadcasted straw shall be used where ever silt-laden water has the potential to leave the Project area.

2.29 Site Stabilization. Site stabilization shall be completed as soon as possible after Project related activities in those areas cease. Seeding placed after October 15 shall be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket. Monofilament or woven plastic strands shall not be used.

2.30 Replanting Time Period. Replacement of habitat shall occur during the same calendar year as Project impacts are completed. Planting shall be done between October 15 and December 31. Species specific planting may be

delayed if planting from October 15 to December 31 may compromise survival of plantings. Permittee shall provide written notification and justification to CDFW for written acceptance prior to November 30 of any delays in replacement of habitat. Failure to implement the mitigation during the required time period shall result in additional mitigation for the temporal loss of habitat and will be determined in consultation with CDFW.

- 2.31 Revegetation Criteria. To ensure a successful revegetation effort, all plantings shall be monitored and maintained over a minimum five (5)-year monitoring period with a minimum of two (2) consecutive years (two growing seasons) of monitoring after the removal of irrigation. All plantings shall have a minimum of 75% survival at the end of the five year monitoring period. Invasive plant species shall be manually removed within the replanting area. If the survival and/or cover requirements are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other corrective actions, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five (5) years after planting. Mitigation shall be performed until CDFW determines that the revegetation area has met all the success/performance criteria. If the mitigation fails, then CDFW shall require additional mitigation that is appropriate to compensate for the temporal loss of habitat.
- 2.32 Remove Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the project site and vicinity of the stream upon completion of project activities.
- 2.33 Native Plant Materials Required. Revegetation shall include only trees and shrubs native to the Project area, unless otherwise accepted by CDFW in writing.
- 2.34 Prohibited Plant Species. Permittee shall not plant, seed or otherwise introduce invasive exotic plant species. Prohibited exotic plant species include those identified in the California Exotic Pest Plant Council's database, which is accessible at: <http://www.cal-ipc.org/ip/inventory/weedlist.php>.
- 2.35 Monofilament. Erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting shall not be used. Acceptable substitutes include coconut coir matting or tackified hydroseeding compounds.

## Equipment and Materials

- 2.36 No Equipment in Stream. Equipment shall not be operated in wetted areas (including but not limited to flowing or ponded water, or wetland areas) without the prior written approval of a CDFW representative.
- 2.37 Imported Materials. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the beds or banks of the stream channels except as otherwise addressed in this Agreement.
- 2.38 Spoils. Spoil shall not be placed where it could enter the stream. Spoil shall not be placed over vegetation except as specifically noticed to and accepted by CDFW, in writing. Plastic sheeting or visquine shall be readily available to cover exposed spoil piles and exposed areas. These covering materials shall be applied when it is evident rainy conditions threaten to erode loose soils into sensitive habitats.
- 2.39 Staging Equipment. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the stream banks. Heavy equipment shall be limited to the existing maintenance access roads. Stationary equipment such as motors, pumps, generators, compressors and welders, located within or adjacent to the stream channel and riparian area shall be positioned over drip-pans. Any equipment or vehicles driven and/or operated within or adjacent to the stream channel and riparian areas must be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles must be moved away at a minimum distance of 300 feet from these habitats prior to refueling and lubrication.

## Debris Materials and Waste

- 2.40 No Dumping. Permittee and all contractors, subcontractors, and employees shall not dump any litter or construction debris within the stream, or where it may pass into a watercourse.
- 2.41 Pick Up Debris. Permittee shall pick up all debris and waste daily.
- 2.42 Wash water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a watercourse or placed in locations that may be subjected to high storm flows.
- 2.43 Clean-up. All construction debris and associated materials shall be removed from the work site upon completion of this project.

## **Toxic and Hazardous Materials**

- 2.44 Toxic Materials. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into a watercourse or its tributaries shall be contained in water tight containers or removed from the project site.
- 2.45 Hazardous Substances. 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 any watercourse or its tributaries. Any of these materials, placed within or where they may enter the stream by Permittee or any party working under contract, or with the permission of Permittee, shall be removed immediately.
- 2.46 Contaminants. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, 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, wildlife, or riparian habitat resulting from the project related activities shall be prevented from contaminating the soil and/or entering any watercourse or its tributaries. Any of these materials, placed within or where they may enter the stream, by Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately.

## **Spills and Emergencies**

- 2.47 Spill Clean up. Permittee shall begin the clean up of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills within the stream zone that exceed 5 gallons and shall be consulted regarding clean up procedures. The Permittee shall have all spill clean-up equipment on site during construction.
- 2.48 Spill Containment. All activities performed in or within 50 feet of a watercourse shall have absorbent materials designated for spill containment and clean-up activities on-site for use in an accidental spill. As described in the Permittee's Reporting Guidelines, if a spill exceeds 42 gallons or contains polychlorinated biphenyl, the Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550, immediately initiate the clean up activities and CDFW shall be notified by the Permittee and consulted regarding clean up procedures.

### 3. Reporting Measures

Permittee shall meet each reporting and maintenance requirement described below.

- 3.1 Report Nesting Bird Survey Results. Prior to the start of Project-related activities, Permittee shall submit to CDFW a report on survey methodology and results of focused nesting bird surveys (refer to Measures 2.11, 2.13 and 2.14). Project activities shall not start until CDFW has reviewed and provided written acceptance of the survey report. Refer to Notification Number 1600-2013-0258-3 when submitting the report.
- 3.2 Annual Status Report. An annual monitoring report on Project-related site restoration and monitoring shall be provided to CDFW by December 31 of each year until the end of the CDFW required monitoring period. The report shall include monitoring results (including methods and discussion of modifications since the previous monitoring period); analysis of the monitoring results, including evaluation of conditions relative to success criteria; discussion of remedial measures identified and implemented following the previous monitoring period; overall site progress; any remedial actions taken during the year; and a summary of the general successes and failures of revegetation efforts. The report shall include plant counts, plant growth condition (dead, stressed, or vigorous), site photos, maintenance activities, observed wildlife, and overall site conditions (garbage, vandalism, and invasive weed growth). Any proposed changes to the performance criteria or timelines shall require CDFW written acceptance.
- 3.3 California Natural Diversity Data Base. If any sensitive species are observed during Project surveys or at any time during Project implementation or mitigation and monitoring work, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms to the CNDDDB within five (5) working days of the sightings, and provide CDFW Region 3 with copies of the CNDDDB forms and survey maps. Refer to <http://www.CDFW.ca.gov/biogeodata/cnddb/> for additional information on CNDDDB.

## 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:

Richard Marovich  
Solano County Water Agency  
810 Vaca Valley Parkway, Suite 203  
Vacaville, CA 945688  
(707) 451-6090  
[rmarovich@scwa2.com](mailto:rmarovich@scwa2.com)

### To CDFW:

Department of Fish and Game  
Bay Delta Region  
7329 Silverado Trail  
Napa, California 94558  
Attn: Lake and Streambed Alteration Program – Lorie Hammerli  
Notification #1600-2012-0231-R3  
(707) 944-5568  
Fax: (707) 944-5553  
[lorie.hammerli@wildlife.ca.gov](mailto:lorie.hammerli@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 the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at [http://www.CDFW.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.CDFW.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall expire on December 31, 2017, 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, titled: "Project Map", prepared by Mark Snyder, Solano County Water Agency; dated: July 31, 2013

Exhibit B, titled: "Typical Transect", additional Notification information received by CDFW on August 14, 2013.

## **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 SOLANO COUNTY WATER AGENCY**

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Richard Marovich  
Streamkeeper

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Date

## **FOR DEPARTMENT OF FISH AND GAME**

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Craig J. Weightman  
Environmental Program Manager

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Date

Prepared by: L. Hammerli  
Environmental Scientist

Date Submitted: September 12, 2013

Exhibit A:

Project Map

Project Map



- Legend
- Putah Creek OHWM
  - Access\_Routes
  - Staging\_Area
  - Selective Grading
  - McCuneOHWM
  - Fill/Staging Area
  - Project Area
  - County Parcels - 2008

Prepared by Mark Snyder  
Solano County Water Agency  
July 31, 2013  
Bing Base Map  
WGS 84

Exhibit B:

Typical Transect

Typical Transect

