

CALIFORNIA DEPARTMENT OF FISH AND GAME

4949 Viewridge Ave.
San Diego, California 92123

Notification No. R5-2001-0132

June 13, 2001

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AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the **Department**, and **Rick and Laura Fulmer of 387 Burnham Rd, Oak View, CA 93022 (805) 649-2308**, State of California, hereinafter called the **Operator**, is as follows:

WHEREAS, pursuant to Section 1603 of California Fish and Game Code, the Operator, on the 3rd day of May, 2001, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): Live Oak Creek tributary to the Ventura River, **Ventura County, California, County Assessor's Parcel Number 031-0-210-385.**

WHEREAS, the Department (represented by Betty J. Courtney) through a site visit on June 6, 2001 and subsequent information) has determined that such construction may substantially adversely affect those existing fish and wildlife resources within the Live Oak Creek tributary to the Ventura River, specifically identified as follows: *****Fishes (steelhead/smolt); Amphibians; Reptiles; Birds; Mammals.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. 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, 5937, 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. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes **effective the date of the Department's signature** and the construction portion **terminates on 12/31/2002**. This Agreement shall remain in effect to satisfy the terms/conditions of this Agreement. Any provisions of the agreement may be amended at any time provided such amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original agreement and are subject to all previously negotiated provisions.

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1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

2. Operator proposes to alter the streambed by constructing a private bridge on property/easement for residential use (single family home). The bridge will be 15 feet wide and approximately 30 feet long, per Fire Department requirements. Permanent impacts of 450 sq. ft. and temporary impacts of an additional 450 sq. ft. Total impacts of 900 sq. ft. (0.02 acres). Areas of temporary impacts will be revegetated with native vegetation (mulefat cuttings and native seed mix).

3. The agreed work includes activities associated with No. 2 above. The project area is located in **Oak View at Live Oak Creek tributary to the Ventura River** in **Ventura County**. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator and shall be implemented as proposed unless directed differently by this agreement. Contact **Rick and Laura Fulmer** at Phone: **(805) 649-2308** for additional information.

4. COPIES OF THIS AGREEMENT AND ALL REQUIRED PERMITS AND SUPPORTING DOCUMENTS, PROVIDED WITH NOTIFICATION OR REQUIRED BY THIS AGREEMENT SHALL BE READILY AVAILABLE AT THE WORK SITE(S) AT ALL TIMES DURING PERIODS OF WORK.

5. The Operator certifies by signing this agreement that the project site has been surveyed and shall not impact any rare, threatened or endangered species; or the Operator certifies that such a survey is not required for the proposed project. If rare, threatened or endangered species occur within the proposed work area, or could be impacted by the work proposed, the Operator shall consult with the Department and obtain any required State and/or Federal permits.

6. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's Region 5 Office at the above address. If the Operator fails to request the extension prior to the agreement's termination, then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement are a violation of Fish and Game Code Section 1600 et. seq. The Operator may request a maximum of 3 extension(s) of this agreement.

<< WORK AREAS AND VEGETATION REMOVAL >>

7. The Operator shall not exceed 0.01 acres of permanent impact the stream/river.

8. Disturbance or removal of vegetation shall not exceed 0.02 acres, the limits approved by the Department, within the drainages. All portions of the stream/river temporarily impacted shall be restored to original conditions. (30'X30')

9. The work area shall be flagged to identify its limits, as represented in plans contained in the notification packet. Native vegetation shall not be removed or intentionally damaged beyond these limits.

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10. The Operator shall not remove vegetation from the project site from **March 1 to July 1** to avoid impacts to nesting birds.

11. The Operator shall not remove any native trees with a diameter-at-breast-height (dbh) of 2 inches or greater. If the Operator determines that any native trees with 2 inch dbh or greater needs to be removed, then they shall submit an inventory of trees to be removed to the Department for review and approval. Any trees removed with a 2 inch dbh or greater shall be replaced in-kind at a 5:1 replacement-to-impact ratio. All trees shall be planted at a Department approved location.

12. In **areas of temporary disturbance**, where vegetation must be removed, native trees and shrubs with DBH of 2 inches or less, shall be cut to ground level with hand operated power tools rather than grading. No replanting will be required for vegetation of this size and type if it is cleared in this manner.

13. Vegetation removed from the stream shall not be stockpiled in the stream bed or on its bank. The sites selected on which to push this material out of the stream should be selected in compliance with the other provisions in this Agreement.

14. No living native vegetation shall be removed from the channel, bed, or banks of the stream, except as otherwise provided for in this agreement.

<<EQUIPMENT AND ACCESS>>

15. Staging/storage/idling/parking areas for equipment and materials shall be located outside of the stream/lake.

16. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed.

17. Access to the worksite shall be via existing roads and access ramps and shall be placed where the least vegetation removal or grading is necessary.

<<FILL AND SPOIL>>

18. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

19. Fill length, width, and height dimensions shall not exceed those discussed at the field visit or exceed the original naturally occurring topography, contour, and elevation. Fill shall be limited to the minimal amount necessary to accomplish the agreed activities. Except as otherwise specified in this Agreement, fill construction materials other than on-site alluvium, shall consist of clean silt-free gravel or river rock.

<<STRUCTURES>>

20. The final design of the structure shall be submitted to the Department for approval prior to project initiation.

21. This Agreement does not authorize the construction of any temporary or permanent dam, flow restriction.

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22. Any materials placed in seasonally dry portions of the stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.

<<POLLUTION, SEDIMENTATION, AND LITTER>>

23. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

24. Water containing mud, silt or other pollutants from aggregate washing or other activities shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

25. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.

26. **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/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.

27. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity of whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

28. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.

29. Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

30. Stationary equipment such as motors, pumps, generators and welders, located within or adjacent to the stream/lake shall be positioned over drips pans.

31. Equipment shall not be operated in wetted areas (including but not limited to ponded, flowing or wetland areas) without the prior written approval of the Department.

32. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. All precautionary measures shall be approved by the Department and may include the negotiation of additional Agreement provisions. Debris and dust from construction activities shall be prevented from entering the water or stream bottom.

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33. Silty/turbid water from dewatering or other activities, shall not be discharged into the stream. Such water shall be settled, filtered, or otherwise treated prior to discharge. The Operator's ability to minimize turbidity/siltation shall be the subject of pre-construction planning and feature implementation.

34. Upon the 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.

35. If a stream's low flow channel, bed, or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.

36. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed or banks of the stream, except as otherwise addressed in this Agreement.

37. The clean-up of all spills begin immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.

38. Temporary fills shall be constructed of nonerodible materials and shall be removed immediately upon work completion, and shall be approved by the Department prior to implementation.

<<FISH PASSAGE>>

39. 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 section 5937.

40. If flowing or ponded water is within the proposed work limits, the Operator shall telephone the fishery biologist, Maurice Cardenas at (805) 640-1852, prior to commencing activities within the bed, bank, and channel. The Operator shall leave his/her name, date and time called, telephone number, the stream name, work location, nature of planned activities and proposed schedule.

41. No work shall be conducted within 200 feet of flowing or ponded water within the river, which has potential to support steelhead. Adult steelhead are expected to be in the area during periods of high flow (January through March) and smolt are likely to be in the area during periods of receding flows (March to July). The Operator shall not work during these times. National Marine Fisheries Biologist shall be contacted to coordinate additional fish salvage and avoidance measures.

42. If flowing or ponded water is within the proposed work limits, the Operator shall have a qualified fisheries biologist survey the proposed work area to verify presence/absence of the any sensitive fish species and any other species of special concern which may occur within the area. Survey methods shall conform to the current U. S. National Marines Fisheries Service and the California Department of Fish and Game. If any T/E species are found, the Operator shall cease all work within ½ mile radius of the sighting and in all water (flowing or impounded) and shall contact the Department within 24 hours of the sighting and shall request an onsite inspection by the Department representative (to be done at the discretion of the Department) to determine if work shall proceed. The results of the surveys shall be provided to the Department, along with copies of all field notes, prior to the completion of work or as otherwise specified. The survey techniques shall be approved by the Department, in writing, and the researcher shall have the required State and federal permits.

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<<RESTORATION/MITIGATION>>

43. The Operator shall submit a Mitigation plan for Department review and approval prior to project initiation/impacts. The plan shall: identify areas of temporary impact, areas of permanent impact, species list including current vegetation and proposed species for revegetation and quantities, non-native species for removal and technique for removal, planting plan, criteria for success, location and size of mitigation area, implementation plan, monitoring plan, maintenance plan, contingency measures.

44. Restoration for areas of temporary disturbance shall be at a 1:1 ratio. Restoration shall include the revegetation of stripped or exposed work areas within the banks, bed and channel of the stream (including construction areas, access roads, etc.) with only native vegetation local to the area.

45. Mitigation for areas of Permanent Disturbance - no more than 0.01 acres of within the banks, bed and channel of the stream and/or riparian habitat shall be permanently lost due to the proposed operations. Restoration shall include the restoration of a degraded, stripped, or exposed area (s) with native riparian and transitional vegetation, local to the drainage, at a ratio of 3:1 for a total of 0.03 acres. The location and type of restoration shall be approved by the Department prior to any construction activities. All restoration shall be completed by March 1, 2003.

46. In order to determine if the revegetation techniques used have been successful any plant species required that are listed below shall achieve the minimum growth at the end of three and five years. If the minimum growth is not achieved then the Operator shall be responsible for taking the appropriate corrective measures as determined by Department representatives. The Operator shall be responsible for any cost occurred during the revegetation or in subsequent corrective measures.

SPECIES	SIZE AT PLANTING (GALLONS)	PLANTING CENTERS	HEIGHT	
			3 years	5 years
Mulefat Sycamore	cuttings	5 ft	3 ft	5 ft
	1 gallon	20 ft	5 ft	9 ft
	5 gallon	22.5 ft	7 ft	13 ft
	15 gallon	25 ft	10 ft	18 ft
Cottonwood	1 gallon	*	7 ft	12 ft
	5 gallon	*	9 ft	15 ft
	15 gallon	*	13 ft	20 ft
White Alder	1 gallon	*	6 ft	11 ft
	5 gallon	*	8 ft	13 ft
	15 gallon	*	11 ft	16 ft

* = Depending if used as supplemental species (40 ft O.C.) or if dominate species (15 ft O.C.)

* = Plant in naturalized clumps and randomly scattered.

All mitigation shall be initiated after the Agreement becomes effective and installed no later than March 1, 2003.

47. All planting shall be done between October 1 and April 30 to take advantage of the winter rainy season.

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48. All plants shall be planted in randomly space, naturally clumped patterns. The average planting densities shall meet the criteria specified above.

49. All planting shall have a minimum of 80 % survival, by species, the first year and 100% survival thereafter and/or shall attain 75 % cover after 3 years for the life of the project. If the survival and cover requirements are not achieved then the Operator shall be responsible for taking the appropriate corrective measures as determined by Department representatives. The Operator shall be responsible for any cost occurred during the revegetation or in subsequent corrective measures. Replacement plants shall be monitored with the same survival and growth requirements for 3 years after planting.

50. An annual report shall be submitted to the Department by Jan. 1 of each year for 3 years after planting. This report shall include the survival, % cover, and height by species of both tree and shrub species. The number by species of plants replaced, an overview of the revegetation effort, exotic plant control efforts, and the method used to assess these parameters shall also be included. Photos from designated photo stations shall be included.

51. The Operator shall provide irrigation when natural moisture conditions are inadequate to ensure survival of plants. Irrigation shall be provided for a period of at least two years from planting. Irrigation shall be phased out during the fall/winter of the third year from planting. All plants must survive and grow for at least three years without supplemental water for the restoration phase of the project to be eligible for acceptance by the Department.

52. All planting, maintenance, monitoring and reporting activities shall be supervised by a specialist familiar with restoration of native plants.

<<REMOVAL OF NON-NATIVE VEGETATION>>

53. The Operator shall remove any non-native vegetation (tree tobacco, castor bean, giant reed, etc from the work area and shall dispose of it in a manner and a location which prevents its reestablishment. Removal shall be done at least three times annually during the growing season.

Giant Reed, if present, shall be cut to a height of 12 inches or less, and the stumps painted with a herbicide approved for aquatic use within 5 minutes of cutting. Herbicides shall be applied at least three times during the period between May 1 and October 31 to eradicate these plants. Where proposed methods for removing giant reed deviate from this procedure, the Operator shall present the alternate methods, in writing, to the Department for review and approval, prior to construction.

54. No herbicides shall be used on native vegetation unless specifically authorize, in writing, by the Department.

55. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicide could come into contact with water, the Operator shall employ only those herbicides, such as Rodeo (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

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56. The Operator shall apply any herbicide in accordance with state and federal law. No herbicide shall be used where Threatened or Endangered species occur. No herbicides shall be used when wind velocities are above 5 miles per hour.

<<PROTECTION FOR WILDLIFE AND AQUATIC SPECIES>>

57. The Operator shall have a qualified wildlife biologist survey the area to confirm the presence/absence of the Steelhead and smolt, Coast Horned lizard and other species of concern likely to be found in the area during the proposed operations. If sensitive species are discovered, the survey techniques, timing, etc. shall be submitted to by the Department. In addition, survey results, analysis, and recommendations, along with the field notes shall be provided to the Department prior to commencing construction or within two weeks of completion of field surveys, whichever is earlier. Should any sensitive species be found during pre-project surveys and work must be done in identified areas during sensitive periods, the Operator shall develop and implement a plan for the protection of these species. This plan shall be approved by the department prior to commencing work. The results of any surveys and any protective measures instituted, as a part of the protection and monitoring plan, shall be provided to the Department within one week from implementation. The Operator shall be responsible for reporting all observations of threatened/endangered species or of species of special concern to the Department's Natural Diversity Data Base within ten (10) days of sighting.

58. Should any federal listed threatened/endangered (T/E) species occur in the area or will be impacted by the work proposed, the Department herein advises the Operator that a Federal Endangered Species Permit may be required to address possible impacts to any T/E species. Should such permit(s) be required, the Operator shall provide copies to the Department. All conditions contained therein, shall become a part of this agreement and shall be enforceable by the Department.

<<ADMINISTRATIVE-MISCELLANEOUS >>

59. 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. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

60. If the Operator or any of the individuals mentioned above, violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until the Department has taken all of its legal actions.

61. The Operator shall **provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work** and must be presented to any Department personnel, or personnel from another agency upon demand.

62. The Operator herein grants to Department employees and/or their consultants (accompanied by a Department employee) the right to enter the project site at any time, to ensure compliance with terms and conditions of this Agreement and /or determine the impacts of the project on wildlife and aquatic resources and /or their habitats.

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63. The Operator shall notify the Department, in writing, at least five (5) days prior to initiation of construction (project) activities (**) and at least five (5) days prior to completion of construction (project) activities. Notification shall be sent to the Department at 4949 Viewridge Ave., San Diego, CA 92123, Attn: ES. SAA # R5-2001-0132.

64. The Department reserves the right to cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator or any contractors working for the Operator, has breached any of the terms or conditions of the agreement.

65. The Department reserves the right to suspend or cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of this Agreement, or for other reasons, including but not limited to the following:

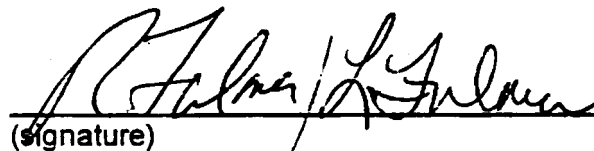
- a. The Department determines that the information provided by the Operator in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;
- c. The project or project activities as described in the Notification/Agreement have changed;
- d. The conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment

CONCURRENCE

This Agreement becomes effective on the Departments signature and the construction portion terminates on 12/31/2002. This Agreement shall remain in effect to satisfy the mitigation terms/conditions of this Agreement.

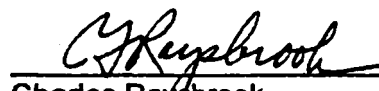
This agreement was prepared by Betty Courtney

(Operator's name)

 6/19/01
(signature) (date)


(title)

California Dept. of Fish and Game

 07/06/01
Charles Raybrook (date)
Regional Manager

SAA# R5-2001-0132