

STATE OF CALIFORNIA-THE RESOURCES AGENCY

GRAY DAVIS Governor

DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 487-4201
FAX (858) 487-4235



July 13, 2001

State of California
Department of Transportation, District 11
Attn: David Stebbins
P.O. Box 85406
San Diego, CA 92186

Dear Mr. Stebbins,

Enclosed is Streambed Alteration Agreement R5-2001-0147 that authorizes work on the Bayshore Bike Route project impacting Sweetwater River in San Diego County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Determination (NOD) on the project on July 13, 2001. Under CEQA regulations, the project has a 30-day statute of limitations on court challenges of the Department's approval under CEQA.

The Department believes that the project fully meets the requirements of the Fish and Game Code and CEQA. However, if court challenges on the NOD are received during the 30-day period, then an additional review or even modification of the project may be required. If no comments are received during the 30-day period, then any subsequent comments need not be responded to. This information is provided to you so that if you choose to undertake the project prior to the close of the 30-day period, you do so with the knowledge that additional actions may be required based on the results of any court challenges that are filed during that period.

Please contact Pam Beare at (858) 467-4229 if you have any questions regarding the Streambed Alteration Agreement.

Sincerely,

William F. Tyssul
C.F. Raysbrook
Regional Manager

Enclosure

cc: Pam Beare

CALIFORNIA DEPARTMENT OF FISH AND GAME

4949 Viewridge Avenue
San Diego, California 92123

Notification No. R5-2001-0147

Page 1 of 5

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 David Stebbins of the State of California, Department of Transportation, District 11, P.O. Box 85406, San Diego, CA 92186, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 14th 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): Sweetwater River, San Diego County, California, (Section __, Township 17S -18S, Range 2W, National City Quad.).

WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within, and adjacent to, the Sweetwater River, specifically identified as follows: horn snails (*Cerethidia californica*), lined shore crabs (*Pachygrapsus crassipes*), yellow shore-crabs (*Hemigrapsus oregonensis*), topsmelt (*Atherinops affinis*), California killifish (*Fundulus parvipinnis*), California halibut (*Paralichthys californicus*), diamond turbot (*Hypsopsetta guttulata*), staghorn sculpin (*Leptocottus armatus*), willet (*Catoptrophus semipalpatus*), marbled godwit (*Limosa fedoa*), long-billed curlew (*Nemenius americanus*), great blue heron (*Ardea herodias*), common egret (*Casmerodius albus*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sterna antillarum browni*), Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), salt marsh bird's beak (*Cordylanthus maritimus ssp. maritimus*), Palmer's frankenia (*Frankenia palmeri*) and all other aquatic and wildlife resources, and habitat for such species in the area.

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 Department's signature and terminates March 15, 2003 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

Page 2 of 5

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2001-0147

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. The Operator proposes to alter the streambed of the Sweetwater River just west of Interstate 5 to construct a bridge for an 12-foot wide bicycle path. This section of the river has been confined to a channel with soft bottom and riprap banks; no emergent vegetation or trees are present. Activities within the river include pile driving, and construction of concrete bridge footings and piers. There will be 2 piers with 12 piles/pier. Temporary coffer dams will be placed around the location for each footing and the water will be pumped out to allow construction of the footings and piers. Temporary placement of a barge or platform for the pile driver will also be necessary. (Piles, in addition to those for the bridge, would be needed if a platform is used - the platform would be no more than 20 feet wide and may need to be almost as long as the channel width.) Falsework for the bridge deck will be supported by the coffer dams and three temporary columns of timber piles (4-5 piles/column). All temporary piles will be removed once construction is completed.
3. The agreed work includes activities associated with No. 2 above. The project area is located in National City, San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including Final Negative Declaration/Finding Of No Significant Impact, Bayshore Bikeway in San Diego County Between National City and Chula Vista, dated May 1995, Environmental Reevaluation/Addendum for the Final Negative Declaration/Finding Of No Significant Impact for the Bay Shore Bike Way in Chula Vista and National City from E Street to 24th Street dated April 2001, Biological Report for the Sweetwater Channel Segment of the Bay Shore Bike Route, and Biological Assessment for the Sweetwater Channel Segment of the Bay shore Bike Route and shall be implemented as proposed unless directed differently by this agreement.
4. The Operator shall not permanently impact more than 23.8 ft² of channel bottom for the bridge footings. Additional temporary impacts would consist of disturbance of the channel bottom for placement of the coffer dams and, if needed, temporary piles for a platform. During all activities, turbidity that could adversely impact channel organisms or the adjacent salt marsh habitats, flora, and fauna will be limited to the greatest extent practicable. Procedures for limiting turbidity shall be approved by the Department prior to beginning any activities within the river.
5. The Operator shall not work within the stream from March 15 to September 15 to avoid impacts to nesting birds in adjacent habitats, including the following species listed as endangered under the California Endangered Species Act: California least tern, Belding's savannah sparrow and light-footed clapper rail. In order to avoid potential impacts to savannah sparrows and clapper rails that may be establishing territories prior to the March 15 date, work shall be further restricted as follows: (1) pile driving shall only occur from September 16 through January 31, and (2) a temporary wall shall be installed by January 1 that will shield construction activities from view of birds within the marsh habitats (plans for the wall shall be approved by the Department prior to its installation).
6. Access to the work site shall be via existing roads and access ramps.

Page 3 of 5

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2001-0147

7. 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, except as otherwise provided for in the Agreement and as necessary to complete authorized work.
8. Any equipment or vehicles driven and/or operated 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.
9. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
10. Staging/storage areas for equipment and materials shall be located outside of the stream.
11. The perimeter of the work site shall be fenced to prevent damage to adjacent habitats and a biological monitor shall be onsite during project construction to ensure that all conditions of this agreement are implemented and no impacts to adjacent marsh habitats or listed species occur.
12. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade; bottoms of permanent culverts shall be placed at or below stream channel grade.
13. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require that the work site be isolated and /or the construction of silt catchment basins, so that silt, or other deleterious materials are not allowed to pass to downstream reaches, or upstream during the incoming tide. The placement of any structure or materials in the stream for this purpose, not included in the original project description, shall be coordinated with the Department. Coordination shall include the negotiation of additional Agreement provisions.
14. Measures to divert runoff from steep, erodible surfaces into stable areas with little erosion potential shall be implemented. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
15. 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.
16. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.
17. If a stream's 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.
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. 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,

Page 4 of 5

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2001-0147

resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. 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.

20. 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.

21. 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.

22. 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. **All project personnel shall abide by all terms and conditions of this agreement.**

23. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

24. 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 Avenue, CA 92123, Attn: Pam Beare.

25. 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 South Coast Regional 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 is a violation of Fish and Game Code Section 1600 et. seq.

26. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. **It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator.** The Operator agrees to hold harmless 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 any other damages.

27. The Department reserves the right to suspend or cancel this Agreement for other reasons, including but not limited to the following

- a. The Department determines that the information provided by the Operator in support of

STREAMBED ALTERATION CONDITIONS FOR NOTIFICATION NUMBER: R5-2001-0147

- 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.

28. Before any suspension or cancellation of the Agreement, the Department will notify the Operator in writing of the circumstances which the Department believes warrant suspension or cancellation. The Operator will have seven (7) working days from the date of receipt of this notification to respond in writing to the circumstances described in the Department's notification. During the seven (7) day response period, the Operator shall immediately cease any project activities which the Department specified in its notification. The Operator shall not continue the specified activities until that time when the Department notifies the Operator in writing that adequate methods and/or measures have been identified and agreed upon to mitigate or eliminate the significant adverse effect.

CONCURRENCE

CALIFORNIA DEPT. OF TRANSPORTATION

CALIFORNIA DEPT. OF FISH AND GAME

John P. Rieger 13 Jul 01
 (signature) (date)

William E. Tjipets 7/13/01
 (signature) (date)

John P. Rieger Project Manager
 (Type or print name and title)

C.F. Raysbrook, Regional Manager