

California Department of Fish and Game

Lake and Streambed Alteration (LSA) Agreement Process and Prospects in 2009

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Road Ecology Meeting

Concord, California

February 2009





Purpose of LSA Session

- Orient to DFG statutory authority and basic LSA administrative process, including CEQA
- Orient to basic ecological and geomorphic principles (including jurisdiction), and project review
- Effective LSA application process
- Identify some recurring challenging and collaborative themes

DFG Statutory Authority

- **Lake and Streambed Alteration (Fish & G. Code 1600 et seq.)**
 - DFG has statutory responsibility for lakes and streams
- **California Endangered Species Act Incidental Take Permit (Fish & G. Code 2080.1, 2081(b); Cal. Code Regs. 783.0 et seq.)**
 - DFG has statutory responsibility for state listed species
- **California Environmental Quality Act (Public Resources Code 21000 et seq.; Cal. Code Regs. 15000 et seq.)**
 - DFG is Trustee and Responsible Agency for fish and wildlife resources

**Department of Fish and Game
Code Sections 1600-1616**

(amended January 1, 2004)



Fish and Game Code

Section 1602(a) :

“an entity may not ...

- 1. substantially divert or obstruct the natural flow*
- 2. substantially change or use any material from the bed, channel, or bank of any river, stream, or lake*
- 3. deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream or lake, unless*

...the Department receives written notification...”

Work in the channel and containment



Substantial Alterations



Other variants of substantial alteration



- Horizontal directional drilling
- Impoundment
- Geotechnical surveys
- Subsurface flow alteration

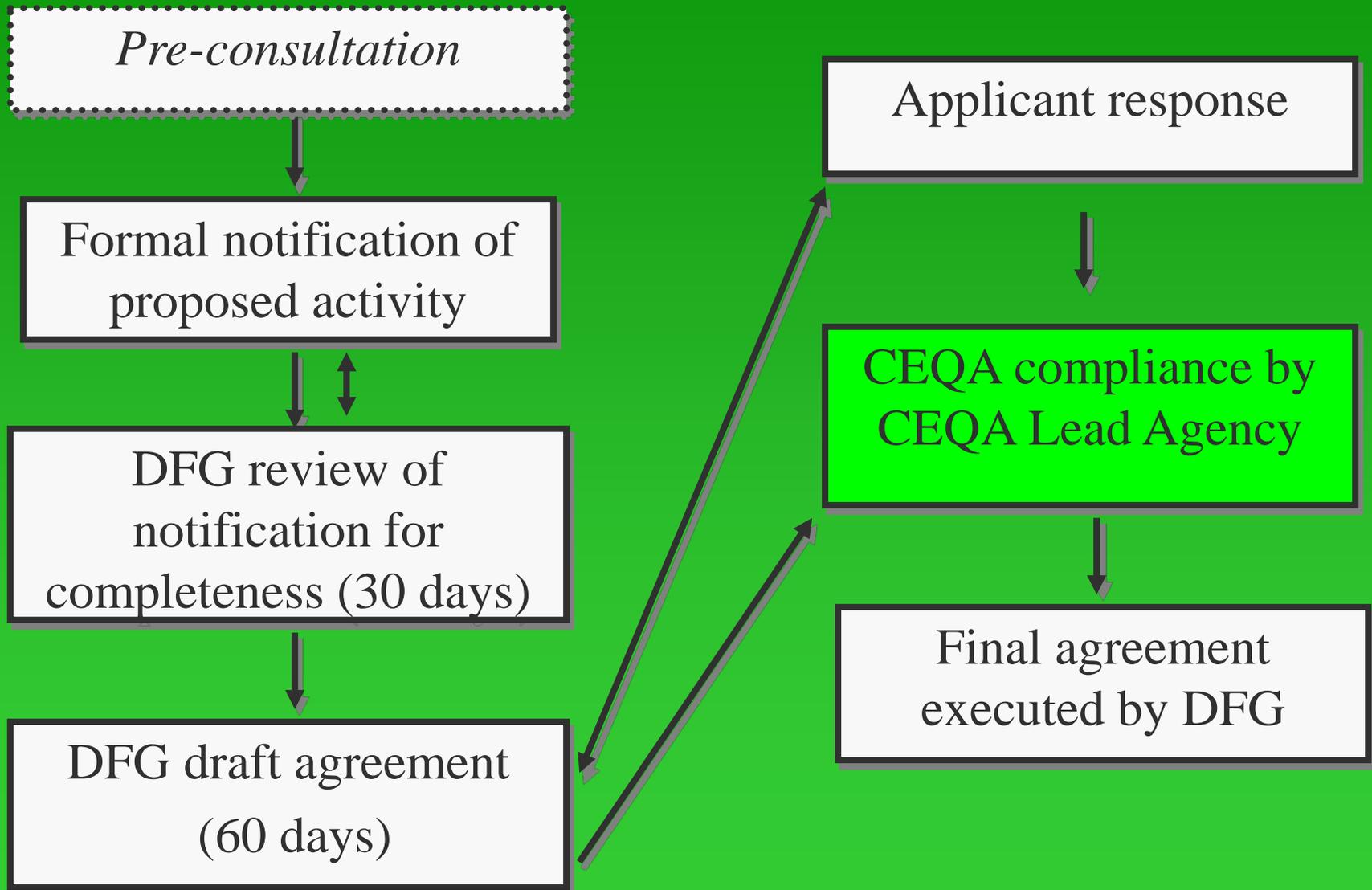
Deposition of material that “may pass into any river, stream or lake”



Jurisdiction: **DFG's call**

- 1) Might project substantially alter a bed, channel, bank or natural flow of a river, stream or lake (requires notification from Applicant), and
- 2) Might the activity substantially adversely affect an existing fish and wildlife resource (requires proponent notification AND an Agreement with DFG)

LSA Agreement Process



Trenching



The California Environmental Quality Act (CEQA) / LSA process



**Superior Court of California
County of Mendocino, Ukiah Branch**

Mendocino Environmental Center

vs

**California Department of Fish and
Game**

February 3, 1999

**This court order changed the
process for obtaining Lake or
Streambed Alteration
Agreements after**

May 1, 1999.

The Court found:

... the Department of Fish and Game must comply with the California Environmental Quality Act (CEQA) when issuing Lake or Streambed Alteration Agreements

DFG as Responsible Agency for CEQA review

- **DFG must consider:**
 - adequacy of document type (CE, ND, MND or EIR)
 - exposition of impacts
 - adequacy of mitigation and avoidance

DFG as agency authorizing LSA agreement

- Can add necessary mitigations in LSA agreement to adequately mitigate for specific impacts to stream
- Cannot use a CEQA exemption if mitigations (rather than avoidance) have to be used
- Will always use adequate CEQA document by Lead Agency to issue a Notice of Determination (“NOD”).

Key Concept for CEQA / 1600

For DFG to use another agency's CEQA document in support of the LSA agreement, the effect of the project specifically on the DFG jurisdictional LSA area should be clearly discernible.

Can a previously prepared CEQA document be used?

Yes, if it adequately covers the entirety of impacts and specific sites of the current project ...

DFG Jurisdiction

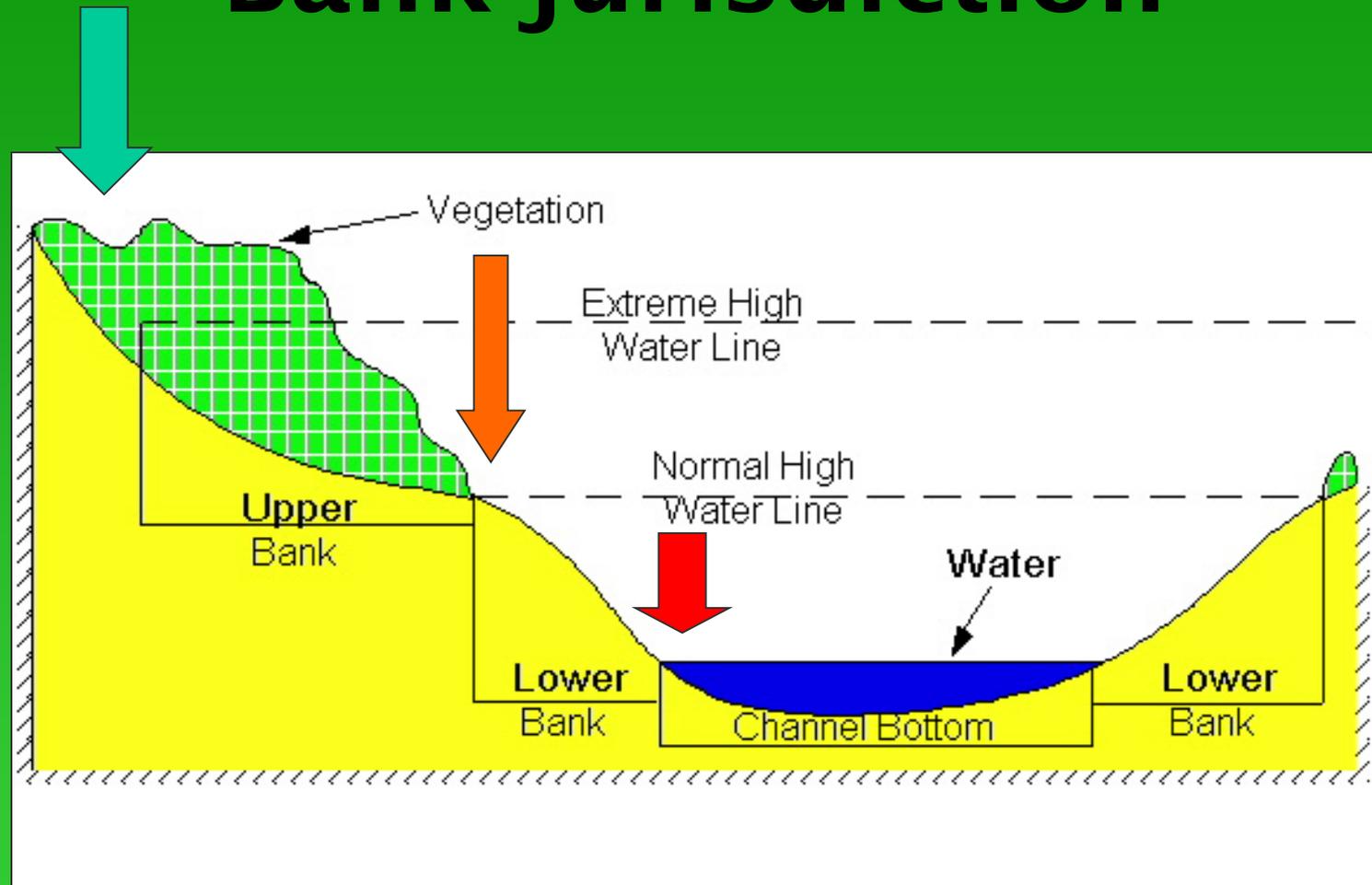




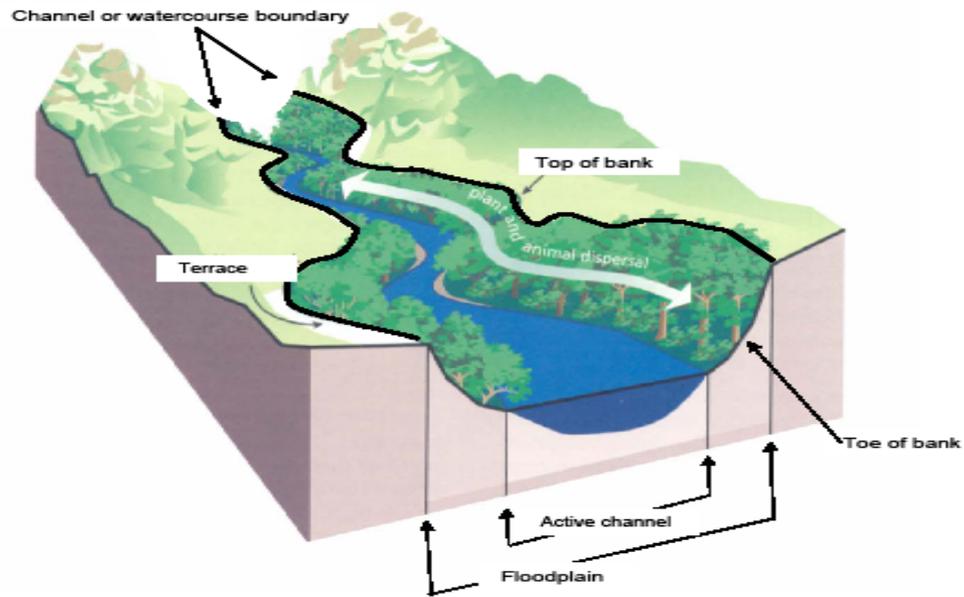
Jurisdictional terms and elements

- River, stream, lake
- Bed, channel, bank and natural flow
- Perennial, intermittent, or ephemeral (including desert washes)
- Fish need not be present
- Vegetated or unvegetated
- “Natural” or “artificial”

Bank jurisdiction



Bed, channel, and bank

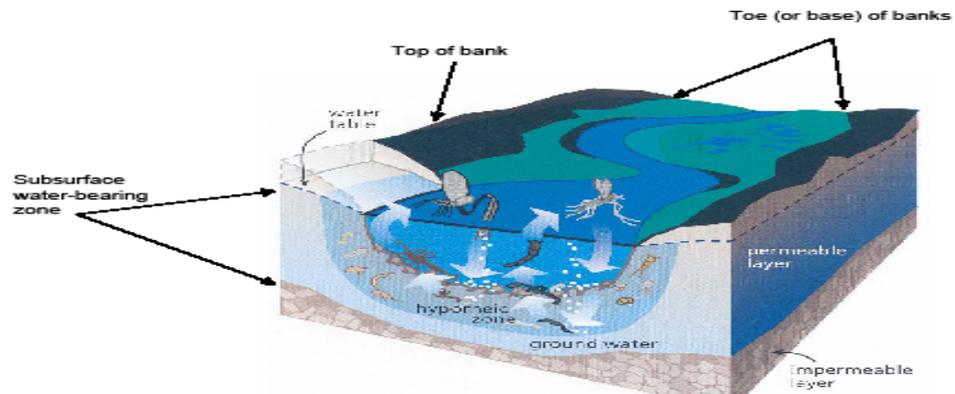


Channel with active floodplain



Mojave River

The hyporheic bed



Elements of Field Review





Field Review

- **Alteration to bed, channel or bank**
- **Alteration of water quantity or flow characteristics**
- **Alteration of water quality**

- **Effects on aquatic resources**
- **Effects on riparian vegetation**
- **Effects on terrestrial species**
- **Impacts to special status species**



Riparian “ecologistics”

- Fish
- Herptiles
- Birds and bats
- Germination
- Sedimentation
- Invasive species
- Native genotypes
- Corridors
- Cumulative impacts
- Habitat heterogeneity
- Channel “integrity”
- Avoidance of night lighting
- Seasonal timing

Hydroscaapes

- **Large debris (LWD)**
- **Retain vegetation for bank stability**
- **Dissipate new hydraulic energy entering channel**
- **Protect riffles, pools, and spawnable substrate**



Waterscapes and introduced hardscapes

- Access to floodplain**
- Bioengineering of banks**
- Avoidance of overarmoring**
- Adequately sized culverts
(fish and flood passage)**
- Bridges vs. culverts**

LSAA Conditions

- **Protective at a variety of levels:**
 - **Temporal**
 - **Individual (e.g. single tree mitigation)**
 - **Local population**
 - **Species**
- **Can be final or adaptive**
- **Can be negotiated**

Equipment containment in riparian zone



Seasonal restrictions



Slope rehabilitation





How to save time, money and the resource:

Plan the project to avoid or minimize impacts to fish and wildlife resources.

The less impacts the project has, the quicker it will move through environmental review.

Impacts, rather than size of project, ultimately dictate the level of agreement condition and CEQA review required.

Apply early

- A review cycle for a *complete* notification is about 90 days.
- 30 days for completion review plus 60 days for preparation of draft agreement by DFG.
- Timelines can be extended by mutual agreement.
- Agreement execution follows the receipt of a signed draft agreement from the Applicant and DFG compliance with the CEQA.

Front Load!

- **Pre-consultation, although not guaranteed, can save unnecessary delay later in the project cycle.**
- **Always include existing permits, and related information available at the time, in the notification process (e.g. USFWS, NOAA Fisheries, to avoid duplication.**

Apply well

- Follow the directions and provide the information requested.
- Note all project “side-effects” and related information requirements
 - Attachments for water diversion or gravel removal
 - Water re-route plans
 - Hydrological and biological studies

Apply well

- **Include amounts (linear feet, area, cubic yards, etc.)**
- **Completely describe the project including equipment to be used, erosion control measures planned, and the time schedules required to do the project.**



Caltrans/DFG Collaboration and Challenges on LSA Agreements

- **Collaborative opportunities:**
 - Access: DFG must have it to move an agreement forward
 - If project changes relative to resource impacts, Applicant needs to notify – before taking action.
- **Occasional tension between fiscal and biological clocks and needs**

Caltrans/DFG

LSA Collaboration and Challenges

cont'd.

- **Recognition / training useful:**
 - DFG jurisdictional areas
 - CEQA liability for us all: improper use of Categorical Exemptions
 - Fees can be problematic
 - Mitigation and monitoring: the good and the abandoned
 - Agreement timelines: completion, draft agreement, operation of law
 - Approaches evolve over time with increased understanding of resources
- **Positive collaborative themes**
 - Both DFG and DOT are government agencies
 - Both entrusted with public service
 - Often working with biologist counterparts

LSA Program Information

www.dfg.ca.gov/1600

**(Lake and Streambed alteration
link)**

or

Regional DFG offices

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