

FOR CONTRACT NO.: 06-353414

INFORMATION HANDOUT

WATER QUALITY

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

AGREEMENTS

CALIFORNIA DEPARTMENT OF FISH AND GAME

NOTIFICATION NO.2008-0148-R4

UNITED STATES FISH AND WILDLIFE SERVICE (Biological Opinion)

ROUTE: 06-Ker-46-0.0/11.8



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

11 September 2008

Tamra Nunes, Associate Environmental Planner
California Department of Transportation
2015 East Shields Avenue, Suite 100
Fresno, CA 93727

ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS ASSOCIATED WITH THE STATE ROUTE 46 EXPRESSWAY, SEGMENT 2 (PM 0.0/7.3) PROJECT, KERN COUNTY

APPLICANT: California Department of Transportation

PROJECT: Refer to Attachment 1 for Project Information

ACTION:

1. Order for Standard Certification
2. Order for Technically-conditioned Certification
3. Order for Denial of Certification

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and Section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action is conditional upon total payment of the full fee required under 23 CCR Section 3833, unless otherwise stated in writing by the certifying agency.

California Environmental Protection Agency

4. Certification is valid for the duration of the described project. The Discharger shall notify the Regional Water Board in writing within 7 days of project completion.

ADDITIONAL CONDITIONS (for Certification Action 2):

In addition to the four standard conditions, the applicant shall satisfy the following:

1. A finalized Streambed Alteration Agreement must be issued by DFG before this project may proceed. A copy of the finalized Streambed Alteration Agreement shall be submitted to the Regional Water Board.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Bridget Supple, Environmental Scientist
(559) 445-5919
bsupple@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that the proposed discharge from the State Route 46 Expressway, Segment 2 (PM 0.0/7.3) project will comply with the applicable provisions of Sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Water Quality Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)," which is enclosed.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigations being completed in strict compliance with the applicant's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Board's *Water Quality Control Plan for the Tulare Lake Basin, Second Edition, Revised January 2004*.


Pamela G. Creedon
Executive Officer

Enclosure: Project Information

cc: (See next page)

Tamra Nunes,
Associate Environmental Planner
California Department of Transportation

- 3 -

11 September 2008

cc: Dave Smith, Chief, Wetlands Regulatory Office, U.S. Environmental Protection Agency,
Region 9, San Francisco (email)
Kathleen Dadey, Chief, Sacramento South Branch, Regulatory Unit, Department of the
Army, Corps of Engineers, Sacramento
Bill Orme, Water Quality Certification Unit Chief, Division of Water Quality, State Water
Resources Control Board, Sacramento (email)
W.E. Loudermilk, Regional Manager, San Joaquin Valley-Southern Sierra Region,
California Department of Fish and Game, Fresno

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**ATTACHMENT 1
PROJECT INFORMATION**

Application Date: 21 July 2008

Applicant: California Department of Transportation (Caltrans)

Applicant Representatives: Tamra Nunes, Associate Environmental Planner

Project Name: State Route 46 Expressway, Segment 2 (PM 0.0/7.3)

Applicant Number: RN #343

Project Location: 35°43'36" North Latitude, 120°11'31" West Longitude at west end of project to 35°40'14" North Latitude, 120°04'55" West Longitude at east end of project; Sections 30, 31, 32, and 33 of Township 25 South, Range 17 East, and Sections 2, 3, 4, 10, 11, 12, and 13 of Township 26 South, Range 17 East, MDB&M.

Project Duration: 23 October 2009 to 1 July 2012

County: Kern

Receiving Water(s) (hydrologic unit): Unnamed drainages that are Valley Floor Waters; Tulare Lake Hydrologic Basin, South Valley Floor Hydrologic Unit, Antelope Plan Hydrologic Area (# 558.60) and Temblor Hydrologic Unit (# 573.00).

Water Body Type: Drainages

Designated Beneficial Uses: The designated beneficial uses of Valley Floor Waters are: agricultural supply; industrial service supply; industrial process supply; water contact recreation; non-contact water recreation; warm freshwater habitat; wildlife habitat; rare, threatened, or endangered species; and groundwater recharge.

Project Description: Caltrans proposes to convert the existing two-lane conventional highway into a four-lane expressway from the Kern County line to PM 7.3 near Keck's Corner (Segment 2 is a portion of a larger project). Riprap will be placed in drainages to prevent deterioration of side slopes, and culverts will be extended to accommodate the road widening.

Preliminary Water Quality Concerns:	Soil erosion, increased turbidity, deposition of settleable material, and transport of pollutants to the drainages.
Proposed Mitigation To Address Concerns:	Best Management Practices (BMPs) will be implemented during construction. Work in the drainages will take place when the waterways will be dry. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities.
Fill/Excavation Area:	The project will result in permanent impacts of 0.417 acres (1,207 linear feet) to the unvegetated streambed of the drainages.
Dredge Volume (cy):	None
U.S. Army Corps of Engineers Permit:	Caltrans applied for Nationwide Permit No. 14 on 11 July 2008.
Department of Fish and Game Streambed Alteration Agreement:	Caltrans applied for a Streambed Alteration Agreement from DFG on 17 July 2008.
CEQA Compliance:	Caltrans prepared a Mitigated Negative Declaration (2003041036) and filed it with the State Clearinghouse on 18 May 2005.
Compensatory Mitigation:	Caltrans will pay \$93,825 for 0.6255 acres of jurisdictional streambed; The details of mitigation bank will be coordinated with U.S. Army Corps of Engineers.
Application Fee Provided:	A fee of \$1,500.00 was submitted on 21 July 2008, as required by 23 CCR Section 3833(b)(2)(A).

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED
STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)**

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e g , soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the *SWANCC* decision) called into question the extent to which certain “isolated” waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a “project” within the meaning of CEQA, since a “project” results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term “project” does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs (Title 14, CCR section 15061(b)(3))
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or general WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.



Debbie Irvin
Clerk to the Board

AGREEMENT



**California Fish and Game Code Section 1602
Stream Alteration Agreement No. 2008-0148-R4
California Department of Transportation
Tributary to Franciscan Creek - Kern County
KER 46 PM 0.0-7.3 EA 06-0F820**

Parties:

California Department of Fish and Game
Central Region
1234 East Shaw Avenue
Fresno, California 93710

California Department of Transportation
Tamra Nunes
2015 East Shields Avenue, Suite 100
Fresno, California 93728

WHEREAS:

1
2
3 1. Mrs. Tamra Nunes, representing the California Department of Transportation (referred to
4 as "Caltrans") on July 21, 2008, notified ("Notification" No. 2008-0148-R4) the Department of
5 Fish and Game (Department) of their intent to divert or obstruct the natural flow of, or change
6 the bed or banks of, or use materials from tributary to Franciscan Creek – Kern County, waters
7 over which the Department asserts jurisdiction pursuant to Division 2, Chapter 6 of the
8 California Fish and Game Code.

9
10 2. Caltrans may not commence any activity that is subject to Fish and Game Code Sections
11 1600 et seq. until the Department has found that such Project shall not substantially adversely
12 affect an existing fish or wildlife resource or until the Department's proposals, or the decisions
13 of a panel of arbitrators, have been incorporated into such projects.

14
15 3. Fish and Game Code Sections 1600 et seq. make provisions for the negotiation of
16 agreements regarding the delineation and definition of appropriate activities, Project
17 modifications and/or specific measures necessary to protect fish and wildlife resources.

18
19 4. The Department has determined that without the protective features identified in this
20 Agreement, the activities proposed in the Notification could substantially adversely affect fish
21 and wildlife.

Agreement No. 2008-0148-R4
Department of Transportation
Tributary to Franciscan Creek -
Kern County

1 **NOW THEREFORE, IT IS AGREED THAT:**

2
3 1. The receipt of this document ("Agreement"), by Caltrans, satisfies the
4 Department's requirement to notify Caltrans of the existence of an existing fish and
5 wildlife resource that may be substantially adversely affected by the Project that is
6 described in the Notification.

7
8 2. The contents of this Agreement constitute the Department's proposals as to
9 measures necessary to protect fish and wildlife resources, and satisfy the Department's
10 requirement to submit these proposals to Caltrans.

11
12 3. The signature of Caltrans' representative on this Agreement constitutes Caltrans'
13 commitment to incorporate the Department's proposals into the Project that is described
14 in the Notification.

15
16 4. This Agreement does not exempt Caltrans from complying with all other applicable
17 local, State and Federal law, or other legal obligations.

18
19 5. This Agreement, alone, does not constitute or imply the approval or endorsement
20 of a Project, or of specific Project features, by the Department of Fish and Game,
21 beyond the Department's limited scope of responsibility, established by Code Sections
22 1600 et seq. This Agreement does not therefore assure concurrence, by the
23 Department, with the issuance of permits from this or any other agency. Independent
24 review and recommendations shall be provided by the Department as appropriate on
25 those projects where local, State or Federal permits or environmental reports are
26 required.

27
28 6. This Agreement does not authorize the "take" (hunt, pursue, catch, capture, or kill,
29 or attempt to hunt, pursue, catch, capture, or kill) of State-listed threatened or
30 endangered species. If the Operator, in the performance of the agreed work, discovers
31 the presence of a listed species in the Project work area, work shall stop immediately.
32 Caltrans shall not resume activities authorized by this Agreement until such time as
33 valid "take" permits are obtained from the Department pursuant to Fish and Game Code
34 Sections 2081(a) and 2081(b) as appropriate. Incidental Take Permit 2081-2008-006-
35 04 has been obtained for the parent project the Route 46 Expressway Project.

36
37 7. To the extent that the Provisions of this Agreement provide for the diversion of
38 water, they are agreed to with the understanding that Caltrans possesses the legal right
39 to so divert such water.

40
41 8. To the extent that the Provisions of this Agreement provide for activities that
42 require Caltrans to trespass on another owner's property, they are agreed to with the
43 understanding that Caltrans possesses the legal right to so trespass.

Agreement No. 2008-0148-R4
Department of Transportation
Tributary to Franciscan Creek -
Kern County

1 9. To the extent that the Provisions of this Agreement provide for activities that are
2 subject to the authority of other public agencies, said activities are agreed to with the
3 understanding that all appropriate permits and authorizations shall be obtained prior to
4 commencing agreed activities.

5
6 10. All Provisions of this Agreement remain in force throughout the term of the
7 Agreement. Any Provision of the Agreement may be amended at any time, provided
8 such amendment is agreed to in writing by both parties. Mutually approved
9 amendments become part of the original Agreement and are subject to all previously
10 negotiated Provisions. The Agreement may be terminated by either party, subject to
11 30 days written notification.

12
13 11. Caltrans shall provide a copy of the Agreement to the Project supervisors and all
14 contractors and subcontractors. Copies of the Agreement shall be available at work
15 sites during all periods of active work and shall be presented to Department personnel
16 upon demand.

17
18 12. Caltrans agrees to provide the Department access to the Project site at any time to
19 ensure compliance with the terms, conditions, and Provisions of this Agreement.

20
21 13. Caltrans and any contractor or subcontractor, working on activities covered by this
22 Agreement, are jointly and separately liable for compliance with the Provisions of this
23 Agreement. Any violation of the Provisions of this Agreement is cause to stop all work
24 immediately until the problem is reconciled. Failure to comply with the Provisions and
25 requirements of this Agreement may result in prosecution.

26
27 14. Caltrans assumes responsibility for the restoration of any fish and wildlife habitat
28 which may be impaired or damaged either directly or, incidental to the Project, as a
29 result of failure to properly implement or complete the mitigation features of this
30 Agreement, or from activities which were not included in the Caltrans' Notification.

31
32 15. It is understood that the Department enters into this Agreement for purposes of
33 establishing protective features for fish and wildlife, in the event that a Project is
34 implemented. The decision to proceed with the Project is the sole responsibility of
35 Caltrans, and is not required by this Agreement. It is agreed that all liability and/or
36 incurred costs, related to or arising out of Caltrans' Project and the fish and wildlife
37 protective conditions of this Agreement, remain the sole responsibility of Caltrans.
38 Caltrans agrees to hold harmless and defend the Department of Fish and Game
39 against any related claim made by any party or parties for personal injury or other
40 damage.

41
42 16. The terms, conditions, and Provisions contained herein constitute the limit of
43 activities agreed to and resolved by this Agreement. The signing of this Agreement
44 does not imply that Caltrans is precluded from doing other activities at the site.

Agreement No. 2008-0148-R4
Department of Transportation
Tributary to Franciscan Creek -
Kern County

1 However, activities not specifically agreed to and resolved by this Agreement are
2 subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

3
4 **California Environmental Quality Act (CEQA) Compliance:** In approving this
5 Agreement, the Department is independently required to assess the applicability of
6 CEQA. The features of this Agreement shall be considered as part of the overall
7 Project description. Caltrans' concurrence signature on this Agreement serves as
8 confirmation to the Department that the activities that shall be conducted under the
9 terms of this Agreement are consistent with the Project described in Notification
10 No. 2008-0148-R4. Caltrans submitted a Negative Declaration May 12, 2005, State
11 Clearinghouse No. 2003041036, for the parent Project the State Route (SR) 46
12 Expressway, then referred to as the 4-Lane Widening or Expansion Project.

13
14 **Project Location:** The work authorized by this Agreement will occur at three
15 (3) locations along SR 46 between the San Luis Obispo county line and Kecks Corner
16 in Kern County, location No. 1 at Post Mile (PM) 1.20-1.85, location No. 2 at PM 4.62-
17 4.66, and location No. 3 at PM 6.44-6.52 (**Figure 1**). This is within the Project limits of
18 the second Segment of the SR 46 Expressway from PM 0.0-7.3, approximately 15
19 miles west of the City of Lost Hills in Township 25 and 26 south, Range 17 east, Quads
20 Orchard Peak and Sawtooth Ridge.

21
22 **Project Description:** Caltrans' Notification includes Fish and Game Notification Form
23 FG2023 and construction plans. The Notification comprises Caltrans' Project
24 description, and it is used as the basis for establishing the protective Provisions that are
25 included in this Agreement. Any changes or additions to the Project as described in the
26 Notification shall require additional consultation and protective Provisions. The
27 Department's concurrence with Caltrans' CEQA Determination is based upon Caltrans'
28 commitment to full implementation of the Provisions of this Agreement. Caltrans has
29 proposed the following scope of work. The bulleted items comprise the activities
30 authorized by this Agreement.

- 31
- 32 • Location No. 1 – Riprap will be placed at six (6) spots where road erosion occurs
33 between PM 1.20 and 1.85.
 - 34 • Location No. 2 – Riprap will be placed at the bend in the ditch where erosion
35 occurs at PM 4.62 - 4.66.
 - 36 • Location No. 3 – Riprap at PM 6.44 – 6.47 and culvert extension at PM 6.52 which
37 will include increasing the size of the box culvert from 6 x 7 feet to 10 x 12 feet to
38 help facilitate kit fox passage. The culvert extension will require the removal of
39 trees and shrubs including mulefat (*Baccharis salicifolia*), tree tobacco (*Nicotiana*
40 *glauca*) and tamarisk (*Tamarix sp.*). When informed that mulefat is a native
41 riparian species, Caltrans proposed transplanting the mulefat north of the area of
42 impact and possibly some south of SR 46.
 - 43
 - 44

Figure 1
Department of Fish and Game
Conservation Planning GIS
Central Region
USGS Quad

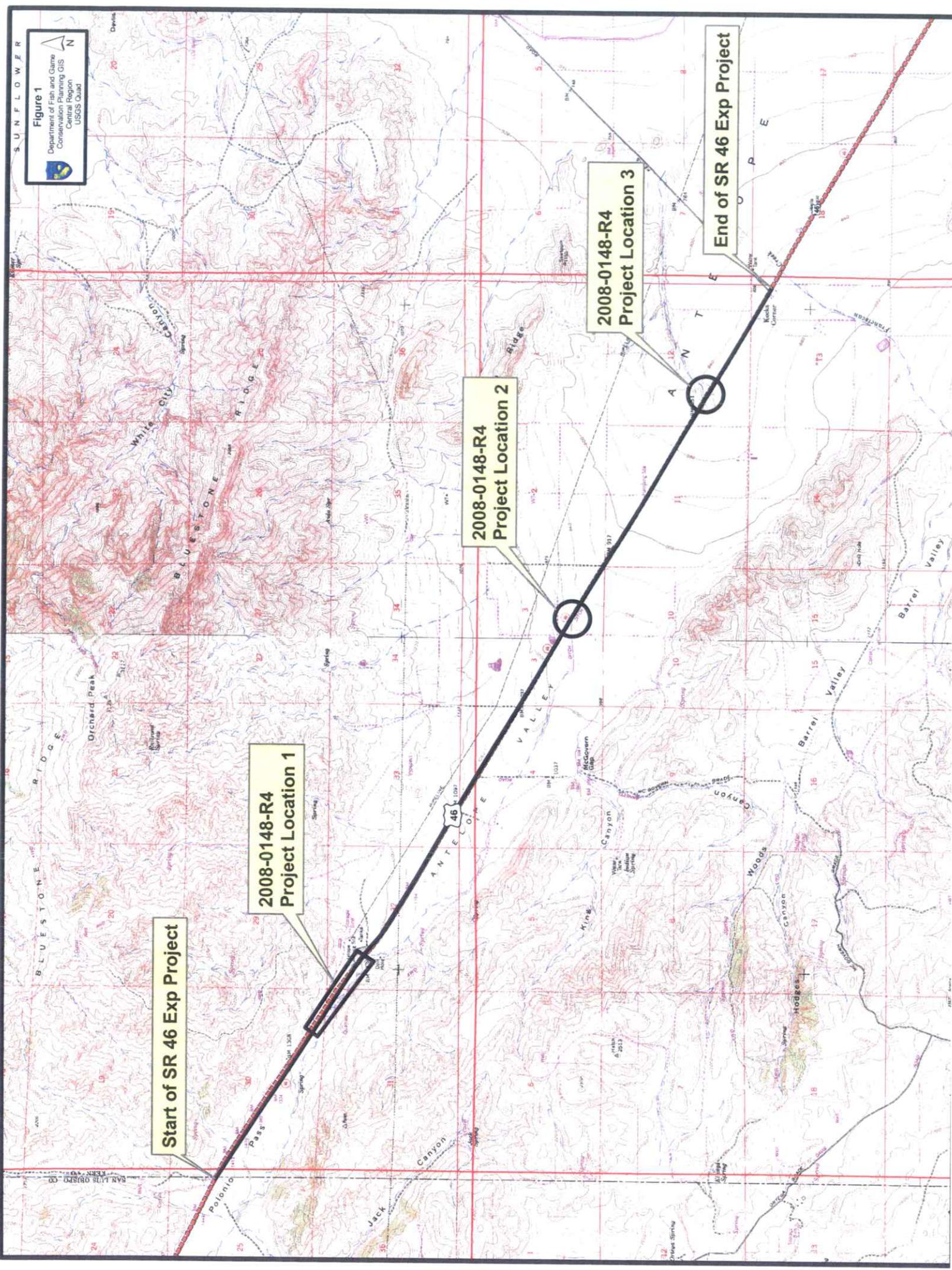
Start of SR 46 Exp Project

**2008-0148-R4
Project Location 1**

**2008-0148-R4
Project Location 2**

**2008-0148-R4
Project Location 3**

End of SR 46 Exp Project



1 **Plant and Animal Species of Concern:** This Agreement is intended to minimize and
2 mitigate adverse impacts to the wildlife resources that may occupy this area of the
3 tributary to Franciscan Creek and the immediate adjacent habitat. The California Natural
4 Diversity Database shows the following species as previously documented in the
5 vicinity:
6

7 Species	8 Listing
9 Blunt-nosed leopard lizard (<i>Gambelia sila</i>)	Fed Endangered, State Endangered and Fully Protected
10 San Joaquin kit fox (<i>Vulpes macrotis mutica</i>)	Fed Endangered and State Threatened
11 Giant kangaroo rat (<i>Dipodomys ingens</i>)	Fed Endangered and State Endangered
12 San Joaquin antelope squirrel 13 (<i>Ammospermophilus nelsoni</i>)	State Threatened
14 Tulare grasshopper mouse 15 (<i>Onychomys torridus tularensis</i>)	DFG Species of Special Concern
16 Kern Mallow (<i>Eremalche kernensis</i>)	Fed Endangered, CNPS 1B.1
17 Recurved larkspur (<i>delphinium recurvatum</i>)	CNPS 1B.2

18
19 **Fully Protected Species:** Neither this Agreement nor the Incidental Take Permit (ITP)
20 2081-2008-006-04 authorizes the “take” of any fully protected species. See Fish and
21 Game Code section 3511, section 4700, section 5050, and section 5515. The
22 Department finds that the Project can likely be carried out without “take” of blunt-nosed
23 leopard lizard provided the conditions in this agreement, the ITP and in all other
24 approvals are fully implemented and adhered to. The Department therefore finds that
25 the Project as conditioned can be carried out in compliance with Fish and Game Code.
26

27 **California Endangered Species Act (CESA) Compliance:** Incidental Take Permit
28 (ITP) 2008-006-04 has been obtained for the parent project the Route 46 four-Lane
29 Expansion Project. The ITP covers the following species:
30

- 31 1. San Joaquin kit fox (*Vulpes macrotis mutica*)
32
- 33 2. San Joaquin antelope squirrel (*Ammospermophilus nelsoni*)
34
- 35 3. Giant kangaroo rat (*Dipodomys ingens*)
36

37 The above species as well as birds, mammals, reptiles, amphibians, fish, invertebrates
38 and plants that comprise the local ecosystem could be subject to potential generated
39 impacts from this Project if the following provisions are not followed.

1 **PROVISIONS:**

2
3 General

4
5 1. The Notification, together with all supporting documents, is hereby incorporated
6 into this Agreement to describe the location and features of the proposed Project.
7 Caltrans agrees that all work shall be done as described in the Notification and
8 supporting documents, incorporating all wildlife resource protection features, mitigation
9 measures, and provisions as described in this Agreement. Caltrans further agrees to
10 notify the Department of any modifications that need to be made to the Project plans
11 submitted to the Department. At the discretion of the Department, modifications may
12 be deemed minor, requiring an amendment to this Agreement, or substantial requiring
13 the submission of a new notification application. If the later is the case, this Agreement
14 becomes null and void. Failure to notify the Department of changes to the original
15 plans or subsequent amendments to this Agreement may result in the Department
16 suspending or canceling this Agreement.

17
18 2. Before the start of construction/work activities covered under this Agreement, all
19 workers shall have received training from Caltrans' staff, or approved alternate trainer,
20 on the content of this Agreement, the resources at stake, and the legal consequences
21 of non-compliance.

22
23 3. When known, prior to beginning work, Caltrans shall provide a construction/work
24 schedule to the Department (fax to Laura Peterson-Diaz, Environmental Scientist, at
25 (559) 243-4020). Please reference the Agreement number. Caltrans shall also notify
26 the Department upon the completion of the activities covered by this Agreement.

27
28 4. Agreed activities within the bed, bank or channel of the tributary to Franciscan Creek
29 may commence any time after the Department has signed this Agreement. This
30 Agreement shall remain in effect for five (5) years beginning on the date signed by the
31 Department. If the Project is not completed prior to the expiration date defined above,
32 Caltrans shall contact the Department to negotiate a new expiration date and any new
33 requirements.

34
35 Flagging/Fencing

36
37 5. Within the riparian corridor, Caltrans shall identify the upstream and downstream
38 limits of the minimum work area required, access routes, the Project footprint, plus all
39 Environmentally Sensitive Areas (ESA). These boundaries shall be defined by the
40 Caltrans' Project engineer and biologist, and flagged/fenced prior to the beginning of
41 construction. These limits shall not extend beyond Caltrans' right of way and/or the
42 construction easement, and shall be confined to the minimal area needed to
43 accomplish the proposed work. Flagging/fencing shall be maintained in good repair for
44 the duration of the Project.

1 Wildlife

2
3 6. Caltrans' biologist shall perform general wildlife surveys of the Project area, prior
4 to Project construction with particular attention to evidence of the presence of any of
5 the species listed above and shall report any possible adverse affect to fish and wildlife
6 resources not originally reported. If the survey shows presence of any wildlife species
7 which could be impacted, Caltrans shall contact the Department and mitigation, specific
8 to each incident, shall be developed. If any State- or Federal-listed Threatened or
9 Endangered species, not already addressed, are found within the proposed work area
10 or could be impacted by the work proposed, a new Agreement may be necessary and a
11 new CEQA analysis may need to be conducted.

12
13 7. To protect nesting birds, Caltrans' biologist shall make a survey for nesting activity
14 in and adjacent to the defined "work area", before construction begins. If any nesting
15 activity is observed, Caltrans shall contact the Department and mitigation, specific to
16 each incident, shall be developed.

17
18 8. All the Conditions of Approval for the ITP 2081-2008-006-04 must also be
19 followed during the work on the portions of the Project also covered by this agreement.

20
21 9. If any wildlife is encountered during the course of construction, said wildlife shall
22 be allowed to leave the construction area unharmed.

23
24 Vegetation

25
26 10. For this Project there will be impacts to the following native plant species: mule fat
27 (*Baccharis salicifolia*), sunflower (*Helianthus annuua*), narrow-leafed milkweed
28 (*Asclepias fascicularis*), and stinging nettle (*Urtica dioica*) as a result of planned
29 construction activities. Precautions shall be taken to avoid any unnecessary damage to
30 native plants and vegetation by people or equipment for the duration of the Project.

31
32 11. There is no restriction on the removal of non-native plants including black
33 mustard, Russian thistle, prickly lettuce, tamarisk, and tree tobacco provided the
34 removal will not cause impacts to nesting birds. Removal of additional non-native
35 plants, beyond what is required for the Project, will be beneficial to native plants
36 becoming established in the area.

37
38 Transplantation

39
40 The mulefat shall be removed as carefully as possible. Some reduction of the canopy
41 is expected; clean trim cuts should be made rather than breaking branches. As much
42 of the root ball as possible should be extracted. The location where each shrub will be

1 moved to should be prepared before the removal begins so that it can be immediately
2 transplanted. The plants should be spaced appropriately, taking in to account the wide
3 canopy growth form. After all the mulefat have been transplanted, a one (1) year
4 monitoring and maintenance period shall begin, with irrigation and weeding as
5 necessary to insure their survival. A report shall be submitted to the Department,
6 including before and after photographs, within the first month after one (1) year has
7 passed. If less then 70 percent survive the year, then additional mitigation will be
8 required.

9
10 Vehicles

11
12 12. Construction vehicle access to the stream banks and bed shall be limited to
13 predetermined ingress and egress corridors. Heavy equipment will need to access the
14 creek during the course of the Project, but will do so when the creek is dry. All other
15 areas adjacent to the work site shall be considered an ESA and shall remain off-limits
16 to construction equipment.

17
18 Pollution

19
20 13. Caltrans and all contractors and subcontractors shall be subject to the pollution
21 protective and other features of Department of Transportation Standard Specifications
22 Section 7-1.01G and Fish and Game Code Sections 5650 and 12015.

23
24 14. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents
25 shall be located outside of the stream channel and banks. Any equipment or vehicles
26 driven and/or operated within or adjacent to the creek shall be checked and maintained
27 daily to prevent leaks of materials that, if introduced to water, could be deleterious to
28 aquatic life. If a spill should occur, cleanup shall begin immediately. The Department
29 shall be notified as soon as possible by Caltrans and shall be consulted regarding
30 further cleanup procedures.

31
32 Erosion

33
34 15. All disturbed soils shall be stabilized to reduce erosion potential, both during and
35 following construction. Erosion control Best Management Practices (BMP's) shall be
36 applied to all disturbed areas.

37
38 Fill/Spoil

39
40 16. Rock, gravel, and/or other materials shall not be imported into or moved within the
41 stream, except as otherwise addressed in this Agreement. Only on-site materials and
42 clean imported fill shall be used to complete the Project.

1 17. Fill shall be limited to the minimal amount necessary to accomplish the agreed
2 activities. Excess fill material shall be moved off-site at Project completion.

3
4 Restoration

5
6 18. Excess material must be removed from the Project site pursuant to Department of
7 Transportation Standard Specifications Section 7-1.13.

8
9 19. Caltrans shall make the final contour of the site match the adjacent slope of the
10 land and provide the appropriate surface water drainage. All areas subject to
11 temporary ground disturbance, including storage and staging areas, temporary roads,
12 pipeline corridors, etc., shall be recontoured, if necessary, and revegetated to promote
13 restoration of the area.

14
15 20. All areas subject to ground disturbance on the bank shall be stabilized. Planting,
16 seeding with native species, and mulching is conditionally acceptable. Where suitable
17 vegetation cannot reasonably be expected to become established, non-erodible
18 material shall be used for such stabilization. Any installation of non-erodible material,
19 not included in the original Project description, shall be coordinated with the
20 Department. Coordination may include the negotiation of additional Agreement
21 provisions for this activity

22
23 **MONITORING AND REPORTING PROGRAM (MRP):**

24
25 PURPOSE

26
27 The purpose of the MRP is to ensure that the protective measures required by the
28 Department are properly implemented, and to monitor the effectiveness of those
29 measures.

30
31 OBLIGATIONS OF THE OPERATOR

32
33 Caltrans shall have primary responsibility for monitoring compliance with all protective
34 measures included as "Provisions" in this Agreement. Protective measures must be
35 implemented within the time periods indicated in the Agreement and the program
36 described below.

37
38 Caltrans shall submit the following Reports to the Department:

- 39
40 • Verification of employee training (Provision 2).
41
42 • Construction/work schedule (Provision 3).

- 1 • Wildlife survey results (Provisions 6 and 7).
2
3 • A Final Project Report submitted within 30 days after the Project is completed.
4 The final report shall summarize the Project construction, including any problems
5 relating to the protective measures of this Agreement. "Before and After" photo
6 documentation of the Project site shall be required.
7

8 In addition to the above monitoring and reporting requirements, the Department
9 requires as part of this MRP that Caltrans:

- 10
11 • Immediately notify the Department in writing if monitoring reveals that any of the
12 protective measures were not implemented during the period indicated in this
13 program, or if it anticipates that measures will not be implemented within the time
14 period specified.
15
16 • Immediately notify the Department if any of the protective measures are not
17 providing the level of protection that is appropriate for the impact that is occurring,
18 and recommendations, if any, for alternative protective measures.
19

20 **VERIFICATION OF COMPLIANCE:**

21
22 The Department shall verify compliance with protective measures to ensure the
23 accuracy of Caltrans' monitoring and reporting efforts. The Department may, at its sole
24 discretion, review relevant Project documents maintained by Caltrans, interview
25 Caltrans' employees and agents, inspect the Project area, and take other actions to
26 assess compliance with or effectiveness of protective measures for the Project.

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CONCURRENCE:

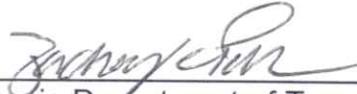
APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME

on _____, 2008.

W. E. Loudermilk, Regional Manager
Central Region

ACKNOWLEDGMENT

The undersigned acknowledges receipt of this Agreement and, by signing, accepts and agrees to comply with all terms and conditions contained herein. The undersigned also acknowledges that adequate funding shall be made available to implement the measures required by this Agreement.

By: 
California Department of Transportation

Date: 3/4/2009



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In reply refer to:
1-1-07-F-0113

APR 4 2007

Gene K. Fong
Division Administrator
Federal Highway Administration
U.S. Department of Transportation
650 Capitol Mall, Suite 4-100
Sacramento, California 95814

Subject: Amendment of the Biological Opinion (File # 1-1-03-F-0367) for the Proposed State Route 46 4-Lane Widening Project from the San Luis Obispo County/Kern County line to mile post 37.5 in Kern County, California.

Dear Mr. Fong:

This letter is in response to your February 13, 2007 request to amend the Biological Opinion (BO) for the Proposed State Route (SR) 46 4-Lane Widening Project (Project). The U.S. Fish and Wildlife Service (Service) issued the BO (1-1-03-F-0367; change from 1-1-03-F-0208) for the State Route 46 Widening Project on September 22, 2003. The Service provided concurrence that the proposed project is likely to adversely affect the San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton kangaroo rat (*Dipodomys nitratooides nitratooides*), blunt-nosed leopard lizard (*Gambellia sila*), Hoover's woolly-star (*Eriastrum hooveri*), San Joaquin woolly-threads (*Monolopia congdonii*), California jewelflower (*Caulanthus californicus*), and Buena Vista Lake shrew (*Sorex inornatus relictus*). The Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans) are requesting that the Service amend the BO for the Project in order to account for (1) additional impacts that have been proposed to address road safety and utility company (ConocoPhillips, Pacific Gas and Electric [PG&E], and Verizon) needs during Phase 2 construction (post-mile [PM] 0.0 to 7.3), and (2) revised compensation for impacts to the Buena Vista Lake shrew (*Sorex ornatus relictus*).

Phase 2 Additional Work

North of the existing SR 46 from San Luis Obispo/Kern County line (PM 0.0 to PM 4.2)

The new alignment was adjusted to avoid the ConocoPhillips storage tanks located at the Antelope Pump Station and minimize highway crossings over the Department of Water Resources (DWR) facilities. At the request of ConocoPhillips, a 20-foot utility easement and a 100-foot temporary construction easement (TCE) will be required for relocation and construction of their facilities. The installation of their facilities will be accomplished by trenching, installing

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pipe and then backfilling and compacting the topsoil. The impacts associated with the utility easement consist of temporary ground disturbance for placement of relocated utilities underground. The impact associated with TCE is grading. At the request of PG&E, a permanent easement will be added within the ConocoPhillips TCE. The proposed PG&E work includes relocation of transmission line poles, which will result in permanent impacts to the habitat totaling 0.002 acre. A total of 26 two-foot diameter poles spaced every 328 feet will be installed within a 1.3 miles section (PM 0.5 to 1.8); one pole will be located south of the existing SR 46.

Due to the minimal permanent impact associated with this work, compensation is not proposed. The impact is not likely to affect listed species and prior to the pole installation, pre-construction surveys will be conducted to avoid potential habitat. Temporary impacts north of SR 46 will be 31 acres and will be compensated for at a rate of preservation of 1:1:1.

South of the existing SR 46 between PM 0.0 and PM 7.3

Due to the erosion of a natural creek that runs parallel to SR 46 and into the Caltrans right-of-way, riprap will be placed at seven locations to prevent further deterioration of side slopes. Temporary impacts associated with this work include clearing and re-grading existing side slopes at 1:1.5 within identified areas and stacking 2-ton rock parallel to the slope at a thickness of 5 feet. Additional work to be conducted within this segment of SR 46 is to improve vertical and horizontal curves to meet Caltrans' stopping sight distance requirements. Permanent impacts associated with this work include backfilling in low points with soil and constructing a new structural section over the filled area. As a result of this change, the width of the cross-sectional area affected increased. Associated with these improvements is grading for cross culvert outlets at 12 spot locations. Temporary impacts at these 12 locations will consist of grading the proposed flow line to match the existing flow line. Additional temporary impacts include the relocation of PG&E power poles and Verizon fiber optic cable to utility easements south of existing SR 46. Work associated with the relocation of these utilities includes digging (with an auger) for power poles and trenching for underground fiber optic cable then backfilling in and compacting soil. The anticipated impacts from this additional work south of the existing SR 46 are 11.1 acres of permanent impacts and 11.5 acres of temporary impacts.

Phase 2 Habitat

The habitat that will be affected by the additional proposed construction consists entirely of non-native grassland, which is the same as described in the April 2002 Biological Assessment (BA). Proposed compensation for temporary impacts will include the restoration of the non-native grassland after disturbance to its previous condition within two years, along with a rate of preservation of 1:1:1.

Incidental Take

According to the BO (page 58), the Service quantified take incidental to the project as all of the listed species inhabiting 489.8 acres between the San Luis Obispo/Kern County line and Interstate 5 (I-5), and 62.14 acres between I-5 and PM 37.5. As a result of the additional work

proposed between PM 0.0 and PM 7.3. The amount of incidental take of federally listed species that exceeds the original acreage is 53.6 acres, making for a total of 605.54 acres.

The following compensation ratios are proposed based on similar ratios approved by the Service in the BO.

Habitat Impacts	Acres of Impact	3:1	1.1:1	
Permanent impacts to non-native grassland	11.1 acres	33.3 acres	--	
Temporary impacts to non-native grassland	42.5 acres	--	46.75 acres	

Total area of compensation required for the additional activities described in this amendment is 80 acres.

As stated in the BO (page 63), fee title or conservation easements for 1108.59 acres for the portion of the project located between I-5 and the Kern/San Luis Obispo County line shall be acquired. Based on the table above, an additional 80 acres would also be included in the acquisition for the additional work proposed during Phase 2 construction. Caltrans will purchase fee title for at least 1188.59 acres owned by the Berrenda Mesa Water District. If acquired, the fee title for 1188.59 acres will then be transferred to the California Department of Fish and Game (CDFG) to be conserved in perpetuity.

The following shall be amended to the BO (File # 1-1-03-F-0367):

Of the **Terms and Conditions**, under part 2, Reasonable and Prudent Measures "O" (page 63):
 "...fee title or conservation easements for 1108.59 acres..."

Shall be changed to:

"...fee title or conservation easements for 1188.59 acres..."

This change is made in order to reflect the additional proposed compensation for the impacts by the revised construction requirements for the project.

Of the **Terms and Conditions**, under part 2, Reasonable and Prudent Measures "P" (page 63):
 The inclusion of the Buena Vista lake shrew in this section shall be withdrawn, the fee title acquisition will exclude habitat for the Buena Vista Lake shrew due to minimal impacts (0.2 acre) anticipated to occur at the Kern River Channel during Phase 4 of construction. Caltrans proposes to compensate for the impacts to the shrew by the habitat restoration of an area, at minimum, 3 times that of the area of impact.

Mr. Gene K. Fong

The following provision shall be added to the **Terms and Conditions**, part 2, Reasonable and Prudent Measures:

“Prior to construction Caltrans shall conduct a pre-construction survey for the Buena Vista Lake shrew following Service approved protocol at the Main Flood Canal-Kern River (first drainage with vegetation east of Interstate 5). The survey effort will serve as one conservation strategy for the Buena Vista Lake shrew that may aid in the location and protection of additional extant populations within the Tulare Basin. If the survey confirms presence of the Buena Vista Lake shrew within the project area, additional avoidance and minimization measures, along with additional compensation will be discussed with the Service. Caltrans shall compensate on-site for potential loss of habitat of the Buena Vista Lake shrew. Compensation shall include the restoration and re-vegetation of in-kind riparian vegetation of the impacted riparian habitat along the Main Flood Canal-Kern River in the amount of a minimum of 0.25 acres of riparian habitat.”

A new species has not been listed or critical habitat designated that may be affected by the action. Critical habitat for the California tiger salamander (*Ambystoma californiense*) central population has been designated within the Orchard Peak quadrangle (Unit 6, **FR**; August 23, 2005). However, the designated area will not be affected, as it is located approximately 4 miles southwest of the San Luis Obispo/Kern County line, which is the project limit. Critical habitat for the California red-legged frog (*Rana draytonii*) has been designated within the Orchard Peak quadrangle (Unit SLO-1, **FR**; April 13, 2006). However, the primary constituent elements for this species do not occur within the project area.

All pre-construction requirements mandated within the biological opinion will need to be completed as prescribed before the start of construction. In response to a June 28, 2006 electronic mail sent to the Service requesting written approval that the fee title for 1108.59 or more acres owned by the Berenda Mesa Water District, would be appropriate habitat to compensate for adverse effects resulting from this project, the Service did concur. With the above additional work the total number of acres proposed for compensation will be 1188.59 acres. The fee title shall be obtained by Caltrans at least sixty (60) days prior to the date of initial groundbreaking (item 2; o, Page 63). The fee title for the 1188.59 acres will then be transferred to the California Department of Fish and Game and be conserved in perpetuity.

If you have any questions pertaining to this letter regarding the amending of the biological opinion for the proposed State Route 46 Widening Project, please contact Richard Montgomery or Susan P. Jones at (916) 414-6630.

Sincerely,



Kenneth Sanchez
Assistant Field Supervisor

Mr. Gene K. Fong

cc:

Zachary Parker, Caltrans, Fresno, California

Steve Juarez, California Department of Fish and Game, Fresno, California