

CALIFORNIA DEPARTMENT OF FISH AND GAME
NOTIFICATION NO. 1600-2012-0110-R6

CALIFORNIA DEPARTMENT OF FISH AND GAME
Inland Deserts Region
407 West Line St.
Bishop, CA 93514
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STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2012-0110-R6

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 9
HIGHWAY 127 CULVERT REPLACEMENT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Game (DFG) and the California Department of Transportation District 9 as represented by Patricia Ann Moyer (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified DFG on August 17, 2012 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, DFG has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located on State Route 127, PM 15.17, in Shoshone, on a spring-fed stream, tributary to the Amargosa River, in the County of Inyo, State of California; Township 22N, Range 7E, Tract #37, Shoshone US Geological Survey Map; Assessors Parcel Number 046-120-25.

PROJECT DESCRIPTION

The project is limited to Permittee replacing one existing culvert structure that has deteriorated over time. To conduct the project, Permittee proposes to replace the culvert in-kind with an 80-foot long by 30-inch diameter plastic pipe. The inlet of the culvert is connected to a 4-foot by 200-foot long concrete drainage ditch. Sixteen square feet of concrete ditch that immediately adjoins the culvert will be removed and replaced in-kind.

Prior to construction commencing, a temporary 6-inch flexible culvert shall be installed parallel to the existing culvert to maintain water flow and to create a dry work area. Temporary sand bags will be used at the inlet side of the temporary culvert to direct flows into the culvert. Temporary sand bags will also be placed at the outlet to direct water flow back into the stream. Concrete replacement is proposed to be conducted by an excavator from the road. In the event that the excavator cannot conduct this work, a jackhammer will be hand carried and used in the ditch to break up the cement. Once the culvert has been replaced, the temporary culvert will be removed and the new culvert covered with minor concrete and native soil.

Equipment to be used includes a backhoe, vibratory compactor, concrete saw cutter, jackhammer and excavator. Work is proposed to begin October 2012 and is expected to take up to 45 days to complete. The proposed project is described in greater detail in the Permittee's notification package.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: fish, songbirds, amphibians, reptiles, mammals, and riparian plant species.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to DFG personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify DFG if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, DFG shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that DFG personnel may enter the project site at any time to verify compliance with the Agreement.

- 1.5 Compliance with other Agencies. This Agreement does not relieve the Permittee of responsibility for compliance with applicable federal, state, local laws, or ordinances. A consummated Agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits or conditions required from other agencies.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Permittee shall not impact any wetland and/or riparian habitats beyond the limits described in this agreement.
- 2.2 Permittee shall have a qualified biological monitor present during project construction activities. The biological monitor shall have authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid or minimize impacts to fish and wildlife resources.
- 2.3 If Permittee intends to conduct the project during the period between February 1 and August 15, Permittee shall direct a qualified biologist to survey all potential bird nesting habitat within the project site prior to project activities (including construction and/or site preparation). Nest surveys shall be conducted at the appropriate time of day during the breeding season and surveys shall end no more than three days prior to clearing. DFG shall be notified in writing prior to the start of surveys. Documentation of surveys and findings shall be submitted to DFG within ten days of the final survey. If no nesting birds were observed, project activities may begin. If an active bird nest is located, Permittee shall protect the nest site from project-related impacts until the young have fledged or the nest otherwise becomes inactive. If threatened or endangered bird species are observed in the area, no work shall occur during the breeding season (March 1 through September 15) to avoid take of listed species. Permittee shall consult with DFG to determine possible protection measures and protective buffers for nesting birds. Sections 3503, 3503.5, and 3513 of FGC prohibits take of all birds and their active nests, including raptors and other migratory nongame birds (As listed under the Migratory Bird Treaty Act).
- 2.4 When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around the work area as described in Permittee's notification package. Construction of the barrier and/or the new channel shall normally begin in the downstream area and continue in an upstream direction, and the flow shall be diverted only when construction of the diversion is completed. Channel bank or barrier construction shall be adequate to prevent seepage into or from the work area. Channel banks or barriers shall not be made of earth or other substances subject to erosion unless first enclosed by sheet piling, rock rip-rap, or other protective material. The enclosure and the supportive material shall be removed

when the work is completed and removal shall normally proceed from downstream in an upstream direction.

- 2.5 Permittee shall install silt fences, sand bags, fiber rolls, straw wattles or similar devices around the perimeter of the work area prior to the start of work to reduce the velocity of sediments and to control sediments downstream of the work area.
- 2.6 Permittee shall make all reasonable efforts to capture and move all stranded aquatic life observed in dewatered areas when project construction commences. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately into the spring-fed stream downstream and as far away from the work site as possible.
- 2.7 Permittee shall not allow water containing mud, silt or other pollutants from grading, aggregate washing, or other activities to enter a lake or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.8 Permittee shall ensure no broken concrete, 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. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake. When project activities are completed, any excess materials, debris or rubbish shall be removed from the work area.
- 2.9 Permittee shall ensure spoil sites are not located within a stream/lake or locations that may be subjected to high storm flows, where spoil has the potential to be washed back into a stream/lake, or where it will impact streambed habitat, aquatic or riparian vegetation.
- 2.10 Pursuant to Section 5650 of the Fish and Game Code, Permittee shall not use any chemicals, herbicides, or other substance or material deleterious to fish, plant life, or bird life, near a water body where it can pass into any waters of the State.
- 2.11 Permittee 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 Permittee to ensure compliance.
- 2.12 Permittee shall ensure equipment maintenance is not conducted within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.13 Permittee shall ensure all equipment is maintained such that there are no leaks of automotive fluids such as gasoline, oils, or solvents. Absorbent spill clean-up

materials and spill kits shall be available on site at all times in the event of such a spill.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 3.1 Permittee shall notify DFG, in writing, at least 5 days prior to initiation of project activities as noted in the Project Description above, and within 5 days of completion of project activities as noted in the Project Description above. Notification shall be transmitted by electronic mail to tbranston@dfg.ca.gov, or by FAX to DFG's Bishop Field Office (760) 872-1284. The subject line of any electronic mail or FAX pursuant to this term shall contain the phrase "1602 work advisory." This subject line is important so DFG can automatically disseminate the information to affected personnel. Please reference SAA # 1600-2012-0110-R6.

CONTACT INFORMATION

Any communication that Permittee or DFG submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or DFG specifies by written notice to the other.

To Permittee:

Ms. Patricia Ann Moyer
Branch Chief District 9 Environmental
California Department of Transportation
500 South Main Street
Bishop, California 93514
patricia_ann_moyer@dot.ca.gov

To DFG:

Ms. Tammy Branston
Environmental Scientist
Department of Fish and Game
407 West Line Street
Bishop, CA 93514
Notification #1600-2012-0110-R6
tbranston@dfg.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute DFG's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

DFG may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before DFG suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before DFG suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused DFG to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes DFG from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects DFG's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

DFG may amend the Agreement at any time during its term if DFG determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by DFG and Permittee. To request an amendment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter DFG approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to DFG a completed DFG "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to DFG a completed DFG "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in DFG's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). DFG shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of DFG's signature, which shall be: 1) after Permittee's signature; 2) after DFG complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at:
http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on **December 31, 2013**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

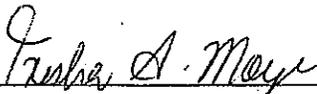
AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify DFG in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

**FOR CALIFORNIA DEPARTMENT OF
TRANSPORTATION**



Ms. Patricia Ann Moyer

Branch Chief District 9 Environmental

8.21.12

Date

FOR DEPARTMENT OF FISH AND GAME

Kimberly Nicol
Ms. Kim Nicol
Regional Manager

8/21/12
.Date

Prepared by: Tammy Branston
Environmental Scientist