

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 1 – NORTHERN REGION
619 Second Street
Eureka, CA 95501

RECEIVED

AUG 24 2016

CDFW - EUREKA



STREAMBED ALTERATION AGREEMENT

NOTIFICATION NO. 1600-2016-0228-R1

Unnamed Tributary to Brannan Creek, Tributary to Willow Creek,
Tributary to the Trinity River, Tributary to the Klamath River and the
Pacific Ocean

Mr. James Hay
Hay Water Diversion and Stream Crossings Project
6 Encroachments



This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Mr. James Hay (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on May 25, 2016, that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW 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, the Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

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

PROJECT LOCATION

The project to be completed is located within the Brannan Creek and Willow Creek watersheds, approximately 2.7 miles west of the town of Willow Creek, County of Humboldt, State of California. The project is located in Section 35, T7N, R4E, Humboldt Base and Meridian; in the Willow Creek U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Number 522-044-39; latitude 40.9453 N and longitude 123.6833 W at the Point of Diversion (POD).

PROJECT DESCRIPTION

The project is limited to six encroachments (Table 1). One encroachment is for water diversion from a Class II spring that provides water for domestic use and irrigation.

Work for the water diversion will include use and maintenance of the water diversion infrastructure. The other encroachments include installation of five culverts and one rocked ford. Work for these projects will include excavation, placement of the culvert, rock armoring, and relocation of the fill material.

Table 1. Project encroachments with description.

ID	Latitude/Longitude	Description
Stream Crossing -1	40.9452, -123.6843	Remove failing culvert and install a minimum 18" diameter 20' long culvert
Stream Crossing -2	40.9452, -123.6841	Install 18" diameter 80' long culvert through developed area
Stream Crossing -3	40.9452, -123.9452	Install 15" diameter culvert to drain seep in developed landing
Stream Crossing -4	40.9453, -123.6835	Remove failing culvert and install a minimum 18" diameter 20' long culvert
Stream Crossing -5	40.9453, -123.6833	Install Rocked Ford at Class III spring crossing
Stream Crossing -6	40.9460, -123.6833	Remove culvert and install minimum 30" diameter 20' long culvert
Point of Diversion (POD)	40.9453, -123.6833	Class II spring diversion

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead trout (*O. mykiss*), amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include:

Impacts to water quality:

increased water temperature;
 reduced instream flow;
 temporary increase in fine sediment transport;

Impacts to bed, channel, or bank and direct effects on fish, wildlife, and their habitat:

loss or decline of riparian habitat;
 direct impacts on benthic organisms;

Impacts to natural flow and effects on habitat structure and process:

cumulative effect when other diversions on the same stream are considered;
 diversion of flow from activity site;
 direct and/or incidental take;
 indirect impacts;
 impediment of up- or down-stream migration;

water quality degradation; and
damage to aquatic habitat and function.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

The Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. The 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 CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. The 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 the Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Adherence to Existing Authorizations. All water diversion facilities that the Permittee owns, operates, or controls shall be operated and maintained in accordance with current law and applicable water rights.
- 1.4 Change of Conditions and Need to Cease Operations. If conditions arise, or change, in such a manner as to be considered deleterious by CDFW to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken. This includes new information becoming available that indicates that the bypass flows and diversion rates provided in this agreement are not providing adequate protection to keep aquatic life downstream in good condition or to avoid "take" or "incidental take" of federal or State listed species.
- 1.5 Notification of Conflicting Provisions. The Permittee shall notify CDFW if the 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, CDFW shall contact the Permittee to resolve any conflict.
- 1.6 Project Site Entry. The Permittee agrees to allow CDFW employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this Agreement, provided CDFW: a) provides 24 hours advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring. This condition does not apply to CDFW enforcement personnel.

2. Avoidance and Minimization Measures

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

- 2.1 Permitted Project Activities. Except where otherwise stipulated in this Agreement, all work shall be in accordance with the Permittee Notification received on May 25, 2016, together with all maps, BMP's, photographs, drawings, and other supporting documents submitted with the Notification.
- 2.2 Maximum Diversion Rate. The maximum instantaneous diversion rate from the water intake shall not exceed 15% of the total flow at any time.
- 2.3 Bypass Flow. The Permittee shall pass sufficient flow at all times to keep all aquatic species including fish and other aquatic life in good condition below the point of diversion.
- 2.4 Seasonal Diversion Minimization. **No water shall be diverted during the low flow season from May 15 to October 15 of any year except for strictly domestic use.**
- 2.5 Domestic Water Use. **No more than 150 gallons per day shall be diverted for domestic use during the diversion minimization period** (condition 2.4). Water shall be diverted only if the Permittee can adhere to conditions 2.2 and 2.3 of this Agreement. *5 mo @ 30 days = 150 gpd*
- 2.6 Measurement of Diverted Flow. The Permittee shall install a device acceptable to CDFW for measuring the quantity of water diverted to and from the spring and well. This measurement shall begin as soon as this Agreement is signed by the Permittee. The Permittee shall record the quantity of water pumped to and from the system on a weekly basis. Alternatively, the Permittee can record the frequency of pumping and the time to fill storage. *- 22,500 gal during diversion*
- 2.7 Intake Structure. No polluting materials (e.g., particle board, plastic sheeting, bentonite) shall be used to construct or screen, or cover the diversion intake structure.
- 2.8 Intake Screening. Screens shall be installed on intakes wherever water is diverted, and shall be in place whenever water is diverted. Openings in intakes shall not exceed 1/8 inch diameter (horizontal for slotted or square openings) or 3/32 inch for round openings. The Permittee shall regularly inspect, clean, and maintain screens in good condition.
- 2.9 Intake Shall Not Impede Aquatic Species Passage. The water diversion structures shall be designed, constructed, and maintained such that they do not constitute a barrier to upstream or downstream movement of aquatic life.

- 2.10 Water Conservation. The Permittee shall make best efforts to minimize water use, and to follow best practices for water conservation and management.
- 2.11 Water Storage Maintenance. Storage tanks shall have a float valve to shut off the diversion when tanks are full to prevent overflow from being diverted when not needed. The Permittee shall install any other measures necessary to prevent overflow of tanks resulting in more water being diverted than is used.
- 2.12 State Water Code. This Agreement does not constitute a valid water right. The Permittee shall comply with State Water Code sections 5100 and 1200 et seq. as appropriate for the water diversion and water storage. The application for this registration is found at:
http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/sdu_registration.pdf.

Stream Crossings

- 2.13 Work Period. All work, not including water diversion, shall be confined to the period June 15 through October 15 of each year. Work within the active channel of a stream shall be restricted to periods of **no stream flow and dry weather**. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Construction activities shall cease and all necessary erosion control measures shall be implemented prior to the onset of precipitation.
- 2.14 Excavated Fill. Excavated fill material shall be placed in locations where it cannot deliver to a watercourse. To minimize the potential for material to enter the watercourse during the winter period, all excavated and relocated fill material shall be tractor contoured (to drain water) and tractor compacted to effectively incorporate and stabilize loose material into existing road and/or landing features.
- 2.15 Runoff from Steep Areas. The Permittee shall make preparations so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential or contained behind erosion control structures. Erosion control structures such as straw bales and/or siltation control fencing shall be placed and maintained until the threat of erosion ceases. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.16 Culvert Installation.
- 2.16.1 Existing fill material in the crossing shall be excavated down vertically to the approximate original channel and outwards horizontally to the approximate crossing hinge points (transition between naturally occurring soil and remnant temporary crossing fill material) to remove any potential unstable debris and voids in the older fill prism.

- 2.16.2 Culvert shall be installed to grade, aligned with the natural stream channel, and extend lengthwise completely beyond the toe of fill. If culvert cannot be set to grade, it shall be oriented in the lower third of the fill face, and a downspout or energy dissipator (such as boulders, rip-rap, or rocks) shall be installed above or below the outfall as needed to effectively control stream bed, channel, or bank erosion (scouring, headcutting, or downcutting).
- 2.16.3 Culvert bed shall be composed of either compacted rock-free soil or gravel. Bedding beneath the culvert shall provide for even distribution of the load over the length of the pipe, and allow for natural settling and compaction to help the pipe settle into a straight profile. The crossing backfill materials shall be free of rocks, limbs, or other debris that could allow water to seep around the pipe, and shall be compacted.
- 2.16.4 Culvert inlet, outlet (including the outfall area), and fill faces shall be armored where stream flow, road runoff, or rainfall energy is likely to erode fill material and the outfall area.
- 2.16.5 Permanent culverts shall be sized to accommodate the estimated 100-year flood flow [i.e. ≥ 1.5 times the width of the active (bankfull) channel width or the 100-year flood size, whichever is greater], including debris, culvert embedding, and sediment loads.
- 2.17 Rock Armor Placement.
- 2.17.1 No heavy equipment shall enter the wetted stream channel.
- 2.17.2 No fill material, other than clean rock, shall be placed in the stream channel.
- 2.17.3 Rock shall be sized to withstand washout from high stream flows, and extend above the ordinary high water level.
- 2.17.4 Rock armoring shall not constrict the natural stream channel width and shall be keyed into a footing trench with a depth sufficient to prevent instability.
- 2.18 Project Inspection. The Project shall be inspected by Timberland Resource Consultants or a licensed engineer to ensure that the crossings and spillway were built as designed. A copy of the inspection report, including photographs of each site, shall be submitted to CDFW within 90 days of completion of this project.
- 2.19 Stream Protection. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other deleterious material from project activities shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into the stream. All project materials and

debris shall be removed from the project site and properly disposed of off-site upon project completion.

- 2.20 Equipment Maintenance. Refueling of machinery or heavy equipment, or adding or draining oil, lubricants, coolants or hydraulic fluids shall not take place within stream bed, channel and bank. All such fluids and containers shall be disposed of properly off-site. Heavy equipment used or stored within stream bed, channel and bank shall use drip pans or other devices (e.g., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.
- 2.21 Hazardous Spills. Any material, which could be hazardous or toxic to aquatic life and enters a stream (i.e. a piece of equipment tipping-over in a stream and dumping oil, fuel or hydraulic fluid), the Permittee shall immediately notify the California Emergency Management Agency State Warning Center at 1-800-852-7550, and immediately initiate clean-up activities. CDFW shall be notified by the Permittee within 24 hours at 707-445-6493 and consulted regarding clean-up procedures.

3. Reporting Measures

- 3.1 Measurement of Diverted Flow. Copies of the **water diversion records (condition 2.6)** shall be submitted to CDFW at 619 Second Street, Eureka, CA 95501 **no later than December 31 of each year beginning in 2016**.
- 3.2 Project Inspection. The Permittee **shall submit the Project Inspection Report (condition 2.18)** to CDFW, LSA Program at 619 Second Street, Eureka, CA 95501.

CONTACT INFORMATION

Written communication that the Permittee or CDFW submits to the other shall be delivered to the address below unless the Permittee or CDFW specifies otherwise.

To Permittee:

Mr. James Hay
P.O. Box 515
Salyer, California 95563-0515

To CDFW:

Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501
Attn: Lake and Streambed Alteration Program
Notification #1600-2016-0228-R1

LIABILITY

The Permittee shall be solely liable for any violation of the Agreement, whether committed by the Permittee or any person acting on behalf of the 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 CDFW's endorsement of, or require the Permittee to proceed with the project. The decision to proceed with the project is the Permittee's alone.

SUSPENSION AND REVOCATION

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

Before CDFW suspends or revokes the Agreement, it shall provide the 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 the Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

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

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

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve the Permittee or any person acting on behalf of the 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 the Permittee or any person acting on behalf of the 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 the Permittee or any person acting on behalf of the Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

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

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

EXTENSIONS

In accordance with FGC section 1605(b), the 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, the Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If the Permittee fails to submit a request to extend the Agreement prior to its expiration, the Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after the Permittee signature; 2) after CDFW 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.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall **expire five years** from date of execution, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. The 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 the Permittee, the signatory hereby acknowledges that he or she is doing so on the Permittee's behalf and represents and warrants that he or she has the authority to legally bind the Permittee to the provisions herein.

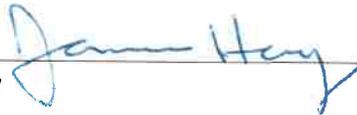
AUTHORIZATION

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

CONCURRENCE

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

FOR Mr. James Hay

James Hay 

8-23-2016
Date

FOR DEPARTMENT OF FISH AND WILDLIFE


Gordon Leppig
Senior Environmental Scientist Supervisor

8/25/16
Date



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
REGION 1 – NORTHERN REGION
619 Second Street
Eureka, CA 95501
707-441-2075
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



February 21, 2017

James Hay
P.O. Box 515
Salyer, CA 95563-0515

Dear Mr. Hay:

Transfer of Lake or Streambed Alteration Agreement, Notification No. 1600-2016-0228-R1

On January 18, 2017, the California Department of Fish and Wildlife (CDFW) received your request to amend Lake or Streambed Alteration Agreement 1600-2016-0228-R1 (Agreement) and the required fee in the amount of \$421 for a minor amendment. Your request to amend the Agreement included a transfer of the Agreement from James Hay (Transferor), the current Permittee under the Agreement, to Tara Fulgenzi (Transferee).

CDFW, Transferor, and Transferee hereby agree to the following:

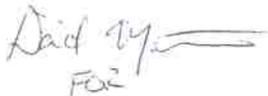
1. The Agreement is hereby transferred from Transferor to Transferee, thereby making Transferee the new Permittee under the Agreement.
2. Transferee shall be solely responsible for complying with all terms and conditions in the Agreement; including, but not limited to, any terms and conditions for which Transferor was previously responsible as the former Permittee under the Agreement.
3. This Agreement shall take effect on the last date of signature.

Please return one copy of this letter with both Transferor and Transferee signatures to acknowledge the amendment. Copies of the Agreement and this amendment must be readily available at project worksites and must be presented when requested by a CDFW representative or agency with inspection authority.

James Hay
February 21, 2017
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If you have any questions regarding this letter, please contact David Manthorne, Senior Environmental Scientist Specialist at by email at david.manthorne@wildlife.ca.gov or (707) 441-5900.

Sincerely,



Scott Bauer
Senior Environmental Scientist Supervisor

ec: Chris Carroll
Timberland Resource Consulting
carroll@timberlandresource.com

California Department of Fish and Wildlife
David Manthorne
Region 1 – Northern Region
david.manthorne@wildlife.ca.gov

ACKNOWLEDGEMENT

I hereby agree to the above-referenced amendment.

TRANSFEROR


James Hay

Date 3-1-17

TRANSFeree


Tara Fulgenzi

3-1-17
Date