FOR CONTRACT NO.: 01-472304

INFORMATION HANDOUT

WATER QUALITY

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

PERMITS

UNITED STATES ARMY CORPS OF ENGINEERS

AGREEMENTS

CALIFORNIA DEPARTMENT OF FISH AND GAME

ROUTE: 01-Hum-96-26.9/R41.1

California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman

Linda S. Adams
Secretary for Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
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Arnold Schwarzenegger
Governor

August 10, 2009

In the Matter of

Water Quality Certification

for the

California Department of Transportation
Highway 96 – Storm Damage (Five Locations) Project
WDID No. 1B09002WNHU

APPLICANT:	California Department of Transportation
RECEIVING WATER:	Tributaries to the Klamath River
HYDROLOGIC AREA:	Klamath River Hydrologic Unit No.105.00, Orleans Hydrologic Sub-Area No. 105.12
COUNTY: Humboldt	
FILE NAME:	CDOT - Highway 96 Storm Damage (Five Locations) Project

BY THE EXECUTIVE OFFICER:

1. On January 2, 2009, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application and $3,043.00 fee from the California Department of Transportation (Caltrans), requesting Federal Clean Water Act (CWA), section 401, Water Quality Certification for activities related to the proposed Highway 96, Storm Damage (Five Locations) Repair Project (project). Additional project information was received on April 2, April 10, 2009 and May 4, 2009. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on July 8, 2009, and posted information describing the project on the Regional Water Board's website. No comments were received.

2. The proposed project includes five locations along Highway 96 at post mile (PM) 27.02, PM 27.20, PM 35.34, PM 36.05 and PM 41.04 in Humboldt County. The purposes and objectives of the project are to repair and upgrade the culverts, downdrains, drainage ditches, subgrade and asphalt to protect the roadway from erosion-related structural failures. The proposed construction activities will consist of: installing new corrugated metal pipes and plastic pipes; installing drain inlets and downdrains; installing rock slope protection; and conducting slope revegetation and erosion control. In addition, the project will include the installation of a traction sand trap at PM 41.04 to reduce the amount of sediment discharges to the Klamath River associated with winter maintenance activities. The proposed project may result in soil disturbances up to approximately 1.23-acres, including 3,518 ft^2 (1,709 linear feet) of temporary impacts to the jurisdictional drainages. All areas with disturbed soil will be stabilized with appropriate erosion control and subsequent to the completion of the project the disturbed soil areas will be revegetated.

3. The proposed project will result in approximately 2,476 ft^2 (1,238 linear feet) of new permanent impacts to waters of the U.S and waters of the State. However, the permanent impacts are associated with the installation of drainage ditch underdrains, which are primarily designed to prevent ground water from infiltrating road base and destabilizing the highway. In addition, the underdrains will likely promote a limited amount of infiltration of surface waters within the drainage ditches. The proposed project will likely require a water diversion to conduct the proposed construction activities. Caltrans will utilize BMPs for all activities including work windows for stream work, and proper erosion control, sediment control and pollution prevention during construction. Due to the nature of the activities compensatory mitigation is not required.

4. Caltrans has applied for authorization from the U.S. Army Corps of Engineers (USACE) to perform the project under their Nationwide Permit No. 33 (Temporary Construction, Access and Dewatering) pursuant to Clean Water Act, section 404. In addition, Caltrans has applied to the California Department of Fish and Game for a 1602 Lake and Streambed Alteration Agreement. Caltrans has determined that this project is categorically exempt from California Environmental Quality Act (CEQA) review (Class 1 Categorical Exemption). Caltrans has determined that this project is categorically exempt from California Environmental Quality Act (CEQA) review (General Rule Categorical Exemption). In addition, Regional Water Board staff also determined that this project is categorically exempt from CEQA review (Class 1 Categorical Exemption) and anticipate filing a Notice of Exemption. Project activities will be conducted year round; however, work in the jurisdictional drainages will only be performed between May 15 and October 15.

Receiving Water: Roadside Ditches and Tributaries to the Klamath River

	Klamath River Hydrologic Unit No.105.00, Orleans Hydrologic Sub-Area No. 105.12.
Filled or Excavated Area:	Permanent impacts: 2,476 ft^2 (0.056-acres) of new permanent impacts Temporary impacts: 3,518 ft^2 (0.081-acres) of temporary construction impacts
Total Linear Impact:	Permanent impacts: 1,238 linear feet of new permanent impacts Temporary impacts: 1,709 linear feet of temporary construction impacts
Dredge Volume :	None
Latitude/Longitude:	41.219 N/123.646 W
Expiration:	August 10, 2014

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD CERTIFIES THAT THE CALTRANS – HIGHWAY 96 – STORM DAMGE (FIVE LOCATIONS) REPAIR PROJECT, WDID NO. 1B09002WNHU, AS DESCRIBED IN THE APPLICATION WILL COMPLY WITH SECTIONS 301, 302, 303, 306 AND 307 OF THE CLEAN WATER ACT, AND WITH APPLICABLE PROVISIONS OF STATE LAW, PROVIDED THAT CALTRANS COMPLIES WITH THE FOLLOWING TERMS AND CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.

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 title 23, California Code of Regulations, section 3855, subdivision (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 nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under title 23, California Code of Regulations, section 3833, unless otherwise stated in writing by the certifying agency.

4. The Regional Water Board shall be notified in writing each year at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction activities, and to answer any public inquiries that may arise regarding the project.

5. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed revegetation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.

6. Caltrans shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality standards.

7. Any change in the implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.

8. Caltrans shall provide Regional Water Board staff access to the project site to document compliance with this order.

9. Caltrans shall provide a copy of this order and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor or subcontractors.

10. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.

11. All conditions required by this Order shall be included in the Plans and Specifications prepared by Caltrans for the Contractor. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this project.

12. The Resident Engineer shall hold on-site water quality permit compliance meetings (similar to tailgate safety meetings) to discuss permit compliance, including instructions on how to avoid violations and procedures for reporting violations. The meetings shall be held at least every other week, and particularly before forecasted storm events and when a new contractor or subcontractor arrives to begin work at the site. The contractors, subcontractors and their employees, as well as any

inspectors or biological monitors assigned to the project, shall be present at the meetings. Caltrans shall maintain dated sign-in sheets for attendees at these meetings, and shall make them available to the Regional Water Board on request.

13. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.

14. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.

15. Water which has come into contact with wet concrete during construction shall be captured and disposed of in appropriate locations at least 100 linear feet beyond waters of the State. No excess concrete or concrete washings shall be allowed to contact waters of the State. In addition, all concrete contact water disposal locations as well as concrete washout basins shall have adequate BMPs in accordance with the Caltrans Construction Site Best Management Practices Manual (CCSBMPM).

16. All materials used for cleaning concrete from tools and equipment, and any wastes generated by this activity, shall be adequately contained to prevent contact with soil and surface water and shall be disposed of properly within a clearly designated area at least 100 linear feet beyond waters of the State

17. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly and in accordance with the Special Provisions for the project and/or Standard Specification 7-1.13, Disposal of Material Outside the Highway Right of Way. Caltrans shall submit to the Regional Water Board the satisfactory evidence provided to the Caltrans engineer by the Contractor referenced in Standard Specification 7-1.13.

18. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited. If construction dewatering is found to be necessary, the Applicant shall use a method of water disposal other than disposal to surface waters (such as land disposal) or the Applicant shall apply for coverage under the Low Threat Discharge Permit or an individual National Pollutant Discharge Elimination System Permit (NPDES) and

receive notification of coverage to discharge to surface waters, prior to the discharge.

19. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States and the State. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State or the United States. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality.

20. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water. The BMPs shall be implemented in accordance with the CCSBMPM and all contractors and subcontractors shall comply with the CCSBMPM.

21. Caltrans shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after rainfall events that generate visible runoff from these areas in order to demonstrate that erosion control and revegetation measures have been successful. A brief report containing these photos shall be submitted within 60 days of the rainfall event that generated runoff from the disturbed areas. In addition, Caltrans shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance.

22. Caltrans shall provide yearly monitoring reports for the new culverts proposed at locations PM 35.34 and PM 41.04 for up to five years subsequent to the installation of the new culvert locations. To ensure the reduction of sediment transport into the Klamath River Caltrans shall conduct inspections prior to and subsequent to each rainy season up to five years after the installation of the new culverts. Reports shall include, at a minimum, the following information: name and title of personnel conducting monitoring and/or maintenance; observation dates; site photographs; and an erosion evaluation. If the newly installed culverts attribute to excessive erosion or other water quality degradation corrective actions will be required to mitigate the impacts.

23. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with

the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

24. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

25. The Klamath River watershed is listed on the State of California Clean Water Act Section 303(d) list as impaired for sediment, temperature, nutrients, and dissolved oxygen. Given that roads are a responsible source of sediment in the watershed (directly, from surface erosion, and, indirectly, by triggering landslides) a good first step can be made by focusing on reducing sediment from roads in the middle and lower portions of the watershed. Reducing road-related sediment should be made a high priority. In addition, activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures. At present, there are no watershed-specific Total Daily Maximum Load (TMDL) implementation plans for this watershed. If a TMDL implementation plan is adopted prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plan.

26. This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this Order to discharge dredged or fill material under this Order. The request must contain the following:

    a. requesting entity's full legal name
    b. the state of incorporation, if a corporation
    c. address and phone number of contact person
    d. description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.

27. The authorization of this certification for any dredge and fill activities expires on August 10, 2014. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Please contact Jeremiah Puget of our staff at (707) 576-2835 or jpuget@waterboards.ca.gov if you have any questions.

for Catherine Kuhlman
Executive Officer

090810_CDOT_Hwy96_StormDamage_401cert.doc

Web link: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original: Mr. Gary Berrigan, California Department of Transportation, P.O. Box 3700, Eureka, CA 95501-3700

Copies: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street, San Francisco, CA 94103-1398

U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box 14, Eureka, CA 95501

Ms. Gail Popham, California Department of Transportation, P.O. Box 3700, Eureka, CA 95501-3700

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

MAR 17 2009

Regulatory Division

SUBJECT: File No. 2009-00030N

Ms. Gail Popham
California Department of Transportation
District 1
Post Office Box 3700
Eureka, California 95502

Dear Ms. Popham:

This letter responds to your submittal of December 18, 2008, concerning Department of the Army authorization to complete storm damage restoration at five locations on route 96 (PM 26.9 and 41.1), near Orleans, Humboldt County, California. Caltrans requests authorization to repair damage caused by 2006 winter storms that resulted in impairment of the roadway.

This project includes construction of underdrains and the replacement of three culverts to restore the two-lane highway. The work will also include the placement of two new 24-inch diameter culverts. Then inlet of the culverts will be connected to the proposed underdrains. Rock riprap will be placed at the outlets of all five culverts to control erosion. No construction material will be placed in the river. Work will occur with a backhoe, excavator, dump trucks, portable generators, concrete trucks, and pumps. A temporary concrete washout facility will be required. Disturbed areas will revegetate naturally. Project construction work will be performed in general accordance with the plans and drawings entitled: "Drainage Plan" D-1 through D-3 and Appendix A "Project Location," dated November 28, 2008.

Based on a review of the information you submitted and an inspection of the project site conducted by Corps personnel, your project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 14 for *Linear Transportation Projects* and NWP 33 for *Temporary Construction, Access, and Dewatering* (72 Fed. Reg. 11092, Mar. 12, 2007), pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344). Section 404 generally regulates the discharge of dredged and fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters.

The project must be in compliance with the Terms and General Conditions of the NWPs cited in Enclosure 1 and any Special Conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any Term or Condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps of Engineers (Corps). Upon completion of the project and all associated mitigation and monitoring requirements, you shall sign and return the statement cited in

Enclosure 2, certifying all work complies with the Terms and Conditions of the NWPs. Project authorization under the NWPs does not obviate any requirement to obtain other Federal, State, or local approvals necessitated by law.

Project authorization will remain valid for a period of two (2) years from the date of this letter, unless the NWPs are modified, suspended, or revoked. If the project has commenced or is under contract to commence construction prior to any modification, suspension, or revocation of the NWPs and the project could not comply with any newly issued NWP, you shall have twelve (12) months from that expiration date to complete the project under the present Terms and Conditions of this NWP authorization.

Project authorization will not be effective until you have obtained Section 401 water quality certification from the Regional Water Quality Control Board (RWQCB), North Coast Region and a coastal zone consistency concurrence from the California Coastal Commission (CCC). You shall submit a copy of the certification and consistency concurrence to the Corps prior to the commencement of work. You shall comply with any condition of certification and consistency concurrence required by RWQCB and CCC, and you shall consider such conditions to be an integral part of the NWP authorization for your project. If the RWQCB fails to act on a valid request for certification within two (2) months after receipt of a complete application, the Corps may a waiver of water quality certification has been obtained. If the CCC fails to act on a valid request for a consistency concurrence within six (6) months after receipt of a complete application, the Corps may presume a consistency concurrence has been obtained.

To ensure compliance with the NWP authorization and to further minimize adverse impacts to water quality and other aquatic resources, the project is subject to the following Special Conditions:

1) All minimization measures identified on pages 4 and 5 of your Categorical Exemption dated June 30, 2008, shall be implemented.

2) Best Management Practices will be implemented to minimize turbidity and downstream sedimentation.

You may refer any questions on this matter to Carol Heidsiek of our Regulatory staff by telephone at 707-443-0855. All correspondence should be addressed to the Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501, referencing the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at our website: http://www.per2.nwp.usace.army.mil/survey.html.

Sincerely,

for Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copies Furnished (w/o encls):

US NMFS, Arcata, CA
CA CC, Eureka, CA
CA DFG, Eureka, CA
CA RWQCB, Santa Rosa, CA

Nationwide Permit 14 - *Linear Transportation Projects*

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. *Notification:* The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit 33 - Temporary Construction, Access, and Dewatering

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to preconstruction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.) Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

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Enclosure 3:

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. *Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed* on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species specific regional endangered species conditions to the NWPs. (e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at *http://www.fws.gov/* and *http://www.noaa.gov/fisheries.html* respectively.

18. *Historic Properties.* (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the

National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the *location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal* Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete preconstruction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. *This documentation must include any views obtained* from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) *Mitigation in all its forms (avoiding, minimizing, rectifying,* reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require preconstruction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that

compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered. (d) For losses of streams or other open waters that require pre-*construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the* activity results in minimal adverse effects on the aquatic environment. (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs. (f) Compensatory mitigation plans for projects in or near streams or other open waters *will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of* riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where *riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or* reduce the requirement to provide wetland compensatory mitigation for wetland losses. (g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan. (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and

the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)_____
(Date) _____

26. *Compliance Certification.* Each permittee who received a NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include: (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

27. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2). (b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.); (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate; (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by

the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring preconstruction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each preconstruction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination. (5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS. (e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

Enclosure 2

Permittee: Gail Popham, Caltrans

File Number: 2009-00030N

Certification of Compliance
for
Nationwide Permit

"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of this Nationwide Permit authorization."

PERMITTEE _____ DATE _____

Return to:

Carol Heidsiek
Eureka Field Office
U.S. Army Corps of Engineers
601 Startare Drive Box 14
Eureka, CA 95501

California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
Northern Region
601 Locust Street
Redding, California 96001
(530) 225-2367

ARNOLD SCHWARZENEGGER, Governor

RECEIVED
APR 14 2009
D. F. G. – EUREKA

NOTIFICATION NO. R1-08-0614
(5 encroachments)

AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called DFG, and **Mr. Frank Demling, representing California Department of Transportation (Caltrans)**, hereinafter jointly and severally called the Entity (Responsible Party), is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code (Code), the Responsible Party, on **December 30, 2008**, notified DFG of the intention to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed of, the following waters: **Unnamed Tributaries to the Klamath River, tributary to the Pacific Ocean**, in the County of **Humboldt.** These waters are located in **Section 19, Township 10 North, Range 5 East; sections 6 and 20, Township 11 North, Range 5 East, Humboldt Base and Meridian,** in the **Weitchpec and Orleans U.S. Geological Survey 7.5-minute quadrangles.**

WHEREAS, DFG has determined that without implementation of the conditions contained within this Agreement, such operations may substantially adversely affect existing fish and wildlife resources including, but not limited to: **Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead (*O. mykiss*)**, other non-game and game fishes, amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

THEREFORE, DFG hereby proposes measures to protect fish and wildlife resources during the Responsible Party's work. The Responsible Party hereby agrees to accept and conduct all activities in accordance with the following:

ADMINISTRATIVE PROVISIONS:

1) If the Responsible Party's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to DFG. Failure to comply with the provisions of this Agreement and with other pertinent Code sections, including but not limited to Code sections 5650, 5652, 5901, 5937, and 5948, may result in prosecution.

2) Nothing in this Agreement authorizes the Responsible Party to trespass on any land or property, nor does it relieve the Responsible Party of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits required from other agencies.

3) The provisions contained in this Agreement constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Responsible Party is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Code sections 1600 *et seq.*

4) In accordance with Code section 1605, the Responsible Party may request one extension of this Agreement, provided that the request is made in writing prior to the expiration of its original term. DFG shall grant the extension if the appropriate extension fee is paid unless it determines that the Agreement requires modification because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. If the Responsible Party fails to request the extension prior to the Agreement's termination then the Responsible Party shall submit a new notification with fees and required information to DFG. Any activity conducted under an expired Agreement is a violation of Code section 1600 *et seq.*

5) The Responsible Party shall provide a copy of this Agreement to all contractors, subcontractors, and the Responsible Party's project supervisors. Copies of the Agreement and any amendment thereto shall be readily available at work sites at all times during periods of active work and must be presented to any DFG personnel, or personnel from another agency upon demand.

6) DFG reserves the right to enter the project site at any time to ensure compliance with measures and/or monitoring of this agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Responsible Party or representatives to participate in the inspection and/or monitoring. This condition does not apply to DFG enforcement personnel.

7) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination are agreed to in writing by both parties. Mutually-approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.

8) It is understood DFG will enter into this Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Responsible Party. It is further agreed all liability and/or incurred cost related to or arising out of the Responsible Party's project and the fish and wildlife protective measures of this Agreement, remain the sole responsibility of the Responsible Party. The Responsible Party agrees to hold harmless the State of California and DFG against any related claim made by any party or parties for personal injury or any other damages.

9) This Agreement is not intended as an approval of a project or of specific project features by DFG. Independent review and recommendations will be provided by DFG as appropriate on those projects where local, state, or federal permits or other environmental reports are required.

10) Suspension and Cancellation. DFG may suspend or cancel this Agreement if DFG determines that circumstances warrant suspension or cancellation. The circumstances that might warrant suspension or cancellation include, but are not limited to, the following:

a) Failure by the Responsible Party, or his/her employees, agents, representatives, contractors, and/or subcontractors, to comply with any of the terms and measures of this Agreement.

b) DFG determines that the information the Responsible Party provided to DFG to develop this Agreement, or the information contained in a notification, is incomplete or inaccurate.

c) DFG obtains new information that shows the work authorized by this Agreement could substantially adversely affect fish and wildlife resources, notwithstanding Responsible Party's compliance with the Agreement.

d) DFG determines that measures to protect fish and wildlife resources different from those included in this Agreement are necessary to protect those resources.

e) There is a substantial change in conditions. For purposes of this Agreement, "substantial change in conditions" shall mean one or more of the following: 1) the work described in this Agreement is substantially changed; 2) conditions affecting fish and wildlife resources substantially change; and/or 3) the work conducted under this Agreement have adversely affected, or will adversely affect, fish and wildlife resources, notwithstanding that Responsible Party has complied, or will comply with, the terms and measures of this Agreement.

Scope of Suspension. At the discretion of DFG, any action to suspend this Agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, DFG may limit the suspension to specified work or specified areas. DFG shall notify Responsible Party of any suspension of the Agreement, or any part thereof, in writing. Any suspension shall take effect immediately upon receipt of such notice by Responsible Party, or in accordance with the instructions contained in the notice. Such notice will identify the reason or reasons for the suspension, the actions necessary to correct the problem, and the scope of the suspension.

Reinstatement Following Suspension. DFG may lift any suspension when it has determined that Responsible Party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the Agreement will not cause harm to fish and wildlife resources.

Other Laws Regarding Habitat and Species Protection.

11) No direct or indirect impacts shall occur to any threatened or endangered species as a result of implementing the project or the project's activities. If any threatened or endangered species could be impacted by the work proposed, the Responsible Party shall obtain the required state and federal permits. This Agreement does not authorize the take of any federal or state threatened or endangered species.

12) The California Endangered Species Act (CESA) (Code Sections 2050 to 2097) is administered by DFG and prohibits the take of plant and animal species designated by the Fish and Game Commission as either threatened or endangered in the state of California.

13) If the project could result in the "take" of a state listed threatened or endangered species, the Responsible Party has the responsibility to obtain from DFG, a California Endangered Species Act Permit (CESA 2081 Permit). DFG may formulate a management plan that will avoid or mitigate take. If appropriate, contact the DFG CESA coordinator at (530) 225-2300.

14) The U.S. Army Corps of Engineers (Corps) has permitting requirements for certain instream projects under Section 404 of the Federal Clean Water Act. If this project features the placement of dredged or fill materials into the channels of streams (below the ordinary high water mark) that are waters of the United States, a permit may be required by the Corps. If your project needs a permit from the Corps, you will also need to obtain a Water Quality Certification pursuant to Section 404 of the Federal Clean Water Act from the Regional Water Quality Control Board (Regional Water Board). In addition, if your project will involve disturbance within or discharges of pollutants to waters of the State of California, the Regional Water Boards may require a permit, whether or not the Corps requires a permit. If there is any question regarding the possibility of the project meeting the above limitations, the Responsible Party should contact the Corps and the Regional Water Board prior to beginning work. This Agreement in no way represents permitting requirements by the Corps or the Regional Water Board. It is the responsibility of the Responsible Party to contact the Corps, and to comply with the provisions of any Section 404 permit issued, if required by the Corps. Similarly, it is the responsibility of the Responsible Party

to contact the Regional Water Board and to comply with the provisions of any Section 401 Certification, Regional Water Board Waste Discharge Requirements or waiver of Waste Discharge Requirements issued by the Regional Water Board.

15) The Responsible Party may have certain other responsibilities pursuant to the Federal Endangered Species Act resulting in mitigative project features required by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

16) The Responsible Party 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 Responsible Party to ensure compliance.

OPERATIONAL PROVISIONS

NOTIFICATION MATERIALS AND PROJECT DESCRIPTION:

17) The Responsible Party's notification (notification of lake or streambed alteration, received December 30, 2008) together with all maps, plans, photographs, drawings, and all other supporting documents submitted with notification to describe the activity, are hereby incorporated by reference into this Agreement. Responsible Party shall conduct project activities within the work areas and using the mitigative features described in the notification and supporting documents, unless such project activities, work areas or mitigative features are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.

18) The work under this Agreement is limited to *the replacement of five existing crossings with new 24-inch culverts, and installation of rock slope protection at the following five locations on Highway 96: post mile (pm) 27.02, pm 27.10, pm 35.34, pm 36.05, and pm 41.04.*

PROJECT TIMING AND COORDINATION:

19) The Responsible Party shall contact DFG within the 7-day period preceding the beginning of work permitted by this Agreement. Information to be disclosed shall include Agreement number, and the anticipated start date. The Responsible Party shall contact DFG within thirty days of completion of the work permitted by this Agreement. Information to be disclosed shall include Agreement number.

20) The usual June 1 through October 15 work period is extended as follows: Work may be conducted in or near the stream during the late season work period (October 15 through November 15), provided adherence to all conditions in this Agreement and a - c below.

a) The Responsible Party shall complete any unfinished encroachment work, including erosion control measures, within 24 hours of DFG directing the Responsible Party to do so.

b) Prior to any work at a site, the Responsible Party shall stock-pile erosion control materials at the site. All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair or removal shall be treated for erosion immediately upon completion of work on the crossing, and prior to the onset of precipitation capable of generating runoff. Erosion control shall consist of at least 2 to 4 inches straw mulch with greater than 90% coverage and 100 lbs/acre equivalent barley seed. No annual, or Italian, ryegrass (*Lolium multiflorum*) shall be used.

c) Road construction leading directly into or out of a proposed stream crossing shall only be performed when soils are sufficiently dry so that sediment is not discharged into streams.

GENERAL CONDITIONS FOR ALL ENCROACHMENTS

21) Equipment shall not operate in a live (flowing) stream or wetted channel except as may be necessary to construct and remove in-stream structures to catch and contain water (i.e. cofferdams) to divert stream flow and isolate the work site, or as otherwise specifically provided for in this Agreement.

22) No fill material shall be placed within a stream except as specified in this Agreement. Pit-run rock may be used as bedding material for permanent culverts. No native fill shall be placed in a live stream. Any fill material used shall be placed and/or removed in such a manner that it shall cause no sediment discharge or siltation in the stream.

23) Adequate and effective erosion and siltation control measures shall be used to prevent sediment or turbid or silt-laden water from entering streams. Where needed, the Responsible Party shall use native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils. Geotextiles, fiber rolls, and other erosion control treatments shall not contain plastic mesh netting.

24) All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the seeding and mulching of all bare mineral soil exposed in conjunction with encroachment work. Erosion control shall consist of at least 2 to 4 inches straw mulch and 100 lbs/acre equivalent barley seed. No annual, or Italian, ryegrass (*Lolium multiflorum*) shall be used.

25) Encroachments and associated structures, fills, and other exposed soils shall be armored as needed to protect fill, abutments, and the stream channel and banks from erosion. Armoring shall be comprised of rock riprap, and shall be constructed to remain in place during periods of high flow events. When used on permanent culverts, armoring shall extend at least as high as the top of the culvert, and shall prevent bank erosion by extending a sufficient distance upstream and downstream along the banks.

26) Encroachments shall be constructed, deconstructed, and maintained in a manner that minimizes to the extent feasible headcutting or downcutting of the stream channel by installing grade control such as riprap, woody debris, or through other effective measures.

27) Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.

28) The Responsible Party shall provide site maintenance including, but not limited to, re-applying erosion control to minimize surface erosion and ensuring drainage structures, streambeds and banks remain sufficiently armored and/or stable.

29) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.

30) Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within riparian areas or within stream beds, banks or channels. All such fluids and containers shall be disposed of properly.

31) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

SITE-SPECIFIC CONDITIONS

32) No mature trees shall be removed from the project area.

33) When work in a flowing stream is unavoidable, the entire stream flow shall be diverted around or through the work area during the excavation and/or construction operations. Stream flow shall be diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses. Any temporary dam or other artificial obstruction constructed shall only be built from materials such as sandbags or clean gravel which will cause little or no siltation. No other diversion method shall be use without authorization of the Department. If another diversion method is preferred, the operator must submit a plan detailing the desired diversion method. Authorization of any other diversion method shall be at the discretion of the Department. Normal flows will be restored to the affected stream immediately upon completion of work at that location.

This Agreement becomes effective on the date of DFG's signature and terminates 2 years from the effective date.

CONCURRENCE

RESPONSIBLE PARTY

(Signature)

FRANK C. DEMLING
(Print Name)

PROJECT MANAGER / CALTRANS
(Title/Organization)

10 APRIL 2009
(Date)

CALIFORNIA DEPARTMENT OF FISH AND GAME

for William Cordova
Acting Habitat Conservation Program Manager
Northern Region

4/16/09
(Date)

Prepared by: Environmental Scientist Scott Bauer, March 24, 2009