

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

11291  
**RECEIVED**

JUN 03 2020

CDFW - EUREKA



**STREAMBED ALTERATION AGREEMENT**

NOTIFICATION NO. 1600-2019-0109-R1

Unnamed Tributary to Pine Creek, Tributary to the Klamath River and  
the Pacific Ocean

Emry Jacques  
Jacques Stream Restoration Project  
1 Encroachment

This Lake or Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Emry Jacques (Permittee).

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on February 19, 2019, with additional information obtained during a May 29, 2019 CDFW site visit, 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 Klamath River watershed, approximately 5.8 miles southwest of the town of Hoopa, County of Humboldt, State of California. The project is located in Section 18, T07N, R04E, Humboldt Base and Meridian; in the Lord Ellis Summit U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Number 522-021-009; latitude 40.9945 N and longitude -123.7668 W at the stream restoration project.

**PROJECT DESCRIPTION**

This Agreement relies on the Notification materials and a CDFW site inspection by Environmental Scientist Andrew Orahoske on May 29, 2019. The project is limited to

one encroachment (Table 1) for stream restoration in the headwaters of Pine Creek, a tributary to the Klamath River. The wetlands and stream were impacted by unpermitted cannabis cultivation development. The Permittee shall submit a Stream Restoration and Revegetation Plan for CDFW review and approval by July 31, 2020. Work for this project will include stream, wetland and riparian restoration, rerouting or decommissioning of a road and adjacent disturbed areas.

Table 1. Project Encroachments with Description

ID	Latitude/Longitude	Description
Stream Restoration	40.9945, -123.7668	The Permittee shall submit a Stream Restoration and Revegetation Plan for CDFW review and approval by July 31, 2020.

The Notification discloses the use of a well located at Lat/Long 40.9943, -123.7657. This well is presented as the sole source of water for all needs on the property. CDFW did not evaluate hydraulic connection of the well to surface water, nor was a hydrogeologic evaluation prepared by a licensed geologist provided for CDFW review. Based on the available documents and the site inspection, the well may be hydraulically connected to streams, springs and wetlands downslope and shall be evaluated for potential impacts from commercial cannabis irrigation use through the County of Humboldt's conditional use permit (PLN-11291-CUP).

No other projects that may be subject to FGC section 1602 were disclosed. This Agreement does not retroactively permit any constructed reservoirs (including "ponds"), stream crossings, water diversions, modifications to riparian buffers, or other encroachments not described in Table 1.

## 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*), **Western Brook Lamprey** (*Lampetra richardsoni*), **Pacific Lamprey** (*Entosphenus tridentatus*), **Southern Torrent Salamander** (*Rhyacotriton variegatus*), **Pacific Giant Salamander** (*Dicamptodon tenebrosus*), **Foothill Yellow-legged Frog** (*Rana boylei*), **Coastal Tailed Frog** (*Ascaphus truei*), **Western Pond Turtle** (*Actinemys marmorata marmorata*), 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;  
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:**

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 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.
- 1.4 Project Site Entry. The Permittee agrees to allow CDFW employees access to the Project site 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 law enforcement personnel.
- 1.5 Applicable Permits. Land development or alterations may be subject to additional federal, state and local laws, regulations, and permitting requirements, including but not limited to the following:

- The Clean Water Act (CWA) as implemented through permits, enforcement orders, and self-implementing requirements. When needed per the requirements of the CWA, the Permittee shall obtain a CWA section 404 (33 U.S.C. § 1344) permit from the United States Army Corps of Engineers (Army Corps) and a CWA section 401 (33 U.S.C. § 1341) water quality certification from the State Water Board or the Regional Water Board with jurisdiction.
  - The California Water Code as implemented through applicable water quality control plans (often referred to as Basin Plans), waste discharge requirements (WDRs) or waivers of WDRs, enforcement orders, and self-implementing requirements issued by the State Water Resources Control Board (State Water Board) or Regional Water Quality Control Boards (Regional Water Boards).
  - All applicable state, city, county, or local regulations, ordinances, or license requirements including, but not limited to those for grading, construction, and building.
  - All applicable requirements of the California Department of Forestry and Fire Protection (CAL FIRE), including the Board of Forestry.
- 1.6 Cannabis Cultivation Policy. If Cannabis is or becomes cultivated on the project parcel, the State Water Resources Control Board (SWRCB) requires enrollment in the Cannabis Cultivation General Order and compliance with the Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation, available at: [https://www.waterboards.ca.gov/water\\_issues/programs/cannabis/cannabis\\_policy.html](https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_policy.html)
- 1.6.1 Site Management Plan and Related Technical Reports. Permittee shall submit to CDFW the initial preparation and subsequent updates to the project's Site Management Plan and related technical reports that are prepared in conformance with the SWRCB Cannabis Cultivation Policy.
- 1.7 Water Rights. This agreement does not constitute a valid water right. 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. Water rights are administered by the State Water Resources Control Board as described here: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/registrations/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/).
- 1.8 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 bypass flows, diversion rates or other measures 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.

- 1.9 **Notification Materials.** Permittee's Notification of Lake or Streambed Alteration, together with all maps, plans, photographs, drawings, and all other supporting documents submitted with the Notification and received on February 19, 2019, with additional information obtained during a May 29, 2019 CDFW site visit, is hereby incorporated by reference into this Agreement. Permittee shall conduct project activities within the work areas, and using the protective measures, described in the Notification and supporting documents, unless such project activities, work areas or protective measures are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.

## **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.

### **Work Periods and Pre-Project Notice**

- 2.1 **Work Period.** All authorized work shall be confined to the period **July 10 through October 15** of each year. Work within the active channel of a stream shall be restricted to periods of **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. A notice of completed work, including photographs of each site, shall be submitted to CDFW within seven (7) days of project completion.
- 2.2 **CDFW Notification of Work Initiation and Completion.** The Permittee shall contact CDFW in writing 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. Subsequently, the Permittee shall notify CDFW in writing no later than seven (7) days after the project is fully completed. **Notification of completion will include photographs of the completed work, erosion control measures, waste containment and disposal, and a summary of any CNDDB submissions as required below.**
- 2.3 **Work Period Modification.** If Permittee needs more time to complete the project activity, the work may be permitted outside of the work period and extended on a day-to-day basis by the CDFW representative who reviewed the project. Requests shall be made in writing via email or letter. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. The work period variance request should



consider the effects of increased stream flows, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period. CDFW reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the variance. CDFW shall have ten (10) calendar days to review the proposed work period variance.

### **General Species Protection Measures**

- 2.4 Prohibition of Live Stream Work. No work is authorized in a live flowing stream. All work shall be conducted when the stream is dry. The Permittee shall notify CDFW if it determines that work in a live flowing stream is required to complete a project and will submit a diversion plan.
- 2.5 Maintain Passing of Fish Up and Down Stream. It is unlawful to construct or maintain in any stream any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish (as defined in FGC Section 45 "fish" means a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals) up and down stream pursuant to FGC section 5901.
- 2.6 Decontamination. The Permittee is responsible for ensuring all project personnel adhere to the latest version of the Northern Region California Department of Fish and Wildlife Aquatic Invasive Species Decontamination Protocol for all field gear and equipment that will be in contact with water. Heavy equipment and other motorized or mechanized equipment that comes in contact with water should generally follow watercraft decontamination protocols found in the AIS Decontamination Protocol.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=92821&inline>
- 2.7 Staging and Storage. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located adjacent to the stream, shall be positioned over drip-pans. Any equipment or vehicles driven and/or operated in proximity to the stream must be checked and maintained daily. Vehicles must be moved away from the stream prior to refueling and lubrication.
- 2.8 Allow Wildlife to Leave Unharmed. Permittee shall allow any wildlife encountered during the course of construction to leave the construction area unharmed. This Agreement does not allow for the trapping, capture, or relocation of any state or federally listed species.
- 2.9 Escape Ramp in Trench. At the end of each work day, Permittee shall place an escape ramp at each end of any open trench greater than 6-inches in depth and

walls greater than 30 degrees to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees.

2.10 Prohibition Against Use of Plastic Netting in Erosion Control Measures. Permittee shall not use temporary or permanent erosion control devices containing plastic netting, including photo- or bio-degradable plastic netting. Erosion control and landscaping specifications shall allow only natural fiber for use in erosion control mats, blankets, and straw or fiber wattles.

2.11 Remove Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the project site and vicinity of the stream upon completion of project activities.

### **Designated Biologist**

2.12 Designated Biologist. At least thirty (30) days before initiating project activities requiring biological surveys, the Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information for a Designated Biologist. Permittee shall obtain CDFW's written approval of the Designated Biologist prior to the commencement of project activities. The Designated Biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources present at the project site. In addition to these requirements, only Designated Biologists with a valid Scientific Collection Permit issued pursuant to FGC sections 1002 and 1002.5 will be approved and authorized to capture, handle, and relocate any species of fish and wildlife. The Designated Biologist shall be responsible for monitoring all project activities, avoidance measures, including any ground-disturbing activities in areas subject to this Agreement.

2.13 Designated Biologist Authority. To ensure compliance with the measures within this Agreement, the Designated Biologist shall have authority to immediately stop any activity that is not in compliance with this Agreement, and/or to order any reasonable measure to avoid the unauthorized take of Special Status Species. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with the Measures within this Agreement, including cease-work orders issued by the CDFW.

### **Special Status Species Avoidance and Minimization**

2.14 Prohibition on Take of Listed Species. This agreement does not authorize the take or incidental take of any State or Federal listed threatened or endangered listed species. State Listed or Fully Protected Species include any native plant species listed as rare under the Native Plant Protection Act (Fish & G. Code, § 1900 et

seq.; Cal. Code Regs., tit. 14, § 670.2); any species that is listed or is a candidate for listing under the California Endangered Species Act (Fish & G. Code, § 2080 et seq.; Cal. Code Regs., tit. 14, §§ 670.2, 670.5); or any fully protected species (Fish & G. Code, §§ 3511, 4700, 5050, 5515). The Permittee is required, as prescribed in these laws, to consult with the appropriate agency prior to commencement of the project.

- 2.15 Northern Spotted Owl (NSO) Avoidance. To avoid take of NSO from noise disturbance, all road maintenance and improvement activities are prohibited during the breeding season until **July 10** of each year.
- 2.16 Avoidance of Nesting Birds. Permittee shall avoid nests occurring within and near the project site pursuant to the Migratory Bird Treaty Act of 1918 and Fish and Game Code section 3503. Vegetation maintenance/removal as necessary within the scope of the project shall be confined to the period commencing **August 16 and ending February 28**, of any year in which this Agreement is valid, provided the work area is outside of the actively flowing stream. Vegetation maintenance/removal may continue during precipitation events provided stream flows have not risen into work areas and sediment delivery will not result.
- 2.17 Nesting Bird Survey Before Commencement. If vegetation removal or other project-related improvements that could impact nesting birds are scheduled during the nesting season (typically **March 1 to August 15**), a focused survey for active bird nests shall be conducted by a Designated Biologist within seven (7) days prior to the beginning of project-related activities. Surveys shall begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. The results of the survey shall be submitted to CDFW by email within three (3) business days of survey completion. Survey results shall include a description of the area surveyed, time and date of surveys, ambient conditions, species observed, active nests observed, evidence of breeding behaviors (e.g., courtship, carrying nesting material or food, etc), and a description of any outstanding conditions that may have impacted survey results (e.g. weather conditions, excess noise, predators present, etc.) If an active nest is found, the Permittee shall avoid disturbance and destruction of the nest by implementing avoidance measures. If the nest cannot be avoided, consult with CDFW regarding appropriate action to comply with the Fish & Game Code section 3503. If a lapse in project-related work of seven (7) days or longer occurs, another focused survey and if required, consultation with CDFW, will be required before project work can be reinitiated.
- 2.18 Special-Status Plants. If Special-Status plants (State listed and taxa that meet the definition of Rare or Endangered under CEQA Guidelines 15380) may occur on the project site, the Designated Biologist shall conduct annual, focused surveys on the Project site during the bloom periods and before the implementation of Project-related activities. If populations of any of these species are found:

2.18.1 Fencing shall be installed a minimum of 100 feet from the location of



special-status plants, and no Project activity will be permitted in the area occupied by special-status plants or the 100-foot buffer area around these plants.

- 2.18.2 If special-status plant populations are found on the Project site and it is not feasible to avoid them during Project-related activities, the Project applicant shall consult with CDFW to determine if the project may be covered under this Agreement. Separate notification pursuant to FGC 1602 may be required in some instances.

### **Vegetation Management**

- 2.19 Riparian Buffers. Riparian buffers shall be not be modified, unless authorized by CDFW in writing.
- 2.20 Minimum Vegetation Removal. No native riparian vegetation shall be removed from the bank of the stream, except where authorized by CDFW. Permittee shall limit the disturbance or removal of native vegetation to the minimum necessary to achieve design guidelines and standards for the Authorized Activity. Permittee shall take precautions to avoid damage to vegetation outside the work area.
- 2.21 Vegetation Maintenance. Permittee shall limit vegetation management (e.g., trimming, pruning, or limbing) and removal for the purpose of Authorized Activity to the use of hand tools. Vegetation management shall not include treatment with herbicides.
- 2.22 Invasive Plant Species. Permittee shall not plant, seed or otherwise introduce invasive plant species within the Project area. Invasive plant species include those identified in the California Invasive Plant Council's inventory database, which is accessible at: <https://www.cal-ipc.org/plants/inventory/>.

### **Stream Remediation and Restoration**

- 2.23 Stream Restoration Plan. The Permittee shall submit a Stream Restoration Plan to CDFW prior to conducting remediation activities. The Stream Restoration Plan (SRP) shall detail the dimensions and slopes of the stream channel to be remediated. The SRP shall describe any material utilized to restore the channel to a natural condition. The SRP shall include a revegetation plan for remediation of the impacted channel reach.
- 2.24 Revegetation Plan. The Permittee shall submit a Revegetation Plan with the SRP to CDFW for review and approval prior to implementation of riparian habitat restoration activities. The Revegetation Plan shall, at a minimum, include the following:

- 2.24.1 The identification of the area and vegetation types that will be restored.
- 2.24.2 A planting design and palette appropriate to the vegetation type, cover, stratum, and level of biodiversity (i.e., species richness and composition). Use of a reference site is recommended.
- 2.24.3 Use regionally appropriate native plants for a riparian vegetation type. The derivation of plant material such as containers, plugs, cuttings, divisions, or seeds from coastal areas of Humboldt, Del Norte and Mendocino Counties within 30 miles of the coast. All native seed material shall be from the North Coast ecoregion (Humboldt, Mendocino, Sonoma or Del Norte Counties), if practical. If quantities are not able to be satisfied from these collection sites, propagules may be obtained from other counties in Northern California with pending approval from a restoration ecologist or botanist.
- 2.24.4 Cuttings of willows, cottonwoods conducted when dormant. Collection of cuttings within an area dispersed to maintain genetic and sexual diversity, and to avoid adversely impact existing riparian vegetation. Cuttings hydrated between harvesting and planting (e.g., soak cuttings in water several days to a week to stimulate rooting prior to planting). Cuttings planted to depth of 75% of their length with buds pointing up and bottom of cutting in moist soil or water.
- 2.24.5 Planting conducted after the first seasonal rains have saturated soils beyond the first several inches (November/December) and before April.
- 2.24.6 No application of fertilizer on plants or chemical controls on weeds.
- 2.24.7 Measurable success criteria based on plant survival, density, or cover.
- 2.24.8 Monitoring conducted for a minimum of five years to determine whether the revegetation goals and objectives have been met. Remedial measures if revegetation goals and objectives are not met.
- 2.24.9 Annual status reports on the revegetation efforts shall be submitted to CDFW in the by **October 31 of each year** following initial planting for the length of the monitoring period.
- 2.25 Project Inspection. The Project shall be inspected by qualified professional to ensure that the stream restoration was implemented and functioning 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.

## **Erosion and Sediment Control**

- 2.26 Erosion Control. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to enter waters of the State. Erosion control measures, such as, silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used wherever sediment has the potential to leave the work site and enter the stream.
- 2.27 Silt Laden Runoff. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed.
- 2.28 Disposal and Removal of Material. All removed spoils and construction debris shall be moved outside the work area prior to inundation by water. Spoil sites shall not be located within the stream channel or areas that may be subjected to stream flows, where spoil may be washed back into a stream, or where it may impact streambed habitat, aquatic or riparian vegetation. All removed material shall be disposed of according to State and local laws and ordinances.

## **Equipment and Vehicles**

- 2.29 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat.
- 2.30 Stationary Equipment Leaks. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.31 Equipment Storage. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, shall be located outside of the stream channel and banks.
- 2.32 Stockpiled Materials. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation. Stockpiles shall be covered when half inch (0.5") or more precipitation within a 48-hour or greater period and/or when a rain event with 30 percent or greater probability of precipitation is forecasted. Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the project area.

## **Debris Materials and Waste**

- 2.33 Waste Containment and Disposal. Permittee shall contain all refuse in enclosed, wildlife proof, storage containers, at all times, and relocate refuse to an authorized

waste management facility, in compliance with State and local laws, on a regular and ongoing basis. All refuse shall be removed from the site and properly disposed of, at the close of the cultivation season and/or when the parcel is no longer in use. Photo documentation of newly installed storage containers shall be included in the Work Completion Report.

- 2.34 No Dumping. Permittee and all contractors, subcontractors, and employees shall not dump any litter or construction debris within the stream, or where it may pass into the stream.
- 2.35 Pick Up Debris. Permittee shall pick up all debris and waste daily.
- 2.36 Wash Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

### **Toxic and Hazardous Materials**

- 2.37 Toxic Materials. Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into the stream or its tributaries shall be contained in watertight containers or removed from the project site.
- 2.38 Hazardous Substances. Permittee shall ensure that debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement and concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to any life stage of fish and wildlife or their habitat (includes food sources) does not enter the riparian setback or waters of the state, pursuant to FGC Section 5650. Permittee shall immediately remove any of these materials placed within, or where they may enter, a stream or lake or other waters of the state.
- 2.39 Hazardous Materials. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the project related activities shall be prevented from contaminating the soil and/or entering the waters of the State.

### **Spills and Emergencies**

- 2.40 Spill Clean Up Equipment. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of work within the stream zone.
- 2.41 Spill Cleanup. Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted

regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on site during construction.

- 2.42 **Spill Containment.** All activities performed in or near a stream shall have absorbent materials designated for spill containment and clean-up activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the clean-up activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

### **3. Reporting Measures**

Permittee shall meet each reporting requirement described below.

- 3.1 **CDFW Notification of Work Initiation.** The Permittee shall contact CDFW within the seven-day period **preceding the beginning of work** permitted by this Agreement. Information to be disclosed shall include Agreement number, and the anticipated start date.
- 3.2 **Work Completion.** The proposed work shall be completed by no later than **October 15, 2020. Notification of completion will include photographs of the completed work, erosion control measures, waste containment and disposal, and a summary of any CNDDB submissions** and shall be submitted to CDFW, LSA program at 619 Second Street, Eureka, CA 95501 **within seven (7) days** of project completion.
- 3.2.1 Photo documentation of newly installed storage containers shall be included in the Work Completion Report. A notice of completed work, with supplemental pictures, shall be submitted to CDFW **within seven (7) days** of project completion as part of the work completion report.
- 3.3 **Project Inspection.** The Project shall be inspected a by licensed professional to ensure that the stream restoration was implemented and is functioning as designed and complies with the terms of this Agreement. A copy of the inspection report, including photographs of each site, shall be submitted to CDFW within 90 days of completion of each separate project. The Permittee shall submit the **Project Inspection Report** to CDFW, LSA Program at 619 Second Street, Eureka, CA 95501.
- 3.4 **Site Management Plan and Related Technical Reports.** The Permittee shall submit to CDFW the project's current draft of the Site Management Plan and related technical reports if it was not included in the Notification. If the Site Management Plan and/or related technical reports are still in preparation, Permittee shall submit it and all subsequent revisions and updates within 30 days of submittal to the SWRCB.

- 3.5 Stream Restoration Plan. The Permittee shall submit a **Stream Restoration Plan** by **July 31, 2020**. The Stream Restoration Plan shall be submitted to CDFW at 619 Second Street, Eureka, CA 95501.
- 3.6 Revegetation Plan. The permittee shall submit a **Revegetation Plan** to CDFW by **July 31, 2020**, for review and approval prior to implementation of riparian habitat restoration activities (condition 2.25). The Revegetation Plan shall be submitted to CDFW at 619 Second Street, Eureka, CA 95501.
- 3.6.1 Annual status reports on the revegetation efforts shall be submitted to CDFW by **October 31 of each year** following initial planting for the length of the monitoring period.
- 3.7 Notification to the California Natural Diversity Database. If any special status species are observed at any time during the project, the Designated Biologist shall submit California Natural Diversity Data Base (CNDDDB) forms to the CNDDDB within five (5) working days of the sightings. A summary of CNDDDB submissions shall be included with the completion notification. Forms and instructions for submissions to the CNDDDB may be found at:  
<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

## CONTACT INFORMATION

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

### To Permittee:

Emry Jacques  
4235 Excelsior Road  
Eureka, CA 95503  
[ejacques3@gmail.com](mailto:ejacques3@gmail.com)

### To CDFW:

Department of Fish and Wildlife  
Northern Region  
619 Second Street  
Eureka, California 95501  
Attn: Lake and Streambed Alteration Program – Andrew Orahoske  
Notification #1600-2019-0109-R1



## **LIABILITY**

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 Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or 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. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of

authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 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, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to 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 section 1605, subdivisions (b) through (e).

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

### **EFFECTIVE DATE**

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after the Permittee signature; 2) after CDFW complies with all applicable requirements under CEQA; and 3) after payment of the applicable FGC section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

### **TERM**

This Agreement shall **expire five (5) 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, subdivision (a)(2) requires.

### **AUTHORITY**

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

**AUTHORIZATION**

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

**CONCURRENCE**

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

**FOR EMRY JACQUES**



---

Emry Jacques

5/13/20  
Date

---

**FOR DEPARTMENT OF FISH AND WILDLIFE**

**Sanville, Cheri@Wildlife**

---

Cheri Sanville

Senior Environmental Scientist Supervisor

Digitally signed by Sanville, Cheri@Wildlife  
DN: DC=Gov, DC=Ca, DC=Dfg, DC=AD, OU=DFG Divisions, OU=(1) NR, OU=Users, CN="Sanville, Cheri@Wildlife"  
Reason: I am the author of this document  
Location: CDFW 619 2nd Street Eureka, CA  
Date: 2020-05-15 08:37:52  
Foxit PhantomPDF Version: 9.6.0

Date

Prepared by: Andrew Orahoske, Environmental Scientist, May 7, 2020