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

NOV 29 2017

CDFW - EUREKA



**STREAMBED ALTERATION AGREEMENT**

NOTIFICATION NO. 1600-2017-0319-R1

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

Mr. Fritz Sexton

Sexton R & F Investments Stream Crossings and Remediation Project  
14 Encroachments

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

**RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on June 5, 2017, 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 accept 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 Willow Creek watershed, approximately 7.5 miles southwest of the town of Willow Creek, County of Humboldt, State of California. The project is located in Section 16, T6N, R4E, Humboldt Base and Meridian; in the Willow Creek U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Number 316-071-04; latitude 40.9029 N and longitude 123.7285 W at the parcel center.

**PROJECT DESCRIPTION**

The project is limited to 14 encroachments to unnamed tributaries to Willow Creek (Table 1). Twelve of these encroachments are to upgrade or decommission existing stream crossings and two encroachments are to remediate stream alterations

associated with a notice of violation. Work for these encroachments will include some or all of the following: excavation, culvert removal, culvert installation, backfilling and compaction of fill, rock armoring as necessary to minimize erosion, and revegetation.

Table 1. Project encroachments with descriptions.

ID*	Latitude/Longitude^	Description
MP2	40.8989, -123.7335	Stream crossing: Upgrade existing dirt ford to an armored ford.
MP3	40.8979, -123.7359	Stream crossing: Replace undersized 18" diameter culvert with minimum 24" diameter culvert.
MP4	40.9004, -123.7284	Stream crossing: 1. Install minimum 36" diameter culvert at existing crossing to reestablish natural flow path. 2. Remove 12" diameter culvert at spring and direct flow into rock armor inboard ditch connected to inlet of 36" culvert.
MP6	40.9046, -123.7310	Stream crossing: Install minimum 24" diameter culvert at existing ford crossing to reestablish natural flow path and disconnect diversion to adjacent channel.
MP7	40.9045, -123.7313	Stream crossing: Replace existing 18" diameter culvert with minimum 24" diameter culvert.
MP8	40.9024, -123.7355	Decommission crossing: 1. Remove existing 18" diameter culvert and fencing. 2. Excavate a stream channel across south extent of flat to connect spring flow to Class II channel. 3. Revegetate banks of constructed channel (50 feet from top of bank) with native conifer seedlings (container, spaced 8-10'). 4. Remove perched unstable fill to create a 2:1 slope. 5. Remove any remaining garbage within 150 feet from the stream.
MP9	40.9045, -123.7332	Decommission crossing: 1. Excavate existing fill crossing to reestablish stream channel along natural flow path. 2. Rock armor constructed channel and hydrologically disconnect road approaches to minimize erosion.
MP10	40.9054, -123.7314	Stream crossing: 1. Install minimum 30" diameter and 60 foot long culvert to realign diverted stream channel to natural flow path. 2. Excavate channel downslope from culvert outlet through landing to match natural topography and rock armor constructed channel. 3. Revegetate riparian zone (50 feet from top of bank) with native conifer seedlings (container, spaced 8-10'). Move boat > 50 feet from top of bank of stream.
MP12	40.9052, -123.7287	Stream Crossing: Replace undersized 12" diameter culvert with minimum 24" diameter culvert.
MP13	40.9055, -123.7280	Stream remediation: 1. Pull back over steepened western bank of spring channel. 2. Revegetate riparian zone (50 feet from top of bank) with native conifer seedlings (container, spaced 8-10'). 3. Clean out inlet and outlet of existing 18" diameter culvert. 4. Remove and properly dispose of cultivation waste.

\*ID name is consistent with that used in the LSA Notification. ^Units = decimal degrees, datum = WGS84.

Table 1. Continued.

ID*	Latitude/Longitude^	Description
MP14	40.9026, -123.7257	Decommission crossing: 1. Excavate existing Humboldt crossing to the natural stream bed elevation. 2. Rock armor as necessary to minimize erosion.
MP19	40.9054, -123.7342	Stream remediation: 1. Excavate graded flat to reestablish channel and natural flow path. 2. Install minimum 24" diameter culvert. 3. Rock armor excavated channel and culvert outlet to minimize erosion.
MP20	40.9071, -123.7330	Stream crossing: 1. Excavate existing fill crossing to reestablish natural flow. 2. Install minimum 24" diameter by 60' long culvert.
MP21	40.9074, -123.7336	Stream crossing: Install minimum 24" diameter culvert at existing crossing.

\*ID name is consistent with that used in the LSA Notification. ^Units = decimal degrees, datum = WGS84.

## PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: Southern Torrent Salamander (*Rhyacotriton variegatus*), Pacific Tailed Frog (*Ascaphus truei*), Foothill Yellow-legged Frog (*Rana boylei*), Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*O. kisutch*), Steelhead Trout (*O. mykiss*), Pacific Lamprey (*Entosphenus tridentate*), and Western Pond Turtle (*Actinemys marmorata marmorata*) as well as, other amphibian, reptile, aquatic invertebrate, mammal, and bird species.

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

### Impacts to water quality:

temporary increase in fine sediment transport;  
 increased water temperature;

### 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:

direct and/or incidental take;  
 indirect impacts;  
 impediment of up- or down-stream migration;  
 water quality degradation; and  
 damage to aquatic habitat and function.

## **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

### **1. Administrative Measures**

The Permittee shall meet each administrative requirement described below.

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

## 2. Avoidance and Minimization Measures

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

- 2.1 Permitted Project Activities. Except where otherwise stipulated in this Agreement, all work shall be in accordance with the initial Permittee Notification received on June 5, 2017 and revision received on September 20, 2017, together with all maps, BMP's, photographs, drawings, and other supporting documents submitted with the Notification.
- 2.2 Work Period. All work, not including water diversion, shall be confined to the period **June 15 through October 1** 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.
- 2.3 Work Completion. The Permittee shall complete all projects by **October 1, 2018**.
- 2.4 Extension of the Work Period. If weather conditions permit, and the Permittee wishes to extend the work period after October 1, a written request shall be made to CDFW at least 5-working days before the proposed work period variance. Written approval (letter or e-mail) for the proposed time extension must be received from CDFW prior to activities continuing past October 1.
- 2.5 Stream Protection. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other deleterious material from project activities shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into the stream. All project materials and debris shall be removed from the project site and properly disposed of off-site upon project completion.
- 2.6 Equipment Maintenance. Refueling of machinery or heavy equipment, or adding or draining oil, lubricants, coolants or hydraulic fluids shall not take place within stream bed, channel and bank. All such fluids and containers shall be disposed of properly off-site. Heavy equipment used or stored within stream bed, channel and bank shall use drip pans or other devices (e.g., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.

- 2.7 Hazardous Spills. Any material, which could be hazardous or toxic to aquatic life and enters a stream (i.e. a piece of equipment tipping-over in a stream and dumping oil, fuel or hydraulic fluid), the Permittee shall immediately notify the California Emergency Management Agency State Warning Center at 1-800-852-7550, and immediately initiate clean-up activities. CDFW shall be notified by the Permittee within 24 hours at 707-445-6493 and consulted regarding clean-up procedures.
- 2.8 Excavated Fill. Excavated fill material shall be placed in locations where it cannot deliver to a watercourse. To minimize the potential for material to enter the watercourse during the winter period, all excavated and relocated fill material shall be tractor contoured (to drain water) and tractor compacted to effectively incorporate and stabilize loose material into existing road and/or landing features.
- 2.9 Runoff from Steep Areas. The Permittee shall make preparations so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential or contained behind erosion control structures. Erosion control structures such as straw bales and/or siltation control fencing shall be placed and maintained until the threat of erosion ceases. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.
- 2.10 Culvert Installation.
- 2.10.1 Existing fill material in the crossing shall be excavated down vertically to the approximate original channel and outwards horizontally to the approximate crossing hinge points (transition between naturally occurring soil and remnant temporary crossing fill material) to remove any potential unstable debris and voids in the older fill prism.
- 2.10.2 Culvert shall be installed to grade, aligned with the natural stream channel, and extend lengthwise completely beyond the toe of fill. If culvert cannot be set to grade, it shall be oriented in the lower third of the fill face, and a downspout or energy dissipator (such as boulders, rip-rap, or rocks) shall be installed above or below the outfall as needed to effectively control stream bed, channel, or bank erosion (scouring, headcutting, or downcutting).
- 2.10.3 Culvert bed shall be composed of either compacted rock-free soil or crushed gravel. Bedding beneath the culvert shall provide for even distribution of the load over the length of the pipe, and allow for natural settling and compaction to help the pipe settle into a straight profile. The crossing backfill materials shall be free of rocks, limbs, or other debris that could allow water to seep around the pipe, and shall be compacted.

2.10.4 Culvert inlet, outlet (including the outfall area), and fill faces shall be armored where stream flow, road runoff, or rainfall energy is likely to erode fill material and the outfall area.

2.10.5 Permanent culverts shall be sized to accommodate the estimated 100-year flood flow [i.e.  $\geq 1.0$  times the width of the bankfull channel width or the 100-year flood size, whichever is greater], including debris, culvert embedding, and sediment loads.

#### 2.11 Rock Armor Placement.

2.11.1 No heavy equipment shall enter the wetted stream channel.

2.11.2 No fill material, other than clean rock, shall be placed in the stream channel.

2.11.3 Rock shall be sized to withstand washout from high stream flows, and extend above the ordinary high water level.

2.11.4 Rock armoring shall not constrict the natural stream channel width and shall be keyed into a footing trench with a depth sufficient to prevent instability.

#### 2.12 Decommissioning

2.12.1 Stream crossing fills shall be completely excavated, including 100 year flood channel bottom widths and 2:1 or otherwise stable side slopes.

2.12.2 Any unstable or potentially unstable sidecast materials that could fail or deliver sediment to the stream shall be excavated and properly disposed.

2.12.3 Surface treatments (ripping, outsliping and/or cross draining) shall be used to disperse and reduce surface runoff.

#### 2.13 Dewatering.

2.13.1 Stream Diversion. Only when work in a flowing stream is unavoidable (e.g., perennial streams), Permittee shall divert the stream flow around or through the work area during 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.

- 2.13.2 **Maintain Aquatic Life.** When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, Permittee shall allow sufficient water at all times to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code §5937.
- 2.13.3 **Stranded Aquatic Life.** The Permittee shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any State or federally listed species, or State listed species of special concern.
- 2.13.4 **Coffer Dams.** Prior to the start of construction, Permittee shall divert the stream around or through the work area and the work area shall be isolated from the flowing stream. To isolate the work area, water tight coffer dams shall be constructed upstream and downstream of the work area and water diverted, through a suitably sized pipe, from upstream of the upstream coffer dam and discharge downstream of the downstream coffer dam. Coffer dams shall be constructed of a non-erodible material which does not contain soil or fine sediment. Coffer dams and the stream diversion system shall remain in place and functional throughout the construction period. Coffer dams or stream diversions that fail for any reason shall be repaired immediately.
- 2.13.5 **Restore Normal Flows.** Permittee shall restore normal flows to the effected stream immediately upon completion of work at that location.
- 2.14 **Project Inspection.** The Project shall be inspected by Stillwater Sciences or a licensed engineer before **October 1** during the year when the project was completed to ensure that stream crossing(s) were installed as designed. A copy of the inspection report, including photographs of each site, shall be submitted to CDFW in accordance with the reporting measures described below.

### **3. Reporting Measures**

- 3.1 **Project Inspection.** To comply with Condition 2.14, the Permittee shall **submit the Project Inspection Report, within 90 days of completion of this project** to CDFW, LSA Program at 619 Second Street, Eureka, CA 95501.



## **CONTACT INFORMATION**

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

To Permittee:

Mr. Fritz Sexton  
R&F Investments LLC  
1717 Tasi Lane  
McKinleyville, California 95519  
707-834-6301  
fritzsex@gmail.com

To CDFW:

Department of Fish and Wildlife  
Northern Region  
619 Second Street  
Eureka, California 95501  
Attn: Lake and Streambed Alteration Program  
Notification #1600-2017-0319-R1

## **LIABILITY**

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

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

## **SUSPENSION AND REVOCATION**

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

Before CDFW suspends or revokes the Agreement, it shall provide the Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide the Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to the Permittee, if necessary, including but not

limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

## **ENFORCEMENT**

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

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

## **OTHER LEGAL OBLIGATIONS**

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

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

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

## **AMENDMENT**

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

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

## **TRANSFER AND ASSIGNMENT**

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

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

## **EXTENSIONS**

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

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

## **EFFECTIVE DATE**

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

## **TERM**

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

**AUTHORITY**

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

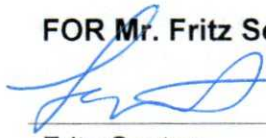
**AUTHORIZATION**

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

**CONCURRENCE**


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

**FOR Mr. Fritz Sexton**

  
\_\_\_\_\_  
Fritz Sexton

11-28-17  
Date

**FOR DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_  
Scott Bauer  
Senior Environmental Scientist Supervisor

12/21/17  
Date