

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

RECEIVED

AUG 14 2018

CDFW - EUREKA



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2017-0463-R1
Unnamed Tributaries to the South Fork Trinity River

Mr. Brian Radoo
Radoo Water Diversion Project
2 Encroachments



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

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on July 14, 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 Trinity River Watershed, approximately 5.5 miles south of the town of Willow Creek in the County of Humboldt, State of California. The project is located in Section 27, T 6N, R 5E, Humboldt Base and Meridian; in the Hennessy Peak U.S. Geological Survey 7.5-minute quadrangle; Assessor's Parcel Number 524-112-022; latitude 40.8641 N and longitude -123.6095 W for two points of diversion (POD) as described in the Notification.

PROJECT DESCRIPTION

The project is limited to 2 encroachments (Table 1). Both encroachments consist of adjacent small, reinforced corrugated plastic culvert pipe sumps that collect water into 2 inch PVC pipes that are gravity fed into a settling tank equipped with a shut off float valve. A high pressure pump is then used to push water upslope. The PODs are subject to dry-season forbearance (May 15th to October 15th) for cannabis cultivation with irrigation water during forbearance from an off-channel lined, rainwater catchment pond with capacity of ~675,000 gallons. POD's also supply water for domestic household use year round, but primarily during the cultivation season. Additional water storage is provided by a bank of water tanks currently totaling 11,500 gallons. Work for the water diversion will include use and maintenance or improvement of the water diversion infrastructure.

Table 1. Project encroachments with descriptions.

ID	Latitude/Longitude	Description
POD 1	40.8641 N/ 123.6095 W	Culvert sump catchment at the head of an unnamed class II spring/stream gravity fed to settling tank and pumped to an off channel pond and tanks for storage and used for cannabis cultivation and domestic household
POD 2	40.8641 N/ 123.6095 W	Culvert sump catchment near the head of an unnamed class II spring/stream adjacent and downstream from POD 1 gravity fed to settling tank and pumped to an off channel pond and tanks for storage and used for cannabis cultivation and domestic household

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: Osprey (*Pandion haliaetus*), Pacific Fisher (*Pekania pennanti*), Long-legged myotis (*Myotis volans*), Foothill yellow-legged frog (*Rana boylei*), Southern Torrent Salamander (*Rhyacotriton variegatus*), Western pond turtle (*Emys marmorata*), Chinook salmon (*Oncorhynchus tshawytscha*), Steelhead trout (*O. mykiss*), amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species and native plants.

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

Impacts to water quality:

- increased water temperature
- reduced instream flow

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

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

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

- cumulative effect when other diversions on the same stream are considered
- diversion of flow from activity site
- direct and/or incidental take
- indirect impacts
- impediment of up- or down-stream migration
- water quality degradation; and damage to aquatic habitat and function

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

The Permittee shall meet each administrative requirement described below.

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

- 1.6 **Project Site Entry.** The Permittee agrees to allow CDFW employees access to any property it owns and/or manages for the purpose of inspecting and/or monitoring the activities covered by this Agreement, provided CDFW: a) provides 24 hours advance notice; and b) allows the Permittee or representatives to participate in the inspection and/or monitoring. This condition does not apply to CDFW enforcement personnel.

2. Avoidance and Minimization Measures

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

- 2.1 **Permitted Project Activities.** Except where otherwise stipulated in this Agreement, all work shall be in accordance with the Permittee Notification received on July 14, 2017, together with all maps, BMP's, photographs, drawings, and other supporting documents submitted with the Notification.
- 2.2 **Maximum Diversion Rate.** The maximum instantaneous diversion rate from the water intake shall not exceed 2 gallons per minute (gpm) combined from POD 1 and POD 2 at any time.
- 2.3 **Bypass Flow.** The Permittee shall pass 90% or sufficient flow at all times to keep all aquatic species including fish and other aquatic life in good condition below the point of diversion.
- 2.4 **Seasonal Diversion Minimization.** No more than 2,880 gallons per day shall be cumulatively diverted from POD 1 and POD 2 between October 15 and May 15 of any year. No more than 400 gallons per day shall be diverted for domestic household use during the low flow season from May 15 to October 15 of any year. Water shall be diverted only if the Permittee can adhere to conditions 2.2 and 2.3 of this Agreement.
- 2.5 **Measurement of Diverted Flow.** The Permittee shall install devices acceptable to CDFW for measuring the quantity of water diverted from each POD for domestic household and cannabis cultivation use. Measurement(s) shall begin as soon as this Agreement is signed by the Permittee. The Permittee shall record the quantity of water pumped to both systems on a weekly basis. The report shall be submitted to CDFW in accordance with the reporting measures described below.
- 2.6 **Water Management Plan.** The Permittee shall submit a Water Management Plan no later than 60 days following the signing of this Agreement that describes how forbearance, metering and separate storage for cultivation and domestic household use will be achieved under this Agreement. The Water Management Plan shall include details on water storage, water conservation, or other relevant material to maintain irrigation needs in coordination with forbearance and bypass flow requirements. The Water Management Plan shall include a brief narrative

describing water use on the property, photographs to support the narrative, and water use calculations to ensure compliance with this Agreement. The report shall be submitted to CDFW in accordance with the reporting measures described below.

- 2.7 **Intake Structure.** No polluting materials (e.g., particle board, plastic sheeting, bentonite) shall be used to construct or screen, or cover the diversion intake structure. Any improvements to the POD's during the term of this agreement must be approved by CDFW.
- 2.8 **Intake Screening.** Screens shall be installed on intakes wherever water is diverted, and shall be in place whenever water is diverted. Openings in intakes shall not exceed 1/8 inch diameter (horizontal for slotted or square openings) or 3/32 inch for round openings. The Permittee shall regularly inspect, clean, and maintain screens in good condition.
- 2.9 **Intake Shall Not Impede Aquatic Species Passage.** The water diversion structures shall be maintained in such that they do not constitute a barrier to upstream or downstream movement of aquatic life.
- 2.10 **Management of Invasive Bullfrogs.** The Permittee shall monitor pond(s) each year for invasive bullfrogs. If bullfrogs are or become present, they shall be appropriately managed. Management of bullfrogs, including annual draining and drying of ponds, shall follow the guidelines in Exhibit A. A copy of the annual monitoring report, shall be submitted to CDFW in accordance with the reporting measures described in Exhibit A and below (Reporting Measure 3.3).
- 2.11 **Pond Wildlife Escape Structures.** The Permittee shall provide suitable escape structures such as ramps, cargo netting or other structures that allow wildlife entrapped in the existing pond to escape.
- 2.12 **Water Conservation.** The Permittee shall make best efforts to minimize water use, and to follow best practices for water conservation and management.
- 2.13 **Water Storage Maintenance.** Storage tanks shall have a float valve to shut off the diversion when tanks are full to prevent overflow from being diverted when not needed. The Permittee shall install any other measures necessary to prevent overflow of tanks resulting in more water being diverted than is used.
- 2.14 **State Water Code.** This Agreement does not constitute a valid water right. The Permittee shall comply with State Water Code sections 5100 and 1200 et seq. as appropriate for the water diversion and water storage. The application for this registration is found at:
http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/sdu_registration.pdf.

3. Reporting Measures

- 3.1 **Measurement of Diverted Flow.** To comply with Condition 2.5, the Permittee shall **submit a copy of the water diversion records, no later than December 31 of each year beginning in 2018**, to CDFW at 619 Second Street, Eureka, CA 95501.
- 3.2 **Water Management Plan.** To comply with Condition 2.6, the Permittee shall **submit a Water Management Plan no later than 60 days following the signing of this Agreement**, to CDFW at the 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. Brian Radoo
W.U.R.M. Assets
5 Valley Lane West
Valley Stream, NY 11581
516-567-2375
brian.radoo@gmail.com

To CDFW:

Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501
Attn: Lake and Streambed Alteration Program
Notification #1600-2017-0463-R1

LIABILITY

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

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

SUSPENSION AND REVOCATION

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

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

ENFORCEMENT

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

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

OTHER LEGAL OBLIGATIONS

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

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

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

AMENDMENT

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

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

TRANSFER AND ASSIGNMENT

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

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

EXTENSIONS

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

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

EFFECTIVE DATE

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

TERM

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

AUTHORITY

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

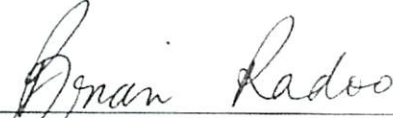
AUTHORIZATION

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

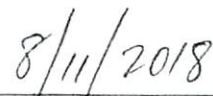
CONCURRENCE

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

FOR Mr. Brian Radoo



Brian Radoo

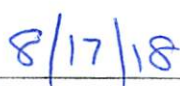


Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Cheri Sanville
Senior Environmental Scientist Supervisor



Date