

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



STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2016-0271-R1
Waterfall Gulch to Hare Creek

City of Fort Bragg as represented by Tabatha Miller
1 Encroachment

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Tabatha Miller representing the City of Fort Bragg (Permittee).

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, the Permittee initially notified CDFW on June 17, 2016 and submitted a revised notification on July 29, 2016, that the Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

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

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

PROJECT LOCATION

The project location is approximately 3.5 miles southeast of Fort Bragg near Franklin Road on APN 019-460-21. The project is located on an Unnamed Tributary known as Waterfall Gulch, tributary to Hare Creek, thence the Pacific Ocean in the County of Mendocino, State of California; Section 28, Township 18N, Range 17W; Mount Diablo Base and Meridian, in the Fort Bragg, California 7.5-minute quadrangle, U.S. Geological Survey (USGS) map.

PROJECT DESCRIPTION

The project is limited to a total of one existing gravity-fed water diversion facility on Waterfall Gulch, tributary to Hare Creek. Water is used for municipal purposes and will also be diverted to offstream storage at Summers Lane Reservoir under Water Right License No. 12171.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: downstream coho salmon (*Oncorhynchus kisutch*), steelhead trout (*O. mykiss*), Pacific lamprey (*Entosphenus tridentatus*), Western pond turtle (*Emys marmorata*), foothill yellow-legged frogs (*Rana boylei*), and onsite southern torrent salamanders (*Rhyacotriton variegatus*), tailed frog (*Ascaphus truei*), northern red-legged frog (*Rana aurora*), Coastal giant salamanders (*Dicamptodon tenebrosus*) and other aquatic resources. The adverse effects the project could have on the fish or wildlife resources identified above include:

Impacts to bed, channel, or bank and effects on habitat structure:

loss of natural bed or bank;
restriction or increase in sediment transport;

Impacts to water quality:

change in water temperature;
change in dissolved oxygen (DO);

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

loss or decline of instream channel habitat;

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

change in stream flow (Q);
diversion of flowing water from, or around, activity site;
dewatering;
change in hydrology below intake;
change in flow depth, width or velocity;
cumulative effect when other diversions on the same watercourse are considered;

Impacts to natural flow and direct effects on fish, wildlife, and their habitat:

impediment to migration of aquatic and terrestrial species; and
direct loss of resources for aquatic organisms.

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 readily available to all operational staff.

- 1.2 Limitations of Authorization for Water Use. This Agreement does not authorize any diversion, use, or storage of water unless already permitted by law. This Agreement does not constitute a valid water right.
- 1.3 Adherence to Existing Authorizations. Permittee shall operate and maintain the water diversion facility it owns, operates, or controls in accordance with current law and applicable water rights.
- 1.4 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.
- 1.5 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site to verify compliance with the 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.

- 2.1 Permitted Project Activities. All work shall be conducted as specified in the Agreement Notification No. 1600-2016-0271-R1 and all other supporting environmental documents, except where otherwise stipulated in this Agreement.
- 2.2 Diversion Rates. At no time shall the maximum instantaneous rate of diversion exceed 0.668 cubic feet per second (cfs).
- 2.3 Compliance with FGC Section 5937. Permittee shall allow sufficient flow to pass downstream to maintain aquatic life below the dam pursuant to FGC Section 5937.
- 2.4 Instream Assessment. To meet Condition 2.3, the Permittee shall perform a temperature and low flow assessment to determine effects on Waterfall Gulch and Hare Creek. Permittee shall measure water temperature using automated meters, such as HOBO meters, immediately upstream of the diversion pool, immediately downstream of the diversion, near the mouth of Waterfall Gulch, and in Hare Creek upstream and downstream of the confluence from June through October for the first two summers after execution of this Agreement. Water temperature shall be measured at least every 15 minutes; daily high and low temperature and the mean weekly average temperature (MWAT) for each site shall be reported.

Permittee shall measure low-flows in Hare Creek upstream and downstream of the confluence of Waterfall Gulch with Hare Creek at appropriate locations using CDFW's Discharge Measurement Standard Operating Procedure to determine

summer base flows in Hare Creek. Flows shall be measured at least once per month in August, September and October in the first two years of execution of this Agreement. Permittee may also deploy water level loggers to collect water level data.

The Permittee shall provide CDFW a draft of the proposed assessment specifics including a map of measurement locations within 120 days of execution of this Agreement for CDFW review and approval. The yearly results of the assessment shall be submitted to CDFW by December 31 of each year.

- 2.5 Bypass Flow Requirement. The Permittee shall bypass at least 25% of natural stream flow at all times to protect fish and wildlife, except for the following:
- a) If the Summers Lane reservoir is less than 90% full, then the bypass may be ramped down to 10% of the natural flow of Waterfall Gulch. A staff gage shall be installed in Summer's Lane Reservoir and the level of this reservoir recorded with the date and time when it is below 90% full.
 - b) During City declared water emergencies or Governor's drought state of emergencies, Permittee may bypass a minimum of 10% of the flow.
- 2.6 Ramping. To reduce impacts due to abrupt changes in released flows, the rate of release from the impoundment outside of the diversion season shall be modified incrementally to avoid sudden changes in flow. The amount of flow bypassed below the dam shall not be modified over a two hour period.
- 2.7 Water Conservation. The Permittee shall make best efforts to minimize water use and to follow best practices for water conservation and management.
- 2.8 Incidental Take. This Agreement does not allow for the take, or incidental take of any state or federal listed threatened or endangered species.
- 2.9 Removal of Structures. 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.
- 2.10 Water Contamination. Refueling of equipment, adding or draining lubricants, coolants and/or hydraulic fluids shall not take place within any stream or where activities could risk contamination of a stream. All such fluids and containers shall be disposed of at an appropriate waste facility. Equipment placed adjacent to the stream shall use drip pans as needed to prevent soil and water contamination.
- 2.11 Pollution Prevention. 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.

2.12 Spill Prevention. For all activities performed in the field involving the use of petroleum or oil based substances, the Permittee shall employ absorbent material designated for spill containment and clean up activity on site for use in case of accidental spill. Clean-up of all spills shall begin immediately. The Permittee shall immediately notify the State Office of Emergency Services at 1-800-852-7550. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

2.13 Notification and Coordination. Within 3 years of date of execution of this Agreement, Permittee shall notify CDFW for their diversions from Newman Gulch and from the Noyo River. The City shall make good faith efforts to work towards finding additional water supply solutions, which also could result in improving flows for fish and wildlife in Waterfall Gulch and in the Noyo River watershed. CDFW commits to coordinating and supporting the City of Fort Bragg's efforts.

3. Monitoring

- 3.1 To confirm bypass flows, a CDFW-approved water diversion monitoring program shall be conducted in Waterfall Gulch at the diversion facilities. Submitting water diversion and metering records for each day on annual basis can be used for this measure.
- 3.2 To meet 3.1, the Permittee shall maintain accurate records with current operational information including: (a) site location, (b) date, time, and duration of water diversion, (c) diversion rate (in gallons per minute (gpm) or cfs), and (d) measured streamflow upstream of the diversion. Accurate records shall be made available to CDFW on December 31 of each year following execution of this Agreement.

CONTACT INFORMATION

Any communication that the 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 the Permittee or CDFW specifies by written notice to the other.

To Permittee:

Tabatha Miller
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, California 95437
tmiller@fortbragg.com

To CDFW:

Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501
Attn: Lake and Streambed Alteration Program
Notification #1600-2016-0271-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 propose to amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource. 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. CDFW will inform the City of any new information and provide the City an opportunity to address or respond to the new information. CDFW will request information on the City's operations and potential operational changes that may be implemented before proposing an amendment to the Agreement. The process outlined in Fish and Game Code section 1603 will be followed for an amendment.

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., title. 14, section 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., title 14, section 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., title 14, section 699.5). CDFW shall process the extension request in accordance with FGC section 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 Permittees 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 three 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 CITY OF FORT BRAGG

Tabatha Miller
City Manager

Date

FOR DEPARTMENT OF FISH AND WILDLIFE

Curt Babcock
Environmental Program Manager

Date