

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Sacramento Area Flood Control Agency of Sacramento, State of California, hereafter called SAFCA, is as follows:

WHEREAS, pursuant to California Fish and Game Code, Section 1602, SAFCA, on September 18, 2008, notified the Department that it intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: Sacramento River, Natomas Cross Canal, and unnamed tributaries, in the Counties of Sacramento and Sutter, State of California.

WHEREAS, the Department, represented by Gary Hobgood, has determined that such operations may substantially adversely affect existing fish and wildlife resources including: valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); giant garter snake (*Thamnophis Gigas*); Swainson's hawk (*Buteo swainsoni*); Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*); Central Valley spring-run Chinook salmon (*O. tshawytscha*); fall-/late fall-run Chinook salmon (*O. tshawytscha*); Central Valley steelhead (*O. mykiss*); green sturgeon (*Acipenser medirostris*); Delta smelt (*Hypomesus transpacificus*); warm water fish species, amphibians, and other aquatic and terrestrial plant and wildlife species.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during SAFCA's work. SAFCA hereby agrees to accept the following recommendations as part of its work:

Project Description: The Sacramento Area Flood Control Agency (SAFCA) is proposing to implement Phase 2 of the Landside Improvements Project, an element of the Natomas Levee Improvement Program (NLIP). This program SAA #1600-2008-0290-R2 is divided into four phases for project schedule and implementation purposes: Phase 1, Phase 2, Phase 3, and Phase 4.

Phase 1 of the NLIP Landside Improvements Project was authorized separately under Notification No. 1600-2007-0085-R2 as the Natomas Cross Canal South Levee Phase 1 Improvement Project which involved degrading the levee crown and constructing a seepage remediation cutoff wall through the levee for the first 9,700 feet of the levee.

Phase 2 (referred to in the Landside Improvements Project EIR as the 2008 construction phase), would consist of improvements along the 5.3-mile-long Natomas Cross Canal (NCC) south levee and approximately 4.5 miles of the Sacramento River east levee from the NCC south levee to 2,000 feet south of the North Drainage Canal (Reaches 1-4B), relocation of the Elkhorn Main Irrigation Canal (Elkhorn Canal); construction of a new canal designed to provide drainage and associated giant garter snake habitat (referred to in this document as the Giant Garter Snake [GGG]/Drainage Canal) between the North Drainage Canal and the Elkhorn Reservoir; culvert removal under Garden Highway adjacent to the former Reclamation District (RD) 1000 Pumping Plant No. 2 site; and associated activities.

Phases 3 and 4 (collectively referred to as the 2009-2010 construction phases in the EIR) include improvements to the remaining portion of the Sacramento River east levee to the American River, the Pleasant Grove Creek Canal (PGCC) west levee, the Natomas East Main Drainage Canal (NEMDC) west levee, the American River north levee, and relocation of the Riverside Canal and connection of the GGS/Drainage Canal to Fisherman's Lake.

The elements of the proposed project include four broad, overlapping categories: 1) levee raising and seepage remediation, 2) improvements to major irrigation and drainage infrastructure, 3) habitat development and management, and 4) additional actions to meet Federal Emergency Management Agency (FEMA) requirements: encroachment management and bridge crossing modifications.

Stream Zone Defined: The stream zone is that portion of the stream channel that restricts lateral movement of water. The stream zone is delineated at the top of the bank or the outer edge of any riparian vegetation, whichever is more landward. For project activities related to levees, the stream zone is delineated as the area on the water side of the water side hinge-point of the levee.

1. The notification, together with all supporting documents submitted with the notification, including **Attachment B** (submitted with the notification), **Revisions to NLIP Landside Improvement Project Phase 2 Construction Plans and Riparian Vegetation Removal on the Water Side of the Sacramento River East Levee** (submitted on December 30, 2008), **Landside Improvements Project Draft EIR and Draft and Final EIS**, NLIP Phase 2 Draft Supplemental EIR are hereby incorporated into this agreement to describe the location and features of the proposed project. SAFCA agrees that all work shall be done as described in the notification and supporting documents, incorporating all project modifications, wildlife resource protection features, mitigation measures, and provisions as described in this agreement. Where apparent conflicts exist between the notification and the provisions listed in this agreement, SAFCA shall comply with the provisions listed in this agreement. SAFCA further agrees to notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, this agreement will be amended to accommodate modifications to the project plans submitted to the Department and/or new project activities. Please see the current fee schedule to determine the appropriate amendment fee.
2. Documents, plans, surveys, notifications, and requests pertaining to this project or required by this agreement may be sent via email to Gary Hobgood at ghobgood@dfg.ca.gov or delivered to the Department of Fish and Game at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670. **Refer to Notification Number 1600-2008-0259-R2 when submitting documents to the Department.**
3. Unless otherwise stated in this agreement or by written authorization from the Department, the time period for completing the work within the stream zone of the Sacramento River, Natomas Cross Canal, and unnamed tributaries shall be restricted to periods of low stream flow and dry weather and shall be confined to the period of May 1 to October 1. Construction activities shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream zone shall cease until all reasonable erosion control measures, inside and outside of the stream zone, have been implemented prior to all storm events. No work will occur during wet weather. Revegetation, restoration and erosion control work is not confined to this time period.
4. If SAFCA finds more time is needed to complete the authorized activity, SAFCA shall submit a written request for a work period time extension to the Department. The work period extension request shall provide the following information: 1) Describe the extent of work already completed; 2) Provide specific detail of the activities that remain to be completed within the stream zone; and 3) Detail the actual time required to complete each of the remaining

activities within the stream zone. The work period extension request should consider the effects of increased stream conditions, rain delays, increased erosion control measures, limited access due to saturated soil conditions, and limited growth of erosion control grasses due to cool weather. Photographs of the work completed and the proposed work areas are helpful in assisting the Department in its evaluation. Time extensions are issued at the discretion of the Department. The Department will review the written request to work beyond the established work period. The Department will have ten calendar days to approve the proposed work period extension. The Department reserves the right to require additional measures designed to protect natural resources.

5. SAFCA is responsible for obtaining all required permits and authorizations from local, state and federal agencies. SAFCA shall notify the Department where conflicts exist between the provisions of this agreement and those imposed by other regulatory agencies. Unless otherwise notified, SAFCA shall comply with the provision that offers the greatest protection to water quality, species of special concern and/or critical habitat.
6. A copy of this agreement shall be provided to the Contractor(s) who works within the stream zone of this project. A copy of this agreement and a copy of the original notification, including the project description, as submitted to the Department, must be available upon request at the work site. The Contractor(s) shall sign this agreement prior to working within the stream zone. The Contractor(s) or a designated crew supervisor(s) shall be on site the entire time a work crew is working near the stream zone. The supervisor(s) shall be completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Department reserves the right to enter the project site at any time to ensure that there is compliance with the terms/conditions of this Agreement.
7. SAFCA shall notify the Department within two working days of beginning work within the stream zone of the Sacramento River, Natomas Cross Canal, and unnamed tributaries. Upon completion of the construction phase and the installation of erosion control materials, the work area within the stream zone shall be digitally photographed. Photographs and notification shall be submitted to the Department as instructed in item number 2 above.
8. This project could result in the incidental "take" of a State listed species, SAFCA has applied for a permit under Fish and Game Code Section 2081 before proceeding. The provisions of such a permit are incorporated as additional provisions of this agreement.
9. It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird except as otherwise provided by the Fish and Game Code. No trees that contain active nests of birds shall be disturbed until all eggs have hatched and young birds have fledged without prior consultation and approval of a Department representative. It is recommended that the trees that are identified for removal, be removed during the non-nesting period of August 15 to February 28. If tree removal must occur during the period of March 1 and August 14, a qualified biologist shall conduct a pre-construction survey for bird nests or nesting activity in the project area. If any active nests or nesting behaviors are found, the Department must be notified prior to further action. SAFCA may be required to create exclusion zones of 75 feet to 0.25 miles depending on the species observed. The exclusion zone must be maintained until birds have fledged or nest is abandoned. The survey results shall be provided to the Department prior to removing any trees. The survey shall be submitted to the Department as instructed in item number 2 above.

10. No excavation in the live stream is allowed. "Live Stream" shall be defined as that portion of the stream bed where flowing water is present or anticipated during the term of this agreement. SAFCA must submit a detailed water diversion plan to the Department. The water diversion plan must be acceptable to the Department prior to any work in or near the stream.
11. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations. Except for the trees specifically identified for removal in the notification, no native trees with a trunk diameter at breast height (DBH) in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a Department representative. Using hand tools (clippers, chain saw, etc.), trees may be trimmed to the extent necessary to gain access to the work sites. All cleared material/vegetation shall be removed out of the riparian/stream zone.
12. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. SAFCA is responsible for the removal of non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation (usually after the first growing season). Upon Department determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department approved control devices are installed or abatement procedures are initiated.
13. 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, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake by SAFCA or any party working under contract or with the permission of SAFCA, shall be removed immediately. The Department shall be notified immediately by SAFCA of any spills and shall be consulted regarding clean-up procedures.
14. During construction, the contractor shall not dump any litter or construction debris within the stream zone. All construction debris and associated materials shall be removed from the work site upon completion of this project.
15. Compensation/mitigation for project impacts shall be done according to provisions of the Landside Improvements Project Draft EIR and Draft EIS, and any Incidental Take Permit issued for this project. Compensation/ mitigation implemented by SAFCA shall also be consistent with the objectives, and shall not preclude the implementation, of the Natomas Basin Habitat Conservation Plan.
16. All exposed/disturbed areas and access points within the stream zone left barren of vegetation

as a result of the construction activities shall be restored using locally native grass seeds, locally native grass plugs and/or a mix of quick growing sterile non-native grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jute netted (monofilament erosion blankets are not authorized).

17. This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game. Stream alteration work authorized by this agreement expires on December 31, 2013. This agreement shall remain in effect for that time necessary to satisfy all required mitigation and monitoring measures.
18. Requests for Extensions (agreement renewal), Minor Amendments, and Major Amendments must be submitted in writing prior to expiration of the agreement or commencement of work on modified project plans. Extensions and Amendments are issued at the discretion of the Department. Please see the current fee schedule to determine the appropriate fee.
19. The Department may take enforcement action and reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require these Department actions include, but are not limited to, the following: A) Failure to comply with the terms/conditions of this agreement. B) The information provided by SAFCA in support of the agreement/notification is determined by the Department to be incomplete, or inaccurate. C) When new information becomes available to the Department representative(s) that was not known when preparing the original terms/conditions of this agreement. D) The project as described in the notification, agreement, or amendment has changed, or conditions affecting fish and wildlife resources change.
20. If, in the opinion of the Department, conditions arise or change in such a manner as to be considered deleterious to aquatic life, operations shall cease until corrective measures are taken.
21. It is understood that the Department enters into this agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with the project is the sole responsibility of SAFCA, and is not required by this agreement. It is agreed that all liability and/or incurred costs related to or arising out of SAFCA's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of SAFCA. SAFCA agrees to hold harmless and defend the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or other damage.

SIGNATURE PAGE

SAFCA, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractor and subcontractors and must be in their possession at the work site.

Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes SAFCA to trespass on any land or property, nor does it relieve SAFCA of responsibility for compliance with applicable federal, state, or local laws or ordinances.

This agreement is not valid and work may not begin until the agreement is signed by a representative of the Department of Fish & Game.

SAFCA Representative: STEIN M. BUER Stein M. Buer
Please print and sign name

Date 1/26/2009

Contractor: _____ Date _____
Print & Sign Name

Title: _____

Company: _____

Department Representative: Sandra Morey Sandra Morey, Regional Manager Date 1/29/09