

Appendix G. Memorandum Of Understanding Between The Department Of Fish And Game And The Division Of Flood Management Of The Department Of Water Resources For Routine Maintenance Of Flood Control Projects By The Sacramento And Sutter Maintenance Yards

This Memorandum of Understanding (“MOU”) is entered into between the Department of Fish and Game (“DFG”) and the Division of Flood Management of the Department of Water Resources (“DWR”).

WHEREAS, DFG is the trustee for fish and wildlife resources of the State of California; and

WHEREAS, DWR is a state governmental agency responsible for maintaining and operating the flood control projects listed in Attachment A (“flood control projects”), which are attached to, and part of, the MOU; and

WHEREAS, DFG and DWR entered into an earlier memorandum of understanding effective January 17, 1986, entitled “Memorandum of Understanding Between the Department of Fish and Game and Department of Water Resources Regarding Streambed Alteration Notification and Maintenance Activities Under Fish and Game Code section 1601” (“1986 MOU”), which established a process to allow DFG to annually review the maintenance work on flood control projects to ensure that the work was not adversely affecting fish and wildlife resources; and

WHEREAS, DFG and DWR amended the 1986 MOU by adding a procedure for dispute resolution entitled “Amendment No. 1 to Memorandum of Understanding Between the Department of Fish and Game and Department of Water Resources Regarding Streambed Alteration Notification and Maintenance Activities Under Fish and Game Code section 1601” (“Amendment No. 1”), effective April 19, 1990; and

WHEREAS, DFG and DWR recognize that the process described in the 1986 MOU can be improved to better meet their goals and responsibilities of each department, and for that reason prepared the MOU, which will replace the 1986 MOU; and

WHEREAS, the MOU, like the 1986 MOU, benefits DFG and DWR by delineating and defining DWR’s ongoing maintenance work on its flood control projects (“maintenance work”); by identifying the location of the maintenance work; by establishing a process to expedite DWR’s maintenance work; and by identifying work measures to protect fish and wildlife resources; and

WHEREAS, DWR agrees to perform its maintenance work in a manner that minimizes adverse impacts to fish and wildlife resources and water quality, consistent with the MOU; and

WHEREAS, DWR and DFG agree that the maintenance work is exempt from the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.);

NOW, THEREFORE, DFG and DWR mutually agree the MOU, like the 1986 MOU, satisfies the requirements of Fish and Game Code section 1601 (“section 1601”) and mutually

agree further as follows:

I. DEFINITIONS

“Channel maintenance area” means the portion of a channel from the waterside toe of the levee to the waterside toe of the levee on the other side of the channel.

“Day” means work day (based on a five day work week), unless otherwise specified.

“Diameter breast height” (“dbh”) means the diameter of a tree trunk at a point measured 4½ feet above grade.

“Heavy equipment work” means work that involves the use of backhoes, front-end loaders, bulldozers, excavators, and other heavy, mechanized equipment necessary to control vegetation, remove sediment, large woody debris, and beaver dams; maintain established levee toe road and levee firebreaks; place rocks; and grade.

“Levee maintenance area” means the waterside of the levee from the waterside hinge point to the waterside toe of the levee, or to the waterside outside edge of an established waterside toe road or waterside levee firebreak, whichever is greater in distance.

Levee slopes, channel banks, channel bottoms, low flow channels, and other appurtenant channel features are defined as illustrated in Exhibits A and B.

“Low flow area” means, generally, the flowing portion of the channel during low flow conditions. Maintenance work in low flow areas includes removing debris, downed trees, and other obstructions to normal flow.

“Maintenance work” means limited and routine maintenance work within the channel maintenance area or levee maintenance area on the flood control projects listed in Attachment A and described in Exhibits A and B necessary to maintain the structural integrity and capacity of the projects. Maintenance work, as described in Exhibits A and B, includes, but is not limited to the following: removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow; controlling weeds, grasses, emergent vegetation, and woody vegetation; controlling rodents, grouting rodent holes, dragging and track walking levee slopes; repairing gates, barricades, and small structures; completing minor erosion and stability repairs; and other work necessary to maintain the function and integrity of the flood control projects.

“Special status species” means any species defined in CEQA Guidelines section 15380 (Cal. Code Regs., tit. 14, § 15380); species that are fully protected under the Fish and Game Code; species protected under the Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.); and/or species identified by DFG or other state and federal resource agencies as a species of special concern. Such species include, but are not limited to, the following: Central Valley steelhead (*Oncorhynchus mykiss*); Winter-run Chinook salmon (*Oncorhynchus tshawytscha*); Spring-run Chinook salmon (*Oncorhynchus tshawytscha*); Delta smelt (*Hypomesus transpacificus*); Fall-run Chinook salmon (*Oncorhynchus tshawytscha*); Late-fall run Chinook (*Oncorhynchus tshawytscha*); Sacramento splittail (*Pogonichthys macrolepidotus*); giant garter snake (*Thamnophis*

gigas); Swainson's hawk (*Buteo swainsoni*); bank swallow (*Riparia riparia*); western yellow-billed cuckoo (*Coccyzus americanus occidentalis*); burrowing owl (*Athene cunicularia*); and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*).

“Stream zone” means the portion of the stream channel that restricts the lateral movement of water. For purposes of the MOU, the stream zone is the area between the waterside top of one levee to the waterside top of the levee immediately across from it.

“Thinning” means the selective cutting of smaller individual trees, leaving larger individual trees to maintain canopy.

“Toe road” means the dirt road at the base of a levee. Toe roads are maintained by grading, disking, herbicide spraying, mowing, burning, and removing debris.

“Vegetation zone” as described in Exhibits A and B means the fringe of vegetative growth 15 feet wide at the edge of the low channel which generally is left undisturbed. With specific notice to DFG, vegetation within the vegetation zone may be trimmed, thinned, or removed.

II. NOTIFICATION PROCEDURE

Except as specified in section II.A or II.B below, DWR is not required to notify DFG to obtain a streambed alteration agreement for maintenance work before it may commence such work.

A. DWR Notification to DFG

1. Routine maintenance work: 10 to 15 days prior to commencing routine maintenance work, DWR shall complete and submit to DFG a Verification Request Form (“VRF”) (attached hereto as Attachment B) for routine maintenance work. DWR shall send the VRF by e-mail to the “E-Mail Distribution List” (attached hereto as Attachment C) (“distribution list”). In the event that DWR delays the project start date on the VRF by more than 10 days, DWR shall submit a revised VRF.
2. Urgent maintenance work: A minimum of 2 days prior to commencing urgent maintenance work covered by the MOU, DWR shall complete and submit to DFG a VRF by e-mail to the distribution list. Urgent maintenance work is routine maintenance work DWR needs to expedite based on the limited availability of work crews, the need for specialized equipment, future weather conditions, or other limiting factors.
3. Emergency work: The MOU does not apply to emergency work on flood control projects. DWR shall complete any emergency work in accordance with section 1601(f), except that DWR shall comply with the notice requirement in that section by completing and submitting a VRF by e-mail

to the distribution list within 14 days of commencing the emergency work.

4. Maintenance work not covered by MOU: Maintenance work not covered by and consistent with the MOU shall include maintenance work on flood control projects not described in Exhibits A or B, regardless of whether the maintenance work would otherwise be consistent with the MOU. For maintenance work not covered by the MOU, DWR shall comply with section 1601 as required by law or regulation.

B. DFG Response to DWR Notification

1. Upon receipt of a VRF for routine or urgent maintenance work, DFG shall submit the VRF to appropriate DFG staff and field personnel. DFG shall also acknowledge receipt of all VRFs submitted by DWR in the form of an e-mail response to the DWR contact identified in the VRF. The acknowledgement shall not be construed as an approval by DFG that DWR may proceed with the maintenance work described in the VRF.
2. After acknowledging receipt of a VRF for routine or urgent maintenance work, DFG shall determine if the proposed maintenance work described in the VRF is covered by and consistent with the MOU.
 3. If DFG determines that the proposed maintenance work is consistent with and covered by the MOU, DFG may either: (a) send by e-mail a notice of concurrence to the DWR contact identified in the VRF and all DWR employees on the distribution list stating that it may proceed with the maintenance work described in the VRF, in which case DFG must send the notice prior to the proposed start date in the VRF; or (b) allow the 10- to 15-day (routine maintenance work) or minimum 2-day (urgent maintenance work) comment period to elapse. Upon receipt of a notice of concurrence, or if DFG does not submit a notice of concurrence, upon expiration of the applicable comment period, DWR may begin the maintenance work described in the VRF, provided it does so in accordance with the terms and conditions of the MOU.
 4. If DFG determines that the maintenance work proposed in the VRF is consistent with and covered by the MOU, but, notwithstanding such consistency, additional measures (i.e., measures not included in the MOU) need to be incorporated into the maintenance work to adequately protect fish and wildlife resources, DFG shall specify those measures in its notice of concurrence to the VRF. Upon receipt of such concurrence, DWR may commence its maintenance work consistent with the measures included in the notice of concurrence.
5. If DFG determines that the maintenance work is not covered by or consistent with the MOU, DFG shall send by e-mail a notice of non-concurrence to the DWR contact identified in the VRF and all DWR employees on the

distribution list, in which case DFG must send the notice prior to the proposed start date in the VRF. If DFG submits a notice of non-concurrence, DFG shall specify the basis for its inconsistency determination and describe the actions DWR will need to take before it may commence the maintenance work. Such actions DFG may recommend include, but are not limited to, the following:

- a. augmenting the VRF by submitting to DFG information sufficient to allow it to develop additional measures needed to protect fish and wildlife resources;
- b. working with DFG to augment Exhibits A or B;
- c. separately notifying DFG in accordance with section 1601 and section II.A.4 of the MOU (above); or
- d. working with DFG to amend the MOU.

If DFG does not respond within the 10- to 15-day (routine maintenance work) or minimum 2-day (urgent maintenance work) comment period, DWR may commence the maintenance work described in the VRF upon expiration of the applicable comment period.

C. Field Confirmation of VRF

1. DWR shall ensure that a copy of the VRF is readily available at the maintenance work site, even if DFG did not respond to it prior to the proposed start date in the VRF. If DFG did respond to the VRF prior to the proposed start date, DWR shall ensure that a copy of the response also is readily available at the maintenance work site.
2. A copy of the VRF and any DFG response to it shall be presented to any DFG employee upon request.

III. AUTHORIZED MAINTENANCE WORK

Unless the maintenance work is not covered by or consistent with the MOU, DWR may perform the maintenance work described below without further notifying, or obtaining a separate streambed alteration agreement from, DFG, provided that: 1) DWR limits the work to the flood control projects and work areas specified in Exhibits A and B; and 2) completes the work in accordance with the terms and conditions specified herein.

- A. Debris or obstruction removal. DWR may remove debris, trash, rubbish, beaver dams, flood-deposited woody and herbaceous vegetation, fallen trees, dead trees which are in clear danger of falling in or across a channel, branches, and associated debris which noticeably reduces channel capacity, would accelerate erosion, and/or would damage levees, flood control structures, pumps, weirs, or

bridges.

B. Silt, sand, or sediment removal. DWR may remove or displace silt, sand, gravel, or sediment in the immediate vicinity (i.e., within 50 feet) of man-made facilities or structures that substantially obstruct the flow of projects listed in Attachment A.

C. Channel vegetation control. DWR may cut, mow, disc, bulldoze, or spray herbicides on grasses, shrubs, and woody growth to maintain the designed capacity of its flood control projects. DWR may control vegetation by strip disking or bulldozing 75 to 100 foot wide sections within large channels. If DWR would like to control vegetation by strip disking or bulldozing in greater than 100 foot wide sections within large channels, DWR shall first consult with DFG. DWR may cut, mow, burn, or spray herbicides on weeds, grasses, shrubs, and woody growth on levees to conduct levee safety inspections. DWR may cut, trim, or remove the lower branches of large trees to facilitate site inspections and maintain channel capacity. DWR may remove dead trees, dying trees, and new trees less than 4-inches dbh to maintain channel capacity and prevent erosion. DWR may thin or clear vegetation in the vegetation zone (15 foot fringe area). DWR may remove non-native vegetation (e.g., giant reed (i.e., "false bamboo"), Chinese tallow, red sesbania, Spanish bloom, Tree-of-heaven, black locust, tree tobacco, castor bean, pampas grass, eucalyptus, tamarisk, and acacia) to maintain channel capacity and improve native habitat.

D. Repair of previous erosion control work. DWR may repair previous erosion control work, including, but not limited to, failed rock, sacked concrete, or gabion sections. Such work shall not extend beyond 20 linear feet of the revetted area.

E. Minor erosion control work. DWR may slope, place earthen fill, install rocks and gabions, or take other necessary measures to control erosion on previously unrevetted areas. Such work shall not exceed 50 linear feet in length.

F. Minor grading work. DWR may grade or drag levee slopes to smooth surface irregularities, fill scour holes within the channel, and repair the levee toe road.

G. Rodent control. DWR may exterminate any rodents (e.g., ground squirrels) burrowing in levees, and fill their burrows with earthen materials or grout.

IV. CONDITIONS

A. DWR shall act as the lead agency under CEQA for the maintenance work covered by the MOU.

B. DWR shall complete maintenance work in accordance with the following time periods, and as otherwise specified in the MOU:

1. Heavy equipment work within or immediately adjacent (within 15 feet) to

standing water, flowing water or areas where DWR

reasonably anticipates flowing water: July 1 to October 1.

2. Heavy equipment work within 50 feet, but no closer than 15 feet, of the low flow channel except as specified in paragraph 3 below: May 1 to October 1.
3. Heavy equipment work within the dry portions of large channels (e.g., Tisdale Bypass, Yolo Bypass, Sacramento Bypass, and Cache Creek Settling Basin) and other project areas located at least 50 feet from flowing or standing water (e.g., Lake O'Conner and Lake of the Woods): July 1 to November 30.
4. Heavy equipment work on levees within 50 feet, but no closer than 15 feet, of the low flow channel: May 1 to October 1.
5. Debris removal in critical locations, including bridges, weirs, gates, culverts, pumps, gauging stations, flood control structures, and channels, where such removal is necessary to avoid flooding or damage to structures or facilities: no time restriction.
6. Vegetation control by preemergent herbicide spraying on levee slopes: the time period(s) recommended by the California Department of Pesticide Regulation.
7. Vegetation control by selective herbicide spraying in areas excluding levee slopes: July 1 to March 1.
8. Vegetation control by burning levee slopes: May 1 to October 1.
9. Vegetation control by mowing levee slopes: no time restriction.
10. Vegetation control by mowing within the dry portions of large channels (e.g., Tisdale Bypass, Yolo Bypass, Sacramento Bypass, and Cache Creek Settling Basin) and other maintenance areas located at least 50 feet from the low flow channel (e.g., O'Conner Lake and Lake of the Woods): July 1 to November 30.
11. Control of woody and brushy vegetation by mechanical means (e.g., by brush hog or similar device) except as specified in paragraph 12 below: July 1 to October 1.
12. Control of woody and brushy vegetation by mechanical means within the dry portions of large channels (e.g., Tisdale Bypass, Yolo Bypass, Sacramento Bypass, Cache Creek Settling Basin) and other project areas located at least 50 feet from the low flow channel (e.g., O'Conner Lake and Lake of the Woods): July 1 to November 30.

13. Vegetation control by using hand tools to selectively trim, “limb-up,” or cut-down vegetation and selectively spraying herbicides to control woody and brushy vegetation: July 1 to March 1.
14. DWR may cut, trim, or remove fallen trees and dead or live trees that are in clear danger of falling in or across a channel, which will significantly reduce channel capacity, result in accelerated erosion, or otherwise result in an emergency: no time restriction.
15. Rodent control by applying rodenticides: the time period(s) recommended by the California Department of Pesticide Regulation.
16. Filling or grouting rodent burrows and other “gaps” in levees and within channels: May 1 to October 1, provided that the ambient temperature exceeds 75°F.
17. DWR may request DFG to allow work outside the time periods listed above in paragraphs 1 through 16 by submitting to DFG a written variance request that contains the following information: 1) the work location; 2) the name of the stream or watercourse near or within which DWR intends to perform the work; 3) a description of the work DWR intends to perform; 4) the amount of time DWR will need to complete the work described; and 5) the name and telephone number of DWR’s contact person for the work. DFG may make approval of a variance contingent on agreement by DWR to complete a biological survey (in accordance with paragraph 18 below); employ a biological monitor (in accordance with paragraph 19 below); and/or incorporate additional conditions as part of the proposed maintenance work if DFG determines that the work could adversely affect nesting birds and/or special status species. DFG shall approve or disapprove a variance at its sole discretion within 10 days, except where DFG has requested DWR to complete a biological survey.
18. If DFG requires DWR to complete a biological survey before approving a variance request, DWR shall employ a qualified biologist to survey the maintenance area to verify the presence or absence of nesting birds or special status species. The survey shall be performed no more than 14 calendar days prior to commencement of the maintenance work. The biologist shall survey the entire maintenance area and a 50-foot “buffer” adjacent to and around the area. Upon completion of the survey, DWR shall submit a written report to DFG that describes the biologist’s survey protocols and findings together with a copy of its original variance request. Within 10 days of receiving the survey report and variance request, DFG shall notify DWR by e-mail, fax, or regular mail that it approves or disapproves the variance request. Failure by DFG to notify DWR within 10 days shall not constitute approval of DWR’s variance request. In the event DFG does not notify DWR within 10 days, DWR should contact DFG and inquire about the status of the request.
19. If DFG requires DWR to employ a qualified biologist to monitor maintenance

work described in a variance request as a condition of approving the request, DFG may require DWR to have the monitor on site before, during, and after the maintenance work. If a monitor is used, DWR shall halt any maintenance work if the monitor determines that doing so is necessary to prevent harm to nesting birds, special status species, or other fish and wildlife resources. The monitor shall notify the DFG staff person who approved the variance request of any work stoppage as soon as practicable. DWR may resume work after the monitor determines that doing so will not cause harm to nesting birds, special status species, or fish and wildlife resources. If DWR would like to employ a monitor in performing the maintenance work described in a variance request, DWR should indicate that preference in the request.

- C. DWR shall complete maintenance work of projects listed in Attachment A in accordance with the descriptions in Exhibits A and B. DWR shall notify, and obtain concurrence from, DFG before modifying any of the projects listed in Attachment A or any of the descriptions included in Exhibits A and B. DFG at its sole discretion shall determine whether proposed modifications to Attachment A, as well as Exhibits A and B, will be allowed. DFG and DWR shall resolve any disputes that arise in regard to this paragraph in accordance with section IX below. If DFG determines that any maintenance work is inconsistent with the MOU, section II.A.4. of the MOU shall apply.
- D. Notwithstanding the time restrictions specified above, DWR shall limit heavy equipment work to periods of dry weather, and otherwise schedule maintenance work with an awareness of precipitation forecasts and likely increases in water flow. DWR shall suspend any ongoing maintenance work and implement all reasonable erosion control measures prior to any storm event. DWR shall document weather forecasts upon request by DFG.
- E. Prior to commencing any maintenance work under this MOU, DWR maintenance supervisors and crews who will be completing such work under this MOU shall be trained by a qualified biologist to identify and avoid harm to special status species and their habitat.
- F. Some of the flood control projects covered by the MOU are within the known home range of species that are fully protected under the Fish and Game Code or listed as threatened under the California Endangered Species Act (“CESA”) (Fish & G. Code, § 2050 et seq.) and the Endangered Species Act (16 U.S.C. § 1531 et seq.), including giant garter snake (“GGS”). The work periods listed above are intended to avoid adverse impacts to fully protected and listed species. DFG may impose additional conditions on the maintenance work covered by the MOU if DFG determines that such conditions are necessary to protect a fully protected and/or listed species from harm. If DWR encounters a fully protected or listed species or any snake, regardless of whether the snake is fully protected or listed, while performing maintenance work, DWR shall suspend all work until the fully protected or listed species or snake has escaped from the work area. DWR shall notify DFG of all confirmed observation of any listed or fully protected species, including GGS, in, or adjacent to, any work area covered by the MOU.

- G. DWR may not perform any work within ¼ mile of a nesting Swainson's hawk between March 1 and September 15 without first consulting with DFG and, if necessary, obtaining an incidental take permit in accordance with CESA. When advised by a DFG or DWR biologist, DWR's Sacramento and Sutter Maintenance Yards shall suspend any maintenance work that has the potential to disrupt or otherwise interfere with Swainson's hawk nesting until the yards receive direction by DFG.
- H. If DWR encounters any wildlife during the course of maintenance work covered, DWR shall suspend any work until the wildlife has escaped from the work area. If necessary, DWR may attempt to flush, haze, or herd the wildlife in a safe direction away from the work area, provided that the wildlife is not a listed or fully protected species. If the wildlife is a listed or fully protected species, DWR shall follow the provisions in paragraph F above.
- I. DWR shall not disturb any active bird nests until after all eggs have hatched and/or young birds have fledged. Unless otherwise specified herein, DWR shall operate equipment at least 50 feet away from active bird nests.
- J. DWR may cut, trim, spray with herbicides, burn, or remove only that vegetation that obstructs stream flow, prevents levee inspections, or otherwise interferes with the normal operation of the channel or levee.
- K. DWR may only burn vegetation on levee slopes and properly stationed debris piles. DWR shall establish a firebreak at the toe of the levee slope and around debris piles prior to burning. Where firebreaks cannot be established, DWR shall not burn the levee or shall have adequate fire suppression equipment and material available for immediate use at each burn site. DWR shall use fire suppression equipment and material to contain the fire to the slope of the levee or the designated debris pile. DWR shall perform all burning in accordance with applicable California Air Resources Board rules and regulations.
- L. DWR shall clear channels in such a manner that it avoids trees greater than 4 inches dbh, except that DWR may trim such trees as necessary to gain access to maintenance areas. DWR may not remove trees greater than 4 inches dbh without first consulting with DFG. DWR may remove trees less than 4 inches dbh without first consulting with DFG
- M. Recruitment of single trunk species of trees (e.g., oak, sycamore, cottonwood, Gooding willow, alders, and others) within or adjacent to stream channels is important for the replacement of trees that die or are removed by natural or man-made causes. Where limited tree growth does not substantially interfere with channel capacity or function, DWR shall allow young trees to grow. DWR may thin young trees only where tree density is likely to cause future problems with regard to channel capacity and function.
- N. DWR may trim the lower branches of large trees growing within a stream channel

from ground level to a distance of 6 feet above ground level. The 4 inch dbh restriction shall not apply to low-hanging limbs that block flow or catch debris.

O. In areas where small trees growing densely on both sides of the watercourse create flow passage problems, thinning of those trees might be an appropriate maintenance technique. If DWR intends to cut trees and shrub brush along a stream, it shall do so in an alternating pattern by cutting on one side of a stream one year and the other side of the stream the following year, except that in doing so, DWR shall avoid removing all vegetation along long reaches (i.e., greater than 200 feet) of a stream bank; and shall leave isolated patches of vegetated habitat to serve as nesting and cover material. DWR shall employ this maintenance technique only with specific notice to and concurrence by DFG.

P. DWR shall remove all trash and man-made debris collected in the channel. Any organic debris collected in the channel may be cut into appropriate sizes to be chipped and scattered as mulch at maintenance areas; removed from the channel; or burned in stationed debris piles.

Q. DWR may chemically treat or remove the following non-native plants without restriction: giant reed (i.e., "false bamboo"), Chinese tallow, red sesbania, Spanish bloom, Tree-of-heaven, black locust, tree tobacco, castor bean, pampas grass, eucalyptus, tamarisk, and acacia. DWR may add other invasive non-native plants to this list if approved by DFG.

R. DWR may only use herbicides registered with the California Department of Pesticide Regulation. DWR shall apply herbicides in accordance with regulations established by that department and in accordance with labeled instructions. Upon request, DWR shall make available to DFG labeled instructions for any herbicides used by DWR in performing maintenance work. DWR shall report immediately to DFG the killing of any non-plant aquatic life caused by the use or spilling of any chemical.

S. DWR shall prevent chemicals, paint, oil, gas, or other petroleum products, or other substances that could be deleterious to aquatic life, from contaminating the soil and/or entering waters of the state, and shall immediately remove such substances from any place where it could enter waters of the state and/or adversely affect fish and wildlife resources. DWR shall attempt to contain any releases or spills of such substances, and shall report the release or spill as soon as possible to DFG at (916) 445-0045 and the Office of Emergency Services at 1-800-852-7550.

T. DWR shall provide DFG keys for all locked gates and fences that restrict (public) access to maintenance work areas. DWR agrees that DFG may inspect maintenance work areas at any time without first notifying, or obtaining consent from, DWR. DFG shall report to DWR any problems it discovers during its inspection.

U. If DFG determines that conditions have arisen or changed in such a manner that the

work covered by the MOU may adversely affect fish and wildlife resources, upon notice by DFG, DWR shall temporarily stop the work until corrective measures are taken in consultation with DFG.

V. SUBMITTALS

A. DWR shall send or deliver all non-VRF submittals to the following address:

Department of Fish and Game
Sacramento Valley - Central Sierra Region
Attn: Lake or Streambed Alteration Program/DWR Maintenance Yards
1701 Nimbus Road
Rancho Cordova, California 95670
(916) 358-2929 (telephone)
(916) 358-2912 (fax)

B. DWR shall send all VRF submittals to the appropriate e-mail addresses listed on the distribution list. DFG shall update the distribution list as needed, modify the revision date accordingly, and provide DWR a copy of the most current list.

VI. FEES

By April 15 of each year, DWR's Sacramento Maintenance Yard shall submit to DFG a check in the sum of \$1,683.50, and DWR's Sutter Maintenance Yard shall submit a check in the amount of \$2,331.00. These fees are based on the number of maintenance areas identified in Exhibits A and B, and in accordance with the fee schedule in section 699.5 of title 14 of the California Code of Regulations ("fee schedule"). DFG shall adjust the fees as necessary to conform to the fee schedule or if flood control projects are added to or removed from Exhibits A or B, provided that DFG notifies DWR of the adjustment by April 1 of each year. Such a fee adjustment shall not constitute an amendment for purposes of the MOU. DWR shall be responsible for paying the fees in total, regardless of whether DWR completes the maintenance work in each maintenance area the previous year.

VII. OTHER PERMIT REQUIREMENTS

DWR shall notify DFG if it discovers a conflict between any of the terms and conditions of the MOU and those that another local, state, or federal governmental agency might impose under the laws and regulations it administers and enforces.

VIII. AMENDMENT

A. The MOU may be amended or modified at any time, provided that it is by a written agreement duly executed by DFG and DWR. Any proposal for amendment or modifications must be delivered for review and approval by the Regional Manager or the official designated by the Regional Manager, unless

otherwise specified.

- B. Notwithstanding paragraph A above, upon review and approval by a DFG staff person in the Lake and Streambed Alteration Program, DWR may add other flood control projects and work areas to Attachment A and Exhibits A and B after the effective date of the MOU, in which case all provisions of the MOU shall apply to them. DFG may impose additional conditions on DWR when performing maintenance work on any flood control projects and work areas that are added to Attachment A and Exhibits A and B after the effective date of the MOU.
- C. Notwithstanding paragraph A above, DFG may modify the distribution list at any time, provided that DFG indicates on the list the date it was modified, and thereafter provides DWR a copy of the list, as modified.
- D. DFG and DWR shall meet in January each year or at some other mutually agreed to time to discuss the MOU. Both parties should be prepared at that meeting to propose any amendments to the MOU.

IX. DISPUTE RESOLUTION

Any disagreement between DFG and DWR regarding the MOU or the performance of any maintenance work covered by the MOU shall be resolved in accordance with the "Memorandum of Understanding for Dispute Resolution Between the Department of Fish and Game and Department of Water Resources Regarding Fish and Game Code section 1601," dated January 2003, which for reference is attached hereto as Attachment D.

X. TERMINATION

The MOU shall remain in effect until it is terminated in writing by either party. Termination shall become effective 30 days after receipt of the termination notice by the other party. In the event the MOU is terminated, DWR may complete any maintenance work that DFG approved prior to the date of the termination notice.

XI. ENTIRE AGREEMENT

The MOU, Attachments A, B, and C, and Exhibits A and B constitute the entire MOU. The MOU supersedes the 1986 MOU in its entirety.

XII. SIGNATURE AND EFFECTIVE DATE

This agreement shall become effective on the date of DFG's signature, which shall be after DWR's signature.

DEPARTMENT OF WATER RESOURCES

_____ Date: _____
Stein Buer, Chief
Division of Flood Management

Approved as to legal form and sufficiency:

By _____ Date: _____
Peggy Bernardy
Chief Counsel

DEPARTMENT OF FISH AND GAME

_____ Date: _____
Banky Curtis, Regional Manager
Sacramento Valley - Central Sierra Region

_____ Date: _____
Robert C. Floerke, Regional Manager
Central Coast Region

Approved as to legal form and sufficiency:

By _____ Date: _____
Michael Valentine
General Counsel

