

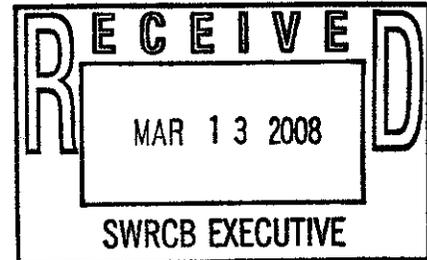
HCB
HERUM CRABTREE BROWN
Attorneys At Law

Karna E. Harrigfeld
kharrigfeld@herumcrabtree.com

March 13, 2008

VIA ELECTRONIC MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95812-0100



Re: COMMENT LETTER - 03/18/08 BOARD MEETING ITEM:
NSJWCD CDO ACL ORDER

Dear Ms. Townsend:

On behalf of North San Joaquin Water Conservation District (North San Joaquin or District) we have the following comments to the Draft Order in the Matter of Draft Cease and Desist Order No. 262.31-XX and Administrative Civil Liability Complaint No. 262.5-46 against North San Joaquin Water Conservation District Water Right Permit 10477 (Application 12842).

While we believe that the State Prosecution team failed to meet their burden of proof and failed to submit evidence supporting the lack of agreement with the Department of Fish and Game (DFG) relating to the fish screen and bypass flow issues, and failed to substantiate that the State Water Board's Order D1641 was not a further order of the Board, North San Joaquin is not going to reargue the issues addressed at the hearing and in our closing brief - these arguments are fully set forth in the record of these proceedings.

CEASE AND DESIST ORDER

Order Section A.1:

North San Joaquin requests the State Water Board make certain modifications to the language in Order section A.1 of the Draft Order relating to identification of its two unscreened pumping facilities and the requirement to "construct" fish screens within one

year from the date of this Order.¹

Bifurcation of Screening Requirements

While the Draft Order specifically refers to two unscreened pumping facilities, the District actually has *three* pumping facilities permitted under Water Right Permit 10477.² The language as currently drafted would eliminate pumping from the third point of diversion for implementation of the District's CALFED project this year *even though this diversion is already properly screened* and water is likely available for use this year. Because this diversion is properly screened there is no basis for prohibiting implementation of this project and diverting at that pumping facility.

The principle basis for the State Water Board's order granting the District's Petition for Extension of Time is because of the "**public interest in addressing the critical overdraft condition in the Eastern San Joaquin groundwater basin.**" [Draft Order WR-2008-00XX, pg. 10] Placing any amount of water, even as little as 1,000 acre feet, into the critically overdrafted groundwater basin supports this very important public interest. This Order requires us to reach agreement with the DFG on the bypass flow issue prior to diverting water or obtain State Water Board approval regarding the bypass flow, so the fishery resources will be adequately protected once a diversion is screened.

DFG issued the District a Streambed Alteration Permit 1600-2007-0084-R2 dated July 25, 2007 for the pumping facility used for the CALFED project.³ The only limitation placed on the District in this permit is that "[t]he District may proceed with permitting and construction of the CalFed site, but may not divert flow from the river until a fish screen is in place and operational. It is understood that the District intends to construct this facility late summer/early fall 2007." [Exhibit B, Page 13] Construction of the fish screen for this diversion was completed in September 2007. Diversions should not be curtailed at the CALFED diversion point and the District respectfully requests the modifications contained in Exhibit A, section A.1 to facilitate diversions for the CALFED project, recognizing it must reach agreement with DFG regarding bypass flows.

Because of the District's budgetary constraints, it anticipates that installation of the required fish screens will be phased. The pumping station on the south side of the Mokelumne River will be screened first because these facilities can be utilized immediately with some minor improvements. If section A.1 of the Draft Order remains unchanged the District will not be allowed to make diversion from this properly screened point of diversion until the second diversion pump is screened. Modifying the Order to eliminate this requirement would facilitate the public interest by allowing the District to distribute surface water to reduce groundwater pumping. Because this Order requires us to reach

¹ For ease of reference we have attached as Exhibit "A" the specific changes requested in the Order section in strike out/insert form.

² The third pumping station is used to implement the CALFED project has already been screened.

³ Attached as Exhibit "B" to this letter.

agreement with the DFG on the bypass flow issue prior to diverting or obtaining State Water Board approval regarding the bypass flow, the fishery resources will be adequately protected once any individual diversion is screened.

Timing of Construction of Fish Screens

With respect to the requirement that "construction" of the fish screens be completed within one year from the date of this Order, as you know, North San Joaquin is a small district with limited annual revenues. One of the principle reasons for adoption and implementation of the District's new groundwater charge is to generate sufficient revenues to implement the District's 10 year plan. The District has been working for over a year with DFG staff regarding a timetable for construction of the screens for the two existing pumping facilities. The draft agreement contemplates a phased approach for screening, meaning the screens will be constructed in different years, but the District commits that no diversion will take place unless the pumping facility is screened. The DFG staff that we have been working with had no problem with this phasing. Moreover, DFG staff expressly contemplated the phasing and the potential for installation of a temporary screen when it issued the Streambed Alteration Permit 1600-2007-0084-R2. The permit states "[t]he NSJWCD shall expedite design and permitting for the South Pumping Station for construction in summer/early fall 2008. If the NSJWCD is unable to screen the South Pumping Station by fall 2008, then a temporary fish screen approved by the DFG shall be installed at the mouth of the south diversion trench by fall 2008 and shall be maintained and operated until a permanent screen is in place." [Exhibit B, Page 13] The permit went on to state "[t]he NSJWCD shall commence design and permitting for the North Pumping Station for construction in summer/early fall 2009...If the NSJWCD is unable to screen the North Pumping Station by fall 2009, then a temporary fish screen approved by the DFG shall be installed...by fall 2009 and shall be maintained and operated until a permanent screen is in place." [Exhibit B, Page 14]

In light of the fiscal constraints and DFG's acknowledgement (the very witness that testified on DFG's behalf) that phasing is appropriate and even "temporary" screening may be appropriate, requiring construction within one year of the date of this Order is too onerous of a requirement. Allow the District to work out the specifics on fish screening directly with DFG. We will include a detailed description in the compliance plan, which the Division will approve.

The District spent a great deal of time developing the District's 10 year budget which identifies projects to be implemented each year in a systematic order which will result in providing the facilities necessary to put the 20,000 acre feet of water to use within the 10 year period. Implementation in the manner and order contained in the 10 year budget is the best use of District resources and in the best interest of our constituents. Screening a diversion then waiting an additional year or years until we have sufficient revenues to screen the other diversion and not allowing the District to put some of its water to use does not make sense and appears to be in direct contravention to the reasoning and

rationale for granting the District's Petition for Extension of Time. Please allow the District to determine the best method and use of its funds.

Finally, should the District be delayed in implementing its new groundwater charge, because of the pending litigation or otherwise, and the requirement to construct the fish screens within in a year remain in the Order, we could be in violation of the Cease and Desist Order and subject to additional enforcement. This is neither fair nor just if we are not diverting. We respectfully request that you make the proposed changes in section A.1.

Order Section 1.B.

The District requests a minor modification to section 1.B. relating to the time period for the District to submit the District's proposed bypass flow condition. As currently drafted, the District would be required to engage a fishery consultant to begin immediately working on an appropriate bypass flow, PRIOR TO, fully exploring this issue with DFG. We would like to explore reaching agreement with DFG first, and only if our discussions fail, proceed with retaining a fishery expert and developing the District's proposal on bypass flows. Exhibit "A" contains the specific language providing the District with 90 days from the date the District notifies the State Water Board that the District has failed to reach agreement with DFG to present a condition to the District.

ADMINISTRATIVE CIVIL LIABILITY

The District appreciates the State Water Board's suspending a portion of the administrative civil liability amount in light of the unique circumstances the District faces. The District respectfully request an additional indulgence by the State Water Board relating to payment of the \$20,000 based on recent circumstances. The District filed an action in San Joaquin County superior court to seek confirmation that the District properly adopted its new groundwater charge before moving ahead on the multi-million dollar project to be funded with the charge. The action was motivated by threats of litigation from the Howard Jarvis Taxpayer Group and several vocal landowners. The District was also concerned that should the District's charge be challenged at some time in the future, without a court determining its validity, the District may be required to return funds to its landowners should that challenge be successful (which is what the Pajaro Valley Water Management Agency is currently doing).

The District just completed the trial and will hopefully receive a ruling in the next 30 to 90 days. We have expended considerable monies and would appreciate using the remaining 2008 resources we have to make improvements to the south pumping facility and moving forward with permitting for the fish screen on the south pumping facility. We propose modifying Section B.1 to provide for the payment to be split into two \$10,000 payments, due the January 1, 2009 and January 1, 2010. We included a provision in section B.2 that requires payment of the suspended amount should we fail to make the scheduled payments.

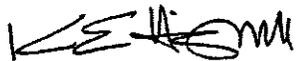
Finally, the District proposes adding an additional paragraph which recognizes that when the District has successfully completed items described in A.1, A.2, and B.1, the Division Chief will issue a letter confirming compliance and dismissing the complaint and the requirement to pay the suspended amount. All of the requested changes are shown on Exhibit "A."

OTHER PROCEDURAL QUESTION

The District would appreciate if the State Water Board staff could clarify one remaining issue relating to adoption of this Draft Order WR 2008-00XX. There is different factual information in Cease and Desist Order No. 262.31-XX and Administrative Civil Liability Complaint No. 262.5-46 and different "order" language in this Draft Order than in those two orders. Will this Draft Order replace, supersede or supplant the other documents (CDO 262.31-XX and ACL 262.5-46)? Or will we simply need to read the three Orders collectively together?

We appreciate the opportunity to provide these comments and look forward to working with the State Water Board to finalize the requested language changes. Should you have any questions prior to the hearing, please feel free to contact me.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:md

EXHIBIT "A"
SUGGESTED CHANGES TO DRAFT ORDER WR 2008-00XX
CDO_ACL ORDER

Page 18, Order Section A.1. be modified as follows:

1. The District shall immediately cease its diversion of water at its two unscreened pumping facilities until it submits the following to the Division and obtains the Division's approval of: (a) a plan for complying with Term 15; and (b) a timeline, ~~not to exceed one year from the date of this order~~, for implementing the plan. The District shall submit the compliance plan and timeline within 90 days of the date of this order. The District shall implement the compliance plan and timeline, as approved by the Division.

If DFG requires fish screens to be constructed, the District shall develop the fish screen construction and operation plans in consultation with DFG. The District shall submit plans for DFG's approval prior to construction. The District must submit a copy of its written request for DFG's written approval of the plans to the Division within 5 days of the District's request for approval. ~~Construction of the fish screens must be completed within one year from the date of this order.~~

The District shall provide the Division with a copy of any approval by DFG of either the fish screen plans or the operating agreement within 30 days of the date of this order.

Page 19, Order Section A.2 should be modified as following:

2. The District shall immediately cease its diversion of water at its pumping facilities until the District submits to the Division one of the following documents to demonstrate compliance with Term 23: (a) a final agreement with DFG with respect to bypass flows, or (b) written confirmation from DFG that a bypass agreement is unnecessary. The District shall submit this information to the Division within 90 days of the date of this order.

If the District fails to reach agreement with DFG regarding bypass flows or the necessity for bypass flows, the District may propose to the State Water Board a term to implement Term 23, including a proposal for bypass flows. The proposed term must be submitted to the Division within 90 days ~~of the date of this order~~ from the date the District notifies the State Water Board that the District has failed to reach agreement with DFG. The District shall submit the proposed term with an opinion by a fisheries expert as to whether the proposed term is protective of aquatic life in accordance with the intent of Term 23. The State Water Board will consider whether or not to incorporate the term only after it provides notice and opportunity for hearing to the DFG, EBMUD, CSPA, and any other affected parties the State Water Board deems appropriate. The District may not divert water from its pumping facilities unless authorized in writing by the State Water Board or until the State Water Board renders a final decision on proposed term.

The District shall comply with the Division's requests for information, environmental documents, maps, and fees within the designated time frames.

Page 20, Order Section B shall be modified as follows:

1. ~~Of this amount, \$20,000 is due immediately~~ is due in \$10,000 equal installments on January 1, 2009 and January 1, 2010. ~~If this amount of the ACL is unpaid after the time for review under chapter 4 (commencing with section 1120) of part 1 of division 2 of the Water code has expired,~~ the State Water Board may seek a judgment against the District in accordance with Water Code section 1055.4.
2. The remaining \$46,400 is suspended provided that the District complies with the schedule for compliance with Terms 15 and 23 set forth in section A.1 and A.2 and the schedule of payments in section B.1. Upon a finding by the Division Chief that the District has not complied with the schedule, the \$46,400 in suspended liability shall become immediately due and payable. If this amount of the suspended ACL is unpaid after 30 days of the Division Chief's finding, the State Water Board may seek a judgment against the District in accordance with Water Code section 1055.4.
3. Upon a finding by the Division Chief that the District has complied with section A.1, A.2 and B.1 of this Order, the Division Chief shall issue a letter confirming satisfaction of ACL 262.5-46 and dismissing the complaint including the obligation to pay the suspended liability amount of \$46,400.

California Department of Fish & Game

North Central Region (2)
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900

F A C S I M I L E

To: Mr. Edward Steffani
Organization: North San Joaquin Water
Conservation District
Fax Number: (209) 333-6710
Business Phone: (209) 727-0207
Date: July 25, 2007

From: Ian Drury
Fax Number: (916) 358-2912
Business Phone: (916) 358-2030

Pages: 27 Total

Subject: Streambed Alteration Agreement No. 1600-2007-0084-R2

Dear Mr. Steffani:

Attached is a draft copy of Streambed Alteration Agreement number 1600-2007-0084-R2 for the Cal Fed Demonstration Recharge Project. Please review the agreement with the appropriate parties. If you have any questions regarding the proposed provisions please contact me at (916) 358-2030. Let me know if you would like me to mail a copy of this agreement to you.

If you agree with the provisions set forth in the agreement, please have the person who has been designated as the Operator sign the agreement. Please mail or deliver the agreement with original signature to: Department of Fish & Game, Environmental Services Desk, 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670.

Upon receipt of the signed agreement, the Department will fulfill its obligation as a Responsible Agency as defined in the California Environmental Quality Act (CEQA). The project description and the signed agreement are of prime consideration as the Department files its Notice of Determination (Section 21108 of Public Resources Code). The Department will not be able to sign the agreement until after the CEQA review process is completed. You may begin your proposed project, as conditioned in the streambed alteration agreement, after the Department signs the streambed alteration agreement and returns a copy of the agreement to you. If you have any questions regarding the CEQA process or the status of the CEQA review after you have submitted the signed agreement, please phone Dale Watkins at (916) 358-2842.

Sincerely,



Ian Drury
Environmental Scientist
North Central Region

Exhibit B
(Page 1 of 14)

Ed, Read - then
sign the "Signature
Page". Send back
1 7 1 1

Mr. Edward Steffani
North San Joaquin Water District
P.O. Box 428
Clements, CA 95227

Dear Mr. Steffani,

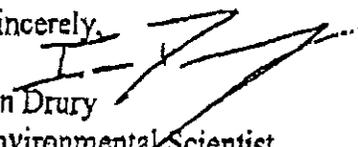
Streambed Alteration Agreement Number 1600-2007-0084-R2.

The Department of Fish and Game has received your application to construct fish screens at three (3) locations along the Mokelumne River (Cal Fed Demonstration Recharge Project). Your application is hereby granted under the conditions indicated below:

1. Work windows for in-water project activities (and areas above the high water mark) associated with the Cal Fed Demonstration Recharge Project shall be conducted during the months of August 1st - October 15th of the years 2007 - 2009.
2. A copy of this letter and a copy of the agreement must be provided to contractor and subcontractors and must be in their possession at the work sites.
3. Refer to attachment "Proposed Fish Screening Requirements for North San Joaquin Water District" for direction, and timing of implementation.

If you have any questions or need further information please contact me at (916) 358-2030.

Sincerely,


Ian Drury

Environmental Scientist

AGREEMENT REGARDING PROPOSED STREAM ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and the North San Joaquin Water Conservation District (NSJWCD)) of San Joaquin County, State of California, hereafter called the Operator, is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code, the Operator, on June 15, 2007, 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: lower Mokelumne River, in the County of San Joaquin, State of California, Section Various, Township 13. 14 North, Range 4 East (GPS Coordinates: Latitude 38°09'258N" / Longitude 121°13'072W"

WHEREAS, the Department (represented by Mr. Ian Drury) has determined that such operations may substantially adversely affect existing fish and wildlife resources including: Chinook salmon, Central Valley steelhead trout, giant garter snake, Northwestern pond turtle, warm water fish species, invertebrates, amphibians, riparian and/or freshwater marsh habitat, and other aquatic and terrestrial plant, fish and wildlife species.

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

Project Description

This agreement pertains only to those activities specifically described in Streambed Alteration Notification No. R2-2007-0084 pertaining to the Cal Fed Demonstration Recharge Project (Project) which includes three primary components designed to meet the Project's objectives, which are summarized as follows: (1) Cal Fed Site - a proposed new diversion scheduled to be constructed on the north bank of the lower Mokelumne River in late summer/early fall of 2007. The diversion rate will be 10 cubic feet per second (cfs), which will be piped to an infiltration basin for groundwater recharge north of the river. The diversion will consist of a fish screen in the river off the toe of the north bank. (2) North Pumping Station - The north pumping station is an existing diversion, which has proposed for a similar type fish screen as site # 1. The existing diversion rate is 10 cfs, but may be increased to a maximum of 30 cfs in the future. (3) South Pumping Station - The south pumping station is an existing diversion, which has proposed for a similar type fish screen as site # 1. The existing diversion rate is 10 cfs, but may be increased to a maximum of 30 cfs in the future. Alteration Agreement No. R2-2007-0084 pertains only to the components of the proposed Project as currently described, and an additional Alteration Agreement will be necessary for any additional work needed for the proposed Project.

Definitions

Stream Zone Defined: The stream zone is that portion of the stream channel that restricts the lateral movement of water. The stream zone is delineated at the top of the bank or outer edge of

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any riparian vegetation, which ever is more landward.

Work Periods

- 1) The time limit for completing the work within the stream zone of the project area, hereafter called the stream zone, shall be restricted to periods of low stream flow and dry weather and shall be confined to the periods of August 1, 2007 to October 15, 2007, and August 1, 2009 to October 15, 2009. Revegetation work is not confined to this time period
- 2) In-water project activities outside this work period will require consultation with the Department's North Central Region (contact Mr. Ian Drury). Although the granting of an extension for work within the stream zone is unlikely due to the nature of the project and the species it may impact, the Operator may submit a written request for a time extension to the Department 7 to 10 days before the above date is reached. The time extension request shall detail the extent of work already completed and the scope of work remaining and time required to complete operations within the stream zone. Time extensions are issued at the discretion of the Department. The Department, within 14 days of the receipt of a request to modify the work period, shall provide to the Operator its response to the request.
- 3) The Operator is advised that the Army Corps of Engineers also regulates in-water activities in the Sacramento-San Joaquin River Delta and its tributaries. The Corps may apply regulations that greatly restrict the "in-water" work periods. The Operator is advised to contact the Army Corp of Engineers Regulatory Section at (916) 557-5250.

Project Modifications

- 4) In-water work shall be done at the location and as described in the plans submitted to the Department. Project plans shall include all recommendations in this agreement. The Operator shall notify the Department of any modifications made to the project plans submitted to the Department. At the discretion of the Department, minor plan modifications may require an amendment to this agreement. At the discretion of the Department, if substantial modifications are made to the original plans, this agreement becomes void and the Operator must submit a new application. The Department, within 21 days of receipt of such plan modifications or within a time determined by mutual agreement, shall provide to the Operator its proposals as to measures necessary to protect fish and wildlife.
- 5) In the event that the project scope, nature, or environmental impact is altered by the imposition of subsequent permit conditions by any lead agency, special district or federal regulatory authority, the Operator may be required to resubmit a notification to the Department and seek a new agreement to proceed. (See condition number 4 above for

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handling of modification made to the project plans.)

Notifications and On-Site Documentation

- 6) The Operator/Contractor shall notify the Department two working days prior to beginning work within the stream zone of this project. Notification may be made to Mr. Ian Drury by phone at 916-358-2030, by FAX transmittal to (FAX # 916-358-2912) or by mail to the Department of Fish and Game, 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670, Attention Mr. Ian Drury. Refer to Streambed Notification Number R2-2007-0084 when notifying the Department.
- 7) A copy of this agreement shall be provided to all work crew supervisors who are working in or near the stream zone of this project. A copy of this agreement must be available upon request at the work site. Supervisors shall ensure that all employees who work in or near the stream zone are completely familiar with the terms and conditions of this agreement and shall ensure compliance with all terms and conditions. The Contractor selected for this project shall sign a copy of this agreement and return it to the Department prior to any in-water work.

Pollution Prevention Measures

- 8) Prior to working within the stream zone, all heavy equipment shall be closely examined for oil and fuel discharges. All equipment operated within or adjacent to the waterway shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Petroleum products, and 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 the river, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately. The Department shall be notified immediately by the Operator of any spills and shall be consulted regarding clean-up procedures.
- 9) 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 Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
- 10) Adequate erosion control and water pollution control measures shall be adopted and maintained for the duration of the project in order to prevent deleterious materials from entering the waterway. The Operator/Contractor shall install when practical a siltation curtain in close proximity to the project site. The siltation curtain shall be of effective

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design to limit and abate heavily silted materials from impacting the stream zone.

- 11) Turbidity levels in the lower Mokelumne River resulting from project related activities shall not exceed 20% of the natural turbidity levels as measured 200 feet upstream of the project site. 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.
- 12) 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) Rock slope protection shall be appropriately sized and engineered in place to resist washout. The Operator shall seek appropriate Rip-Rap Guidelines from the State Reclamation Board, the Army Corps of Engineers or other appropriate agency. Only clean material that is free of trash, debris and deleterious material, such as, rock rip-rap or broken concrete free of exposed rebar shall be used as bank stabilization. Asphalt is prohibited. All rock slope protection work shall be done from the top of the stream bank unless otherwise authorized. Equipment shall not be operated in the flowing portion of the river without the prior approval of the Department.
- 14) The bank stabilization material shall extend above the normal high-water mark.
- 15) Equipment and Material staging and storage areas shall be located away from the water side of the levee. All equipment, maintenance materials and other items considered to be pollutants shall be stored away from the water. Any spills of hazardous materials, petroleum products or other pollutant shall be reported immediately to the appropriate agency without delay.
- 16) During construction, the Operator/Contractor shall not dump any litter or construction debris within the stream zone. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site. All construction related materials shall be removed from the work site upon completion of the project.
- 17) Creosote treated wood products shall not be used in State Waters. Alternatives that may be appropriate include steel, concrete, plastic or wood products treated with EPA approved preservatives that are not deleterious to aquatic life.

Native Plant Protection and Vegetation Removal

- 18) Disturbance or removal of terrestrial and aquatic vegetation shall not exceed the minimum necessary to complete operations. The disturbed portions of the stream channel within the

Operator's Initials: _____

- high water mark of the stream shall be restored to as near their original condition as possible. Areas vegetated by blackberries shall be cleared using mowers, pruners, brush saws, or other hand tools. No bulldozer/backhoe type equipment shall be used to remove vegetation. No trees with trunks in excess of three (3) inches in diameter at breast height (DBH) shall be removed. The root zone of the existing vegetation shall not be disturbed.
- 19) Elderberry bushes shall be flagged and fenced too prevent damage and destruction. No Elderberry bushes shall be trimmed, moved or destroyed without the Operator first consulting the US Fish and Wildlife Service for the appropriate clearances, permits and protocols.
 - 20) The upper two-third of the stream bank areas receiving rock slope protection (rip-rap) shall be back-filled with appropriate topsoil. The topsoil fill should be placed to fill the voids in the rock slope protection and provide a substrate for revegetation efforts. The soil shall consist of soil free of clay lumps or other deleterious materials. Hand tools and directed water spray may be needed to achieve filling of the voids.
 - 21) The top soil covered rip-rap areas shall be restored to a natural state by seeding with a blend native and non-native erosion control grass seeds. Placement of cuttings of surrounding plant species shall be worked into the topsoil and rock. Cuttings should be placed at approximately 10 foot centers. Revegetation shall be completed after construction activities in those areas cease. Seed areas should be covered with broadcast straw.
 - 22) There shall be no net loss of riparian habitat and/or freshwater marsh habitat acreage or value. If the Operator is placing rock slope protection on a vegetated levee, the Operator shall be responsible for mitigating for the loss of habitat. The Operator may either prepare and implement a revegetation plan near the project site (at a habitat replacement ratio of 2:1, mature tree replacement at a minimum ratio of 3:1) or acquire mitigation credits at an approved mitigation bank (mitigation credits shall be purchased at a ratio of 1:1). A revegetation plan shall include species, numbers, size of plantings and location. Monitoring shall be for five years. The plan shall discuss maintenance, a success criteria, monitoring & reporting program and corrective actions to be taken if success criteria are not met.

Bank Protection and Erosion Control Measures

- 23) All exposed/disturbed areas and access points within the stream zone left barren of vegetation due to project related activities, shall be restored to its natural state by seeding with a blend of native and non-native erosion control grass seeds. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeded areas shall be covered with anchored jute netting, coconut fiber blanket or similar erosion control blanket. The Operator/Contractor shall be required to maintain the area until the grass seeds have successfully become established.

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- 24) All exposed banks that will not be seeded shall be erosion protected with rip-rap materials meeting US Army Corps, and State Reclamation Board minimum requirements. All materials used shall be free of pollutants, silt, fines, oils, paint and other pollutants. If broken concrete is used, it shall be free of exposed or broken rebar. All broken concrete used shall be free of rebar prior to being placed on the levee bank. Reasonable efforts shall be made to set, place and secure rip-rap material in place to prevent slippage, movement, sloughing and loss of material into the waterway.

Standard Administrative Streambed Alteration Agreement Provisions

- 25) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination is agreed to in writing by both parties.
- 26) The Department reserves the right to suspend and/or revoke this agreement if the Department determines that the circumstances warrant. The circumstances that could require a reevaluation include, but are not limited to, the following: A) Failure to comply with the terms/conditions of this agreement. B) The information provided by the Operator 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 has changed, or conditions affecting fish and wildlife resources change.
- 27) 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. If the Operator/Contractor or Other any party working under contract violates any of the terms of this agreement, project operations shall cease and the Department shall be notified immediately. **DFG 24-hour Dispatch: (916) 445-0045.**
- 28) Stream alteration construction work authorized by this agreement expires on **October 15, 2009**. This agreement shall remain in effect for that time necessary to satisfy the terms/conditions of the agreement including mitigation measures.
- 29) Requests for Renewals, Extensions, or Amendments must be submitted in writing to the Department prior to expiration of the agreement, conclusion of the work period, or commencement of changed work design, respectively. **Renewals, Extensions and Amendments are issued at the discretion of the Department.**
- a. **Renewals** - A renewal is a request to complete a project during next year's construction season. Renewals are for projects that have no changes in the work period (dates) or scope of work described in the original notification. The cost of

Operator's Initials: _____

- a renewal is \$127.25 (subject to change without notice).
- b. **Extensions** - An extension is a request to allow work on the project to extend beyond the work period (dates) described in the agreement and there are no changes in the scope work described in the original notification. The Department may require changes or additions to the list of conditions in the original agreement to protect fish and wildlife. The cost of the extension is \$127.25 (subject to change without notice).
- c. **Amendments** - An amendment is a modification to the original agreement that considers changes in the project's scope or design which would have impacts to fish and wildlife thereby requiring changes or additions to the list of conditions in the original agreement. The cost of an amendment is 50% of the fee of the original agreement.

Levee Work Project Specific Provisions

- 30) At this time, the provisions of the following agency permits is unknown, however, their permit requirements and restrictions shall be incorporated into this agreement upon their completion: (a) Regional Water Quality Control Board- Central Valley Region, adoption of Waste Discharge Requirements and (b) The U.S. Army Corps of Engineers- permit consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The Operator shall provide copies of these permits to the Department as soon as they become available. Failure to comply with these permits shall be considered violations of this agreement.

Threatened and Endangered Species Specific Provisions

- 31) Species designated by the State and Federal Governments as Threatened or Endangered may be present at this site. Any and all impacts to these species are strictly prohibited. For this agreement, the word "impact" in reference to a species includes but is not limited to the following: any impact on habitats used, species numbers and/or distribution, migration, water quality or reproductive success.
- 32) The Operator may be required to have a qualified biologist survey the proposed work area to verify the presence or absence of any of the following threatened or endangered species: Chinook salmon, Central Valley steelhead trout, Sacramento splittail, giant garter snake. The results of these surveys shall be provided to the Department, in report form, prior to initiation of work.
- 33) If Chinook salmon, Central Valley steelhead trout, giant garter snake are found in the proposed work area, or it is in a location which could be impacted by the work proposed, the Operator shall consult with the Department to ensure this species is protected. If the work requires that the species be removed, disturbed or otherwise impacted, the Operator shall first obtain the appropriate State and Federal endangered species permits.

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State of California, Department of Fish and Game, SVCSR
Streambed Alteration Number R2-2007-0094 Cal Fed Demonstration Reclamation Project

FAX TO
VAN DUUVY
916-350-2912

SIGNATURE PAGE

The Operator, 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 sub-contractors 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 the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances.

THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL BE PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

This agreement becomes effective on receipt of signed agreement by all parties. This agreement terminates on October 15, 2009, for project construction activities only. This agreement shall remain in effect for that time necessary to satisfy the terms/conditions of the agreement, including mitigation measures.

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

Operator: Ed St. John Date: 7/25/07
Print & Sign Name

Title: General Manager

Organization: North San Joaquin Water Conservation District

Contractor: _____ Date: _____

Title: _____

Company: _____

Department Representative: [Signature] Date: 7/27/07

Operator's Initials: _____

Sandra Morey, Regional Manager

Operator's Initials: _____

Proposed Fish Screening requirements for North San Joaquin Water District

Draft – George Heise – 04/08/07

Diversion Locations and Descriptions

The North San Joaquin Water District (NSJWD) has one proposed and two existing diversions on the Mokelumne River upstream of Lake Lodi. Information on the diversion rate and proposed fish screens at each site was provided by Ed Stephani of NSJWD and Daryl Hayes of Intake Screens, Inc. (ISI).

1. CalFed Site – The CalFed Site is a proposed new diversion scheduled to be constructed on the north bank of the river in late summer/early fall 2007. The diversion rate will be 10 cfs, which will be piped to an infiltration basin for groundwater recharge north of the river. The diversion will consist of a fish screen in the river off the toe of the north bank, which will deliver screened water to the pump wet well. The pumps will draft from the wet well and deliver flow to the pipeline. NSJWD proposes to use an ISI Cone Screen for the fish screen. Power will be available at the pump station for running the hydraulically operated screen cleaning brushes.
2. North Pumping Station – The North Pumping Station is the older of the two existing diversions (apprx. 60 years old??). The existing diversion is rate is up to 10 cfs, but may be increased to a maximum of 30 cfs in the future. The existing pumps are recessed into the north floodplain approximately 100 yards back from the river edge. A trench has been cut through the flood plain to deliver flow from the river to the pumps. NSJWD proposes to use an ISI Cone Screen at the mouth of the trench at the river edge. Power will be available at the pump station for running the hydraulically operated screen cleaning brushes. The screened flow would be delivered through a pipe which would be placed in the existing trench and terminate in a wet well at the pumps. The wet well would be created by a dike constructed across the trench near the end of pipe coming from the screen. The top elevation of the dike is proposed to be higher than the river water surface elevation at flow of 1,000 cfs (NSJWD does not divert when river flows are above 1,000 cfs.)
3. South Pumping Station – The North Pumping Station is the newer of the two existing diversions (age??). The existing diversion is rate is up to 30 cfs. The existing pumps are recessed into the south floodplain approximately 300 yards from the river edge. A trench has been cut through the flood plain to deliver flow from the river to the pumps. NSJWD proposes to use one or two ISI Cone Screens at the mouth of the trench at the river edge. Because of the distance from the distance from the power available at the pumps to the fish screens, ISI proposes to use batteries charged by solar collectors to energize the hydraulically operated screen cleaning brushes. A dike would be constructed

across the trench as near the screen as practical to minimize the length of the pipe. The screened flow would be delivered through the pipe which would be placed in the existing trench and penetrate the dike. The top elevation of the dike is proposed to be consistent with the ground level adjacent to the trench.

Fish Screen Selection

Any fish screen meeting the requirements of the Department of Fish and Game (DFG) FISH SCREENING CRITERIA dated June 19, 2000 are acceptable subject to design approval by the DFG. The ISI Cone Screens are specifically approved for the use on the three subject NSJWD diversions provided approach velocity, screen opening, and cleaning criteria are met. Sweeping velocity criteria will not apply to the ISI Cone Screen and an exception will be made to the Structure Placement criteria for the North Pumping Station and South Pumping Station as described below.

Fish Screen Location

For ISI Cone Screens, at the CalFed site the screen shall be placed in the flowing river channel. For the North and South Pumping Stations, the ISI Cone Screens may be located at the mouth of the existing diversion trenches such that the upstream edge of the screen base is aligned with the low flow bank line, or streamward of the bank line. If a screen other than an ISI Cone Screen is proposed, the screening criteria for Structure Placement shall be met.

Screen Cleaning Operation

The screening cleaning mechanism shall be capable of completing a cleaning cycle once every five minutes. For the ISI Cone Screens at the CalFed site and the North Pumping Station the hydraulic operated screen brushes shall be powered by line power to the pumping station. For the Cone Screens at the South Pumping Station, a solar powered system is acceptable energize the screen cleaning system provided a five minute cleaning cycle can be maintained.

Implementation Priority and Schedule

The District may proceed with permitting and construction of the CalFed site, but may not divert flow from the river until a fish screen is in place and operational. It is understood that the District intends to construct this facility late summer/early fall 2007.

Screening the South Pumping Station will provide fish protection on 75% of the district's existing diversions. The NSJWD shall expedite design and permitting for the South Pumping Station for construction in summer/early fall 2008. If the NSJWD is unable to screen the South Pumping Station by fall 2008, then a temporary fish screen approved by the DFG shall be installed at the mouth of the south diversion trench by fall 2008 and shall be maintained and operated until a permanent screen is in place.

The NSJWD shall commence design and permitting for the North Pumping Station for construction in summer/early fall 2009. It is understood that the North Pumping Station may be reconstructed and enlarged to 30 cfs along with the screen implementation. If the NSJWD is unable to screen the North Pumping Station by fall 2009, then a temporary fish screen approved by the DFG shall be installed at the mouth of the south diversion trench by fall 2009 and shall be maintained and operated until a permanent screen is in place.