

## Central Valley Regional Water Quality Control Board

20 July 2018

Keith Andy Stone  
U. S. Department of Agriculture,  
Sequoia National Forest  
11380 Kernville Rd.  
Kernville, CA 93238

***CLEAN WATER ACT SECTION 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; U. S. DEPARTMENT OF AGRICULTURE, SEQUOIA NATIONAL FOREST; FISH CREEK AQUATIC ORGANISM PASSAGE PROJECT (WDID #5C54CR00095); TULARE COUNTY***

This Order responds to the 21 May 2018 application submitted by the U. S. Department of Agriculture, Sequoia National Forest (Applicant) for the Water Quality Certification of the Fish Creek Aquatic Organism Passage Project (Project), permanently impacting 0.04 acres of waters of the United States and the state of California.

This Order serves as certification of the subject Project permitted by the United States Army Corps of Engineers' Nationwide Permit #27 under Section 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and Section 3867 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to Section 3855(b) of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under Section 3860(c) of the California Code of Regulations.
4. This Certification is no longer valid if the Project (as described) is modified, or coverage under Section 404 of the Clean Water Act has expired.

5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) shall be signed by a person described below or by a duly authorized representative of that person.
  - (a) For a corporation: by a responsible corporate officer such as: 1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; 2) any other person who performs similar policy or decision-making functions for the corporation; or 3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (b) For a partnership or sole proprietorship: by a general partner or the proprietor.
  - (c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
  
6. Any person signing a document under Standard Condition number 5 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**TECHNICAL CERTIFICATION CONDITIONS:**

In addition to the above standard conditions, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in writing seven (7) days in advance of the start of any work within waters of the United States.
2. Except for activities permitted by the United States Army Corps of Engineers under Section 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
4. The Applicant shall perform surface water sampling<sup>1</sup>:
  - a) when performing any in-water work, including during water diversion activities;
  - b) in the event that Project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters.

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<sup>1</sup> Sampling is not required in wetlands, where the entire wetland is being permanently filled; provided there is no outflow connecting the wetland to surface waters.

The sampling requirements in Table 1 shall be conducted upstream out of the influence of the Project, and approximately 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab	Every 4 hours during in-water work	(1, 2)
pH	Standard Units	Grab	Every 4 hours during in-water work	(1, 2)

<sup>(1)</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff.

<sup>(2)</sup> A hand-held field meter may be used, provided the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

A surface water monitoring report shall be submitted within two weeks of initiation of in-water activity, and every two weeks thereafter. In reporting the sampling data, the Applicant shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the Project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

**If no sampling is required**, the Applicant shall submit a written statement stating, "No sampling was required" within two weeks of initiation of in-water construction, and every two weeks thereafter.

5. The Project is located within the jurisdiction of the Central Valley Water Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised July 2016 (Basin Plan). The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies. Turbidity limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Activities shall not cause turbidity increases in surface water to exceed:
  - i. where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases exceeding 1 NTU;
  - ii. where natural turbidity is between 5 and 50 NTUs, increases exceeding 20 percent;
  - iii. where natural turbidity is between 50 and 100 NTUs, increases exceeding 10 NTUs;

- iv. where natural turbidity is greater than 100 NTUs, increases exceeding 10 percent.

Appropriate averaging periods may be applied, provided that beneficial uses will be fully protected. Averaging periods may only be used with prior permission of the Central Valley Water Board Executive Officer.

- b) Activities shall not cause the pH in surface waters to be depressed below 6.5 nor raised above 8.3.
6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity, pH, or other water quality objectives are exceeded.
  7. In-water work shall occur during periods of low flow and no precipitation.
  8. Activities shall not cause visible oil, grease, or foam in the receiving water.
  9. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If critical equipment must be refueled within 300 feet of the waterway, spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a waterway. The Applicant must perform frequent inspections of construction equipment prior to utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.
  10. The Applicant shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the Project. The Plan must detail the Project elements, construction equipment types and location, access and staging, and construction sequence.
  11. The discharge of petroleum products, any construction materials, hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete, asphalt, paint, coating material, drilling fluids, or other construction-related potentially hazardous substances to surface water and/or soil is prohibited. In the event of a prohibited discharge, the Applicant shall notify the Central Valley Water Board Contact within 24-hours of the discharge.
  12. Silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States through the entire duration of the Project.
  13. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the Project area.
  14. All areas disturbed by Project activities shall be protected from washout and erosion.
  15. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.

16. All materials resulting from the Project shall be removed from the site and disposed of properly.
17. Hydroseeding shall be performed with California native seed mix approved by the California Department of Fish and Wildlife.
18. If the Project will involve land disturbance activities of one or more acres, or where the Project disturbs less than one acre but is part of a larger common plan of development that in total disturbs one or more acres, the Applicant shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ for discharges to surface waters comprised of storm water associated with construction activity.
19. The Applicant shall comply with all United States Fish and Wildlife Service requirements.
20. The Conditions in this Certification are based on the information in the attached "Project Information Sheet" and the application package. If the actual project, as described in the attached Project Information Sheet and application package, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
21. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. The applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
  - (a) If the Applicant or a duly authorized representative of the Project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability, for each day of violation, and/or criminal liability.
  - (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
  - (c) The Applicant shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.

**NOTIFICATIONS AND REPORTS:**

22. The Applicant shall provide a Notice of Completion (NOC) no later than 30 days after the Project completion. The NOC shall demonstrate that the Project has been carried out in

accordance with the Project description in the Certification and in any approved amendments. The NOC shall include a map of the Project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.

23. The Applicant shall submit all notifications, submissions, materials, data, correspondence, and reports in a searchable Portable Document Format (PDF). Documents less than 50 MB must be emailed to: [centralvalleyfresno@waterboards.ca.gov](mailto:centralvalleyfresno@waterboards.ca.gov). In the subject line of the email, include the Central Valley Water Board Contact, Project name, and WDID number as shown in the subject line above. Documents that are 50 MB or larger must be transferred to a disk and mailed to the Central Valley Water Board Contact.

#### **CENTRAL VALLEY WATER BOARD CONTACT:**

Debra Mahnke, Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
1685 E Street  
Fresno, CA 93706  
[debra.mahnke@waterboards.ca.gov](mailto:debra.mahnke@waterboards.ca.gov)  
(559) 445-6281

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

**Status of CEQA Compliance:** The Central Valley Water Board has determined that the Project is exempt from review under CEQA pursuant to California Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations, title 14, section(s) 15333 –Small Habitat Restoration Projects.

Additionally, the Central Valley Water Board concludes that no California Code of Regulations, title 14, section exceptions to the CEQA exemption apply to the activities approved by this Order.

The Central Valley Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days from the issuance of this Order. (Cal. Code Regs., tit. 14, § 15062.)

The Sequoia National Forest, as Lead Agency under the National Environmental Policy Act (NEPA), prepared a Decision Memo for the Project, and circulated it for public comment. The Sequoia National Forest determined the Project is categorically excluded from documentation in an environmental impact statement or an environmental assessment; determined that no extraordinary circumstances exist that would preclude use of categorical exclusion in accordance with Council on Environmental Quality regulations at 40 CFR 1508.4; and determined the Project, as designed, will have little to no effect on the natural or human environment.

The decision meets the requirements found at 36 CFR 220.6 - Categorical Exclusions. Specifically, the project meets Category 36 CFR 220.6(e)(18):

- FSH 1909.15 Sec. 32.2 (18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. (36 CFR 220.6 (d)(18)).

#### **WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that the proposed discharge from the U. S. Department of Agriculture, Sequoia National Forest, Fish Creek Aquatic Organism Passage Project (WDID #5C54CR00095) will comply with the applicable provisions of Section 301 ("Effluent Limitations"), Section 302 ("Water Quality Related Effluent Limitations"), Section 303 ("Water Quality Standards and Implementation Plans"), Section 306 ("National Standards of Performance"), and Section 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. Through this Order, this discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in compliance with the conditions of this Certification, the U. S. Department of Agriculture, Sequoia National Forest's application package, and the attached Project Information Sheet; and b) compliance with all applicable requirements of the *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised July 2016.

Any person aggrieved by this action may petition the State Water Resources Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.



*for* Patrick Pulupa  
Executive Officer

Enclosure: Project Information Sheet

Attachment: Project Maps

cc: Distribution List, see Page 8

**DISTRIBUTION LIST**

cc: (w/ enclosure):

Sam Ziegler (Electronic Copy Only)  
U.S. Environmental Protection Agency, Region 9  
Ziegler.Sam@epa.gov

Marc Fugler (Electronic Copy Only)  
United States Army Corps of Engineers  
Sacramento District Headquarters  
SPKRegulatoryMailbox@usace.army.mil

Patricia Cole (Electronic Copy Only)  
United States Fish & Wildlife Service  
patricia\_cole@fws.gov

Department of Fish and Wildlife, Region 4 (Electronic Copy Only)  
R4LSA@wildlife.ca.gov

CWA Section 401 WQC Program (Electronic Copy Only)  
Division of Water Quality  
State Water Resources Control Board  
Stateboard401@waterboards.ca.gov

## PROJECT INFORMATION SHEET

**Application Date:** 21 May 2018

**Applicant:** Keith Andy Stone  
U. S. Department of Agriculture, Sequoia National Forest  
11380 Kernville Road  
Kernville, CA 93238

**Project Name:** Fish Creek Aquatic Organism Passage Project

**WDID Number:** WDID #5C54CR00095

**Date on Public Notice:** 8 June 2018

**Date Application Deemed Complete:** 28 June 2018

**Type of Project:** Restoration

**Project Location:** Sherman Pass Road at Fish Creek  
Latitude: 36.0634°, Longitude: -118.21878°

**County:** Tulare

**Receiving Water(s) (hydrologic unit):** Fish Creek, Tulare Lake Hydrologic Basin, Kern River Hydrologic Unit #554.23, Upper Kern HA, South Fork Kern HSA

**Water Body Type:** Streambed

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised July 2016 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Biological Habitats of Special Significance (BIOL); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

### **Project Description:**

The Forest Service is proposing a restoration project to increase passage for juvenile and adult golden trout, mountain yellow-legged frogs, and other aquatic organisms. The project will replace the existing culvert on Sherman Pass Road (FS Road 22S05) at the Fish Creek crossing with a 58-foot span bridge and reconstruct/restore the stream channel up and downstream of the bridge. The Project will provide a channel floodplain design through the bridge footprint to stabilize the upstream channels, reduce the sedimentation downstream, and optimize the movement of aquatic organisms.

Work would occur in the channel and along the banks of the existing streams (Fish and Jackass Creeks). The existing culvert and road prism fill around the culvert (approximately 600 cubic yards) would be removed.

All excavation will occur above the floodplain elevation (i.e., no "dredging" of material will occur in the floodplain or stream channel). Fill material for channel reconstruction would be comprised of rock with at least 20% soil to provide plant medium and to seal the structure against leakage. Total fill would be approximately 450 cubic yards of rock and 150 cubic yards of soil. Work would be conducted using an excavator and track loader. No disposal of material is proposed.

**Proposed Mitigation to Address Concerns:**

Construction activities will follow relevant water quality protection best management practices (BMPs) per Forest Service Handbook 2509.22, the Sierra Nevada Forest Plan Amendment Riparian Conservation Objectives Standards and Guides, and site specific design features. Construction will only occur during low flow and low soil moisture conditions in the fall. Measures will be taken to protect aquatic life including a limited operating period for mountain yellow-legged frog (MYLF) (May 1- July 15) and blocking nets up and downstream of the project to prevent migrating MYLF tadpoles and frogs from entering the project area. A Forest Service site monitor will be present and if a MYLF is detected, all activities will cease until the animal(s) are safely removed. All riparian vegetation removed will be salvaged for later planting in and around the restoration site.

**Excavation/Fill Area:** Approximately 0.04 acres will be permanently impacted by the Project by placement of 113 cubic yards of soil and 342 cubic yards of rock.

**Dredge Volume:** None

**California Integrated Water Quality System Impact Data:**

**Table 2: Impacts from Fill and/or Excavation Activities**

Aquatic Resource Type	Temporary			Permanent					
				Physical Loss of Area			Degradation of Ecological Condition Only		
	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet
Streambed	--	--	--	0.04	455	265	--	--	--

**United States Army Corps of Engineers Permit Type:** Nationwide Permit #27

**California Department of Fish and Wildlife Lake or Streambed Alteration Agreement:**

Not applicable for a federal project on federal land.

**Possible Listed Species:**

Mountain yellow-legged frog: Site-specific surveys have detected none. Area would be surveyed again immediately before construction, and a site monitor would be present during construction to look for frogs.

**Compensatory Mitigation:**

This Project is being funded by the In-Lieu Fee Program as a mitigation project.

**Table 3: Compensatory Mitigation**

Water Body Type	Created		Restored		Enhanced	
	(acres)	(linear ft)	(acres)	(linear ft)	(acres)	(linear ft)
Riparian	--	--	0.54	407	0.07	187
Streambed	--	--	0.05	192	0.28	1,001

**Application Fee Provided:** Not applicable for a federal project.

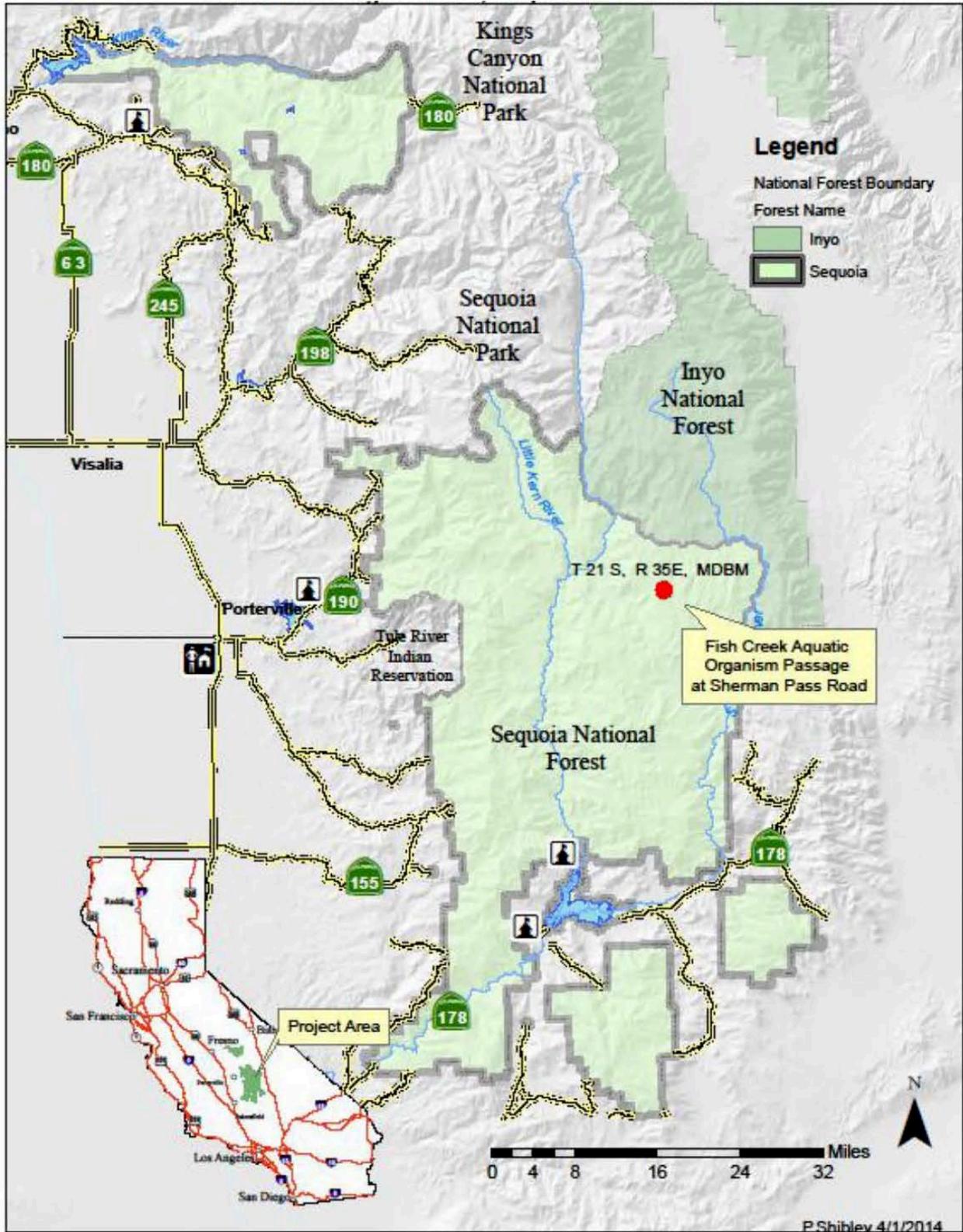


Figure 1- Location Map

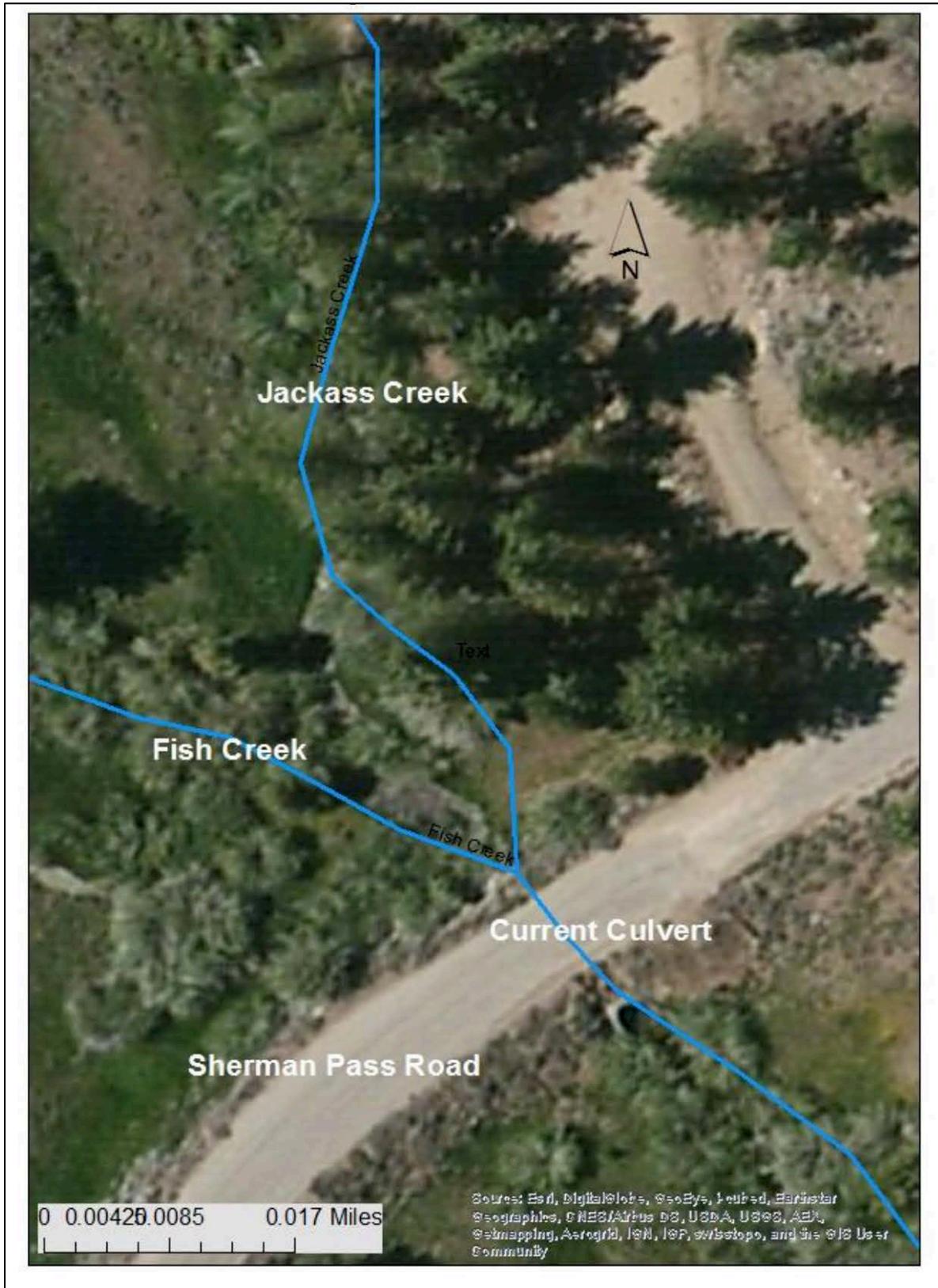


Figure 2- Site Plan