

California Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501



Streambed Alteration Agreement

Notification No. 1600-2021-0019-R1

Unnamed tributaries to Martin Slough, tributary to Elk River, tributary to Humboldt Bay,
Humboldt County

1 Encroachment

Applicant: Sam Kelly, as represented by Bill Dann

Property owner: Sam Kelly

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Sam Kelly (Permittee), as represented by Bill Dann.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on March 12, 2021 that Permittee intends to complete the project described herein.

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

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

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

PROJECT LOCATION

The activities to be completed according to the Agreement are located approximately 1 mile east of Eureka in Humboldt County in an unnamed tributary to Martin Slough, tributary to Elk River, tributary to Humboldt Bay. The project is located in Section 35, Township 5N, Range 01W; Humboldt Base and Meridian, in the Fields Landing, California, U.S. Geological Survey 7.5-minute quadrangle (see Appendix A).

PROJECT DESCRIPTION

The project proposes to reconstruct one Class III culvert crossing as outlined in, and limited to Table 1 below.

Table 1: Streambed Alteration Agreement 1600-2021-0019-R1 encroachment details for “Sam Kelly Exemption”

Map Point	Watercourse classification	Encroachment description	Minimum culvert size (in)
Site 1	III	Watercourse Crossing	18

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: coho salmon (*Oncorhynchus kisutch*), steelhead (*O. mykiss*), coastal cutthroat trout (*O. clarki clarki*), amphibians, aquatic invertebrates, and other aquatic and riparian species.

The adverse effects the project could have on the fish or wildlife resources identified above include: damage to spawning and/or rearing habitats and potential cumulative impacts.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. ADMINISTRATIVE MEASURES

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site: Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site: Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions: Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry: Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.

- 1.5 Project Accordance: Except where otherwise stipulated in this Agreement, all work shall be in accordance with the project description submitted with Notification No. 1600-2021-0019-R1.
- 1.6 Amendment of Agreement into the Exemption: Before any work covered by this Agreement is undertaken, this Agreement shall be amended into and made enforceable as part of the exemption.
- 1.7 All Lake and Streambed Alteration Agreement (LSAA) notification, amendment, extension and emergency forms can be found:
<https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

2. REPORTING MEASURES

- 2.1 CDFW Reporting Location: All reports shall be sent by email to (CTP@wildlife.ca.gov).
- 2.2 Emergency Road Work: Permittee may remove obstructions and sediment at any time if the obstructions and sediment would reasonably be expected to cause substantial damage to resources or cause the facility to fail outside the time periods specified above. If heavy equipment is used, please notify CDFW within 14 days after completing activity using the emergency work form (<https://www.wildlife.ca.gov/Conservation/LSA/Forms>).

AVOIDANCE AND MINIMIZATION MEASURES

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below as outlined in Sections 3 through 5.

3. PROJECT TIMING

- 3.1 Timing for Work on Class III Watercourses: Permittee shall conduct the following activities only during periods between June 1 and October 15: vegetation removal; bank stabilization; and maintenance, replacement and installation of watercourse crossings. Temporary crossings installed during this time shall be removed prior to October 15.
- 3.2 Timing for Work: The project may commence during the winter period (October through June, provided adherence to all conditions in this Agreement and a-e) below.
 - a) Permittee shall obtain approval from CDFW prior to commencement of work

activities.

- b) Prior to any ground disturbing work at a project site, Permittee shall stockpile erosion control materials at the site. All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion immediately upon completion of work on the crossing, and prior to the onset of precipitation capable of generating runoff. Erosion control shall consist of packed slash or weed-free straw mulch in a mosaic of depths of ½ to 2 inches. If the site is seeded, a mix of native grasses common to the area shall be used, free from seeds of noxious or invasive weed species, and applied at a rate which will ensure establishment. No annual (Italian) ryegrass (*Lolium multiflorum*) shall be used.
- c) Crossing construction shall only be performed when soils are sufficiently dry so that sediment is not discharged into streams.
- d) All crossing installation or removal work at a given site shall be conducted in one day. If equipment breakdowns prevent completion of installation or removal in one day, work shall be completed in the shortest period feasible.
- e) When a 7-day National Weather Service forecast of rain includes a minimum of 5 consecutive days with any chance of precipitation, 3 consecutive days with a 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, the Responsible Party shall refrain from starting work at encroachment prior to the rain event.

4. GENERAL CONDITIONS FOR ALL ENCROACHMENTS

- 4.1 Heavy equipment shall not enter, cross, or operate in a stream when surface water is present. If heavy equipment is approved by CDFW for use in the stream at a particular site, equipment shall be cleaned of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil and other debris. Cleaning of equipment shall take place outside of the Watercourse and Lake Protection Zone (WLPZ) and prior to entering the water.
- 4.2 In Class III watercourses, where flowing water is present during operations:
 - a) Cofferdams shall be installed to divert stream flow, isolate and dewater the work site, catch any sediment-laden water, and minimize sediment transport downstream. Cofferdams shall be constructed of non-polluting materials including sand bags, rock, and/or plastic tarps. Mineral soil shall not be used in the construction of cofferdams.
 - b) Flowing water shall be cleanly bypassed and/or prevented from entering the

work area through pumping or gravity flow, and cleanly returned to the stream below the work area. Flow diversions shall be done in a manner that shall prevent pollution and/or siltation and provide flows to downstream reaches.

- c) Permittee shall remove any turbid water and sediment present in the work area prior to restoring water flow through the project site, and place them in a location where they cannot enter the Waters of the State.

- 4.3 No fill material shall be placed within a stream except as specified in this Agreement.
- 4.4 Adequate and effective erosion and siltation control measures shall be used to prevent sediment or turbid or silt-laden water from entering streams at all times. Where needed, Permittee shall use native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils. Geotextiles, fiber rolls, and other erosion control treatments shall not contain plastic mesh netting.
- 4.5 All bare mineral soil outside of the stream channel and in the riparian area exposed in conjunction with road work and drafting activities shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the seeding and mulching of all bare mineral soil with at least 2 to 4 inches straw mulch and native plants or regionally appropriate seeds, or sterile varieties or short-lived non-native annuals that are known not to persist or spread such as cereal cover crops [e.g. barley (*Hordeum vulgare*), buckwheat (*Fagopyron esculentum*), oats (*Avena sativa*), rye (*Secale cereale*), wheat (*Triticum aestivum*)] to avoid the propagation of non-native (invasive) plants and minimize competition with native vegetation. Annual (Italian) ryegrass (*Lolium multiflorum*) shall not be used.
- 4.6 Encroachments and associated approaches, structures, fills, and other exposed soils shall be armored as needed to protect the stream channel and banks from erosion. Armoring shall be comprised of rock riprap, large woody debris (LWD), or other non-polluting materials and shall be constructed to remain in place during periods of high flow events. When used on permanent culverts, armoring shall extend at least as high as the top of the culvert, and shall prevent bank erosion by extending a sufficient distance upstream and downstream along the banks.
- 4.7 Encroachments shall be constructed, deconstructed, and maintained in a manner that minimizes to the extent feasible headcutting or downcutting of the stream channel by installing grade control such as riprap, woody debris, or through other effective measures.
- 4.8 Approaches to all encroachments shall be treated to eliminate the generation and transport of sediment to streams. Treatment locations shall include, but not be

- limited to, road surfaces, fill faces, cut banks, and road drainage ditches. Road approaches and other work shall be left in a finished condition with all hydrologic connectivity from the road or ditch to the site eliminated as feasible and effective erosion control in place prior to any rainfall event capable of generating runoff. Effective erosion control shall extend away from the crossing to at least the first waterbreak.
- 4.9 Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.
 - 4.10 Temporary erosion control devices, such as straw bales, silt fencing, and sand bags, may be used, as appropriate, to prevent siltation of the stream. To minimize the risk of ensnaring and strangling wildlife, coir rolls, erosion control mats or blankets, straw or fiber wattles, or similar erosion control products shall be composed entirely of natural-fiber, biodegradable materials. Permittee shall not use "photodegradable" or other plastic erosion control materials.
 - 4.11 All non-merchantable LWD excavated during crossing construction or deconstruction shall be used on site for streambed and bank stabilization or erosion control. LWD shall be sufficiently anchored or keyed-in to resist movement during high flows and placed in a manner that prevents undercutting of streambanks.
 - 4.12 Permittee shall provide site maintenance including, but not limited to, re-applying erosion control to minimize surface erosion and ensure streambeds and banks remain sufficiently armored and/or stable at the encroachment for as long as the encroachment remains.
 - 4.13 Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.
 - 4.14 Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within RMZs or within stream beds, banks or channels. All such fluids and containers shall be disposed of properly. Heavy equipment including water drafting trucks parked within RMZs or streambeds, banks or channels shall use drip pans or other devices (e.g. absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.
 - 4.15 No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.

5. PERMANENT CULVERT CROSSINGS

- 5.1 Culvert Alignment: Permittee shall align culverts with the watercourse channel. Culverts shall extend beyond the road fill and shall not be perched (suspended). On Class III watercourses they shall be installed at watercourse gradient or have downspouts or energy dissipaters (rock rip-rap or boulders) at the outfall to prevent erosion.
- 5.2 Basins at Culvert Inlets: Permittee shall ensure basins are not constructed and channels are not be widened at culvert inlets unless designed and approved.
- 5.3 Culverts Extend Beyond Toe of Fill: Permittee shall ensure that culverts extend lengthwise completely beyond the toe of fill.
- 5.4 Culverts Aligned With the Stream Channel: Permittee shall ensure that permanent culverts and their outfall structures are aligned with the stream channel and as wide as or wider than the channel width.
- 5.5 Culvert Bottom at Natural Streambed Elevation: Permittee shall ensure that permanent culverts are placed with the bottom set at or slightly below the natural streambed elevation to the maximum extent feasible.
- 5.6 Culverts Not Set to Grade: Permittee shall ensure, if permanent culverts cannot or will not be set to grade, that they shall have downspouts and/or energy dissipaters below the outfall as needed to effectively control erosion. If half-round downspouts (flumes) are used, they shall be placed in line with the culvert, sized larger than the culvert and of sufficient size to accommodate entire anticipated stream flow. Downspouts shall be securely attached to the culvert and staked or otherwise anchored to the fill slope.
- 5.7 Permanent Culvert Sized to Pass One Hundred Year Flow: Permittee shall size permanent culverts at stream crossings to pass the estimated 100-year flood flow, including debris and sediment loads, without overtopping or diverting. Culvert sizing factors shall include transportation of bedload and the abundance and size of woody debris likely to be introduced to the stream upstream of the culvert crossing. Culverts shall be set at the natural streambed elevation to the maximum extent feasible.
- 5.8 Culvert Protection: Permittee shall protect culvert inlets and outlets from erosion as appropriate through armoring constructed of rock rip-rap or other non-erodible material (e.g. concrete head wall). Where used, rock rip-rap or armoring shall be of sufficient size and depth to remain in place during 100-year peak flows (generally 12 inch or greater diameter or equal to the largest size that naturally exists in the channel), extend at least as high as the top of the pipe on inlets, and shall extend sufficient distance upstream as wing walls to prevent bank erosion. Where armoring is used, the channel at the culvert outlet shall be rip-rapped in a

U-shaped channel and rip-rap set below grade so as to allow the natural accumulation of bedload at watercourse grade.

- 5.9 Excavate and Dispose of Sediment Depositions: Permittee shall excavate and dispose of sediment depositions in the stream channels at the inlets of the culvert at a location and in a manner where sediment shall not enter into the waters of the State.

CONTACT INFORMATION

Written communication that Permittee or CDFW submits to the other shall be delivered to the address below unless Permittee or CDFW specifies otherwise:

To Permittee:

Sam Kelly
2963 Pigeon Point Road
Eureka, California 95503

To CDFW:

Department of Fish and Wildlife
North Coast Region
619 Second St
Eureka, California 95501
ATTN: Lake and Streambed Alteration
Program
Notification # 1600-2021-0019-R1
Fax: (707) 441-2021

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include

instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form.

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form.

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form. CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification before beginning or continuing the project the Agreement covers (FGC § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under CEQA.

TERM

This Agreement shall expire 5 years from the CDFW signature date below, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

Maps of the encroachment sites are included as an exhibit to the Agreement and shall be incorporated herein by reference.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

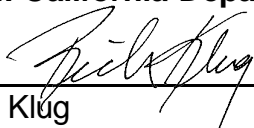
The undersigned accepts and agrees to comply with all provisions contained herein.

FOR: Sam Kelly



Sam Kelly / William S. Dann - RPF, Agent 3/19/2021
Date

FOR: California Department of Fish and Wildlife



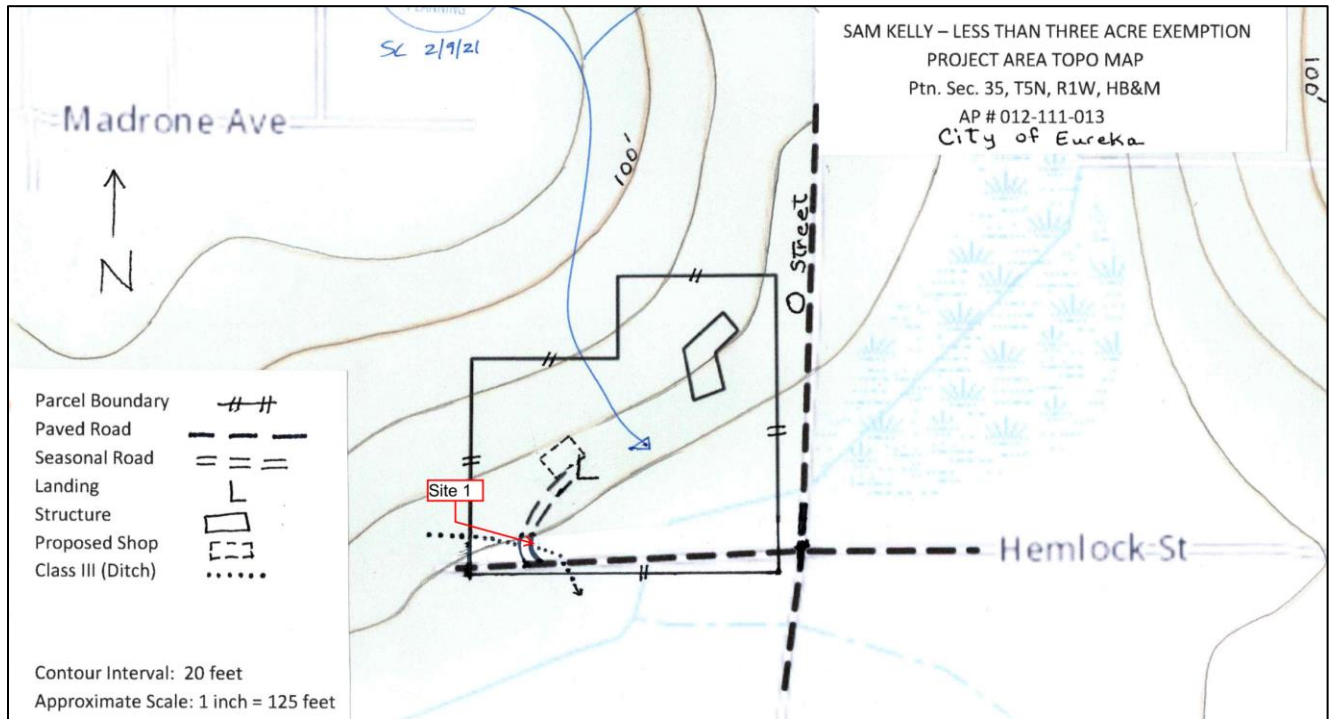
Rich Klug 03/22/2021
Date
Senior Environmental Scientist (Supervisory)
Timber Conservation Planning

Prepared by:

Nicholas Simpson
Senior Environmental Scientist (Specialist)
Timber Conservation Planning

Date Prepared; 3/15/2021

Appendix A:



To:
Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

From:
Department of Fish and Wildlife
Northern Region
619 Second Street
Eureka, California 95501



Street Address:
1400 Tenth Street
Sacramento, CA 95814

Project Title: Samy Kelly Class III Culvert Crossing Replacement (Lake or Streambed Alteration Agreement No. 1600-2021-0019-R1)

Project Location (include county): The activities to be completed according to the Agreement are located approximately 1 mile east of Eureka in Humboldt County in an unnamed tributary to Martin Slough, tributary to Elk River, tributary to Humboldt Bay. The project is located in Section 35, Township 5N, Range 01W; Humboldt Base and Meridian, in the Fields Landing, California, U.S. Geological Survey 7.5-minute quadrangle.

Project Description: The California Department of Fish and Wildlife has executed Lake and Streambed Alteration Agreement number 1600-2021-0019-R1, pursuant to Section 1602 of the Fish and Game Code to Mr. William Dann.

The project proposed to replace an existing 18-inch culvert Class III watercourse crossing with a longer 18-inch culvert crossing to facilitate harvesting a future CALFIRE 14 CCR 1104.1 (a) "Less than 3 acre" forest conversion.

Public Agency Approving Project: CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

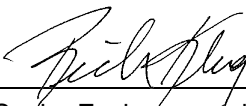
Person or Public Agency Carrying Out Project: William Dann

Exempt Status:

- Statutory Exemption. State code number
- Categorical Exemption. Type – Class 1 and 4; California Code of Regulations, title 14, section 15301 and 15304

Reasons why project is exempt: The project proposes reconstruct a Class III watercourse culvert. There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065. There are no hazardous materials at or around the project site that may be disturbed or removed. The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

CDFW Contact Person: Nicholas Simpson, Senior Environmental Scientist, (707) 445-6512

Signature:  _____ *Date:* 03/22/2021
Rich Klug, Senior Environmental Scientist Specialist (Supervisor)

Date received for filing at OPR: _____