

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



Streambed Alteration Agreement

Notification No. 1600-2021-0044-R1

Marshall Creek, tributary to Ruth Lake, tributary to the Mad River, Trinity County

1 Encroachment

Applicant: Jake Morris, as represented by Bill Dann

Property owner: Humboldt Bay Municipal Water District

Associated CALFIRE exemption: 1-21-EM-00112-TRI; "Marshall Creek Emergency"

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

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on May 05, 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 6 miles south of the town of Mad River in Trinity County in Marshall Creek, tributary to Ruth Lake, tributary to the Mad River. The project is located in Section 11, Township 2S, Range 07E; Humboldt Base and Meridian, in the Forest Glen, California, U.S. Geological Survey 7.5-minute quadrangle (see Appendix A).

PROJECT DESCRIPTION

The project proposes to install and remove a Class I temporary culvert crossing as outlined in, and limited to, the Table 1 below.

Table 1: Streambed Alteration Agreement 1600-2021-0044-R1 encroachment details for 1-21EM-00112-TRI “Marshall Creek Emergency”

Map Point	Watercourse classification	Encroachment description	Minimum culvert size (in)
1	1	Temporary Culvert Crossing	24 (multiple)

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: rainbow trout (*Oncorhynchus mykiss*) and Foothill Yellow-legged Frogs (*Rana boylei*). The adverse effects the project could have on the fish or wildlife resources identified above include: direct and/or incidental take, impede up- and/or down-stream migration of aquatic species, 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. 1600-2021-0044-R1 and 1-21EM-00112-TRI approved by CAL FIRE on April 27, 2021.

- 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 Class I Watercourse Crossing Fish Notification Report: Within five days of a Class I crossing installation/removal, a person familiar with life stages of trout, shall examine the site determine if fish or redds are present. If fish or redds are found present within 100 feet of the crossing, Permittee shall not commence operations and immediately notify and consult with CDFW to incorporate avoidance or disturbance minimization measures during crossing installation.
- 2.3 Class I Watercourse Crossing Foothill Yellow-legged Frog (FYLF) Notification Report: Within five days before initiating a Class I crossing installation/removal, a person familiar with life stages of FYLF shall examine the site and determine if any FYLF life stages are present. If FYLF are found present within 100 feet of the crossing, Permittee shall not commence operations and immediately notify and consult with CDFW to incorporate avoidance or disturbance minimization measures during crossing installation.
- 2.4 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 7.

3. PROJECT TIMING

- 3.1 Timing for Work on Class I 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 Early and Late Season Work: The project may commence early between May 1 and May 31 or be extended late from October 15 to November 15, provided adherence to all conditions in this Agreement and a-h) below.
- a) Permittee shall obtain written approval from CDFW prior to commencement of work activities.
 - b) Permittee shall complete any unfinished encroachment work, including erosion control measures, within 24 hours of CDFW directing the Responsible Party to do so.
 - c) 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.
 - d) Road construction leading directly into or out of a proposed stream crossing shall only be performed when soils are sufficiently dry so that sediment is not discharged into streams.
 - e) 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.
 - f) 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 finish work underway at encroachment and refrain from starting any new work at encroachment prior to the rain event.

4. INSPECTIONS AND REPAIR WORK

- 4.1 Inspection Timing: All crossings appurtenant to proposed operations shall be inspected by Permittee at least once during the first spring following construction. The inspection shall ensure that crossings are functioning as designed, road approaches hydrologically disconnect the road prism from waters, and the fine sediment present on road approach surfaces is prevented from delivery to streams. Inspection results and follow-up repair measures shall be documented and provided to CDFW in the annual monitoring report.
- 4.2 Repair Work: Permittee shall perform routine repair work that prevents diversion of water from a stream or ditch or helps maintain a stable operating surface within 50 feet of a crossing (e.g. repairing inboard ditches, cross drains, water bars, road surface and fill, unblocking of culverts) as soon as possible, regardless of the time of year. Forest floor discharge sites below the outlets of drainage facilities on all roads within the plan area and appurtenant to proposed operations shall be inspected for evidence of sediment delivery to streams. If evidence of sediment delivery is present, additional measures shall be undertaken to reduce the discharge of sediment from the site.
- 4.3 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>).

5. GENERAL CONDITIONS FOR ALL ENCROACHMENTS

- 5.1 Heavy equipment 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. Heavy equipment is allowed two full passes across the stream. During operations, if the turbidity plume extends beyond 150 feet downstream of the crossing, operations shall cease until turbidity subsides.
- 5.2 Only clean, screened gravel, shredded slash and logs shall be used as fill within the high-water mark. No dirt fill shall be used.
- 5.3 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.

- 5.4 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 of straw or slash mulch. 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.
- 5.5 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.
- 5.6 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.
- 5.7 Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.
- 5.8 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.
- 5.9 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.

- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 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.

6. TEMPORARY CROSSINGS

- 6.1 Class I Temporary Crossings: The crossing shall pass juvenile and resident adult fish. A sufficient number of 24-inch culverts shall be used to span the wetted channel. Culverts shall be installed at or below grade.
- 6.2 Temporary crossings shall not restrict surface flows at the time of installation.
- 6.3 When surface water is present, temporary crossing fill shall only be composed of clean, durable, screened rock and a culvert or a combination of such rock, filter fabric, sound logs and green slash, and straw. These materials shall cause no siltation.
- 6.4 During temporary crossing deconstruction and removal activities, when stream crossings, stream channels, and fills are excavated, all materials shall be excavated down to the original stream channel and outwards, horizontally, as wide as or wider than the natural channel to form a channel as close as feasible to the natural stream grade and alignment.

7. DECONSTRUCTION AND ABANDONMENT

- 7.1 When stream crossings and fills are removed, all fill shall be excavated down to the original stream channel and outwards, horizontally, as wide as or wider than the natural channel to form a channel as close as feasible to the natural stream grade and alignment. The restored stream bank slopes shall be no steeper than a 2:1 slope (horizontal: vertical) or natural slope. Restored slopes shall be stabilized to prevent slumping and to minimize soil erosion that could lead to sediment deposition into Waters of the State.
- 7.2 Sites previously not fully excavated shall be completely excavated when crossings are deconstructed. Adjacent potentially unstable road or landing fill that can enter a stream shall also be excavated when crossings are deconstructed.
- 7.3 All excavated fill shall be placed in stable areas where it cannot enter or erode into a stream.

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:

Bill Dann
2963 Pigeon Point Road
Eureka, California 95501

To CDFW:

Department of Fish and Wildlife
North Coast Region
619 Second St
Eureka, California 95501
ATTN: Lake and Streambed Alteration
Program
Notification # 1600-2021-0044-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: Jake Morris



Bill Dann 5/6/2021
Date

FOR: California Department of Fish and Wildlife



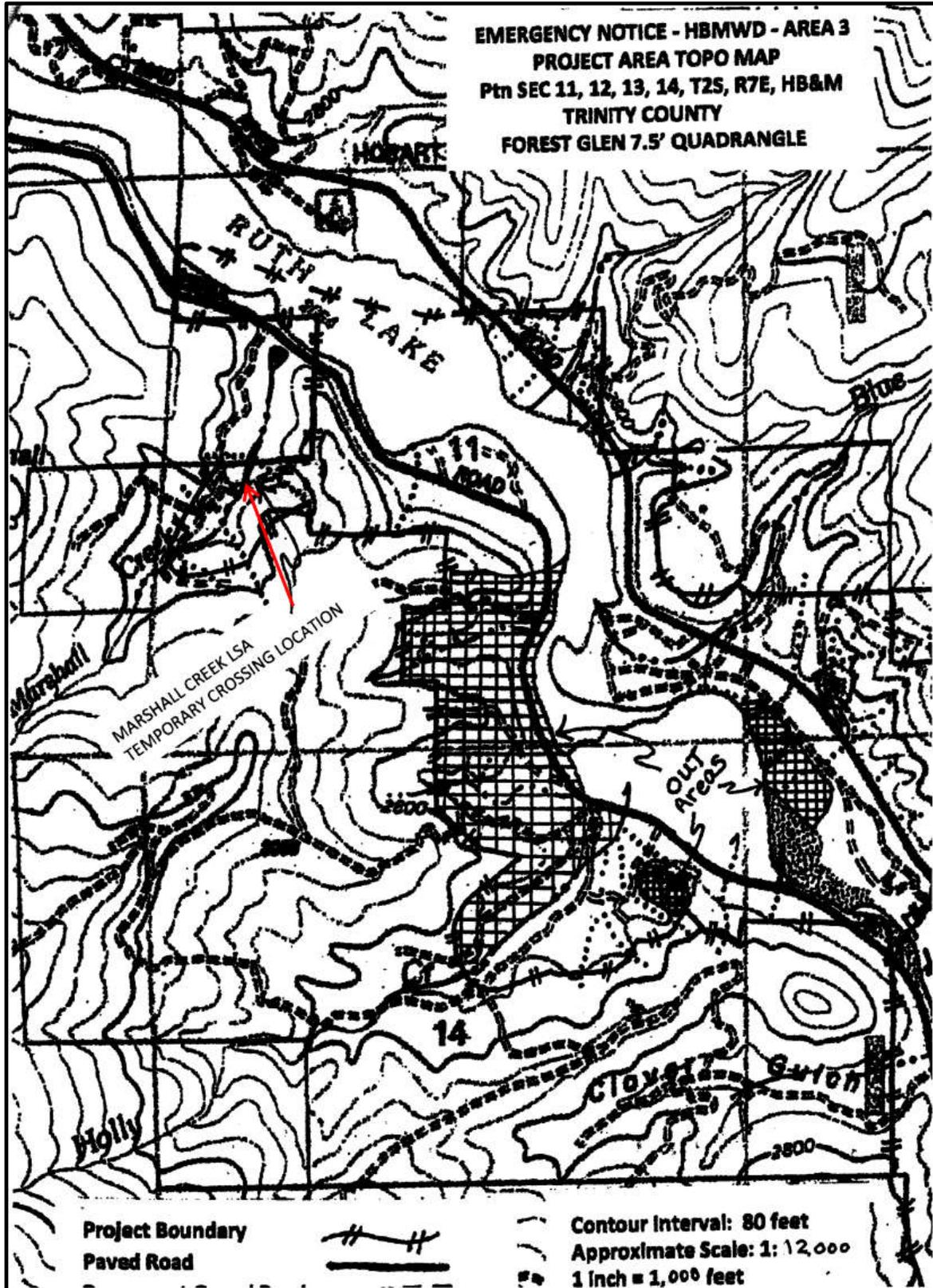
Richard Klug May 7, 2021
Date
Senior Environmental Scientist (Supervisory)
Timber Conservation Planning

Prepared by:

Nicholas Simpson
Senior Environmental Scientist (Specialist)
Timber Conservation Planning

Date Prepared: 5/6/2021

Appendix A:



Notice of Exemption

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

From:
Department of Fish and Wildlife
Region 1 – Northern
619 Second Street
Eureka, CA 95501



Street Address:
1400 Tenth Street
Sacramento, CA 95814

State Clearinghouse Number: N/A

Project Title: Marshall Creek Emergency 1-21-EM-00112-TRI (Lake or Streambed Alteration Agreement No. 1600-2021-0044-R1)

Project Location: The activities to be completed according to the Agreement are located approximately 6 miles south of the town of Mad River in Trinity County in Marshall Creek, tributary to Ruth Lake, tributary to the Mad River. The project is located in Section 11, Township 2S, Range 07E; Humboldt Base and Meridian, in the Forest Glen, California, U.S. Geological Survey 7.5-minute quadrangle.

Project Description: The project is limited to one encroachment. It consists of installing and removing a Class I temporary crossing with heavy equipment.

Public Agency Approving Project: CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Person or Public Agency Carrying Out Project: Bill Dann

Exempt Status:

- Statutory Exemption.
- Categorical Exemption. Type – Class 2; California Code of Regulations, Title 14, Section 15302

Reasons why project is exempt: There would be no significant adverse impact on endangered, threatened, or rare species or their habitat pursuant to §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 Specialist), (707) 445-6512

Signature:  *Date:* May 7, 2021
Richard Klug, Senior Environmental Scientist Supervisor

Date received for filing at OPR: _____