

Notification No. W-049-94

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AGREEMENT FOR  
ANNUAL ROUTINE LEVEE MAINTENANCE  
Notification No. W-049-94

This Agreement, entered into between the State of California Department of Fish and Game, hereinafter called the Department and Reclamation District No. 2028 Bacon Island ) hereinafter called the District is as follows:

WHEREAS, the Department is charged with the protection and enhancement of fish and wildlife resources of the State of California.

WHEREAS, the District is the governmental agency created for the purpose of maintenance, protection, or repair of its reclamation works which include without limitation levees, dredger cuts, borrow pits, canals, ditches, pumping plants, gates, fences and other works.

WHEREAS, pursuant to Section 50652 of the Water Code, the Board of Trustees of the District is to exercise general supervision and complete control over the construction, maintenance and operation of the District reclamation works.

WHEREAS, the Department contends pursuant to Section 1600 et seq. of the California Fish and Game Code, the District must first notify the Department of its intentions to divert or obstruct the natural flow of; or change the bed, channel, or bank; or use material from streambeds designated by the Department.

WHEREAS, the Department contends that Section 1600 et seq. of the Fish and Game Code applies to the levees, dredger cuts, and other waterways of the District from the waterward side of the levee from the crown to the water and all areas in the wetted channel.

WHEREAS, the District contends that Section 1600 et seq. of the Fish and Game Code does not apply to the levees, dredger cuts, and other works of the District.

WHEREAS, both the Department and the District desire to have the subject activity move forward without any prejudice to their respective contentions as to the application of Fish and Game Code Section 1600 et seq.

THEREFORE, it is agreed as follows:

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This agreement shall not constitute a waiver of the contentions of either party as to the application of Fish and Game Code Section 1600 et seq. and shall be without prejudice to such contentions.

Activities other than those outlined in this agreement or which do not meet the criteria for routine maintenance shall require a site specific Streambed Alteration Agreement pursuant to Section 1600 of the Fish and Game Code.

If Special Status species exist, the locations of these species shall be clearly marked to help equipment operators avoid adverse impacts to these species. Flagging or other suitable material shall be placed within 50 feet from such locations and shall be sufficient to delineate area boundaries and help equipment operators avoid adverse impacts to these species. Appendix A, which is a list of Special Status species, is provided as information. These provisions shall also apply to the elderberry (*Sambucus* spp.); host plant for the Valley elderberry longhorn beetle.

If adverse impacts to Special Status species are unavoidable due to levee maintenance requirements, prior to commencing work operations it will be necessary to consult with appropriate agencies and develop a plan to mitigate or avoid adverse impacts as required.

All projects which will occur within 50 feet of the locations of any State or Federally listed Rare, Candidate, Threatened, or Endangered (Special Status) species shall require fourteen (14) days prior written notification to Department of Fish and Game (Region II, Attention: Delta Levees Project) of the work to be performed in the flagged area. If the work requires further permitting under California Endangered Species Act, then such permit will be required prior to commencement of the work. Prior to 60 days after commencement of this agreement District shall file with the Department an initial Habitat Assessment or equivalent document meeting requirements set forth in Appendix 1. For Applicants who have not submitted such documents prior to July 1, 1992, work under this agreement shall not commence until the Department has received and approved the initial Habitat Assessment or equivalent document described above; provided however, if the Department does not notify the applicant of the shortcomings of such Habitat Assessment or equivalent document within twenty (20) days of receipt, then such assessment or equivalent document shall be deemed approved.

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Routine annual maintenance is defined as "repetitious activities carried out on an annual basis as part of an ongoing levee maintenance program."

It is agreed that the District may conduct the routine maintenance activities which are specified in and under the terms and conditions in this agreement as follows:

1. Removal of vegetation and debris, including sediment and rocks, to ensure proper functioning of existing water and flood control devices including, but not limited to, culverts, bridges and streamflow measuring stations.
2. Cleaning, repairing, raising, modifying and replacing flap gates, discharge pipes, siphons, weirs, drop structures, or other existing water control devices.
3. Removal of flood deposited woody or herbaceous vegetation, and associated debris, which significantly reduce channel capacity.
4. Repair or replacement of existing bank protection materials with clean quarry rock, broken concrete free of exposed rebar, gabions, and replacement of concrete slope paving and channel lining, pipe and weir revetments, articulated concrete mats, and other similar materials. Asphalt shall not be considered an acceptable material. Such repair work shall minimize excavation and placement of earth fill.
5. Removal of soil, debris, rubbish and other material from channels whose sides and bottom are lined with concrete.
6. All cleared material shall be disposed of above the high water level and outside the riparian zone on the land side of the levee.
7. Minor sandblasting and painting may be performed as necessary, provided paint, rebound and related materials do not enter waters of the State. Chipped paint and rebound materials shall be contained, removed, and disposed of at an appropriate disposal site.
8. Extermination of burrowing rodents and filling their burrows with compacted material. Except as to the filling of beaver and muskrat dens near the waterline no filling of burrows in burrowing owl areas as designated by the Department, shall take place during the period of March 15 through August 15.

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9. Shaping the levee crown to drain freely.
10. Repairing and shaping patrol or access road and controlling the weight and speed of all vehicles using patrol roads on the levee crown.
11. Repairing minor slipouts, erosion, or subsidence of the levee section up to 100 linear feet (and 1,200 linear feet per year)\*; provided however, that vegetation will be permitted to reestablish itself on these repaired sections. Thereafter, control will be in conformance with paragraph 13 below. Dredging to accomplish these minor repairs shall comply with the following rules:

**RULE A. Time of Year**

All dredging activities will be confined to the period from July 1 to September 1. Beginning September 1 through July 1, all dredging is prohibited. Dredging during the period of September 1 through March 15 is a matter of dispute between the parties and such dispute may proceed to resolution as per Fish and Game Code 1600 et seq.

**RULE B. Depth of Dredging**

To help protect valuable fish habitat, no dredging shall occur in water areas where the bottom elevation is less than -6.5 feet USGS Datum or where the water is less than six feet deep measured at mean low low water (m.l.l.w.) except that dredging in shallower waters may occur where the primary purpose of dredging is to obtain fill material and no suitable dredge areas deeper than elevation -6.5 feet USGS Datum or six feet below m.l.l.w. are within 200 feet of the dredge material deposition site and no feasible alternative source of materials is available.

12. Removing deposits, debris and litter from the levee and the berm.
13. Controlling vegetation on the waterside levee slope which shall include applying permitted herbicides, and cutting or trimming vegetative growth such as weeds, brush, berry vines, and trees to the extent necessary to inspect and maintain the levee, subject to the following additional conditions:

\*For Districts with more than 8.8 miles of levees, the total linear feet allowed shall be 136.36 lineal feet times the number of miles of levee.

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- A. Herbicides shall not be applied between March 15 and July 1 of each year, to protect ground-nesting birds and other breeding species of wildlife.
  - B. No soil sterilants shall be applied, except to control *Arundo donax* (Giant reed).
  - C. Except during the period of March 15 through June 30, removal of branches, stems, and shoots of weeds, brush, berry vines, and shrubs is allowed.
  - D. Except during the period of March 15 through June 30, trees under 2 inches and over 18 inches diameter at 48 inches above the ground may be removed. Removal of trees over 18 inches in diameter shall be restricted to those trees determined by a California Registered Civil Engineer to constitute a threat to the levee. Pruning of branches up to 48 inches above the ground is allowed. When trees under 2 inches are removed the root system shall be left undisturbed. When trees over 18 inches are removed the root system can also be removed if necessary for Levee purposes. Removal of trees over 2 inches in diameter but less than 4 inches in diameter 48 inches above the ground is a matter of dispute between the parties and such dispute may proceed to resolution as per Fish and Game Code 1600 et seq.
- 14. Removing or modifying encroachments which endanger the levee or interfere with maintenance of the levee.
  - 15. A fee of \$111.00 shall be required for this agreement and the agreement is not in effect until receipt of this fee by the Department.
  - 16. This agreement shall not be amended or modified in any way except by a written agreement duly executed by the Department and the District.
  - 17. This Agreement may be terminated by either party. Said termination shall become effective six (6) months after the party not initiating the termination has been duly notified in writing.

Prior to sending the notice of termination, the parties agree to meet and confer in an effort to resolve their differences. If this effort is not successful, the parties agree to engage in a minimum of four (4) hours of mediation. A mediator will be agreed to by the parties or chosen by alternate striking from a list provided by the California Mediation Conciliation

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Service or the American Arbitration Association in San Francisco. The order of striking shall be determined by coin toss.

18. This Agreement shall extend indefinitely until terminated by either party.
19. Department representatives, besides law enforcement personnel, shall be allowed access to existing and potential work locations during the term of this agreement.
20. If a net long term loss of habitat results from the work allowed hereby, then mitigation will be covered through mitigation banking programs including SB 34 or by adding additional mitigation to mitigation required under site specific agreements between District and Department.

Al Warren Hoslett  
District Representative  
AL WARREN HOSLETT  
Title Secretary  
DELTA FARMS  
Organization R.D. No. 2028,  
Bacon Island  
Date January 14, 1994

Peter Termin  
Department Representative  
Title Environmental Specialist III  
Department of Fish and  
Game, State of California  
Date February 22, 1994

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME  
REGION 2

SPECIAL STATUS SPECIES KNOWN TO EXIST  
IN THE SACRAMENTO - SAN JOAQUIN DELTA

1992

**LEGEND** --- CA: California      FED: Federal      E: Endangered  
T: Threatened      R: Rare  
C: Candidate for listing

CATEGORY	COMMON NAME	SCIENTIFIC NAME	STATUS CA/FED
Mammals	Salt-marsh harvest harvest mouse	<u>Reithrodontomys</u> <u>raviventris</u>	E E
	San Joaquin kit fox	<u>Vulpes macrotis mutica</u>	T E
	San Joaquin pocket mouse	<u>Perognathus inornatus</u> <u>inornatus</u>	-- C
	Riparian brush rabbit	<u>Sylvilagus bachmani</u> <u>riparius</u>	-- C
	Riparian wood rat	<u>Neotoma fuscipes riparia</u>	-- C
Birds	Swainsons hawk	<u>Buteo swainsoni</u>	T C
	California black rail	<u>Laterallus jamaicensis</u> <u>coturniculus</u>	T C
	Bald eagle	<u>Haliaeetus leucocephalus</u>	E E
	Peregrine falcon	<u>Falco peregrinus anatum</u>	E E
	Aleutian Canada goose	<u>Branta canadensis</u> <u>leucopareia</u>	-- E
	Western yellow- billed cuckoo	<u>Coccyzus americanus</u> <u>occidentalis</u>	E --
	Tri-colored black- bird	<u>Aegialius tricolor</u>	-- C
	California least tern	<u>Sterna antillarum</u> <u>browni</u>	E E

Birds continued	COMMON NAME	SCIENTIFIC NAME	STATUS CA/FED
	Burrowing owl	<u>Athene cunicularia</u>	-- --
	Greater Sandhill crane	<u>Grus canadensis tabida</u>	T --
	Suisun song sparrow	<u>Melospiza melodia maxillaris</u>	-- --
Reptiles	Giant garter snake	<u>Thamnophis couchi gigas</u>	T C
	California tiger salamander	<u>Ambystoma tigrinum californiese</u>	-- C
Fish	Winter-run chinook salmon	<u>Oncorhynchus tshawytscha</u>	E E
	Delta smelt	<u>Hypomesus transpacificus</u>	-- C
Insects	Sacramento anthicid beetle	<u>Anthicus sacramento</u>	-- C
	Valley elderberry longhorn beetle	<u>Desmocercus californicus dimorphus</u>	-- T
	Lange's metalmark butterfly	<u>Apodemia mormo langei</u>	-- E
	Delta green ground beetle	<u>Elaphus viridis</u>	-- T
	San Joaquin dune beetle	<u>Coelus gracilis</u>	-- C
	Molestan blister beetle	<u>Lytta molesta</u>	-- C
Plants	Ferris' birds beak	<u>Cordylanthus palmatus</u>	E E
	Delta button celery	<u>Eryngium racemosum</u>	E C
	Contra Costa wallflower	<u>Erysimum capitatum</u> var. <u>angustatum</u>	E E
	Masons lilaeopsis (aka:mudflat quill)	<u>Lilaeopsis masonii</u>	R C
	Antioch Dunes evening primrose	<u>Oenothera deltoides</u> var. <u>howellii</u>	E E
	California hibiscus	<u>Hibiscus californicus</u>	-- C

Plants continued	<u>COMMON NAME</u>	<u>SCIENTIFIC NAME</u>	<u>STATUS</u> <u>CA/FED</u>
	Suisun marsh aster	<u>Aster chilensis</u> var. <u>lentus</u>	-- C
	Delta tule pea	<u>Lathyrus jepsonii</u> var. <u>jepsonii</u>	-- C
	Sanford's sagittaria	<u>Sagittaria sanfordii</u>	-- C
	Recurved larkspur	<u>Delphinium recurvatum</u>	-- --
	Caper-fruited trepidocarpum	<u>Trepidocarpum capparideum</u>	-- C
	Soft bird's beak	<u>Cordylanthus mollis</u> var. <u>mollis</u>	R C
	Crampton's orcuttia	<u>Tuctoria mucronata</u>	E E
	Bolander water hemlock	<u>Circuta bolanderi</u>	-- C
	Colusa grass	<u>Neostapfia colusana</u>	E C
	Contra Costa goldfields	<u>Lasthenia conjugens</u>	-- C
	Slough thistle	<u>Cirsium crassicaule</u>	-- C

List compiled by Scott Clemons, Environmental Specialist III