

BOARD OF SUPERVISORS

AGENDA

Meetings are located at:
Yuba County Government Center
Board Chambers, 915 Eighth Street
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8th Street, the County Library, 303 Second Street, Marysville, and www.co.yuba.ca.us. Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

APRIL 5, 2011

- 1:00 P.M. YUBA COUNTY WATER AGENCY CANCELLED**
- 3:30 P.M. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY**
- 6:00 P.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. Thank you.**
- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Stocker
- II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker
- III. **CONSENT AGENDA:** All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.
- A. **Clerk of the Board of Supervisors**
1. Approve minutes of the meetings of March 21 and 22, 2011. (135-11)
 2. Appoint David Ashby to the Law Library Board of Trustees for a term to expire April 5, 2012. (136-11)
- B. **Community Development and Services**
1. Adopt resolution authorizing the submission of the State CSBG Contract No. 11F-4255 regarding Community Services Block Grant amendments and authorizing the Executive Director to execute required documents to complete contract upon review and approval of Counsel. (137-11)
- C. **Health and Human Services**
1. Approve Memorandum of Understanding with Sierra-Sacramento Valley Emergency Medical Services Agency for the provision of fiscal administrative services of the Hospital Preparedness Program funds and authorize the Chairman to execute same. (Human Services Committee recommends approval) (138-11)
- D. **Sheriff-Coroner**
1. Adopt resolution authorizing the Sheriff to execute the state application and agreement through the Department of Boating and Waterways for financial aid for the boating program fiscal year 2011/2012; and approve the contract with Department of Boating and Waterways and authorize the Chairman to execute same. (139-11)
- IV. **SPECIAL PRESENTATION**
- A. Present proclamation proclaiming April 2011 as Child Abuse Prevention Month. (Ten minute estimate) (140-11)
- V. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.

VI. **COUNTY DEPARTMENTS**

A. **Community Development and Services**

1. Approve letter of support to Three Rivers Levee Improvement Authority regarding developing the Feather River Floodway for recreation use and authorize the Chairman to execute same. (Five minute estimate) (141-11)
2. Adopt resolution to approve application for grant funds from the Statewide Park program to acquire land and develop a community park in East Linda. (Land Use and Public Works Committee recommends approval) (Ten minute estimate) (142-11)

VII. **CORRESPONDENCE - (143-11)**

- A. Letter from Sutter Yuba Republican Women Federated regarding sponsoring students for the Advocacy Day Workshop held in Sacramento on April 19, 2011.
- B. Two notices from California Department of Fish and Game regarding adoption of emergency regulations concerning ocean salmon sport fishing and the incidental take of Mountain yellow-legged frog.
- C. Letter from Stewardship Council regarding public comment period for draft guidelines for achieving property tax neutrality.
- D. Notice of default from CR Title Services Inc., and election to sell property, APN 022-142-015, located in Plumas Lake.
- E. Letter from Senator Doug LaMalfa regarding grant funding received for affordable housing programs.
- F. Letter from Wheatland Union High School District regarding adding the railroad spur at Ostrom Landfill.

VIII. **BOARD AND STAFF MEMBERS' REPORTS: This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.**

IX. **CLOSED SESSION: Any person desiring to comment on any matter scheduled for this closed session may address the Board at this time.**

- A. Personnel pursuant to Government Code §54957 (b) (1) -
 1. Public Employee: Ratification of Action taken; and
 2. Public Employee: Discipline/Dismissal/Release

X. **ADJOURN**

COMMITTEE MEETINGS

5:00 P.M. Human Services Committee - (Supervisors Stocker and Vasquez - Alternate Supervisor Abe)

- A. Consider a Budget Transfer in the amount of \$22,859 from Account No. 100-5200-451-2300 (Professional Services) to Account No. 100-5200-451-6200 (Fixed Asset), for purchase of fixed assets to be used at points of dispensing and alternate care sites - Health and Human Services (Ten minute estimate) (144-11)

Public Facilities Committee - (Supervisors Griego and Vasquez - Alternate Supervisor Nicoletti)

- A. Consider lease agreement with Yuba County Office of Education for space occupied by the Public Guardian at the One Stop in Marysville - Administrative Services (Ten minute estimate) (145-11)

04/07/2011 - 4:30 P.M. Marysville City/County Liaison Committee

City of Marysville, Covillaud Room
526 C Street, Marysville, Ca 95901

In compliance with the American with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made one full business day before the start of the meeting.

To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

PUBLIC INFORMATION

PUBLIC COMMUNICATIONS: Members of the public shall be allowed to address the Board of Supervisors on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Board, provided that no action shall be taken unless otherwise authorized by law. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

AGENDA ITEMS: The opportunity of the public to be heard on an item shall be provided during the consideration of that item. In the interest of time, the Board has limited the length of such comment or input on each item to 15 minutes total, with a limit of no more than 5 minutes per person or group. The period for public comments on a particular item may be extended upon a majority vote of the Board. These time limits do not apply to applicants appearing before the Board on behalf of their applications.

ACTION ITEMS: All items on the Agenda under the headings "Consent," "County Departments," Ordinances and Public Hearings," "Items of Public Interest," and "Closed Session," or any of them, are items on which the Board may take any action at this meetings.

PUBLIC HEARINGS: All members of the public shall be allowed to address the Board as to any item which is noticed on the Board's agenda as a public hearing. The Board has limited each person or group input to no more than 3 minutes. Any person or group may provide the Board with a written statement in lieu of or in supplement to any oral statement made during a public hearing. Written statements shall be submitted to the Clerk of the Board.

ORDINANCES: Ordinances shall not be passed within five days of their introductions, nor at other than a regular meeting or at an adjourned regular meeting. The Board of Supervisors will address ordinances at first readings. The public is urged to address ordinances at first readings. Passage of ordinances will be held at second readings, after reading the title, further reading is waived and adoption of the ordinance is made by majority vote. An urgency ordinance may be passed immediately upon introduction. The Board reserves the right to amend any proposed ordinances and to hold a first reading in lieu of a second reading.

INFORMATIONAL CORRESPONDENCE: The Board may direct any item of informational correspondence to a department head for appropriate action.

SCHEDULED LUNCH BREAK: Between the hours of 12:00 noon and 1:00 p.m. and at the discretion of the Chair, the Board will recess one hour for lunch.

SPECIAL MEETINGS: No public comment shall be allowed during special meetings of the Board of Supervisors, except for items duly noticed on the agenda.

PUBLIC INFORMATION: Copies of §6.7 shall be posted along with agendas.

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CONSENT
AGENDA

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The County of Yuba

B O A R D O F S U P E R V I S O R S

MARCH 21, 2011 – MINUTES



The Honorable Board of Supervisors of the County of Yuba met in special session on the above date, commencing at 6:01 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Roger Abe, and Hal Stocker. Mary Jane Griego was absent. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Abe presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Abe
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker – Supervisor Griego absent
- III. ITEM OF PUBLIC INTEREST
 - A. Review proposed changes to the Draft General Plan Update 2030 and provide staff direction. (2 hour estimate) (115-11) *See www.yubavision2030.org for Proposed Changes and Fiscal Impact Analysis*

Community Development and Services Director Kevin Mallen recapped the process to date and provided a Power Point presentation recapping the substantive changes in the following areas, responded to Board inquiries and received Board direction:

- Vision Statement
- Community Development Element
 - o 4/5 requirement for valley growth boundary only
 - o Economic Development - Home-based Businesses
 - o Jobs-Housing Balance
 - o Levels of Service
 - o Public Safety
 - o School facilities
 - o Cities Coordination
 - o Travel demand management - rural communities distinction
- Public Health and Safety Element
 - o Levee and Fire Protection
 - o Water Quality - Septic systems
 - o Climate Change - Greenhouse Gas Emissions
- Natural Resources Element
 - o Recreational Areas
 - o Urban Greening Projects
 - o Farmland Biological and Cultural Resources
 - o Soil and Mineral Resources
 - o Water Supply

- General Plan Implementation
 - o General Plan Amendments
 - o Rural Community Plans
 - o Glossary

The Board recessed at 9:31 p.m. and reconvened at 9:40 p.m. with all present as indicated above.

The following individuals spoke:

Ms. Frances Hofman, Olivehurst

Mr. Charles Sharp, Oregon House

Mr. Mallen advised the final language changes would be made and the final document provided for public review and comment.

Following Board discussion, Mr. Mallen received direction to provide a 30 day comment period and advised hearing dates would be scheduled in May.

IV. ADJOURN: 10:06 p.m. by Chairman Abe.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

Approved: _____

The County of Yuba

B O A R D O F S U P E R V I S O R S

MARCH 22, 2011 – MINUTES



The Honorable Board of Supervisors of the County of Yuba met in regular session on the above date, commencing at 9:46 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, Mary Jane Griego, Roger Abe, and Hal Stocker. Supervisor John Nicoletti was absent. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Deputy Clerk of the Board of Supervisors Rachel Ferris. Vice Chair Abe presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Abe
- II. ROLL CALL - Supervisors Vasquez, Griego, Abe, Stocker – Supervisor Nicoletti absent
County Council Angil Morris-Jones requested the Board postpone County Departments Item A1 to April 26, 2010, and postpone Closed Session Item C to April 12, 2011.
- III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve MOVED: Hal Stocker SECOND: Andy Vasquez
AYES: Hal Stocker, Mary Jane Griego, Andy Vasquez, Roger Abe
NOES: None ABSENT: John Nicoletti ABSTAIN: None

A. Administrative Services

1. Authorize the Administrative Services Director to release Request for Qualifications for Architectural Consultant services for design and construction of new Sheriff's Department facility. (Public Facilities Committee recommends approval) (116-11) Approved.
2. Approve contract extension with Applied Forest Management for timber management at the 4H property and authorize the Chairman to execute same. (Public Facilities Committee recommends approval) (117-11) Approved.

B. Clerk of the Board of Supervisors

1. Reappoint Robert Mathews, Gerald Norene, and John Waskiewitz to the Resource Conservation District for terms to expire November 30, 2014. (118-11) Approved.
2. Appoint Rich Gable to the Yuba County Economic Development Advisory Committee as the District two Representative to serve at the pleasure of the Board. (119-11) Approved.
3. Approve minutes for the regular meetings of March 1 and 8, 2011. (120-11) Approved as written.

C. Community Development and Services

1. Adopt resolution authorizing Yuba County Community Development and Services Agency Director to complete purchase of single family residences APN 013-290-071 and APN 014-550-020 as part of the Neighborhood stabilization program and execute all documents needed for completion of purchase, rehabilitation and resale. (121-11)
Adopted Resolution No. 2011-21, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AUTHORIZING YUBA COUNTY COMMUNITY DEVELOPMENT AND SERVICES AGENCY DIRECTOR TO COMPLETE PURCHASE OF SINGLE FAMILY RESIDENCES APN 013-290-071 AND APN 014-550-020 AS PART OF THE NEIGHBORHOOD STABILIZATION PROGRAM AND EXECUTE ALL DOCUMENTS NEEDED FOR COMPLETION OF PURCHASE, REHABILITATION AND RESALE."
2. Adopt resolution authorizing Yuba County Community Development and Services Agency Director to complete purchase of a single family residence APN 021-181-029 as part of the Neighborhood stabilization program and execute all documents needed for completion of purchase, rehabilitation and resale. (122-11)
Adopted Resolution No. 2011-22, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AUTHORIZING YUBA COUNTY COMMUNITY DEVELOPMENT AND SERVICES AGENCY DIRECTOR TO COMPLETE PURCHASE OF SINGLE FAMILY RESIDENCE APN 021-181-029 AS PART OF THE NEIGHBORHOOD STABILIZATION PROGRAM AND EXECUTE ALL DOCUMENTS NEEDED FOR COMPLETION OF PURCHASE, REHABILITATION AND RESALE."
3. Adopt resolution authorizing applying for CalRecycle waste tire enforcement grant for Fiscal Years 2010-11 through 2015-16 and authorizing the County Administrator or Director of Environmental Health to execute all grant related documents. (123-11)
Adopted Resolution No. 2011-23, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION AUTHORIZING THE COUNTY OF YUBA TO APPLY FOR CALRECYCLE WASTE TIRE ENFORCEMENT GRANT FISCAL YEARS 2010/2011 - 2015/2016."
4. Authorize Budget Transfer in the amount of \$140,000 from Account No. 113-0000-371-98-99 (2010 Community Development Block Grant) to various line items to appropriate Grant No. 10-STBG-6748. (124-11) Authorized.

IV. SPECIAL PRESENTATION

- A. Recognize Peace Officer of the Year Deputy Nelson Magana and Probation Officer of the Year Tara Moseley. (Ten minute estimate) (125-11)

Chief Probation Officer Jim Arnold introduced Probation Officer of the Year Tara Lynn Moseley.

Sheriff Durfor introduced Peace Officer of the Year Deputy Nelson Magana.
- B. Present County employee service awards. (Thirty minute estimate) (126-11) Human Resources Director Martha Wilson and Board members presented the following service awards and congratulated employees for their years of County service:

10 Years Service

Tammy Anderson
Jamie Bartolome
Melanie Bendorf
Richard Carter
Craig Cornett
Jennifer Cotter
Asha Davis
Brandy Dewitt
Kathleen Easley
Bonnie Eyraud
Theresa Gallier
Maria Garcia
Kimberly Garner
Scott Gillett
Ronald Gordon
Kathy Gregg
Meta Gutierrez
Betty Hackett
Sherry Haines
Valeree Hammes
Denise Hamon

Denise Hamon
Jolene Harper
John Harvey
Kathleen Hering
Maria Hicks
Linda Hornyak
Melinda Hotchkiss
Randy Inman
Sherran Japhet
Eduardo Jimenez
Willie Kardatzke
Stephanie Kendall
Angelika Klug
Jennifer Kugelman-Reilly
Vina Lobaugh
Dave Maddux
Tiffany Malia
Michael McCleary
Lisa Morrell
Alicia Orozco

Jeffrey Palmer
Jeffrey Pask
Calvin Perry
Monique Phillips
Rosemary Pierce
Ruth Plantenga
Ann Rainey
Ismael Ramos
Doris Robertson
Traci Rongey
Jason Roper
Gerard Rosetti
April Scappington
Ami Scarfe
Tanna Schwartz
Erin Sims
Norma Stone
Tammy Turner
Marcel Van de Bruinhorst
Tom Yamamoto

15 Years Service

Cleotha Adams
Brandon Barnes
Tina Beeler
Diana Clavel
Jeannine Friemark
Daniel Harris
Elizabeth Holcomb

Wanda Horn
Twila Kardatzke
Stephen Lacouture
Paul Nacin
Thomas Nightingale
Miguel Rodriguez

Erich Runge
Cynthia Sadlowski
Hal Stocker
Carolyn Weatherup
Seth Welker
Judith Zirion

20 Years Service

Terri Ayers
Shirley Baker
Teena Carlquist
Thomas Clark

Herbert Cooley
Tracy Enriquez
Terese Johnson
Mark Lee

Charles Moore
Erma Thurman
Krista Trimble
Robert Umino

25 Years Service

Paula Dent
Kenneth Jones
Mary Long

Angelica Martinez
John Nash
Karen White

Richard Wise

30 Years Service

Frank Sorgea

John Wyant

35 Years Service
Ladonna Choate

Dean Sellers

The Board recessed at 10:15 a.m. and reconvened at 10:21 a.m. with all members present as indicated above.

V. PUBLIC COMMUNICATIONS:

Program Manager Jason Roper extended an invitation to the Board of Supervisors and the public to attend the 20th annual candlelight vigil in recognition of National Victims' Rights week to be held April 10, 2011 at 6:30 p.m. in Olivehurst.

Mr. Nick Spaulding, Oregon House, expressed concern with zoning changes in the General Plan Update.

VI. COUNTY DEPARTMENTS

A. Board of Supervisors

1. Adopt resolution approving the Bi County Solid Waste Independent Hearing Panel Procedures Manual. (127-11) Postponed to April 26, 2011 at the request of County Counsel Angil Morris-Jones.

B. Health and Human Services

1. Authorize solicitation of proposals for Yuba County's Child Abuse Prevention Intervention and Treatment, Community Based Child Abuse Prevention and the County Childrens Trust Fund funds for Differential Response. (Ten minute estimate) (128-11) Health and Human Services Director Suzanne Nobles recapped the necessity for solicitation of proposals and responded to Board inquiries.

MOTION: Move to approve MOVED: Mary Jane Griego SECOND: Andy Vasquez
AYES: Mary Jane Griego, Andy Vasquez, Roger Abe, Hal Stocker
NOES: None ABSENT: John Nicoletti ABSTAIN: None

VII. ORDINANCES AND PUBLIC HEARINGS: The Deputy Clerk read the disclaimer.

- A. Public Hearing – Hold public hearing and adopt resolution approving application for funding from the Economic Development allocation of the State Community Development Block Grant Program and authorizing the County Administrator to execute necessary documents. (Yuba-Sutter Economic Development Corporation) (Ten minute estimate) (129-11) Yuba-Sutter Economic Development Corporation Loan Officer Jackie Slade recapped the grant and responded to inquiries.

Chairman Abe opened the public hearing. No one came forward

MOTION: Move to adopt MOVED: Mary Jane Griego SECOND: Andy Vasquez
AYES: Mary Jane Griego, Andy Vasquez, Roger Abe, Hal Stocker
NOES: None ABSENT: John Nicoletti ABSTAIN: None

Adopted Resolution No. 2011-24, which is on file in Yuba County Resolution Book No. 42 entitled: "RESOLUTION APPROVING AN APPLICATION AND CONTRACT EXECUTION FOR FUNDING FROM THE ECONOMIC DEVELOPMENT ALLOCATION OF THE STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM AND AUTHORIZING THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO WITH THE STATE OF CALIFORNIA FOR THE PURPOSE OF THIS GRANT."

VIII. COUNTY DEPARTMENTS – CONTINUED

C. County Administrator

1. Receive presentation of proposed State Constitutional Amendment (SCA 1X - Steinberg) related to realignment of programs and take action as appropriate. (Fifteen minute estimate) (134-11) County Administrator Robert Bendorf recapped the pending proposed State Constitutional Amendment including the following:
 - Eliminates Williams Act subventions
 - Cuts general fund support to 78 local state fairs
 - Impacts to public safety funding
 - Partial or full closure to state parks
 - Realignment of supervision of offenders
 - Gas Tax Swap – funding for transportation
 - First 5 funding impacts
 - Mental Health Services – shift in Proposition 63 revenue
 - CalWORKS - \$1.1 billion expenditure cuts and time limit reduction for adult assistance
 - In-Home Support Services – approximately \$486 million in expenditure cuts
 - Emergency Services – shift of emergency medical service funds
 - Elimination of enterprise zones

Following Board discussion the following department heads expressed concerns regarding funding, impacts to budgets, position, and increase in case loads:

- Health and Human Services Director Suzanne Nobles
- Chief Probation Officer Jim Arnold
- Sheriff Steve Durfor
- District Attorney Pat McGrath.

Following additional Board discussion, Supervisor Vasquez moved to support the proposed State Constitutional Amendment. Motion died for lack of a second.

IX. CORRESPONDENCE - (130-11)

- A. Letter from City of Marysville advising Mr. Ricky Samayoa had been appointed to serve as the City Representative on the Yuba County Trails Commission. Accepted
- B. Letter from United States Department of Agriculture enclosing 2009 Single Audit Desk Review for the County of Yuba. Accepted
- C. Notice from United States Department of Homeland Security, National Flood Insurance Program regarding a revision to the effective Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for Yuba County. Accepted
- D. Memorandum from Community Development and Services Agency regarding residential care facilities. Accepted
- E. Notice from State of California Fish and Game Commission regarding receipt of amended petition to list the American pika as a threatened species. Accepted

X. BOARD AND STAFF MEMBERS' REPORTS: Reports were received on the following:

Supervisor Stocker:

- Memorial Adjournment - Mrs. Roberta Springsteen
- Memorial Adjournment - Ms. Elizabeth Joan Anderson
- Memorial Adjournment - Mrs. D'loris Galart

Supervisor Griego:

- American Society of Civil Engineers awards banquet held March 9, 2011
- Sacramento Area Council of Governments Board of Directors meeting held March 17, 2011
- Awwahnee Conference held March 17 - 20, 2011

Supervisor Abe:

- Association of California Water Agencies conference held in Sacramento March 16, 2011
- Department Head meeting held March 17, 2011
- Yuba Sutter Transit Authority meeting held March 17, 2011
- Recology scoping meeting held March 17, 2011
- Lions Club St. Patrick's Dinner held March 17, 2001
- Economic Development Advisory Committee breakfast held March 18, 2011
- Memorial Adjournment - Mr. John Meares

XI. CLOSED SESSION: The Board retired into closed session at 12:10 p.m. with all staff present as above.

- A. Personnel pursuant to Government Code §54957 - Public Appointment/County Surveyor
- B. Threatened litigation pursuant to Government Code §54956.9(b) - One Claim/Cuthbert

The Board returned from closed session at 12:26 p.m. with all staff present as indicated above.

Chairman Abe advised in the matter of the threatened litigation, direction was provided to staff, and in the personnel matter the Board appointed Public Works Director Mike Lee as County Surveyor pursuant to approval in open session in late April.

C. Pending litigation pursuant to Government Code §54956.9(a) – regarding the following:

- 1) Broughton v. Shotwell and County of Yuba
- 2) Carter v. Comar and County of Yuba
- 3) Cox v. County of Yuba
- 4) Martinov v. County of Yuba
- 5) Donahoe v. Yuba-Sutter Transit and County of Yuba
- 6) Hernandez v. County of Yuba
- 7) Holston v. Debranca and Spadini
- 8) Justice v. County of Yuba
- 9) Lindsay v. Fryson and County of Yuba
- 10) Saechao v. County of Yuba
- 11) Ybarra v. County of Yuba

Postponed to April 12, 2011 at the request of County Counsel Angil Morris-Jones.

- XII. ADJOURN: 12:28 p.m. by Chairman Abe in memory of Mrs. Roberta Springsteen, Ms. D'loris Galart, Mrs. Joan Elizabeth Anderson, and Mr. John Meares.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

By: Rachel Ferris, Deputy Clerk

Approved: _____

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The County of Yuba

136-11



Office of Clerk of the Board of Supervisors

To: Board of Supervisors
From: Donna Stottlemeyer, Clerk of the Board
Subject: Law Library Board of Trustees
Date: April 5, 2011

A handwritten signature in black ink, appearing to read "Donna Stottlemeyer", is written over the "From:" line of the memo.

Recommendation

Appoint David Ashby to the Law Library Board of Trustees for a term to expire April 5, 2012.

Background and Discussion

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information and is updated monthly. This is a scheduled vacancy; one application has been received from David Ashby and is attached for your review and consideration.

In light of the expressed interest, it would be appropriate to make the appointment at this time.

Fiscal Impact

None

Committee Action

None required.

/rf

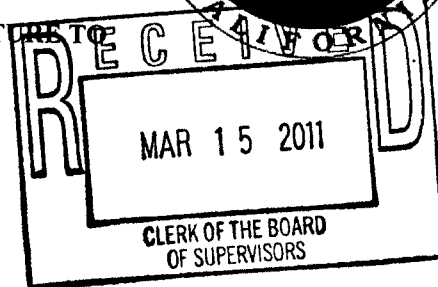
attachment

The County of Yuba

Application for Board/Commission/Committee
Appointed by the Board of Supervisors

RETURN APPLICATION WITH ORIGINAL SIGNATURE TO

CLERK OF THE BOARD OF SUPERVISORS
YUBA COUNTY GOVERNMENT CENTER
915 EIGHTH STREET, SUITE 109
MARYSVILLE, CA 95901
(530) 749-7510



Yuba County Law Library Board of Trustees

PLEASE FILL IN NAME OF BOARD/COMMISSION/COMMITTEE ON WHICH YOU WOULD LIKE TO SERVE

APPLICANT NAME:

David Ashby

MAILING ADDRESS:

[REDACTED]

PHYSICAL ADDRESS:

Same

TELEPHONE:

HOME:

[REDACTED]

WORK:

671-0400

OCCUPATION/PROFESSION:
SUPERVISOR/ DISTRICT
NUMBER:

Attorney

REASONS YOU WISH TO
SERVE ON THIS BODY:

Current Board Member

QUALIFICATIONS:

Attorney ; Yuba Sutter Bar Association President

LIST PAST AND CURRENT
PUBLIC POSITIONS HELD:

See above

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU WISH TO SERVE UPON? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

[Signature]

DATE

3/14/11

THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: _____

☐ OTHER: _____

The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

Phone - (530) 749-5430 • Fax - (530) 749-5434
915 8th Street, Suite 123
Marysville, California 95901
www.co.yuba.ca.us



137-11

BUILDING
749-5440 • Fax 749-5616

CODE ENFORCEMENT
749-5455 • Fax 749-5464

ENVIRONMENTAL HEALTH • CUPA
749-5450 • Fax 749-5454

HOUSING AND COMMUNITY SERVICES
749-5460 • Fax 749-5464

PLANNING
749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

April 5, 2011

TO: Board of Supervisors

FROM: Wendy Hartman, CDSA Planning Director *W. Hartman*
Debra J. Phillips, Executive Director of Community Services Commission *Debbie*

SUBJECT: **Authorize Contract for 2011 CSBG Program and Execution of all Documents**

Recommendation:

It is recommended that the Yuba County Board of Supervisors approve and authorize execution of contract 11F-4255 between the Department of Community Services and Development (CSD) and the Yuba County Community Services Commission for the 2011 Community Services Block Grant (CSBG) program and authorize and empower the Executive Director of the Community Services Commission to execute all necessary documents in connection with this program.

Background:

The Yuba County Community Services Commission is approved to receive and administer \$256,378 in Community Services Block Grant funds for 2011. The State is operating under a continuing resolution and has authorized an initial allocation in the amount of \$44,574. The remainder of the allocation will be released under contract amendments as the funds become available. The Board has approved prior agreements for calendar years 1989 through 2010. It is the general policy of the County that the Chairman of the Board of Supervisors executes contracts. The CSD contract requires a resolution specific to this contract.

The Board of Supervisors previously authorized, empowered, and designated the Executive Director of the Community Services Commission to execute all necessary documents and act in all matters in connection with the CSBG programs in Resolution No. 1990-15. The 2011 CSD contract requires that a new resolution specific to contract 11F-4255 be submitted. This does not alter the action previously taken by the Board of

H:\COMMON\2011\YC-CSBG\CONTRACT RESOLUTION BOS.DOC



Community Services Commission



Supervisors, but satisfies this requirement.

Discussion:

The attached contract contains many provisions, including budget information reflecting the 2011 distribution of funds previously approved by the Board.

Committee Recommendation:

The Yuba County Community Services Commission approved the attached contract on February 3, 2011.

Fiscal Impact:

These activities are at no cost to the General Fund.

A complete copy of the contract is on file in the Clerk of the Board's office for review.

DJP

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

IN RE:

RESOLUTION NO.:

RESOLUTION AUTHORIZING THE
SUBMISSION OF THE STATE CSBG
CONTRACT NO. 11F-4255 REGARD-
ING COMMUNITY SERVICES BLOCK
GRANT, AMENDMENTS AND
REQUIRED REPORTS

WHEREAS, the State of California Department of Community Services and Development has made available Community Services Block Grant (CSBG) funds for 2011, and

WHEREAS, the State of California Department of Community Services and Development has offered CSBG Contract No. 11F-4255 to the Yuba County Community Services Commission, and

WHEREAS, the Yuba County Community Services Commission and the Board of Supervisors have determined that there is a need for anti-poverty programs and are willing to accept the aforementioned contract, and

WHEREAS, should the Yuba County Community Services Commission accept a contract from the California State Department of Community Services and Development, the

organization certifies that all uses of funds will be in compliance with the California State Department of Community Services and Development regulations, guidelines and contract provisions, and

WHEREAS, the Chairman of the Board of Supervisors, or Executive Director of the Community Services Commission can act on behalf of the Yuba County Community Services Commission and will sign all necessary documents required to complete the contract.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby authorizes the Chair of the Board of Supervisors, or the Executive Director of the Community Services Commission, subject to approval of County Counsel, to apply for and to enter into contract #11F-4255 and any amendments thereto with the California State Department of Community Services and Development, including amendments to the aforementioned contract #11F-4255 which may alter Section 2, Term and Section 3, Consideration. The Executive Director is further authorized to sign subsequent required fiscal and programmatic reports, and to perform any and all responsibilities in relationship to such contract.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the
County of Yuba, State of California, on the ____ day of ____ 2011, by the following vote:

AYES:

NOES:

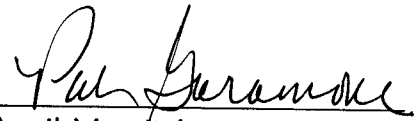
ABSENT:

Roger Abe, Chair

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By: _____

APPROVED TO FORM

By: 
Angil Morris-Jones
County Counsel

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The County of Yuba

HEALTH & HUMAN SERVICES DEPARTMENT

Suzanne Nobles, Director

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901
Phone: (530) 749-6311 Fax: (530) 749-6281



138-11

**Joseph W. Cassady, D.O.,
Health Officer**

Phone: (530) 749-6366

TO: Board of Supervisors
Yuba County

FROM: *Suzanne Nobles*
Suzanne Nobles, Director
Health and Human Services Department

DATE: April 5, 2011

SUBJECT: Memorandum of Understanding (MOU) between the Yuba County Health and Human Services Department and the Sierra-Sacramento Valley Emergency Medical Services Agency (S-SV EMS) for the fiscal administration of Hospital Preparedness Program (HPP) funds

RECOMMENDATION: Board of Supervisors approval of the MOU between the Health and Human Services Department and S-SV EMS for the provision of fiscal administrative services of HPP funds is recommended.

BACKGROUND: The California Department of Public Health makes HPP funds available to county health departments to administer on behalf of local hospitals and supporting health care systems to provide funding for disaster preparedness. S-SV EMS is a Joint Powers Agency established by and between the Counties of Nevada, Placer, Sutter, Yolo, and Yuba to act as the local emergency medical services agency for its member counties. S-SV EMS has the experience and expertise to provide the fiscal administration of HPP funds for its member counties.

DISCUSSION: This MOU will authorize the S-SV EMS Agency to apply for and administer HPP funds for the Public Health Division of the Health and Human Services Department for Yuba County's local hospitals and supporting health care systems. Approval of this MOU will allow S-SV EMS Agency to apply for Yuba County's HPP funds and administer these funds to provide disaster preparation for the local hospitals and supporting health care systems of Yuba County.

COMMITTEE: The Human Services Committee recommended approval on March 22, 2011.

FISCAL IMPACT: Approval of this MOU will not impact County Funds. The HPP grant does not require County Match. The HPP grant will compensate the S-SV EMS Agency for its provision of fiscal administration of HPP grant funds.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
YUBA COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT
AND
SIERRA-SACRAMENTO VALLEY EMS AGENCY**

This Memorandum of Understanding (hereafter "MOU") is effective as of July 1, 2010, by and between the County of Yuba hereafter, "COUNTY" on behalf of its Health and Human Services Department, (hereafter "YCHHSD") and Sierra-Sacramento Valley EMS Agency (hereafter "S-SV EMS").

The purpose of this MOU is to provide fiscal administration services for Hospital Preparedness Program funds in order to upgrade the preparedness of hospital and supporting health care systems of the County of Yuba to deliver coordinated and effective care to victims of terrorism and other public health emergencies.

RECITALS

WHEREAS,

- A. YCHHSD is a department of the County of Yuba and is overseen by the Yuba County Board of Supervisors; and
- B. S-SV EMS is a Joint Powers Agency established by the Joint Powers Agreement of February 11, 1992 by and between the Counties of Nevada, Placer, Sutter, Yolo, and Yuba to perform the duties and responsibilities of a local emergency medical services agency for the member counties; and
- C. Pursuant to the *Revised Continuing Appropriations Resolution, 2007 (Public Law 110-5)*, the California Department of Public Health (CDPH) makes Hospital Preparedness Program (HPP) funds available to county health departments; and
- D. YCHHSD, through its Public Health Division, is responsible for the administration of HPP funds to provide funding to the local hospitals and supporting health care systems of Yuba County for bioterrorism preparedness; and
- E. S-SV EMS has the experience and the expertise to provide fiscal administration services and has agreed to act as the fiscal agent on behalf of YCHHSD for its HPP funds.

THEREFORE, YCHHSD and S-SV EMS hereto mutually agree as follows:

1. TERM

The initial Term of this Agreement shall be from July 1, 2010 through June 30, 2011 to cover the grant period for the HPP federal grant. Said Agreement shall thereafter be automatically renewed from year to year without further action by either party unless terminated as stated or specified below.

2. DESIGNATED REPRESENTATIVES

Suzanne Nobles, Director of Yuba County Health and Human Services Department, is the representative of YCHHSD and will administer this Agreement for YCHHSD. Victoria Pinette, Regional Executive Director, is the authorized representative for S-SV EMS. Changes in designated representatives shall occur only by advance written notice to the other party.

3. S-SV EMS DUTIES AND RESPONSIBILITIES.

S-SV EMS SHALL:

- A. Act as fiscal agent for YCHHSD for its HPP grant funds. In this capacity, S-SV EMS shall:
 - (1) Meet with representatives of YCHHSD and participating local service providers to identify current health care preparedness needs and establish the annual budget for HPP grant funds, and
 - (2) Apply annually to the California Department of Public Health (CDPH) for YCHHSD's HPP grant funds in accordance with the bioterrorism preparedness needs identified and the budget established in collaboration with the representatives of YCHHSD and its participating local service providers and provide YCHHSD with a copy of each fully executed HPP Funding Agreement entered into on behalf of YCHHSD; and
 - (3) Carry out activities to upgrade the County of Yuba's local preparedness for and response to outbreaks of infectious disease and other public health threats and emergencies, in accordance with the HPP Funding Agreement including , but not limited to: making approved expenditures, submitting invoices, and compiling and submitting required reports.
- B. Provide personnel to act as the HPP Coordinator in meeting with representatives of YCHHSD and its participating local service providers and in facilitating and carrying out the activities specified by the HPP Funding Agreement.

- C. S-SV EMS shall, at their sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing its services pursuant to this MOU.

4. YCHHSD OBLIGATIONS AND DUTIES.

YCHHSD SHALL:

- A. Meet with S-SV EMS or its HPP Coordinator, along with representatives from local service providers, on a regular basis as agreed upon by all parties, in order to identify current health care preparedness needs, establish an annual HPP grant budget, and carry out the activities as specified for the HPP grant funds.
- B. Ensure a Hospital Preparedness Program Funding Memorandum of Understanding, (Attachment A), is completed by each local provider receiving HPP grant funds and that a copy of each executed form is forwarded to S-SV EMS or its HPP Coordinator.

5. FISCAL PROVISIONS

- A. As fiscal agent for YCHHSD for its HPP grant funds, S-SV EMS agrees to purchase the equipment and supplies selected by YCHHSD and its local service providers, in compliance with the HPP funding agreement, plan, and budget approved by CDPH.
- B. As compensation for its provision of fiscal administrative services, S-SV EMS shall be awarded administrative fees through each HPP grant applied for and administered under the terms of this MOU. Said administrative fees shall be specified in the HPP grant budget as "Fiscal Agent Administrative Fee" and shall not exceed 15 percent of the purchases to be made by S-SV EMS, as identified in the HPP grant as "Fiscal Agent Purchases".
- C. S-SV EMS shall establish, maintain, and keep adequate, consistent, and accurate fiscal documentation to ensure and demonstrate that expenditures made under the terms of this MOU are in accordance and as specified by the HPP funding plan and budget approved by CDPH. S-SV EMS shall retain such records for a minimum of three (3) years from the date of final payment from HPP grant funds or until all pending State, Federal and County audits are completed, whichever is later.
- D. Within sixty (60) days of the end of each HPP grant funding period, S-SV EMS shall provide YCHHSD with a detailed summary of the expenditure of HPP grant funds, including an inventory of supplies and equipment purchases made during the preceding HPP grant funding period.

6. INSURANCE PROVISIONS

A. S-SV EMS shall procure and maintain for the duration of this MOU contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the S-SV EMS, its consultants, its agents, representatives, or employees.

B. Minimum Scope of Insurance

B.1 Coverage should be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01)
- Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
- Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Errors & Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

C. Minimum Limits of Insurance

C.1 Consultant shall maintain limits no less than:

1. General Liability: (including operations products and completed operations, as applicable.)	\$1,000,000	Per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:	\$1,000,000	Per accident for bodily injury and property damage
3. Workers' Compensation:	As required by the State of California	
4. Employer's Liability:	\$1,000,000	each accident, \$1,000,000 policy limit bodily by disease, \$1,000,000 each employee bodily injury by disease
5. Errors & Omissions Liability:	\$1,000,000	per occurrence

D. Deductibles and Self-Insured Retentions

- D.1 Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or S-SV EMS shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses

E. Other Insurance Provisions

- E.1 The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- The County, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased or borrowed by the Consultant.
- For any claims related to this project, S-SV EMS insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of S-SV EMS insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) day's prior written notice has been provided to the County.

- F. If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverage's are written on a claims-made form:

- The retroactive date must be shown, and must be before the date of the contract or the beginning of the contract work.
- Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, S-SV EMS must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
- A copy of the claims reporting requirements must be submitted to the County for review.

- If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

G. Acceptability of Insurers

G.1 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

H. Verification of Coverage

H.1 S-SV EMS shall furnish the County with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the County or on other than the County's forms provided those endorsements conform to County requirements. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

I. Waiver of Subrogation

I.1 S-SV EMS hereby agrees to waive subrogation which any insurer of contractor may acquire from vendor by virtue of the payment of any loss. S-SV EMS agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

I.2 The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the consultant, its employees, agents and subcontractors.

7. GENERAL PROVISIONS

A. This MOU constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter of this MOU.

- B. Both parties understand that this MOU is subject to the requirement of the HPP Funding Agreement between CDPH and S-SV EMS. If there is any conflict between this MOU and the Master Grant Agreement, the requirements of the Master Grant Agreement shall prevail.
- C. This MOU may be amended only by an instrument signed by both parties.
- D. This MOU may be terminated by either party upon thirty (30) days written notice.
- E. Both parties agree and understand that if the state Budget Act and/or other state statute of the current year and/or any subsequent years covered under this MOU does not appropriate sufficient funds for the Hospital Preparedness Program, this MOU shall be of no further force and effect. Additionally, this MOU is subject to any additional restrictions, limitations, or conditions imposed by the United States Government, which may affect the provisions, terms, or funding of this MOU in any manner.
- F. YCHHSD and/or its participating local providers shall select the equipment and supplies furnished pursuant to this MOU. It is understood that, except for manufacturers' warranties, if any, the equipment and supplies provided under this MOU are being provided "as is", and all other warranties, expressed or implied, are disclaimed.
- G. It is understood that the equipment and supplies furnished pursuant to this MOU are being procured through the use of federal funds and that YCHHSD and/or its participating local providers may not sell, transfer or otherwise dispose of any said equipment or supplies without prior approval by CDPH.
- H. Both parties warrant that they are knowledgeable of the provisions of Government Code section 8350 et seq. in matters relating to providing a drug-free work place.
- I. S-SV EMS agrees that its performance, place of business and records pertaining to this MOU are subject to monitoring, inspection, review and audit by authorized representatives of the County of Yuba, the State of California, and the United States government and that all information and records obtained in the course of providing services pursuant to this agreement shall be subject to confidentiality and disclosure provision of applicable Federal and State statutes and regulations.
- J. Each party agrees to indemnify, defend, and hold harmless the other party and its elected and appointed councils, boards, commissions, officers, director, trustees, employees, and agents from liability for damage or

claims for damage for personal injury, including death, as well as for property damage, which may arise out of or result from the intentional or negligent acts or omissions of the indemnifying party or any of its Employees or Agents in connection with this MOU.

- K. Both parties understand and agree that CDPH shall not be liable for any damages or loss resulting from: the use (or misuse) of equipment or supplies purchased under this MOU, the failure of any party to provide services pertaining to the equipment or supplies as prescribed by this MOU, or any defects in the equipments or supplies purchased under the terms of this MOU.
- L. Both parties shall comply with all applicable federal, State, and local laws and regulations. Such laws include, but are not limited to the following : Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Section 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102.
- M. Both parties will perform all work and services described in this MOU as independent contractors and not as officers, agents, servants or employees of the other. It is understood by both parties that this MOU is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or associations. Neither party shall have the authority to make any statements, representations, or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except by the written consent of the other party or as explicitly provided in this MOU.
- N. The parties may not assign any right or obligation pursuant to this MOU. Any attempted or purported assignment of any right or obligation pursuant to this MOU shall be void and of no legal effect.
- O. If any term, covenant, condition, or provision of this MOU is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- P. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

8. NOTICES

Any notice required or permitted to be given under this MOU shall be in writing and shall be served by certified mail, return receipt requested, or personal service upon the other party. Notices shall be addressed as follows:

If to YCHHSD:

Yuba County
Health and Human Services
Suzanne Nobles, Director
5730 Packard Ave., Suite 100
Marysville, CA 95901

With a copy to:

County Counsel
County of Yuba
915 8th Street, Suite 111

If to S-SV EMS:

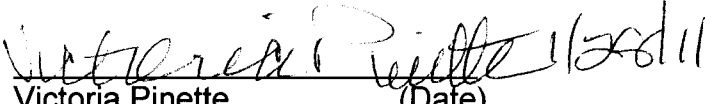
Victoria Pinette
Regional Executive Director
Sierra-Sacramento Valley EMS Agency
5995 Pacific St.
Rocklin, CA 95677

IN WITNESS WHEREOF, this MOU has been executed as follows:


COUNTY OF YUBA

Chair (Date)
Yuba County Board of Supervisors

SIERRA-SACRAMENTO
VALLEY EMS AGENCY


Victoria Pinette (Date)
Regional Executive Director


APPROVED AS TO FORM:


ANGIL MORRIS-JONES
YUBA COUNTY COUNSEL

ATTEST:

DONNA SOTTLEMEYER
YUBA COUNTY CLERK OF
THE BOARD

INSURANCE PROVISIONS
APPROVED


Martha K. Wilson
Risk Manager

ATTACHMENT A

HOSPITAL PREPAREDNESS PROGRAM GRANT FUNDING MEMORANDUM OF UNDERSTANDING

PROVIDER: Provider Name Here

MEMORANDUM OF UNDERSTANDING PERIOD: JULY 1, 2010 through JUNE 30, 2011

This memorandum of understanding is entered into by and between the Sierra-Sacramento Valley Emergency Medical Services Agency, hereinafter known as S-SV EMS, and Provider Name Here, hereinafter known as "HPP Provider."

Both parties agree as follows:

A. It is mutually agreed that:

1. The purpose of this memorandum of understanding, hereinafter known as MOU, is to facilitate the distribution and use of federal HHS Hospital Preparedness funds to community hospitals and others for the development of resources at the local level.
2. Funding for this contract is the responsibility of S-SV EMS. S-SV EMS is serving as contracting agent for the COUNTY NAME on behalf of its Health and Human Services Department, hereinafter known as LHD. Funding is contingent on availability of grant funding.
3. S-SV EMS retains state regulatory responsibilities for this program. The local HPP coordinator will provide guidance to HPP Provider regarding requirements of this MOU.
4. This MOU is part of a multiyear program and, therefore any unused funds for Fiscal Year 2010/2011 may be extended by the State into the Fiscal Year 2011/2012. This MOU will also serve as an instrument of agreement for this extended period, should an extension occur. Such amendments shall be in writing and duly executed by both parties.

B. HPP Provider agrees:

1. To expend all funds by June 30, 2011, in accordance with the budget submitted by the HPP Provider and so approved by the local planning group, under the direction of local HPP coordinator and S-SV EMS. This includes expending funds for equipment, supplies, consultants, salary reimbursements, and enrollment in approved education/exercises.
2. To provide reporting of actual expenditures by invoicing S-SV EMS, in the format provided by S-SV EMS. Reimbursement of expenditures will only be granted in the approved format given by S-SV EMS.

Yuba County Sheriff's Department

Steven L. Durfor, Sheriff - Coroner

215 5th Street, Suite 150, Marysville, CA 95901

Ph: 530-749-7777 • Fax: 530-741-6445

APRIL 5, 2011

TO: YUBA COUNTY BOARD OF SUPERVISORS

FR: STEVEN L. DURFOR, SHERIFF-CORONER *SD/MW*

RE: BOATING SAFETY AND ENFORCEMENT FINANCIAL AID PROGRAM

RECOMMENDATION:

1. Approve the Resolution authorizing the Sheriff to execute the State Application for Financial Aid for the Boating Program for Fiscal Year 2011-12;
2. Approve the contract between the County of Yuba and the Department of Boating and Waterways for the purpose of performing boating and safety enforcement activities for Fiscal Year 2011-2012.

BACKGROUND:

This is an annual agreement that has been in effect for many years and requires Board of Supervisor's approval. The agreement covers the period of July 1, 2011 to June 30, 2012, and provides reimbursement of \$166,131 for conducting boating safety and enforcement activities on Yuba County waterways. This funding allows for 1 Deputy III and 1 Sergeant to patrol the County waterways for the FY 2011-2012.

DISCUSSION:

This is the continuation of an agreement that is a benefit to both agencies. The agreement will provide for a total of \$166,131 in additional law enforcement revenue. The Sheriff will provide reimbursable law enforcement services in accordance with the attached agreement.

FISCAL IMPACT:

Boat taxes estimated at \$28,888.

COMMITTEE ACTION:

Due to the routine nature of this request, this item was placed directly on the Board of Supervisor's agenda.

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA

IN RE:)	
RESOLUTION AUTHORIZING THE)	RESOLUTION NO. _____
SHERIFF TO EXECUTE THE STATE)	
APPLICATION FOR FINANCIAL)	
AID FOR THE BOATING PROGRAM)	
FISCAL YEAR 2011-2012)	
_____)	

WHEREAS, the California Department of Boating and Waterways performs boating safety enforcement activities on waterways within the state; and

WHEREAS, the County of Yuba has a need for boating safety enforcement on waters under its jurisdiction; and

WHEREAS, pursuant to the requirements of California Harbors and Navigation Code section 663.7 and the California Code of Regulations Title 14, Division 4, Chapter 1, Article 4.5.1, the County of Yuba is eligible and entitled, on an annual basis, to apply for and receive state financial aid for boating safety and enforcement programs on waters under its jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Yuba hereby makes the following determinations:

1. Sheriff Steven L. Durfor is hereby authorized to execute on behalf of the County of Yuba that certain State Application for Financial Aid and Financial Aid Agreement for the Boating Program, Fiscal Year 2011-2012, in the form

of copies thereof on file with the Clerk of the Board of Supervisors of the County of Yuba.

2. Sheriff Steven L. Durfor is hereby authorized to execute quarterly and annual activity reports for the Boating Program, for Fiscal Year 2011-2012.
3. Yuba County Auditor, Dean E. Sellers, is hereby authorized to execute on behalf of the County of Yuba, the 'estimated boat taxes' and quarterly claims for reimbursement for the Boating Program, for the Fiscal Year 2011-2012.

PASSED AND ADOPTED, at the regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the _____ day of _____, 2011 by the following vote:

AYES:

NOES:


ABSENT:

CHAIR

ATTEST: DONNA STOTTLEMEYER

APPROVED AS TO FORM

By: _____
Clerk of the Board of Supervisors


ANGIL P. MORRIS-JONES,
County Counsel



Boating Safety and Enforcement Financial Aid Program Contract

This contract, entered into this *1ST day of July, 2011*, by and between the CALIFORNIA DEPARTMENT OF BOATING AND WATERWAYS, hereinafter called "Department," and the **COUNTY OF YUBA**, hereinafter called "Agency";

WITNESSETH

WHEREAS, Contingent on approval of the **Fiscal Year 2011-2012** budget, the Department intends to contract with Agency for the purpose of performing boating safety and enforcement activities as described in Title 14, California Code of Regulations Section 6593.3; and

WHEREAS, Agency is equipped, staffed and prepared to provide such services on the terms and conditions set forth in this contract and in accordance with Title 14, California Code of Regulations Section 6593 et seq.; and

WHEREAS, pursuant to Title 14, California Code of Regulations Section 6593.6, Department shall enter into an annual contract with each participating agency;

NOW, THEREFORE, it is mutually agreed as follows:

I. Applicable Law

Agency shall observe and comply with all applicable federal, state, and county statutes, ordinances, regulations, directives, and laws, including, but not limited to, Harbors and Navigation Code Section 663.7 and Section 6593 et seq. of Title 14, California Code of Regulations, as amended and attached hereto and incorporated by reference as Attachment I. Contract shall be deemed to be executed within the State of California and construed and governed by the laws of the State of California.

II. Description of Services

Agency shall conduct boating safety and enforcement activities in the jurisdiction of the Agency in consideration of the payments hereinafter set forth.

III. Payments

- A. **Maximum Amount**. The amount the Department shall be obligated to pay for services rendered under this contract shall not exceed **\$166,131.00** for the contract term in full consideration of Agency's performance of the services described in this contract.
- B. **Rate of Payment**. The Department shall reimburse Agency in accordance with the reimbursement procedures set forth in Title 14, California Code of Regulations Section 6593.9.

- C. Submission of Claims. Agency shall submit claims for reimbursement to the Department contact person identified in paragraph V of this contract on a ___ monthly **OR** xx quarterly basis. **(Please check one)**
- D. Failure to Submit Claims. Claims for reimbursement shall be submitted within 60 days following the last day of the reporting period. Pursuant to Title 14, California Code of Regulations 6593.9 (i), the Department may reduce an Agency's allocation by five percent if the Agency exceeds the sixty-day billing period and an additional five percent for every thirty-day period thereafter that the Agency is late in filing a claim.

IV. Records

Agency shall maintain records pursuant to Section 6593.10 of Title 14, California Code of Regulations.

V. Notice

Notice shall be in writing and shall be deemed to have been served when it is deposited in the United States mail, first class postage prepaid, and addressed as follows:

TO DEPARTMENT

*Ms. Corrina Dugger
Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, CA 95815-3888*

TO AGENCY

Yuba County Sheriff's Dept.
215 Fifth Street, Ste. 150
Marysville, CA 95901

Either party may change the address to which subsequent notice and/or other communication can be sent by giving written notice designating a change of address to the other party.

VI. Term

This agreement shall be for the term beginning **July 1, 2011**, and ending **June 30, 2012**.

VII. Prior Agreements

All prior contracts regarding this subject matter between Department and Agency are hereby terminated effective June 30 prior to the term beginning date of this contract.

VIII. Amendment

No amendment or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto.

IX. Termination

Agency may terminate this contract without cause in writing at any time. Department may terminate this contract without cause upon a sixty (60) days written notice served upon the Agency.

X. Special Provisions

- A. Agency hereby certifies that the obligations created by this contract do not violate the provisions of Sections 1090 to 1096 of the Government Code.
- B. This contract shall have no force or effect until signed by the Department, Agency, and approved by the Department of General Services Legal Department, if required.
- C. Agency shall continue with the responsibilities of this contract during any dispute.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

**CALIFORNIA DEPARTMENT OF BOATING AND
WATERWAYS**

By: _____

Lucia C. Becerra, Acting Director
California Department of Boating and Waterways

Date: _____

“Department”

APPROVED AS TO FORM:

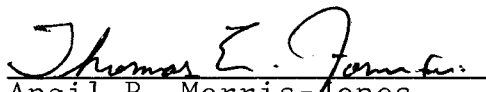
COUNTY OF YUBA

By: _____

Title: Chairman, Board of Supervisors

Date: _____

“Agency”


Angil P. Morris-Jones
County Counsel

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*SPECIAL
PRESENTATIONS*

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March 15, 2011

REQUESTED PROCLAMATIONS

Yuba County Board of Supervisors
915 8th Street Suite 109
Marysville, Ca 95901

Dear Honorable Board Members:

Each year we come before you and request your support in proclaiming April as Child Abuse Prevention month. Each year you have shown your support to the abused and neglected children of our community through your proclamation and by wearing blue ribbons. This year we again ask for your support.

Multiple agencies, community groups, and citizens have joined together this year to celebrate "Hands Across the Bridge," which will be located at Veterans Memorial Park in Marysville. We invite you to wear a blue ribbon and hang blue ribbons in your home, on your car antenna and or mirror during the month of April. This will be evidence of your personal commitment to ending the tragedy of child abuse and neglect, and support those individuals and agencies who daily fight the battle against child abuse.

We ask your board to kick off the beginning of the month by adopting the attached proclamation at your earliest meeting in April. We appreciate the support you have provided in the past and look forward to your continuing support in the future.

If you would like any additional information regarding child abuse, or if you have any questions in reference to our planned events for Child Abuse Prevention month, please feel free to contact Casa at (530)674-5400.

Sincerely,

Marsha Krouse-Taylor
Executive Director

THE COUNTY OF YUBA

BOARD OF SUPERVISORS



— P R O C L A M A T I O N —

**DECLARING THE MONTH OF APRIL 2011
AS CHILD ABUSE PREVENTION MONTH
IN THE COUNTY OF YUBA**

WHEREAS, the tragedy of child abuse and neglect affects every community in California and touches the lives of far too many citizens regardless of cultural, ethnic, religious or socioeconomic level; and

WHEREAS, the threat to our children's welfare is demonstrated by steady increases in the number and in the seriousness of reported cases of child abuse and neglect; and

WHEREAS, if our children are to become productive adults, they should have the right to a childhood free from neglect, physical abuse, sexual molestation and exploitation; and

WHEREAS, it is recognized that primary prevention programs designed to work with children themselves, their parents, and care givers within the community are successful in preventing first time abuse situations; and

WHEREAS, early identification and intervention are essential to successfully interrupting the generational cycle of abuse and neglect; and

WHEREAS, collaboration among professionals, concerned parents, volunteers and policy makers can help to reduce the level of child abuse and neglect in our communities; and

WHEREAS, dedicated volunteers and professionals are working to decrease the incidence of child abuse through prevention programs and coordination among agencies delivering services to child abuse victims and their families; and

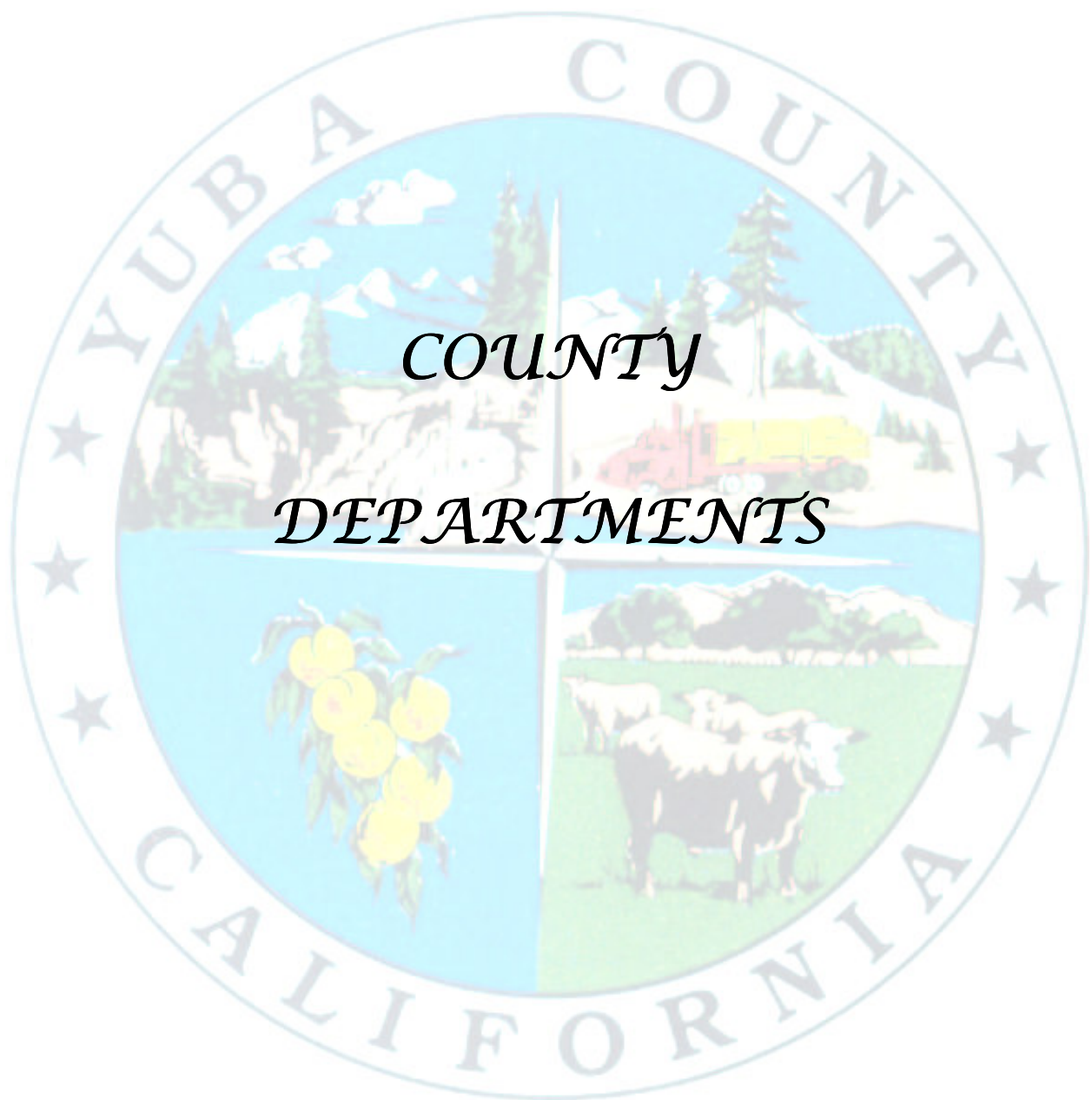
WHEREAS, the observance of Child Abuse Prevention Month provides an excellent opportunity for all citizens to reflect on this tragic crime, while rededicating themselves to taking an active role in child abuse prevention activities in their community.

NOW, THEREFORE, the Yuba County Board of Supervisors does hereby proclaim April 2011 as Child Abuse Prevention Month in the County of Yuba and encourage all residents to join with local community efforts in keeping all children "Safe, Strong and Free."


CHAIRMAN




CLERK OF THE BOARD OF SUPERVISORS



COUNTY
DEPARTMENTS

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The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

Phone - (530) 749-5430 • Fax - (530) 749-5434
915 8th Street, Suite 123
Marysville, California 95901
www.co.yuba.ca.us



141-11

BUILDING
749-5440 • Fax 749-5616

CODE ENFORCEMENT
749-5455 • Fax 749-5464

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749-5450 • Fax 749-5454

HOUSING AND COMMUNITY SERVICES
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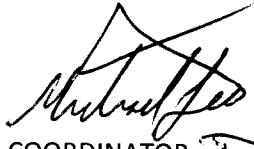

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April 5, 2011

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: MICHAEL LEE, PUBLIC WORKS DIRECTOR 
RYAN McNALLY, PARKS AND LANDSCAPE COORDINATOR 

SUBJ: LETTER SUPPORTING TRLIA'S PROPOSAL OF DEVELOPING THE FEATHER RIVER FLOODWAY FOR RECREATIONAL USE

RECOMMENDATION:

Authorize Chair to sign letter supporting TRLIA's proposal to obtain funding for the Feather River Floodway Corridor for recreational use.

BACKGROUND and DISCUSSION:

The 2008 Yuba County Parks Master Plan identified the Feather River floodway created by the levee setback project as an ideal location for multi-use trails. Recent improvements to the Star Bend Boat Ramp established a good starting point for establishing a trail system that would proceed along the floodway northward toward the communities of Olivehurst, Linda, and Marysville.

Three Rivers Levee Improvement Authority would act as a partner in creating this portion of the Master Plan. This letter from the Board of Supervisors is intended to support TRLIA's participation in the creation of recreational access along the planned route.

COMMITTEE ACTION:

Due to time constraints, this matter was not presented at the committee level.

FISCAL IMPACT:

No fiscal impact.

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April 5, 2011

Mr. Paul Brunner, Director
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, CA 95901

RE: The Yuba County Parks Master Plan and the Feather River Floodway Corridor

Dear Paul:

In February 2008, the Yuba County Board of Supervisors adopted its first ever Parks Master Plan, marking the first of many steps toward improving the overall livability and vitality of our community. The plan used a comprehensive community needs assessment of the County's parks and recreation network to help determine the eventual direction of the program.

One significant consideration to come out of the plan is the region's lack of adequate trails, despite an abundance of ideal topography throughout our County. The Feather River Floodway represents a major piece of this equation and has tremendous potential to serve as a multi use trail extending from the southern end of the County into its population centers of Olivehurst, Linda, and Marysville.

With our recent completion of major improvements at the Star Bend Boat Ramp, including adequate paved parking and ten campsites, it has become an ideal staging area for access at the southern end of this proposed project. Hikers, bicyclists, and equestrian enthusiasts would be able to access the recreation area at Star Bend and travel northward along the low maintenance corridor. The boat launch facility accommodates all types of watercraft, including canoes and kayaks, which can safely enter the river and navigate the Feather River northward along the floodway to the additional proposed access points.

By encouraging public access rather than restricting it, the risk of unauthorized entry would be diminished, along with the propensity for damage and vandalism to associated facilities, including important wildlife mitigation areas. The floodway will inevitably attract good stewards of the property who will naturally keep a vigilant watch for illicit activities.

Consistent with and in continuous pursuit of the Parks Master Plan, Yuba County pledges its support for the proposal set forth by the Three Rivers Levee Improvement Authority. The Feather River Floodway Corridor, created primarily to protect the citizens of the region, can also serve to enhance their lives in an equally fulfilling role. The Yuba County Board of Supervisors has great hope and anticipation that the Feather Floodway Corridor will soon become a critical piece of the County's Parks Master Plan; a cornerstone to our regional trails and open space network.

Sincerely,

Roger Abe, Chairman
Board of Supervisors

The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

Phone - (530) 749-5430 • Fax - (530) 749-5434
915 8th Street, Suite 123
Marysville, California 95901
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April 05, 2011

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: MICHAEL LEE, PUBLIC WORKS DIRECTOR 
RYAN McNALLY, PARKS AND LANDSCAPE COORDINATOR 

SUBJ: ADOPT RESOLUTION TO APPLY FOR THE SECOND ROUND OF CALIFORNIA STATEWIDE PARK PROGRAM GRANT FUNDS.

RECOMMENDATION:

Adopt the attached resolution to apply for the second round of the California Statewide Park Program Grant Funds for the acquisition and development of a community park in East Linda.

BACKGROUND:

On November 7th 2006, California voters passed Proposition 84, known as the "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006." Of this \$5.4 billion initiative, the "Sustainable Communities and Climate Change Reduction" chapter allocated \$368 million for competitive grants for the creation of new parks and recreation opportunities in proximity to the most critically underserved communities across California, with priority given to the creation of new parks in existing neighborhoods.

This grant is unique in that it allows for the acquisition AND development for projects resulting in a new recreational opportunity. Virtually all recreational features are eligible, including athletic fields, gymnasiums, trails, picnic areas, playgrounds, skate parks, sprayparks, swimming pools, and all the support amenities including restrooms and landscaping. This grant opportunity allows its recipients to develop and bring to fruition a comprehensive, turn-key park facility for the community with a maximum \$5 million application.

Public Works previously applied for the first round of this program on July 1st, 2010 and although considered competitive, was ultimately unsuccessful. However, the State has since encouraged us to solicit additional public input, which is a major criterion, and re apply July 1st, 2011.

DISCUSSION:

After reviewing the grant requirements and favorable criteria, staff seeks to apply for the maximum amount of \$5 million with the intent to develop a 30+ acre community park on Hammonton Smartsville Road adjacent to a school site proposed by the Marysville Joint Unified School District. This site meets all the criteria detailed by the grant and is identified in the Parks Master Plan as well as the East Linda Specific Plan. Based on the Community Fact Finder database (www.parkinfo.org/caparks/grantee) as required by the grant itself, the proposed location is described to have zero acres of park space within a one half mile radius, with 2,665 residents and 778 families living below the poverty line in the same radius. In terms of parks, this proved to be the most underserved community per capita in the County, thus improving our competitiveness for the grant.

Consistent with the State's recommendation, Public Works participated in the East Linda Reinvestment Advisory Committee meeting held on February 10, 2010 and has planned an additional park planning workshop scheduled on the evening of Thursday, April 28, 2011.

COMMITTEE ACTION:

On March 22, 2011, the Land Use & Public Works Committee reviewed this item and recommended approval by the Board.

FISCAL IMPACT:

As is often the case with grant projects, this program requires the project expenses to be financed by the applicant, to be reimbursed by grant funds at completion. This project requires a minimum request of \$100,000 to a maximum of \$5,000,000. There is no match requirement.

If successfully awarded, this grant has no provisions for operations and maintenance and once the park is completed, the burden of those subsequent costs will become that of the County's. By using historical park maintenance costs at nearby 8 acre POW/MIA Park, we can extrapolate that the operations and maintenance expenses for this new park may be around approximately \$150,000 per year.

Funds from CSA 52 and possibly the Gledhill Landscaping District may be used to cover some of the O&M costs, but will not likely be adequate to cover them in full. If we are successful and awarded the grant, staff will come back to the Board with an O&M funding program prior to grant acceptance.

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

**APPROVE APPLICATION FOR)
GRANT FUNDS FROM THE)
STATEWIDE PARK PROGRAM TO)
ACQUIRE LAND AND DEVELOP A)
COMMUNITY PARK IN EAST LINDA)**

RESOLUTION NO. _____

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Program, setting up necessary procedures governing the Application; and

WHEREAS, said procedures of the State Department of Parks and Recreation require the applicant to certify by resolution of approval of application before submission of said application to the State; and

WHEREAS, Yuba County will enter into a Contract with the State of California to complete the East Linda Community Park (Project);

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Yuba

1. Approves the filing of an application for the East Linda Community Park; and
2. Certifies that Yuba County has or will have available, prior to the commencement of any work on the project included in this application, sufficient funds to complete the Project; and
3. Certifies that Yuba County has or will have sufficient funds to operate and maintain the Project; and
4. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the Contract shown in the Grant Administration Guide; and
5. Delegates authority to the Public Works Director as agent to conduct all negotiations, execute and submit all documents, including, but not limited to applications,

agreements, amendments, payment requests and so on, which may be necessary for the completion of the Project; and

6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

PASSED AND ADOPTED this _____ day of _____
2011, by the Board of Supervisors of the County of Yuba, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

, Chair
Yuba County Board of Supervisors

ATTEST:

Donna Stottlemeyer, Clerk of the Board

APPROVED AS TO FORM:



Angil Morris-Jones, County Counsel

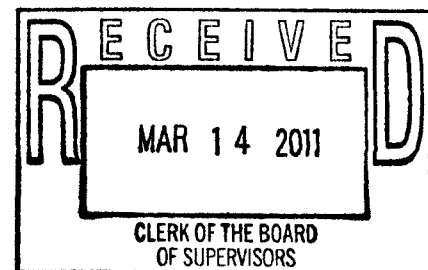


Sutter-Yuba Republican Women Federated

P.O. Box 791
Yuba City, CA 95992

March 10, 2011

Yuba County Board of Supervisors
915 8th St. Suite 109
Marysville, CA 95901
Roger Abe, Chairman



Dear Mr. Abe,

The 36th Annual Advocacy Day Workshop of the California Republican Women Federated will be held in Sacramento on Tuesday, April 19. Federated clubs throughout California provide transportation and luncheon expenses for selected high school students to attend, and Sutter-Yuba Republican Women Federation sponsors students from schools in our area.

We have asked six high schools in Sutter County and four in Yuba County to select two of their school's senior students whom they think will benefit from this worthwhile program. These students generally have a keen interest in the legislative process. The students will have a hands-on opportunity to visit with legislators from both the Assembly and the Senate, to ask questions, and learn about the process of how a bill becomes a law that impacts each citizen in the state.

Each student registration and lunch is \$55 per student. It is our hope that The Yuba County Board of Supervisors or possibly its individual members would sponsor one or more students to help defray the cost of the event.

If you have any questions, I would welcome your calls-my phone number is 530-674-5192. Please make checks payable to S-YRWF and sent to the address above.

Thank you,

Vera N. Bryan
Vera N. Bryan
Advocacy Chair

BOS CORRESPONDENCE A

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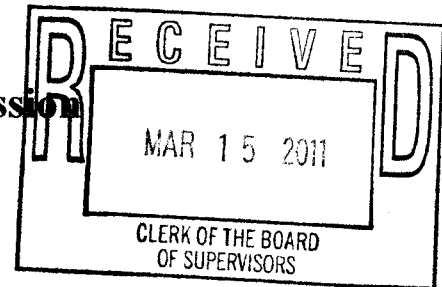
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EDMOND G. BROWN, JR.



1416 Ninth Street
Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
(916) 653-5040 Fax
fgc@fgc.ca.gov

STATE OF CALIFORNIA
Fish and Game Commission



March 14, 2011

TO ALL INTERESTED AND AFFECTED PARTIES:

On March 14, 2011, the Commission adopted emergency regulations concerning ocean salmon sport fishing. The Administrative Procedure Act requires that we make this regulation available for public review for at least five working days prior to submitting the regulation to the Office of Administrative Law.

Attached for your review are copies of the notice of emergency regulatory action, the emergency regulatory language in strikeout/underline format, and the Statement of Facts Constituting Need for Emergency Action.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachments

BOS CORRESPONDENCE B

TITLE 14. Fish and Game Commission Notice of Emergency Regulatory Action

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, relating to ocean salmon sport fishing.

Informative Digest/Policy Statement Overview

California's commercial and recreational salmon fisheries have been severely constrained since 2007 when the Sacramento River Fall Chinook (SRFC) escapement failed to meet the minimum level of its conservation objective of the Pacific Fishery Management Council's (PFMC) Fishery Management Plan (FMP). The FMP conservation objective is an annual SRFC escapement range of 122,000 to 180,000 hatchery and natural adult spawners. The SRFC escapements for 2007, 2008 and 2009 ranged from 40,900 to 91,400 adults.

In response to the series of record low SRFC escapements, the National Marine Fisheries Service (NMFS) and Commission closed the ocean waters off California to the commercial and recreational salmon fisheries during 2008 and 2009 and offered limited fishing in 2010. As a result, the commercial and recreational salmon fisheries were declared a fishery disaster in 2008 by the State of California and the U.S. Department of Commerce. The 2009 and 2010 salmon fisheries were also declared extensions of the 2008 fishery disaster by the State of California and the U.S. Department of Commerce. The total projected economic loss to the State for recent closures of California commercial and recreational salmon fisheries in coastal marine waters and a Central Valley in-river salmon recreational fishery were \$262 million (2008) and \$279 million (2009) and \$166 million (2010). Although recreational fishing was allowed in 2010, considerable economic losses were still projected because the season was shorter in duration and was closed two days per week.

Recent Developments

On March 1, 2011, the PFMC released the Preseason Report I: Stock Abundance Analysis and Environmental Assessment Part 1 for 2011 Ocean Salmon Fisheries (Preseason Report I). The Preseason Report I projects that the 2011 SRFC preseason ocean abundance is 730,000 adult Chinook which is significantly higher than the 2010 preseason ocean abundance projection.

Based upon this new information on March 9, 2011, the PFMC recommended that the federal waters of the Fort Bragg, San Francisco, and Monterey port areas should open on April 2, 2011 to recreational salmon fishing. The minimum size limit in all areas is 24 inches total length. The NMFS will enact this recommendation in federal regulations via routine in season action.

Given this federal rule change is pending, this proposed emergency regulatory action would implement this same opening date of April 2, 2011, in Section 27.80, Title 14, CCR for state waters.

Emergency action is necessary to conform Section 27.80, Title 14, CCR, to the federal regulations in order to reduce continued adverse economic impact on the port areas of Fort Bragg, San Francisco and Monterey. If federal regulations are effective on April 2 opening the fishery, but fishing and possession of salmon continues to be prohibited in state waters as of this

date, the state alone could be held responsible for continued adverse economic consequences to these port areas. The proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

The standard rulemaking process will not provide sufficient time for submission, review, and filing of the conforming state regulations with the Secretary of State by April 2, 2011. The lack of emergency action would result in different state and federal regulations governing ocean salmon recreational fishing season dates in waters off California, creating confusion for the public and extreme difficulty regarding enforcement of an opening date. The lack of clarity would also result in significant hardship and increased operational and management costs to both state and federal agencies and stakeholders associated with responding to uncertainty as to what rules actually govern individual fishing activities. Thus, the Commission finds this emergency action is necessary for the immediate preservation of the public peace and general welfare pursuant to Section 240 of the Fish and Game Code.

Proposed Regulations

This regulatory action proposes amendment of Section 27.80, Title 14, CCR, concerning the recreational ocean salmon fishing seasons in the ocean waters off California. The changes for each management area are listed in the following paragraphs:

- 1) The waters between Horse Mountain and Point Arena will open on April 2, 2011.
- 2) The waters between Point Arena and Pigeon Point will open on April 2, 2011.
- 3) The waters between Pigeon Point and Point Sur will open on April 2, 2011.
- 4) The waters below Point Sur will open on April 2, 2011.

The 2011 closing dates for the above four management areas will be decided in April by the PFMC and Commission, and Section 27.80 will be amended pursuant to the regulatory process to implement these dates.

This emergency regulatory action is expected to allow salmon fishing opportunities in these four management areas approximately 1 to 2 months earlier as compared to the standard rulemaking process, consistent with the pending new federal regulations. This emergency action could result in \$8.2 million in total economic output for businesses that provide goods and services to salmon anglers and provide support for up to 84 jobs in these businesses that would otherwise be lost if regulations are delayed because they are implemented via the standard rulemaking process.

The 2008, 2009 and 2010 combined fishery disaster losses for the ocean recreational fishery were \$406 million. This emergency action will help salmon-related businesses recover from the recent salmon fishery closures and is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Section 240 Finding

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth in the "Statement of Facts Constituting Need for Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

These proposed changes will help businesses that provide goods and services to salmon anglers recover from the adverse economic effects of the recent salmon fishery closures.

Public Comments on Proposed Emergency Regulations

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. The Commission anticipates filing the emergency regulations with OAL on March 21, 2011. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco and Monterey. On a pro-rata basis, increasing the estimated business output for merchants that provide goods and services to salmon anglers in the State by this same percentage could result in an average projected increase of about \$8.2 million in total economic output for businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco, and Monterey. On a pro-rata basis, the estimated employment impacts could result in an increase of about 84 jobs in businesses that provide goods and services to salmon anglers.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new reporting requirements imposed as a result of the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Jon K. Fischer
Acting Executive Director

Dated: March 14, 2011

Regulatory Language

Section 27.80, Title 14, CCR is amended to read:

§27.80. Salmon.

(a) Methods of take:

(1) General Provisions. Only by angling as defined in Section 1.05. No sinkers or weights exceeding four pounds may be used, except that a fishing line may be attached to a sinker or weight of any size if such sinker or weight is suspended by a separate line and the fishing line is released automatically by a mechanical device from the sinker or weight when any fish is hooked. See sections 28.65 and 28.70.

(2) Barbless Hooks. No more than two (2) single point, single shank barbless hooks shall be used in the ocean north of Point Conception (34° 27'00"N. lat.) when salmon fishing or fishing from any boat or floating device with salmon on board.

(3) Other Hook Restrictions. When fishing with bait in the ocean between Horse Mountain (40° 05'00"N. lat.) and Point Conception, if angling by any means other than trolling, then no more than two (2) single point, single shank, barbless circle hooks shall be used. The distance between the two hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape, and a point which turns inwards, pointing directly to the shank at a 90 degree angle. Trolling is defined as angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions. See Section 28.65(g).

(4) One Rod Restriction north of Point Conception. Salmon may be taken by angling with no more than one rod in ocean waters north of Point Conception. See Section 28.65(e).

(b) Season:

(1) North of Horse Mountain (40° 05'00"N. lat.) and Humboldt Bay. All waters of the ocean north of Horse Mountain and in Humboldt Bay are open to salmon fishing from May 29, 2010 to September 6, 2010.

Exception: The ocean area surrounding the Klamath River mouth bounded on the north by 41° 38'48"N lat. (approximately 6 nautical miles north of the Klamath River mouth), on the south by 41° 26'48"N lat. (approximately 6 nautical miles south of the Klamath River mouth), and extending 3 nautical miles offshore is closed to salmon fishing during August. No salmon may be taken at any time in ocean waters at the mouths of the Smith and Klamath rivers and during August and September at the mouth of the Eel River. See Section 27.75.

(2) Between Horse Mountain and Point Arena (38° 57'30"N. lat.). All waters of the ocean between Horse Mountain and Point Arena ~~are~~will open to salmon fishing ~~April 3 to September 6, 2010~~ 2, 2011. (Note: The rest of the season will be decided in April by the Pacific Fishery Management Council and California Fish

and Game Commission and the section will be amended pursuant to the regulatory process.)

(3) Between Point Arena and Pigeon Point (37° 11'00"N. lat.). All waters of the ocean between Point Arena and Pigeon Point arewill open to salmon fishing April 3, 2010 to April 30, 2010 seven days per week. From May 1, 2010 through September 6, 2010, fishing is open Thursday through Monday only 2, 2011.

(Note: The rest of the season will be decided in April by the Pacific Fishery Management Council and California Fish and Game Commission and the section will be amended pursuant to the regulatory process.)

(4) Between Pigeon Point and Point Sur (36° 18'00"N. lat.). All waters of the ocean between Pigeon Point and Point Sur arewill open to salmon fishing April 3, 2010 to April 30, 2010 seven days per week. From May 1, 2010 through September 6, 2010, fishing is open Thursday through Monday only 2, 2011.

(Note: The rest of the season will be decided in April by the Pacific Fishery Management Council and California Fish and Game Commission and the section will be amended pursuant to the regulatory process.)

(5) South of Point Sur. All waters of the ocean south of Point Sur arewill open to salmon fishing April 3, 2010 to April 30, 2010 seven days per week. From May 1, 2010 through September 6, 2010, fishing is open Thursday through Monday only 2, 2011. (Note: The rest of the season will be decided in April by the Pacific Fishery Management Council and California Fish and Game Commission and the section will be amended pursuant to the regulatory process.)

(c) Limit:

(1) Two salmon per day. See subsection (c)(2) below and Section 1.17.

(2) Statewide Silver (coho) Salmon Restrictions: No silver (coho) salmon may be retained.

(d) Minimum size:

(1) North of Horse Mountain: Twenty-four inches total length.

~~(2) South of Horse Mountain: Twenty inches total length through April 30, 2010 and twenty-four inches total length thereafter.~~

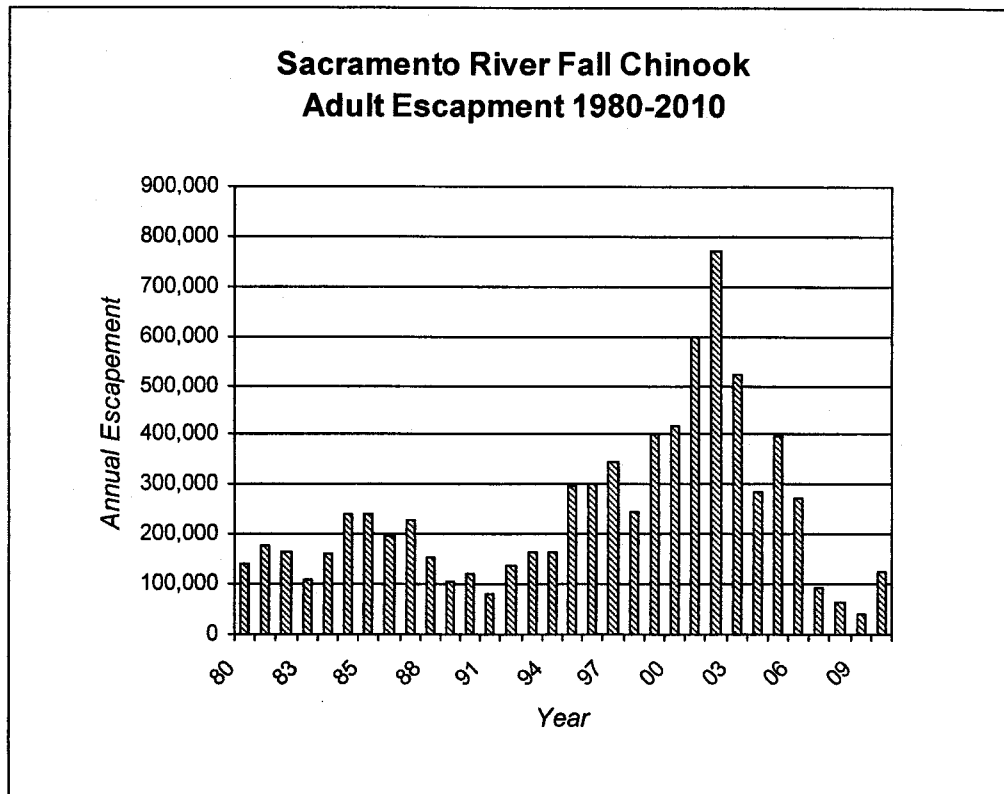
Note: Authority cited: Sections 200, 202, 205, 220, 240, 316.5 and 2084, Fish and Game Code. Reference: Sections 200, 202, 205, 316.5 and 2084, Fish and Game Code.

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Emergency Action to Amend Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Recreational Fishing
Conformance with Federal Regulations

I. Statement of Facts Constituting the Need for Emergency Regulatory Action:

California's commercial and recreational salmon fisheries have been severely constrained since 2007 when the Sacramento River Fall Chinook (SRFC) escapement failed to meet the minimum level of its conservation objective of the Pacific Fishery Management Council's (PFMC) Fishery Management Plan (FMP). The FMP conservation objective is an annual SRFC escapement range of 122,000 to 180,000 hatchery and natural adult spawners. The SRFC escapements for 2007, 2008 and 2009 ranged from 40,900 to 91,400 adults as shown below.



In response to the series of record low SRFC escapements, the National Marine Fisheries Service (NMFS) and California Fish and Game Commission (Commission) closed the ocean waters off California to the

commercial and recreational salmon fisheries during 2008 and 2009 and offered limited fishing in 2010. As a result, the commercial and recreational salmon fisheries were declared a fishery disaster in 2008 by the State of California and the U.S. Department of Commerce. The 2009 and 2010 salmon fisheries were also declared extensions of the 2008 fishery disaster by the State of California and the U.S. Department of Commerce. The total projected economic loss to the State for recent closures of California commercial and recreational salmon fisheries in coastal marine waters and a Central Valley in-river salmon recreational fishery were \$262 million (2008) and \$279 million (2009) and \$166 million (2010). Although recreational fishing was allowed in 2010, considerable economic losses were still projected because the season was shorter in duration and was closed two days per week.

Recent Developments

On March 1, 2011, the PFMC released the Preseason Report I: Stock Abundance Analysis and Environmental Assessment Part 1 for 2011 Ocean Salmon Fisheries (Preseason Report I). The Preseason Report I projects that the 2011 SRFC preseason ocean abundance is 730,000 adult Chinook which is significantly higher than the 2010 preseason ocean abundance projection.

Based upon this new information on March 9, 2011, the PFMC recommended that the federal waters of the Fort Bragg, San Francisco, and Monterey port areas should open on April 2, 2011 to recreational salmon fishing. The minimum size limit in all areas is 24 inches total length. The NMFS will enact this recommendation via a routine inseason action.

Given this federal rule change is pending, this proposed emergency regulatory action would implement this same opening date of April 2, 2011, in Section 27.80, Title 14, CCR for state waters along with a statewide size limit of 24 inches.

Emergency action is necessary to conform Section 27.80, Title 14, CCR, to the federal regulations in order to reduce continued adverse economic impact on the port areas of Fort Bragg, San Francisco and Monterey. If federal regulations are effective on April 2 opening the fishery, but fishing and possession of salmon continues to be prohibited in state waters as of this date, the state alone could be held responsible for continued adverse economic consequences to these port areas. The proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

The standard rulemaking process will not provide sufficient time for submission, review, and filing of the conforming state regulations with the Secretary of State by April 2, 2011. The lack of emergency action would result in different state and federal regulations governing ocean salmon recreational fishing season dates in waters off California, creating confusion for the public and extreme difficulty regarding enforcement of an opening date. The lack of clarity would also result in significant hardship and increased operational and management costs to both state and federal agencies and stakeholders associated with responding to uncertainty as to what rules actually govern individual fishing activities. Thus, the Commission finds this emergency action is necessary for the immediate preservation of the public peace and general welfare pursuant to Section 240 of the Fish and Game Code.

Proposed Regulations

This regulatory action proposes amendment of Section 27.80, Title 14, CCR, concerning the recreational ocean salmon fishing seasons and the statewide size limit of 24 inches in the ocean waters off California. The changes for each management area are listed in the following paragraphs:

- 1) The waters between Horse Mountain and Point Arena will open on April 2, 2011.
- 2) The waters between Point Arena and Pigeon Point will open on April 2, 2011.
- 3) The waters between Pigeon Point and Point Sur will open on April 2, 2011.
- 4) The waters below Point Sur will open on April 2, 2011.

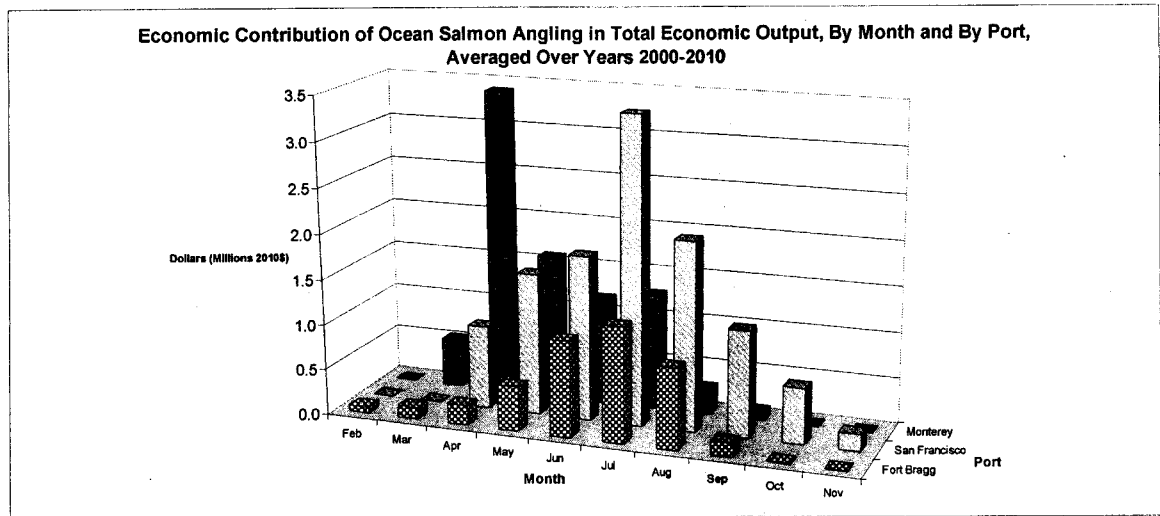
The 2011 closing dates for the above four management areas will be decided in April by the PFMC and Commission, and Section 27.80 will be amended pursuant to the regulatory process to implement these dates.

Justification

In 2010, the 2011 opening dates for recreational salmon fisheries south of Horse Mountain were not established by the PFMC for the first time since 1977 to enhance protection of SRFC due to the stock failing to meet the minimum conservation objective for three consecutive years and the uncertainty in the recent abundance forecasts. Prior to the 2008 and 2009 salmon fishery closures, the recreational salmon fishery always opened on the Saturday nearest February 15 in Fort Bragg and on the first Saturday in April for the San Francisco and Monterey port areas. These opening dates were always enacted the prior year during the PFMC process.

The April and May ocean recreational salmon fisheries are very important economically to the Fort Bragg, San Francisco, and Monterey port areas.

For the Fort Bragg port area, April and May accounts for about 4.9% and 11.4%, respectively, of that coastal community's total economic benefit from each salmon season. For the San Francisco port area, April and May accounts for 7.8% and 13.3%, respectively, of that community's total economic benefit from each salmon season. For the Monterey port area, April and May accounts for 40.7% and 19.0%, respectively, of that community's total economic benefit from each salmon season.



When limited salmon fishing reopened in 2010 after being closed for two successive seasons, April was a particularly important month for several port areas and a significant portion of the salmon revenue for the entire season was generated in that month. 35% of all salmon angler trips and 31% of all Charter Passenger Fishing Vessels (CPFV) salmon trips occurred in April. The April 2010 angler trips for Monterey were 20% higher as compared to the 2000-07 mean number of angler trips. Fort Bragg port showed a similar 15% jump for the same comparison while San Francisco port dropped 5.3%. The poor San Francisco salmon fishing in April 2010 was primarily due to bad weather and longer travel times to the fishing grounds.

In addition, the CPFV fleets in the Fort Bragg, San Francisco, and Monterey port areas have been severely reduced as a result of being closed or significantly constrained for three successive salmon seasons, which is compounded by a poor economy in general and significant increases in fuel prices. Since 2001, the number of CPFVs targeting salmon has decreased almost 30% (120 to 86) in California. The CPFV fleet has decreased 53%, 45% and 13% in Fort Bragg (number=8), Monterey (number=22) and San Francisco ports (number=49), respectively. Many CPFVs in San Francisco and Monterey switched to

sight-seeing and/or whale-watching trips in order to survive economically during the salmon fishery closures in recent years.

Industry contacts indicated that there has been a 30% reduction in coastal retail businesses that provide goods and services to salmon anglers. The economic benefit of opening April and May is desperately needed to keep the salmon-related businesses from suffering continued losses during these fiscally challenging times.

This emergency regulatory action is expected to allow salmon fishing opportunities in these four management areas approximately 1 to 2 months earlier as compared to the standard rulemaking process, consistent with the pending new federal regulations. This emergency action could result in \$8.2 million in total economic output for businesses that provide goods and services to salmon anglers and provide support for up to 84 jobs in these businesses that would otherwise be lost if regulations are delayed because they are implemented via the standard rulemaking process.

The 2008, 2009 and 2010 combined fishery disaster losses for the ocean recreational fishery were \$406 million. This emergency action will help salmon-related businesses recover from the recent salmon fishery closures and is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

II. Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The

proposed changes are necessary to bring needed economic benefit to local businesses who are recovering from the lingering effects of three years of continuous salmon fishery closures.

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco and Monterey. On a pro-rata basis, increasing the estimated business output for merchants that provide goods and services to salmon anglers in the State by this same percentage could result in an average projected increase of about \$8.2 million in total economic output for businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

This proposal to open April and May could result in an angler effort increase for sport salmon fishing of up to 33.6% for the port areas of Fort Bragg, San Francisco, and Monterey. On a pro-rata basis, the estimated employment impacts could result in an increase of about 84 jobs in businesses that provide goods and services to salmon anglers.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new reporting requirements imposed as a result of the proposed regulations.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None

IV. Plain English Statement:

It has been determined that the amendment of these regulations may affect small businesses. The Commission has drafted the regulations in

Plain English pursuant to Government Code sections 11342(e) and 11346.2(a)(1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5, and 2084 of the Fish and Game Code and to implement, interpret, or make specific sections 200, 202, 205, 316.5, and 2084 of said Code.

VI. Express Finding of Emergency:

Pursuant to the authority vested in it by Section 240 of the Fish and Game Code and for the reasons set forth above in the "Statement of Facts Constituting Need for Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

These proposed changes will help businesses, that provide goods and services to salmon anglers, recover from the adverse economic effects of the recent salmon fishery closures.

VII. Specific Agency Statutory Requirements:

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to Section 240 of the Fish and Game Code. The Commission will hold a public hearing on this regulation on March 14, 2011, and the above finding that this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare, meets the requirements of Section 240.

VIII. Documents Relied Upon for Rulemaking:

PFMC, 2011, *Preseason Report I: Stock Abundance Analysis and Environmental Assessment Part 1 for 2011 Ocean Salmon Fisheries*, PFMC, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220-1384.

Informative Digest (Plain English Overview)

California's commercial and recreational salmon fisheries have been severely constrained since 2007 when the Sacramento River Fall Chinook (SRFC) escapement failed to meet the minimum level of its conservation objective of the Pacific Fishery Management Council's (PFMC) Fishery Management Plan (FMP). The FMP conservation objective is an annual SRFC escapement range of 122,000 to 180,000 hatchery and natural adult spawners. The SRFC escapements for 2007, 2008 and 2009 ranged from 40,900 to 91,400 adults.

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Richard Rogers, Vice President
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Michael Sutton, Member
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Jack Baylis, Member
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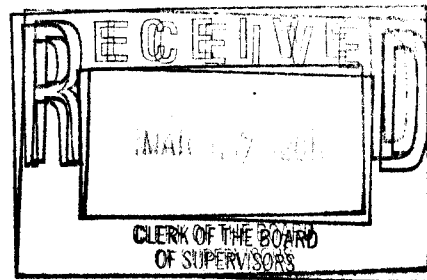
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(916) 653-4899
(916) 653-5040 Fax
fgc@fgc.ca.gov

STATE OF CALIFORNIA

Fish and Game Commission


March 15, 2011

TO ALL AFFECTED AND INTERESTED PARTIES:



This is to provide you with a copy of the notice of proposed emergency regulatory action relating to incidental take of Mountain yellow-legged frog.

Sincerely,


Sheri Tiemann
Staff Services Analyst

Attachments

BOS CORRESPONDENCE

TITLE 14. Fish and Game Commission
Notice of Proposed Emergency Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 240, and 2084, of the Fish and Game Code (FGC) and to implement, interpret or make specific sections 200, 202, 205, 240, 2080, 2084, and 2085 of said Code, readopted Section 749.6, Title 14, California Code of Regulations (CCR), relating to incidental take of mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*) ("MYLF") during candidacy period.

Informative Digest/Policy Statement Overview

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulation - Listing under CESA

1. Petition and Acceptance

Fish and Game Code section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in Fish and Game Code sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department of Fish and Game (Department) for evaluation.

Fish and Game Code section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

Fish and Game Code section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species. Fish and Game Code section 86 states "take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Killing of a candidate, threatened, or endangered species under CESA that is incidental to an otherwise lawful activity and not the primary purpose of the activity constitutes take under state law. (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District* (1992) 8 Cal.App.4th 1554; see also *Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (in the context of an ITP issued by the Department under CESA the California Supreme Court stated, "'take' in this context means to catch, capture or kill").)

CESA's take prohibition applies to candidate species pursuant to Fish and Game Code section 2085 upon public notice by the Commission of its finding that sufficient information exists to indicate the petitioned action may be warranted. Upon publication of such notice in the

California Regulatory Notice Register, take of candidate species is prohibited absent authorization as provided in the Fish and Game Code. Following such notice, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of CESA unless the take is authorized in regulations adopted by the Commission pursuant to Fish and Game Code section 2084 or the Department authorizes the take through the issuance of an ITP or other means available pursuant to the Fish and Game Code.

2. Status Review and Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to Fish and Game Code section 2074.6. This status review helps to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into and evaluation of available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Within 12 months of the petition's acceptance, the Department must provide the Commission a written report that indicates whether the petitioned action is warranted. (Fish & G. Code, § 2074.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, § 2075.) In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." (*Id.*, § 2075.5.) If listing is not warranted in the Commission's judgment, controlling authority directs the Commission to enter that finding in the public record and the subject species is removed from the list of candidate species. (*Id.*, § 2075.5(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

B. Effect of the Emergency Action

Section 749.6 of Title 14 of the California Code of Regulations would authorize and provide for take of MYLF during its candidacy subject to the following terms and conditions:

(a) Take Authorization.

The Commission authorizes the take of Mountain yellow-legged frog during the candidacy period subject to the terms and conditions herein.

- (1) Scientific, Education or Management Activities.
Take of Mountain yellow-legged frog incidental to scientific, education or management activities is authorized.
- (2) Scientific Collecting Activities.
Take of Mountain yellow-legged frog authorized by a scientific collecting permit issued by the Department pursuant to California Code of Regulations, Title 14, section 650 or a recovery permit issued by a federal wildlife agency pursuant to United States Code, Title 16, section 1539(a)(1)(A) is authorized.

- (3) **Actions to Protect, Restore, Conserve or Enhance.**
Take of Mountain yellow-legged frog incidental to otherwise lawful activities initiated to protect, restore, conserve or enhance a state or federally threatened or endangered species and its habitat is authorized.
 - (4) **Fish Hatchery and Stocking Activities.**
Take of Mountain yellow-legged frog incidental to fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the Department of Fish and Game (Department) and U.S. Fish & Wildlife Service Hatchery and Stocking Program Joint Environmental Impact Report/Environmental Impact Statement (SCH. No. 2008082025), as certified by the Department on January 11, 2010, is authorized.
 - (5) **Wildland Fire Response and Related Vegetation Management.**
Take of Mountain yellow-legged frog incidental to otherwise lawful wildland fire prevention, response and suppression activities, including related vegetation management, is authorized.
 - (6) **Water Storage and Conveyance Activities**
Take of Mountain yellow-legged frog incidental to otherwise lawful water storage and conveyance activities is authorized.
 - (7) **Forest Practices and Timber Harvest.**
Incidental take of Mountain yellow-legged frog is authorized for otherwise lawful timber operations. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Pub. Resources Code, Section 4511 et seq.), the Forest Practice rules of the Board of Forestry, which are found in Chapters 4, 4.5 and 10 of Title 14 of the California Code of Regulations or other applicable law. The Z'Berg Nejedly Forest Practice Act and Forest Practice Rules can be found at the following website:
http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.
- (b) **Reporting.**
- Any person, individual, organization, or public agency for which incidental take of Mountain yellow-legged frog is authorized pursuant to subdivision (a), shall report observations and detections of Mountain yellow-legged frog, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Fisheries Branch, Attn: Mountain yellow-legged frog observations, 830 S St., Sacramento, CA 95811, or by email submission to mylfddata@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinate preferred) of the observation, detection, or take; and details regarding the animal(s) observed.
- (c) **Additions, Modifications or Revocation.**
- (1) Incidental take of Mountain yellow-legged frog from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to

Fish and Game Code section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code section 2081, or other authority provided by law.

- (2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of Mountain yellow-legged frog.

C. Existing, Comparable Federal Regulations or Statutes

The Federal Endangered Species Act ("FESA") (16 U.S.C. § 1531 et seq.) includes a listing process that is similar to the listing process under CESA, except that take of a candidate species is not prohibited under FESA. The U.S. Fish & Wildlife Service ("Service") designated the southern California population of MYLF (*Rana muscosa*) as a distinct population segment and listed it as an endangered species under FESA on July 2, 2002. (67 Fed.Reg. 44382.) In January 2003, the Service determined that listing the Sierra Nevada populations of MYLF (*Rana sierrae*) as endangered was warranted, but precluded by other higher priority listing actions. (68 Fed.Reg. 2283.) MYLF (*Rana sierrae*) remains a candidate under FESA based on the Service's "warranted but precluded" finding and take of the species under FESA is not currently prohibited.

FESA Section 4(d) (16 U.S.C. § 1533, subd. (d)) is similar in some respects to Fish and Game Code section 2084. Section 4(d) authorizes the Service or the National Marine Fisheries Service (NMFS) to issue protective regulations prohibiting the take of species listed as threatened. These regulations, also called "4(d) rules," may include any or all of the prohibitions that apply to protect endangered species and may include exceptions to those prohibitions. The 4(d) rules give the Service and NMFS the ability to craft comprehensive regulations to apply to particular activities that may result in take of a threatened species in a manner similar to the Commission's authority to prescribe terms and conditions pursuant to FGC section 2084 during the species' candidacy period. Here, no 4(d) rules have been promulgated for MYLF (*Rana sierrae*) because the "warranted but precluded" finding by the Service did not yet effectuate the designation of MYLF (*Rana sierrae*) as a federally listed threatened or endangered species.

This emergency regulation does not provide FESA authorization for take of MYLF (*Rana muscosa* and *Rana sierrae*). To the extent a project will result in take of MYLF as defined by the FESA, the project proponent is responsible for consulting with the Service to obtain the appropriate take authorization.

D. Policy Statement Overview

The objective of this emergency regulation is to allow specified activities to continue on an interim basis, subject to the measures in the regulation designed to protect MYLF, pending final action by the Commission under CESA related to the proposed listing. The Department's evaluation of the species during the candidacy period will result in the status report described in Section A.2 above. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action is or is not warranted.

The regulations as proposed are attached to this notice. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Section 240 Finding

Pursuant to the authority vested in it by FGC Section 240 and for the reasons set forth in the attached "Statement of Emergency Action," the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect MYLF to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

Public Comments on Proposed Emergency Regulations

The Commission readopted this emergency regulation at its March 14, 2011 teleconference meeting. It is anticipated that the emergency regulation will be filed with the Office of Administrative Law (OAL) on or about March 28, 2011

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to Fish and Game Code section 2084

will likely provide cost savings to local agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of MYLF on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. Without this emergency regulation, many routine and ongoing otherwise lawful wildfire suppression and response activities; water management and conveyance activities; restoration, conservation and enhancement actions; scientific research, monitoring and management activities; and forest practices and timber harvest activities would be delayed, or cancelled entirely while awaiting the necessary CESA authorization or ultimate listing determination by the Commission. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California, especially during the current economic crisis.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code; and

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to Fish and Game Code section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of MYLF on a project-by-project basis, which is both time-consuming and costly for both the Department in processing and authorizing such take, as well as to state agencies seeking take authorization. Without this emergency regulation, many routine and ongoing otherwise lawful wildfire suppression and response activities; water management and conveyance activities; restoration, conservation and enhancement actions; scientific research, monitoring and management activities; and forest practices and timber harvest activities would be delayed, or cancelled entirely while awaiting the necessary CESA authorization or the ultimate listing decision by the Commission. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California, especially in light of the current economic crisis.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: March 15, 2011

Jon K. Fischer
Acting Executive Director

**FISH AND GAME COMMISSION
STATEMENT OF EMERGENCY ACTION
FOR RE-ADOPTION OF EMERGENCY REGULATIONS**

Emergency Action to Re-adopt Section 749.6, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Mountain-Yellow Legged Frog
(*Rana muscosa* and *Rana sierrae*) During Candidacy Period

I. Request for Approval of Re-adoption of Emergency Regulation

The Fish and Game Commission (Commission) requests to re-adopt Section 749.6, Title 14, California Code of Regulations (CCR) [Office of Administrative Law (OAL) file number 2010-0930-03 E] without modification. The Findings of Emergency for this file (Attachment A), which contain the following information: Statement/Finding of Emergency; Authority and Reference Citations; Informative Digest; Fiscal Impact Statement; and Standard Form 399 are incorporated by reference. The objective of this regulation is to allow specified activities to continue on an interim basis, subject to the measures in the regulation designed to protect Mountain yellow-legged frog (MYLF), while the Department of Fish and Game (Department) focuses its efforts on further evaluating the status of MYLF.

II. Emergency Regulation in Effect to Date

On September 15, 2010, the Commission determined that the listing of MYLF may be warranted. (Cal. Reg. Notice Register 2010, No. 40-Z, p. 1601 (October 1, 2010).) The Commission's determination designates MYLF as a candidate species under the California Endangered Species Act (CESA). On September 15, 2010, the Commission adopted an emergency regulation pursuant to Fish and Game Code (FGC) section 2084 to allow incidental take of MYLF during its candidacy period subject to specified conditions. (Cal. Reg. Notice Register 2010, No. 43-Z, p. 1782 (October 22, 2010).) The emergency regulation was approved by OAL and became effective on October 11, 2010. Pursuant to Government Code (GC) sections 11346.1(e) and (h), emergency regulations are effective for 180 days. OAL may approve two re-adoptions, each for a period not to exceed ninety days. In the absence of re-adoption, the current 2084 regulation will expire on April 12, 2011.

III. Statement of Emergency

The Commission has prepared this Emergency Action Statement under the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in connection with its request to OAL to approve the re-adoption of section 749.6 of Title 14 of the California Code of Regulations (CCR). The Commission's adoption, and requested re-adoption, of section 749.6 as an emergency action under the APA is based, in part, on authority provided by FGC sections 240 and 2084. Pursuant to the latter section, the emergency regulation adopted by the Commission,

section 749.6, authorizes incidental "take" of MYLF during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally Fish & G. Code, §§ 86, 2080, 2084, 2085.)

As set forth above, the Commission designated MYLF as a candidate species under CESA and found that adoption of section 749.6 pursuant to FGC sections 240 and 2084 constituted a necessary emergency action by the Commission under the APA. If the emergency regulation is not re-adopted, individuals engaging in activities authorized pursuant to section 749.6 would need to obtain an incidental take permit (ITP) or other authorization from the Department on a project-by-project basis to avoid potential criminal liability for violating CESA should take occur. The issuance of individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for MYLF. Without re-adoption of the emergency regulation, prospective permittees, by any reasonable measure, would be subject to CESA's take prohibition without an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of MYLF would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby MYLF may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that may provide economic, scientific, conservation, and/or other benefits to the State of California, its residents and their communities, and the State's natural resources would be postponed during the candidacy period or canceled entirely. The Commission finds this threatened result constitutes an emergency under Fish and Game Code section 240 and the APA requiring immediate action, especially against the backdrop of the economic crisis currently faced by the State of California.

Given that the emergency circumstances that necessitated the original 2084 regulation are continuing and unchanged, the Commission requests that the previous Finding of Emergency (Attachment A) previously incorporated by reference into this document be used to supplement this justification.

IV. Re-adoption Criteria

1) Same or Substantially Equivalent

Pursuant to GC section 11346.1(h), the text of a re-adopted regulation must be the "same or substantially equivalent" to the text of the original emergency regulation. The proposed language for the re-adopted 2084 emergency regulation is the same as the language of the original 2084 emergency regulation. As no changes have been made to the text of Section 749.6, Title 14, CCR, this requirement has been met.

(2) Substantial Progress

GC section 11346.1(h) specifies that the emergency rulemaking agency must demonstrate that it is making "substantial progress and has proceeded with due diligence" to comply with the standard rulemaking provisions. The Commission has not technically complied with this requirement because a standard rulemaking is not necessary in this particular circumstance and this 2084 regulation is not the appropriate mechanism to authorize take of a threatened or endangered species absent statutory authority.

A 2084 regulation is an appropriate mechanism to authorize take for "candidate" species. Pursuant to FGC sections 2080 and 2085, take of a candidate species is prohibited, unless: (1) the take is authorized in a regulation adopted by the Commission pursuant to FGC section 2084 or (2) the Department authorizes the take through incidental take permits issued on a project-by-project basis pursuant to FGC section 2081. Therefore a 2084 regulation is an appropriate mechanism to authorize take of a candidate species. However, a species is only a "candidate" until the Commission decides whether listing the species as threatened or endangered "is warranted" or "is not warranted." (Fish & G. Code § 2075.5.) This determination immediately follows the conclusion of the 12-month review of the species' status by the Department. (Id. § 2074.6.) After the Commission makes the determination that listing the species is or is not warranted, a 2084 regulation is no longer appropriate because the species is no longer a candidate for listing. At that point, the species is either protected under CESA as a listed species or is no longer protected under CESA because it is not listed and is no longer a candidate for listing.

If the Commission determines that listing the MYLF "is warranted," the former candidate species will become a listed species and the persons conducting activities currently covered by the 2084 regulation that take MYLF will be required to obtain an Incidental Take Permit (ITP) pursuant to FGC section 2081(b). ITP's are authorized for certain activities only if specified criteria are met including minimization and full mitigation of the impacts of the take. ITP's are issued on a project-by-project basis to ensure the mitigation and minimization measures are narrowly tailored to the individual project and completely protective of the species. Given that persons conducting activities that will take MYLF will be required to obtain an ITP, which will contain tailored measures to mitigate the impacts of the take, adoption of this 2084 regulation as permanent is not necessary because the MYLF will be protected under CESA and its provisions as a listed species.

If the Commission decides that listing the MYLF "is not warranted," take of the former candidate species will no longer be prohibited under CESA. Absent protected status, no mechanism would be needed to authorize take of MYLF. In that circumstance, adoption of this 2084 regulation as permanent is unnecessary.

A standard rulemaking is not necessary to authorize take of MYLF regardless. As discussed above, if the MYLF is listed it will be protected under CESA as a listed species independent of this 2084 regulation. If the MYLF is not listed, no authorization will be needed for a take. The Commission is currently proceeding with due diligence in accordance with its statutory duties to determine whether or not the listing of MYLF is warranted and the inherent temporary nature of a 2084 regulation makes pursuing its permanent status unnecessary.

FISH AND GAME COMMISSION STATEMENT OF EMERGENCY ACTION

Emergency Action to Add Section 749.6, Title 14, CCR,
Re: Special Order Relating to Incidental Take of Mountain-Yellow Legged Frog
(*Rana muscosa* and *Rana sierrae*) During Candidacy Period

I. INTRODUCTION

The Fish and Game Commission ("Commission") as established by the Constitution of the State of California has exclusive statutory authority to designate species protected by the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.). (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.) As described in greater detail below, CESA authorizes the Commission to establish lists of threatened and endangered species, and to add or remove species from those lists if it finds, upon receipt of sufficient scientific information, that the action is warranted. Pursuant to section 2084 of the Fish and Game Code, the Commission may authorize, subject to the terms and conditions it prescribes, the taking of any species designated as a candidate for listing under CESA. Pursuant to controlling statutory authority, the candidacy period under CESA generally runs for a 12-month period. (See generally *Id.*, §§ 2074.6, 2080, 2085.) The Commission has relied on the authority in section 2084 to permit take of candidate species on eight previous occasions: in 1994 for the southern torrent salamander; in 1994 for the coho salmon south of San Francisco; in 1997 and 1998 for the spring-run chinook salmon; in 2000 for coho salmon throughout its range in California; in 2002 for the Xantus's murrelet; in 2008 for the longfin smelt; in 2009 for the California tiger salamander; and in 2009 for the Pacific fisher.

On September 15, 2010, the Commission determined that the listing of Mountain yellow-legged frog (MYLF) may be warranted. The Commission's determination designates MYLF as a candidate species under CESA and notice of the Commission's finding will be published in the California Regulatory Notice Register. The Commission has prepared this Emergency Action Statement under the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) in connection with its subsequent adoption of section 749.6 of Title 14 of the California Code of Regulations. The Commission's adoption of section 749.6 as an emergency action under the APA is based, in part, on authority provided by Fish and Game Code sections 240 and 2084. Pursuant to the latter section, the emergency regulation adopted by the Commission, section 749.6, authorizes incidental "take" of MYLF during candidacy, subject to certain terms and conditions prescribed by the Commission. (See generally Fish & G. Code, §§ 86, 2080, 2084, 2085.)

As set forth below, the Commission designated MYLF as a candidate species under CESA and found that adoption of section 749.6 pursuant to Fish and

Game Code sections 240 and 2084 constitutes a necessary emergency action by the Commission under the APA. In the absence of this emergency regulation, individuals engaging in activities authorized pursuant to section 749.6 would need to obtain an incidental take permit ("ITP") or other authorization from the Department of Fish and Game ("Department") on a project-by-project basis to avoid potential criminal liability for violating CESA should take occur. The issuance of individual ITPs authorizing incidental take is a complicated and lengthy process, and the Commission finds specifically that it is not feasible for the regulated community to obtain, and the Department to issue, ITPs or other authorizations on a project-by-project basis for the numerous activities that would otherwise be prohibited during the candidacy period for MYLF. Without this emergency regulation, prospective permittees, by any reasonable measure, would be subject to CESA's take prohibition without an ability to obtain the necessary state authorization during the candidacy period. As a practical matter, activities that result in the take of MYLF would be prohibited and could not be implemented pending final action by the Commission on the listing petition, an action whereby MYLF may or may not be listed as endangered or threatened under CESA. As a result, many projects that are planned or underway that may provide economic, scientific, conservation, and/or other benefits to the State of California, its residents and their communities, and the State's natural resources would be postponed during the candidacy period or canceled entirely. The Commission finds this threatened result constitutes an emergency under Fish and Game Code section 240 and the APA requiring immediate action, especially against the backdrop of the economic crisis currently faced by the State of California.

II. BACKGROUND

On January 27, 2010, the Commission received a petition from the Center for Biological Diversity ("Center") to list MYLF as an endangered species under CESA. (Cal. Reg. Notice Register 2010, No. 9-Z, p. 333 (February 26, 2010).) In June 2010, the Department provided the Commission with a written evaluation of the petition pursuant to FGC section 2073.5, indicating the Department believed that the petition provided sufficient information to indicate the petitioned action may be warranted. On September 15, 2010, at a public meeting in McClellan, California, the Commission considered the petition, the Department's evaluation report and recommendation, and other information presented to the Commission and determined sufficient information exists to indicate the petitioned action may be warranted. In so doing, the Commission accepted the Center's petition for further review and designated MYLF as a candidate species under CESA. The Commission expects to publish notice of its finding as required by law on or about October 1, 2010, at which time "take" of MYLF as defined by the Fish and Game Code will be prohibited, except as authorized by law. (See Fish & G. Code, §§ 86, 2074.2, subds. (a)(2), (b), 2080, 2085.)

On September 15, 2010, the Commission also adopted section 749.6 as an emergency action under the APA (Gov. Code, § 11340 et seq.), as well Fish and Game Code section 240. In the absence of the take authorization provided by section 749.6, or as otherwise provided under existing law, take of MYLF will be prohibited by CESA and unauthorized take will be subject to criminal liability and potential prosecution under state law. Under the APA, upon approval by the Office of Administrative Law, section 749.6 will remain in effect initially for six months beginning on or about October 1, 2010.

III. FACTS CONSTITUTING THE NEED FOR EMERGENCY ACTION

The APA defines an “emergency” to mean “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” (*Id.* § 11342.545.) To make a finding of emergency, the agency must describe the specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. (*Id.*, § 11346.1, subd. (b)(2).) Some of the factors an agency may consider in determining whether an emergency exists include: (1) the magnitude of the potential harm, (2) the existence of a crisis situation, (3) the immediacy of the need, i.e., whether there is a substantial likelihood that serious harm will be experienced unless immediate action is taken, and (4) whether the anticipation of harm has a basis firmer than simple speculation. The Commission has considered all of these factors and the definition of an emergency provided in the APA, as well as pertinent authority in Fish and Game Code section 240. Under this latter authority, notwithstanding any other provision of the Fish and Game Code, the Commission may adopt an emergency regulation where doing so is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, or for the immediate preservation of the general welfare. The Commission finds that such necessity exists in the present case.

Section 749.6 authorizes incidental take of MYLF during candidacy for seven categories of activities:

- In connection with scientific, education or management activities.
- In connection with activities authorized pursuant to a scientific collecting permit issued by the Department or a recovery permit issued by a federal wildlife agency pursuant to United States Code, Title 16, section 1539, subdivision (a)(1)(A).
- In connection with otherwise lawful activities initiated to protect, restore, conserve or enhance any state or federally threatened or endangered species and its habitat.
- In connection with fish hatchery and stocking operations consistent with the project description and related mitigation measures identified in the

Department and U.S. Fish & Wildlife Service ("Service") Hatchery and Stocking Program Joint Environmental Impact Report/Environmental Impact Statement (SCH No. 2008082025)("EIR/EIS"), as certified by the Department on January 11, 2010.

- In connection with activities necessary to prevent, respond or suppress wildland fire; and
- In connection with water storage and conveyance activities.
- In connection with otherwise lawful timber operations.

The Commission finds as set forth below that an emergency exists with respect to each of these covered activities.

A. Scientific, Education or Management Activities

Section 749.6, subdivision (a)(1) and (2), authorizes incidental take of MYLF for scientific, education or management activities, including activities authorized through a scientific collecting permit issued by the Department or through a recovery permit issued by a federal wildlife agency. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful scientific, education or management activities. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(1) and (2), is necessary to conserve, preserve, or protect of fish and wildlife resources, and to preserve the general welfare.

In the absence of the emergency regulation, take of MYLF for scientific, education and management purposes would require authorization by the Department through an individual ITP which is a lengthy, complicated process. (See previous discussion on CESA's other forms of take authorization and why they are not likely to authorize these activities to continue during the candidacy period.) For some of the activities authorized by this subdivision, there is one other unique form of take authorization available, Fish and Game Code section 2081, subdivision (a). Because this form of take authorization still requires "permits or memorandums of understanding (to) authorize individuals...and scientific or educational institutions" to take, it is unlikely that permits under this section could be issued much more quickly than the standard ITP issued by the Department under section 2081, subdivision (b).

Management, education and scientific activities (including research and monitoring) are critical during this candidacy period. During this period, the Department is expected to prepare a status review for MYLF so the Commission can determine if the species should in fact be listed. During this candidacy period, the Department needs all of the scientific information that is available to

make the most scientifically sound recommendation to the Commission and the Commission to make the most scientifically sound final listing decision. There are currently many ongoing MYLF studies proceeding pursuant to Department-issued scientific collecting permits, which are occurring throughout the species' range, and must be allowed to continue to ensure a complete data set. Many studies operate on a continuous basis and rely on that predictability in coming to scientific conclusions about the data they acquire. In addition, new studies during this period that might be proposed should also be facilitated without delay to fill in any data gaps relevant to the possible listing of MYLF. If these activities are not allowed to continue, adequate evaluation and protection of MYLF could be severely impaired and the public will be disserved by decisions being made without the best available science.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new management, education and scientific activities while providing safeguards to protect the MYLF, including continued regulatory oversight by the Department pursuant to its authority to condition scientific collecting permits. (See Cal. Code Regs, tit. 14, § 650.) Therefore, the Commission finds that impacts to management, education and scientific activities caused by designating the MYLF as a candidate species, constitute an emergency under the APA requiring immediate action.

B. Actions to Protect, Restore, Conserve or Enhance

Section 749.6, subdivision (a)(3), authorizes take of MYLF incidental to otherwise lawful activities where the purpose of the underlying activity is to protect, restore, conserve or enhance a state or federally threatened or endangered species and its habitat. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful activities to protect, restore, conserve or enhance state or federally threatened or endangered species and their habitat. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(3), is necessary to conserve, preserve, or protect of fish and wildlife resources, and to preserve the general welfare.

In the absence of the emergency regulation, take of MYLF incidental to otherwise lawful activities to protect, restore, conserve or enhance state or federally threatened or endangered species and their habitat would require authorization by the Department through an individual ITP which is a lengthy, complicated process. (See previous discussion on CESA's other forms of take authorization and why they are not likely to authorize these activities to continue during the candidacy period.) Ongoing and planned activities to protect, restore, conserve or enhance state or federally threatened or endangered species are critical during this candidacy period. The status of many listed species is precarious, and even the slightest delay in initiated or continued implementation of any

related conservation actions could adversely affect or otherwise cause further decline of these species. In addition, any further decline in the status of listed species will lead to increased costs to the Department because more resources will be required to get the species to the point where protective measures are no longer necessary. Increased cost will also be shouldered by prospective permittees, who will be charged with funding the mitigation and related monitoring required for the impacts of their project on the species.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in ongoing or new lawful activities to protect, restore, conserve and enhance state or federally threatened or endangered species and their habitat. The Commission finds that impacts to activities to protect, restore, conserve, or enhance state or federally threatened or endangered species and their habitat caused by designating the MYLF as a candidate species, constitute an emergency under the APA requiring immediate action.

C. Fish Hatchery and Stocking Operations

Section 749.6, subdivision (a)(4), authorizes take of MYLF incidental to fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the Department and Service Hatchery and Stocking Program Joint EIR/EIS as certified by the Department on January 11, 2010. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to hatchery and stocking program activities. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(4), is necessary for the conservation, preservation, or protection of fish and wildlife, and to preserve the general welfare.

In the absence of Section 749.6, subdivision (a)(4), take of MYLF incidental to otherwise lawful fish hatchery and related stocking activities would require authorization by the Department through an individual ITP and, as previously stated, doing so is a lengthy and complicated process. (There are other means by which take can be authorized under CESA, however they either take longer than individual ITPs or are not likely to be available for use for fish hatchery and related stocking activities.) Fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the recent Department and Service Joint EIR/EIS play a critical role in efforts to conserve and manage California's fishery both from a conservation and management, and recreational standpoint. In addition, the project description and mitigation measures identified in the Joint EIR/EIS were carefully crafted by the Department and Service with extensive public review and related scientific input, all with the goal of conserving and managing California's fisheries in a way that protects and ensures that any indirect impacts are avoided or substantially reduced to the extent feasible. Absent the take authorization provided by Section

749.6, subdivision (a)(4), during the 12-month candidacy period fish hatchery and related stocking activities would cease or be substantially curtailed to the detriment of the People of California and related natural resources.

Adoption of this emergency regulation would minimize the hardships to hatchery and stocking activities as a result of MYLF being designated as a candidate species under CESA. The Commission finds, as a result, that impacts to hatchery and stocking activities constitute an emergency under the APA requiring immediate action.

D. Wildland Fire Prevention, Suppression and Response

Section 749.6, subdivision (a)(5), authorizes take of MYLF incidental to otherwise lawful wildland fire prevention, response and suppression activities. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to fire prevention, response and suppression activities. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(5), is necessary to preserve the general welfare.

In the absence of Section 749.6, subdivision (a)(5), take of MYLF incidental to otherwise lawful fire prevention, response, and suppression activities, would require authorization by the Department through an individual ITP and, as previously stated, doing so is a lengthy and complicated process. (There are other means by which take can be authorized under CESA, however they either take longer than individual ITPs or are not likely to be available for use for wildland fire prevention, suppression and response activities.) It is important to note that unlike many other regulatory statutes, CESA does not contain any exemption from the permitting requirements or the take prohibition for emergency situations like fuel (vegetation) control, wildfire suppression and response.

California's fire seasons have recently involved far-ranging catastrophic wildland fires. The role of the emergency regulation in allowing activities related to fire-related vegetation management and prevention, fire suppression and response to continue falls squarely within virtually any statutory definition of "emergency," including one of the most narrow--CEQA's definition of an emergency that states it is an activity "involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." (Pub. Resources Code, § 21080; see also CEQA Guidelines, § 15359.)

According to CalFire's website, creating a "defensible space" by controlling vegetation within 100 feet of dwellings and other buildings "dramatically increases the chance of your house surviving a wildfire" and "provides for firefighter safety" when fighting a fire. It is precisely these vegetation control

activities that are authorized under the emergency regulation without the need for additional take authorization. The emergency regulation also removes impediments to critical wildland fire suppression and response. Delays due to permitting would cause risks to public safety, should fire suppression activities be delayed or cancelled entirely. In addition, there would be grave social and economic harm to the employees and agencies tasked with carrying out the fire suppression activities and the local communities where those activities might be critically needed.

Adoption of this emergency regulation would minimize these hardships. Therefore, the Commission finds that impacts to wildland fire prevention, response and suppression activities, caused by designating the MYLF as a candidate species, constitute an emergency under the APA requiring immediate action.

D. Watershed Storage and Conveyance Activities

Section 749.6, subdivision (a)(6), authorizes take of MYLF incidental to otherwise lawful water storage and conveyance activities. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful water storage and conveyance activities. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(6), is necessary to preserve the general welfare.

In the absence of the emergency regulation, take of MYLF incidental to otherwise lawful water storage and conveyance activities would require authorization by the Department through an individual ITP which is a lengthy, complicated process. (See previous discussion on CESA's other forms of take authorization and why they are not likely to authorize these activities to continue during the candidacy period.) Activities to maintain, manage or operate watershed storage and conveyance facilities must be allowed to continue during this candidacy period. Many dams are located in the range of MYLF, and are utilized for power generation, water storage, and recreation. The conveyance facilities operate to transport the water from storage facilities to customers, including members of the public. Without take protection, it is possible that water deliveries, power generation or recreational opportunities would be interrupted. The ability to deliver water and manage stored water without impediment is necessary to avoid serious harm to public health due to lack of water for drinking, sanitation and food production.

Adoption of this emergency regulation would minimize the hardships that would be caused by delays in lawful water storage and conveyance activities. The Commission finds that impacts to lawful water storage and conveyance activities constitute an emergency under the APA requiring immediate action.

E. Forest Practices and Timber Harvest Activities

Section 749.6, subdivision (a)(7), authorizes incidental take of MYLF incidental to otherwise lawful timber harvest activities. As explained below, the Commission finds that the designation of MYLF as a candidate species under CESA, and the related take prohibition, constitutes an emergency under the APA with respect to otherwise lawful timber harvest activities and operations. The Commission also finds that immediate emergency action to adopt Section 749.6, subdivision (a)(7), is necessary to preserve the general welfare.

In general, timber harvest review in California is administered by the California Department of Forestry and Fire Protection ("CalFire") pursuant to the Z'Berg Nejedly Forest Practice Act (Pub. Resources Code, § 4511 et seq.), the Forest Practice Rules (Cal. Code Regs., tit. 14, § 895 et seq.), and other applicable law, including the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.). In the absence of Section 749.6, subdivision (a)(7), many existing, already-approved, otherwise lawful timber harvest operations in MYLF range could not move forward absent additional review and re-approval. Likewise, without Section 749.6, many already-approved, otherwise lawful timber harvest operations and activities would require a project-specific authorization under CESA from the Department. Yet, the regulatory oversight of timber operations by various public agencies under State law generally requires consideration and protection of various environmental resources and in many instances government approval of individual timber harvest activities requires compliance with CEQA and mitigation of significant environmental impacts to the extent feasible. Therefore, many timber projects that are about to commence or are already underway currently include measures that will reduce the prospect of adverse impacts to, and minimize and mitigate take of MYLF. Re-opening and re-negotiating agreements for timber activities to address the MYLF's legal status as a candidate species and, where necessary, to obtain an ITP or other take authorization under CESA (e.g., FGC section 2835) would unnecessarily delay these already-approved and otherwise lawful timber operations, resulting in undue burden on the Timber Harvest Plan (THP) holder.

Without this emergency regulation, many routine and ongoing otherwise lawful timber operations on land already managed for timber harvest would be delayed while awaiting the necessary State CESA authorization or cancelled entirely. In many cases, the delays would cause THP holders to substantially delay or cancel their projects entirely, resulting in great social and economic harm to the THP holders, their employees, registered professional foresters, the local communities that rely on timber harvest activities, and the State of California. CalFire review of existing otherwise lawful timber operations, along with project-specific CESA permitting by the Department, would also pose a significant burden to these state agencies. Both CalFire and the Department would likely face a sudden and potentially large increase in requests for timber harvest review and related take authorizations under CESA. Neither agency is equipped with

appropriate resources to handle and address the likely workload associated with this scenario, creating a significant permitting backlog.

F. Reporting

Subdivision (b) of the emergency regulation is different from the previous sections described herein. It is not an additional activity for which take is authorized under the regulation. Instead, subdivision (b) of the emergency regulation concerns reporting detections and observations of MYLF in connection with and by persons involved or otherwise engaged in the activities for which take is authorized pursuant to subdivision (a). It is vital that during this candidacy period detections and observations of MYLF be reported to the Department so it can have the most complete information possible as it prepares its scientific status review of the species and develops related recommendation to the Commission regarding whether listing MYLF under CESA is warranted.

For these reasons, the immediate adoption of this emergency regulation is necessary to allow numerous projects and activities to continue during the candidacy review period for MYLF under CESA. The Commission believes the activities permitted under this regulation will result in very limited take and will not jeopardize the continued existence of the species. The Commission finds, in this respect, that the regulation subject to this determination will ensure appropriate interim protections for MYLF while the Department conducts a 12-month review of the status of the candidate species and the Commission makes its final determination regarding listing under CESA.

IV. Express Finding of Emergency

Pursuant to the authority vested in the Commission by Fish and Game Code section 240, and for the reasons set forth above, the Commission expressly finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare. The Commission specifically finds that the adoption of this regulation will allow activities that may affect MYLF to continue during the candidacy period as long as those activities are conducted in a manner consistent with the protections specified in this regulation.

V. Authority and Reference Citations

Authority: FGC sections 200, 202, 205, 240, and 2084.

Reference: FGC sections 200, 202, 205, 240, 2080, 2084, and 2085.

VI. Informative Digest

The sections below describe laws relating to listing species under CESA, the effect of this emergency regulation, a description of related federal law, and a policy statement overview.

A. Laws Related to the Emergency Regulation - Listing under CESA

1. Petition and Acceptance

Fish and Game Code section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. Any interested person may petition the Commission to add a species to the endangered or threatened list by following the requirements in Fish and Game Code sections 2072 and 2072.3. If a petition is not factually incomplete and is on the appropriate form, it is forwarded to the Department for evaluation.

Fish and Game Code section 2073.5 sets out the process for accepting for further consideration or rejecting a petition to list a species and, if the petition is accepted, a process for actually determining whether listing of the species as threatened or endangered is ultimately warranted. The first step toward petition acceptance involves a 90-day review of the petition by the Department to determine whether the petition contains sufficient information to indicate that the petitioned action may be warranted. The Department prepares a report to the Commission that recommends rejection or acceptance of the petition based on its evaluation.

Fish and Game Code section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species. Fish and Game Code section 86 states "take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. Killing of a candidate, threatened, or endangered species under CESA that is incidental to an otherwise lawful activity and not the primary purpose of the activity constitutes take under state law. (*Department of Fish and Game v. Anderson-Cottonwood Irrigation District* (1992) 8 Cal.App.4th 1554; see also *Environmental Protection and Information Center v. California Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (in the context of an ITP issued by the Department under CESA the California Supreme Court stated, "'take' in this context means to catch, capture or kill").)

CESA's take prohibition applies to candidate species pursuant to Fish and Game Code section 2085 upon public notice by the Commission of its finding that sufficient information exists to indicate the petitioned action may be warranted. Upon publication of such notice in the California Regulatory Notice Register, take

of candidate species is prohibited absent authorization as provided in the Fish and Game Code. Following such notice, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of CESA unless the take is authorized in regulations adopted by the Commission pursuant to Fish and Game Code section 2084 or the Department authorizes the take through the issuance of an ITP or other means available pursuant to the Fish and Game Code.

2. Status Review and Final Action on the Petition

The Commission's acceptance of a petition initiates a 12-month review of the species' status by the Department, pursuant to Fish and Game Code section 2074.6. This status review helps to determine whether the species should be listed as threatened or endangered. Unlike the Department's initial evaluation, which focuses largely on the sufficiency of information submitted in the petition, the 12-month status review involves a broader inquiry into and evaluation of available information from other sources. The Commission is required to solicit data and comments on the proposed listing soon after the petition is accepted, and the Department's written status report must be based upon the best scientific information available.

Within 12 months of the petition's acceptance, the Department must provide the Commission a written report that indicates whether the petitioned action is warranted. (Fish & G. Code, § 2074.) The Commission must schedule the petition for final consideration at its next available meeting after receiving the Department's report. (*Id.*, § 2075.) In its final action on the petition, the Commission is required to decide whether listing the species as threatened or endangered "is warranted" or "is not warranted." (*Id.*, § 2075.5.) If listing is not warranted in the Commission's judgment, controlling authority directs the Commission to enter that finding in the public record and the subject species is removed from the list of candidate species. (*Id.*, § 2075.5(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

B. Effect of the Emergency Action

Section 749.6 of Title 14 of the California Code of Regulations would authorize and provide for take of MYLF during its candidacy subject to the following terms and conditions:

a) Take Authorization.

The Commission authorizes the take of Mountain yellow-legged frog during the candidacy period subject to the terms and conditions herein.

- (1) Scientific, Education or Management Activities.
Take of Mountain yellow-legged frog incidental to scientific, education or management activities is authorized.
- (2) Scientific Collecting Activities.
Take of Mountain yellow-legged frog authorized by a scientific collecting permit issued by the Department pursuant to California Code of Regulations, Title 14, section 650 or a recovery permit issued by a federal wildlife agency pursuant to United States Code, Title 16, section 1539(a)(1)(A) is authorized.
- (3) Actions to Protect, Restore, Conserve or Enhance.
Take of Mountain yellow-legged frog incidental to otherwise lawful activities initiated to protect, restore, conserve or enhance a state or federally threatened or endangered species and its habitat is authorized.
- (4) Fish Hatchery and Stocking Activities.
Take of Mountain yellow-legged frog incidental to fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the Department of Fish and Game (Department) and U.S. Fish & Wildlife Service Hatchery and Stocking Program Joint Environmental Impact Report/Environmental Impact Statement (SCH. No. 2008082025), as certified by the Department on January 11, 2010, is authorized.
- (5) Wildland Fire Response and Related Vegetation Management.
Take of Mountain yellow-legged frog incidental to otherwise lawful wildland fire prevention, response and suppression activities, including related vegetation management, is authorized.
- (6) Water Storage and Conveyance Activities
Take of Mountain yellow-legged frog incidental to otherwise lawful water storage and conveyance activities is authorized.
- (7) Forest Practices and Timber Harvest.
Incidental take of Mountain yellow-legged frog is authorized for otherwise lawful timber operations. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law. The Z'Berg Nejedly Forest Practice Act and Forest Practice Rules can be found at the following website:
http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.

(b) Reporting.

Any person, individual, organization, or public agency for which incidental take of Mountain yellow-legged frog is authorized pursuant to subdivision (a), shall report observations and detections of Mountain yellow-legged frog, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Fisheries Branch, Attn: Mountain yellow-legged frog observations, 830 S St., Sacramento, CA 95811, or by email submission to mylfdata@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinate preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

(c) Additions, Modifications or Revocation.

- (1) Incidental take of Mountain yellow-legged frog from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code section 2081, or other authority provided by law.
- (2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of Mountain yellow-legged frog.

C. Existing, Comparable Federal Regulations or Statutes

The Federal Endangered Species Act ("FESA") (16 U.S.C. § 1531 et seq.) includes a listing process that is similar to the listing process under CESA, except that take of a candidate species is not prohibited under FESA. The U.S. Fish & Wildlife Service ("Service") designated the southern California population of MYLF (*Rana muscosa*) as a distinct population segment and listed it as an endangered species under FESA on July 2, 2002. (67 Fed.Reg. 44382.) In January 2003, the Service determined that listing the Sierra Nevada populations of MYLF (*Rana sierrae*) as endangered was warranted, but precluded by other higher priority listing actions. (68 Fed.Reg. 2283.) MYLF (*Rana sierrae*) remains a candidate under FESA based on the Service's "warranted but precluded" finding and take of the species under FESA is not currently prohibited.

FESA Section 4(d) (16 U.S.C. § 1533, subd. (d)) is similar in some respects to Fish and Game Code section 2084. Section 4(d) authorizes the Service or the National Marine Fisheries Service (NMFS) to issue protective regulations prohibiting the take of species listed as threatened. These regulations, also called "4(d) rules," may include any or all of the prohibitions that apply to protect endangered species and may include exceptions to those prohibitions. The 4(d)

rules give the Service and NMFS the ability to craft comprehensive regulations to apply to particular activities that may result in take of a threatened species in a manner similar to the Commission's authority to prescribe terms and conditions pursuant to FGC section 2084 during the species' candidacy period. Here, no 4(d) rules have been promulgated for MYLF (*Rana sierrae*) because the "warranted but precluded" finding by the Service did not yet effectuate the designation of MYLF (*Rana sierrae*) as a federally listed threatened or endangered species.

This emergency regulation does not provide FESA authorization for take of MYLF (*Rana muscosa* and *Rana sierrae*). To the extent a project will result in take of MYLF as defined by the FESA, the project proponent is responsible for consulting with the Service to obtain the appropriate take authorization.

D. Policy Statement Overview

The objective of this emergency regulation is to allow specified activities to continue on an interim basis, subject to the measures in the regulation designed to protect MYLF, pending final action by the Commission under CESA related to the proposed listing. The Department's evaluation of the species during the candidacy period will result in the status report described in Section VI.A.2 above. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action is or is not warranted.

VII. Specific Agency Statutory Requirements

The Commission has complied with the special statutory requirements governing the adoption of emergency regulations pursuant to Fish and Game Code section 240. The Commission held a public hearing on this regulation on September 15, 2010, and the above finding that this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources, and for the immediate preservation of the general welfare meets the requirements of section 240.

VIII. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to FGC section 2084 will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to Fish and Game Code section 2084 will likely provide cost savings to local agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of MYLF on a project-by-project basis, which is both time-consuming and costly to local agencies seeking take authorization. Without this emergency regulation, many routine and ongoing otherwise lawful wildfire suppression and response activities; water management and conveyance activities; restoration, conservation and enhancement actions; scientific research, monitoring and management activities; and forest practices and timber harvest activities would be delayed, or cancelled entirely while awaiting the necessary CESA authorization or ultimate listing determination by the Commission. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California, especially during the current economic crisis.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code; and

(e) Effect on Housing Costs:

The Commission has determined that the adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that adoption of Section 749.6 of Title 14 of the California Code of Regulations as an emergency regulation pursuant to Fish and Game Code section 2084 will likely provide cost savings to state agencies in an undetermined amount. In the absence of the emergency regulation, the Department would have to authorize take of MYLF on a project-by-project basis, which is both time-consuming and costly for both the Department in processing

and authorizing such take, as well as to state agencies seeking take authorization. Without this emergency regulation, many routine and ongoing otherwise lawful wildfire suppression and response activities; water management and conveyance activities; restoration, conservation and enhancement actions; scientific research, monitoring and management activities; and forest practices and timber harvest activities would be delayed, or cancelled entirely while awaiting the necessary CESA authorization or the ultimate listing decision by the Commission. These delays and cancellations would cause great economic harm to persons already lawfully engaged in such activities, their employees, their local communities, and the State of California, especially in light of the current economic crisis.

Regulatory Language

Section 749.6, Title 14, CCR, is added to read:

749.6 Incidental Take of Mountain Yellow-Legged Frog (*Rana muscosa* and *Rana sierrae*) During Candidacy Period

This regulation authorizes take as defined by Fish and Game Code section 86, of Mountain yellow-legged frog (*Rana muscosa* and *Rana sierrae*), subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, section 2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of Mountain yellow-legged frog during the candidacy period subject to the terms and conditions herein.

(1) Scientific, Education or Management Activities.

Take of Mountain yellow-legged frog incidental to scientific, education or management activities is authorized.

(2) Scientific Collecting Activities.

Take of Mountain yellow-legged frog authorized by a scientific collecting permit issued by the Department of Fish and Game pursuant to California Code of Regulations, Title 14, section 650, or a recovery permit issued by a federal wildlife agency pursuant to United States Code, Title 16, section 1539, subdivision (a)(1)(A), is authorized.

(3) Activities to Protect, Restore, Conserve or Enhance.

Take of Mountain yellow-legged frog incidental to otherwise lawful activities where the purpose of the activity is to protect, restore, conserve or enhance a species designated as an endangered, threatened, or candidate species under state or federal law, or such species' habitat is authorized.

(4) Fish Hatchery and Stocking Activities.

Take of Mountain yellow-legged frog incidental to fish hatchery and related stocking activities consistent with the project description and related mitigation measures identified in the Department of Fish and Game (Department) and U.S. Fish & Wildlife Service Hatchery and Stocking Program Joint Environmental Impact Report/Environmental Impact Statement (SCH. No. 2008082025), as certified by the Department on January 11, 2010, is authorized.

(5) Wildland Fire Response and Related Vegetation Management.

Take of Mountain yellow-legged frog incidental to otherwise lawful wildland fire prevention, response and suppression activities, including related vegetation management, is authorized.

(6) Water Storage and Conveyance Activities

Take of Mountain yellow-legged frog incidental to otherwise lawful water storage and conveyance activities is authorized.

(7) Forest Practices and Timber Harvest.

Incidental take of Mountain yellow-legged frog is authorized for otherwise lawful timber operations. For purposes of this authorization, an otherwise lawful timber operation shall mean a timber operation authorized or otherwise permitted by the Z'Berg Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.), the Forest Practice Rules of the Board of Forestry, which are found in Chapters 4, 4.5, and 10, of Title 14 of the California Code of Regulations, or other applicable law. The Z'Berg Nejedly Forest Practice Act and Forest Practice Rules can be found at the following website: http://www.fire.ca.gov/resource_mgt/resource_mgt_forestpractice.php.

(b) Reporting.

Any person, individual, organization, or public agency for which incidental take of Mountain yellow-legged frog is authorized pursuant to subdivision (a), shall report observations and detections of Mountain yellow-legged frog, including take, to the Department of Fish and Game on a semi-annual basis during the candidacy period. Observations, detections, and take shall be reported pursuant to this subdivision to the Department of Fish and Game, Fisheries Branch, Attn: Mountain yellow-legged frog observations, 830 S St., Sacramento, CA 95811, or by email submission to mylfdata@dfg.ca.gov. Information reported to the Department pursuant to this subdivision shall include as available: a contact name; the date and location (GPS coordinate preferred) of the observation, detection, or take; and details regarding the animal(s) observed.

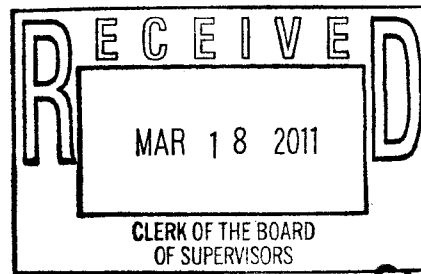
(c) Additions, Modifications or Revocation.

- (1) Incidental take of Mountain yellow-legged frog from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code section 2081, or other authority provided by law.
- (2) The Commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of Mountain yellow-legged frog.

Note: Authority cited: Sections 200, 202, 205, 240 and 2084, Fish and Game Code. Reference: Sections 200, 202, 205, 240, 2080, 2084 and 2085, Fish and Game Code.

March 17, 2011

Honorable Members of the Board
Yuba County Board of Supervisors
915 Eighth Street, Suite 109
Marysville, CA 95901



Stewardship
Council

Dear Honorable Members of the Board,

Last December, you received a letter from the Stewardship Council notifying you of a public comment period regarding a draft set of guidelines for achieving property tax neutrality being considered for adoption by the Board of Directors.

During the comment period, we received several comments from interested stakeholders which were provided to our Watershed Planning Committee (Committee) on March 8, 2011. The Committee considered all comments received and has made the following changes to the guidelines.

The Committee is recommending that the Board of Directors adopt the revised guidelines (enclosed) at its March 30 public board meeting in Sacramento.

Satisfaction of Tax Neutrality When Lands are Transferred to Counties

Several counties objected to the requirement that the value of lands received by a county via a donation be considered an in-lieu payment for the county's share of property taxes. The Committee is recommending that the draft guidelines be revised to provide that the Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non county" recipients when lands are transferred to counties.

Satisfaction of Tax Neutrality When Lands are Transferred to State Agencies

The Regional Council of Rural Counties (RCRC) expressed concern about the Stewardship Council's exception to making property tax neutrality payments when lands are transferred to a state agency which is "expressly obligated to pay property taxes by law and has a history of making such payments." The RCRC cited as an example one state agency, which it reported had failed to make several years' worth of in-lieu payments.

The California Department of Forestry and Fire Protection (CAL FIRE) is the only state agency that has applied to be a donee of fee title whose statutory obligation to make tax payments is funded through operating (i.e. timber harvest) revenues. The Committee is recommending that the guidelines be revised to state that the Stewardship Council will make property tax neutrality payments for lands transferred to any state agency other than CAL FIRE.

Furthermore, a significant portion of PG&E's forested watershed lands are not currently designated Timber Production Zone (TPZ) lands. Under CAL FIRE's current payment methodology, the transfer of non-TPZ lands to CAL FIRE could result in lower future annual tax payments to the counties. The Committee is recommending that the guidelines be revised to state that the Stewardship Council or CAL FIRE will make property tax payments to compensate counties, special districts and other "non-county" recipients for any shortfall caused by the transfer of non-TPZ lands.

BOS CORRESPONDENCE C

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Feel free to contact us if you have additional questions or concerns. The Stewardship Council will be accepting additional public comments on the revised draft guidelines in advance of, or at, the March 30 board meeting. Again, we appreciate your attention to this matter and value your participation in the work of the Stewardship Council.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel Wagner", with a stylized flourish at the end.

Joel Wagner

Director of Finance

Enclosure



GUIDELINES FOR ACHIEVING PROPERTY TAX NEUTRALITY

INTRODUCTION

The Settlement Agreement¹ and Stipulation² that established the Land Conservation Commitment require that the Land Conservation Plan being developed by the Stewardship Council provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county will be "tax neutral" for each county. Section 4.3 of Volume I of the Land Conservation Plan (LCP) adopted by the Stewardship Council in November 2007 described the Stewardship Council's potential strategies and anticipated approach to achieving property tax neutrality at a programmatic level.

More recently, on September 17, 2009, the Stewardship Council adopted a funding policy. This policy further clarified the Stewardship Council's approach to property tax neutrality and identified the following potential vehicles to achieving this requirement:

- Voluntary payment of property taxes by the new landowner
- Lump-sum payment in satisfaction of future tax revenues
- Establishment of an endowment to fund a negotiated share of annual payments
- Other in-lieu compensation as negotiated by the parties
- Payment by PG&E per the terms articulated in the Stipulation
- Other consideration or benefit as negotiated by the parties

BACKGROUND

The watershed lands identified in the Land Conservation Commitment are subject to a valuation process conducted by the California State Board of Equalization (SBE), rather than local county assessors. The SBE sets the taxation value of all property owned or used by public utilities. Utility owned property is reassessed by the SBE every four years; therefore, the lands owned by PG&E are generally at or near their current market value.³

In California, property taxes are allocated among several different agencies and districts according to the subject property's Tax Rate Area (TRA). Typically, only a portion of the annual tax payments go to the county general fund, with the majority of taxes distributed to the county's

¹ Opinion Modifying the Proposed Settlement Agreement of Pacific Gas & Electric Company, PG&E Corporation and the Commission Staff, and Approving the Modified Settlement Agreement, December 18, 2003:

http://www.stewardshipcouncil.org/documents/Settlement_Agreement.pdf

² Stipulation Resolving Issues Regarding the Land Conservation Commitment, September 25, 2003:

http://www.stewardshipcouncil.org/documents/Stipulation_Agreement.pdf

³ Stewardship Council Land Conservation Plan, November 28, 2007



special districts (e.g., water and fire districts, school districts, libraries, and resource conservation districts).

The SBE classifies real property owned by public utilities as either "unitary" or "non-unitary." Unitary property is defined as property necessary for an assessee's primary function. Non-unitary property is property owned by the assessee, but not used as part of its primary function. The SBE generally assesses both unitary and non-unitary land using typical appraisal methods, such as comparable sales.

PG&E is expected to retain the majority of lands and improvements necessary for the future generation of power (i.e., unitary property). However, in some instances, PG&E may donate lands classified as unitary. Table 1 below lists the acreage and annual taxes for the watershed lands by county as presented in Volume I of the LCP. The estimated total tax liability that would be subject to tax neutrality will depend upon the total acreage transferred, and the types of organization receiving lands.

Table 1 - Property Taxes From Land Available for Donation³

County	Lands Available for Donation	Unitary Taxes (Annual)	Non-Unitary Taxes (Annual)	Total Taxes (Annual)
Alpine	1,028	\$21,000	\$11,300	\$32,300
Amador	2,851	\$18,000	\$23,100	\$41,100
Butte	6,843	\$41,700	\$23,700	\$65,400
Calaveras	1	\$1,900	\$300	\$2,200
El Dorado	9	\$1,100	\$0	\$1,100
Fresno	335	\$17,200	\$8,300	\$25,500
Kern	443	\$1,500	\$0	\$1,500
Lake	3,390	\$37,000	\$2,500	\$39,500
Lassen	1	\$33,800	\$0	\$33,800
Madera	704	\$62,500	\$116,600	\$179,100
Mariposa	0	\$100	\$0	\$100
Mendocino	1,823	\$25,000	\$200	\$25,200
Merced	0	\$400	\$0	\$400
Nevada	4,095	\$34,800	\$41,600	\$76,400
Placer	4,693	\$106,600	\$176,800	\$283,400
Plumas	5,329	\$278,200	\$98,300	\$376,500
San Luis Obispo	654	\$0	\$2,800	\$2,800
Shasta	37,127	\$107,900	\$138,500	\$246,400
Tehama	1,412	\$3,300	\$7,600	\$10,900
Tulare	29	\$500	\$2,000	\$2,500
Tuolumne	1,337	\$4,800	\$16,900	\$21,700
Yuba	59	\$0	\$200	\$200
Other ^a	2,431			
Total	74,593	\$797,300	\$670,700	\$1,468,000

^a This acreage includes lands within parcels that cross county boundaries



PURPOSE OF PROPOSED GUIDELINES

The purpose of these guidelines is to establish a standard methodology for addressing property tax neutrality on lands located across 22 affected counties that are subject to the Land Conservation Commitment; and to communicate the general principles and approach regarding the achievement of property tax neutrality.

Following the adoption of these guidelines, the Stewardship Council will develop a more specific methodology concerning other elements of property tax neutrality such as:

- Determination of allocations between counties and special districts
- Disbursement of funds after settlement amounts are calculated
- Subsequent changes in property tax allocations and effects on the Stewardship Council's tax neutrality payments
- Effects of inflation and future appreciation of value on property tax neutrality payments

OVERARCHING ASSUMPTIONS

These guidelines are based on the following three overarching assumptions:

I. Compensation for property taxes will be based on the current property taxes as paid by PG&E at the time of transfer.

The Stewardship Council will address property tax neutrality based upon the most current property taxes paid by PG&E on the lands being transferred at the time of the actual transfer of fee title from PG&E to the selected donee.

Due to the uncertain nature of timber harvests and similar activities, the Stewardship Council's commitment to the achievement of property tax neutrality does not extend to timber yield tax or any other taxes associated with the conversion of natural resources to revenues by the future landowner.

II. Property tax neutrality includes all property taxes assessed by the State Board of Equalization and distributed between the affected county and special districts

The property taxes paid to counties are distributed among multiple agencies, including County General Funds, School and Fire Districts, Regional Conservation and Water Districts, and other special districts.

The Stewardship Council's achievement of property tax neutrality applies to all property taxes that would be distributed directly to County General Funds, School and Fire Districts, Regional Conservation and Water Districts, and any other special districts as defined by the applicable Tax Rate Area.



III. The Stewardship Council's tax neutrality commitment extends only to property tax revenues that remain with locally controlled entities.

The Settlement and Stipulation direct the Stewardship Council to ensure that the effects of distributions be made tax neutral for the affected counties. Therefore, the Stewardship Council's property tax neutrality commitment will not apply to any portion of property tax payments that are subject to apportionment by the State of California.

OPTIONS FOR FUNDING PROPERTY TAX NEUTRALITY PAYMENTS

The Stewardship Council is currently considering two options for making tax neutrality payments: (1) a one-time lump-sum payment; or (2) funding of an independent trustee to continue annual payments in lieu of taxes. If lands are transferred to entities which make annual tax or in-lieu payments consistent with any applicable regulations; that entity will be responsible for making tax payments, and its payment methodology would supersede either option described below.

Lump-sum payments

Lump-sum payments in satisfaction of property tax neutrality would be calculated based upon the net present value of the current taxes as paid by PG&E at the time that lands are removed from the property tax rolls. The lump-sum payment would be calculated based upon the most current assessed value and tax rate at the time of property transfer. The discount rate would be based upon reasonable rates of interest for long-term assets and liabilities.

Lump-sum payments would be allocated based upon the applicable Tax Rate Area at the time of payment. The Stewardship Council envisions making these lump-sum payments as unrestricted payments in lieu of property taxes. Counties and special districts would be free to determine the best use of the funds pursuant to the needs of the county or special district.

Annual payments

The Stewardship Council is researching the feasibility of establishing a third-party managed endowment account to make annual payments to affected counties and special districts in lieu of property taxes on donated lands. The endowment amount would be calculated based upon the net present value of the current taxes as paid by PG&E at the time that lands are removed from the property tax rolls, net of the trustee's management and administrative fees.

As envisioned, annual payments out of the endowment account would be calculated as a percentage of the account's value based upon a rolling average to be determined upon the selection of an endowment manager. Please note, under this approach annual payments may be higher than the original tax payments in some years, and lower in others. Annual payments from the trustee would be unrestricted.

ACCEPTANCE OF PROPERTY TAX NEUTRALITY PAYMENTS

Prior to the disbursement of funding of property tax neutrality the Stewardship Council will ask affected counties and special districts to execute an agreement stipulating that the Stewardship Council's property tax neutrality has been fulfilled for each transaction. The Stewardship Council will work with affected counties and special districts to determine the exact form of acceptance that is acceptable to both parties.

PROPOSED GUIDELINES BY DONATION SCENARIO

The proposed guidelines described below are organized and presented under four different land donation scenarios: donation of lands to counties, state agencies, federal agencies, and Native American tribes and other tax-exempt organizations.

The Stewardship Council expects that any intended payments for property tax neutrality will be a consideration in the selection of donees for lands and in the development of transactional terms related to the preservation and enhancement of beneficial public values.

SATISFACTION OF TAX NEUTRALITY WHEN LANDS ARE TRANSFERRED TO COUNTIES

- The Stewardship Council recognizes that the transfer of lands to counties will result in a reduction of annual property tax revenues. When transferred lands have associated revenues, it is preferable for the revenues to be used for management and enhancement of the lands, rather than for satisfaction of property tax neutrality.
- Therefore, the Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients when lands are transferred to counties.

~~Transfer of lands with no associated revenues:~~

- ~~• The value of the land interests donated will be considered "in lieu" payment of the county's share of property taxes on the affected parcel~~
- ~~• The Stewardship Council will pay 100% of property tax neutrality related to special districts and other "non-county" recipients~~

~~Transfer of lands with associated revenues (i.e. existing leases and licenses, or timber harvest revenues):~~

- ~~• The value of the land interests donated will be considered "in lieu" payment of the county's share of property taxes on the affected parcel~~
- ~~• The first use of revenues associated with the lands is to pay for special districts' share of taxes~~
- ~~• If revenues are not sufficient to cover all property taxes due to special districts, the Stewardship Council will pay for property tax neutrality related to special districts and other "non-county" recipients.~~
- ~~• Any excess revenues after satisfaction of property tax neutrality will be available for enhanced management and improvements on the subject property.~~



SATISFACTION OF TAX NEUTRALITY WHEN LANDS ARE TRANSFERRED TO STATE AGENCIES

- The Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients when lands are transferred to state agencies, unless the recipient agency is expressly obligated to pay property taxes by law and has a history of making such payments.
- With the exception of the California Department of Forestry and Fire Protection (CAL FIRE), the Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients when lands are transferred to state agencies.
- Lands transferred to CAL FIRE will be subject to Section 4654 of the California Public Resources Code, which requires annual payments equivalent to taxes levied in the county on similarly situated lands.
- If the transfer of lands to CAL FIRE results in a reduced property tax assessment, the Stewardship Council or CAL FIRE will pay 100% of the difference related to counties, special districts, and other "non-county" recipients.

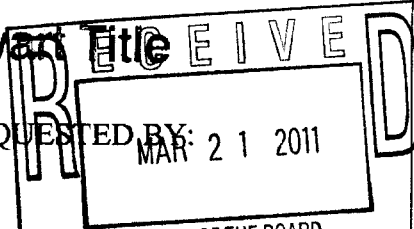
SATISFACTION OF TAX NEUTRALITY WHEN LANDS ARE TRANSFERRED TO FEDERAL AGENCIES

- The Stewardship Council recognizes that lands transferred to federal agencies are typically subject to various revenue sharing programs intended to help compensate local governments for the provision of services on federal lands. The Stewardship Council's analysis of these programs indicates that the annual payments under these programs would yield only a fraction of the amount counties and special districts currently receive in property taxes from PG&E.
- Therefore, the Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients when lands are transferred to federal agencies.

SATISFACTION OF TAX NEUTRALITY WHEN LANDS ARE TRANSFERRED TO NATIVE AMERICAN TRIBES AND TAX-EXEMPT ORGANIZATIONS OTHER THAN COUNTIES AND STATE OR FEDERAL AGENCIES

- The Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients when lands are transferred to tax-exempt organizations other than counties and state or federal agencies.
- With respect to Native American tribes that would have been able to place lands into trust but for the terms of the donation transaction, the Stewardship Council will pay 100% of property tax neutrality related to counties, special districts, and other "non-county" recipients.

Stewart Title



RECORDING REQUESTED BY: MAR 21 2011

WHEN RECORDED MAIL TO
CR TITLE SERVICES INC.
1000 TECHNOLOGY DRIVE MS 314
O'FALLON, MO 63368
7742-365745

CLERK OF THE BOARD
OF SUPERVISORS

7196 9006 9295 0753 7975
COPY of Document Recorded

at Yuba County Recorder

2011R-002123

02/22/2011

has not been compared with original.

Original will be returned when process
has been completed.

Fee: 20.00 DTT: 0.00 Total 20.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No.: T11-74191-CA/ APN: 022-142-015-000

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,

and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is \$10,453.46 as of 02-12-2011, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

CitiMortgage, Inc.
C/O CitiMortgage Inc.
ATTN: FORECLOSURE DEPARTMENT

BOS CORRESPONDENCE D



TS No.: T11-74191-CA

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

**1000 TECHNOLOGY DRIVE MS 314
O'FALLON, MO 63368
Phone: 877-576-0472**

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN: That CR Title Services, Inc. is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated 09-01-2006, executed by STEVEN L. FOWLER, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, as Trustor, to secure certain obligations in favor of "MERS" IS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as beneficiary, recorded 09-08-2006, as Instrument No. 2006R-018386, in Book , Page , , of Official Records in the Office of the Recorder of YUBA County, California describing land therein as: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

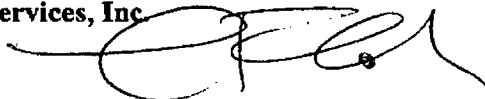
including 1 NOTE(S) FOR THE ORIGINAL sum of \$352,417.00, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:

INSTALLMENT OF PRINCIPAL AND INTEREST PLUS IMPOUNDS AND / OR ADVANCES WHICH BECAME DUE ON 11/01/2010 PLUS LATE CHARGES, AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST, BALLOON PAYMENTS, PLUS IMPOUNDS AND/OR ADVANCES AND LATE CHARGES THAT BECOME PAYABLE.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for same, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated: 02-17-2011

CR Title Services, Inc.




BY:

TERESA FERNANDEZ, TRUSTEE SPECIALIST

Federal Law requires us to notify you that we are acting as a debt collector. If you are currently in a bankruptcy or have received a discharge in bankruptcy as to this obligation, this communication is intended for informational purposes only and is not an attempt to collect a debt in violation of the automatic stay or the discharge injunction.

711-74191-CA

Declaration Re: Borrower Contact and Due Diligence Pursuant to CC §2923.5 and instructions to Trustee
Re: Notice of Default

Re: **STEVEN L FOWLER**
1746 POWDER WAY
PLUMAS LAKE, CA 95961
CitiMortgage


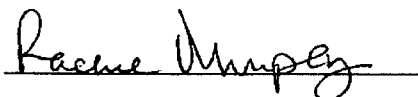
The undersigned beneficiary or their authorized agent for the beneficiary hereby represents and declares as follows:

1. X On 12/21/2010 the beneficiary or their authorized agent contacted the borrower(s) to assess their financial situation and to explore options to avoid foreclosure. During this contact the borrower(s) was advised he or she has the right to schedule a follow-up meeting to occur within 14 days. Further, the borrower(s) was provided the toll-free telephone number to find a HUD-certified housing counseling agency.
2. n/a No contact was made with the borrower despite the due diligence of beneficiary or their authorized agent's pursuant to California Civil Code §2923.5(g), including (a) Mailing a first-class letter to the borrower(s) which included a toll free number to contact a HUD-certified housing counseling agency; (b) Attempting to contact the borrower(s) by telephone at the primary telephone number on file at least three times at different hours and on different days or determined that the primary and secondary phone numbers on file were disconnected; and (c) Having received no response from the borrower(s) for 14 days after the telephone contact efforts were complete, an additional letter was sent to the borrower(s) via certified mail, with return receipt requested.
3. n/a The borrower has surrendered the secured property as evidenced by a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, their authorized agent or the trustee.
4. n/a The Beneficiary or their authorized agent has evidence and reasonably believes that the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and to avoid their contractual obligations to beneficiaries.
5. n/a The beneficiary or their authorized agent has confirmed that the borrower(s) filed for bankruptcy and the proceedings have not been finalized to wit, there is no order on the court's docket closing or dismissing the bankruptcy case.
6. n/a The provisions of California Civil Code §2923.5 do not apply because the loan is not a residential mortgage loans originated between January 1, 2003 and December 31, 2007 secured by the borrower's principal residence.

The undersigned instructs the trustee to proceed with non-judicial foreclosure proceedings and expressly authorizes the trustee or their authorized agent to sign the notice of default containing the declaration re: contact required pursuant to California Civil Code §2923.5.

Dated: 2/7/2011

By: Rachel Murphy





STATE CAPITOL
ROOM 3070
SACRAMENTO, CA 95814
(916) 651-4004

5800 STANFORD RANCH ROAD
SUITE 720
ROCKLIN, CA 95765
(916) 435-0744

1550 MEYERS STREET
SUITE C
OROVILLE, CA 95965
(530) 532-5860

2400 WASHINGTON AVENUE
SUITE 200
REDDING, CA 96001
(530) 225-3142

California State Senate

SENATOR
DOUG LA MALFA
FOURTH SENATE DISTRICT



COMMITTEES

NATURAL RESOURCES & WATER
VICE-CHAIR

ELECTIONS & CONSTITUTIONAL
AMENDMENTS
VICE-CHAIR

AGRICULTURE

BUDGET & FISCAL REVIEW

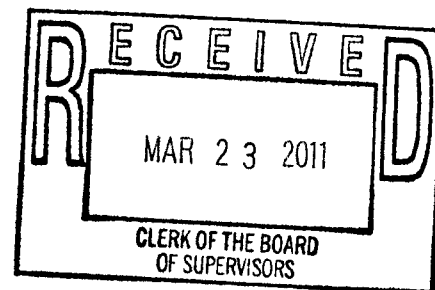
GOVERNANCE & FINANCE

VETERANS AFFAIRS

JOINT LEGISLATIVE AUDIT

March 17, 2011

Honorable Roger Abe, Chair
Yuba County Board of Supervisors
915 8th Street
Marysville, CA 95901



Dear Chairman Abe and Members of the Board:

The California Department of Housing and Community Development recently sent notification to my office that Yuba County's application for grant funding in the amount of \$800,000 has been approved for affordable housing programs. Congratulations.

I am pleased that the county's application successfully met the criteria for these vital funds and am confident that your community will benefit from your plans to assist local residents in their pursuit of home ownership.

Once again, congratulations. Please do not hesitate to contact my office whenever my staff or I may be of assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug LaMalfa".

Doug LaMalfa
SENATOR, Fourth Senate District

DL:cb

BOS CORRESPONDENCE E



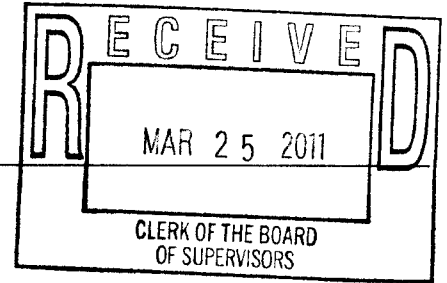
Wheatland Union High School District

1010 Wheatland Road • Wheatland, CA 95692

Phone: (530) 633-3100 • Fax: (530) 633-3119

www.wheatlandhigh.org

Vic Ramos, Ed.D.
Superintendent
Mrs. Lynne Tafoya
Associate Principal



March 25, 2011

Yuba County Supervisors
915 8th Street Suite 109
Marysville, CA 95901

Dear Board of Supervisors:

On behalf of the Governing Board of Wheatland Union High School District, this letter is being drafted. Its purpose is to share with you concerns we have regarding the addition of the railroad spur at the Ostrom Landfill. We realize that the Board of Supervisors has jurisdiction over this matter. We would like for you to take into consideration the following as you make your decisions.

- Water Contamination- Due to
 - the liner failure
 - high water table
 - surface water runoff into Best Slough
- Student safety
- Emergency service located on one side of railroad tracks
 - 3-5 additional trains per week will greatly reduce the ability in obtaining emergency services throughout Wheatland
- Contamination in general
 - Air born contamination from ADC
- Impact on Agriculture
 - Food safety modernization act
- Height of garbage
- Train spur directly effect the safety of our students daily

We appreciate your time and consideration and understand the decisions you make will have the best interest of all citizens in mind.

Sincerely,

Dr. Vic Ramos
Superintendent

BOS CORRESPONDENCE F

3-25-11:CC:Community Development and Services/rf

Main Office x100
Guidance x110

Attendance x109
Athletic Director x112

Business x103
Ag. Dept. x134

Technology x123
Music x163

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COMMITTEE MEETINGS

5:00 P.M.

Human Services Committee

(Supervisors Stocker and Vasquez - Alternate Supervisor Abe)

- A. Consider a Budget Transfer in the amount of \$22,859 from Account No. 100-5200-451-2300 (Professional Services) to Account No. 100-5200-451-6200 (Fixed Asset), for purchase of fixed assets to be used at points of dispensing and alternate care sites - Health and Human Services (Ten minute estimate) (144-11)

Public Facilities Committee

(Supervisors Griego and Vasquez - Alternate Supervisor Nicoletti)

- A. Consider lease agreement with Yuba County Office of Education for space occupied by the Public Guardian at the One Stop in Marysville - Administrative Services (Ten minute estimate) (145-11)

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The County of Yuba

HEALTH & HUMAN SERVICES DEPARTMENT

Suzanne Nobles, Director

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901
Phone: (530) 749-6311 Fax: (530) 749-6281



144-11

**Joseph W. Cassady, D.O.,
Health Officer**

Phone: (530) 749-6366

TO: Human Services Committee
Yuba County Board of Supervisors

FROM: Suzanne Nobles, Director
Health and Human Services Department

DATE: April 5, 2011

SUBJECT: Request for Authorization for Appropriation and Transfer of Funds
and Approval to Purchase Equipment for the Public Health
Emergency Preparedness and Response Programs and the
Hospital Preparedness Program

RECOMMENDATION: Board of Supervisors approval and authorization to appropriate and transfer funds for the purchase of: 1) two medium power radios with custom specifications and options for the Department Operations Center (DOC) to provide Interoperable Communications with the Emergency Operations Center (EOC), Points of Dispensing (POD) and/or Alternate Care Sites (ACS), 2) a high power UHF radio for the disaster response trailer, and 3) two Automated External Defibrillators (AED) for use at a POD and/or ACS is recommended.

BACKGROUND: The Public Health Division, through its Health and Human Services Department, receives Public Health Emergency Preparedness/Pandemic Influenza (PHEP), Public Health Emergency Response (PHER) and Hospital Preparedness Program (HPP) grant funds in order to establish an infrastructure to plan and prepare for a response to acts of bioterrorism, as well as other infectious disease outbreaks and threats to public health. The state has approved the use of the grant funds for these purchases.

DISCUSSION: The Health and Human Services Department requests approval to purchase: 1) two medium power radios with custom specifications and options for a total cost of \$16,962.00 (see attached budgetary project proposal for detailed information) with funds from the PHER grant; 2) a High power UHF radio for the disaster response trailer for communicating with the POD(s), ACS, DOC and/or EOC for a total cost of \$2,117 with funds from the HPP grant; and 3) two AEDs at \$1,890 each for a total cost of \$3,780.00 with funds from the PHEP grant. The purchase of the radio equipment will increase and maximize interoperability communications within the Operational Area. The purchase of the AEDs will provide additional life saving equipment for use at an ACS or POD site. The state has approved the use of the grant funds for these purchases. Authorization to reduce and transfer \$22,859 from Account 106-4700-441-23-00 (Prof. Services) to Account 106-4700-441-62-00 (Fixed Assets) is required in order to fund the purchases.

FISCAL IMPACT: There is no fiscal impact to County Funds. The \$22,859 to purchase the equipment will be paid by the PHEP, PHER and HPP grant funds.

Proposal

BUDGETARY ONLY

F.O.B.
Quote Valid For

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
2	XTL2500, Medium Power Dash Mt w/ custom specs and options	3,200.00	\$6,400.00
1	Uniden Scanner, digital P25 (for scanning other local freqs)	625.00	625.00
1	Custom Cabinet T-B-D	1,500.00	1,500.00
1	Portable Multi-Band Interop Antenna Kit with Case and Tripod	1,600.00	1,600.00
1	Coax and Connectors for deployable antenna feedline (RG-8)	250.00	250.00
1	AC to DC Power Supply, AC Surge Prot, and DC distribution	1,500.00	1,500.00
1	Misc Hardware, Jumpers, Wiring, Electrical	500.00	500.00
1	Custom Design, Finishing, Radio Faceplates, Subcontract Fabr.	800.00	800.00
	Labor: Design, Assembly, Project Mgt, Frequency Plan, Write ICS217A for resource, Programming, Setup, optimization, ops/test, customer orientation.		
		SUBTOTAL	13,175.00
		TAX	1,086.94
		LABOR	2,500.00
		EST FREIGHT	200.00
			\$16,961.94 PAY THIS AMOUNT

DIRECT ALL INQUIRIES TO:

Name Bill Corey
Phone 530-673-3475
e-mail: bcorey@sutterbuttescomm.com

Delivery: T-B-D
BUDGETARY ONLY



WHITE AUDITOR - CONTROLLER
YELLOW - COUNTY ADMINISTRATOR
PINK - DEPARTMENT

AUDITOR - CONTROLLER TRANSFER NO. _____

B. Sellers

COUNTY OF YUBA
REQUEST FOR TRANSFER OR
REVISION OF APPROPRIATION, ESTIMATED REVENUE OR FUNDS

DATE: March 7, 2011

DEPARTMENT Health & Human Services - Human Services Division 100

REQUEST APPROVAL OF THE FOLLOWING TRANSFER FISCAL YEAR ENDING JUNE 30, 2011

BUDGET OR ESTIMATED REVENUE

☐ ESTIMATED REVENUE INCREASED

☒ APPROPRIATION DECREASED

ACCOUNT NO.	NAME	AMOUNT
100-5200-451.23-00	Prof Services	\$22,859

☒ APPROPRIATION INCREASED

ACCOUNT NO.	NAME	AMOUNT
100-5200-451.62-00	Fixed Assets	\$22,859

FUND TRANSFERS

FUNDS TO BE REDUCED:

FUND	AMOUNT

FUNDS TO BE INCREASED:

FUND	AMOUNT

GENERAL LEDGER (AUDITOR - CONTROLLER USE ONLY)

FUND	ACCOUNT	AMOUNT			FUND	ACCOUNT	AMOUNT	
		DEBIT	CREDIT				DEBIT	CREDIT

REASON FOR TRANSFER:

To purchase equipment approved in the PHEP, PHER & HPP grants in February 2011.

APPROVED:

☐ AUDITOR - CONTROLLER

Signature

Date

Signature

DEPARTMENT OR PUBLIC OFFICIAL

☐ COUNTY ADMINISTRATOR:

Signature

Date

Health & Human Services Director

TITLE

proved as to Availability of Budget Amounts and Balances
the Auditor/Controllers Office.

AUDITOR - CONTROLLER



Approved:

BOARD OF SUPERVISORS

Clerk of the Board

Date

Auditor/Controller, Dean E. Sellers

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Administrative Services Memorandum

To: Public Facilities Committee
CC: Robert Bendorf, County Administrator
From: Doug McCoy, Director, Administrative Services
Date: April 5, 2011
Re: Lease for Public Guardian

Recommendation

Consider and authorize the Chair to sign the attached lease between the County of Yuba and the Yuba County Office of Education for the space occupied at the One Stop facility in Marysville.

Background

The County Public Guardian occupies 819 square feet of space on the second floor of the One Stop in Marysville, in a space they have occupied for several years. This lease represents a renewal of the lease for this space, and will be in effect through June of 2013.

Discussion

The attached lease is very similar to the previous lease on this space. The only change is the incorporation of a per foot charge to fund a portion of the uniformed security presence on site.

Financial Impact

The rent for this space will be funded by the Public Guardian at a rate of \$1.53 per foot; \$.07 of which is earmarked to pay for the security services. This equates to \$1253.07 per month.

**GROSS LEASE
BETWEEN YUBA COUNTY OFFICE OF EDUCATION
AND Yuba County/ Public Guardian
FOR LEASE SPACE LOCATED AT
1114 Yuba Street, Marysville, California**

Section 1.	Lease
Section 2.	Warranty by Landlord
Section 3.	Term
Section 4.	Renewal Extension Option
Section 5.	Holding Over
Section 6.	First Refusal
Section 7.	Rent
Section 8.	Service, Utilities and Supplies
Section 9.	Use of Premises
Section 10.	Insurance
Section 11.	Insurance for Tenant's Personal Property
Section 12.	Indemnification
Section 13.	Assignment and Subletting
Section 14.	Other Provisions of Lease
Section 15.	No Broker
Section 16.	Notices
Section 17.	Successors and Assigns
Section 18.	Entry
Section 19.	Late Charge and Interest
Section 20.	Compliance with Legal Requirements; Tenant's Obligations
Section 21.	Environmental Certification
Section 22.	Parking
Section 23.	Attorney Fees
Section 24.	Entire Agreement
Section 25.	Time of Essence
Section 26.	Governing Laws
Exhibit "A"	Rentable Area Reference Plan Drawing
Exhibit "B"	Space Allocation Sheets
Exhibit "C"	Technical Support of Computers, Phone Systems, and Security Systems
Exhibit "D"	C.B.W.D. Rules

This Lease ("**Lease**") is made between Scotia Holmes Sanchez, the Yuba County Superintendent of Schools, solely in his official capacity as an elected public official of Yuba County, California ("**Landlord**"), and **Yuba County/ Public Guardian** ("**Tenant**").

Recitals

Landlord is the authorized agent of the Yuba County Board of Education, ("**Owner**"), the owner of the real property located in the City of Marysville, County of Yuba, State of California, described as One Stop Center for Business and Workforce Development ("**Premises**").

Section 1. Lease.

Landlord leases to Tenant on the terms and conditions in this Lease the following portion of the Premises:

Portions of a two-story office building ("**Lease Space**") located on Premises as set forth in Exhibit "A", attached hereto and by reference incorporated herein, and more specifically referred to as One Stop Center for Business and Workforce Development located at 1114 Yuba Street, Marysville, California.

Section 2. Warranty by Landlord.

Landlord warrants to Tenant that the Landlord is an authorized agent of the Owner and is empowered to enter into this Lease agreement on the Owner's behalf.

Section 3. Term

The term of this Lease ("**Term**") will commence on the January 1, 2011 provided Tenant obtains required approval of the Board Of Supervisors at a regularly scheduled meeting, ("**Commencement Date**"), and ends on June 30, 2013 ("**Termination Date**") unless terminated sooner in accordance with the provisions of this Lease. Upon Tenant's possession of the Premises ("**Possession**"), tenancy will continue in accordance with terms of the Lease until the Termination Date of this Lease.

Section 4. Renewal Extension Option.

Landlord grants to Tenant the option to negotiate a new lease upon Tenant's written notification of its intent to renew the Lease to Landlord at least ninety (90) days prior to the Termination Date of this Lease. Tenant's privilege to exercise this option is expressly conditioned upon Tenant not having previously defaulted on the terms of the Lease, not being in default at the time the option is exercised, and not being in default between the time the option is exercised and the start of the new lease term.

Section 5. Holding Over.

Any holding over after the expiration of the Term of this Lease, with the consent of Landlord, shall be construed to be a tenancy from month-to-month, cancelable by Landlord upon ninety (90) days written notice, with a Monthly Rent as existing during the last year of the Term of this Lease, and upon terms and conditions as existing during the last year of the Term of this Lease, until a new Lease is negotiated. Any holding over after the expiration of the Term, without the consent of Landlord, shall be construed to be a tenancy-at-will at a Monthly Rent of one hundred ten percent (110%) of the existing Monthly Rent but otherwise on the terms and conditions in this Lease.

Section 6. First Refusal.

If the Landlord elects to lease, to anyone other than Tenant, any adjacent space to the lease space depicted in Exhibit "A", the Landlord shall first offer such space in writing to Tenant on terms and conditions no less favorable in this Lease or the original lease agreement. If within ten (10) working days after receipt of such offer by Tenant, Tenant does not notify Landlord in writing that Tenant elects to lease such space, Landlord shall be relieved of any obligations to Tenant with regard to any such offering.

Section 7. Rent

Commencing on the Commencement Date, the Tenant shall pay monthly, in advance, a rent ("Monthly Rent") without notice or demand,

as set forth below:

- (a) For the first three-year period of the Term of the Lease commencing from January 1, 2011 and ending, June 30, 2013, the Monthly Rent shall be computed at one dollar and fifty-three cents (\$1.53) per Square Foot for **Eight Hundred and Nineteen (819)** square feet of rentable completed office space and is inclusive of the \$.07 per foot for security plus technology connection/phone connections.
- (b) The Monthly Rent for each of the two remaining years of the Term of the Lease shall be increased annually, upon ninety (90) days written notice from the Landlord to the Tenant prior to adjustments. The adjustment to the Monthly Rent shall be made by Landlord in accordance with the annual United States Consumer Price Index ("**CPI**"), and shall be up to, but not exceeding, 10% over the term of the Lease. The CPI adjustment will be applied June 1st, 2012, and June 1st, 2013, respectively.

The Eight Hundred and Nineteen (819) square feet of rentable completed Tenant office space is set forth in Exhibit "A" - Rentable Area Reference Plan Drawing and Exhibit "B" - Space Allocation Sheets. The Monthly Rent includes base lease space rental for the Premises, and services, utilities, supplies and maintenance as set forth in more detail in Section 8. of this Lease.

The Monthly Rent shall be payable on the Commencement Date, continuing thereafter on the first day of each month. Monthly Rent payments shall be delivered to the following address: 935 Fourteenth Street, Marysville, California 95901, or at another address that Landlord may from time to time designate by written notice to Tenant. If the Term begins or ends on a day other than the first or last day of a month, the rent for the partial months will be prorated on a per diem basis.

Section 8. Services, Utilities and Supplies.

Landlord, at Landlord's sole cost and expense, during the term of this Lease, shall furnish the following services, utilities, and supplies to the areas leased by the Tenant:

- (a) Elevator service.

(b) Maintenance of Premises in good operating condition and appearance to include, but not necessarily limited to, the following:

- 1) Furnishing and promptly replacing any inoperative light bulbs, fluorescent tubes, ballasts, starters, and filters for the heating, ventilating and air conditioning equipment as required.
- 2) Furnishing remedial painting as necessary to maintain the Premises in a neat and clean condition.
- 3) Furnishing prompt, good quality repair of the building, equipment, and appurtenances.
- 4) Annual testing and maintenance of all fire extinguishers in or adjacent to the leased premises.

(c) Security monitoring service with access fobs and security codes. Gross lease services includes physical on-site security services.

- 1) On-Site Security Services. Tenant shall agree to pay a prorated share of physical on-site security service with other building tenants included in this Lease Agreement. Prorated share shall be determined by the percentage of the building's 43,230 square feet the Tenant occupies.

(d) Janitorial services sufficient to maintain the interior in a clean, well-maintained condition to the greatest practical degree possible, by more specially performing the following:

***Daily:**

- 1) Empty and clean all trash containers, and dispose of all trash and rubbish.
- 2) Clean and maintain in a sanitary and odor-free condition all floors, wash mirrors, basins, toilet bowls and urinals.
- 3) Furnish and replenish all toilet room supplies (including soap, towels, seat covers, and toilet tissue.)
- 4) Clean and damp-mop reception area daily.
- 5) Carpet sweep all carpeted areas

* *Extent of janitorial services dependent on Tenant spaces being kept in a manner whereby surfaces and areas to be cleaned can be accessed without moving and replacing personal items and equipment.*

Twice Weekly:

- 1) Vacuum all carpets.
- 2) Dust the tops of all furniture, counters, cabinets, and window sills

As Needed:

- 1) Spot clean all walls
- 2) Sweep parking areas and sidewalks
- 3) Dust all window blinds
- 4) Strip all hard surface floors and apply a new coat of floor finish; buff as necessary to produce a uniformly shining appearance.
- 5) Wash all windows, window blinds, light fixtures, walls and painted surfaces.
- 6) Steam clean carpets to remove all stains and spots

The utility baseline expenses incurred by the Landlord are established at the Commencement Date. The Tenant's Commencement Date baseline utility costs are established at an averaged monthly cost of \$0.20 per square foot of rentable area leased per month. Baseline utility expense rate established covers the Tenant's share of the Landlord's utility costs related to electric, gas, water, sewer, and garbage in providing the services and utilities, as set forth below:

- (a) Sewer, trash disposal, and water service including both hot and cold water to the lavatories.
- (b) Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning.

Landlord reserves the right to adjust the Monthly Rent upwards in the event of an increase in the established baseline utility costs. For purposes of this section, an increase in utilities costs means Premise's cumulative aggregate increase in any such charges in excess of five percent (5%) aggregate over the term of the Lease. Utility increases shall be documented by the Landlord and provided to the Tenant, and shall solely reflect the actual increase in Landlord's costs of utility operation of the Premises.

Landlord shall make available a telephone system for the Premises. Tenant shall utilize said telephone system and receive local area phone service at Landlord's expense. Landlord shall make available a local area network for computers and a Security System on the Premises. Landlord shall provide technical and support services for phone system, computer local area network, and Security Systems in accordance with Exhibit "C".

Section 9. Use of Premises.

The Premises will be used and occupied only for office, classroom, and education purposes in accordance with both this Agreement and the Center for Business and Workforce Development ("C.B.W.D.") Rules as set forth in Exhibit "D", and for any necessary and related use or purpose, and for no other use or purpose. Any extended use of the Premises beyond the Tenant's normal business hours shall result in a pro rata increase in rental assessments to compensate Landlord for such extended use. Tenant's normal business hours shall be deemed to be 8:00am to 6:30pm Monday through Friday. Tenant shall maintain the Premises in a professional manner and appearance. This does not alter in any fashion any obligation of Landlord to maintain the Premises and the common areas of the Premises. Tenant shall not undertake any remodeling, redecoration, or alteration, including painting and wall coverings, to the Premises without first receiving Landlord's written permission.

Section 10. Insurance

For the mutual benefit of Landlord and Tenant, Tenant shall, during the Term of this Lease, cause to be issued and maintained public liability insurance in the sum of at least One Million Dollars (\$1,000,000) for injury to or death of one person, and Three Million (\$3,000,000) for injury to or death of more than one person in anyone accident, insuring the Tenant against liability for injury and/or death occurring in or on the Premises or the common areas. Landlord shall be named as an additional insured, and the policy shall contain cross-liability endorsements. The Tenant shall maintain all such insurance in full force and effect during the entire term of this Lease and shall pay all premiums for the insurance. Tenant shall furnish the Landlord a current copy of their public liability insurance policy to be maintained on file by the Landlord. Subsequent insurance premium renewals shall be provided the Landlord upon renewal. Such liability insurance, including the deductible, may be maintained as part of or in conjunction with any other insurance coverage carried by Tenant and may be maintained in the form of self-insurance by Tenant.

Section 11. Insurance for Tenant's Personal Property.

Tenant agrees at all times during the term of this Lease to keep, at Tenant's sole expense, all of Tenant's personal property,

including trade fixtures and equipment of Tenant that may be on or in the Premises from time to time, insured against loss or damage by fire and by any peril included within fire and extended coverage insurance for an amount that will insure the ability of Tenant to fully replace the personal property, trade fixtures, and equipment or, in the alternate, Tenant shall waive any claim against Landlord for any such loss or damage.

Section 12. Indemnification

Each party to this Lease shall indemnify and hold harmless the other party from any and all claims or liability for any injury or damage to any person or property whatsoever occurring in, on, or about the Premises when that injury or damage was caused in part or in whole by the act, neglect, fault of, or omission of any duty by the party, its agents, servants, employees, or invitees.

Section 13. Assignment and Subletting

Tenant will not assign this Lease or further sublet all or any part of the Premises without the prior written consent of Landlord. Tenant further agrees that it shall not assign or sublet all or any part of the Premises to any party other than a public, governmental, or municipal entity.

Section 14. Other Provisions of Lease

Landlord reserves the right to terminate the Lease in the event of the partial or total damage, destruction, or condemnation of the Premises or the building or project of which the Premises are a part. The exercise of this right by Landlord will not constitute a default or breach, and the parties will be relieved of any further liability or obligation under this Lease.

Section 15. No Broker.

Landlord and Tenant each warrant that they have not dealt with any real estate broker in connection with this transaction. Landlord and Tenant each agree to indemnify, defend, and hold the other harmless against any damages incurred as a result of the breach of the warranty contained in this Section.

Section 16. Notices.

All notices and demands that may be required or permitted by either party to the other will be in writing. All notices and demands by the Landlord to Tenant will be sent by United States Mail, postage prepaid, addressed to the Tenant at the Premises, and to the address in this Lease below, or to any other place that Tenant may from time to time designate in a notice to the Landlord. All notices and demands by the Tenant to Landlord will be sent by United States Mail, postage prepaid, addressed to the Landlord at the address in this Lease, and to any other person or place that the Landlord may from time to time designate in a notice to the Tenant.

To Landlord: Scotia Holmes Sanchez
Yuba County Superintendent of Schools
935 Fourteenth Street
Marysville, California 95901

To Tenant:

Section 17. Successors and Assigns.

This Lease will be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

Section 18. Entry

Landlord reserves the right to enter the Premises on reasonable notice to Tenant to inspect the Premises or the performance by Tenant of the terms and conditions of this Lease and, during the last six (6) months of the Term, to show the Premises to prospective Tenants. In an emergency, no notice will be required for Landlord's entry.

Section 19. Late Charge and Interest.

The late payment of any Monthly Rent will cause Landlord to incur additional costs, including the cost to maintain in full force the Lease, administration and collection costs, and processing and accounting expenses. If Landlord has not received any installment of Monthly Rent within five (5) days after that amount is due, Tenant will pay five percent (5%) of the delinquent amount, which is agreed to represent a reasonable estimate of the cost incurred by Landlord. In addition, all delinquent amounts will bear interest from the date

the amount was due until paid in full at a rate as established by applicable California law. In no event will the Applicable Interest Rate exceed the maximum interest rate permitted by law that may be charged under these circumstances. Landlord and Tenant recognize that the damage Landlord will suffer in the event of Tenant's failure to pay this amount is difficult to ascertain and that the late charge and interest are the best estimate of the damage that Landlord will suffer. If a late charge becomes payable for any three (3) installments of Monthly Rent within any twelve (12) month period, the Monthly Rent will automatically become payable quarterly in advance.

**Section 20. Compliance with Legal Requirements;
Tenant's Obligations.**

(a) Compliance with Legal Requirements. At Landlord's sole cost, Landlord will promptly comply with all laws, statutes, ordinances, rules, regulations, orders, recorded covenants and restrictions, and requirements of all municipal, state, and federal authorities now or later in force, including, but not limited to all provisions of the Americans with Disabilities Act; the requirements of any board of fire underwriters or other similar body now or in the future constituted; and any direction or occupancy certificate issued by public officers ("**Legal Requirements**"), insofar as they relate to the construction, condition, use, or occupancy of the Premises.

(b) Tenant's Obligations. Tenant will comply in a timely manner with all Legal Requirements that are not Landlord's responsibility under this Section to the extent that noncompliance would adversely affect Landlord's use or occupancy of the Premises.

(c) The judgment of any court of competent jurisdiction or Landlord's admission in any action or proceeding against Landlord that Landlord has violated any Legal Requirement in the condition, use, or occupancy of the Premises will be conclusive of that fact as between Tenant and Landlord.

Section 21. Environmental Certification.

Landlord certifies to Tenant that Landlord has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that no soil or groundwater contamination has occurred on or under or originated from the Premises.

Section 22. Parking.

Landlord shall, at Landlord's sole cost and expense, provide Tenant three (3) parking spaces adjacent to the building in which the Premises is located. Forty-seven unassigned visitor parking spaces and handicap parking spaces sufficient to comply with municipal codes shall be provided to the building in addition to parking spaces provided to building Tenants.

Section 23. Attorney Fees.

If either party brings an action to enforce or declare rights hereunder, the prevailing party in the action shall be entitled to reasonable attorney fees fixed by the court.

Section 24. Entire Agreement.

This Lease and the C.B.W.D. Rules for the Office Building set forth all the agreements between Landlord and Tenant concerning the Premises, and there are no agreements, either oral or written, other than as set forth in this Lease.

Section 25. Time of Essence.

Time is of the essence in this Lease.

Section 26. Governing Law.

This Lease will be governed by and construed in accordance with California law. In the event of any litigation arising from this Lease, the parties agree that any such dispute shall be submitted to the jurisdiction of the courts of Yuba County, State of California.

In Witness Whereof, the parties have executed this Lease as of the date first above written.

Tenant: _____ Date: _____

Landlord: Scotia Holmes Sanchez Date: 2/10/11
Scotia Holmes Sanchez, Superintendent of Schools
Yuba County Board of Education

APPROVED AS TO FORM

ANGIL P. MORRIS-JONES

COUNTY COUNSEL

BY: Ken Garamba

BUILDING LEASE CONTRACT

For clarity, in this contract:

Landlord: Yuba County Office of Education (Superintendent of Schools or designated representative)

Tenant: Yuba County Health and human Serves Department Building:

- 1) The sidewalks, halls, passages, exits, entrances, elevators, escalators (if appropriate), and stairways of the Buildings shall not be obstructed by any of the tenants or used for any purpose other than for ingress to and egress from their respective and designated premises.
- 2) The halls, passages, exits, entrances, elevators, escalators (if appropriate), and stairways are not for the general public, and Landlord shall in all cases retain the right to control and prevent access to them by all persons whose presence in the judgment of the Landlord would be prejudicial to the safety, character, reputation, and interests of the Building and its tenants. However, nothing here shall be construed to prevent access to persons with whom any tenant normally deals in the ordinary course of business, unless these persons are engaged in illegal activities.
- 3) A sign, placard, picture, name, advertisement, or notice visible from the exterior of any of the tenant's premises shall not be inscribed, painted, affixed, or otherwise displayed by any tenant on any part of the Building without the prior written consent of Landlord. Landlord will adopt and furnish to tenants general guidelines relating to signs inside the Building on the office floors. Each tenant shall conform to these guidelines, but may request approval of Landlord for modifications, which will not be unreasonably withheld. All approved signs or lettering on doors shall be printed, painted, affixed, or inscribed at the expense of the tenant by a person approved by Landlord, which will not be unreasonably withheld. Material visible from outside the Building will not be permitted.
- 4) The premises of each tenant shall not be used for the storage of merchandise held for sale to the general public or used for lodging. No cooking shall be done or permitted by any tenant on the Premises, except that each tenant may establish and operate a lunchroom facility for use by tenant's employees, and each tenant may use and install food and beverage vending machines and Underwriters' Laboratory approved microwave ovens and equipment for brewing coffee, tea, hot chocolate, and similar beverages, provided that adequate provisions are made for venting and control of odors and all facilities and equipment are in accordance with all applicable federal, state, and county statutes, rules, and ordinances.
- 5) No tenant shall employ any person other than the Landlord's predetermined janitorial service for cleaning the Premises, unless otherwise approved by the Landlord. No persons other than those approved by Landlord shall be permitted to enter the Building to clean it. No tenant shall cause any unnecessary labor because of carelessness or indifference in the preservation of good order and cleanliness. Janitorial service will not be furnished on nights when rooms are occupied after 8:00 p.m., unless, by prior arrangement with Landlord, service is extended to a later hour for specifically designated rooms.
- 6) Landlord will furnish each tenant, free of charge, two keys to each door lock in the designated leased premises. Landlord may make a reasonable charge for any additional keys. No tenant shall have any keys made. No tenant shall alter any lock or install a new or additional lock or any bolt on any door of the premises without the prior consent of the Landlord. The tenant shall in each case furnish Landlord with a key for any lock. Each tenant, upon the termination of the tenancy, shall deliver to the Landlord all keys to doors in the Building that have been furnished to the tenant.
- 7) The freight elevator shall be available for use by all tenants in the Building subject to reasonable scheduling as Landlord deems appropriate. The persons employed to move equipment in or out of the Building must be acceptable to the Landlord. Landlord shall have the right to prescribe the weight, size, and position of all equipment, materials, furniture, or other property brought into the Building. Heavy objects shall, if

considered necessary by Landlord, stand on wood strips of a thickness necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to property from any cause and all damage done to the Building by moving or maintaining property shall be repaired at the expense of the tenant.

8) No tenant shall use or keep in the Premises or the Building any kerosene, gasoline, or inflammable or combustible fluid or material other than limited quantities reasonably necessary for the operation or maintenance of office equipment, and may not, without Landlord's prior approval, use any method of heating or air conditioning other than that supplied by Landlord. No tenant shall use or keep any foul, noxious, or hazardous gas or substance in the Premises, or permit the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building because of noise, odors, or vibrations, or interfere with any other tenants or using the building or premises.

9) Landlord shall have the right, exercisable without notice and without liability to the Tenant, to change the name and street address of the Building.

10) Landlord reserves the right to exclude from the Building between the hours of 10:00 p.m. and 7:00 a.m., and at all hours on Saturdays, Sundays, and legal holidays, any person who does not present a proper access card or other identification as a tenant or an employee of a tenant, or who does not otherwise present proper authorization by a tenant for access to the premises. Each tenant shall be responsible for all persons for whom it authorizes access and shall be liable to Landlord for all acts of these persons. Landlord shall in no case be liable for damages for any error with regard to the admission to, or exclusion from, the Building of any person. In the case of invasion, mob, riot, public excitement, or other circumstances rendering an action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building during the continuance of the circumstance by any action Landlord deems appropriate.

11) A directory of the Building will be provided to display the name and location of tenants, their subtenants, and a reasonable number of the principal officers and employees of tenants, and Landlord reserves the right to exclude any other names. Any additional name that a tenant desires to have added to the directory shall be subject to Landlord's approval and may be subject to an additional charge.

12) No curtains, draperies, blinds, shutters, shades, screens, or other coverings, hangings, or decorations shall be attached to, hung, or placed in, or used in connection with any exterior window in the Building without the prior consent of the Landlord. If consented to by Landlord, these items shall be installed on the office-side of the standard window covering and shall in no way be visible from the exterior of the building.

13) Messenger services and suppliers of bottled water, food, beverages, and other products or services shall be subject to reasonable regulations as may be adopted by the Landlord. Landlord may establish a central receiving station in the Building for delivery and pick up by all messenger services, and may limit delivery and pick-up at tenant premises to building personnel.

14) Each tenant shall see that the doors of the premises are closed and locked and that all water faucets or apparatus, cooking appliances and facilities, and office equipment, excluding office equipment required to be operative at all times, are shut off before the tenant or employees leave the premises at night, so as to prevent waste or damage. For any default or carelessness in this regard, the tenant shall be responsible for any damage sustained by other tenants or occupants of the Building or Landlord. On multiple-tenancy floors, tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

15) The toilets, urinals, washbowls, and other restroom facilities shall not be used for any purpose other than that for which they were constructed. No foreign substance of any kind shall be thrown in them for disposal any damage or leakage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, have caused it.

16) Except with the prior consent of the Landlord, no tenant shall sell, or permit the sale/retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in the Premises, nor shall any tenant carryon, permit, or allow any employee or other person to carryon the

business of stenography, typewriting, or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises of any tenant be used for manufacturing of any kind, or any business or activity other than that specifically provided for in the tenant's lease.

17) No tenant shall install any antenna, loudspeaker, or other device in the exterior walls of the Building unless with the prior written consent of the Landlord.

18) No motorcycles or motor scooters shall be parked or stored anywhere in the Building other than the designated parking area of the Premises and no bicycles may be parked or stored anywhere in the Premises, other than in facilities provided in the Common Area of the Building. Parking facilities shall be under the supervision and control of the Premises Facility Manager as assigned by the Landlord, subject to his reasonable supervision and control.

19) Hand trucks or other material handling equipment, except those equipped with rubber tires and side guards, may not be used in any portion of the Building unless approved by Landlord.

20) Each tenant shall store refuse within that tenant's premises. No material of a nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of refuse in the city of Marysville without being in violation of any law or ordinance governing such disposal, shall be placed in the refuse boxes or receptacles. All refuse disposals shall be made only through entryways and elevators provided for these purposes and at the times Landlord shall designate. The Premises shall not be used for storage without the prior written approval of the Premises Facility Manager as assigned by the Landlord, said approval shall not be unreasonably withheld.

21) Canvassing, peddling, soliciting, and handbills or any other written materials is prohibited and each tenant shall cooperate to prevent any occurrence.

22) The requirements of the tenants will be attended to only on application by telephone or in person at the office of the Landlord. Employees of the Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

23) Landlord may waive any one, or more, of these Rules and Regulations for the benefit of any particular tenant, so long as Tenant's use of the Premises is not adversely affected by the waiver, and no waiver by Landlord shall be construed as a waiver of the Rules in favor of any other tenant, or prevent the Landlord from later enforcing any of the Rules against any of the tenants of the Building.

24) These rules are in addition to, and shall not be construed to modify or amend, in whole or in part, the terms, covenants, agreements, and conditions of any lease of Premises in the Building.

25) To the extent permitted by law, Tenant shall prohibit the smoking of cigarettes, cigars, pipes and any other tobacco products within the Buildings and on the Premises.

The undersigned have read, understand, agree to, and have received a copy of
The Rules and Regulations.

Building Authorized Signatory: _____

Tenant Authorized Signatory: _____

Dated: _____