

CITY OF YUBA CITY  
STAFF REPORT

**Date:** January 19, 2021  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works Department  
**Presentation by:** Diana Langley, Interim City Manager

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**Summary**

**Subject:** 5<sup>th</sup> Street Bridge Replacement Project (17-01) – Mitigation Bank Agreement

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an Agreement for Sale of Mitigation Credits with the Bullock Bend Mitigation Bank in the amount of \$312,800, subject to approval as to legal form by the City Attorney, for the purpose of complying with mitigation requirements associated with the 5<sup>th</sup> Street Bridge Replacement Project, with a finding that it is in the best interest of the City.

**Fiscal Impact:** \$312,800 – Account No. 941084-65501 (5<sup>th</sup> Street Bridge Replacement)

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**Purpose:**

Replace the existing 5<sup>th</sup> Street Bridge by constructing a new bridge over the Feather River and Second Street and related improvements.

**Background:**

The 5<sup>th</sup> Street Bridge Replacement Project (Capital Improvement Project #17-01) was subject to extensive permitting and environmental regulations, including California Department of Fish & Wildlife (CDFW) Incidental Take Permit (ITP) No. 2081-2016-022-02 and National Oceanic & Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) Biological Opinion (BO) No. 2012-9267.

The CDFW ITP requires the Project to purchase 1.39 acres of Spring-run Chinook Salmon mitigation bank credits and restore 0.45 acres of riparian habitat.

The NMFS BO requires the Project to prepare a riparian restoration plan to be reviewed and approved by CDFW, the Central Valley Flood Protection Board, NMFS, and any other applicable agencies. This requirement was met prior to the start of bridge construction.

**Analysis:**

The City's design and environmental consultant, Dokken Engineering, has determined that the only CDFW-approved mitigation bank for salmonids in this region is the Bullock Bend Mitigation Bank operated by Westervelt Ecological Services, LLC. NMFS also approves of this mitigation bank for salmonids.

For restoration of riparian habitat, both CDFW and NMFS have indicated that the Project can either purchase riparian mitigation credits (0.45 acres) or perform onsite restoration as originally planned. Since onsite restoration requires 5 years of maintenance and monitoring, staff recommends purchasing mitigation credits.

**Fiscal Impact:**

The current rate for mitigation credits at the Bullock Bend Mitigation Bank is \$170,000 per acre. Staff is recommending purchasing mitigation credits as follows:

<u>Impact</u>	<u>Acreage</u>	<u>Rate</u>	<u>Total</u>
Spring-run Chinook Salmon	1.39	\$170,000/acre	\$236,300
<u>Riparian vegetation</u>	<u>0.45</u>	<u>\$170,000/acre</u>	<u>\$76,500</u>
<b><u>Totals:</u></b>	<b><u>1.84</u></b>		<b><u>\$312,800</u></b>

The 5<sup>th</sup> Street Bridge Replacement Project is substantially complete with significant savings in both construction contingency and construction management costs. Staff recommends funding the mitigation bank payment with a portion of these savings, in which case no budget transfers or supplemental appropriations will be necessary. Funding consists of federal Highway Bridge Program and Regional Surface Transportation Program funds. No local funds are required.

**Alternatives:**

Direct staff to install revegetation on-site with the understanding that it will have to be maintained and monitored for 5 years.

**Recommendation:**

Adopt a Resolution authorizing the City Manager to execute an Agreement for Sale of Mitigation Credits with the Bullock Bend Mitigation Bank in the amount of \$312,800, subject to approval as to legal form by the City Attorney, for the purpose of complying with California Department of Fish & Wildlife and National Oceanic & Atmospheric Administration National Marine Fisheries Service requirements related to vegetation and wildlife impacts, with a finding that it is in the best interest of the City.

**Attachments:**

1. Resolution – Authorizing the City Manager to execute an Agreement for Sale of Mitigation Credits
2. Agreement for Sale of Mitigation Credits

**Prepared by:**

*/s/ Kevin Bradford*  
Kevin Bradford  
Deputy Public Works Director – Engineering

**Submitted by:**

*/s/ Diana Langley*  
Diana Langley  
Interim City Manager

**Reviewed By:**

Finance Director  
City Attorney

SM  
SLC by email

# ATTACHMENT 1

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR SALE OF  
MITIGATION CREDITS WITH THE BULLOCK BEND MITIGATION BANK FOR THE  
PURPOSE OF COMPLYING WITH MITIGATION REQUIREMENTS ASSOCIATED WITH THE  
5<sup>TH</sup> STREET BRIDGE REPLACEMENT PROJECT (17-01)**

WHEREAS, the 5<sup>th</sup> Street Bridge Replacement Project (Capital Improvement Project #17-01) was subject to extensive permitting and environmental regulations, including California Department of Fish & Wildlife (CDFW) Incidental Take Permit (ITP) No. 2081-2016-022-02 and National Oceanic & Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) Biological Opinion (BO) No. 2012-9267; and

WHEREAS, said CDFW ITP requires the 5<sup>th</sup> Street Bridge Replacement Project to purchase 1.39 acres of Spring-run Chinook Salmon mitigation bank credits and restore 0.45 acres of riparian habitat; and

WHEREAS, said NMFS BO requires the 5<sup>th</sup> Street Bridge Replacement Project to prepare a riparian restoration plan to be reviewed and approved by CDFW, the Central Valley Flood Protection Board, NMFS, and any other applicable agencies; and

WHEREAS, the City's design and environmental consultant, Dokken Engineering, has determined that the only CDFW-approved mitigation bank for salmonids in this region is the Bullock Bend Mitigation Bank operated by Westervelt Ecological Services, LLC; and

WHEREAS, for restoration of riparian habitat, both CDFW and NMFS have indicated that the 5<sup>th</sup> Street Bridge Replacement Project can either purchase riparian mitigation credits (0.45 acres) or perform onsite restoration as originally planned; and

WHEREAS, onsite restoration requires 5 years of maintenance and monitoring, therefore staff recommends purchasing mitigation credits; and

WHEREAS, the current rate for mitigation credits at the Bullock Bend Mitigation Bank is \$170,000 per acre.

NOW, THEREFORE, be it resolved by the City Council of the City of Yuba City as follows:

1. The City Council finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. The City Council hereby authorizes the City Manager to execute an Agreement for Sale of Mitigation Credits with the Bullock Bend Mitigation Bank in the amount of \$312,800, subject to approval as to legal form by the City Attorney, for the purpose of complying with California Department of Fish & Wildlife and National Oceanic & Atmospheric Administration National Marine Fisheries Service requirements related to vegetation and wildlife impacts, with a finding that it is in the best interest of the City.
3. This Resolution shall become effective immediately.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 19<sup>th</sup> day of January, 2021.

AYES:

NOES:

ABSENT:

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Marc Boomgaarden, Mayor

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Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY:

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Shannon Chaffin, City Attorney  
Aleshire & Wynder, LLP

# ATTACHMENT 2

## EXHIBIT F-2 CREDIT PURCHASE AGREEMENT AND PAYMENT RECEIPT FORMS

### AGREEMENT FOR SALE OF MITIGATION CREDITS

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Bullock Bend Mitigation Bank (“Bank”) and Yuba City (“Project Applicant”), jointly referred to as the “Parties,” as follows:

#### RECITALS

- A. The Bank Owner has developed the Bullock Bend Mitigation Bank located in Yolo County, California; and
- B. The Bank was approved by National Oceanic & Atmospheric Administration Fisheries (“NOAA”), U.S. Army Corps of Engineers (“Corps”), U.S. Environmental Protection Agency (“EPA”), U.S. Fish and Wildlife Service (“USFWS”), and California Department of Fish and Wildlife (“CDFW”) (jointly referred to as “Resource Agencies”) on June 30<sup>th</sup>, 2016 and is currently in good standing with these agencies; and
- C. The Bank has received approval from the Resource Agencies to offer ‘salmonid’ Credits for sale as compensation for the loss of either Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead (*Oncorhynchus mykiss*) plus their habitat, Credits for Swainson’s hawk (*Buteo swainsoni*) plus its habitat, Credits for riparian habitat, and Credits for “Other Waters of the U.S.” as compensation for impacts to wetlands regulated by the federal and State Endangered Species Acts, the federal Fish and Wildlife Coordination Act, and the federal Clean Water Act, through the *Bullock Bend Mitigation Bank Enabling Instrument* (“Bank Agreement”); and
- D. Project Applicant is seeking to implement the project described on Exhibit “A” attached hereto (“Project”), which would unavoidably and adversely impact Feather River Spring-run Chinook Salmon, and seeks to compensate for the loss of Salmonid habitat by purchasing Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW Credits from the Bank; and
- E. Project Applicant has been authorized by the NOAA, File No. 2012-9267, and CDFW, File No. 2081-2016-022-02 to purchase from the Bank 1.84 Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW credits upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and
- F. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant 1.84 Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW credits;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank 1.84 Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW credits for the purchase price of \$312,800.00. The Bank will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit “B”. The purchase price for said

credits shall be paid by cashier’s check or, at the option of Bank, wire transfer of funds according to written instructions by Bank to Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Applicant. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant must exercise his/her/its right to purchase the Credits within 30 days of the date of this Agreement. After the 30 day period this Agreement will be considered null and void.

6. Upon purchase of the credits specified in paragraph D above, the Bank shall submit to the parties listed in the Notices section of the Bank Agreement / Bank Enabling Instrument, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) NOAA File Number (if applicable); vi) Corps File Number (if applicable); vii) USFWS File Number (if applicable); viii) CDFW File Number (if applicable); ix) Total Number of Credits Authorized to Sell; x) Total Number of Credits Sold to Date (inclusive); and xi) Balance of all Credits Available. The inventory / ledger should include all sales data from bank opening/establishment to the present.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK:

Bullock Bend Mitigation Bank

By: \_\_\_\_\_ Date: \_\_\_\_\_

PROJECT APPLICANT:

Yuba City

By: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED**

NOAA FISHERIES:

This Agreement fulfills a portion of the Project Applicant's proposed Feather River Spring-run Chinook Salmon habitat conservation measures, as described in NOAA's Biological Opinion, NOAA File Number 2012-9267 dated May 19, 2014. NOAA verifies that the Bullock Bend Mitigation Bank is in good standing as of the date of this Agreement.

By: \_\_\_\_\_

Date: \_\_\_\_\_

NOAA Fisheries, West Coast Region

\_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

U.S. Fish and Wildlife Service  
Sacramento Fish and Wildlife Office

Exhibit "A"

**DESCRIPTION OF PROJECT  
TO BE  
MITIGATED**

NOAA File #:2012-9267  
CDFW Permit #: 2081-2016-022-02

5<sup>th</sup> Street Bridge Replacement Project, Yuba County, California

The City of Yuba City in cooperation with the City of Marysville will replace the 5th Street Bridge (Bridge Number 1 SC-0012) over the Feather River (River Mile 28) and improve roadways to the bridge.

The existing 5th Street Bridge is rated "functionally obsolete" by Caltrans under Federal Highway Administration prescribed inspection criteria. Full replacement of the bridge is needed because the current structure does not meet structural design standards. Additional capacity is needed because traffic forecasts show intersection and roadway segments operating at failing levels of service by 2035.

The Project would replace the existing bridge over the Feather River with a new four-lane bridge, in order to provide an improved transportation network and improve traffic operations between Yuba City and Marysville.

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Exhibit "B"

**BILL OF SALE**

NOAA File #: 2012-9267  
CDFW Permit #: 2081-2016-022-02

In consideration of \$236,300.00, receipt of which is hereby acknowledged, *Bullock Bend Mitigation Bank* does hereby bargain, sell and transfer to Yuba City (Project Applicant), 1.84 Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW credits in the *Bullock Bend Mitigation Bank* in Yolo County, California, developed, and approved by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, NOAA Fisheries, and California Department of Fish and Wildlife.

Westervelt Ecological Services, LLC ("Westervelt") represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Westervelt covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: \_\_\_\_\_

Bullock Bend Mitigation Bank

By: \_\_\_\_\_

**Bullock Bend Mitigation Bank  
MITIGATION CREDITS: PAYMENT RECEIPT**

**PARTICIPANT INFORMATION**

Name: Yuba City  
Address: 1201 Civic Center Blvd., Yuba City, CA 95993  
Telephone: (530)822-4786  
Contact: Kevin Bradford

**PROJECT INFORMATION**

Project Description: 5<sup>th</sup> Street Bridge Replacement  
NOAA File Number: 2012-9267  
DFW File Number: 2081-2016-022-02  
Species/Habitat Affected: Feather River Spring-run Chinook Salmon  
Credits to be Purchased: 1.84 Salmonid/Floodplain Riparian/SWHA Nesting Buffer (Enhanced) NMFS, CDFW  
Payment Amount: \$312,800.00  
Project Location: 39.138685° N latitude, and -121.606516° E longitude  
County/Address: Yuba City, Yuba County

**PAYMENT INFORMATION**

Payee: Westervelt Ecological Services  
Payer: Yuba City  
Amount: Three Hundred Twelve Thousand Eight Hundred Dollars and 00/100 cents  
Method of payment: Cash \_\_\_\_\_ Check No. \_\_\_\_\_ Money Order No. \_\_\_\_\_  
Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)  
Name: \_\_\_\_\_ Title: \_\_\_\_\_