



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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April 11, 2023

Gavin R. Poore, Assistant Water Resources Engineer

Solano County Water Agency

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Subject: Lower Putah Creek Restoration Project, Nishikawa Reach, Mitigated Negative Declaration, SCH No. 2015022022, Solano and Yolo County

Dear Mr. Poore:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Supplemental Mitigated Negative Declaration (MND) from the Solano County Water Agency (SCWA) for the Lower Putah Creek Restoration Project, Nishikawa Reach (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> The MND is tiered from a Programmatic Environmental Impact Report (PEIR); CDFW previously submitted comments in response to the Notice of Preparation of the draft PEIR on March 2, 2015.

CDFW is submitting comments on the MND to inform SCWA, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. We appreciate SCWA’s efforts to restore Putah Creek and improve associated fish and wildlife habitat.

### CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state’s fish and wildlife trust resources.

### PROJECT DESCRIPTION SUMMARY

**Description:** The Project is an element of the Lower Putah Creek Restoration Project, Upper Reach Project (Program), the goal of which is to restore and enhance

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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geomorphic and ecological function on approximately 24.2 miles of Putah Creek between the Putah Diversion Dam and the western boundary of the Yolo Bypass Wildlife Area.

The Project's purpose is to restore a section of active channel that is currently in an entrenched, unnaturally straight, and over-widened condition. This Project aims to create a narrow design channel in a more central, meandering form to create 0.5-mile of nearly continuous salmon spawning habitat across a gravel-rich floodplain. The Project design includes grading 11 acres to floodplain elevation, and construction of 15 riffles and several rock vanes.

To create a low flow channel bordered by functional floodplain surfaces, 14,000 cubic yards of alluvial material from within the stream corridor would be excavated and placed within the over-wide channel. This activity would completely fill the existing channel to the proposed floodplain elevation of 42 feet. Work areas within the active channel would be isolated from flowing water and dewatered as needed. The total volume of cut for channel and floodplain reconfiguring would be 37,500 cubic yards and the total fill would be 12,700 cubic yards.

A new narrow channel with an average width of approximately 18 feet would be located within the recontoured floodplain. The new channel would be approximately 1.2 acres in surface dimensions (or approximately 50 percent of the original surface area). The stream length would be 2,720 feet (approximately 8 percent longer than the current stream channel). The new meandering low flow channel alignment would be excavated, and the excavated material would be used to fill the former, straightened channel alignment. The total volume of cut for the design channel would be 8,000 cubic yards.

A maximum of 37,500 cubic yards of earthwork would be repositioned within the design channel to create pools and substructure for riffle gravel. Approximately 2,000 cubic yards of clean gravel suitable as salmon spawning substrate would be placed within the channel to create riffles. Wood structures will be installed in conjunction with gravel placement activities to improve channel sinuosity and bar formation. Wood structures placed at channel margins would also provide immediate critical cover and foraging habitat for fish.

Channel bank stabilization methods that may be employed as part of the Project include installation of rock revetment, log revetment, root wads, and/or large woody debris. Priority would be given to bank stabilization methods that can provide multiple benefits such as cover, velocity refuge, shade, and foraging opportunities.

The recontoured floodplain and the design channel would be cleared of remaining vegetation and debris, and revegetated.

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**Location:** A 0.47-mile reach of Putah Creek west of the Pederick Road Bridge identified as Nishikawa Reach in the PEIR (page 2-2); approximately 3.75 miles west of downtown Davis and 5.7 miles north of Dixon; center point approximately Latitude 38.52675 °N, Longitude -121.80779 °W.

## REGULATORY REQUIREMENTS

### California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, including candidate species, either during construction or over the life of the Project. **As described in the MND, the Project has the potential to impact giant garter snake (*Thamnophis gigas*, GGS), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

### Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank; or deposit or dispose of material where it may pass into a river, lake, or stream including associated riparian or wetland habitat. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **As described in the MND, the Project would impact Putah Creek and the associated floodplain; therefore, an LSA Notification pursuant to Fish and Game Code section 1602 would be required, as further described below.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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## Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds of prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SCWA in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments are also included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

### **I. MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

**COMMENT 1:** Giant Garter Snake, MND page 3.4-15; PEIR pages E-10, ES-18, 3.4-11, 3.4-20, Mitigation Measure Shortcoming

**Issue:** MND Mitigation Measure (MM) 3.4-3 would not avoid take of GGS under CESA or mitigate potentially significant impacts to the species to less-than-significant. For example, MM 3.4-3 indicates that a biologist would relocate GGS if found during construction activities, which would constitute take. The MND and PEIR identify agricultural wetlands and other waterways such as irrigation and drainage canals, sloughs, ponds, small lakes, low gradient streams, and adjacent uplands as suitable GGS habitat which may occur within the Project area (MND page 3.4-15; PEIR page E-10) and indicate that GGS has been located approximately 2.7 miles east of the Project area (PEIR pages 3.4-11 and 3.4-20). The California Natural Diversity Database (CNDDDB) documents an occurrence of GGS approximately 2.7 miles east of the Project area (CNDDDB 2023). Based on a review of aerial imagery, side channels and uplands adjacent to Putah Creek occur in the Project area and; therefore, GGS may occur in the Project area and be subject to impacts and 'take' under CESA.

**Specific impacts, why they may occur and be potentially significant:** GGS is a highly aquatic species endemic to California. GGS typically occur in slow-moving, warm aquatic environments like marshes, sloughs, and ponds. They have adapted to using

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irrigation canals and rice fields as wetlands have been reduced in the Central Valley (Halstead et al. 2010). Small mammal burrows in upland habitat are generally used for cover and retreat during the active season and for refuge from flood waters during the dormant season (Halstead et al. 2015). Causes of decline are largely related to habitat loss and fragmentation of wetland habitat, and up to 98 percent of historic GGS habitat in the Central Valley has been lost to development, including agricultural lands (Ellis 1987).

The Project has the potential to impact GGS through a biologist relocating the species, mowing, earthmoving, and removing burrow refugia and vegetation, possibly injuring or crushing GGS. GGS is considered a threatened species under CEQA Guidelines section 15380. Injuring or killing a GGS would substantially reduce the number of GGS, a potentially significant impact pursuant to CEQA Guidelines section 15065, subdivision (a) Mandatory Findings of Significance.

**Recommended Mitigation Measure:** To reduce impacts to GGS to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure in the MND.

GGs Protection. The Project shall consult with CDFW to develop Project-specific avoidance measures for GGS. If development and implementation of avoidance measures is not feasible and take of GGS cannot be avoided by the Project, the Project shall obtain an ITP from CDFW pursuant to CESA prior to Project construction and comply with the ITP.

## II. Stream Alteration

**COMMENT 2:** Permits for Stream and Wetland Impacts, MND page 2-2

**Issue:** The MND states that the Project would impact Putah Creek and therefore require an LSA Notification pursuant to Fish and Game Code section 1600 et seq. (Fish and Game Code section 1600 et seq. (MND page 2-2)). However, the MND does not include a mitigation measure requiring an LSA Notification and compliance with the LSA Agreement.

**Recommended Mitigation Measure:** To comply with Fish and Game Code section 1600 et seq. and the Clean Water Act, CDFW recommends including the mitigation measure below.

LSA Notification and other Resource Agency Permits. The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected

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habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (USACE) pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.

### III. Nesting Birds

**COMMENT 3:** Nesting Bird Protection, MND page 5-27, Mitigation Measure Shortcoming

**Issue:** The MND includes Mitigation Measure 3.4-6 for nesting bird avoidance (page 5-27), including a nesting bird survey conducted 15 days prior to the start of construction activities. However, nesting birds may occupy the Project area within 15 days of construction activities or if there is a lapse in construction activities.

**Recommended Mitigation Measure:** CDFW recommends modifying Mitigation Measure 3.4-6 so the nesting bird survey is conducted within 7 days prior to the start of construction activities and another survey is conducted if there is a lapse of 7 or more days in construction activities, to increase the likelihood of detecting nesting birds that could occupy the Project area.

### IV. Editorial Comments

**COMMENT 4:** Nesting Bird Season, MND page 5-27

**Issue:** The MND Project description identifies August 1 as the end of nesting season (page 3-16) while mitigation measure 3.4-6, nesting bird avoidance, inconsistently identifies August 31 as the end of nesting season (page 5-27). The end of the nesting season should be revised to August 31 in the Project description.

**Please be advised that an LSA Agreement, if issued, would likely include the above recommended mitigation measures, as applicable, in addition to other avoidance and minimization measures to protect fish and wildlife.**

### ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported

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to CNDDDB can be found at the following link:  
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist SCWA in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or [Alex.Single@wildlife.ca.gov](mailto:Alex.Single@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov) or (707) 210-4415.

Sincerely,

DocuSigned by:  
  
Erin Chappell  
B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Tanya Sheya, CDFW North Central Region – [Tanya.Sheya@wildlife.ca.gov](mailto:Tanya.Sheya@wildlife.ca.gov)  
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Office of Planning and Research, State Clearinghouse

## REFERENCES

CDFW. 2023. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS>.

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Ellis, S. R. 1987. Five-year Status Report. Giant Garter Snake (*Thamnophis couchii gigas*). California Department of Fish and Game. Inland Fisheries Division, Endangered Species Project.

Halstead, B.J., G. D. Wylie, and M. L. Casazza. 2010. Habitat Suitability and Conservation of Giant Gartersnakes (*Thamnophis gigas*) in the Sacramento Valley of California. Copeia 4: 591-599. Website <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=72655>.

Halstead, B.J. S.M. Skalos, G.D. Wylie, and M.L. Casazza. 2015. Terrestrial Ecology of semi-aquatic giant gartersnakes (*Thamnophis gigas*). Herpetological Conservation and Biology 10(2): 633-644.

Hansen, G.E. and J.M. Brode, 1980. Status of the Giant Garter Snake *Thamnophis couchii gigas* (Fitch). California Department of Fish and Game Inland Fisheries Endangered Species Program. Special Publication 80-5.

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## ATTACHMENT 1

### Draft Mitigation and Monitoring Reporting Plan

Biological Resources			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1	GGs Protection. The Project shall consult with CDFW to develop Project-specific avoidance measures for GGS. If development and implementation of avoidance measures is not feasible and take of GGS cannot be avoided by the Project, the Project shall obtain an ITP from CDFW pursuant to CESA prior to Project construction and comply with the ITP.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
BIO-2	LSA Notification and other Resource Agency Permits. The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <a href="https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS">https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS</a> ) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
3.4-6	<i>Modify mitigation measure 3.4-6 to incorporate the following language:</i> Nesting bird surveys shall be conducted within 7 days prior to the start of construction activities and another survey shall be conducted if there is a lapse of 7 or more days in construction activities.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant