



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Deputy Director's Office
 Ecosystem Conservation Division
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 12, 2021

Governor's Office of Planning & Research

Jeanine Townsend
 Clerk to the Board
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95812

August 12 2021

STATE CLEARINGHOUSE

Re: General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide; Draft Program Environmental Impact Report (SCH No. 2019100230)

Dear Ms. Townsend:

The California Department of Fish and Wildlife (CDFW) is pleased to support State Water Resources Control Board (Water Board) consideration of the proposed Statewide General Order for Restoration Projects (Proposed Order). The opportunity to comment marks an important milestone in the agencies' shared goal to increase the pace and scale of environmental restoration in California by streamlining the state's process to approve and facilitate these projects. CDFW recognizes the importance of the Water Board effort in the broader context of Governor Newsom's leadership as detailed in Executive Order N-82-20, and the related *Cutting the Green Tape* initiative by Secretary Blumenfeld and Secretary Crowfoot. The Water Board's effort, including its ongoing coordination with CDFW, is essential to effectively address the challenges of creating climate change resiliency, maintaining biodiversity, connecting wildlife corridors, protecting water supplies, and restoring ecosystem benefits and services. We commend and support the Water Board's effort, and CDFW will continue to do so with our shared interest.

CDFW offers its support and the comments that follow consistent with its mission as California's trustee agency for fish and wildlife. That mission directs CDFW to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public (Fish and G. Code, § 712.1, subd. (a)). CDFW carries out that mission with an ecosystem-based focus, informed by credible science and with a constant eye to interagency cooperation and coordination, as the current effort highlights (*Id.*, §§ 703.3, 703.5). We do so in turn, holding California's fish and wildlife in trust on behalf of the all the people in the State (*Id.*, §§ 711.7, subd. (a), 1802).

CDFW also supports the Water Board's lead agency effort under the California Environmental Quality Act (CEQA). We appreciate the Water Board Program Environmental Impact Report (PEIR) for the Proposed Order identifies CDFW as a both a responsible and trustee agency under CEQA (See Pub. Resources Code, §§ 21069, 21070). The PEIR includes a robust analysis of potential effects on fish and wildlife that may result if the Proposed Order is approved, along with a comprehensive mitigation framework that will avoid or substantially lessen those effects to the extent feasible, as CEQA requires. The PEIR provides substantial information regarding potential effects to fish and wildlife to facilitate informed public decision making for both the Water Board and for other agencies that may propose to carry out or approve individual restoration projects in the future, including CDFW.

CDFW offers two comments against this backdrop. First, Section 2.8 (Programmatic Sideboards, General Protection Measures, and Other Requirements), in Chapter 2 of the PEIR, describes pre-application consultation with the applicants under the Proposed Order. Interagency consultation with an applicant that also includes CDFW would improve the process. Interagency consultation and joint review of applications with CDFW would foster open dialogue early in the process.

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It would also help to identify permitting needs early on, improve process timelines across multiple agencies, and reduce potential inconsistencies between multiple authorizations that may be required to implement individual projects.

Second, CDFW expects many of the restoration projects authorized under the Proposed Order, if adopted, will require separate approval under the Fish and Game Code, including the California Endangered Species Act (CESA) or CDFW's Lake and Streambed Alteration Program, as two examples. Most projects should qualify under the Fish and Game Code as voluntary habitat restoration projects, while others may not (See, e.g., Fish & G. Code, § 2081.2, subd. (a)(6)). We highlight the distinction not because it is relevant to Water Board and Regional Water Quality Control Board determinations regarding whether an individual project qualifies under the Proposed Order. We highlight the distinction because it can be relevant to the permitting options available for individual projects under the Fish and Game Code, including permitting tools CDFW has or is developing consistent with the Secretaries' *Cutting the Green Tape* initiative (See, e.g., and compare Fish & G. Code, § 2081, subds. (a)-(b)). The distinction is important, hopefully in rare instances, because some projects authorized under the Proposed Order, if adopted, may not be eligible for restoration permitting pathways under the Fish and Game Code, albeit CDFW expects other permitting tools would be available.

Finally, CDFW encourages the Water Board to upload species-specific information developed during preparation of the Proposed Order and PEIR to the California Natural Diversity Database (CNDDDB) (See generally Pub. Resources Code, 21003, subd. (e)). Information regarding the CNDDDB is available on CDFW's web page (<https://wildlife.ca.gov/Data/CNDDDB>). Likewise, we respectfully remind the lead agency to pay the environmental filing fee for an environmental impact report as required by Fish and Game Code section 711.4. These fees fund CDFW's work under CEQA.

* * *

In closing, CDFW appreciates the opportunity to provide comments to the Water Board regarding the Proposed Order and PEIR. Congratulations again on this important milestone. We look forward to further collaboration.

Questions regarding this letter or further coordination should be directed to Karen Carpio, Senior Environmental Scientist at karen.carpio@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Chad Dibble, Deputy Director
Ecosystem Conservation Division

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: California Department of Fish and Wildlife

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