



Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 1, 2020

Tonia M. Tabucchi Herrera
Senior Engineer
Nevada Irrigation District
1036 West Main Street
Grass Valley, CA 95945
herrera@nidwater.com

Governor's Office of Planning & Research

Oct 02 2020

STATE CLEARINGHOUSE

Subject: Hemphill Diversion Structure Project
Notice of Preparation
SCH# 2020090032

Dear Ms. Tabucchi Herrera:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from Nevada Irrigation District (NID) for the Hemphill Diversion Structure Project (Project) in Placer County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants, and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental

¹ 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.

Nevada Irrigation District

October 1, 2020

Page 2 of 16

review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Hemphill Diversion Structure is located on Auburn Ravine northeast of the City of Lincoln, California. The structure diverts water from Auburn Ravine into the Hemphill Canal located south of the ravine for delivery to NID raw water customers. The structure is located at latitude 38.896731° and longitude -121.251885°.

NID proposes to remove or replace the existing diversion structure to allow for anadromous fish passage upstream within Auburn Ravine. The proposed Project includes four potential alternatives that will be analyzed in the EIR including: 1) Riverbank Infiltration Gallery Alternative, 2) Fish Passage Alternative, 3) Pipeline Alternative, and 4) Abandonment of Hemphill Canal Alternative. These alternatives vary as far as construction attributes and areas of potential disturbance. It is intended by NID that all these alternatives are designed to allow for fish passage beyond the Hemphill Diversion Structure.

The Project description in the EIR should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

COMMENTS AND RECOMMENDATIONS

During 2017 NID was awarded a Proposition 1 Watershed Restoration Grant for Phase 2 of the Hemphill Diversion Assessment. CDFW staff participated in a technical advisory committee (TAC) alternative development process associated with this grant and submitted comments to NID for consideration. Some of the comments below reflect

Nevada Irrigation District

October 1, 2020

Page 3 of 16

those interactions with NID staff during the TAC meetings for the purpose of compiling a complete alternatives analysis in the EIR.

CDFW offers the comments and recommendations presented below to assist NID in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming EIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the EIR specifically include:

1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey (USGS) 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Nevada Irrigation District

October 1, 2020

Page 4 of 16

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it a substitute for site-specific species surveys. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship (CWHR) System, California Native Plant Society (CNPS) Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

3. A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. The EIR should include the results of focused species-specific surveys, completed by a qualified biologist, and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends the lead agency rely on survey and monitoring protocols and guidelines available at: www.wildlife.ca.gov/Conservation/Survey-Protocols. Alternative survey protocols may be warranted; justification should be provided to substantiate why an alternative protocol is necessary. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought or deluge.
4. A thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see www.wildlife.ca.gov/Conservation/Plants).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Nevada Irrigation District
October 1, 2020
Page 5 of 16

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed and it must permit the significant effects of the Project to be considered in the full environmental context.
2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The EIR should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

Nevada Irrigation District
October 1, 2020
Page 6 of 16

Project Alternatives

Alternative 1 – Riverbank Infiltration Gallery Alternative

Alternative 1 proposes a subsurface streambed/bank infiltration gallery and removal of the existing diversion structure. CDFW recommends that the EIR utilize the results of the October 2018 Geotechnical Engineering and Hydraulics Report for the Hemphill Diversion Structure and May 2020 Auburn Ravine-Hemphill Diversion Assessment Sediment Transport Study to determine the amount of sedimentation or scour that could be expected to affect the infiltration gallery site. Although the proposed design of the infiltration gallery depicted in the NOP contemplates a back-flushing system, the EIR should also analyze whether the amount of sedimentation could be effectively and consistently cleared using these design components. The EIR should also discuss whether materials used to construct the infiltration gallery have a likelihood of scour during high flow events and could cause additional erosion or downcutting of the stream at this location.

The CDFW fish screen criteria that are included in Appendix S of the California Salmonid Stream Restoration Manual (document can be found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>) do not cover infiltration galleries or experimental technology. For this reason, CDFW recommends that the following National Oceanic and Atmospheric Administration Fisheries' (NOAA Fisheries) Salmonid Passage Design (document can be found at <https://www.fisheries.noaa.gov/resource/document/anadromous-salmonid-passage-facility-design>) criteria for siting of infiltration galleries be considered when analyzing the current project proposal in Alternative 1.

CDFW recommends that the EIR include a discussion of the monitoring and maintenance activities that would be implemented post-construction to determine consistency with NOAA's infiltration gallery siting criteria, as well as the long-term monitoring and maintenance necessary to maintain pumping and fish protection functionality.

Alternative 2 – Fish Passage Alternative

Alternative 2 proposes the installation of a fish ladder at the existing dam/diversion structure site. The NOP states that this alternative could require modification or replacement of the existing diversion structure to construct a viable fish ladder as proposed in this alternative. CDFW recommends that the EIR include analysis of whether existing bypass flows would be sufficient to provide for safe and timely adult upstream fish passage in both sections of the two-stage ladder throughout the salmonid migration period. CDFW recommends that the EIR also analyze inclusion of a fish

Nevada Irrigation District
October 1, 2020
Page 7 of 16

screen at the diversion as a part of this alternative to minimize the entrainment risk to juvenile salmonids and resident fish species.

Alternative 3 – Pipeline Alternative

Alternative 3 proposes to remove the existing diversion structure, decommission Hemphill Canal, and construct a 24-inch pipeline from NID's Placer Yard on Gold Hill Road to the Hemphill Canal. The canal is currently master planned for 18 cubic feet per second (cfs) with six existing service boxes on the canal that have a peak summer delivery of 12 cfs. Salmonid surveys and monitoring conducted in recent years have indicated that western Placer County streams, including Auburn Ravine, support in-river life stages (spawning and rearing) of naturally reproducing salmonids that contribute toward species recovery in the Central Valley (Maslin et. al, 1998; Titus 2003, 2013; and Healey 2014). This alternative could reduce the flows in Auburn Ravine by up to 12 cfs downstream from the Gold Hill diversion during the irrigation season. CDFW recommends that the EIR analyze the impacts to juvenile salmonids and resident fish populations due to the reduction in flows within Auburn Ravine (i.e. warmer water temperatures and less available habitat) associated with this alternative. Additionally, CDFW recommends that the proposed alternative considers the inclusion of a fish screen at the Gold Hill diversion to minimize the entrainment risk to resident fish species associated with the Project alternative.

Alternative 4 – Abandonment of Hemphill Canal Alternative

Alternative 4 proposes to remove the existing diversion structure and decommission Hemphill Canal, requiring the individual property owners to operate and maintain smaller diversion pump systems. Unscreened irrigation diversions have long been identified as having potential for causing harm to resident and migratory fish, mainly through entrainment (Poletto, et al. 2015). If Alternative 4 includes or would result in the installation of multiple unscreened diversions, CDFW recommends that the EIR analyze the impacts of unscreened diversions to adult and juvenile salmonids and resident fish species, including entrainment. Additionally, CDFW encourages the consolidation of diversions to reduce the potential impacts on adult and juvenile salmonids and other resident fish species.

Other Alternatives not Described in the NOP

The EIR should describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and the reasons underlying that determination (CEQA Guidelines, § 15126.6, subd. (c)). Other dam removal and fish screening alternatives were considered by NID during the 2018/2019 TAC process. One alternative discussed at the August 13, 2019, TAC meeting was dam removal and site grade restoration through a nature-like fishway or series of concrete weirs (similar to the Highway 65 gaging station ladder) coupled with the installation of conical fish screens at the diversion point to Hemphill Canal. Accordingly, CDFW recommends that NID consider Project alternatives in the EIR that include traditional fish screening practices

Nevada Irrigation District
October 1, 2020
Page 8 of 16

at the existing diversion structure location that could feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen one or more of the significant effects. If these alternatives were rejected as infeasible the EIR should describe the rationale for that determination.

Placer County Conservation Program

The Placer County Conservation Program (PCCP) was approved by the Placer County Board of Supervisors on September 1, 2020, and the South Placer Regional Transportation Authority Board of Directors on September 23, 2020. It is anticipated that the PCCP will be approved by the remaining PCCP Permittees with subsequent permits/approvals issued by the associated state/federal regulatory agencies during fall of 2020. The PCCP comprises three planning documents published by Placer County: the Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP), the Western Placer County Aquatic Resources Program, and the Western Placer County In-Lieu Fee Program.

CEQA Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans). Because the PCCP is close to being implemented, CDFW recommends that the EIR include a discussion of each Project alternative's consistency with the PCCP and how NID will ensure that implementation of the Project alternatives do not impede the PCCP's ability to meet its biological goals and objectives.

The HCP/NCCP Conservation Strategy identifies the need to form private partnerships to remove high-priority fish passage barriers identified within the Plan Area, including Hemphill Dam (see HCP/NCCP Section 5.3.2.3.3, CM2 RAR-2, *Removal and/or Modification of Barriers to Fish Passage*). The CDFW recommends that the EIR evaluate the various Project alternatives' potential to form a partnership with the Placer County Authority (PCA) to implement the barrier modification/removal as a Covered Activity under the HCP/NCCP. If the proposed Project were able to proceed as a Covered Activity under the HCP/NCCP in partnership with the PCA, the Project would benefit from obtaining take coverage for applicable state/federally protected species as well as streamlined/programmatic permitting for impacts to state and federally protected aquatic resources. The final PCCP documents can be found at: www.placer.ca.gov/3362/Placer-County-Conservation-Program.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends that the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of

Nevada Irrigation District

October 1, 2020

Page 9 of 16

CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully Protected Species (Fish & G. Code sections 3511, 4700, 5050, and 5515) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The EIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The EIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

Nevada Irrigation District

October 1, 2020

Page 10 of 16

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles. Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of plants and wildlife for scientific, educational, and propagation purposes. Please see our website for more information on Scientific Collecting Permits at www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations-.

5. *Nesting Birds*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the

Nevada Irrigation District

October 1, 2020

Page 11 of 16

Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The EIR should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR.

CDFW recommends that the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the EIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

6. *Moving out of Harm's Way*: The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the lead agency may condition the EIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. The qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
7. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful.

The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. To avoid deferring mitigation in this way, the EIR should describe

Nevada Irrigation District
October 1, 2020
Page 12 of 16

avoidance, minimization and mitigation measures that would be implemented should the impact occur.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” If Project activities have the potential to cause take of state-listed species during construction or through operations and maintenance over the life of the Project, a CESA Incidental Take Permit (ITP) may be obtained to provide coverage in the event that take occurs. A CESA ITP may also be obtained to provide coverage for rare and endangered plants listed under the Native Plant Protection Act (Fish & G. Code §1900 *et seq.*).

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, the EIR should disclose the potential of the Project to take state-listed species and include measures to minimize and fully mitigate the impacts to those species. Please note that mitigation measures that are adequate to reduce impacts to a “less-than significant” level to meet CEQA requirements may not be enough to minimize and fully mitigate impacts to the extent required for the issuance of an ITP. Therefore, CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

State-listed species with the potential to occur in the area include, but are not limited to: the State threatened Swainson’s hawk (*Buteo swainsoni*), tricolored blackbird (*Agelaius tricolor*), California black rail (*Laterallus jamaicensis coturniculus*), and foothill yellow-legged frog – Northern Sierra clade (*Rana boylei*).

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Lake and Streambed Alteration Program

The EIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including access and

Nevada Irrigation District

October 1, 2020

Page 13 of 16

staging areas). The EIR should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW will determine if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement will include measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce adverse impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW recommends lead agencies coordinate with us as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process. For more information on LSA notification, please go to <https://www.wildlife.ca.gov/Conservation/LSA>.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. Addressing CDFW's input and

Nevada Irrigation District

October 1, 2020

Page 14 of 16

comments during project planning helps the EIR appropriately address Project impacts and facilitates the issuance of an LSA Agreement.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into the EIR to avoid subsequent CEQA documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

CDFW recommends that the EIR fully identify the Project's potential impacts to Auburn Ravine and any other stream and/or associated vegetation and/or wetlands that may be affected by the Project.

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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of 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 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

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

Nevada Irrigation District
October 1, 2020
Page 15 of 16

CDFW appreciates the opportunity to comment on the NOP of the EIR for the Hemphill Diversion Structure Project and recommends that the NID address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Patrick Moeszinger, Senior Environmental Scientist (Specialist) at (916) 767-3935 or Patrick.Moeszinger@wildlife.ca.gov.

Sincerely,

DocuSigned by:

778EDA8AE45F4C9...

Kelley Barker
Environmental Program Manager

ec: Patrick Moeszinger, Senior Environmental Scientist (Specialist)
patrick.moeszinger@wildlife.ca.gov

Juan Torres, Senior Environmental Scientist (Supervisory)
juan.torres@wildlife.ca.gov

Tanya Sheya, Senior Environmental Scientist (Specialist)
tanya.sheya@wildlife.ca.gov

Beth Lawson, Senior Hydraulic Engineer
beth.lawson@wildlife.ca.gov
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

Literature Cited

Healey, M.C. 2014. CDFW Memorandum dated July 10, 2014. Completion of the 2013 Auburn Ravine Rotary Screw Trap Monitoring Report. CDFW Fisheries Files R2, Rancho Cordova, CA.

Maslin, P., M. Lennox, and J. Kindopp. 1998. Intermittent streams as rearing habitat for Sacramento River Chinook salmon (*Oncorhynchus tshawytscha*). Report to the U.S. Fish and Wildlife Service, 4001 North Wilson Way, Stockton, CA 95205.

Poletto, J. B., Cocherell, D. E., Mussen, T. D., Ercan, A., Bandeh, H., Kavvas, M. L., Cech, J. J., Jr, & Fangue, N. A. 2015. Fish-protection devices at unscreened water

Nevada Irrigation District

October 1, 2020

Page 16 of 16

diversions can reduce entrainment: evidence from behavioural laboratory investigations. *Conservation Physiology*, 3(1), cov040. <https://doi.org/10.1093/conphys/cov040>.

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. *A Manual of California Vegetation*, 2nd ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>.

Titus, R. 2003. CDFG Memorandum dated February 5, 2003. Fishes in Secret Ravine (Dry Creek Drainage, Placer County. CDFW Fisheries Files R2, Rancho Cordova, CA.

Titus, R. 2013. CDFW Memorandum dated November 20, 2013. Chinook salmon and steelhead use of Steelhead Creek. CDFW Fisheries Files R2, Rancho Cordova, CA.