

From: [Oswalt, Caitlyn@Wildlife](mailto:Oswalt.Caitlyn@Wildlife)
To: [Smith, Jordan@Waterboards](mailto:Smith.Jordan@Waterboards)
Cc: [OPR State Clearinghouse](#); [Wildlife R2 CEQA](#)
Subject: SCH #2020090506 Comment Letter; Fordyce Dam Seepage Mitigation Project; MND
Date: Monday, October 26, 2020 1:48:12 PM

10/26/2020

Dear Mr. Smith:

Governor's Office of Planning & Research

LAKE FORDYCE DAM SEEPAGE MITIGATION PROJECT (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2020090506

Oct 26 2020

STATE CLEARINGHOUSE

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt (NOI) an MND from the State Water Resources Control Board (SWRCB) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game 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 is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments 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.), related authorization as provided by the Fish and Game Code will be required.

COMMENTS AND RECOMMENDATIONS

-
CDFW offers the following comments and recommendations to assist SWRCB 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 or other suggestions may also

be included to improve the document.

Biology

1. MM BIO 5: Implement Specific Measure for Nesting Birds

- CDFW recommends every year a helicopter flight plan be made in coordination with a designated biologist to establish appropriate buffers and to map all bald eagle nests.
- CDFW recommends a qualified biological monitor be present during all high intensity activities including helicopters or blasting.
- CDFW recommends pre-construction nesting bird surveys be done at the beginning of each construction season by a qualified biologist no greater than fourteen (14) days prior to the beginning of project-related activities. If a lapse in project-related work of fourteen (14) days or longer occurs, another survey should be conducted.

Hydrology and Water Quality

1. On page 3-102 within the Hydrology and Water Quality impact matrix, CDFW recommends item 'a' – *violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality* – be changed from 'less than significant' to 'less than significant with mitigation.' As discussed on pages 3-106 through 3-119, Mitigation Measure HYD-1 will be used to ensure the projects impacts are less than significant in this area.
2. On page 3-105, CDFW recommends referencing the Drum-Spaulding relicensing process to confirm if there is an agreed upon standard for nephelometric turbidity units as a result of the 2008 and 2009 water quality studies.
3. On page 3-119, the NOI states three water quality monitoring locations shall be required with stations located both above and below the Proposed Project. Please identify where each of these three stations will be located with a site map, and specifically note whether they are above or below the Project. To enable turbidity attenuation analysis, CDFW recommends including two in-creek monitoring locations, at a minimum, below the Project's return flow, in addition to one station above the Project's return flow, to understand baseline water quality.

Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for 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:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or 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

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

Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt, Environmental Scientist at 916-319-4315 or caitlyn.oswalt@wildlife.ca.gov.

Thanks,

Caitlyn Oswalt

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife