

# **Response to Comments**

## **Bobcat Flat Phase III**

Governor's Office of Planning & Research

**Dec 22 2020**

**STATE CLEARINGHOUSE**

### **Comments Received:**

- 1. California State Lands Commission (CSLC)**
- 2. Central Valley Regional Water Quality Control Board TMDL Division**
- 3. California Department of Fish and Wildlife**

**1. California State Lands Commission – December 4, 2020**

**CALIFORNIA STATE LANDS COMMISSION**  
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Sacramento, CA 95825-8202



*Established in 1938*

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December 4, 2020

File Ref: SCH #2020110089

Nicholas White  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670

VIA ELECTRONIC MAIL ONLY ([nicholas.white@waterboards.ca.gov](mailto:nicholas.white@waterboards.ca.gov))

**Subject: Initial Study/Mitigated Negative Declaration (IS/MND) for Bobcat Flat  
Phase III Salmon Habitat Restoration Tuolumne River, Stanislaus  
County**

Dear Mr. White:

The California State Lands Commission (Commission) staff has reviewed the subject IS/MND for the Bobcat Flat Phase III Salmon Habitat Restoration Tuolumne River (Project), which is being prepared by the Regional Water Quality Control Board, Region 5 Central Valley (RWQCB). The Tuolumne River Conservancy, Inc. (Conservancy) is the Project proponent and the RWQCB is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State-owned sovereign land, the Commission will act as a responsible agency.

1A

**Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

1B

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

1B

Based on the scope of work and specific location, the proposed Project will, at a minimum, encroach on State-owned sovereign land as determined by the ordinary low-water mark in the Tuolumne River, a navigable and non-tidal waterway. At this time, it appears that a lease from the Commission *is required* to carry out the proposed Project. Therefore, the Conservancy must submit a lease application to the Commission for use of State land.

1C

As the Project advances towards implementation, the Commission requests future communications related to the Project.

**Project Description**

The Conservancy proposes to restore, increase, and enhance the quantity and quality of salmonid spawning and rearing habitat and improve habitat for waterfowl and other aquatic and terrestrial species. The Conservancy’s objectives are to restore the Tuolumne River and its adjacent habitat for native fish, birds, and mammals for the present and the future.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State-owned sovereign land:

- Project Component 1. Reestablishing natural floodplain processes through channel contouring and connections
- Project Component 2. Replenishing spawning gravel through augmentation
- Project Component 3. Bank re-vegetation and riparian habitat preservation activities promoting both wetland and upland native plant communities

1D

**Environmental Review**

Commission staff requests that the RWQCB consider the following comments on the Project’s IS/MND, to ensure that impacts to State-owned sovereign land are adequately analyzed for the Commission’s use of the IS/MND in consideration of a future lease approval for the Project.

General Comments

1. Project Description: A thorough and complete Project Description should be included in the IS/MND in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, maximum area of impact or volume of sediment removed or disturbed, seasonal work windows, locations for material disposal, etc.), as well as the details of the timing and length of activities, both for inundation areas and for restoration activities. Thorough descriptions and finalized locations of the proposed activities shown in Figures 4 and 5 of the IS/MND will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work that may be performed, and minimize the potential for subsequent environmental analysis to be required. Commission staff are unable to meaningfully analyze and comment on impacts within the Commission's jurisdiction at this time because the Draft IS/MND does not adequately describe the construction activities. Subsequent environmental documentation could be required if the Final IS/MND does not describe details of the Project's activities.

1E

Cultural Resources

2. Mitigation Measure CULT-2: The IS/MD should also mention that the title to all archaeological sites and historic or cultural resources on lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the Conservancy consult with Staff Attorney Jamie Garrett, whose contact information is provided below, should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the IS/MND's Mitigation Monitoring Reporting Program (MMRP), "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

1F

3. Mitigation Measure CULT-3: If human remains are discovered on State-owned land, the Commission must also be notified. Therefore, Commission staff requests that the following statement be added to Mitigation Measure CULT-3, "Should human remains be discovered on State land, the Conservancy shall also notify the California State Lands Commission within 24 hours of the discovery."

1G

Thank you for the opportunity to comment on the IS/MND for the Project. As a responsible and trustee agency, the Commission will need to rely on the adopted MND for the issuance of any new lease as specified above and, therefore, we request that you consider our comments prior to adoption of the MND.

1H

Please send copies of future Project-related documents, including electronic copies of the adopted MND, MMRP, Notice of Determination, and the RWQCB's Project approval document when they become available. Please refer questions concerning environmental

1I

review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or [Alexandra.Borack@slc.ca.gov](mailto:Alexandra.Borack@slc.ca.gov). For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov). For questions concerning Commission leasing jurisdiction and lease application process, please contact Joanne Holt, Public Land Management Specialist, at (916) 574-1832 or [Joanne.Holt@slc.ca.gov](mailto:Joanne.Holt@slc.ca.gov).

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Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
J. Holt, Commission  
J. Garrett, Commission  
E. Kennedy, Commission  
A. Borack, Commission

## Responses to California State Lands Commission

**1A Comment:** *Identifies the California State Lands Commission as both a Responsible and a Trustee Agency under CEQA.*

**1A Response:** The role of the California State Lands Commission as a Responsible Agency and a Trustee Agency pursuant to CEQA is acknowledged.

**1B Comment:** *Establishes the CSLC's role as a Trustee Agency.*

**1B Response:** The role of the CSLC as a Trustee Agency is acknowledged.

**1C Comment:** *A CSLC Lease is required for the Project and ongoing coordination and notification with the CSLC is required.*

**1C Response:** The Project Proponent / Lead Agency acknowledges the necessity to obtain a CSLC Lease and will coordinate with and secure a CSLC lease for the project.

**1D Comment:** *Summarizes the Project Description.*

**1D Response:** The Project Description is accurate but does not include the Project's full description (see Response 1E). No response required.

**1E Comment:** *The comment requests thorough descriptions, finalized locations of Project activities and additional detail related to construction activities.*

**1E Response:** Additional detail related to construction activities and locations are contained in the Project's technical documents and draft permits. Specifically, construction activities are detailed in the following documents incorporated by reference in Section 1.5 of the IS/MND and included here in **Attachment A**:

Anderson, Kd. January 21, 2019. *Bobcat Flat East (Phase III) Project Air Quality Analysis*. **This study includes detailed construction activities, timing and equipment.**

Monk & Associates. July 31, 2018. Environmental Consultants. *Draft Aquatic Resources Delineation Map Bobcat Flat Phase III Channel and Floodplain Restoration Project Site*. **This document includes detailed locational information and further details timing and construction activities.**

In addition, the following documents provide additional detail:

- Monk & Associates. September 15, 2020. 401 Certification Application.
- Monk & Associates. Preliminary Jurisdictional Determination (PJD) US Army Corps of Engineers. PJD based on M&A's field delineation work and onsite meeting with Mr. Ramon Aberasturi of the Corps on February 12, 2019. The Corps took jurisdiction over approximately 6.73 acres of wetlands and approximately 71.37 acres (6,850 linear feet)

of other waters present within the survey area, totaling approximately 78.1 acres, of waters of the United States regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

The detailed project description included in these documents is attached (**Attachment A**). A copy of the above-referenced documents is being forwarded to CSLC in conjunction with this response to comments.

**1F Comment: Requests a revision to Mitigation Measure CULT-2 addressing disposition of resources recovered on state lands under CSLC jurisdiction and notification of the CSLC Staff attorney if cultural resources are discovered on state lands .**

**1F Response:**

Section 2.5.1 of the IS/MND is hereby amended as follows (as indicated by double underlining):

*An archaeological study was conducted by Davis-King & Associates (Davis-King, 2004) and previously incorporated by reference.*

*The 2004 study included informal consultation with local Native American tribes, local historical societies, pre-field archival research at the Central California Information Center at California State University, Stanislaus. Resources were evaluated in accordance with Section 15064.5 of the California Environmental Quality Act, the California Register of Historical Resources (CRHR), the National Historic Preservation Act (16 USC 470) and 36 Code of Federal Regulations (CFR) 800.4 (a) (d) (1). An updated records search at the CCIC was performed by Davis-King associates in conjunction with this project.*

The title to all archaeological sites and historic or cultural resources on lands of California is vested in the state and under the jurisdiction of the California State lands Commission (Pub. Resources Code, § 6313).

*See Section 2.18 relative to Tribal Cultural Resources*

Mitigation Measure CULT-2 (including in the MMRP) is hereby amended as follows:

**Mitigation Measure CULT-2: Unanticipated Cultural Resource Discoveries**

If a cultural resource is discovered during construction activities, the construction contractor shall comply with the following provisions:

- A. The person discovering the cultural resource shall notify the project's designated qualified cultural resource professional by telephone within 4 hours of the discovery or the next working day if the department is closed. In addition, the Conservancy shall consult with CSLC Staff Attorney should any cultural resources on State lands be discovered during construction of the proposed Project.
- B. When the cultural resource is located outside the area of disturbance, the project's designated qualified cultural resource professional shall be allowed to photodocument and record the resource and construction activities may continue during this process. The area of disturbance is defined to include grading and vegetation removal areas and/or access roads or processing areas plus 100 feet.

- C. When the cultural resource is located within the area of disturbance, all activities that may impact the resource shall cease immediately upon discovery of the resource. All activity that does not affect the cultural resource as determined by site's designated qualified cultural resource professional may continue. The project's designated qualified cultural resource professional shall be allowed to conduct an evaluative survey to evaluate the significance of the cultural resource.
- D. When the cultural resource is determined to be not significant, the project's designated qualified cultural resource professional shall be allowed to photodocument and record the resource. Construction activities may resume after authorization from the project's designated qualified professional.
- E. When a resource is determined to be significant, the resource shall be avoided with said resource having boundaries established around its perimeter by the project's designated qualified cultural resource professional or a cultural resource management plan shall be prepared by the project's designated qualified professional to establish measures formulated and implemented in accordance with Sections 21083.2 and 21084.1 of the California Environmental Quality Act (CEQA) to address the effects of construction on the resource. The project's designated qualified cultural resource professional shall be allowed to photodocument and record the resource. Construction activities may resume after authorization from the project's designated qualified cultural resource professional. All further activity authorized by this permit shall comply with the cultural resources management plan.
- F. The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission.

For the purposes of implementing this measure, a "qualified cultural resource professional" is an individual (e.g., historian or archaeologist) meeting the Secretary of the Interior's Qualification Standards.

A "cultural resource" is any building, structure, object, site, district, or other item of cultural, social, religious, economic, political, scientific, agricultural, educational, military, engineering or architectural significance to the citizens of Stanislaus County, the State of California, or the nation which is 50 years of age or older or has been listed on or is eligible for listing on the National Register of Historic Places, the California Register of Cultural Resources, or any local register. Examples of prehistoric resources may include: stone tools and manufacturing debris; milling equipment such as bedrock mortars, portable mortars, and pestles; darkened or stained soils (midden) that may contain dietary remains such as shell and bone; as well as human remains. Historic resources may include: burial plots; structural foundations; mining spoils piles and prospecting pits; cabin pads; and trash scatters consisting of cans with soldered seams or tops, bottles, cut (square) nails, and ceramics.

In addition to the preceding, **Mitigation Measure BIO-1 (CULT-1)** is amended as follows:

**Minimization Measure BIO-1: Environmental Awareness Training**

Construction bid packages and contractual requirements shall include a requirement for tail-gate training by the project's designated qualified biologist and cultural resource

professionals. All contractors involved in site development and environmental specialists will attend a mandatory Environmental Awareness Training prior to any site disturbances. The program will address proper implementation of minimization and avoidance measures contained herein including, but not limited to:

- VELB avoidance
- Turtle conservation
- Nesting birds
- Avoiding inadvertent animal trapping (including SJKF)
- Site maintenance
- Controlling invasive species
- Construction windows
- Handling leaks and spills
- Fencing environmentally sensitive areas
- Native Oak Tree Protection measures (avoiding driplines, no equipment or materials storage in driplines, avoid cutting oak roots, avoid equipment damage to limbs, trunks, and roots of oaks trees; do not attach signs, ropes, cables or other items to trees)
- Cultural resources training to inform construction personnel of the types of cultural resources they may encounter, the laws protecting those resources, and the standard protocols to be implemented. Training shall include contact information for the California State Lands Commission Staff Attorney (currently: Jamie Garrett, at (916) 574-0398 or [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov).)
- Hazardous materials response

**1G Comment:** *Requests CSLC notification of human remains within 24 hours of discovery.*

**1G Response:** Mitigation Measure CULT-3 (including in the MMRP) is hereby amended as follows:

**Mitigation Measure CULT-3: Human Remains**

If human remains, burial, cremation of other mortuary feature are uncovered during construction activities; upon discovery, secure the location, do not touch or remove remains and associated artifacts; do not remove associated spoils or go through them; document the location and keep notes of activity and correspondence. Should human remains be discovered on State land, the Conservancy shall notify the California State Lands Commission within 24 hours of the discovery. All work within 100 feet of the discovery shall stop until the County Coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission to obtain the Most Likely Descendent (MLD) and follow state law (PRC 5097.9 et seq. and Health and Safety Code 7050.5(c)-7054.1 and 8100 et seq.). No further work or disturbance shall occur within 100 feet until all of the preceding actions, as applicable to the discovery, are implemented and completed. Preserve associated spoils without further disturbance, do not touch or remove remains or associated artifacts, document the location and maintain notes of activity and correspondence. Preservation *in situ* is the preferred treatment of human remains and associated burial artifacts. [Public Resources Code Sections 5097.94, 5097.98 and Health and Safety Code Section 7050.5(c) and Section 15064.5 of the California Code of Regulations implementing the California Public Resources Code, Sections 21000-21177]

**1H Comment:** *Request to consider comments prior to adopting the IS/MND.*

**1H Response:** This Response to Comments considers and addresses the CSLC comments.

**1I Comment:** *Requests copies of future Project-related documents, including electronic copies of the adopted MND, MMRP, Notice of Determination, and the RWQCB's Project approval document when they become available. The comment also provides contact information.*

**1I Response:** The Central Valley Regional Water Quality Control Board shall provide copies of the referenced documents to the contacts indicated.

**Enclosures:**

Anderson, Kd. January 21, 2019. *Bobcat Flat East (Phase III) Project Air Quality Analysis.*

Monk & Associates. September 15, 2020. 401 Certification Application.

Monk & Associates. Preliminary Jurisdictional Determination (PJD) US Army Corps of Engineers.

Monk & Associates. July 31, 2018. Environmental Consultants. *Draft Aquatic Resources Delineation Map Bobcat Flat Phase III Channel and Floodplain Restoration Project Site.*

**Attachment A**  
**(Detailed Project Description)**

## Detailed Project Description

### Bobcat Flat Phase III

#### Total project area:

The entire Bobcat Flat property is comprised of four parcels totaling 334.89± acres along the Tuolumne River. All parcels are zoned A-2-40 (General Agriculture) under the Stanislaus County Zoning Code with a General Plan land use designation of Agriculture. The 334.89 (335)± acre Bobcat Flat site consists of multiple discrete restoration project phases. Phases I and II are complete. This project is the final phase. The proposed Phase III project site is approximately 190 ± acres in size with an expected total disturbance area of: 77.4± acres. The project area extends between River Miles 43.5 and 44.5.

#### Excavate and processing coarse sediments (Uplands) – 13± excavation patches – 58.4± acres

Excavate and process 501,360± cubic yards of existing compacted “tailings” composed of 267,500± cubic yards of gravels and 233,860± cubic yards of sands in 13 patches totaling 58.4± acres (borrow areas) within the river floodplain. These patches are labeled “FP” for floodplain. Eight of the 13 excavation areas are in the northerly half of the site away from the main river channel and 5 are closer to the main river channel. These areas have already been disturbed by gold dredger activities and previously scraped dredge tailings. Sediments will be temporarily stockpiled, screened, sorted, and cleaned (i.e., wet-washed or dry screened).

One stockpile area, totaling 4.9+ acres, located on the northeast portion of the project site will be used. Specifically, FP1 will be used for stockpiling and processing until the remaining 12 sites have been excavated and processed. If additional coarse sediments are needed, then FP1 will be excavated last with portions of the 4.9± acres used for processing and the remainder for processing and stockpiling. This stockpiling and processing area is located at least 500± feet from the active river channel. All coarse sediment materials will be excavated from the project site for use on the project site. No excavated materials will be transported or sold off the project site

Wash water for processing gravels shall be pumped from the river using a NMFS-approved screen fitted at the end of the pump hose to block entry by juvenile fish. Large rock will cover the hose/filter to reduce velocity and avoid injury to juvenile fish. Alternatively, water may be pumped from existing on-site ponds using the same NMFS approved screening and velocity reduction methods. Runoff from gravel-washing shall be contained within a separate sediment basin and be allowed to percolate into the ground below the sediment basin. Initially gravels will be cleaned using both wet-washing and dry-screening techniques to compare effectiveness. The more effective of the two options will be implemented for most of the project. It is anticipated that some water will be pumped from the river or on-site ponds even with the use of dry-screening to implement dust-control measures (e.g., dry screening will employ a mist screen above/through the dust when heavy dust is generated by the screen plant).

#### In-Channel work - 10± sites, 10.4± acres

Ten patches of in-channel work. Remove 30,740± and reintroduce 1,370± cubic yards of sediments (22,300± cubic yards gravel, 8,440± cubic yards sand and reintroduce 1,370 cubic yards processed gravels) to widen the channel (IC-6) and remove and re-introduce sediments in conjunction with creating an in-channel riffle (IC-7).

Re-introduce 40,320± cubic yards of cobbles and coarse gravels between 8+ millimeters and 130+ millimeters in size (produced from the preceding extraction activity), into the remaining

eight “patches” of in-stream features to restore a natural pool-riffle morphology in the river channel (e.g., create bars and riffles, recruitment and run enhancement piles). In addition, deposit oversized rock in the bottoms of deep fills mimicking the natural size sorting strata of stream channels.

#### Create Three New Side Channels – 7.9± acres

- Side Channel 1. Excavate 84,650± cubic yards and reintroduce 3,700 cubic yards of processed gravels to create a low flow flood side channel extending across 7.1± acres from east to west across the central/lower central portion of the site.
- Side Channel 2: Excavate 1,470± cubic yards to create a high flow side channel
- Side Channel 3: Excavate 3,790± cubic yards to create a high flow side channel located close to the main channel

#### Create Three New Wetlands – 0.7± acre

Using 2,930± cubic yards of fill, create three wetland areas totaling 0.7± acre:

- Wetland Area W-1: 0.2-acre wetland to be created in the northeastern portion of the project site on the north side of proposed Side Channel 1
- Wetland Area W-2: 0.3-acre wetland to be created south of the proposed high flow channel (south central portion of the project site)
- Wetland Area W-3: 0.2-acre wetland to be created immediately north and east of Wetland Area W-2. (south central portion of the project site)

Consistent with the Tuolumne River, Bobcat Flat Conceptual Restoration Plan (Friends of the Tuolumne 2003); the final floodplain design will handle flows of up to 15,000± cfs (La Grange Dam releases in 2006 peaked at 9,020 cfs). In contrast, riffles and pools are designed for spawning flows of 150–300 cfs. At flood-level flows of 440-1000± cubic feet per second (cfs), inundation from the main river channel will encroach onto the lower benches of the newly lowered floodplain (excavation areas) in the vicinity of patches FP 2,5,8. As river flow increases, more of the bench area will submerge (i.e., retrograde inundation from the river onto the newly lowered floodplain) in the vicinity of patches FP 4, 6 and 7. At 1,000 cfs or above, the new floodplain will enter the high-flow bypass channel. Between 1,000 and 5,400 cfs, the floodplain will encroach onto the next “bench” floodplain level represented by FP 4 and 6. Finally, the most northerly and highest bench/elevation FPs will inundate at 7,000-9,000 cfs.

#### Ongoing maintenance

The spawning gravels (i.e., coarse sediments) will be augmented as necessary when transported by high flows outside of the project reach over the five-year life of the project to maintain spawning and rearing habitat. It is anticipated that approximately 20,000 to 60,000 tons of coarse sediment will need to be replaced in the foreseeable future. In addition to addressing impacts associated with the initial project; this environmental document also is intended to address potential impacts associated with coarse sediment replacement activities in the foreseeable future following initial coarse sediment introduction as long as the same activities and same locations identified in the current project description are unchanged

#### Revegetation/Tree Preservation.

During excavation, tree clusters will be avoided. Fines segregated from the gravel during screening will be placed in the excavated areas to improve substrate for replanting and recruitment. Revegetation will include:

Tree Species to be Mitigated if Removed	Tree protection measures for Trees to be Retained/a/	Tree size requiring mitigation	Replanting Requirement/b/, /c/
Fremont cottonwood <i>Populus fremontii</i>	Protection buffers will be 30-ft (9.1-m) from the outer edge of the dripline	Per Appendix B	Per Appendix B
Willows <i>Salix</i> spp.	Protection buffers 10-ft (3-m) from the outer edge of the dripline		
Poplar, alder, ash, other			
Oaks <i>Quercus</i> spp.	Protection buffers 10-ft (3-m) from the outer edge of the dripline	3 in, or greater dbh. (inventory shall distinguish between trees 3" or greater and those over 5")	3-5" dbh – same species 3:1 >5" dbh – same species 5:1 Planted in excavated areas and/or on-site oak tree planting area (See Appendix B)

(a) Protection buffers as established above shall be established by installing brightly colored temporary safety fencing and/ or installing brightly-colored flagged stakes prior to any site disturbances within areas proposed for site disturbance and as allowed by the dense cobble surface and topography.

(b) Oaks should be planted during the winter dormancy period in the nearest suitable location to the area where they were removed. Riparian trees (i.e., willow, cottonwood, poplar, alder, ash, etc.) and shrubs planted in the nearest suitable location to the area where they were removed. Alternative planting times are permissible; however, irrigation is required for tree planting outside of the rainy season.

(c) Replanted trees shall achieve a 70% survival rate for at least three years from installation (see project conditions for monitoring provisions)

#### Construction timing

Construction of the Bobcat Flat East (Phase III) project is expected to occur within five construction seasons. Construction activity would occur when the water level in the Tuolumne River is low. Water levels low enough for construction activity would usually occur from early August through late September, with the construction period sometimes beginning as early as mid-July and as late as mid-October. Construction is expected to occur in the period July 2021 to 2025.

Equipment and Uses

#	Type of Equipment	Description	Equipment Used for				
			Excavation	Processing	In-Stream	Channel construction	Wetlands
2	Water Truck	CAT 740	X	X			
1	Screenplant	Chieftain 2200 Powerscreen / Terex Brand		X			
1	Screenplant	Warrior 2400 Powerscreen / Terex Brand		X			
3	Haul trucks	CAT 745	X	X	X	X	X
3	Pump	Premier Pump 6 X 4 in redi prime trash pump		X			
4	Front end loader	CAT 980M/982M	X		X	X	X
3	Dozer	CAT D9T	X		X	X	X
1	Excavator	CAT 374FL	X		X	X	X
2	Wheel tractor scraper	CAT 631G/637G	X		X	X	X
1	Motor grader	CAT 160M/160M AWD			X	X	X
1	Compactor	CAT CP/CS 74 Compactor			X	X	X
1	Fuel truck	Kenworth T370 (3 Axle 10-wheeler) – to site daily	X	X	X	X	X

## 2. Central Valley Regional Water Quality Control Board TMDL Division, December 1, 2020

Note: Comments are informally provided as mark-ups to the IS/MND.

### Responses to Central Valley Regional Water Quality Control Board TMDL Division

**2A Comment:** *Discuss potential that Project may have on mercury methylation and use of proposed detention basins relative to mercury-enriched sediments. The IS/MND should mention the Basin Plan, 303d List and evaluate any related potential impacts.*

#### 2A Response:

Paragraph 2.9.2(d) of the IS/MND is hereby amended as follows (see double underlining):

*Mercury was used, historically, in some mining operations, including those involving dredgers. While mercury is not routinely detected within the relatively large-sized cobbles such as those found on the Bobcat Flat site; mercury has been detected in some sand pockets within areas which have been dredged (Mesick, 2005); however, a low potential exists and introducing the mercury into the river is a potentially significant adverse impact.*

*Per the SWRCB Section 303d list, the Tuolumne River adjacent to the Project site lists the following impairments in addition to mercury: chlorpyrifos, diazinon, group A pesticides, temperature, and unknown toxicity impairments. The proposed project improvements enhancing salmon spawning habitat will increase oxygenation and flows in portions of the river and are expected to improve temperature and potentially flush some of these chemical contaminants. However, as with mercury, the potential exists during gravel washing to concentrate chemical contaminants in sediment basins where gravels are washed and sediments concentrated. This is a potentially significant adverse impact. The following mitigation measure is required to address this potential impact:*

*To avoid the potential for introducing mercury and other 303(d) contaminants into the river, and to avoid concentrating these contaminants in sediments in gravel-washing sediment basins or otherwise allowing concentrated sediments to adversely impact water quality or contaminate upland soils, the following mitigation is required:*

Mitigation Measure MM HAZ-03 is hereby amended as follows:

#### **MM HAZ-03: Mercury and Other 303(d) Chemical Impairments**

Gravel wash water area(s) shall be located more than 500± feet from the river and shall include a sediment basin for all wash water to be collected and percolated through the ground. Note: It is anticipated that some water will be pumped from the river as necessary to implement dust-control measures—therefore, any runoff from gravel cleaning activities will include these provisions. Dry screening for gravel cleaning (without the use of rinse water) will use screens of sufficient size to eliminate sands with the potential to contain mercury and other 303(d) chemical impairments.

Due to the potential presence of mercury and other 303(d) chemicals, including the potential to concentrate mercury and other 303 (d) chemicals in sediment basins, basins created for gravel washing shall not be converted into wetlands, ponds, streams, drainage ditches or related structures throughout the life of the Project. Upon Project completion, basins shall be either filled (capped) to bury mercury-enriched/chemical

enriched sediments or sediments in the basins shall be excavated and disposed of at an appropriate hazard material disposal site.

**Mitigation Monitoring HAZ-03:** Requirements for treating sediment basins post-use shall be included in contracting/bid documents and agreements. The required mitigation measure will be implemented throughout Project construction. The measure is the responsibility of the construction contractor. Post-project sediment basin management shall be the responsibility of the construction contractor. If sediment basins are filled post-project rather than excavated with potential mercury-laden/chemical laden soils disposed of off-site, a Notice of Action will be filed identifying the location(s) of the sediment basin(s) and identifying the areas as prohibited for any future use for conversion to wetlands, ponds, streams, ditches or related structures.

The existence of the Basin Plan is acknowledged. The Project is not anticipated to interfere with the implementation of the Basin Plan. Therefore, an extensive discussion of the Basin Plan is not included herein.

3. California Department of Fish and Wildlife – October 23, 2019

*Note: Comment received on aborted circulation through State Clearinghouse. A comment was not received during re-circulation.*



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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



October 23, 2019

Governor's Office of Planning & Research

OCT 23 2019

STATE CLEARINGHOUSE

Stephanie Tadlock  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670

**Subject: Bobcat Flat Phase III Salmon Habitat Restoration Tuolumne River  
(Project)  
Mitigated Negative Declaration (MND)  
State Clearinghouse No. 2019099079**

Dear Ms. Tadlock:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration from the Central Valley Regional Water Quality Control Board for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, CDFW appreciates 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 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 and Game 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.

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<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.

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 & Game 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 & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or Project-related erosion. Potential impacts to the wildlife resources that utilize the Tuolumne River include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

#### PROJECT DESCRIPTION SUMMARY

**Proponent:** Central Valley Regional Water Quality Control Board

**Objective:** The Project proposes to restore, increase, and enhance the quantity and quality of salmonid (Central Valley fall run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley steelhead (*Oncorhynchus mykiss*)) spawning and rearing habitat and improve habitat for waterfowl and other aquatic and terrestrial species between River Miles 43.5 to 44.5 within and adjacent to the Tuolumne River by:

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- Reestablishing natural floodplain processes through channel contouring and connections;
- Replenishing spawning gravel through augmentation; and
- Bank re-vegetation and riparian habitat preservation activities promoting both wetland and upland native plant communities.

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**Location:** The Project site is located approximately 11 miles east from Waterford, between River Miles 43.5 to 44.5 of the Tuolumne River.

**Timeframe:** Unspecified.

#### COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Central Valley Regional Water Quality Control Board 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.

Currently, the MND indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the MND. As currently drafted, the mitigation measures described are insufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding the adequacy of mitigation measures for special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), and the State species of special concern western pond turtle (*Actinemys marmorata*). CDFW recommends that the CEQA document provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels.

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#### I. Environmental Setting and Related Impact

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service?**

#### COMMENT 1: Swainson's Hawk (SWHA)

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**Issue:** SWHA have the potential to nest within and near the Project site (CDFW 2019). The proposed Project will involve activities near large trees that may serve as potential nest sites.

**Specific impacts:** Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include: nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

**Evidence impact is potentially significant:** SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Approval of the Project may lead to ground-disturbing activities that will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

**Recommended Potentially Feasible Mitigation Measure(s)**

Because suitable habitat for SWHA is present throughout the Project site, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures specific to SWHA, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 1: SWHA Surveys**

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

**Recommended Mitigation Measure 2: No-disturbance Buffer**

The MND has indicated that a 300-foot buffer will be implemented around active raptor nests. If ground-disturbing activities are to take place during the normal bird breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active SWHA nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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**Recommended Mitigation Measure 3: SWHA Take Authorization**

CDFW recommends that in the event an active SWHA nest is detected during surveys and implementation of a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an Incidental Take Permit, pursuant to Fish and Game Code Section 2081(b) is necessary to comply with CESA.

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**COMMENT 2: Fully Protected Raptors**

**Issue:** The State fully protected white-tailed kite and the State endangered and fully protected bald eagle have the potential to nest and/or forage in the vicinity of the Project site (CDFW 2019). Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact these species.

**Specific Impacts:** Potentially significant impacts that may result from Project activities include nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

**Evidence impact would be significant:** The Project will involve noise, groundwork, and movement of workers that may occur directly adjacent to large trees and other features with potential to serve as nest sites along the Tuolumne River and thus have the potential to significantly impact fully protected raptor populations.

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**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to fully protected raptors, CDFW recommends conducting the following evaluation of the Project site(s) and editing the initial study/mitigated negative declaration (IS/MND) to include the following.

**Recommended Mitigation Measure 4: Fully Protected Raptor Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity (within ½-mile) contains suitable habitat for fully protected raptors.

**Recommended Mitigation Measure 5: Fully Protected Raptor Surveys**

CDFW recommends that focused surveys be conducted by experienced biologists at the Project site prior to Project implementation. To avoid impacts to these species, CDFW recommends conducting these surveys in accordance with protocols developed by CDFW (CDFG 2010). If Project activities are to take place during the typical bird breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project activity.

**Recommended Mitigation Measure 6: Fully Protected Raptor Avoidance**

In the event a fully protected raptor species is found within ½-mile of the Project site, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on-site during all Project-related activities and that a ½-mile no-disturbance buffer be implemented. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW for assistance with additional avoidance measures is recommended. Fully addressing potential impacts to fully protected raptor species and requiring measurable and enforceable mitigation in the IS/MND is recommended.

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**COMMENT 3: Western pond turtle (WPT)**

**Issue:** WPT have the potential to occur in the Project site. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016).

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** The Project involves ground-disturbing activities in and adjacent to the Tuolumne River. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

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**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures specific to WPT, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 7: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT no more than ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

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**Recommended Mitigation Measure 8: WPT Relocation**

CDFW agrees with Mitigation Measure BIO-7 in the MND that any WPT discovered at the Project site immediately prior to or during Project activities will be allowed to move out of the area on their own.

**COMMENT 4: Lake and Streambed Alteration**

**Issue:** The Project will involve ground-disturbing activities in and adjacent to the Tuolumne River. Project-related activities that have the potential to change the bed, bank, and channel of streams and other waterways or alter riparian habitat, may be subject to CDFW's regulatory authority pursuant Fish and Game Code Section 1600 *et seq.*

**Specific impact:** Work within or adjacent to stream channels has the potential to result in substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water may cause water pollution and degradation of water quality.

**Evidence impact is potentially significant:**

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Lake and Streambed Alteration (LSA)

Project activities have the potential to impact the Tuolumne River may be subject to CDFW's LSA regulatory authority. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems due to potential impacts (e.g., ground-disturbing activities) from the Project site can have significant physical, biological, and chemical impacts that can extend into the adjacent properties, thereby adversely affecting the flora and fauna in the adjacent habitat.

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting)**

CDFW recommends conducting the following evaluation of the Project site and implementing the following mitigation measures.

**Recommended Mitigation Measure 9: Notification of Lake or Streambed Alteration**

The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code Section 1600 *et seq.*, because Project-related activities have the potential to substantially change the bed, bank, and channel of streams or alter riparian habitat. Therefore, Notification is recommended. Fish and Game Code Section 1600 *et seq.* requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

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**II. Editorial Comments and/or Suggestions**

**Nesting birds:** CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends

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having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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#### 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 found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

3I

#### FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

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CDFW appreciates the opportunity to comment on the Project to assist Central Valley Regional Water Quality Control Board in identifying and mitigating the Project's impacts on biological resources.

3K

Stephanie Tadlock  
Central Valley Regional Water Quality Control Board  
October 23, 2019  
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More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

3K

Sincerely,



for Julie A. Vance  
Regional Manager

cc: United States Army Corps of Engineers  
San Joaquin Valley Office  
1325 "J" Street, Suite #1350  
Sacramento, California 95814-2928

ec: Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

Sarah Paulson, CDFW

## Responses to Comments California Department of Fish and Wildlife

**3A Comment:** *Establishes CDFW's jurisdiction and responsibilities for the Project.*

**3A Response:** CDFW's role as a Trustee Agency and a Responsible Agency under CEQA, ability to regulate protections for nesting birds, and ability to address water quality related to Waters of the State is acknowledged.

**3B Comment:** *Summarizes the Project Description.*

**3B Response:** Refer to Response 1E for additional details related to the Project Description.

**3C Comment:** *Questions the adequacy of mitigation measures pertaining to the Swainson's hawk, white-tailed kite, Bald eagle, and western pond turtle. The comment requests quantifiable and enforceable measures.*

**3C Response:** See Response 3D regarding the Swainson's hawk; Response 3E regarding the white-tailed kite and Bald eagle, and Response 3F regarding the western pond turtle.

**3D Comment:** *The Project has the potential to adversely impact the Swainson's hawk, surveys by qualified biologists should be conducted; the IS/MND recommends a 300-foot nest buffer if Swainson's hawks are present, CDFW recommends a ½ mile buffer until nestlings have fledged, a preconstruction survey for the species should occur within 10 days of project activities, and CDFW consultation should occur if a ½ mile buffer cannot be implemented.*

**3D Response:**

Qualified biologists have conducted multiple surveys of the site, including focused surveys for Swainson's hawks.

As noted in the IS/MND and the Project's Biological Technical Memorandum, a 1919 CNDDDB record for the species occurs within 3 miles of the project site. The site provides suitable nesting habitat for the species, however adjacent land provides marginal foraging habitat due to the presence of orchard-type agriculture rather than the species' preferred row and field crops or grasslands. The species was identified soaring above the Project site; however, nesting behavior has not been observed and no Swainson's hawk nests have been observed or recorded in the immediate Project vicinity.

Mitigation Measure BIO-8 is hereby amended as follows:

### **Avoidance and Minimization Measure BIO-8: Preconstruction Surveys Birds**

Prior to construction occurring between February 1<sup>st</sup> and August 30<sup>th</sup> (e.g., staging, excavation, ground disturbance, or vegetation removal) a preconstruction survey for nesting birds will be conducted by a qualified biologist in accordance with the CDFW guidelines and a no-disturbance buffer will be established, if necessary.

If equipment staging, site preparation, vegetation removal, grading, excavation or other project-related construction activities are scheduled during the avian nesting season (generally February 1 through August 30), a focused survey for active nests would be conducted by a qualified biologist within ~~45~~ 10 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat in the BSA.

If an active nest is found, the bird shall be identified to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300± feet for raptors other than the Swainson's hawk; or (b) 75± feet for other non-special-status bird species; c) a ½ mile buffer area shall be established for Swainson's hawk nests. Disturbance of active nests shall be avoided to the extent possible until it is determined that nesting is complete, and the young have fledged. For species protected under the California Fish and Game Code (CFGC), if active nests are closer than those distances to the nearest work site and there is the potential for bird disturbance, CDFW will be contacted for approval to work within ½ mile of a nesting Swainson's hawk, 300± feet of raptors, ~~or~~ 75± feet of other non-special-status bird species.

***3E Comment: The Project has the potential to adversely impact Fully Protected Raptor Species. CDFW specifies the white-tailed kite and Bald eagle and recommends that surveys by qualified biologists should be conducted; the IS/MND recommends a 300-foot nest buffer if raptors are present, CDFW recommends a ½ mile buffer until nestlings have fledged, a preconstruction survey for Fully Protected Raptor species should occur within 10 days of project activities, and CDFW consultation should occur if a ½ mile buffer cannot be implemented.***

**3E Response:**

Qualified biologists conducted multiple surveys of the site, including focused surveys for bald eagles. Focused surveys were not been conducted for white-tailed kites; however, the presence of white-tailed kites was included in general raptor surveys. These surveys included areas within 1/2 mile of the Project site for raptors in those locations observable by binoculars from public rights-of-way or other public access points.

As noted in the IS/MND and the Project's Biological Technical Memorandum, the CNDDDB records site records in February (with juveniles) and January (adult). One record occurs within 2 miles of the Project site. Bald eagles were observed twice within the Project boundaries. Once roosting adjacent to the river (February 1, 2019) and once soaring above the site (June 2018). However, evidence of nesting bald eagles has not been observed on site over multiple survey seasons. A white-tailed kite was observed flying above the site, but not exhibiting nesting behavior.

Mitigation Measure BIO-8 is hereby further amended as follows:

**Avoidance and Minimization Measure BIO-8: Preconstruction Surveys Birds**

Prior to construction occurring between February 1<sup>st</sup> and August 30<sup>th</sup> (e.g., staging, excavation, ground disturbance, or vegetation removal) a preconstruction survey for nesting birds will be conducted by a qualified biologist in accordance with the CDFW guidelines and a no-disturbance buffer will be established, if necessary.

If equipment staging, site preparation, vegetation removal, grading, excavation or other project-related construction activities are scheduled during the avian nesting season (generally February 1 through August 30), a focused survey for active nests would be conducted by a qualified biologist within ~~45~~ 10 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat in the BSA.

If an active nest is found, the bird shall be identified to species and the approximate distance from the closest work site to the nest estimated. No additional measures need be implemented if active nests are more than the following distances from the nearest work site: (a) 300± feet for raptors other than the Swainson's hawk, bald eagle or white-tailed kite; or (b) 75± feet for other non-special-status bird species; c) a ½ mile buffer area shall be established for Swainson's hawk, bald eagle, or white-tailed kite nests. Disturbance of active nests shall be avoided to the extent possible until it is determined that nesting is complete, and the young have fledged. For species protected under the California Fish and Game Code (CFGC), if active nests are closer than those distances to the nearest work site and there is the potential for bird disturbance, CDFW will be contacted for approval to work within ½ mile of a nesting Swainson's hawk, bald eagle, or white-tailed kite, 300± feet of other raptors, ~~or~~ 75± feet of other non-special-status bird species.

**3F Comment:** *CDFW recommends surveys for Western Pond Turtles by a qualified biologist during nesting season (March – August), recommends preconstruction surveys within 10 days of commencing construction, and avoiding all WPT nests*

**3F Response:**

A qualified biologist conducted surveys for Western Pond Turtles. As noted in the IS/MND, numerous Western pond turtles were observed on the Project site. Mitigation measures are included to minimize and avoid harm to the species including requirements to retain an on-site biological monitor (Mitigation Measure BIO-6), requiring preconstruction surveys 48 hours (not 10 days) prior to construction activities; and WPT avoidance.

It is not recommended that surveys be conducted 10 days rather than 2 days prior to construction activities for Western Pond Turtles as the potential for the species to appear on site within 48 hours of commencing construction remains and could jeopardize turtles. Further, recommendations to maintain an on-site monitor for WPTs should not be altered given the recurring and known presence of the species on the site.

In response to CDFW comments, Mitigation Measure BIO-7 is hereby clarified as follows:

**Mitigation Measure BIO-7: Preconstruction Survey/Relocation for Western Pond Turtles**

Within 48 hours of commencing site disturbances, a qualified biologist shall survey for and, if present, relocate any non-nesting western pond turtles from construction areas or other areas where turtle disturbance may occur. If found on site in locations where harm to the turtle may occur from project activities, the turtle first will be given the opportunity to leave the site on its own if the turtle actively is in the process of attempting to leave the site and is likely to successfully do so within the hour in the opinion of the qualified biologist. Otherwise, the qualified biologist will relocate the turtle outside the work area. [California

Code of Regulations, Title 14, Division 1, Chapter 5, Subsection 40(b)]<sup>1</sup>. Should a turtle nest be identified, the nest shall be fully avoided until eggs have hatched.

**3G Comment: The Project requires a Lake or Streambed Alteration Agreement**

**3G Response:** IS/MND Section 1.6 Table 1, identifies the necessity to acquire a Lake or Streambed Alteration Agreement for the California Department of Fish and Wildlife. The Project Proponents have prepared an application and are awaiting the filing of a Notice of Determination for the Project before submitting the application in accordance with CDFW direction.

As included in the IS/MND and Mitigation Monitoring and Reporting Plan, Mitigation Measure BIO-12 requires acquisition of a CDFW Lake or Streambed Alteration Permit prior to commencing construction as follows:

**Avoidance and Minimization Measure BIO-12: Wetlands and Other Waters**

A Section 401/404 Permit(s) and a CDFW 1600 Lake or Streambed Alteration Permit shall be acquired prior to commencing Project construction. The Project Proponents shall implement all identified mitigation measures contained in the permits as necessary to achieve no net loss of wetlands.

Consistent with CEQA guidelines, the Mitigation Monitoring and Reporting Plan identifies the Project Proponent as the responsible entity and requires acquisition prior to initiating project construction.

**3H Comment: CDFW suggests not conducting work during nesting season, having a qualified biologist establish baseline nesting behavior if occupied nests are identified, halting work if behavioral changes are noted, and maintaining a 250-foot buffer around non-listed birds and 500-foot buffer around non-listed raptors until fledglings have left the nest, and with reductions only for biological or ecological reasons (e.g., topography conceals) and with CDFW consultation.**

**3H Response:**

The revisions to pre-existing CDFW setback standards for nesting birds are acknowledged. Mitigation Measure BIO-8 already calls for consultation with CDFW if work is proposed less than 75', 300' and even ½ mile from various bird and raptor species. Because circumstances of each particular case may vary widely based on the bird species, pre-existing conditions that could affect species tolerance (nests established adjacent to pre-existing loud noises, busy roadways or activities), topography and many other site variables; CDFW's suggestions will be recognized and incorporated into pre-construction environmental awareness training rather than required in existing mitigation measures.

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<sup>1</sup> Pursuant to California Fish and Game Code Title 14, Subsection 40(b) the capture, temporary collection, or temporary possession of native amphibians done to avoid mortality or injury in connection with lawful activities is permitted and such live capture and release of native amphibians done to avoid death or injury may occur with the permission of the CDFW. Because WPTs are not listed species pursuant to the state or federal endangered species act, neither an incidental take permit nor consultation beyond securing permission from CDFW to capture and release the individuals, is required.

**Mitigation Measure BIO-1 (CULT-1)** is amended as follows:

**Minimization Measure BIO-1: Environmental Awareness Training**

Construction bid packages and contractual requirements shall include a requirement for tail-gate training by the project's designated qualified biologist and cultural resource professionals. All contractors involved in site development and environmental specialists will attend a mandatory Environmental Awareness Training prior to any site disturbances. The program will address proper implementation of minimization and avoidance measures contained herein including, but not limited to:

- VELB avoidance
- Turtle conservation
- Nesting birds – including recommended, but not required, buffers of up to 250 feet for non-listed nesting birds and 500-feet for non-listed nesting raptors protected pursuant to the Migratory Bird Treaty Act
- Avoiding inadvertent animal trapping (including SJKF)
- Site maintenance
- Controlling invasive species
- Construction windows
- Handling leaks and spills
- Fencing environmentally sensitive areas
- Native Oak Tree Protection measures (avoiding driplines, no equipment or materials storage in driplines, avoid cutting oak roots, avoid equipment damage to limbs, trunks, and roots of oaks trees; do not attach signs, ropes, cables or other items to trees)
- Cultural resources training to inform construction personnel of the types of cultural resources they may encounter, the laws protecting those resources, and the standard protocols to be implemented. Training shall include contact information for the California State Lands Commission Staff Attorney (currently: Jamie Garrett, at (916) 574-0398 or Jamie.Garrett@slc.ca.gov.)
- Hazardous materials response

**3I Comment:** *Special Status Species occurrences identified in conjunction with the Project should be reported to the California Natural Diversity Database.*

**3I Response:** The Project Proponent is aware of this recommendation. Upon authorization by the landowner, the Project Biologist will file the recommended data with the CNDDDB.

**3J Comment:** *CDFW CEQA Filing Fees are Required*

**3J Response:** The Project Proponent is aware of CDFW's CEQA Filing Fees and will comply with applicable regulations upon filing a Notice of Determination.

**3K Comment:** *Identifies additional references and staff contacts.*

**3K Response:** Comment is acknowledged. No further response required.