



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 8, 2021

Governor's Office of Planning & Research

Jan 08 2021

STATE CLEARINGHOUSE

Amy Lyons
Department of Water Resources
Northern Region Office
2440 Main Street
Red Bluff, CA 96080

Subject: Review of the Notice of Preparation for the Lower Deer Creek Flood and Ecosystem Improvement Project, Phase 1

Dear Amy Lyons:

The California Department of Fish and Wildlife (Department) has reviewed the Notice of Preparation (NOP) of the Draft Environmental Impact Report (DEIR) for the above-referenced project (Project) dated December 4, 2020. The Department appreciates this opportunity to comment on the Project, relative to impacts to biological resources.

The Department is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA). As the Trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat necessary for biologically sustainable populations of those species (Fish and Game Code (FGC), sections 1801 and 1802). As the Trustee Agency for fish and wildlife resources, the Department provides requisite biological expertise to review and comment upon CEQA documents, and makes recommendations regarding those resources held in trust for the people of California.

The Department may also assume the role of Responsible Agency. A Responsible Agency is an agency other than the Lead Agency that has a legal responsibility for carrying out or approving a project. A Responsible Agency actively participates in the Lead Agency's CEQA process, reviews the Lead Agency's CEQA document and uses that document when making a decision on a project. The Responsible Agency must rely on the Lead Agency's CEQA document to prepare and issue its own findings regarding a project (CEQA Guidelines sections 15096 and 15381). The Department most often becomes a Responsible Agency when a Lake or Streambed Alteration Agreement (FGC section 1600 et. seq.) or a California Endangered Species Act (CESA) Incidental Take Permit (FGC section 2081(b)) is needed for a project. The Department relies on the CEQA document prepared by the Lead Agency to make a finding and decide whether to issue the permit or agreement. It is important that the Lead Agency's Environmental Impact Report (EIR) considers the Department's Responsible Agency requirements. For example, CEQA requires the Department to

Amy Lyons
Department of Water Resources
January 8, 2021
Page 2

include additional feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect a project would have on the environment (CEQA Guidelines section 15096(g)(2)).

The Department offers the following comments and recommendations on this Project in our role as a Trustee and Responsible Agency:

Project Description and Location

The Project has proposed a variety of design measures, including levee setbacks, bank stabilization, flood easements, bridge improvements, diversion structure improvements, and levee improvements. Upstream of Red Bridge, setback and raised levees are proposed to improve flood protection. Downstream from Red Bridge to the Stanford-Vina Ranch Irrigation Company (SVRIC) Diversion Dam, bridge and levee improvements, coupled with levee setbacks, floodplain lowering, and flood easements, are proposed to convey higher flows and large wood through the bridge and to allow some natural channel migration and increased floodplain inundation and function. South of the SVRIC Diversion Dam, the dam access road would be improved, and a canal cutoff structure installed to improve flood protection. Downstream of the dam to Highway 99, removal of non-U.S. Army Corps of Engineers (USACE) levees and berms is proposed to widen the floodway to allow greater flow conveyance, channel migration, and natural development of instream habitat. Improvements to USACE levees and installation of bank protection are also proposed just upstream of Highway 99 to maintain flood protection. Further downstream, levee improvements and a new levee are proposed to protect existing pasture and infrastructure, and an easement is proposed to allow channel migration at the downstream end of the creek. In China Slough, grading, vegetation management, and culvert improvement are proposed to enhance conveyance through the slough.

The Project is located on Deer Creek and China Slough, at the north end of the Sacramento Valley in southeastern Tehama County. The proposed project would be located along the lower 8 miles of Deer Creek and lower China Slough downstream of State Highway 99, to each waterway's confluence with the Sacramento River.

Comments and Recommendations

To enable Department staff to adequately review and comment on the proposed Project, we recommend the following information be included in the DEIR, as applicable.

1. A complete assessment of the flora and fauna within and adjacent to the Project area should be conducted, with particular emphasis upon identifying special-status species including rare, threatened, and endangered species. This assessment should also address locally unique species, rare natural

Amy Lyons
Department of Water Resources
January 8, 2021
Page 3

communities, and wetlands. The assessment area for the Project should be large enough to encompass areas potentially subject to both direct and indirect Project effects. Both the Project footprint and the assessment area (if different) should be clearly defined and mapped in the DEIR.

- a. The Department's California Natural Diversity Data Base (CNDDDB) should be searched to obtain current information on previously reported sensitive species and habitat. In order to provide an adequate assessment of special-status species potentially occurring within the Project vicinity, the search area for CNDDDB occurrences should include all United States Geological Survey (USGS) 7.5-minute topographic quadrangles with Project activities, and all adjoining 7.5-minute topographic quadrangles. The DEIR should discuss how and when the CNDDDB search was conducted, including the names of each quadrangle queried, or why any areas may have been intentionally excluded from the CNDDDB query. As a reminder, the Department cannot and does not portray the CNDDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide. Field verification for the presence or absence of sensitive species will always be an important obligation of its users. Likewise, your contribution of data to the CNDDDB is equally important to the maintenance of the CNDDDB. Whenever possible, we request that data be submitted using our online field survey form along with a map with the rare populations or stands indicated.
- b. In addition to the CNDDDB, other electronic databases such as those maintained by the California Native Plant Society and U.S. Fish and Wildlife Service (USFWS) should be queried. The online Areas of Conservation Emphasis (ACE) viewer (<https://wildlife.ca.gov/Data/Analysis/Ace>) should also be consulted during EIR preparation. The ACE maps show the relative biological value of an area compared with all other areas across the state. ACE is a decision support tool to be used in conjunction with species-specific information and local-scale conservation prioritization analyses. The ACE maps do not replace the need for site-specific evaluation of biological resources and should not be used as the sole measure of conservation priority during planning.
- c. The Department also recommends review of previous biological technical reports and CEQA documents prepared for other projects in the vicinity, including the Deer Creek Irrigation District Fish Passage project.

Amy Lyons
Department of Water Resources
January 8, 2021
Page 4

- d. A complete assessment of rare, threatened, and endangered invertebrate, fish, wildlife, reptile, and amphibian species should be presented in the DEIR. Rare, threatened, and endangered species to be addressed shall include all those that meet the CEQA definition (see CEQA Guidelines section 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the species are active or otherwise identifiable, are recommended. Acceptable species-specific survey procedures should be developed in consultation with the Department and the USFWS. Links to some survey procedures are provided on the Department's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).
- e. Species of Special Concern (SSC) status applies to animals generally not listed under the federal Endangered Species Act or CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist (see CEQA Guidelines section 15380 and CEQA Guidelines Appendix G (IV)(a)). SSC should be considered during the environmental review process. CEQA (California Public Resources Code sections 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from "projects" in the State. Section 15380 of the CEQA Guidelines clearly indicates that SSC should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein.

Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an EIR to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

- f. Fully Protected animals may not be taken or possessed at any time and the Department is not authorized to issue permits or licenses for their incidental take¹. Fully Protected animals should be considered during the environmental review process and incidental take must be avoided.

¹ Scientific research, take authorized under an approved NCCP, and certain recovery actions may be allowed under some circumstances; contact the Department for more information.

Amy Lyons
Department of Water Resources
January 8, 2021
Page 6

Guidelines section 15064.7)

- b. CEQA Guidelines, section 15125 (a-e), direct that knowledge of environmental conditions at both the local and regional levels is critical to an assessment of environmental impacts and that special emphasis shall be placed on resources that are rare or unique to the region.
 - c. Impacts associated with initial Project implementation as well as long-term operation and maintenance of the Project shall be addressed in the DEIR pursuant to CEQA Guidelines 15126.2 (a). The EIR should describe anticipated levee maintenance activities and impacts and should develop measures to avoid and minimize maintenance impacts.
 - d. In evaluating the significance of the environmental effects of the Project, the Lead Agency should consider direct physical changes in the environment, which may be caused by the Project and reasonably foreseeable indirect physical changes in the environment, which may be caused by the Project. Expected impacts should be quantified (e.g., acres, linear feet, number of individuals taken, volume or rate of water extracted, etc.).
 - e. Project impacts should be analyzed relative to their effects on off-site habitats and species. Specifically, this may include public lands, open space, downstream aquatic habitats, areas of groundwater depletion, or any other natural habitat or species that could be affected by the Project (CEQA Guidelines Appendix G (IV and IX)).
 - f. A cumulative effects analysis shall be developed for species and habitats potentially affected by the Project. This analysis shall be conducted as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts to species and habitats.
3. A range of Project alternatives shall be analyzed to ensure that the full spectrum of alternatives to the proposed Project are fully considered and evaluated. Alternatives, which avoid or otherwise minimize impacts to sensitive biological resources shall be identified. Likewise, alternatives that maximize environmental benefits should be prioritized.
 - a. If the Project will result in any impacts described under the Mandatory Findings of Significance (CEQA Guidelines section 15065) the impacts must be analyzed in depth in the DEIR, and the Lead Agency is required

Amy Lyons
Department of Water Resources
January 8, 2021
Page 7

to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment. When mitigation measures or Project changes are found to be feasible, such measures should be incorporated into the Project to lessen or avoid significant effects.

4. Mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats should be developed and thoroughly discussed. Mitigation measures should first emphasize avoidance and reduction of Project impacts. For unavoidable impacts, the feasibility of on-site habitat restoration or enhancement should be discussed. If on-site mitigation is not feasible, off-site mitigation through habitat creation, enhancement, acquisition and preservation in perpetuity, or a combination thereof should be addressed.
 - a. Plans for restoration and revegetation should be prepared by persons with expertise in northern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (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 long-term conservation of the mitigation site.
5. Take of species of plants or animals listed as endangered or threatened under CESA is unlawful unless authorized by the Department. However, the Department may authorize incidental take during Project construction or over the life of the Project. The DEIR must state whether the Project could result in any amount of incidental take of any CESA-listed species. Early consultation for incidental take permitting is encouraged, as significant modification to the Project's description and/or avoidance, minimization, or mitigation measures may be required in order to obtain a CESA Permit.

The Department's issuance of a CESA Permit for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA will consider the Lead Agency's EIR for the Project. The Department may require additional measures for the issuance of a CESA Permit unless the Project CEQA document addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the

Amy Lyons
Department of Water Resources
January 8, 2021
Page 8

requirements of a CESA Permit.

7. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion, which would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, Project mitigation assures there will be “no net loss” of either wetland habitat values or acreage. The DEIR should demonstrate that the Project will not result in a net loss of wetland habitat values or acreage.
 - a. The Project will require notification to the Department for a Lake or Streambed Alteration Agreement (LSAA) pursuant to Section 1602 et seq. of the FGC, prior to the applicant’s commencement of any activity that will substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank (which may include associated riparian resources) of a river, stream or lake, or use material from a streambed. The Department’s issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the local jurisdiction’s (Lead Agency) Negative Declaration or Environmental Impact Report for the Project. To minimize additional requirements by the Department pursuant to FGC section 1600 et seq. and/or under CEQA, the document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the agreement. A LSAA notification package may be obtained through the Department’s website at <https://www.wildlife.ca.gov/Conservation/LSA>.
8. 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. (Public Resources Code section 21003(e)). Please report any special status species and natural communities detected during Project surveys to the 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. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Amy Lyons
Department of Water Resources
January 8, 2021
Page 9

9. The anticipated long-term maintenance and operational activities associated with any newly-constructed levees, flood control structures, and the overall floodway should be examined in the DEIR.
10. If ranching and grazing activities could occur within the areas between any newly constructed levees and streams, an examination of best management practices for riparian grazing should be developed in coordination with CDFW and included in the DEIR.
11. The riparian areas of Deer Creek from State Route 99 to the confluence with the Sacramento River, as well as China Gulch, contain populations of the invasive giant reed (*Arundo donax*). The DEIR should examine project impacts related to the spread of invasive species and include an examination of options to eliminate populations of giant reed within the project area. Actively reducing giant reed within the Project area should improve habitat values and flood conveyance.

If you have any questions, please contact Philip Cramer, Environmental Scientist, at Philip.Cramer@wildlife.ca.gov

Sincerely,

DocuSigned by:
Curt Babcock
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Curt Babcock

Habitat Conservation Program Manager

ec: Amy Lyons
Department of Water Resources
amy.lyons@water.ca.gov

State Clearinghouse
state.clearinghouse@opr.ca.gov

Brad Henderson, John Downs, Michael Harris, Matt Johnson, Philip Cramer,
Amy Henderson
California Department of Fish and Wildlife
brad.henderson@wildlife.ca.gov; john.downs@wildlife.ca.gov ;
michael.r.harris@wildlife.ca.gov; matt.johnson@wildlife.ca.gov;
philip.cramer@wildlife.ca.gov; amy.henderson@wildlife.ca.gov

Habitat Conservation Planning Branch
ceqacommentletters@wildlife.ca.gov