

June 15 2021

From: [Oswalt, Caitlyn@Wildlife](mailto:Oswalt,Caitlyn@Wildlife)
Sent: Monday, June 14, 2021 4:55 PM **STATE CLEARINGHOUSE**
To: stepaniank@nidwater.com
Cc: Neysa King; Wildlife R2 CEQA; state.clearinghouse@opr.ca.gov
Subject: CEQA Comments - SCH No. 2021050237 - English Meadow Floodplain Restoration and Enhancement Project - Mitigated Negative Declaration (MND)

Dear Kris Stepanian,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Nevada Irrigation District (District) for the English Meadow Floodplain Restoration and Enhancement Project (Project) in Sierra and Nevada Counties pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

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

CDFW ROLE

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

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

PROJECT DESCRIPTION SUMMARY

The Project site is located on 380 acres within the headwaters of the Middle Fork of the Yuba River approximately 35 miles northwest of Lake Tahoe, on the boundary between Nevada County and Sierra County, California. The Project consists of improvements to the watershed/floodplain function and forest resilience in English Meadow and the surrounding forest to potential

disturbances to achieve the following benefits:

- Reduce the transport of bedload and fine sediment from the upper watershed into Jackson Meadows Reservoir (maintain reservoir water storage capacity).
- Increase seasonal retention and release of precipitation in the meadow floodplain aquifer.
- Enhance habitat for meadow-dependent species.
- Improve forest health to reduce wildfire risk through fuels reduction.
- Increase snowpack and surface flow through mechanical thinning of the forest community on north facing slopes.
- Reduce conifer encroachment into the meadow.

COMMENTS AND RECOMMENDATIONS

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

1. Project Description. The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as spoil areas from berm removal and excavated riffle material.
2. BIO-1: Environmental Awareness Training. To ensure all work crew members receive relevant and pertinent information, please consider all environmental awareness trainings be done by a Qualified Biologist. The trainings should consist of a presentation from the Qualified Biologist that includes a discussion of the biology of the habitats and species occurring on site. The Qualified Biologist should also include, as part of the training, information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations and project-specific protective measures included in this IS/MND. Interpretation should be provided for non-English speaking workers, and the same instruction should be provided for any new workers prior to their performing work on-site.
3. BIO-2 General Construction Measures. Consider adding the following general measures to minimize disturbance of sensitive resources in the Project area.
 - a. All construction materials shall be covered at the end of work each day. The District shall visually check all construction materials for the presence of sheltering wildlife prior to the start of work activities each day.
4. BIO-4 Noxious Weed Prevention. Consider creating a separate measure for managing cattle grazing. Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a

minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the restoration area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the restoration site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

5. BIO-5 Noxious Weed Monitoring. Consider rewording the following:

Project restoration/enhancement activities shall be monitored, and noxious weeds shall be removed, annually for 3 years following each work season.

To “noxious weeds shall be removed, annually for 3 years or until native plant success criteria is achieved.” Please see comment 3 for developing success criteria.

6. BIO-6 Fish Capture and Relocation. Please include a description of how downstream flow will be maintained for aquatic life below and above the Project area. Water diversion structures should be designed, constructed, and maintained such that they do not constitute a barrier to upstream or downstream movement of aquatic life. This includes but is not limited to the supply of water at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish movement and migration.
7. BIO-8 Protection of Burrows. A Qualified Biologist should conduct all clearance surveys within one week and prior to ground-disturbing activities. It is recommended that all uninhabited burrows be collapsed by hand to avoid inadvertent impacts to wildlife. If a burrow is inhabited and cannot be avoided, all work in that area should stop and a Qualified Biologist should determine alternative avoidance, protection, and/or exclusion measures.
8. BIO-9 Sierra Nevada Yellow-Legged Frog Protection. The Sierra Nevada Yellow-legged frog is a CESA listed species. If the species has the potential to occur on site, CDFW recommends the District seek CESA take coverage or completely avoid the species. Project activities described in the IS/MND should be designed to completely avoid any special status species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the IS/MND analyze potential adverse impacts to special status species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the District include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to this CESA listed species.
9. BIO-10 & BIO-11. Nesting bird surveys should be done by a Qualified Biologist. The District is responsible for making sure the Qualified Biologist is knowledgeable and experienced in the biology and natural history of the fish and wildlife species that may be present in the Project area. If active nests

are reported, a Qualified Biologist shall determine the appropriate buffers, considering the species, location of nest, and the nature of activities proposed within the vicinity of the nest.

10. BIO-13 Protection of Fens and Springs. Please detail how and with what material the protective buffers will be flagged. Clarify where the buffer radius begins.
11. BIO-14. General Wildlife Protection. The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, The District should have a Qualified Biologist with the proper handling permits, retained to be onsite prior to and during all ground- and habitat-disturbing activities. The IS/MND should describe Qualified Biologist qualifications and authorities to stop work to prevent direct mortality of special-status species. CDFW recommends fish and wildlife species be allowed to move out of harm's way on their own volition, if possible, and to assist their relocation as a last resort. It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
12. HAZ-2. Spill Prevention, Control, and Countermeasures Plan. Consider storing equipment in areas where any possible contamination from the equipment would not pass into waters of the state. No equipment maintenance or fueling should be done where petroleum products or other pollutants from the equipment may pass into waters of the state. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents should be located more than one hundred (100) feet from waters of the state (Fish & G. Code § 89.1), the stream bed, bank, or channel (including but not limited to dry, ponded, flowing, or wetland areas), drainages, lakes, other sensitive habitat, unless otherwise approved by CDFW in writing. All equipment and fuel stored on site should be properly contained and protected from rain.
13. Debris Jams - Page 15. It references Section 1.6.7, and on page 17 it references Section 1.6.2.1, these sections could not be located within the CEQA document. Please clarify the conditions of each jam/riffle and how they would be assessed following Year 1 of restoration/enhancement activities, and what adjustments would be made in Years 2 and/or 3, as necessary.
14. Fill of Erosional Features and Manmade Ditches – Page 18. Please describe how the fill material will be “keyed into the native soil.”
15. Revegetation of Mainstem Channel and Floodplain Treatment Areas and Borrow Sites. Please see comment 4. Consider implementing erosion measures to ensure topsoil and mulch introduced does not erode or otherwise pass into waters of the state. CDFW recommends the planting of new native plant material in conjunction with the relocation of existing plants, depending upon the species, within the Project area. Revegetation shall include only local plant materials native to the Project area.
16. Cattle Grazing. Please clarify the current and proposed future cattle grazing zones within the Project area. Provide details on how these zones will be enforced into the future.

17. Western Bumble Bee. Consider adding BIO-8 to Mitigation Measures for the Western Bumble Bee.
18. Southern Long-toed Salamander. Consider adding BIO-2 to Mitigation Measures for the Southern Long-toed Salamander.
19. Forest Birds. Consider adding BIO-2 to Mitigation Measures for birds that use forest habitats.
20. Meadow birds. Consider adding BIO-2 to Mitigation Measures for birds that use meadow habitats. Please change:

“active nest will be reported to CDFW and appropriate protective buffers developed, considering the species, location of nest, and the nature of activities proposed within the vicinity of the nest.”

To, active nest will be reported to CDFW and a Qualified Biologist will develop appropriate protective buffers considering the species, location of nest, and the nature of activities proposed within the vicinity of the nest.

The IS/MND should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the IS/MND should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the IS/MND should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

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

Thank you for the opportunity to comment on the IS/MND to assist in identifying and mitigating Project impacts on biological resources. If you have questions or would like to discuss this letter, please contact me at contact Caitlyn Oswalt, Environmental Scientist at (916) 358-4315 or caitlyn.oswalt@wildlife.ca.gov.

Sincerely,

Caitlyn Oswalt
(She/Her)
Environmental Scientist | 916.358.4315
North Central Region – Region 2
California Department of Fish and Wildlife