



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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Governor's Office of Planning & Research

July 28, 2021

July 29 2021

STATE CLEARINGHOUSE

Mr. Hamid Heidary
City of Calistoga
414 Washington Street
Calistoga, CA 94515
hheidary@ci.calistoga.ca.us

Subject: Water Reliability Transmission and Distribution Improvement – Conn Creek Water Line Project, Mitigated Negative Declaration, SCH No. 2021070024, Napa County

Dear Mr. Heidary:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Water Reliability Transmission and Distribution Improvement – Conn Creek Water Line Project (Project). CDFW is submitting comments on the MND to inform the City of Calistoga (City), as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, or a Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project would occur along a 3,000-foot reach of the Silverado Trail right-of-way, adjacent to its intersection with State Route 128, in an unincorporated area of Napa County, California, approximately 2 miles southeast of the City of St. Helena; Latitude 38.4873°, Longitude -122.4058°. A portion of the Project would occur within the bed, bank, and channel of Conn Creek, a tributary to the Napa River, and be directly adjacent to the new Conn Creek Bridge. Vegetation and natural communities occurring within the Project area include oak woodland, riparian, wetland, and stream habitat. Adjacent land use includes vineyards, wineries, and rural residences.

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PROJECT DESCRIPTION

The Project would upgrade an underground segment of the existing North Bay Aqueduct (NBA) pipeline that crosses the Conn Creek floodway. Approximately 100 feet of the underground NBA pipeline alignment is proposed to be relocated to an elevated position on the new Conn Creek Bridge, which was replaced in 2020. In addition, the Project would include replacing 3,000 linear feet of 12-inch diameter underground pipeline with a new 16-inch diameter underground pipeline in the same location parallel to and along the south side of Silverado Trail.

COMMENTS AND CONCERNS

Rare Plants

The MND identifies Napa false indigo (*Amorpha californica* var. *napensis*) and Napa bluecurls (*Trichostema ruygtii*), which are California Native Plant Society (California) Rare Plant Rank (CRPR) 1B.2 species, as potentially occurring within the Project area. CRPR 1B.2 species are rare, threatened, or endangered in California and elsewhere, so impacts to these species would be significant.

Mitigation Measure (MM) BIO-1 requires that a qualified botanist survey all Project areas within one year prior to construction; and if any special-status plants are found that cannot be avoided by the Project, mitigation in the form of transplanting, or seed collection and distribution in nearby suitable habitat, would be required. CDFW agrees with the intent of the measure but recommends the following revisions to MM BIO-1 to reduce impacts to a level of less-than-significant:

- The measure should specify that surveys shall be conducted by a qualified botanist during the appropriate blooming period for all special-status plant species with a potential to occur in the Project area, and that surveys be conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018), which can be found here: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>.
- If special-status plant species are discovered during surveys and cannot be avoided during Project construction, a qualified botanist shall prepare a mitigation and monitoring plan for CDFW review and approval prior to starting Project construction. A botanist approved by CDFW may approve the plan if CDFW provides written documentation that we do not have the resources to provide review. The mitigation and monitoring plan shall include, but not be limited to, 1) an onsite habitat enhancement and planting plan, and off-site planting if there is not suitable habitat within the Project area to support a 3:1 individual plants planted to individual plants removed ratio; 2) success criteria, 3) a minimum of 5 years of monitoring, and 4)

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control of invasive species and any other practice to ensure plantings achieve success criteria. A long-term management plan shall be prepared and implemented, funding shall be provided for management of the protected lands in perpetuity pursuant to the long-term management plan, and a land manager shall be designated prior to Project construction. Alternatively, a financial security for implementing the habitat protection described above, and the below mitigation and monitoring plan, such as a letter of credit, shall be provided to the City prior to Project construction. If a security is provided, the conservation easement shall be recorded within 18 months of the initiation of Project construction. The City shall hold the security for all uncompleted obligations described above, including achieving success criteria outlined in the mitigation and monitoring plan. Alternatively, the mitigation and monitoring plan can include preservation of habitat of equal or greater habitat value than the Project area for the rare plant species impacted by the Project, as determined by a qualified botanist. The preservation area must be protected under a conservation easement prior to construction with the same requirements for long-term management as outlined above.

Nesting Birds

Mitigation Measure (MM) BIO-5 includes measures to discourage birds from nesting on the Conn Creek bridge prior to construction, such as installing exclusionary netting. CDFW has observed birds and bats getting tangled in such netting, and therefore discourages its use to prevent potentially significant impacts to sensitive bird and bat species. To reduce impacts to a level of less-than-significant, CDFW recommends that the City remove all language pertaining to the use of exclusion devices in MM BIO-5.

Removal of partially constructed nests or nests presumed to be abandoned could have a significant impact. To reduce potential impacts to a level of less-than-significant, CDFW recommends that MM BIO-5 be revised to state that a qualified biologist shall survey all partially constructed nests, and nests presumed to be abandoned, prior to their removal. Furthermore, CDFW requests that the last sentence of the "Nest Removal" bullet be revised to state that disturbance or removal of active nests shall not be conducted at any time. Fish and Game Code section 3503 prohibits the destruction of nest or eggs of any bird, except as otherwise provided by Fish and Game Code. Lastly, because nest building and egg laying can take less than 2 weeks to occur, CDFW recommends that MM BIO-5 be revised to state that additional nesting bird surveys shall be required after any construction breaks of 7 days or more.

Roosting Bats

The MND identifies pallid bat (*Antrozous pallidus*) and Townsend's big eared bat (*Corynorhinus townsendii*), which are California Species of Special Concern, as having moderate to high potential to occur within the Project area. Trimming bat habitat trees

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and disturbance to the Conn Creek Bridge as a result of the Project could potentially significantly impact special-status bats. MM BIO-6 requires that a qualified biologist conduct a survey for special-status bats in advance of tree trimming; and that tree trimming only occur during seasonal periods of bat activity. CDFW agrees with the intent of MM BIO-6 but recommends the following revisions to reduce impacts to a level of less-than-significant:

- A qualified biologist should conduct a bat habitat assessment of all trees that will be trimmed, and of the Conn Creek Bridge, between 30-90 days prior to Project construction. If the qualified biologist observes any tree limbs containing suitable bat roosting habitat (i.e., cavities, crevices, deep bark fissures), such tree limbs shall be flagged or otherwise clearly marked, and CDFW shall be notified prior to Project construction. In this event, trimming shall not proceed without approval in writing from CDFW. Trimming of trees containing suitable bat roosting habitat shall only occur during seasonal periods of bat activity (i.e., from March 1 to April 15, prior to the formation of maternity colonies, and from September 1 to October 15, to avoid winter torpor bats), and shall be conducted only after a qualified biologist has surveyed the tree, using a methodology approved by CDFW, to determine whether bats are present in the limbs to be removed. If any trees containing suitable bat roosting habitat need to be removed, all trees containing such habitat shall be clearly marked and removed during the above seasonal periods of bat activity using the following two-step method. On day 1, in the afternoon, under the supervision of a qualified biologist, all limbs not containing suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures) shall be removed using chainsaws only. The next day, the rest of the tree shall be removed. A qualified biologist shall also conduct a bat habitat assessment of the Conn Creek Bridge to determine if the bridge contains suitable bat roosting habitat, and whether there is any evidence of bats (e.g., guano deposits). If bats, or evidence of their presence is detected during the habitat assessment, CDFW shall be notified within 48 hours and the qualified biologist shall prepare an Avoidance and Minimization plan for CDFW review and written approval, prior to Project construction.

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 online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CDFW appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Stacy Sherman

692D024D81CA4F7
Stacy Sherman

Acting Regional Manager
Bay Delta Region

cc: State Clearinghouse # 2021070024