

August 25 2021

Oswalt, Caitlyn@Wildlife

STATE CLEARINGHOUSE

From: Oswalt, Caitlyn@Wildlife
Sent: Tuesday, August 24, 2021 5:01 PM
To: dean.wright@dtsc.ca.gov
Cc: Wildlife CEQA Comment Letters; Wildlife R2 CEQA
Subject: Comment Letter for Centennial M1 Property Clean-Up Project Remedial Action Plan; Mitigated Negative Declaration (MND); SCH#2021070473

Dear Mr. Wright:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Department of Toxic Substances Control (DTSC) for the Centennial M1 Property Clean-Up Project Remedial Action Plan (Project) in Nevada County 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.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist DTSC 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 forthcoming MND address the following:

1. Within the *Project Activities* section on page 3, there is engineered fill described to be placed in an area where wetlands and streams are present. If the fill in these areas will be permanent fill coming from the excavated boundary as indicated in *Figure 3*, please indicate if these soils will be contaminated. CDFW recommends an analysis of these impacts and the use of contaminated soils as engineered fill.
2. CDFW recommends identifying the water table within the project site and analyze if percolation of contaminants from grading and consolidation activities could have water quality impacts. Please also include potential future use, as disclosed in *Idaho-Maryland Mine Project NOP*, since this site is proposed to be used for the deposition of 1.6 million tons of engineered fill from the mine.

3. Throughout the MND, *Appendix H to the Remedial Action Plan (RAP)* is mentioned to show the design drawings and detailed grading figures. *Appendix H*, as labeled in this MND is the *Historic Properties Inventory* for the Centennial M-1 Property. Please clarify which appendix supplies the design drawings and detailed grading figures. CDFW recommends revising the MND in these areas with the proper appendix reference.
4. In 2020, The California Fish and Game Commission adopted the yellow-legged frog (*Rana boylei*) listing as threatened in CESA. Please revise Table 13 within the *Biological Resources* section to reflect this change.
5. The California black rail (*Laterallus jamaicensis coturniculus*) is a fully protected species. Please revise Table 13 within the Biological Resources section to reflect this protection status.
6. Page 31, site surveys for the Pine Hill flannelbush (*Fremontodendron decumbens*) identified and mapped 60 individuals. On CNDDDB there are 14 individuals of Pine Hill flannelbush reported within the Project Area. Please be sure to report the 60 individuals identified within the Project site to CNDDDB.
7. CDFW recommends adding a buffer distance to the installation of temporary fencing around identified Pine Hill flannelbush. CDFW also recommends identifying how long-term protection of the plants will be ensured during potential future placement of engineered fill from the Idaho-Maryland mine as it pertains the operations and maintenance at this location.
8. The proposed Project disturbance within the site would cause an estimated permanent impact to a total of 4.35 acres of mapped wetlands and 0.19 acres of mapped streams. Please describe how these areas will be drained, what the dry out period will be, and how any species found during these activities will be relocated, if discovered. Since the above activities have the potential to affect multiple species, please add these descriptions to the Project Description.

Mitigation Measures for Project Impacts to Biological Resources

The MND should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct and indirect impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). For mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: A Fully Protected Species (Fish & G. Code § 3511) has the potential to occur within or adjacent to the Project area, including, but not limited to: the California black rail (*Laterallus jamaicensis coturniculus*). Fully protected species may not be taken or possessed at any time. Based on the survey disclosure detailed in *Bio-7* on page 34 and 35 of the MND, a MOU would be needed for callback/response protocol surveys. As callback/response surveys are considered as take under Fish and Game Code section 86. Project activities described in the MND should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the MND fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the MND include an analysis how of appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in, *The Manual of California Vegetation* (Sawyer 2009). The MND should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Habitat Revegetation/Restoration Plans*: 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 mitigation 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 mitigation 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.
4. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful. Therefore, the MND should describe additional mitigation measures utilizing habitat restoration, conservation, and/or preservation, in addition to avoidance and minimization measures, if it is determined that there may be impacts to rare, threatened, or endangered species.

The MND should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the 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 MND should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species, either through construction or over the life of the Project.

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of State-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Lake and Streambed Alteration Program

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of any river, stream or lake;
2. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or,
3. Deposit debris, waste, or other materials that where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. All LSA Notifications must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, including fees, may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. CDFW recommends lead agencies coordinate with us as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process. The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

Based on review of Project materials, aerial photography, and observation of the site from public roadways, the Project site supports Wolf Creek and its associated riparian habitat. CDFW recommends the MND fully identify the Project's potential impacts to the stream and/or its associated vegetation and wetlands.

ENVIRONMENTAL DATA

CEQA requires that information developed in mitigated 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 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.

CDFW appreciates the opportunity to comment on the MND for the Centennial M1 Property Clean-Up Project Remedial Action Plan and recommends that the DTCS address CDFW's comments and concerns in the forthcoming MND. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Caitlyn Oswald, Environmental Scientist at (916)358-4315 or caitlyn.oswalt@wildlife.ca.gov.

Thanks,

Caitlyn Oswald

(She/Her)

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife