

**From:** Ralston, Ian@Wildlife  
**Sent:** Friday, September 10, 2021 4:04 PM  
**To:** Workman, Michelle  
**Cc:** Barnard, Denise; Wildlife R2 CEQA  
**Subject:** CDFW Comments on Mokelumne Watershed Routine Maintenance Project IS/MND

**September 13 2021**

**STATE CLEARINGHOUSE**

Dear Ms. Workman,

The California Department of Fish and Wildlife (CDFW) North Central Region (NCR) has received and reviewed the Initial Study/Mitigated Negative Declaration (SCH No. 2019049138) prepared by East Bay Municipal Utility District (EBMUD) for the Mokelumne Watershed Routine Maintenance Project (Project) pursuant to 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, native plants, and their habitat. 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.

#### **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 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 & 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 take authorization as provided by the Fish and Game Code. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

#### **PROJECT DESCRIPTION SUMMARY**

The Mokelumne Watershed Routine Maintenance Project (Project) involves the continuation of routine maintenance of the Mokelumne Watershed facilities, roads, and infrastructure at locations within the Watershed property. Maintenance activities include sediment and debris removal; vegetation management; facilities maintenance; erosion prevention, control, repair, and protection; and environmental stewardship activities.

#### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist EBMUD in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

1. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.
2. In several locations within the MND, first appearing on page 1-1, please update the text to state that tri-colored blackbird (*Agelaius tricolor*) is currently listed as threatened under CESA.
3. CDFW recommends the terms "natural channels, modified channels, and engineered channels" be defined for the reader on page 2-10 or 3-21 and a map depicting their locations be included in the MND.
4. The MND proposes grazing as a form of non-targeted weed control for identified maintenance areas. CDFW recommends that the MND include an analysis of the potential impacts of grazing on foothill yellow-legged frog (*Rana boylei*) in Chapter 3 – Environmental Analysis.
5. The MND proposes beaver dam removal as a covered maintenance activity. Beaver dams provide valuable in-stream habitat for multiple species, including juvenile steelhead (*Oncorhynchus mykiss*) (Bouwes et al. 2016). Removal of such habitat could result in potentially significant impacts to aquatic and wildlife resources. CDFW recommends that a hydrology study be completed during the Project planning phase to analyze the potential impacts of beaver dam removal on the water table and geomorphology of the stream. The hydrology study shall be included in the VRF submission package.
6. Mitigation Measure BIO-13 on page 3-47 states that if a prior Burrowing Owl Monitoring and Mitigation Plan was developed and approved by CDFW, then that plan shall be implemented. CDFW acknowledges that site-specific conditions may warrant revisions to a previously approved Burrowing Owl Monitoring and Mitigation Plan. CDFW recommends revising the final sentence of Mitigation Measure BIO-13 to read, "If a prior plan was developed and approved by CDFW, then that plan may be implemented after further consultation with CDFW."
7. Mitigation Measure BIO-3 on page 3-37 states that if salvaging plant species is infeasible, the appropriate agencies (e.g., USFWS, CDFW) will be consulted for additional options, such as payment of an in-lieu fee to the state CNPS program. CDFW recommends that EBMUD develop a plan proposing alternate mitigation options for CDFW's review prior to initial consultation. Potential proposals include:
  1. Explore opportunities to use in-service mitigation banks
  2. Reseeding/Planting Onsite
  3. Working with Conservancy Groups
  4. Mitigate at County/Publicly Owned Lands
  5. Other Opportunities (Increasing Wildlife Connectivity, etc.)
6. Please note that CDFW may ask for a different mitigation ratio than those identified in the MND depending on the quality of the habitat impacted. Therefore, pre-consultation with CDFW is recommended in order to determine the appropriate mitigation for species-specific impacts. For example, the Mitigation Measure BIO-3 on page 3-37 states that off-site compensation may include the permanent protection of an off-site population through a conservation easement or the purchase of mitigation banking credits at a 2:1 ratio.

#### Compliance with LSA

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 where it may pass into any river, stream or lake.

Based on the MND, the Project, as proposed, will require notification for some activities. In issuing a LSA Agreement, CDFW will be acting as Responsible Agency pursuant to CEQA. Therefore, it is important the MND address all of the potential biological streambed alteration temporary and permanent impacts and propose feasible mitigation. This will reduce the need for CDFW to require additional environmental review for preparation of the LSA Agreement.

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. It may also apply to work undertaken within the flood plain of a body of water.

All other LSA Notification types 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, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

#### Compliance with CESA

Based on the MND, the Project, as proposed, has the potential to result in "take" of plants or animals listed under CESA. Therefore, CDFW recommends that EBMUD obtain CESA take authorization for the Project. Early consultation is encouraged, as modification to the Project and additional mitigation measures may be required in order to obtain CESA take authorization. Candidate species are protected under CESA to the same extent as species listed as endangered or threatened (Fish and G. Code, §2085.)

CESA take authorization may only be obtained if the impacts of the authorized take of the species are minimized and fully mitigated and adequate funding has been ensured to implement the mitigation measures. CDFW may only issue a CESA permit if CDFW determines that issuance of the permit does not jeopardize the continued existence of the species. CDFW will make this determination based on the best scientific information available and shall include consideration of the species/capability to survive and reproduce, including the species known population trends and known threats to the species.

#### **CONCLUSION**

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [r2CEQA@wildlife.ca.gov](mailto:r2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Ian Ralston, Environmental Scientist at 916-817-0434 or at [ian.ralston@wildlife.ca.gov](mailto:ian.ralston@wildlife.ca.gov).

Sincerely,

#### **Ian Ralston**

Environmental Scientist  
Habitat Conservation Planning Branch  
North Central Region – Region 2  
*California Department of Fish and Wildlife*  
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*\*As a part of a broader effort by the California Natural Resources Agency and CDFW to go paperless, CDFW will begin accepting electronic notifications for Standard Lake and Streambed Alteration Standard Agreements through CDFW's new online Environmental Permit Information Management System (EPIMS), effective August 1, 2020. As CDFW transitions to EPIMS, CDFW will continue to accept paper notifications for Standard Agreements through August 31, 2020. All notifications for Standard Agreements received on or after September 1, 2020 need to be processed through EPIMS. For more information about EPIMS, or if you need help completing your online notification, please visit the CDFW's EPIMS website at: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>*