State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

September 21, 2021

Andrew Collum
California Department of Parks and Recreation
22708 Broadway Street
Columbia, California 95310

Subject: Pig Pond and Bear Hide Lake Dam Failure (Project)
Mitigated Negative Declaration
SCH No.: 2021080414

Dear Mr. Collum:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the California Department of Parks and Recreation (DPR) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 is charged by law to provide, as available, biological

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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.), related authorization as provided by the Fish and Game Code may be required.

PROJECT DESCRIPTION SUMMARY

Proponent: DPR

Objective: DPR proposes to make repairs to two stock pond dams at Pacheco State Park in Merced County, California. Pacheco State Park, formerly a cattle ranch dating back to the 1840s, consists of many stock ponds used for past cattle grazing practices as well as the current grazing lease. During the winter 2017 rain events, Pig Pond and Bear Hide Lake suffered dam failure. The back face of Pig Pond dam failed, causing massive undermining of the dam face, while Bear Hide Lake dam breached causing the top 5 feet of the dam to wash away along with dam undermining. Repairs to the dam include re-grading the dam to restore it to pre-storm-damaged configuration and to remove the animal burrows in Pig Pond Dam and Bear Hide Lake Dam. Fill material required to restore the original dam configuration will be mined from the pond side of the dam from the adjacent hillside. Project activities will be confined to the dry season (May 1 through October 15), or the first measurable fall rain of 1" or greater.

Location: The nearest cross streets are Dinosaur Point Road and Whiskey Flat Road, west of the San Luis Reservoir, in Merced County. Pig Pond is located at 37°2'58" N and 121°12'43.9" W. Bear Hide Lake is located at 37°1'42.25" N and 121°12'9" W.

Timeframe: n/a

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist DPR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned with potential impacts to special-status species including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State endangered foothill yellow-legged frog (*Rana boylii*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the fully protected golden eagle (*Aquila chrysaetos*), the federally threatened and State species of special concern California red-legged frog (*Rana draytonii*), the State candidate-listed as threatened mountain lion (*Puma concolor*), tule elk (*Cervus canadensis nannodes*), and the following Species of Special Concern: American Badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), western spadefoot toad (*Spea hammondii*), and western pond turtle (*Actinemys marmorata*). CDFW recommends that the MND for this Project provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels. This MND should be edited to include the CESA status of the species with potential to be impacted by this Project as well.

California Tiger Salamander (CTS)

CTS have the potential to occur in the Project site. Aerial imagery show that the area surrounding Pig Pond and Bear Hide Lake consists of upland terrestrial habitat, and the ponds themselves could provide breeding habitat. Both terrestrial and aquatic habitats are important for CTS that are dispersing into and from the area.

CTS breed and develop in vernal and seasonal pools and stock ponds within grassland, woodland, and scrub habitat types. They require upland refuges (i.e. small mammal burrows) when not breeding. Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess the Project site and vicinity (i.e. up to 1.3 miles, observed CTS dispersal distance) to evaluate potential for CTS. CDFW recommends site assessments follow the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). If surveys determine that CTS have the potential to be present, or if DPR assumes presence, it is recommended that DPR pursue take authorization through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081(b), prior to any ground-disturbing activities to comply with CESA. Installation of wildlife exclusion fencing, entrapment in holes and trenches, and handling and relocation as discussed in the CTS Specific Conservation Measures listed in the MND can or will result in take of individuals which is prohibited without prior take authorization.

San Joaquin Kit Fox (SJKF)

The area from around Los Banos Reservoir to the north of San Luis Reservoir has been identified by CDFW and the United States Fish and Wildlife Service (USFWS) as a movement corridor critical to the continued existence and genetic diversity of the northern kit fox population – with the Santa Nella area being identified as a critical SJKF movement "pinch-point" within this area. The creation of the San Luis Reservoir and O'Neil Forebay resulted in a large movement barrier to the north-south migration of SJKF, and busy highways in the area such as State Routes 152 and 33 and Interstate 5, as well as the existing urban development further compounded this problem (HT Harvey and Associates 2004). As a result, any upland habitat in this area that could serve as movement or rest areas for SJKF has very high conservation values for this species.

Because the Project site is within the San Luis Reservoir and Los Banos Reservoir movement corridor, and that the CNDDB has indicated SJKF occurrences in the adjacent properties (CDFW 2021), SJKF have the potential to occur on the Project site. SJKF populations are known to fluctuate over years and a negative finding from biological surveys in any one year does not necessarily depict absence of kit fox on a site. It is important to note that SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

CDFW recommends the MND quantify and describe the direct and indirect potential impacts to SJKF. This information, in addition to adequate description of habitat features on the Project site, is essential to adequately assess Project impacts. CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) and implementing no-disturbance buffers around den sites, as described in the USFWS document. SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code Section 2081(b).

Foothill Yellow-Legged Frog (FYLF) and California Red-legged Frog (CRLF)

FYLF are primarily stream dwelling and requires shallow, flowing water in streams and rivers with at least some cobble-sized substrate, however, they can use terrestrial upland habitats during the overwintering period; CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). FYLF and CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs,

invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to FYLF and CRLF (Thomson et al. 2016, USFWS 2017).

The California Natural Diversity Database (CNDDB) documents FYLF and CRLF occurrences around the Project site (CDFW 2021). Therefore, CDFW cannot conclude that both species are absent from the Project area. Without appropriate avoidance and minimization measures for FYLF and CRLF, potentially significant impacts associated with the Project's activities include inadvertent entrapment, destruction of eggs and oviposition (i.e., egg-laying) sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

CDFW recommends that a qualified wildlife biologist familiar with FYLF and CRLF conduct surveys in accordance with the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if both species are within or adjacent to the Project area. While this survey protocol is designed for CRLF, the survey may be used for FYLF. If any life stage of FYLF (adult, metamorph, larvae, egg mass) is found during surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF are most likely to be moving through upland areas (November 1 through March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for FYLF. If take cannot be avoided, acquisition of take authorization would be warranted prior to initiating ground-disturbing activities; take authorization would occur through issuance of an Incidental Take Permit by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

Mountain Lion

It should be noted that on June 25, 2019, a petition to list the mountain lion (*Puma concolor*), Southern California/Central Coast Evolutionarily Significant Unit (ESU) in Southern and Central California as Threatened or Endangered pursuant to the California Endangered Species Act (California Fish and G. Code §§ 2050 et seq., "CESA") was submitted to the California Fish and Game Commission. Specifically, the petitioners requested listing as a "threatened species" for the ESU comprised of the following recognized mountain lion subpopulations: 1) Santa Ana Mountains 2) Eastern Peninsular Range 3) San Gabriel/San Bernardino Mountains 4) Central Coast South (Santa Monica Mountains) 5) Central Coast North (Santa Cruz Mountains) 6) Central Coast Central. In April 2020, Fish and Game Commission determined that the petitioned action "may be warranted" and established mountain lion within the proposed ESU as a candidate species under CESA. As a candidate species, mountain lion within

the proposed ESU now has all of the protections afforded to an endangered species under CESA.

The Project site is adjacent to the Central Coast North ESU. Therefore, CDFW advises analyzing potential Project impacts to the subpopulation; based on this analysis, CDFW recommends editing the MND to include robust feasible avoidance, minimization, and mitigation measures to reduce impacts to mountain lion to less than significant.

Tule Elk

Tule elk are California's largest land mammal and an important wildlife resource whose population growth in recent decades has been of great interest to the public. Prior to non-indigenous settlement, it is estimated the elk population in California was more than 500,000 animals. Non-indigenous settlement decimated California's elk populations. By 1872, only a few tule elk remained in the San Joaquin Valley. Conservation organizations and hunters were able to restore elk to the California landscape. Elk population growth since 1970 has been significant and California now supports approximately 5,700 tule elk (CDFW 2018).

Tule elk are known to utilize the Project site and adjacent areas. Potential impacts to tule elk as a result of the Project includes temporary loss of habitat, mortality resulting from vehicle collisions, and entanglement with fences and other structures. Therefore, CDFW recommends editing the MND to include robust feasible avoidance, minimization, and mitigation measures to reduce impacts to tule elk to less than significant.

American Badger

American badger have been documented to occur in the vicinity of the Project area (CDFW 2021). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project area have these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include natal den abandonment, which may result in reduced health or vigor of young, or direct mortality. CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contain potential dens for American badger. Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

Western Spadefoot Toad

Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Review of aerial imagery indicates that the Project area contains these requisite habitat elements. Therefore, ground-disturbing activities associated with the Project site have the potential to impact this species. Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance include; collapse of small mammal burrows, inadvertent entrapment, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. CDFW recommends editing the MND to include robust feasible avoidance, minimization, and mitigation measures to reduce impacts to western spadefoot to less than significant.

Burrowing Owl (BUOW)

Small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover, are present on the Project site. Dispersing juveniles, migrants, transients or new colonizers may utilize the Project site year-round. Therefore, Project activities could impact this species. CDFW recommends that a qualified biologist determine if species-specific surveys are necessary to determine if BUOW may be impacted by Project activities. CDFW recommends the survey methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that burrowing owls are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommend that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Western Pond Turtle (WPT)

WPT have the potential to occur in the Project site. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016). Without appropriate avoidance and minimization measures for WPT, potentially significant impacts

associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

CDFW recommends that a qualified biologist conduct focused surveys for WPT 10 days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched. CDFW recommends that any detected WPT nests be provided clear movement corridors to suitable habitat features. If any WPT are discovered at the Project site immediately prior to or during Project activities, they be allowed to move out of the area on their own, or that a qualified biologist with appropriate take authorization move WPT out of harm's way to an appropriate location. Please note that capture is a form of take as defined by section 86 of Fish and Game Code, therefore anyone relocating WPT would need take authorization.

Fully Protected Raptors

The fully protected bald eagle and golden eagle are known to nest and forage in the vicinity of the Project site. Projects within occupied territories have the potential to significantly impact the species. CDFW recommends that focused surveys be conducted by experienced biologists prior to Project implementation. To avoid impact to the species, CDFW recommend incorporating survey protocols developed by CDFW (CDFG, 2010) and the USFWS (USFWS, 2010). In the event that the species is found within 0.5-mile of the Site, implementation of avoidance measures are warranted. CDFW recommends that a qualified wildlife biologist be on-Site during all ground disturbing/construction related activities and that a 0.5 mile no disturbance buffer be put into effect. If the 0.5 mile no disturbance buffer cannot feasibly be implemented, this warrants consultation with CDFW to assist with providing and implementing additional avoidance measures. Mitigation measures for fully protected raptor species should be fully addressed in the CEQA document prepared for the Project.

Lake and Streambed Alteration

The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires DPR to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to CTS, CRLF, and SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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 CNDDB. The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist DPR in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: Veronica Salazar, Lara Sparks, Cristen Langner, CDFW

Patricia Cole, USFWS
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LITERATURE CITED

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Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PROJECT: Pig Pond and Bear Hide Dam Failure

SCH No.: 2021080414

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure: CTS	
CTS Habitat Assessment	
CTS Take Authorization	
Mitigation Measure: SJKF	
SJKF Evaluation	
SJKF Surveys	
SJKF Take Authorization	
Mitigation Measure: FYLF	
FYLF Surveys	
FYLF Take Authorization	
Mitigation Measure: Mountain Lion	
Mountain Lion Evaluation	
Mitigation Measure: Tule Elk	
Tule Elk Evaluation	
Mitigation Measure: American Badger	
American Badger Habitat Assessment	
Mitigation Measure: Western Spadefoot Toad	
Western Spadefoot Evaluation	
Mitigation Measure: BUOW	
BUOW Surveys	
Mitigation Measure: WPT	
WPT Surveys	
During Construction	
Mitigation Measure: SJKF	
SJKF Den Avoidance	
Mitigation Measure: FYLF	
FYLF Avoidance and/or Monitoring	
Mitigation Measure: American Badger	
American Badger Avoidance	
Mitigation Measure: BUOW	
BUOW Avoidance	
Mitigation Measure: WPT	

WPT Nest Movement Corridor	