



**From:** Quillman, Gabriele@Wildlife  
**Sent:** Tuesday, February 15, 2022 8:30 AM  
**To:** Ashley Potocnik  
**Cc:** Wildlife R2 CEQA; 'state.clearinghouse@opr.ca.gov'; Sheya, Tanya@Wildlife  
**Subject:** CDFW's comments on the IS/MND for the Yuba City Wastewater Treatment Facility Outfall and Diffuser Project (SCH 2022010175)

Dear Ms. Potočnik:

RE: Yuba City Wastewater Treatment Facility Outfall and Diffuser Project (PROJECT)  
Mitigated Negative Declaration (MND) SCH# 2022010175.

The California Department of Fish and Wildlife (CDFW) received the Notice of Availability of a draft Mitigated Negative Declaration (MND) from the City of Yuba City (City) for the Yuba City Wastewater Treatment Facility Outfall and Diffuser Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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, we appreciate 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 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 is charged by law to provide, 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.) Based on the information in the Initial Study (IS), CDFW expects that it will need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project is expected to 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 (Fish & G. Code, § 86) 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 is located within the southeastern portion of Yuba City and unincorporated Sutter County, beginning in the open space just east of the Shanghai Bend subdivision, extending south of Levee Road and crossing over existing farmland to Garden Highway, continuing south on Garden Highway, before crossing over private property into the Feather River. The City proposes to replace an existing, damaged wastewater outfall and diffuser by constructing a new outfall and diffuser. The existing diffuser would be abandoned in place, with the new diffuser located downstream of Shanghai Falls in a stable location in the river. Project features include modification of existing effluent pumps to accommodate the new, longer outfall pipeline and new surge control system; a bifurcation station and flow meter at the connection to the existing outfall pipeline to send and meter flows to the new outfall or to the disposal ponds; approximately 2 miles of new outfall pipeline; a vacuum-assisted siphon priming system at the levee crossing; a new

diffuser structure consisting of 250 feet of new 36-inch welded steel pipe buried within the Feather River, with sixteen 12-inch-diameter risers with ports extending above the riverbed; a new permanent access ramp along the Feather River West Levee; new power connections to the bifurcation station and vacuum-assisted siphon building; and acquisition of easements to accommodate these features on affected properties, along with temporary construction easements.

## **COMMENTS AND RECOMMENDATIONS**

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

### **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 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.

Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the MND include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

### **Swainson's Hawk**

Swainson's hawks (*Buteo swainsoni*) are known to nest within the vicinity of the Project area, with 11 known nesting locations recorded within three miles of the Project area. Construction activities occurring near an active Swainson's hawk nest could result in significant impacts to the species, including nest abandonment and/or loss of nest trees or potential nest trees.

Mitigation Measure Bio-2 partially addresses these potential impacts by requiring a pre-construction survey for Swainson's hawk to be carried out within 15 days prior to the start of construction if construction activities will start between March 1 and September 15. CDFW does not concur that this measure is sufficient to reduce the Project's potential impacts on Swainson's hawks to less than significant. The effectiveness of Swainson's hawk nesting surveys is highly dependent on the time of year in which they are conducted. For example, nests are particularly difficult to locate during late spring (approximately April 21 to June 10) because most trees are fully leafed out, reducing nest visibility, and visible Swainson's hawk activity around the nest is typically minimal, with females brooding and males spending hours foraging away from the nest. Furthermore, nests may be missed circumstantially even by experienced surveyors during optimal survey periods. To avoid missing instances of nesting, CDFW recommends the City require at least two nesting surveys prior to construction, following the timing and methodology described in the Swainson's Hawk Technical Advisory Committee's 'Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley' (attached).

### **Bank Swallow**

The IS identifies three bank swallow (*Riparia riparia*) nesting colonies within three miles of the Project area, and states that "(p)otentially suitable (bank swallow) habitat could occur along limited portions of the steep western bank of the Feather River." The IS assumes that implementation of the general nesting bird avoidance survey described in Mitigation Measure Bio-3 will avoid direct take of bank swallow and reduce impacts to less than significant; however this measure does not address potential Project impacts to bank swallow habitat which would be potentially significant.

Approximately 70-90% of the California bank swallow population nests along the Sacramento and Feather Rivers (Humphrey and Garrison, 1986; Garrison et al, 1987; CDFG, 1992). Loss of nesting habitat due to alterations of the riverbanks and flow patterns has been identified as the most important overall threat to bank swallows in California (Bank Swallow Technical Advisory Committee, 2013). If the Project may result in loss or degradation of potential bank swallow habitat, it could result in a significant adverse impact on the species even if direct mortality is avoided.

To address this potential impact, CDFW recommends the IS be revised to include a delineation of potential bank swallow habitat at or near the Project area and an analysis of the Project's potential to impact the habitat. CDFW strongly recommends the Project avoid direct impacts to bank swallow habitat. If impacts are unavoidable, CDFW recommends they be mitigated by protecting existing bank swallow habitat via a conservation easement and/or restoring historic bank swallow habitat by removing revetment from stabilized banks. For more detailed recommendations regarding bank swallow avoidance and mitigation, please see pages 32 and 33 of the Bank Swallow Technical Advisory Committee's (2013) 'Bank Swallow (*Riparia riparia*) Conservation Strategy for the Sacramento River Watershed', available online at <https://www.sacramentoriver.org/bans/index.php?id=recovery>.

### **Central Valley Spring-Run Chinook Salmon**

Mitigation Measure BIO-4 proposes to minimize impacts to special-status fish species by, among other things, confining the in-water work period to between June 1 and October 31. As noted in the IS, this work period overlaps with the migration periods of Central Valley spring-run Chinook salmon, a CESA-listed species. In-water Project activities carried out during June in particular may result in take of Central Valley spring-run Chinook salmon. To avoid take, CDFW recommends an in-water work period of July 1 – October 1 (or as late as October 31 if an extension is needed). If in-water work is scheduled outside of this time period, CDFW recommends the City obtain a CESA ITP prior to starting construction. If the City decides to seek a CESA ITP, CDFW encourages the City to begin the process early to avoid project delays.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental documents 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 types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov).

### **FILING FEES**

The Project, as proposed, would have an impact on fish and/or 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**

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this email or further coordination should be directed to Gabriele Quillman, Environmental Scientist, at [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).

Regards,

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## REFERENCES

Bank Swallow Technical Advisory Committee. 2013. Bank Swallow (*Riparia riparia*) Conservation Strategy for the Sacramento River Watershed, California. Version 1.0. [www.sacramentoriver.org/bans/](http://www.sacramentoriver.org/bans/)

CDFG (California Department of Fish and Game). 1992. Recovery plan: Bank Swallow. Report no. 93.02. California Department of Fish and Game, Nongame Bird and Mammal Section, Wildlife Management Division, Sacramento, California.

Humphrey, J.M., and B.A. Garrison. 1987. The status of bank swallow populations on the Sacramento River, 1986. California Department of Fish and Game. Wildlife Management Division, Final report. Sacramento, California, 35 pages + appendix.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. 5 pages.