



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 26, 2022

Raymundo Gutierrez, Project Manager
County of Madera
200 West 4th Street
Madera, California 93637

**Subject: MD-1 Hidden Lakes Water Distribution Project (Project)
Mitigated Negative Declaration
SCH No.: 2022030700**

Dear Mr. Gutierrez:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the County of Madera (County) 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 expertise during public agency environmental review efforts, focusing specifically on

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.

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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: County of Madera

Objective: The Project, over the course of six phases, involves the abandonment and replacement of the entire existing water distribution system, which consists of approximately 26,000 linear feet of potable water distribution mains, 49 active water services, 51 fire hydrants, valves, appurtenances, 2,600 linear feet of raw water main and 300 linear feet of flexible intake piping. The new water distribution system will be designed to comply with requirements from the County, American Water Works Association, Title 22 of the California Code of Regulations, and the United States Bureau of Reclamation.

Location: The Project is located in the Hidden Lake Estates residential subdivision located on the north shoreline of Millerton Lake within public rights-of-way and County-owned outlots where water distribution and treatment facilities exist.

Timeframe: Construction of each phase is anticipated to be completed within three months, however due to cost constraints, each phase is expected to occur three years apart, with an estimated total completion time of 18 years. Construction will likely commence in January 2024.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County 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.

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There may be special-status resources present in and adjacent to the Project site. 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*). CDFW recommends that the MND for this Project provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels.

California Tiger Salamander (CTS)

CTS have the potential to occur in the Project site. Results from the California Natural Diversity Database (CNDDDB) documents five CTS occurrences within one mile just west of the Project site (CDFW 2022). Aerial imagery show that the Project site consists of upland terrestrial habitat. As a result, CDFW finds that sufficient refugia and breeding habitat for CTS exists and there is a high probability CTS occupies the Project site.

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. Mitigation measure BIO-7(b) states that a pre-construction survey will be performed within 30 days prior to ground-disturbing activities. As stated above, CTS is likely to occupy the Project site. Therefore, absent protocol level surveys demonstrating a negative finding, CDFW will not accept pre-construction survey results. Protocol surveys for CTS must be conducted well in advance of construction based on the close proximity to occupied habitat (0.2 miles) (IS/MND Table 3-8, page 3-16) and the presence of small mammal burrows and aquatic habitat within the project area. The timeline to obtain an Incidental Take Permit, pursuant to Fish and Game Code section 2081(b) is greater than 30-days and CDFW recommends conducting protocol surveys early enough to allow for pursuit of take authorization if the survey results are positive for CTS. CDFW recommends survey protocols 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). In addition to BIO-10 regarding take authorization, if surveys determine that CTS have the potential to be present, or if the County assumes presence, it is recommended that the County pursue take authorization through acquisition 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.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to CTS. 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,

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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 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 mailed electronically to CNDDDB at the following email address:

CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/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 the County 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) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

96D42C58E092466...

Valerie Cook
Acting Regional Manager

ec: Patricia Cole, USFWS
patricia_cole@fws.gov

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LITERATURE CITED

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.

U.S. Fish and Wildlife Service (USFWS). 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.

Attachment 1

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

PROJECT: MD-1 Hidden Lakes Water Distribution Project

SCH No.: 2022030700

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: CTS	
CTS surveys	
CTS take authorization	