



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 North Central Region
 1701 Nimbus Road, Suite A
 Rancho Cordova, CA 95670-4599
 916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Jun 15 2022

6/15/2022

STATE CLEARINGHOUSE

Alicia Forsythe
 Environmental Planning and Permitting Manager
 Sites Project Authority
 P.O. Box 517
 Maxwell, CA 95955

Dear Ms. Forsythe:

Subject: **2022-2024 SITES RESERVOIR GEOLOGIC, GEOPHYSICAL, AND GEOTECHNICAL INVESTIGATIONS
 JOINT ENVIRONMENTAL ASSESSMENT/INITIAL STUDY (EA/IS)
 SCH# 2022050480**

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Sites Project Authority (Authority) for the 2022-2024 Sites Reservoir Geologic, Geophysical, and Geotechnical Investigations Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

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 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. (Fish & G. Code., § 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

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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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 obtained. 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 Project area is generally located within the areas in and near the Antelope Valley in Colusa and Glenn Counties where the dams, reservoirs, pipelines, and related facilities could be located for the proposed Sites Reservoir, along with areas near the town of Dunnigan in Yolo County where pipelines and related facilities could be located for the proposed Sites Reservoir.

The proposed Project (also referred to as the Proposed Action in the Draft Environmental Assessment/Initial Study [EA/IS]) includes conducting geologic, geotechnical, and geophysical investigations, focusing on those areas proposed for the Sites Reservoir saddle dams, roads, bridges, pumping and generating plants, borrow areas, tunnels, pipelines, and transmission corridors. The investigations would be sited in areas where additional or updated data is needed to inform engineering cost projections, design, and preparation of permit applications for the proposed Sites Reservoir and associated facilities. Three types of investigations are planned, including surface geologic investigations, surface geophysical investigations, and subsurface geotechnical investigations.

Surface geologic investigations would include mapping the existing geology of the proposed Sites Reservoir inundation area, proposed conveyance facilities, and roads. Surveys would be performed on foot within areas immediately surrounding Funks Reservoir and lands between the existing reservoir and the proposed Sites Reservoir inundation area including lands south of Hunters Creek, east and south of Funks Creek, adjacent to Maxwell Sites Road and Sites Lodoga Road, and throughout the proposed Dunnigan Pipeline corridor.

Surface geophysical investigations would consist of walking surveys along up to 100 transect lines within the proposed Sites Reservoir inundation area. As part of these investigations, up to 16 geologic pedestrian surveys are also proposed in other locations within the Project area. Geophysical investigations typically involve various noninvasive or minimally invasive physical methods to determine the properties of the subsurface down to about 3 feet in depth.

Subsurface geotechnical investigations are intended to provide information on geologic conditions 20 to 550 feet below grade. Up to 70 pavement cores, 258 augers and borings, and 33 cone penetration test (CPT) probes are proposed within the proposed Sites Reservoir inundation area and associated conveyance facilities areas in Colusa, Glenn,

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and Yolo Counties. In addition, approximately 70 piezometers (a type of groundwater monitoring well) are proposed at select auger or boring locations. This effort is conducted through exploratory pavement borings, auger and rotary wash borings with downhole testing and rock coring, and CPT probes to collect subsurface data and samples and examine material processing requirements.

COMMENTS AND RECOMMENDATIONS

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

COMMENTS

Giant Garter Snake

Giant garter snake (*Thamnophis gigas*, GGS) is a state and federally-listed species with a high potential to occur within the Project area. Because GGS is listed as 'threatened' under CESA, "take"² is prohibited unless the Authority obtains take authorization (e.g., a CESA Incidental Take Permit) from CDFW. The EA/IS's Appendix C states that the Project is "not anticipated to require a permit for take for state listed endangered or threatened species or species proposed for state listing". If the Authority decides to proceed without obtaining CESA take authorization, CDFW recommends modifying the EA/IS's mitigation measures as described below to reduce the risk of take. Please note that while these measures may reduce risk, they cannot guarantee that take will be avoided, and take of GGS without CESA take authorization is prohibited even with implementation of the measures as described below.

1. Mitigation Measure MM Bio-6 allows a United States Fish and Wildlife Service (USFWS) approved biologist to move GGS out of the work area if the GGS does not move out of the work area on its own. Capture and relocation of GGS is take. If the Authority does not intend to obtain take authorization for GGS pursuant to CESA, then MM Bio-6 should be changed to state that any GGS discovered within the work area shall be allowed to leave the area on its own, and that no capture or relocation will be allowed.
2. MM Bio-6 also proposes to avoid take of GGS by avoiding geotechnical activities in GGS upland habitat during the warmer months (April through October) when GGS are most active and having a biologist assess the locations of proposed boreholes to avoid small mammal burrows. While CDFW typically recommends limiting ground-disturbing work within GGS upland habitat to the active season to reduce the risk of injury or mortality to GGS while they are underground, it may be less risky to perform geotechnical activities during the cooler months if it can be reliably determined that the borehole locations will avoid burrows, cracks, crevices, or other potential refugia. However, it is important to note that the presence of underground burrows may not be immediately apparent. For example, California ground squirrel

² Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

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burrows may extend 2 to 4 feet underground and have a length of up to 30 feet (UCIPM 2016). If the Authority decides to attempt to avoid take by avoiding burrows rather than seek incidental take authorization under CESA, CDFW strongly recommends that Project biologists thoroughly inspect all areas within a minimum of 50 feet around the proposed borehole locations for burrow entrances or other signs of underground refugia and avoid any locations near these features.

3. Mitigation Measure MM Bio-2 requires personnel driving vehicles to observe the posted speed limit on paved roads and a 15 mile per hour (mph) speed limit on unpaved roads during travel in the Project area. CDFW recommends MM Bio-2 be amended to extend the 15 mph speed limit to any offroad travel in or adjacent to areas of GGS habitat, as well as on any sections of paved road that are closed to normal traffic during Project activities to reduce the risk of take via vehicle strike. GGS are particularly vulnerable to vehicle strikes in sunny areas of paved roads, as these areas are typically warmer than the surrounding ground during the day and are therefore attractive to GGS as basking areas.

Nesting Birds

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

Mitigation Measure MM Bio-9 proposes to avoid take of nesting birds by conducting preconstruction nesting surveys for nesting raptors and “other nesting birds protected by the Migratory Bird Treaty Act”. Please note that section 3503 of the Fish and Game Code applies to the nests and eggs of all birds, including species that are not specifically protected by the Migratory Bird Treaty Act. CDFW recommends changing MM Bio-9 to specify that the preconstruction surveys will be for all nesting bird species. CDFW also recommends expanding the survey area to areas within ¼-mile of the work site for raptors and 500 feet of the work site for other birds, as sensitivity to disturbance varies greatly depending on species, nest location, general levels of disturbance in the area, time of year, and other factors, and in many circumstances a 50- to 500-foot survey area and subsequent buffer may be insufficient to adequately detect nests that could be impacted by project activities and to protect detected nests. Nesting bird buffers should be specific to each location and established by Project biologists with appropriate nesting bird knowledge and experience.

CDFW also offers the following species-specific comments for nest avoidance:

1. Bald and golden eagles: Mitigation Measure MM Bio-10 requires that all investigations be avoided within 0.5 mile of bald eagle (*Haliaeetus leucocephalus*) nests and 1 mile of golden eagle (*Aquila chryseatos*) nests. However, the measure

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does not include a survey requirement. To ensure that the Authority is able to identify the locations of such nests, CDFW recommends adding language requiring a preconstruction survey for bald and golden eagle nests in all accessible areas within 1 mile of the work sites.

2. Swainson's hawk: Mitigation Measure MM Bio-11 prohibits conducting investigations within 650 feet of a Swainson's hawk (*Buteo swainsoni*, SWHA) nest. CDFW typically recommends SWHA nests be given non-disturbance buffers of $\frac{1}{4}$ to $\frac{1}{2}$ mile, although smaller buffers may be adequate in cases where the nest is located in an area with high ambient disturbance levels, is protected from line of sight by trees or topographical features, where the proposed activity is less likely to cause disturbance, and similar circumstances. CDFW recommends SWHA nests be avoided using a standard $\frac{1}{4}$ -mile buffer except in cases where the project biologist has determined that case-specific circumstances warrant a smaller buffer.
3. Burrowing owl: Mitigation Measure MM Bio-12 requires burrowing owl (*Athene cunicularia*) burrows be avoided with a minimum of 250 feet during the nesting season (February 1 through August 31). CDFW's Staff Report on Burrowing Owl Mitigation (CDFG, 2012) recommends a minimum buffer of 200 meters (approximately 656 feet) around active burrows during the nesting season. To ensure adequate protection of nesting burrowing owls, CDFW recommends MM Bio-12 be changed to require a 200-meter buffer around active burrows during the nesting season except in cases where the project biologist has determined that case-specific circumstances warrant a smaller buffer.

Qualified Biologists and Reporting of Take

The EA/IS requires USFWS approval of qualified biologists to conduct surveys for listed species. CDFW requests that the biologists' qualifications also be submitted to CDFW for review and approval for any state-listed species. Similarly, CDFW requests language requiring notification of observation and/or take of any state-listed species to CDFW be added to Mitigation Measure MM Bio-2.

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 California Natural Diversity Database (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 submitted online or mailed electronically to CNDDB at the following email address: CNDDB@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.

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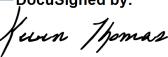
Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

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.

CDFW appreciates the opportunity to comment on the EA/IS 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 Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
Regional Manager

cc: Juan Torres, Senior Environmental Scientist (Supervisor)
Ian Boyd, Acting Senior Environmental Scientist (Supervisor)
Gabriele Quillman, Environmental Scientist
CDFW

Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. Sacramento, California, USA.

University of California Statewide Integrated Pest Management Program (UCIPM). 2016. California Ground Squirrels. <https://www2.ipm.ucanr.edu/agriculture/alfalfa/California-Ground-Squirrels/>. Accessed June 6, 2022.