



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Northern Region
 601 Locust Street
 Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

JAN 27 2023

January 27, 2023

STATE CLEARING HOUSE

Amy Lyons
 Senior Environmental Scientist (Supervisory)
 California Department of Water Resources
 2440 Main Street
 Red Bluff, CA 96080

**SUBJECT: REVIEW OF THE INITIAL STUDY AND MITIGATED NEGATIVE
 DECLARATION FOR KOPTA SLOUGH MULTI-BENEFIT PROJECT,
 STATE CLEARING HOUSE NUMBER 2022120577, TEHAMA COUNTY**

Dear Amy Lyons:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study and Mitigated Negative Declaration (ISMND) dated December 2022, for the above-referenced project (Project). CDFW appreciates this opportunity to comment on the Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines¹.

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 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 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 will be required. CDFW relies on the CEQA document prepared by the Lead Agency to make a finding and decide whether to issue a permit or agreement. It is important that the Lead Agency's ISMND consider CDFW's Responsible Agency recommendations. For example, CEQA requires CDFW to

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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include additional feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect a project would have on the environment (CEQA Guidelines section 15096(g)(2)). CDFW offers the following comments and recommendations on this Project in our role as a Trustee and Responsible Agency.

Project Description

The Project as described in the ISMND is as follows:

“The proposed project consists of three elements: (1) full removal of approximately 5,600 linear feet of existing rock revetment along the Sacramento River bank bordering the Kopta Slough property to restore natural fluvial and geomorphic processes; (2) restoration of the 176-acre agricultural field to native floodplain habitat on the Kopta Slough property; and (3) transfer of the Kopta Slough property to U.S. Fish and Wildlife Service ownership to assure its long-term management and conservation, as well as facilitate the enhancement of public recreational opportunities.”

Comments and Recommendations

CDFW recognizes that the California Department of Water Resources (DWR) has taken the appropriate steps to identify and assess biological resources and state special status species that have potential to occur within or, in-proximity to, the Project area. CDFW acknowledges that this is a restoration project, that the outcome will have a beneficial impacts to biological resources and that many of the environmental commitments listed in the ISMND are adequate in minimizing potential impacts to biological resources during implementation however, CDFW has the following additional comments and recommendations:

Promoting Pollinators

Insect pollinators such as the monarch butterfly and native bees have declined drastically relative to 1980s levels, have had an especially drastic decline since 2018 (Goulson et al. 2015²; Marcum and Darst 2021³) and several of California bumble bee species are now candidates for state listing. CDFW believes this Project is suitable for the incorporation of vegetation that promotes California’s native pollinators. CDFW encourages revegetation efforts that use locally occurring native trees, shrubs, and flowering plants to benefit native wildlife, and specifically, California’s insect pollinators. CDFW recommends the incorporation of native flowering species over non-native species, where possible.

² Goulson, D., Nicholls, E., Botías, C., & Rotheray, E. L. (2015). Bee declines driven by combined Stress from parasites, pesticides, and lack of flowers. *Science*, 347(6229). <https://doi.org/10.1126/science.1255957>

³ Marcum, S., & C. Darst. (2021). Western Monarch Butterfly Conservation Recommendations. Available from: <https://wafwa.org/wp-content/uploads/2021/10/Western-Monarch-Sec-7-Conservation-Recs-08.31.2021.docx>

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Invasive Species

As the Initial Study indicates, Project activities may contribute to the introduction of invasive plant species. CDFW concurs with the preparation and implementation of a weed prevention and control plan to reduce the potential spread of invasive plant species. Additional information and guidelines for invasive plants can be found on the California Invasive Plant Council's website at:

<http://www.cal-ipc.org/solutions/prevention/>.

Additionally, because Project activities include in-water work, prevention of aquatic invasive species may also be applicable. Additional information regarding invasive species can be found at <https://wildlife.ca.gov/Conservation/Invasives>. Guidelines for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <https://stopaquatichitchhikers.org>.

Weed Control and Pesticides

The Kopta Slough Riparian Restoration Plan indicates that control efforts for noxious weeds will include herbicide applications. If herbicide use cannot be precluded from the Project:

- CDFW strongly encourages herbicide applicators to follow the best management practices described by the [Guidance to Protect Habitat from Pesticide Contamination](#).
- Avoid using pesticides marked with the US Environmental Protection Agency's bee hazard icon.
- Avoid spraying pesticides onto any flowering plant, with special care to avoid taxa indicated above.
- Use pesticides with a short residual toxicity to bees- pesticide toxicity to bees can be checked via UC ANR's [Bee Precaution Database](#).
- Use targeted application instead of broadcast spraying whenever possible.
- Avoid mixtures of pesticides as they are only evaluated in scenarios in which they are not combined, therefore potential harmful synergies are also unknown.
- Avoid usage of soil fumigants, which penetrate the soil and can poison ground nesting bees.
- All pesticide application must be conducted by a Licensed and Certified Pesticide Applicator and should be used as directed by the manufacturer.

Additional guidance on this topic is provided by the [United States Environmental Protection Agency](#) and the [California Department of Pesticide Regulation](#).

Bats

Bats are considered non-game mammals and are afforded protection by state law from take and harassment (FGC, § 4150; Cal. Code of Regs, § 251.1). Several California bat species are considered California Species of Special Concern (SSC) and meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance

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by the Lead Agency (CEQA Guidelines, § 15065). Therefore, CDFW concurs with Mitigation Measure Wildlife-1 (MMW1), to survey for bats prior to demolition of existing structures, to perform demolition outside of the bat maternity season (March 1 – August 31) and outside of bat hibernacula (November 1 – March 1). CDFW recommends that MMW1 be amended to clearly state the maternity and hibernacula timeframes above.

To learn more about bat surveys, bats and human-made structures, and appropriate avoidance and minimization measures, the 2003 Bat and Bridges Technical Bulletin⁴ may serve as a resourceful tool.

Foothill Yellow-Legged Frog

The ISMND states “*Foothill yellow-legged frogs are found year-round in rocky streams in a variety of habitats in Tehama County. The project area is located outside the Northwest and North Coast and Feather River populations. There have been no foothill yellow-legged frogs observed within the project area. Project implementation is not expected to affect this species.*”

According to the 2019 foothill yellow-legged frog (FYLF) status review⁵, the Project area is located *within* the Northwest/North Coast clade boundaries therefore, CDFW encourages amending the above statement. According to the California Natural Diversity Database (CNDDDB), FYLF has been observed within 4 miles of the Project area in tributaries with similar habitat characteristics to that of Kopta Slough.

The statement “*There have been no foothill yellow-legged frogs observed within the project area*” is unclear if surveys for FYLF were performed throughout the Project site, or if is considering CNDDDB observations only. If the latter, please be advised that CNDDDB is not an exhaustive or comprehensive inventory of all rare species and natural communities statewide. Field verification for the presence (or protocol level surveys to determine absence) of sensitive species is encouraged.

Aside from the narrative above, there is no further mention of FYLF throughout the report. CDFW recommends that if FYLF surveys were performed, this information should be included with a corresponding date(s). Typically, a table of all biological surveys performed with their corresponding dates is suitable.

Since potentially suitable habitat may occur throughout Kopta Slough and adjacent habitats, CDFW recommends the inclusion of pre-construction FYLF surveys, alongside the daily pre-construction surveys for Western pond turtle, as mentioned in Mitigation Measure Wildlife-6.

⁴ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=10333>

⁵ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=174663&inline>

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Lake and Streambed Alteration Agreement

FGC section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

1. substantially divert or obstruct the natural flow of the bed, channel, or bank of any river, stream, or lake; or
2. substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
3. deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

Notification pursuant to Section 1602 of the FGC appears warranted. Information about the 1600 Notification process can be found at:

<https://www.wildlife.ca.gov/Conservation/LSA>.

Trenching, Excavation and Pipe Staging

Any open trench and excavated areas should be covered securely prior to stopping work each day and/or a wildlife exit ramp should be provided in the trench to prevent wildlife entrapment. If pipes are left out onsite, they should be inspected for wildlife prior to burying, capping, moving, or filling.

CDFW appreciates the opportunity to comment on this Project, and to assist the California Department of Water Resources in adequately analyzing, minimizing, and mitigating impacts to biological resources. If you have any questions, please contact Erika Iacona, Environmental Scientist, by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Jason Roberts, acting for
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