



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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December 27, 2022

Leslie Wells
Executive Assistant
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, CA 95901
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YUBA RIVER NORTH TRAINING WALL PHASE 2 PROJECT – DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION (IS/MND)

Dear Ms. Wells:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from Three Rivers Levee Improvement Authority (TRLIA) for the Yuba River North Training Wall Phase 2 Project (Project).

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.

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; California Environmental Quality Act (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 may also act 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. 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

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PROJECT DESCRIPTION SUMMARY

The proposed Project is the second phase of the North Training Wall (NTW) Phase 1 Project, which includes the construction of a high ground tie-in embankment to extend the north end of the NTW approximately 1,000 feet upstream. Construction activities include a landside toe access road, waterside access ramps, and earthen embankment with two concrete box culverts, installation and removal of a temporary bypass if needed, and removal of the existing canal crossing embankment. The proposed project also includes potential ecological enhancement components: riparian/aquatic habitat creation, fish passage enhancement, and salmonid foraging enhancement which would require excavation of cobble from potential restoration areas. The Project is located on the north bank of the Yuba River, approximately eight miles northeast of the City of Marysville in Yuba County, California.

COMMENTS AND RECOMMENDATIONS

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

Fish Foraging Enhancement and Fish Passage Enhancement

The IS/MND states that the project proposes to construct an approximately 3,300-foot-long pipe along the alignment to transport zooplankton-rice water drained from the flooded rice fields to the existing pipe that returns fish from the Hallwood-Cordua Canal fish bypass to the Yuba River. It is unclear how the new fish food delivery pipeline will be operated in conjunction with the fish return pipeline. Please clarify how the new fish food delivery pipeline will be operated in conjunction with the fish return pipeline in the IS/MND.

The IS/MND also states that the new weir and fish bypass discharge pipes would be monitored and maintained, and the side channel fish passage enhancement area would be monitored at least once annually for five years to determine if the side channel is draining as intended. CDFW recommends that the side channel passage enhancement area monitoring takes into account drought years and requires that monitoring occurs for a minimum of five events, in addition to the five years, to ensure enough monitoring information is obtained to determine project impacts.

Worker Environmental Awareness Program (WEAP) training

CDFW recommends a qualified biologist provide a WEAP training for all construction personnel before any construction activities begin. At a minimum, the training should include a description and discussion of the mitigation measures within the IS/MND and a brief description of each species that have a potential to occur on the Project, including a discussion of identification, habitat, and legal protections.

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Special Status Bird Species

The IS/MND states that riparian vegetation planned for removal within the Project footprint provides potential poor quality nesting habitat for Swainson's hawk (*Buteo swainsoni*), State listed as threatened, and white-tailed kite (*Elanus leucurus*), a fully protected species, and no suitable nesting habitat for tricolored blackbird (*Agelaius tricolor*), State listed as threatened, would be removed but that they could nest in emergent wetland vegetation and shrubby riparian vegetation adjacent to some of the potential restoration areas.

The IS/MND proposes Mitigation Measure (MM) BIO-2, which includes avoiding construction activities during the primary bird nesting season to the extent feasible, conducting focused surveys for Swainson's hawk, white-tailed kite, and nesting birds during their nesting seasons, implementing no-disturbance buffers around any active nests, and monitoring of active nests, to reduce potential impacts to these species.

California Endangered Species Act (CESA) Incidental Take Permit (ITP)

CDFW acknowledges that MM BIO-2 is important to reducing direct and indirect impacts to special status species. If it is determined that the proposed Project may result in "take," as defined in the Fish & G. Code, section 86, of a State-listed species designated as candidate, threatened, or endangered, a CESA ITP may be obtained to provide coverage in the event that take occurs.

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated, and adequate funding has been ensured to implement the mitigation measures (Fish & G. Code, § 2081 subd. (b)). CDFW may only issue a CESA permit if CDFW determines that issuance of the permit does not jeopardize the continued existence of the species. To facilitate the issuance of an ITP, if applicable, the IS/MND should include measures to minimize and fully mitigate the impacts to State-listed species. Please note that mitigation measures that are adequate to reduce impacts to a "less-than significant" level per CEQA requirements may not be enough to minimize and fully mitigate impacts to the extent required for the issue of an ITP. Therefore, CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes.

Fully Protected Species

White-tailed kite is a Fully Protected Species. Note that Fully Protected Species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (NCCP).

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Western Red Bat (*Lasiurus blossevillii*)

Although the IS/MND states that the Project site provides marginal-quality roosting habitat for western red bat, a California species of special concern, and that riparian vegetation planned for removal at the Project site is primarily shrubby and supports few mature trees, the document also states that riparian woodland on and adjacent to the Project site may provide suitable roost sites and foraging habitat for western red bat.

Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Bats can occupy trees year-round and are particularly susceptible to disturbance during the maternity season and during hibernation. Disturbance of roost sites during the maternity and hibernation seasons are considered primary factors that may negatively impact bats and have the potential to result in take. During the hibernation period, bats are very slow to respond to disturbance during torpor and can lose fat stores needed to survive the winter. During the maternity season, pups are not volant and dependent on their mother. Several bat species are also considered Species of Special Concern, which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines §15065); therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

CDFW recommends that the IS/MND fully identify the Project's potential impacts to native wildlife nursery sites, and include appropriate avoidance, minimization, and mitigation measures to reduce impacts or mitigate any potential significant impacts to bat nursery sites. Western red bats roost in foliage, often solitary, and do not require large hollow trees for roosting habitat. To minimize the risk of injuring western red bats during tree removal, CDFW recommends a two-step tree removal process in which the smaller outer branches are removed on the first day and the rest of the tree is removed on the second day. The disturbance caused by removing some of the branches on the first day encourages bats to leave the area.

If roost trees are removed during the colder months, bats may be in hibernation and unable to escape. Similarly, tree removal during the maternity season may cause injury or mortality of pups, particularly those that are too young to fly. To avoid potential impacts to both maternity colonies and hibernating bats, CDFW recommends that tree removal be scheduled either in the spring between approximately March 1 (or when evening temperatures are above 45°F) and April 15, or in fall between approximately September 1 and October 15 (or prior to evening temperatures dropping below 45°F and the onset of rainfall greater than one-half inch in 24 hours).

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, §

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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 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

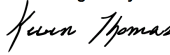
FILING FEE

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 proposal 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 Mary Xiong, Senior Environmental Scientist (Specialist) at (916) 212-3876 or mary.xiong@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
Regional Manager

ec: Tanya Sheya, Environmental Program Manager
Mary Xiong, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Office of Planning and Research, State Clearinghouse, Sacramento