



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 26, 2023

Ms. Carly Blanchard  
 San Lorenzo Valley Water District  
 13060 Highway 9  
 Boulder Creek, CA 95006  
[CBlanchard@slvwd.com](mailto:CBlanchard@slvwd.com)

Subject: Bracken Brae and Forest Springs Consolidation Project, Initial Study/  
 Mitigated Negative Declaration, SCH No. 2023050009, Santa Cruz County

Dear Ms. Blanchard:

The California Department of Fish and Wildlife (CDFW) has received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the San Lorenzo Valley Water District (District) for the Bracken Brae and Forest Springs Consolidation Project (Project), located in Santa Cruz County, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW submits these comments on the IS/MND to inform the District, as the CEQA Lead Agency, of potentially significant impacts to biological resources associated with the Project.

### **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 is also submitting these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise Regulatory Authority over the Project pursuant to the Fish and

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<sup>1</sup> 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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Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) Regulatory Authority. (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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.) or Native Plant Protection Act (NPPA) (Fish & G. Code, § 1900 et seq.), related authorization as provided by the Fish and Game Code will be required.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act and Native Plant Protection Act**

Please be advised that CESA or NPPA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. "Take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). If the Project will impact CESA or NPPA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any such Project modifications and mitigation measures must be incorporated into the IS/MND's analysis, discussion, and mitigation monitoring and reporting program.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA; however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

### **Lake and Streambed Alteration**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes, streams, rivers, or associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject

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to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final IS/MND and complied with its responsibilities as a Responsible Agency under CEQA.

### **Raptors and Other Nesting Birds**

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** San Lorenzo Valley Water District

**Objective:** The Project consists of the consolidation of two small mutual water companies, Bracken Brae and Forest Springs into the District system. The Project would include: 1) the installation of 8,960 linear feet, 10- and 12-inch diameter water main pipeline within roadbeds and existing District right-of-way, 2) installation of a new pump station within District right-of-way, 3) demolition of two existing 17,500-gallon concrete block Forest Springs water storage tanks and four 10,000-gallon Bracken Brae temporary water storage tanks, and 4) installation of one or two water storage tanks, totaling 120,000-gallon capacity, at the existing Forest Springs water storage tank site.

**Timeframe:** Construction is expected to start in summer 2024 and take approximately 12 months to complete.

### **ENVIRONMENTAL SETTING AND LOCATION**

The Project is located in Boulder Creek and unincorporated Santa Cruz County. Pipeline construction would occur within State Highway 236 (Big Basin Highway), Oak Avenue, Hazel Brake, West Park Avenue, Park Street, and Acorn Way. The existing and replacement tanks at the Forest Springs site are located within Assessor's Parcel Number (APN) 083-23-102, at the end of Reservoir Road. The existing Bracken Brae water storage tank is located at the end of Burnside Bend. The proposed pump station would be located within an easement on APN 082-03-118, at the corner of Ridge Drive and Big Basin Highway. The Project is located primarily on existing paved roads, road shoulders, and developed areas. The Project sites are surrounded by single family

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housing. Natural habitats within the area include Boulder Creek and other aquatic resources, and cismontane woodland and North Coast coniferous forest.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

### **MANDATORY FINDINGS OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species?**

#### **COMMENT 1: Potential Take of CESA and NPPA Protected Plant Species**

**Issue:** The IS/MND states that suitable habitat for eight special-status plant species is present within the proposed Project area, including Humboldt County milk-vetch (*Astragalus agnicidus*), state-listed endangered, and Dudley's lousewort (*Pedicularis dudleyi*), state-listed rare. However, the proposed mitigation measures do not reference obtaining an ITP if there is the potential for take of a state-listed species. Mitigation Measure Bio-1 states that special-status plant species may be extracted and relocated, or seed collection may occur. These actions are prohibited by CESA and the NPPA.

**Recommended Mitigation Measure Bio-1a: CESA & NPPA Listed Plants.** In the event that State-listed plants cannot be avoided during construction, the Project proponent shall obtain an ITP pursuant to Fish and Game Code section 2081, subdivision (b) (See cal. Code Regs., tit. 14, §§ 783.4 & 786.9). Information on the ITP process is available at <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>. In addition, CDFW recommends continued coordination to develop additional measures which may include work stoppage, flagging and avoidance of occurrences, collection of propagation material, and site restoration.

#### **COMMENT 2: Potential Take of CESA Protected Animal Species**

**Issue:** The IS/MND states that there is potential for foothill yellow-legged frog (*Rana boylei*, FYLF), West/Central Coast clade, to occur within the Boulder Creek watershed, but Mitigation Measure Bio-2 does not state that work will be stopped if the species is found, nor does it state that CDFW will be contacted. FYLF is listed as endangered under CESA. Species listed under CESA may not be taken at any time except under the provisions of a Natural Community Conservation Plan (NCCP), (Fish & G Code § 2081.7), a Memorandum of Understanding for scientific, education, or management purposes (Fish & G. Code §2081, subd. (a)), a Safe Harbor Agreement (Fish & G. Code §§ 2089.2-2089.26), or an ITP (Fish & G. Code § 2081 (b)).

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**Recommended Mitigation Measure Bio-2a: Foothill Yellow-Legged Frog Work Area Examination and Avoidance.** At least seven days prior to working within or near FYLF habitat, a qualified biologist shall examine the Project site to determine the presence and/or the potential for presence of FYLF adults, juveniles, tadpoles, or egg masses within the Project area and 100 feet upstream and downstream. If FYLF is found in the work area, all work shall stop. The Project proponent shall propose site-specific measures that will be utilized to avoid take and to avoid or minimize disturbance to FYLF habitat. Work shall not recommence until CDFW has provided written approval of the proposed avoidance measures. If take of FYLF cannot be avoided, the Project proponent shall obtain an ITP.

**COMMENT 3: Marbled Murrelet Protocol Level Surveys and Avoidance**

**Issue:** Proposed Mitigation Measure Bio-3: Marbled Murrelet Avoidance does not define the protocol to be used to verify absence of marbled murrelet (*Brachyramphus marmoratus*) if suitable habitat is found during the habitat assessment. In addition, the measure does not provide avoidance measures if the species is found during protocol-level surveys. Marbled murrelet is listed as endangered under CESA and threatened under the federal Endangered Species Act (ESA), and the species may not be taken at any time except under the provisions as stated in Comment 2.

**Recommended Mitigation Measure Bio-3a: Marbled Murrelet Protocol-Level Surveys.** If suitable marbled murrelet nesting habitat is identified during the habitat assessment, a qualified biologist shall conduct protocol level audio-visual marbled murrelet surveys following the *Pacific Seabird Group Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research* (Evans Mack 2003), which is specifically designed to detect murrelets in forests. The protocol is available online at <http://www.pacificseabirdgroup.org>.

**Recommended Mitigation Measure Bio-3b: Marbled Murrelet Avoidance.** If conducting two-year protocol level surveys is not feasible, or if nesting marbled murrelets are detected during surveys, the Project proponent shall either avoid Project activities within 0.25 miles of habitat, or a qualified biologist shall develop appropriate avoidance disturbance buffers around suitable habitat identified within 0.25 miles of the Project area and access road to be implemented during Project activities that occur during the murrelet breeding season (March 24 to September 15). Appropriate audio and visual disturbance buffers shall follow the U.S. Fish and Wildlife Service's (USFWS) *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Although the cover letter indicates that the guidance is valid only to the limits of the Russian River watershed, CDFW recommends use of the guidance document throughout the entire murrelet range. If the determined audio and visual disturbance buffers around the

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identified suitable nesting habitat do not incorporate the Project area, then no specific marbled murrelet mitigation measures are required.

## 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 (CNDDDB). The CNDDDB online field survey form and other methods for submitting data can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

## CONCLUSION

Thank you for the opportunity to comment on the Project's IS/MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or [Serena.Stumpf@wildlife.ca.gov](mailto:Serena.Stumpf@wildlife.ca.gov); or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023050009)

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## **REFERENCES**

- Evans Mack, D., W. P. Ritchie, S. K. Nelson, E. Kuo-Harrison, P. Harrison, and T. E. Hamer. 2003. Methods for surveying Marbled Murrelets in forests: a revised protocol for land management and research. Pacific Seabird Group Technical Publication Number 2. Available from <http://www.pacificseabirdgroup.org>
- USFWS, 2020. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California. 10 October 2020.