

Jan 30 2024**Haggerty, Nicole@Wildlife****STATE CLEARINGHOUSE**

From: Obester, Alyssa@Wildlife
Sent: Tuesday, January 30, 2024 11:12 AM
To: bussmanwid@gmail.com
Cc: MacLeod, Ian@Wildlife; Garcia, Jennifer@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: CDFW Comments on Spenker Lateral Pipeline / Water Conservation Project: IS-MND, SCH# 2024010067

Dear Mr. Keith Bussman:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Woodbridge Irrigation District (Lead Agency) for the Spenker Lateral Pipeline/Water Conservation Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines. 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.

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 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. (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. 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located in San Joaquin County, west of the City of Lodi, beginning at Woodbridge Irrigation District's existing West Main Canal and going southerly to the point just north of Kettleman Lane. The Project would replace 2.6 miles of an existing, unlined canal that is subject to water loss during operations. The replacement pipeline would be buried underground and would partially be realigned from the existing canal, through a vineyard and along an agricultural road. Woodbridge Irrigation District serves as both the project sponsor and the lead agency.

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Lake and Streambed Alteration Notification

Issue: The MND does not fully evaluate impacts to aquatic habitats, nor does it contemplate the potential need for Lake and Streambed Alteration permits or authorizations.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

- a. Substantially divert or obstruct the natural flow of any river, stream, or lake;
- b. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- c. Deposit debris, waste or other materials where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

If upon review of an entity's notification, CDFW determines that the project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the environmental document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments.

The proposed project activities may meet one or more of the conditions identified above. However, as currently written, the MND provides limited information regarding the impacts to aquatic habitats; therefore it is unclear whether an LSA is required. The MND does not quantify the impacts to aquatic habitat (either temporary or permanent), nor does it describe how temporarily impacted areas (if any) will be restored. Section 2.4 broadly describes aquatic resources; however, it does not quantify potential impacts.

Recommendation:

CDFW encourages the Lead Agency to amend the MND to further evaluate potential temporary and permanent impacts to aquatic resources. Additionally, the Lead Agency should identify how any temporarily impacted areas will be restored. The Lead Agency should also quantify (in square feet or acres) temporary and permanent project impacts to aquatic resources.

Additional Recommendation Regarding Future Need to Notify:

CDFW recommends that Woodbridge Irrigation District, in its capacity as project sponsor, notify pursuant to Section 1602 of the Fish and Game Code as early as possible to determine if an LSA is needed. Early consultation with CDFW is recommended, since modification of the project may avoid or reduce impacts to fish and wildlife resources. LSA notifications must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS); <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>). More information about LSA Notifications may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

COMMENT 2: Additional Analysis of Project Impacts on Plant Species Recommended

Issue: The MND describes the existing canal as an open, unlined ditch dating back to at least the 1930s. The Project Description also states that the existing canal is subject to water loss during operations. Section 2.4 states that perennial plant species, including large valley oak trees (*Quercus lobata*), grow along the edges of the canal. It is possible that

perennial plant species near the canal rely on seepage and subterranean flows for survival, however this is not considered in the MND. Additionally, mature valley oaks described in Section 2.4 could provide nesting habitat for the state-listed threatened Swainson's hawk (*Buteo swainsoni*), the fully protected white-tailed kite (*Elanus leucurus*), and other nesting bird species. If the valley oaks described in the MND rely on seepage from the existing canal for survival, the Project may potentially indirectly impact Swainson's hawk, white-tailed kite, and other bird species.

Recommendation: CDFW encourages the Lead Agency to amend the MND to evaluate potential impacts to existing vegetation and birds. As explained in Comment 1, this information may be used to determine if an LSA is needed.

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 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 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. 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 MND for the Spenker Lateral Pipeline/Water Conservation Project to assist Woodbridge Irrigation District 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 Alyssa Obester, Senior Environmental Scientist (Specialist), at alyssa.obester@wildlife.ca.gov.

Sincerely,

Alyssa Obester (she/her/hers)
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