



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



April 10, 2024

Governor's Office of Planning & Research

Apr 10 2024

STATE CLEARINGHOUSE

Tom Trott
Twain Harte Community Services District
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**Subject: Twain Harte Community Services District Water Distribution System
(Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH: 2024030516**

Dear Tom Trott:

The California Department of Fish and Wildlife (CDFW) received a MND from the Twain Harte Community Services District (THCSD) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of 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 (*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.

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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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 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.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Twain Harte Community Services District

Objective: The proposed Project would improve water system fire flow in pressure zones 4 and 6, referred to as the Sherwood Distribution System, through pipeline replacement, upsizing, relocation into road right of ways (ROWs) and/or pipeline abandonment through existing residential lots and the Twain Harte Shopping Center.

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Location: The Project is located in the community of Twain Harte, in Tuolumne County, and extends through portions of Sections 9 and 16, T2N, R16E, Mount Diablo Base and Meridian (MDB&M), in the central Sierra Nevada foothills. The Project footprint is entirely located within the Twain Harte USGS 7.5' Quadrangle and includes a portion of the Twain Harte Community and most of the Sherwood Forest subdivision.

Timeframe: Spring 2025 – Fall 2025

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist THCSD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

Aerial imagery shows the Project site is situated between Yosemite National Park-Hetch Hetchy Reservoir and New Melones Lake within mixed-coniferous forest with sparsely residential infrastructure (CDFW 2024). Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the MND acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*); the State endangered great gray owl (*Strix nebulosa*); and the State Species of Special Concern pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*), Townsends big-eared bat (*Corynorhinus townsendii*), and western mastiff bat (*Perotis californicus*).

CDFW also has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status plant species, including, but not limited to, the CRPR 1B.2 Mariposa clarkia (*Clarkia biloba ssp. australis*), the CRPR 4.2 mountain lady's-slipper (*Cypripedium montanum*), and the State Rare and CRPR 4.3 Tompkins' sedge (*Carex tompkinsii*).

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Bald Eagle

The MND did not evaluate and address potential Project-related impacts to bald eagle (BAEA), even though the Project site is within the geographic range of the species and a historical occurrence was documented 4.75 miles from the Project site. BAEA inhabits forested areas that contain large bodies of water and perching trees, and these habitat features are present within the Project vicinity. As BAEA was not addressed within the MND, CDFW recommends the following:

Recommended Mitigation Measure 1: BAEA Surveys

CDFW recommends that focused BAEA surveys following the Bald Eagle Breeding Survey Instructions (CDFW 2010) protocol be conducted by qualified biologists prior to Project implementation.

Recommended Mitigation Measure 2: BAEA Avoidance Buffer

If a BAEA is found prior to, or during construction, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer. CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon parental care for survival. In the event that a BAEA is detected during surveys, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is recommended.

Great Gray Owl

The MND did not evaluate and address potential Project-related impacts to great gray owl (GGO), even though the Project site is within the geographic range of the species and a historical occurrence was documented 4 miles from the Project site. GGO generally nest in closed canopy forested areas where they forage for pocket mice and voles. As it appears that mixed-coniferous forest is present within and surrounding the Project site, CDFW recommends the following:

Recommended Mitigation Measure 3: GGO Surveys

CDFW recommends that focused GGO surveys be conducted by a qualified biologist familiar with GGO to evaluate potential impacts prior to ground disturbing activities.

Recommended Mitigation Measure 4: GGO Avoidance Buffer

In the event an active GGO nest is found during surveys, CDFW recommends that a ½-mile no-disturbance buffer be implemented if ground-disturbing activities are to occur during the owl nesting season. In the event that a GGO nest is detected during surveys, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is recommended.

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Special-Status Bats

Several special-status bat species have historical occurrences within 5.25 miles of the Project site, including pallid bat, spotted bat, Townsend's big-eared bat, and western mastiff bat (CDFW 2024). The MND lists the spotted bat as having the potential to occur on the Project site, and states, "The species was not identified during surveys; however, given the wide variety of habitats suited to the species (mixed conifer, and presence of lake for foraging), it could roost and/or forage within the Project boundaries." Avoidance and Minimization Measures BIO-12, BIO-13, and BIO-7 are provided to mitigate for Project impacts for this species. CDFW concurs with these measures and recommends that they be implemented within the portions of the Project site that contain suitable habitat for pallid bat, Townsend's big-eared bat, and western mastiff bat as well.

Special-Status Plants

The MND lists Mariposa clarkia, mountain lady's-slipper, and Tompkins' sedge, as having the potential to be present within the Project site. Expanded Alternative Project BIO-A and BIO-C are provided as mitigation for these species, but only if the Expanded Project Alternative is pursued. CDFW concurs with conducting special-status plant surveys prior to construction, but recommends the following:

Recommended Mitigation Measure 5: Special-status Plant Surveys

CDFW recommends that the Project area (regardless of alternative selected) be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Expanded Alternative Project BIO-A also states, "If Tompkins sedge or Mountain lady's slipper or other special-status plant species is observed during the preconstruction surveys, CDFW shall be notified at least 10 days prior to construction activities, in accordance with the California Native Plant Protection Act of 1977 (CFGCA Section 1900- 1913) to allow sufficient time to transplant the individuals to a suitable location." CDFW would like to note that the California Native Plant Protection Act of 1977 (NPPA) is only applicable to the 64 species, subspecies, and varieties of plants that are specifically identified as part of the NPPA. Additionally, the unauthorized take of plant species listed as threatened, endangered, or rare pursuant to CESA or the NPPA is a violation of Fish and Game Code. As such, CDFW recommends the following:

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Recommended Mitigation Measure 6: Special-status Plant Consultation and Take Authorization

If special-status plant species, including State endangered, threatened, or rare plants, are identified during botanical surveys, consultation with CDFW is recommended. For State CESA and NPPA listed species, If take cannot be avoided, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) and/or California Code of Regulations, Title 14, Section 786.9, subdivision (b) to comply with CESA and the NPPA.

Editorial Comments and/or Suggestions

CNDDDB Positive Submission of Data: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

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 CNDD. The CNDD field survey form can be filled out and submitted online 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES


The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist THCS D in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist at (559) 807-1453 or john.riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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REFERENCES

- California Department of Fish and Wildlife. 2010. Bald eagle breeding survey instructions. California Department of Fish and Wildlife, Sacramento, California, USA.
- California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 03 April, 2024.
- California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. California Department of Fish and Wildlife. Sacramento, California, USA.

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)**

**PROJECT: Twain Harte Community Services District Water System
 Improvements Project**

SCH No.: 2024030516

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Bald Eagle	
Recommended Mitigation Measure 1: BAEA Surveys	
Great Gray Owl	
Recommended Mitigation Measure 3: GGO Surveys	
Special-status Plants	
Recommended Mitigation Measure 5: Special-status Plant Surveys	
<i>During Construction</i>	
Bald Eagle	
Recommended Mitigation Measure 2: BAEA Avoidance Buffer	
Great Gray Owl	
Recommended Mitigation Measure 4: GGO Avoidance Buffer	
Special-status Plants	
Recommended Mitigation Measure 6: Special-status plant Consultation and Take Authorization	