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From: Taylor, Brooks@Wildlife
Sent: Wednesday, April 17, 2024 11:25 AM
To: ccissell@buttecounty.net
Cc: Boyd, Ian@Wildlife; Sheya, Tanya@Wildlife; Wildlife R2 CEQA; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the NRRWF SOILS STOCKPILE EXPANSION PROJECT IS/MND (2024030686)

Dear Craig Cissell:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for Neal Road Recycling and Waste Facility (NRRWF) (Project) in Butte County, CA pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

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 the 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.

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 is located in at the existing NRRWF, 1023 Neal Road, Paradise, CA 95969. The project site is located near the Town of Paradise, approximately 7 miles southeast of the City of Chico and east of Durham, CA off of State Route 99.

The Project proposes to expand an existing soil stockpile at the current NRRWF location beyond the existing western boundary into an undeveloped area. The expanded stockpile volume would be approximately 1,169,000 cubic yards. A fence along the western footprint of the site would be removed and reconstructed around the expanded stockpile. Upon Project implementation, the soil stockpile will be used to cover the waste brought into the facility.

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Project alternatives to avoid impacts to Biological Resources

The new project boundary proposes to expand into annual grasslands as well as into the 100-year floodplain of an unnamed ephemeral tributary to Hamlin Slough. A Biological Resources Assessment (Dudek, 2023) was prepared which acknowledges the potential for sensitive biological resources including vernal pools, State and Federally endangered Butte county meadowfoam (*Limnanthes floccosa ssp. californica*) (BCM), federally-listed vernal pool tadpole shrimp (*Lepidurus packardii*) and vernal pool fairy shrimp (*Branchinecta lynchi*), state listed species of special concern western spadefoot (*Spea hammondi*), and Burrowing owl (*Athene cunicularia*), as well as other special status plant species. No project alternatives are proposed in the IS/MND. CDFW recommends that alternatives that substantially avoid and minimize the impacts to the biological resources present within the Project limits are considered as part of the environmental evaluation.

COMMENT 2: Lake or Streambed Alteration

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: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could 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.

If 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. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

Based on a review of Project materials an unnamed tributary to Hamlin Slough occurs along the western project boundary and the Project will occur within its floodplain. Impacts to this stream include the placement of earthen material within the floodplain, therefore, CDFW recommends the project applicant submit a Notification of Lake or Streambed Alteration prior to Project commencement. For more information on CDFW's LSA program including the online permitting portal, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

COMMENT 3: Butte County meadowfoam assessment and mitigation measures

Butte County meadowfoam (BCM) is endemic to Butte County, and is restricted to a narrow 25-mile strip along the eastern flank of the Sacramento Valley from central Butte County to the northern portion of the city of Chico. BCM populations and its habitat have been substantially reduced in number and fragmented by development.

CDFW advises that rare plant surveys within the project site, during the appropriate flowering period, should be conducted within the entire project area. The environmental document prepared for the Project should analyze potential for occurrence, and all direct, indirect, temporary, and permanent impacts to BCM including, but not limited to, habitat loss and fragmentation, habitat alteration and degradation due to changes to natural hydrology, invasive species, infrastructure projects, decline of pollinator species, and water contamination.

If BCM is identified within the project area, the project proponent should comply with the California Endangered Species Act (CESA). If CESA authorization is required for proposed impacts to BCM, the CDFW recommends the project proponent preserve habitat for BCM at a 19:1 ratio for direct impacts and at a 5:1 ratio for indirect impacts at an approved offsite mitigation bank or occupied habitat. Specific compensatory requirements for direct and indirect impacts should be coordinated in consultation with CDFW.

COMMENT 4: California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species, either through construction or over the life of the Project.

The IS/MND should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To facilitate the issuance of an ITP, if applicable, CDFW recommends the IS/MND include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

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 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. Please direct written notifications 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 IS/MND 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. If you have any questions regarding these comments, please contact me at (916) 907-3782 or brooks.taylor@wildlife.ca.gov.

Thank you,

Brooks Taylor
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