



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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April 17, 2024

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Governor's Office of Planning & Research

Apr 18 2024

STATE CLEARINGHOUSE

Subject: Combie and Ophir 2&3 Siphon Replacement Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2024040082

Dear Adrian Schneider:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Nevada Irrigation District (NID) for the Combie and Ophir 2&3 Siphon Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

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, CDFW appreciates 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.

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

PROJECT DESCRIPTION SUMMARY

The Project Site is located near North Auburn, Placer County, east of highway 49 and north of Bell Road. The Project Proponent is NID (Proponent). The Project consists of the replacement of three existing underground siphon pipelines that are part of NID's raw water delivery system. The pipelines cross Orr, Dry, and Rock Creeks. The existing siphons would remain in place. All replacement siphons, except for the Rock Creek siphon, would be located within NID's existing 40-foot right-of-way easement which extends 20 feet on either side of the existing siphon centerlines.

The Orr Creek Siphon would be replaced by installing a new approximately 945-foot-long underground siphon culvert along the west side of the existing culvert. The new siphon would be a 40-inch pipe designed to accommodate a flow rate of 72.5 cfs.

The Dry Creek Siphon would be replaced by installing an approximately 3,350-foot-long new underground siphon culvert along the western side of the existing culvert. The new siphon would be a 40-inch pipe designed to accommodate a flow rate of 70 cfs.

The existing Rock Creek Siphon would be replaced with approximately 5,500 feet of new pipe, including sections that deviate from the existing alignment. The Rock Creek Siphon is a 33-inch steel pipe that has been modified to 32-inch, originally designed for a flow rate of 43.0 cfs. Where the proposed Rock Creek siphon alignment requires a new easement, a similar 40-foot right-of-way width is proposed.

Construction activities include mobilization and staging, vegetation trimming and clearing prior to trenching, open trench digging, siphon placement, backfill, and site restoration. Construction activities will involve the use of backhoes, excavators, dump trucks, and service vehicles. Temporary dewatering and diversion of Orr, Dry, and Rock Creeks is necessary for siphon installation.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist NID in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

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COMMENT 1: Impacts to Foothill Yellow-legged Frog

Section 4.4.4.5 Biological Resources, page 4-36

Issue: Some construction activities will occur at stream crossings on Orr, Rock, and Dry Creeks. The MND indicates that the Project Site is within the range of the Northeast/Northern Sierra clade (North Sierra Distinct Population Segment) of foothill yellow-legged frog (*Rana boylei*; FYLF); this clade is listed as threatened under CESA. A season of operation that completely avoids FYLF presence does not exist; therefore, FYLF may be encountered in various life stages year-round. The MND describes that a Qualified Biologist will conduct pre-construction surveys for FYLF but does not provide sufficient detail on survey methods or timing.

Per CDFW's recommendations below, a Qualified Biologist is defined as a person who is knowledgeable and experienced in the biology, life stages, natural history, and identification of local fish and wildlife resources present at the Project Site.

Recommendation 1.1: CDFW recommends the Proponent provide additional detail on FYLF bioassessment survey methods and timing. The Proponent should review CDFW's Considerations for Conserving the Foothill Yellow-Legged Frog available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>.

To increase the likelihood of detection, surveys should include at least one visual encounter survey (VES) during the breeding and/or oviposition period (generally April–June), a tadpole survey four to eight weeks after the breeding survey(s), and a subadult survey in late summer/early fall (generally late August–early October). VES conducted during the late summer are often the easiest method for determining presence (generally late August to early October);² subadults and occasionally adults are often observed along river margins, and subadult and adult frogs will likely also be observed in tributary streams (Crump and Scott 1994).

If any survey fails to detect FYLFs within suitable habitat, a follow-up survey should be conducted two to four weeks after the initial survey.

Recommendation 1.2: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, including FYLF, pursuant to CESA. Regardless of whether FYLF are detected during the bioassessment surveys (described above in Recommendation 1.1), CDFW recommends the Proponent prepare a Pre-Construction Survey Plan (Plan) for FYLF and submit it to CDFW for review at least 30 calendar days prior to commencing ground-disturbing or in-water work activities.

A Qualified Biologist should develop the Plan for FYLF. Prior to preparing the Plan, CDFW recommends the Proponent review CDFW's Considerations for Conserving the Foothill

² Frogs are ectothermic, so ambient temperature affects the likelihood of detection. Whether the life form is larval or subadult, both stages will shelter in place under substrate and emerge and become active with warmth (i.e., detection probability increases with temperature).

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Yellow-Legged Frog available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. CDFW recommends the following survey and species considerations be incorporated into the Plan and final MND:

- a. The Plan should include what life-stage(s) shall be surveyed for, survey method(s), and timing of survey(s).
- b. The Plan should provide justification for timing and methodology of survey design (e.g., watershed characteristics, regional snowpack, timing and rate of spring runoff, day length, average ambient air and water temperatures, local and seasonal conditions).
- c. If the Project Site has suitable frog breeding habitat, the Plan should include performing egg mass/larval surveys.

Within 3 to 5 calendar days prior to ground-disturbing and in-water activities at the Project Site, the Qualified Biologist should perform a pre-construction survey, as specified in the Plan, within the boundaries of the Project Site, plus a minimum 500-foot buffer zone upstream and downstream of the Project Site. The survey should include a description of any standing or flowing water. The Proponent should provide Pre-Construction Survey results, notes, and observations to CDFW prior to commencing ground disturbing and in-water activities. Conducting surveys prior to maintenance work may allow avoidance of incidental take.³ If the Proponent encounters any life stages of FYLF during pre-construction surveys, ground-disturbing or in-water activities, work should be suspended at the Project Site, and CDFW should be notified within 24 hours. Work may not re-initiate in the Project Site until the Proponent demonstrates compliance with CESA.

Recommendation 1.3: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. Pending results of the surveys described above, 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, including FYLF, either through construction or over the life of the Project. No relocation shall be done for special status species or CESA listed species without the proper handling permits and/or CESA take coverage (e.g., an ITP).

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 issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code § 2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the EIR 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

³ As defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.).

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coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

COMMENT 2: Impacts to California Red-legged Frog

Section 4.4.4.5 Biological Resources, page 4-35

Issue: Mitigation Measure BIO-03 describes actions that the Proponent will take to minimize impacts to California red-legged frog (*Rana draytonii*; CRLF) and suitable habitat. CRLF are federally threatened and a California Species of Special Concern. The MND states that a Qualified Biologist will conduct surveys for CRLF prior to construction but does not provide adequate detail on the type of survey or the timing.

Recommendation 2.1: CDFW recommends the Proponent consult United States Fish and Wildlife Service (USFWS) CRLF survey protocol when developing CRLF surveys, available at <https://www.fws.gov/media/revise-guidance-site-assessments-and-field-surveys-california-red-legged-frog>.

Recommendation 2.2: CDFW recommends the following language be added to BIO-03 to minimize impacts to CRLF:

Prior to construction, the Project Site should be surveyed for special-status amphibians (i.e., CRLF) by a Qualified Biologist.

In addition to the USFWS survey protocol recommended above, within 3 to 5 calendar days prior to ground-disturbing and in-water activities at the Project Site, the Qualified Biologist should perform a pre-construction survey within the boundaries of the Project Site, plus a minimum 500-foot buffer zone upstream and downstream of the Project Site. If the result of the surveys above are negative, work may begin as scheduled, however if special-status amphibians are found during any survey, work may not begin until consultation occurs with the Qualified Biologist in determining appropriate avoidance and minimization measures.

If CRLF are found in the Project Site, CDFW recommends adding an avoidance and minimization measure to include the installation of exclusionary fencing. After installation of exclusionary fencing, the Qualified Biologist should inspect the Project Site and fencing daily, prior to the commencement of activities. If the Qualified Biologist determines that CRLF and other special status species have been successfully excluded from the work area, then equipment or materials may be moved onto the work site under the observation of the Qualified Biologist.

COMMENT 3: Impacts to Northwestern Pond Turtle

Section 4.4.4.5 Biological Resources, page 4-37

Issue: The MND states that a Qualified Biologist will conduct surveys for northwestern pond turtle (*Actinemys marmorata*) prior to construction but does not provide sufficient detail on survey methods.

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Recommendation: CDFW recommends the following language be added to Mitigation Measure BIO-05 to clarify survey details and minimize impacts to northwestern pond turtle:

Prior to ground-disturbing and in-water activities, a Qualified Biologist should survey the Project Site where suitable habitat (including nest sites) occurs for northwestern pond turtle. Surveys shall be performed within 30 days prior to starting Project activities and should be performed within a minimum of 500 feet upstream and downstream of the Project activity where accessible. If detected during surveys, a site-specific avoidance, minimization, and/or relocation plan should be prepared and implemented by a Qualified Biologist. The plan should include daily construction monitoring. The plan shall be submitted to CDFW.

COMMENT 4: Impacts to Special-Status Bird and Bat Species

Section 4.4.4.5 Biological Resources, page 4-38

Issue: The proposed Project involves vegetation trimming and clearing. Trimming or removal of trees and riparian understory associated with Project activities could result in significant habitat loss for a variety of bird and bat species, including the California black rail (*Laterallus jamaicensis coturniculus*), white-tailed kite (*Elanus leucurus*), Nuttall's woodpecker (*Dryobates nuttallii*), tricolored blackbird (*Agelaius tricolor*), pallid bat (*Antrozous pallidus*), and Townsend's big eared bat (*Corynorhinus townsendii*). The significance of the impact of habitat clearing is not reduced by virtue of the abundance of similar or equivalent adjacent habitat to the Project Site; vegetation trimming and clearing may reduce available habitat for wildlife and, potentially, for special-status species which may use these forest stands.

Migratory non-game native bird species are protected under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). Additionally, Fish & G. Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish & G. Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish & G. Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Recommendation: CDFW acknowledges that the Proponent has undertaken nesting bird and bat surveys and has described mitigation measures related to the California black rail, tricolored blackbird, and other nesting bird and bat species. CDFW recommends the following additional actions be taken to minimize impacts to special-status bird and bat species:

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Nesting Bird Surveys: To avoid impacts to nesting and migratory birds, if construction is scheduled to begin between February 1 and August 31, CDFW recommends that a Qualified Biologist conduct a preconstruction nesting bird survey no more than 3 calendar days prior to commencing vegetation removal activities. Because construction noise and vibrations may disturb nearby nesting birds to the point of causing nest failure, CDFW recommends the survey be conducted within a minimum of 1500 feet around the construction area. If an active nest is observed, an appropriate buffer shall be established to avoid impacts to nesting activities.

Please note that the MBTA and Fish & G. Code apply regardless of the time of year. Therefore, if an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

CDFW recommends the Qualified Biologist remain on-site for the duration of the Project, as appropriate, to ensure avoidance and minimization measures are implemented. The Qualified Biologist shall be authorized to stop construction if necessary to protect fish and wildlife resources.

Bat Surveys: No more than 6 months prior to the start of vegetation removal and/or construction, a Qualified Biologist with education and experience in bat biology and identification should survey the project site for potentially suitable bat roosting habitat. The habitat assessment shall include a visual inspection of suitable habitat features (e.g., trees, bridges, and other structures) for suitable bat roosting habitat within the Project Site and a minimum of a 500-foot radius adjacent to these areas that may be impacted by Project activities. If no suitable bat roosting habitat is identified, no further action by the Proponent is required. If bat roosting habitat is present, and activities are scheduled during the maternity season (April 15 to August 31) or the hibernation season (October 15 to March 1), the Proponent shall: 1) conduct pre-construction surveys and 2) develop a Bat Avoidance and Exclusion Plan, if applicable.

The Qualified Biologist should develop a pre-construction Bat Survey Plan (BSP). The BSP shall include a list of potential bat species present, survey method(s), and timing of survey(s). The BSP shall provide justification for timing and methodology of survey design (e.g., habitat characteristics, day length, average ambient air temperatures, local and seasonal conditions). The survey results shall identify: 1) the exact location of all roosting sites (location shall be adequately described and shown on a digital map with GPS coordinates), 2) the number of bats present at the time of visit (count or estimate), 3) species of bat detected, if known (include how the species was identified), and 4) the type of roost(s) [i.e., maternity, hibernaculum, night roost (rest at night while out feeding), or day roost (resting during the day)]. If bats are detected during any survey, and activities are scheduled during the maternity season (April 15 to August 31) or the hibernation season (October 15 to March 1), the Designated Biologist should develop a Bat Avoidance and Exclusion Plan (BAEP). The BAEP should include the following:

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- 1) A bat roost buffer, which would establish an appropriate no-disturbance buffer around bat roosts during maternity (April 15 to August 31) or hibernation (October 15 to March 1) seasons. The Qualified Biologist shall clearly delineate habitat and bat roosts within the Project Site with posted signs demarking the avoidance areas using stakes, flags, and/or rope or cord.
- 2) Exclusion devices, which should be installed either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½-inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½-inch in 24 hours). Specific exclusion devices may include one-way doors, lights and fans, foam or steel wool.
- 3) Tree trimming and/or removal guidance. Tree trimming and/or tree removal should be scheduled either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½-inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½-inch in 24 hours). Additionally, trees should be removed in two steps over a period of two days. On the first day, all branches that do not contain roosting habitat shall be removed. The remaining portion of the tree should be removed on the second day. All branch removal will be conducted using chainsaws or similar handheld equipment.

COMMENT 5: Notification for Lake and Streambed Alteration Agreement

Section 4.4.4.5 Biological Resources, page 4-37

Issue: Construction activities involve trenching across Orr, Dry, and Rock Creeks, as well as the diversion of flows upstream and downstream of the stream crossings. CDFW believes these activities may trigger a Notification for a Streambed Alteration Agreement.

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.

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If upon review of an entity's notification, CDFW determines that the 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. 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). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Recommendation: CDFW recommends that the Proponent notify pursuant to Section 1602 of the Fish and Game Code as early as possible 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 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 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 Combie and Ophir 2&3 Siphon Replacement Project to assist NID in identifying and mitigating Project impacts on

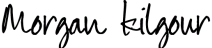
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biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Alyssa Obester, Senior Environmental Scientist Specialist, at alyssa.obester@wildlife.ca.gov.

Sincerely,

DocuSigned by:

C3A86764C0AD4F6...

Morgan Kilgour
Regional Manager

ec: Bridget Gibbons, Senior Environmental Scientist (Supervisory)
Alyssa Obester, or Senior Environmental Scientist (Specialist)
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

References

Crump, M. L. and N. J. Scott, Jr. 1994. Visual encounter surveys. 84-92 in Heyer, W.R., Donnelly, M.A., McDiarmid, R.W., Hayek, L.-A.C., & M.S. Foster, (eds.): Measuring and monitoring biological diversity. Standard methods for amphibians. Washington & London, Smithsonian Institution Press, 364 p.