State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
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Redding, CA 96001
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GAVIN NEWSOM, Governor
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May 1, 2024

Kelsey Marks
District Manager
Honey Lake Valley Resource Conservation District
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SUBJECT: LASSEN COUNTY WILDFIRE RECOVERY PROJECT, STATE CLEARINGHOUSE NUMBER 2024040088, LASSEN COUNTY

Dear Kelsey Marks:

The California Department of Fish and Wildlife (CDFW) has reviewed the Honey Lake Resource Conservation District (Lead Agency) Draft Initial Study and Mitigated Negative Declaration (ISMND), for the above-referenced project (Project). CDFW appreciates this opportunity to provide comments on the Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines[1].

CDFW's 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 and G. Code, §§ 711.7, subd. (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its Trustee Agency 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 comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may

[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.

need to exercise regulatory authority as provided by the Fish and Game Code. 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 and G. Code, § 2050 et seq.), or state listed rare plants pursuant to the Native Plant Protection Act (NPPA; Fish and G. Code § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Project Description

The Project summary, as described in the ISMND, is as follows:

"*The project will result in up to 28,650 acres of private non-industrial timberlands and woodlands receiving site preparation to remove dead and dying trees and shrubs and regrowth of competing vegetation resulting from the Hog, Sheep, Sugar, and Dixie Fires, planting of seedlings to reforest areas prepped as a result of this project and other areas previously cleared by private landowners. The project proposes removal of standing dead biomass material for site preparation in burned stands of Eastside Pine (EPN), Sierra Mixed Conifer (SMC), and Montane Hardwood Conifer (MHC) habitats (See Project Vicinity and Project Area Map). Clearing dead and dying trees which will fall down over time and become a fuel hazard to the reforested area is a key step in ensuring successful regeneration and protecting the investment from reburning. Long-term, downed fire killed trees inhibit reforestation treatments, increase watershed degradation, decompose, and increase fuel loads for a highly probable reburn event. Both occurrences release excess greenhouse gases into the atmosphere. Projects will be implemented within the project area over several years as funding becomes available...*"

Comments and Recommendations

CDFW finds that most of the proposed Avoidance and Minimization Measures (AMM's) included in the ISMND are adequate for avoiding and minimizing potentially significant impacts to biological resources. However, CDFW offers the following comments and recommendations to assist the Lead Agency in further minimizing and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife.

Nesting Birds

The Project includes removal of hazard trees (defined as dead and dying trees) and shrubs which may provide suitable nesting habitat for migratory birds, especially cavity nesting birds; however, the ISMND does not include any AMM's to avoid or reduce potentially significant impacts to nesting birds.

Nesting migratory birds, if present, could be directly or indirectly impacted by Project activities. Direct effects include mortality from pruning tree limbs and/or felling trees containing eggs or young. Indirect effects could include nest abandonment by adults in response to higher-than-ambient noise levels, human encroachment, visual disturbance and/or a reduction in food availability for young birds due to disruption of feeding behavior of adult birds. Including the following AMM into the final ISMND would ensure that potential impacts to nesting birds are less than significant.

To avoid impacts to all nesting birds and/or raptors protected under Fish & Game Code Sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act, one of the following should be implemented:

a. Construction activities should occur between September 1 and January 31, when birds are not anticipated to be nesting; or

b. If construction activities are to occur during the nesting season, a pre-construction nesting bird survey should be conducted by a qualified biologist to identify any active nests adjacent to the Project area.

Pre-construction surveys should begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. The survey should consider acoustic impacts and line of sight Project disturbances to determine a sufficient survey radius. A nesting bird survey report should be prepared and, at a minimum, the report should include a description of the area surveyed, date and time of the survey, ambient conditions, bird species observed, a description of any active nests observed, any evidence of breeding behaviors (e.g., courtship, carrying nest materials or food, etc.), and a description of any outstanding conditions that may have impacted the survey results (e.g., weather conditions, excess noise, presence of predators).

If an active nest is located during pre-construction surveys, a non-disturbance buffer should be established around the nest by a qualified biologist in

consultation with CDFW and U.S. Fish and Wildlife Service to comply with Fish & Game Code Sections 3503 and 3503.5 and the Migratory Bird Treaty Act. Compliance measures may include, but are not limited to, exclusion buffers, sound-attenuation measures, seasonal work closures based on the known biology and life history of the species identified during the survey, as well as ongoing monitoring by biologists.

Nesting bird surveys should be conducted no more than one week prior to the initiation of construction. If construction activities are delayed or suspended for more than one week after the pre-construction nesting bird survey, the site should be resurveyed.

Bats

While the ISMND offers Mitigation Measure BIO-WILD-6 for the avoidance and protection of bats that may utilize caves or cave-like structures, AMM's are not offered for individual roosting bats. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish and Game Code, Section 4150; California Code of Regulations, Section 251.1).

Trees that contain cavities, crevices and/or exfoliated bark have high potential to be used by various bat species. Since this Project includes tree removal and may impact trees with the above-referenced characteristics, a thorough pre-construction survey should be conducted by a qualified biologist to determine if bat roosting features are present prior to tree removal. Trees with potentially suitable roosting features should be clearly marked by a qualified biologist and the following should occur prior to tree removal:

1) To avoid impacts to roosting bats, removal of marked trees 12" diameter at breast height (DBH) or greater should occur only during the following time frames and subject to the following weather conditions, or as otherwise approved/recommended by a qualified biologist:
    - Between March 1 (or after evening temperatures rise above 45°F, and/or no more than ½" of rainfall within 24 hours occurs), and April 15; and
    - Between September 1 and October 15 (or before evening temperatures fall below 45°F, and/or more than ½" of rainfall within 24 hours occurs).

2) Marked trees greater than 12" DBH shall be removed using a two-step process to allow bats the opportunity to abandon the roost prior to removal. The two-sept removal process is as follows:

    - Day 1: Remove small-diameter trees, brush, and non-habitat features of large trees (branches without cavities, crevices, or exfoliating bark) to create noise and vibration disturbance on the tree and to alter the air flow and temperature around the roost feature thus encouraging bats to vacate roost features on their own. The tree shall then be left for 24 hours to allow the bats to move to another roost site. Excavators, grinders, or other heavy equipment shall not be used for first day trimming of habitat trees.
    - Day 2: Remove the remainder of the tree. If bats may be in branches that can be removed from the tree and set aside, cut the branches off intact and set them upright against trees away from the Project site to allow any bats present to passively escape.

This two-step process changes the microhabitat of the area, causing bats to vacate under their own volition, therefore minimizing direct and indirect impacts to bat species.

Western Bumble Bee

On September 30, 2022, the California Fish and Game Commission accepted a petition to list western bumble bee (WBB; *Bombus occidentalis*) as endangered under CESA, advancing the species to the candidacy stage of the CESA listing process. Candidate species are granted full protection under CESA during this period. Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Additionally, WBB has a state ranking of S1/S2, of which are imperiled/critically imperiled and extremely rare (often five or fewer populations) and is listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Priority[2].

Suitable WBB habitat includes areas of woodlands, grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. WBB primarily nest in late February through late November in abandoned

[2] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=149499&inline

underground small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs[3,4]. Overwintering sites utilized by WBB mated queens include soft, disturbed soil[5] or under leaf litter or other debris. Post forest-fire environments have been linked to increases in bumble bee probability[6] therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

Without appropriate AMM's for WBB, direct mortality and potentially significant indirect impacts associated with ground- and vegetation-disturbing activities may occur as a result of the Project. Indirect impacts may include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, and a reduction in health and vigor of eggs, young and/or queens.

Due to potentially suitable habitat throughout the Project area and the potential for significant impacts to WBB, CDFW recommends including AMM's for WBB in the ISMND and aligning the measures with survey considerations outlined in the June 2023 Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species[7].

Water Drafting

ISMND offers Mitigation Measure BIO-AQUA-4, which states the project will, "*Survey all proposed water drafting locations for sensitive and listed amphibians and receive approval from a biologist prior to use. Use drafting devices with 2 millimeter or less screening, and place hose intake into bucket in the deepest part of the pool. Use a low velocity water pump and do not pump ponds to low levels beyond which they cannot recover quickly (approximately 1 hour).*" However, for the protection of sensitive and listed amphibians that may be present, AMM's are not offered for egg mass tadpole life stages stemmed from

[3] Williams, P. H., R. W. Thorp, L. L. Richardson, and S.R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
[4] Hatfield, R., Jepsen, S., Thorp, R., Richardson, L., Colla, S. & Foltz Jordan, S. 2015. Bombus occidentalis. The IUCN Red List of Threatened Species 2015: e.T44937492A46440201. https://dx.doi.org/10.2305/IUCN.UK.2015-2.RLTS.T44937492A46440201.en.
[5] Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
[6] Johnson, S. A., Jackson, H. M., Noth, H., & M'Gonigle, L. K. (2023). Positive impact of postfire environment on bumble bees not explained by habitat variables in a remote forested ecosystem. *Ecology and Evolution*, 13, e9743
[7] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline

water level reductions. Foothill yellow-legged frog (*Rana boylii*) is a Priority 1 Species of Special Concern (SSC, Northwest/North Coast Clade) and threatened under CESA (North Fork Feather River and Upper Feather River Watershed); Cascades frog (*Rana cascadae)* a candidate species under CESA. Priority 1 SSC are those taxa that are likely to experience severe future declines and/or extirpation without immediate conservation actions. CEQA provides protection not only for ESA or CESA listed species, but for any species including, but not limited to, SSC that can be shown to meet the criteria for state listing.

Foothill yellow-legged frog and Cascades frog have ranges that extend adjacent to the project area and have the potential to occur within the project area. Both species reproduce by laying eggs in shallow, slow moving waters, between March and mid-August[8,9]. Flow rate reductions of 50% or more have a significant dewatering effect on the edges of a stream where egg masses and tad poles have potential to be present.

CDFW recommends revising BIO-AQUA-4 to include a drafting rate restriction of no more than 50 percent of surface flows, similar to the language included in Mitigation Measure BIO-AQUA-5. This will ensure that shallow waters retain enough volume to support any amphibian egg masses or tadpoles that may be present. CDFW further recommends revising the language to require surveys be conducted by a biologist familiar with the life-stages of these species.

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit[10] must be obtained if the Project has the potential to result in "take" (hunt, pursue, catch, capture, kill, or attempt thereof) of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project has the potential to result in take of a CESA-listed species, early consultation is encouraged, as significant modification to the Project may be necessary to minimize and fully mitigate impacts as required by Fish and Game Code Section 2081(b)(2).

[8] https://californiaherps.com/frogs/pages/r.boylii.html
[9] https://californiaherps.com/frogs/pages/r.cascadae.html
[10] https://wildlife.ca.gov/Conservation/CESA/Permitting

Additionally, some AMM's only refer to federally listed and sensitive species, and omit state listed and sensitive species. For example, Mitigation Measure BIO-BOT-2 states, "*New Sensitive Plant Discoveries - In the event any new populations of federally threatened, endangered, proposed, and candidate, and State threatened, endangered, and rare (Ranks 1 and 2) plant, lichen or fungi species are discovered during the various phases of the project, the area will be flagged and avoided until a botanist is consulted for mitigation measure applicability*." CDFW recommends including reference to state listed and sensitive plants species in addition to federally listed and sensitive plant species.

Herbicide Use

The ISMND indicates the use of herbicides for emergent brush and noxious weed treatment. While herbicide use is sometimes most efficient for control of vegetation, CDFW discourages their use, especially in areas that provide habitat for CESA-listed bumble bees. If CESA-listed bumble bees occur on the Project area, CDFW recommends implementing alternatives to herbicide use, as outlined in the ISMND.

If herbicides are used, the ISMND should specify specific methods for use to avoid or minimize direct and indirect impacts to bumble bees (i.e. applying herbicides outside of the blooming season). CDFW strongly encourages the preparation and implementation of a weed prevention and control plan. When applying herbicides, CDFW recommends:

- Following the best management practices described by the Guidance to Protect Habitat from Pesticide Contamination[11].
- Avoid using pesticides marked with the US Environmental Protection Agency's bee hazard icon.
- Avoid spraying pesticides onto any flowering plant.
- Use pesticides with a short residual toxicity to bees; bee pesticide toxicity can be checked via UC ANR's Bee Precaution Database[12].
- Use targeted application instead of broadcast spraying whenever possible.
- Avoid mixtures of pesticides as they are only evaluated in scenarios in which they are not mixed; thus, potentially harmful synergies are unknown.

[11] https://xerces.org/sites/default/files/2019-10/16-024_01_XercesSoc_Guidance-to-Protect-Habitat-from-Pesticides_web.pdf
[12] https://ipm.ucanr.edu/bee-precaution-pesticide-ratings/

- All pesticide application must be conducted by a Licensed and Certified Pesticide Applicator and should be used as directed by the manufacturer.

Additional guidance on this topic is provided by the United States Environmental Protection Agency[13] and the California Department of Pesticide Regulation[14].

Erosion Control

The ISMND indicates a need for erosion control. CDFW recommends using erosion control materials (e.g., geotextiles, fiber rolls) only made of loose-weave mesh, such as jute, hemp, coconut (coir) fiber, or other products without welded weaves. Synthetic (plastic or nylon) materials are strongly discouraged and should not be used.

Pre-Construction Surveys

Many of the AMM's listed in the ISMND infer sensitive species will be protected if 'discovered' but do not include targeted or general pre-construction surveys conducted by a biologist specifically for the purpose of detecting sensitive species and/or their habitats. For example, Mitigation Measure BIO-BOT-2 states, "*New Sensitive Plant Discoveries - In the event any new populations of federally threatened, endangered, proposed, and candidate, and State threatened, endangered, and rare (Ranks 1 and 2) plant, lichen or fungi species are discovered during the various phases of the project, the area will be flagged and avoided until a botanist is consulted for mitigation measure applicability*." However, there is no requirement to conduct pre-construction or appropriately timed botanical surveys within the ISMND.

If appropriately timed botanical surveys and/or pre-construction surveys are planned for botanical species or other biological resources, CDFW recommends including such measures in the ISMND. If pre-construction surveys are not planned, CDFW recommends including pre-construction surveys, as they are directly correlated with the implementation and success of the AMM's included throughout the ISMND.

Where pre-construction surveys are specifically indicated in the ISMND, such as for amphibians, it is unclear what survey methods will be used. CDFW recommends including survey methods for each biological resource. Please visit

[13] https://www.epa.gov/pollinator-protection/epa-actions-protect-pollinators
[14] https://www.cdpr.ca.gov/docs/enforce/pollinators/

CDFW's Survey and Monitoring Protocols and Guidelines[15] for accepted survey protocols for some biological resources, including rare plants and amphibians. Acceptable species-specific survey procedures may also be developed in consultation with CDFW and other applicable resource agencies.

Lake and Streambed Alteration

The ISMND indicates the use of water drafting for project operations, however, does not indicate authorization for potential impacts to bed, bank, or channel. Fish & Game Code Section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of the bed, channel, or bank of any river, stream, or lake; or
2. Substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
3. Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

To obtain more information about the 1602 Notification process, please access the Lake and Streambed Alteration Program[16].

Submitting Data

CEQA requires that information in environmental documents is incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Public Resources Code, § 21003, subd. (e).) Accordingly, please report any observation of special status species to the CNDDB. Use this link to access the CNNDB field survey form[17] and this link for additional information on the type of information reported to CNDDB[18].

Future CEQA Consultation

CDFW would like to emphasize that our staff remain available for consultation at every stage of the project development process. CDFW strongly encourages the Lead Agency to continue to consult with CDFW before and during the

[15] https://wildlife.ca.gov/Conservation/Survey-Protocols
[16] https://wildlife.ca.gov/Conservation/Environmental-Review/LSA
[17] https://nrm.dfg.ca.gov/fieldSurvey/default.aspx
[18] https://wildlife.ca.gov/Data/CNDDB/Submitting-Data

development of future projects and their equivalent CEQA documents, specifically regarding the analyses of biological resources and the formulation of avoidance, minimization, and mitigation measures for such resources. Engaging with CDFW early-on plays a critical role in allowing our agency to fulfill our mandate to conserve California's valuable fish and wildlife resources and will simultaneously aid the Lead Agency in an efficient and comprehensive CEQA review.

Conclusion

CDFW appreciates the opportunity to comment on the Project to assist the Lead Agency in adequately analyzing and minimizing impacts to biological resources. If you have any questions regarding the information above, or for future CEQA consultation requests, please contact Colton Trent, Environmental Scientist, by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Tina Bartlett
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Tina Bartlett, Regional Manager
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