



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

North Central Region

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July 10, 2024

Jeff Sutton

General Manager

Glenn-Colusa Irrigation District

P.O. Box 150

Willows, CA 95988

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**Subject: Lurline Check and Replacement Structure Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2024060457**

Dear Jeff Sutton:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Glenn-Colusa Irrigation District (GCID) for the Lurline Check and Replacement Structure 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.

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

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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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 Colusa County, southwest of the city of Maxwell, Latitude 39.2170 N, Longitude -122.2530 W (NAD83/WGS84).

The Project consists of the construction of a new check structure and siphon to replace the existing check structure and siphon, as well as their associated facilities, in their approximate current location along the Canal. The initial phase would involve clearing and grubbing any vegetation present within the project site and constructing a bypass for the Creek around the Canal and existing structures. The temporary bypass channel will consist of an earthen channel with a high-density polyethylene lining to divert flows around the work site and back into Lurline Creek. The next phase would include the demolition and removal of the existing check, siphon, and outlet structures, as well as the two existing maintenance bridges and overflow spill.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist GCID 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.

COMMENT 1: Lake and Streambed Alteration Notification for Project Activities

Issue: The MND describes construction activities that involve trenching and streamflow diversion and mentions the potential need to obtain a Lake and Streambed Alteration Agreement. CDFW believes activity associated with this Project may require 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.

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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. 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 GCID notify pursuant to Section 1602 of the Fish and Game Code as early as possible to determine if an LSA is needed.

COMMENT 2: Impacts of Construction Timing

Issue: The MND states that project construction would occur from October 2025 to April 2026. This construction window coincides with the wet season and periods of peak magnitude flows in Lurline Creek. Peak flows provide cues for native species, restructure the stream channel, redistribute sediment, inundate the floodplain, and create habitat complexity (Yarnell et al. 2020). Diverting flows during the wet season for construction activities may disrupt riverine and riparian processes and may negatively impact aquatic invertebrates, riparian vegetation, and nesting birds.

Recommendation: CDFW recommends that GCID provide justification for the timing of construction work and reconsider the work window for this project. CDFW also recommends that GCID further evaluate impacts of diverting and bypassing water during the wet season and provide additional detail on how flow will be managed during this time.

COMMENT 3: Impacts to Giant Garter Snake

Issue: The Project site provides potentially suitable habitat for the state and federally threatened Giant Garter Snake (GGS; *Thamnophis gigas*). GGS is listed as a threatened species under CESA and as such it is afforded full protection under the act. It is unlawful to take a State-listed endangered or threatened species (Fish & G. Code §2050 et seq.). Take is defined as "hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture or kill" (Fish & G. Code §86). CESA take authorization should be obtained if the proposed project has the potential to result in take of a State-listed plant or wildlife species. CDFW recognizes and appreciates GCID's suggested mitigation measures related to GGS

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(BIO-6A to BIO-6C); however, CDFW does not believe this measure will reduce Project impacts to a less than signification level.

Recommendation: CDFW recommends GCID review the U.S. Fish and Wildlife Service's (USFWS) Guidelines for Permits Specific to the Giant Garter Snake available at <https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-giant-garter-snake.pdf>. CDFW recommends GCID provide additional analysis and incorporation of avoidance and minimization measures for GGS into the MND. Avoidance and minimization measures may include:

Qualified Biologist

GCID should retain a Qualified Biologist responsible for monitoring all project activities, including construction and any ground- or vegetation-disturbing activities. The Qualified Biologist should be knowledgeable and experienced in the biology and natural history of GGS. The Qualified Biologist should be authorized to stop project activities, if necessary to protect GGS. If directed by the Qualified Biologist, GCID should take appropriate actions to ensure project activities are safely suspended and notify CDFW. Work should not re-initiate until GCID has consulted with CDFW and can demonstrate compliance with CESA.

Establishment of Environmentally Sensitive Areas

GCID should establish Environmentally Sensitive Areas (ESAs) in the Project area to minimize the disturbance of GGS habitat from construction-related activities. All potential GGS habitat that can be reasonably avoided during construction activities should be identified as ESAs and should be marked by the Qualified Biologist. GCID should erect ESA fencing, as directed by the Qualified Biologist, 200 feet from the edge of potential aquatic GGS habitat. The Qualified Biologist should also identify and flag all potential small mammal burrows within the Project Area as ESAs. ESAs should be demarked by tying high visibility poly wire to stakes placed every 6 feet along the ESA boundary. The high visibility poly wire should be raised at least 4 feet above grade. The high visibility wire and stakes should be marked with high visibility flagging or markers. All construction personnel should avoid ESAs during all phases of construction. GCID should avoid ESAs when identifying all staging areas, spoils disposal areas, borrow pits, and construction equipment access routes. The Qualified Biologist should inspect ESA fencing before the start of each workday and GCID should maintain the fencing until the completion of the Project. GCID should remove all fencing material upon completion of the Project.

Work Window

GCID's proposed work window is October to April; CDFW strongly encourages GCID to adjust this work window to reduce the potential take of GGS. CDFW recommends all construction activity within GGS upland and aquatic habitat, including activity within 200 feet of aquatic habitat, occur between May 1 and October 1. This is the active period for GGS and direct impacts are lessened because snakes are more active. More danger is posed to snakes during their inactive period, because they are occupying underground burrows or crevices and are more susceptible to direct impacts, especially during excavation. There is still potential for take during the active season. GGS use burrows while shedding,

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digesting, birthing, or during inclement weather, at which time they are not as mobile and may not readily move even when disturbed.

Pre-Construction Surveys

No more than 24 hours prior to the start of vegetation clearing or construction activities in any area within 200 feet of potential GGS aquatic habitat, the Qualified Biologist should conduct pre-construction surveys for GGS that include surveying of burrows, soil cracks, and crevices that may be suitable for use by GGS. Burrows, soil cracks, and crevices should be flagged for avoidance. Surveys shall be repeated if project activities within 200 feet of potential GGS aquatic habitat are paused for 14 or more consecutive days.

Exclusion Fencing

To exclude GGS from entering the Project Area, GCID should include an exclusion fencing measure in the MND. This measure should include the construction of silt fencing between all aquatic habitat and upland habitat, at least one day before upland habitat disturbance. The silt fencing may involve trenching to support fence posts, or contiguous sandbags located within the exclusion area to support and anchor the fence in place. If trenching is implemented, CDFW recommends GCID obtain CESA take authorization, as trenching can cause take of GGS.

GCID should maintain fencing throughout all construction activities. The Qualified Biologist should inspect the area prior to installation. The Qualified Biologist should inspect the barrier daily and during and after storm events (rainfall exceeding 0.5 inches during a 24-hour period). GCID should maintain and repair the barrier immediately to ensure that it is functional and without defects, that fencing material is taut, that the bottom edge of the fencing material remains buried or anchored, and that the fencing is supported by wooden stakes. GCID should remove fencing and all fencing materials upon completion of construction.

Consultation with CDFW

CDFW recommends GCID consult with CDFW and USFWS to determine how project activities may impact GGS and whether CESA and/or ESA coverage may be 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

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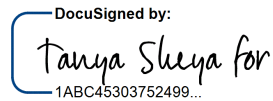
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 Lurline Check and Replacement Structure Project to assist GCID 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,

DocuSigned by:

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Morgan Kilgour
Regional Manager

ec: Briana Seapy, Senior Environmental Scientist (Supervisory)
Alyssa Obester, Senior Environmental Scientist (Specialist)
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

Yarnell, S.M., E.D. Stein, J.A. Webb, T.E. Grantham, R.A. Lusardi, J. Zimmerman, R.A. Peek, B.A. Lane, J. Howard, and S. Sandoval-Solis. (2020). A functional flows approach to selecting ecologically relevant flow metrics for environmental flow applications. *River Research and Applications*, 36(2), 318–324. [doi: 10.1002/rra.3575](https://doi.org/10.1002/rra.3575)