

Haggerty, Nicole@Wildlife

From: Kearns, Zachary@Wildlife
Sent: Friday, October 4, 2024 7:45 AM
To: jfrench@cityofescalon.org
Cc: Wildlife R2 CEQA; Kilgour, Morgan@Wildlife; Sheya, Tanya@Wildlife; Wilson, Billie@Wildlife
Subject: CDFW Comments - City of Escalon Connection to Nick DeGroot Water Treatment Plant

Hello Jaylen French,

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the City of Escalon Connection to Nick DeGroot Water Treatment Plant (project). CDFW is responding to the IS/MND as a Trustee Agency for fish and wildlife resources (Fish & G. Code, §§ 711.7 & 1802, and CEQA Guidelines, §§ 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for incidental take of endangered, threatened, and/or candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project spans from approximately Latitude: 37.804888, Longitude: -120.997823 to approximately Latitude: 37.856665, Longitude: -120.999258 along Escalon-Bellota Road, in San Joaquin County. The project consists of coordination between the City of Escalon (Lead Agency), South San Joaquin Irrigation District (SSJID), the County of San Joaquin, and Oakdale Irrigation District (OID). The proposed project would install approximately 19,500 linear feet of 18-inch PVC potable water line using along existing Escalon-Bellota asphalt roadway and County easement, construction of a new flow control facility (FCF) on existing agricultural land, and construction of a new booster pump station (BPS).

CDFW recommends the following items be addressed in the future planning of the project:

1. **Fully Protected Species.** A Fully Protected Species (Fish & G. Code § 4700) has the potential to occur within or adjacent to the project area, including, but not limited to: White-Tailed Kite (*Elanus leucurus*). Fully protected species may not be taken or possessed at any time. Project activities should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area.
2. **Nesting Birds.** Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. 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 the Fish and Game 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 the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

MMBIO-04 on Page xliii of the IS/MND describes the nesting season from March to late August. CDFW recommends that nesting bird surveys be conducted if project activities are scheduled to occur between February 1 and August 31, to fully encapsulate the potential nesting season. The survey should take place no more than 15 calendar days prior to ground disturbing activities. CDFW typically recommends a minimum of a 500-foot survey radius for migrating birds, and a ½ mile survey radius for nesting raptors.

3. **Swainson's Hawk.** Swainson's hawk (*Buteo swainsoni*) (SWHA) is a species listed as threatened under CESA and has the potential to occur on the project area. California Natural Diversity Database (CNDDDB) has records of at least three (3) previous SWHA occurrences within five (5) miles of the project area. Review of aerial imagery also suggests that there may be suitable nesting trees and foraging habitat on open farmland.

CDFW recommends a qualified biologist conduct a SWHA survey within a minimum 1/2-mile radius around the project area. Surveys should be conducted according to the following the five-period schedule in accordance with the "[Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley \(Swainson's Hawk Tech. Advis. Comm., 5/2000\)](#)":

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If an occupied nest is found and may be impacted by project activities, the project proponent should consult with CDFW and demonstrate compliance with CESA. 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 CESA-listed species, either through construction or over the life of the project.

4. **Passive Relocation and Entrapment Prevention:** At the end of each workday, any structures where wildlife may become trapped (e.g. open pipes, pits, trenches, etc.) should be tightly covered with hard material to prevent wildlife from entering, or an escape ramp should be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. A qualified biologist or construction monitor should survey the project area prior to work each day to ensure wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.
5. **Lake and 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:

- 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.

Page 29 of the IS/MND states that proposed construction includes jack and bore construction underneath Lone Tree Creek and that "...CDFW jurisdictional areas and regulatory approvals will not be required." This activity may trigger Notification with CDFW due to the description in comment 5 (c) above.

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 Notification types 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>.

6. Burrowing Owl (BUOW). The IS/MND states that BUOW is presumed absent from the site, however satellite and street imagery demonstrate potential nesting habitat adjacent to the project area on cleared agricultural land, or near disturbed areas with exposed soil and limited vegetation.

If construction activities are planned in suitable BUOW habitat, a qualified biologist should conduct a survey for burrowing owl following the methodology described in the [Staff Report on Burrowing Owl Mitigation](#), within 1-2 weeks prior to the start of construction. If BUOW, or signs of BUOW presence such as whitewash, feathers, animal dung, etc. are detected or observed within 500 feet of the project area, the project proponent should develop an Impact Assessment consistent with the Staff Report on Burrowing Owl Mitigation and submit the Impact Assessment to CDFW prior to construction work. The final avoidance and mitigation measures should be determined in coordination with CDFW.

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the project and recommends that the City of Escalon address CDFW's comments and concerns in the forthcoming CEQA document. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Zach Kearns, Senior Environmental Scientist (Specialist) at (916) 358-1134 or zachary.kearns@wildlife.ca.gov.

Sincerely,

Zach Kearns
Senior Environmental Scientist (Specialist)
(916) 358-1134
1701 Nimbus Rd.
Rancho Cordova, CA 95670

