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From: Bryant, Claire@Wildlife
Sent: Monday, December 9, 2024 4:30 PM
To: Calaveras Public Utility District
Cc: Wood, Dylan@Wildlife; Wildlife R2 CEQA; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the CPUD Recycle Backwash Station Project (SCH: 2024110310)

Dear Tyla Daries:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Calaveras Public Utility District (CPUD) for the CPUD Recycle Backwash Station 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, we appreciate 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 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.)

PROJECT DESCRIPTION SUMMARY

The Project site is located at the Jeff Davis Reservoir in Calaveras County, nine miles northeast of the community of Mokelumne Hill. The latitude of the project site is approximately 38.343889 and longitude is approximately -120.542222.

The Project consists of the construction of a backwash recycle pump station occupying 49.5 square feet and the installation of a 1,130-foot force main pipeline from the existing backwash ponds to a diffuser structure in the Jeff Davis Reservoir. The pump station would be constructed in the existing backwash pond area. The pipeline would be laid in trenches no less than 36 inches deep and would be confined to existing roadway or other CPUD property. Additional activities will include dredging the existing accumulated sediment from the backwash ponds and replacing a damaged storm drain with an armored V-ditch.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist CPUD 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: Migratory Birds and Birds of Prey, (BIO-2), page 3-15

Issue: Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish & G. Code section 3513. Fish & G. Code sections 3503, 3503.5 and 3800, which provide additional protection to nongame birds, birds of prey, their nests and eggs. Suitable foraging and nesting habitat for birds and birds of prey is present on and adjacent to the Project area. Ground disturbance and other construction activities could result in the take of migratory native bird species, including ground nesting species such as Killdeer (*Charadrius vociferus*) and California Quail (*Callipepla californica*). Currently, the proposed mitigation measures state pre-construction surveys for nesting birds will occur if work takes place between March 1 and July 31, and the measures do not describe avoidance procedures if active nests are found. The typical nesting survey period is between February 1 to August 31, and relevant avoidance measures are recommended below.

Recommendation or Recommended Mitigation Measure: CDFW recommends that Mitigation Measure BIO-2 be revised to implement the following nesting bird survey measures:

- 1.1 Nesting Bird Survey. If project-related activities are scheduled between February 1 to August 31 (the typical nesting season), a focused survey for nests shall be conducted by a qualified biologist within no greater than fifteen (15) calendar days prior to the beginning of Project-related activities. A qualified biologist shall survey a minimum radius of 500-feet for migratory birds and 1/2-mile for raptors around the Project area that can be accessed by the project proponent. The results of the survey shall be provided to Calaveras Public Utility District upon completion. If no active nests are found, project activities may proceed as scheduled.
 - 1.1.1 Active Nests. If an active nest is found, active nests should be avoided, and a no disturbance or destruction buffer shall be determined and established by a qualified biologist. The buffer shall be kept in place until after the breeding nesting season or the qualified biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. The extent of these buffers shall be determined by the qualified biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.
 - 1.1.2 Project Delay. If a lapse in project-related work of fourteen (14) calendar days or longer occurs, the qualified biologist shall complete another focused survey before Project work can be reinitiated.
 - 1.1.3 Permittee Responsibility. It is the project proponent responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.

COMMENT 2: California Spotted Owl, page 3-13

Issue: California Spotted Owl (*S. occidentalis occidentalis*)(CSO) has recently been proposed as *threatened* at the Federal level and is a state designated Species of Special Concern. As stated in the environmental document on page 3-13, there are potentially suitable nest trees within the project site for CSO. Multiple species observations have been recorded on California Natural Diversity Database (CNDDDB) within 5 miles of the proposed project area. While no suitable habitat will be removed, construction activities could disrupt nesting and foraging behavior.

Recommendation or Recommended Mitigation Measure: CDFW recommends that the following measures be added to the IS/MND in addition to the existing BIO-2 preconstruction nesting bird surveys:

- 1) A qualified biologist will be present on-site to identify suitable habitat and monitor during potential disturbance near suitable CSO habitat.
- 2) Environmental Awareness Training for CSO shall be incorporated into the IS/MND and implemented throughout all workers on the project site.

COMMENT 3: Foothill yellow-legged frog (*Rana boylei*), page 3-14

Issue: *R. boylei* Southern Sierra Distinct Population Segment (DPS) is both federally and state listed as *endangered*, and multiple observations have been recorded in CNDDDB in the surrounding project area, indicating that they are potentially present within the project site.

Recommendation or Recommended Mitigation Measure:

Foothill Yellow-Legged Frog Pre-Construction Survey Plan. A qualified biologist shall develop a Pre-Construction Survey Plan for foothill yellow-legged frog and submit it to Calaveras Public Utility District for review at least 14 calendar days prior to commencing project activities. The Plan shall include what life-stage(s) shall be surveyed for, survey method(s), and timing of survey(s). The Plan shall 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). If the Project Site has suitable frog breeding habitat, the Pre-Construction Survey Plan shall include performing egg mass/larval surveys.

Foothill Yellow-Legged Frog Pre-Construction Surveys. Within 3-5 calendar days prior to entering or working at the Project Site, the qualified biologist shall perform a pre-construction survey, within the boundaries of the project area plus a 500-foot buffer zone upstream and downstream of the project area that can be accessed by the project proponent. The survey shall include a description of any standing or flowing water. The project proponent shall provide Pre-Construction Survey results, notes and observations to Calaveras Public Utility District prior to commencing project activities. If the project proponent encounters any life stages of foothill yellow-legged frogs during pre-construction surveys or during project activities, work shall be suspended in the immediate vicinity or project area, and Calaveras Public Utility District and CDFW notified within 24 hours. Work may not re-initiate in the project area until the project proponent has consulted with Calaveras Public Utility District and CDFW and can demonstrate compliance with CESA.

COMMENT 4: Lake and Streambed Alteration, page 3-11

Issue: The proposed Project activities include work within the bank of the Jeff Davis Reservoir that may deposit material into the reservoir. While the Reservoir is a man-made and maintained structure, activities that substantially change the bank of the Jeff Davis Reservoir or may deposit debris are subject to California Fish and Game Code

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.

Recommendation or Recommended Mitigation Measure:

Notification to CDFW may be required, pursuant to Section 1602 of the Fish and Game Code, if the project proponent proposes activities that will substantially divert or obstruct the natural flow of or substantially change or use any material from the bed, channel or bank of any river, stream, or lake, or 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. In these cases, the environmental document should propose mitigation measures to avoid, minimize, and mitigate impacts to fish and wildlife resources from these activities.

Please note that other agencies may use specific methods to delineate Waters of the U.S, etc., including the ordinary high water mark, 100-year flood plain, etc. These methods often do not include all needed information for CDFW determine the extent of fish and wildlife resources that may be impacted by activities subject to Notification under Section 1602 of the Fish and Game Code.

CDFW recommends the Calaveras Public Utility District notify for the Project as early as possible, since potential modification of the proposed project may avoid or reduce impacts to fish and wildlife resources. More information can be found at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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. 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 CPUD Recycle Backwash Station to assist from Calaveras Public Utility District 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 Claire Bryant, Environmental Scientist, at (530) 333-7748, or by email at Claire.Bryant@Wildlife.ca.gov.

Thank you,

Claire Bryant (she/her)
Environmental Scientist
CDFW Region 2
(530) 333-7748

^[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.