



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 7, 2025

Ted Trimble
General Manager
Western Canal Water District
P.O. Box 190
Richvale, CA 95974
ted@westerncanal.com

Subject: FRONT SLIDE GATES REPLACEMENT PROJECT
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2024120443

Dear Ted Trimble:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Western Canal Water District (WCWD) for the Front Slide Gates 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.

Front Slide Gates Replacement Project

January 7, 2025

Page 2 of 9

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.), 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 Butte County, California, approximately 12 miles southwest of Chico. The existing front slide gates structure spans Little Butte Creek and impounds creek flows that are comingled with upstream inflows from the Thermalito Afterbay via the Western Main Canal. The Project consists of the demolition of the existing slide gate structure and the construction of new front slide gates structure across Little Butte Creek. The new structure will be placed along the same approximate alignment as the existing structure, but with a larger footprint to accommodate the necessary civil works. The new structure would improve the reliability and efficiency of WCWD water deliveries. The new structure would contain a concrete foundation, catwalk, and several mechanically operated gates to regulate upstream water levels and downstream flowrates.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist WCWD 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.

CDFW is primarily concerned with the project impacts to nesting birds, bats, and aquatic and riparian species.

COMMENT 1: 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.

Recommendation: CDFW recommends WCWD review the U.S. Fish and Wildlife Service's (USFWS) Guidelines for Permits Specific to the Giant Garter Snake available at

Front Slide Gates Replacement Project

January 7, 2025

Page 3 of 9

<https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-giant-garter-snake.pdf>. CDFW recommends WCWD provide additional analysis and incorporation of avoidance and minimization measures for GGS into the MND. Avoidance and minimization measures may include:

Designated Biologist

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

Establishment of Environmentally Sensitive Areas

WCWD 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 Designated Biologist. WCWD should erect ESA fencing, as directed by the Designated Biologist, 200 feet from the edge of potential aquatic GGS habitat. The Designated 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. WCWD should avoid ESAs when identifying all staging areas, spoils disposal areas, borrow pits, and construction equipment access routes. The Designated Biologist should inspect ESA fencing before the start of each workday and WCWD should maintain the fencing until the completion of the Project. WCWD should remove all fencing material upon completion of the Project.

Work Window

CDFW appreciates WCWD's proposed work window of May to October. CDFW agrees with this proposed work window and 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, digesting, birthing, or during inclement weather, at which time they are not as mobile and may not readily move even when disturbed.

Front Slide Gates Replacement Project

January 7, 2025

Page 4 of 9

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 Designated 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, WCWD should provide additional details related to exclusion fencing in the Avoidance and Minimization Measures. This 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 WCWD obtain CESA take authorization, as trenching can cause take of GGS.

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

Consultation with CDFW

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

COMMENT 2: Aquatic Species Impacts and Relocation

Issue: The Project would involve the temporary diversion of water for the duration of construction activities which have the potential to impact aquatic species in Little Butte Creek.

Recommendation: CDFW recommends WCWD develop a Fish Relocation Plan to address potential impacts of dewatering and diversion on stranded aquatic species. To avoid impact to any non-listed aquatic species, the Aquatic Species Relocation Plan should be submitted to CDFW for approval at least 60 calendar days prior to the start of any in-water project activities. The Aquatic Species Relocation Plan should address the monitoring of the fish to be relocated during the dewatering process. The plan should be

Front Slide Gates Replacement Project

January 7, 2025

Page 5 of 9

prepared and implemented by a Designated Biologist. Additionally, WCWD should ensure that any other necessary permits are acquired prior to fish relocation activity.

For the duration of dewatering and diversion, the Designated Biologist should check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, bucket, and by hand and should minimize handling time. Captured aquatic life should be released immediately in the closest body of water adjacent to the work site that is suitable for the relocated species. The Designated Biologist shall be authorized to stop any project activities if necessary to protect fish and wildlife resources. If WCWD encounters a listed or fully protected species during a project activity that could be harmed, WCWD should suspend work and consult with CDFW.

Following dewatering, a post-relocation report should be provided to CDFW that includes, at a minimum, the date and time of capture and relocation, the method of capture, map of locations in relation to the Project Site, and the number and species of fish captured and relocated. The post-relocation report should be provided to CDFW within 14 calendar days of completing each fish relocation activity.

CDFW also recommends installing and monitoring screens on the temporary diversion to prevent aquatic species impingement and entrainment and limiting in-water work to June 1 through October 1 to minimize the risk of impacting juvenile salmonids that may stray into the Little Butte Creek system.

COMMENT 3: Impacts to Special-Status Bird and Bat Species

Issue: The proposed Project involves vegetation trimming and grubbing. 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 white-tailed kite (*Elanus leucurus*), the state threatened tricolored blackbird (*Agelaius tricolor*), the state candidate Western burrowing owl (*Athene cunicularia hypugaea*), the state threatened Swainson's hawk (*Buteo swainsoni*), the state endangered Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), and the Western red bat (*Lasiurus blossevillii*). 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

Front Slide Gates Replacement Project

January 7, 2025

Page 6 of 9

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 recommends the following additional actions be taken to minimize impacts to special-status bird and bat species:

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 Designated 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 Designated Biologist remain on-site for the duration of the Project, as appropriate, to ensure avoidance and minimization measures are implemented. The Designated 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 Designated 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.

Front Slide Gates Replacement Project

January 7, 2025

Page 7 of 9

The Designated 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:

- 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 Designated 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.

Front Slide Gates Replacement Project

January 7, 2025

Page 8 of 9

COMMENT 4: Lake and Streambed Alteration Notification for Project Activities

Issue: The MND describes construction activities that involve a variety of ground-disturbing work within the bed, bank, and channel. 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.

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 WCWD 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

Front Slide Gates Replacement Project

January 7, 2025

Page 9 of 9

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

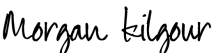
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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