



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



March 28, 2025

Abbygayle Guevara
Environmental Scientist
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Abbygayle.Guevara@waterboards.ca.gov

Subject: Lone Band of Miwok Indians Water System Improvements
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2025030046

Dear Abbygayle Guevara:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from the State Water Resources Control Board for the Lone Band of Miwok Indians Water System Improvements (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.

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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, 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 within a 40-acre rural residential area (APN 005-180-005-000) approximately 3 miles southwest of Ione in Amador County.

The Project consists of installing a new water distribution system by consolidating with the Jackson Valley Irrigation District’s system along Jackson Valley Road and bringing potable water to residents within the Project site. The new distribution system would consist of 4,300 feet of 4-inch high-density polyethylene pipe. Portions of the new pipeline alignment will be located adjacent to, or coincident with, the old pipeline.

Ground disturbance associated with the proposed Project will include clearing and grubbing of vegetation, trenching for pipeline installation, and equipment staging within a 1.2-acre disturbance area. Most of the pipeline excavation will take place within the alignment of existing residential access roads. No tree removal will be required. Trenching is not anticipated to exceed 3 to 4 feet below existing grade.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the State Water Resources Control Board in adequately identifying and, where appropriate, mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT 1: California Tiger Salamander and California Endangered Species Act

Issue: The Central Valley Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*, CTS) is a State - and federally-listed threatened species. The IS/MND on page 5-3 states “direct impact could include harm or mortality of individuals...”. Even with the proposed biological mitigation measures, including BIO-1 which specifies protection for CTS, CDFW believes that take of CTS is possible.

Evidence: According to the IS/MND, two fresh emergent wetlands were observed within the 500-foot biological study area (BSA), and several other aquatic features are visible on aerial imagery within the approximate 1.3-mile dispersal range for CTS from the Project site. Due to the close proximity of a number of potential breeding ponds, it is probable that CTS are dispersed throughout the entire Project site and could be killed or injured during Project activities, as stated on page 5-3 of the IS/MND. Additionally, the IS/MND identifies

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several CTS occurrences recorded in the vicinity of the BSA, the nearest of which is approximately 0.8 miles to the south, well within the 1.3-mile dispersal range. Lastly, the United States Fish and Wildlife Service has designated critical habitat for Central Valley DPS CTS; the grasslands and open woodland habitats within the Project vicinity are comparable to these identified critical habitats.

BIO-1 sections 1 and 5 identify June 1 through October 31 as a construction season intended to avoid CTS presence and identify protective measures to implement in the November 1 through May 31 timeframe to avoid impacts to CTS. Based on CTS life history, CDFW does not find BIO-1 to protect against the risk of take. CTS is a lowland inhabitant restricted to grasslands and open woodland habitats within approximately 1.3 miles of breeding ponds where small mammal burrows are available. CTS spend much of their lives in underground refuges, often in burrowing mammal (ground squirrel, pocket gopher, and other burrowing mammal) burrows (USFWS, 2004). Because CTS spend much of their lives in underground retreat, CDFW considers BIO-1 sections 1 and 5 to be inadequate to mitigate potential impacts to CTS. CTS' potential year-around presence in underground burrows indicates a year-around risk of take for this pipe trenching project that will disturb subsurface potential habitat and require the use of heavy equipment over and around burrow systems that could result in burrow collapse and entombment of CTS.

Further, BIO-1 section 2 specifies a 0.25-inch rain threshold to re-survey for CTS, when CTS may actually be triggered to leave their burrows with less precipitation or for other reasons. CTS are active on the surface of the terrestrial habitat during juvenile dispersal into the uplands and adult breeding during fall and winter rain events, and when metamorphs emerge from the pond in the spring and summer (Searcy and Shaffer, 2011). Dimmit and Ruibal (1980) found that western spadefoot toads, used as a proxy for CTS when analyzing construction impacts for their comparable life histories, relied primarily on vibration from rain falling on the ground at their burrows, rather than increased moisture in the soil from rainfall, as the trigger to emerge from underground refuges. Rain-caused vibrations may occur before the BIO-1 0.25-inch proposed rain threshold for re-surveying for CTS. Dimmit and Ruibal (1980) also found that sound-induced vibration from violent, rainless thunderstorms would also produce the emergence response from western spadefoot toads, suggesting other events may trigger CTS to leave their burrows absent 0.25 inches of rain. Another trigger for CTS to leave their burrows prematurely can be from the use of water trucks during project activities such as dust abatement. Although no study similar to Dimmit and Ruibal's has been applied to CTS, similarities between western spadefoot toad and CTS emergence triggers, habitat, and breeding requirements suggest that the two species are comparable for the purposes of developing conservation strategies and protective measures. Provided that CTS may exit burrows absent a significant rain event above the suggested 0.25-inch threshold in BIO-1 section 2, CDFW believes the mitigation measure does not sufficiently reduce the risk of take to exposed CTS and recommends more consistent biomonitoring (see **Recommendations** below).

Mitigation Measure BIO-1 section 5.b. requires that a qualified biologist be present only during 'initial ground-disturbing activities.' CDFW appreciates that BIO-1 section 5b requires the presence of a qualified biologist be on-site during initial ground-disturbing

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activities, however, this measure may not eliminate the potential for take of CTS, as they could go undetected during surveys, could inhabit underground burrows within the Project site that are not affected until after 'initial ground-disturbing activities', and/or could move into the Project site after ground disturbance begins. Based on their life history, it is highly unlikely any CTS would be found during pre-construction surveys unless the surveys include actions such as burrow excavation, pitfall traps, and drift fencing over multiple seasons, if authorized under CESA. For example, CDFW has no record of any adult or juvenile CTS found in Amador County during pre-construction surveys or habitat assessment surveys *except* those conducted at breeding ponds; however, there are known CTS populations in Amador County. Therefore, it is insufficient to conclude based on pre-construction surveys alone that because no CTS were found during a pre-construction survey, there are no CTS present and/or the risk of impacts to CTS is low. Further, immature salamanders may not migrate to a breeding pond and instead remain in the upland until they are sexually mature, which can take between 3-5 years, so these young salamanders would be undetected in a pre-construction survey and could be killed or injured during Project ground-disturbing activities at any point during construction without ever being seen. CDFW finds Mitigation Measure BIO-1 section 5b to not be protective enough for CTS since they may go undetected during pre-construction surveys and recommends more consistent biomonitoring during *all* ground disturbing activities (see **Recommendations** below).

Recommendations: CDFW recommends that the Project proponent assume presence of CTS over the entire Project site and obtain federal and state take authorities in advance of Project implementation which will require compensatory mitigation for impacts to listed species. Seeking take authorization close to the start of Project construction could result in significant delays in Project implementation, therefore it is recommended to seek take authorization well in advance of construction.

CDFW also recommends a qualified biologist to be present on-site during all ground disturbing activities to better identify and avoid impacts to any emerged CTS.

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

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

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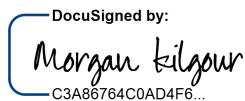
Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

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 Ione Band of Miwok Indians Water System Improvements Project to assist the State Water Resources Control Board 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 Will Kanz, Environmental Scientist at Will.Kanz@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

ec: Briana Seapy, Senior Environmental Scientist (Supervisor)
Dylan Wood, Senior Environmental Scientist (Supervisor)
Will Kanz, Environmental Scientist
Hailey Donaldson, Environmental Scientist
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

Searcy, C.A. and H.B. Shaffer. 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? Pages 73-87 in D.G. Alexander and R.A. Schlising (Eds.), Research and Recovery in Vernal Pool Landscapes. Studies from the Herbarium, Number 16. California State University, Chico, CA.

U. S. Fish and Wildlife Service. 2004. Determination of threatened status for the California tiger salamander; and special rule exemption for existing routine ranching activities; Final Rule. Federal Register, Vol. 69:47212-47248.

Dimmitt, Mark A. and Rodolfo Ruibal. 1980. Environmental correlates of emergence in spadefoot toads (*Scaphiopus*). Journal of herpetology 14(1):1-29.