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May 15, 2019

Stephanie Ponce
Environmental Scientist
California Department of Water Resources
3310 El Camino Avenue, Room 140
Sacramento, CA 95821

Governor's Office of Planning & Research

MAY 15 2019

STATE CLEARINGHOUSE

Dear Ms. Ponce:

SUBJECT: TISDALE WEIR REHABILITATION AND FISH PASSAGE PROJECT, NOP FOR ENVIRONMENTAL IMPACT REPORT

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from the California Department of Water Resources (DWR) for the Tisdale Weir Rehabilitation and Fish Passage Project (Project) in Sutter County 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, plants and their habitats. 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 (Fish & G. 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 (*Id.*, § 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.). 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

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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law (Fish & G. Code, § 86) of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Program, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project site is located at the Tisdale Weir, on the east side of the Sacramento River, south of the town of Meridian in Sutter County, and four miles west of the Sutter Bypass.

The Project consists of structural rehabilitation to the Tisdale Weir that would include replacing southern and northern abutment walls; removing and replacing energy dissipation basin; and injection grouting and patching the weir. Fish passage facility installation would include reconstructing the energy dissipation basin on the bypass side of the weir to facilitate fish collection and passage through a notch in the weir; installing a notch in the existing weir, installing operable gates (for flow regulation) in the notch, installing an equipment access pad and attendant facilities at the north end of the weir; an access ramp; and constructing a channel connecting the notch in the weir to the Sacramento River.

Tisdale Weir and bypass serve an important role in flood flow conveyance in the Sacramento Valley, but has long been recognized to negatively impact fish migration. To address both, the Tisdale Weir and Bypass Program document labeled, "A Road Map for Multi-Benefit Flood and Ecosystem Management (Road Map)," was developed by DWR's Division of Flood Management and released in July of 2018 to outline mutually agreed-upon Project goals and a path forward for the Project. CDFW has been collaborating with DWR since October of 2018 in the Tisdale Weir Interagency Work Group to provide technical level guidance and support for the Project and help define how the Project could not only address fish migration impacts under current weir operations, but also meet the standards of "enhancement" as described in Chapter 11 of Proposition 1.

CDFW supports the original descriptions and intent laid out in the Road Map which outlined two important elements, the first being weir rehabilitation and fish passage improvements (Element 1), and the second being a Tisdale Bypass Management Plan (Element 2) and recommends building this framework into the Project description. Failing to integrate both elements into the overall Project planning effort (refurbishment and fish passage, as well as management of habitat within the bypass), could limit future management opportunities and needed flexibility. Specifically, CDFW recommends the EIR includes an in-depth discussion and analysis on how Element 1 is being designed to be inclusive of Element 2. CDFW also requests that a south notch be thoroughly analyzed in the EIR and that DWR demonstrate how the south channel at the toe of the bypass embankment will be connected to the new channel to maximize fish return to the river and eliminate or minimize fish stranding. CDFW recommends this analysis is completed before the Project design is finalized and included in the EIR in order to help demonstrated benefits or drawbacks to both Elements.

CDFW also recommends the following be analyzed and described in the EIR.

1. An operations plan that addresses fish passage for different scenarios:
 - Normal operations:
 - a. During weir overtopping
 - b. On the declining limb of the hydrograph when the bypass is draining
 - Outage situations:
 - a. Mechanical (Gate Failure)
 - b. Electrical (Gate Failure)
 - c. Debris lodging in notch causing dewatering and fish entrapment/stranding
 - d. Debris blocking the fish passage basin causing fish entrapment/stranding
 - e. Clarify how velocity and depth criteria will be maintained if a gate fails (i.e. Multiple gates? Additional notch?)
 - f. Dewatering the notch basin quickly to fix gates when the facility is operating as a fish passage structure

2. Weir stilling basin and apron design progression (including the following aspects):
 - Depth, Width, Slope, Side-slopes
 - Describe how the energy will be dissipated?
 - Describe how the southern toe drain will be connected and how the elevations work
 - Describe how the current design incorporates the future perennial channel design while maintaining fish passage requirements for depth

3. Current fish passage design progression (including the following aspects):
 - Depth, Width, Slope, Side-slopes
 - Number of gates (and the associated elevations)
 - Type of gate
 - Gate operations assumptions for design
 - Describe how energy will be dissipated
 - Describe how the current design incorporates the future perennial channel design while maintaining fish passage requirements for depth

Additionally, the Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts from the Project.

ENVIRONMENTAL SETTING

To identify a correct environmental baseline, the EIR should include a complete and current analysis of endangered, threatened, candidate, and locally unique species with potential to be impacted by the Project. CEQA guidelines § 15125, subdivision (c) requires lead agencies to provide special emphasis to sensitive habitats and any biological resources that are rare or unique to the area. This includes, but is not limited to vernal pools, streambeds, riparian habitats, and open grasslands that are known to be present within the Project boundaries or its vicinity. CDFW recommends that the environmental documentation identify natural habitats and provide a discussion of how the proposed Project will affect their function and value.

Recent surveys for the different species that have the potential to be present within the Project boundaries and its vicinity should be included within the EIR. Additional information regarding survey protocols can be found on our website here <https://www.wildlife.ca.gov/Conservation/Survey-Protocols> or by contacting CDFW.

IMPACT ASSESSMENT AND MITIGATION MEASURES

Based on habitat assessments and survey results, the EIR should clearly identify and describe all short-term, long-term, permanent, or temporary impacts to biological resources under CDFW's jurisdiction, including all direct and foreseeable indirect impacts caused by the proposed Project.

The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed. CDFW also recommends that the EIR provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines Section 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to resources under CDFW's jurisdiction or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects.

The EIR should incorporate mitigation performance standards that would ensure that significant impacts are reduced as expected. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral.

Threatened, Endangered, Candidate Species

The Project area as shown in the NOP includes habitat for state and federally listed species. If during the environmental analysis for the Project, it is determined that the Project may have the potential to result in "take", as defined in the Fish and Game Code, section 86, of a state-listed species, the EIR shall disclose an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be required prior to starting construction activities. In order to receive authorization for "take", the EIR must include all avoidance and minimization measures to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures shall be proposed to fully mitigate the impacts to state-listed species (Cal. Code Regs., tit. 14, § 783.2, subd.(a)(8)). CDFW encourages early consultation with staff to determine appropriate measures to offset Project impacts, facilitate future permitting processes and to coordinate with the U.S. Fish and Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

Lake and Streambed Alteration Agreement Program

The EIR shall identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures.

Notification to CDFW is required, pursuant to Fish and Game Code section 1602 if the Project proposes activities that will substantially divert or obstruct the natural flow of water; 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. CDFW approval of projects subject to Notification under Fish and Game Code section 1602, is facilitated when the EIR discloses the impacts to and proposes measures to avoid, minimize, and mitigate impacts to perennial, intermittent, and ephemeral rivers, streams, and lakes, other features, and any associated biological resources/habitats present within the vicinity of the Project.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for the CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602.

CDFW recommends lead agencies to coordinate with us as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process.

CDFW relies on the lead agency analysis when acting as a responsible agency issuing a Lake or Streambed Alteration Agreement. Addressing CDFW's comments ensures that the EIR appropriately addresses Project impacts facilitating the issuance of an Agreement.

Migratory Birds and Birds of Prey

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 and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

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 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.

CDFW appreciates the opportunity to comment on the NOP to assist in identifying and mitigating Project impacts on biological resources. As the Project moves forward, CDFW requests to be included in the Project design discussions. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

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Questions regarding this letter or further coordination should be directed to Tanya Sheya, Senior Environmental Scientist (Specialist) at (916) 767-4617 or tanya.sheya@wildlife.ca.gov.

Sincerely,



Colin Purdy
Acting Environmental Program Manager

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