



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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July 31, 2025

Elysha Irish, Project Manager
Marin Municipal Water District
220 Nellen Avenue
Corte Madera, Ca 94925
Elrish@marinwater.org

Subject: Nicasio Spillway Modification Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025050077, Marin County

Dear Elysha Irish:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Nicasio Spillway Modification Project (Project).

CDFW is providing Marin Municipal Water District (Lead Agency) with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)), and recommended mitigation measures, as further described below and in **Attachment 1**.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

The Project is located in an unincorporated area of the Marin County (County) 3.1 miles northwest of Nicasio, an unincorporated community, in the State of California; at approximate coordinates of 38.076596°N and -122.753617°W. The Project intends to increase locally stored water supplies by temporarily increasing the storage capacity of Nicasio Reservoir. Marin Municipal Water District would install and operate a 280-foot-

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long inflatable rubber gate spanning the width of the existing spillway crest at Seeger Dam. Approximately one foot of the existing concrete spillway crest structure would be removed to provide a level surface to install the inflatable rubber gate and ensure no reduction in the current spillway capacity. At full inflation (operation), the gate would stand at 4.4-feet high, setting the water surface elevation at 170.4 feet National Geodetic Vertical Datum of 1929 (NGVD29), which would allow for increased capacity of 3,700 acre-foot. The inflatable gate would be operated during the wet season to capture flows and then deflated during the dry season after the water levels in the reservoir drop below the spillway crest. Marin Municipal Water District is developing an operation plan for the Project and will file for a petition to extend the water right permit P012800.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description:

- Land use changes resulting from, for example, rezoning certain areas.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact coho salmon (*Oncorhynchus kisutch*) and California freshwater shrimp (*Syncaris pacifica*), which are both CESA listed as endangered; and northern spotted owl (*Strix occidentalis caurina*), Marin western flax (*Hesperolinon congestum*), Tiburon paintbrush (*Castilleja affinis* var. *neglecta*), and North Coast**

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semaphore grass (*Pleuropogon hooverianus*), which are all CESA listed as a threatened, as further described below. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065.). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., is required for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **The Project would impact Nicasio Reservoir (a lake) and Nicasio Creek, which is a tributary to Lagunitas Creek, and potentially other streams, therefore an LSA Notification would be required as further described below.** CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

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California Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code § 2081.15). Project proponents should consult with CDFW early in the project planning process. **The Project has the potential to impact golden eagle (*Aquila chrysaetos*), bald eagle (*Haliaeetus leucocephalus*), and white-tailed kite (*Elanus leucurus*), which are all California fully protected species.**

ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including, but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the County may require. Fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include but are not limited to those listed in **Attachment 2**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System, California Aquatic

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Resources Inventory (CARI), and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands, or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, burrows, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

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The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

CDFW offers the specific comments and recommendations below to assist Marin Municipal Water District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Please be advised that the EIR should include a comprehensive evaluation of potentially significant impacts to fish and wildlife resources as described in this letter, and CDFW may provide additional comments once the EIR is circulated for public review.

I. Mandatory Findings of Significance: Would the Project substantially reduce the habitat of a fish or wildlife species?

COMMENT 1: Instream Flow Requirements and Fish and Game Code Section 5937

Issue, specific impacts, why they may occur and be potentially significant: The Project could result in potentially significant impacts to aquatic resources upstream and downstream of the Project area. Fish and Game Code section 5937 requires that: "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam..." Alteration to the natural flows of Nicassio Creek may affect the upstream and downstream biological resources, such as but not limited to fish

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species.¹ If flows are released at an increased rate this may effectively wash out fish and wildlife resources, or if flows are decreased too quickly this may entrap fish and wildlife in pooling or ponding. Additionally, a reduction in flows may impact groundwater recharge. Therefore, if these flows are impacted by the Project, the Project could result in a substantial reduction in the habitat of fish and wildlife species, which would be a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Actions: To reduce potential impacts to habitat of fish or wildlife species downstream of Seeger Dam to less-than-significant, CDFW recommends that the EIR include instream flow studies to: 1) inform the decision of what is necessary to maintain fish and wildlife resources below Seeger Dam in good condition, and 2) assess the potential impacts of altered flows to Nicasio Creek by addressing the following concerns:

- Provide a flow study of the historical and current needs of the stream and how the inflatable gate operation will or will not affect aquatic species and their habitats;
- How minimum flows in Nicasio Creek will be maintained during construction;
- How adequate flows will be maintained for downstream aquatic resources in perpetuity; and
- How the Project will ensure that future operations of the new water conveyance system, inclusive of releases to meet minimum instream flow requirements, will meet existing water demands and priorities regarding Nicasio Reservoir water.

II. Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

And,

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

¹ Pursuant to Fish and Game Code section 45, "Fish" means a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals.

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COMMENT 2: Coho salmon (*Oncorhynchus kisutch*), California freshwater shrimp, steelhead (*Oncorhynchus mykiss irideus* pop. 8), and other aquatic species.

Issue, specific impacts, why they may occur and be potentially significant: The Project will potentially impact, through alteration of water levels and flows as described above, reservoir (lake) habitat and potentially immediately downstream riverine habitat (Nicasio Creek and Lagunitas Creek) that support special-status fish including coho salmon and California freshwater shrimp, both CESA listed as endangered and federally listed as threatened; and steelhead, a California Species of Special Concern and federally listed as threatened, and other special-status fish (**Attachment 2**). Nicasio Creek and downstream Lagunitas Creek are federally designated critical habitat (CH) for coho salmon, and Lagunitas Creek is also designated CH for steelhead. Project activities can also remotely impact special-status fish through: 1) pollutants introduced upstream and downstream from fish habitat, such as from the chemical makeup of the inflatable gate, and 2) expanded habitat, from increased water elevation levels due to increased dam height, for Centrarchidae species which are known predators of juvenile salmonids. The above fish species are CESA and federal Endangered Species Act (ESA) listed and therefore are considered to be threatened or endangered species pursuant to CEQA Guidelines section 15380. Therefore, if these fish would be impacted by the Project, the Project could result in a substantial reduction in the species' population, which would be a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measures: To reduce impacts to CESA listed and other special-status fish and aquatic resources to less-than-significant and comply with CESA, CDFW recommends that the EIR include an assessment of special-status fishes and the below mitigation measure (**Attachment 1**).

Mitigation Measure MM-BIO-1 (Special Status Fish Protection): The Project shall consult with CDFW to evaluate impacts to special-status aquatic species. If take of any CESA listed or candidate aquatic species, such as coho salmon or California freshwater shrimp, cannot be avoided, the Project shall obtain a CESA ITP from CDFW prior to commencing Project activities and shall comply with the ITP including any habitat mitigation. The Project shall also consult with the USFWS or National Marine Fisheries Service for any impacts to federally listed fish.

COMMENT 3: Northern spotted owl

Issue, specific impacts, why they may occur and be potentially significant: The Project may impact nesting northern spotted owl (NSO) due to the Project's auditory or visual disturbance up to 0.25 miles away from the Project site. Potential NSO nesting habitat occurs within 0.25 miles of the Project site and there is a recorded

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NSO activity center approximately 0.50 miles to the southwest. If NSO nesting within 0.25-mile of the Project go undetected, NSO could be impacted by Project activities resulting in nest abandonment and loss of eggs, or reduced health and vigor and loss of young. NSO is CESA listed as a threatened species and is also listed under the federal ESA, and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: To reduce potential impacts to NSO to less-than-significant and comply with CESA, CDFW recommends including the following mitigation measure in the EIR.

Mitigation Measure BIO-2 (Northern Spotted Owl Habitat Assessment and Surveys):

A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS' *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012, unless otherwise approved in writing by CDFW. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding NSO are detected during surveys, CDFW shall be immediately notified and a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP and also consult with USFWS pursuant to the federal ESA.

COMMENT 4: Marin western flax, Tiburon paintbrush, North Coast semaphore grass, and other Special-Status Plants

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Issue, specific impacts and why they may occur and be significant: The Project has potential to impact Marin western flax, Tiburon paintbrush, and North Coast semaphore grass and other special-status plants (**Attachment 2**). The California Natural Diversity Database (CNDDDB) documents occurrences of Marin western flax, Tiburon paintbrush, and North Coast semaphore grass within 5 miles of the Project area, and there appears to be suitable habitat including serpentine soils for these species within or adjacent to the Project area. Marin western flax, Tiburon paintbrush, and North Coast semaphore grass are all CESA listed as threatened and therefore are considered threatened species pursuant to Section 15380 of the CEQA Guidelines. Direct or indirect Impacts to these species or their suitable habitat could substantially reduce the species' population or restrict their range, which would be considered a Mandatory Finding of Significance pursuant to Section 15065, subdivision (a) of the CEQA Guidelines.

Impacts, including, but not limited to direct or indirect impacts associated with water elevation increases, to other special-status plant species may result in local population declines or extirpation of a species. Insufficient detection or mitigation may result in prolonged temporal or permanent impacts to a special-status plant species' range, distribution, and population in the State. Therefore, if other special-status plants occur on or adjacent to the Project site where they may be directly or indirectly impacted, impacts to other special-status plants would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to special-status plants to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure in the EIR (**Attachment 1**).

Mitigation Measure BIO-3 (Special-Status Plant Surveys and Protection): Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment for special-status plants where direct or indirect impacts could occur. If potential habitat for special-status plants is present, a qualified biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys shall include visiting reference population unless otherwise approved in writing by CDFW. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant

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species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval, which may include topsoil salvage, transplanting, or habitat compensation. The Project shall obtain and comply with a CESA ITP from CDFW for any impacts CESA listed plants, and provide habitat compensation to mitigate impacts to CESA listed plant species at a minimum 3 to 1 mitigation to impact ratio, unless otherwise approved in writing by CDFW. Habitat compensation shall include placing a conservation easement over occupied habitat for the applicable species and preparing, funding, and implementing an interim and/or long term management plan, unless otherwise approved in writing by CDFW. The habitat compensation location, conservation easement, and all associated land conservation documents including but not limited to the management plan(s) shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of these documents, unless otherwise approved in writing by CDFW. The conservation easement shall be recorded and management plan(s) funding shall be completed prior to Project construction, unless otherwise approved in writing by CDFW.

III. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?

COMMENT 5: Sensitive Natural Communities, Wetlands, Riparian Habitat, and LSA Notification

Issue, specific impacts, why they may occur and be potentially significant: The Project could result in potentially significant impacts to sensitive natural communities, such as white alder grove (*Alnus rhombifolia* alliance) and Arroyo willow thickets (*Salix lasiolepis* alliance) shown on the Marin County fine scale vegetation map adjacent to the lake and downstream of the Project area, wetlands, or riparian habitat. The existing dam and operations impact Nicasio Creek through flow reduction which is noncompliant with Fish and Game Code section 1602. Section 1602 requires an entity to notify CDFW prior to commencing any activity that substantially diverts or obstructs the natural flow of any river, stream or lake; or substantially change or use any material from bed, channel or bank of, any river, stream, or lake. This includes the ongoing operation of a diversion via an onstream dam. Continued alterations to flow may result in greater impacts, including but not limited to, habitat loss to sensitive natural communities and riparian habitat. Therefore, if these flows are impacted by the Project, the Project could result in a substantial reduction of sensitive natural communities and riparian habitat, which would be a potentially significant impact.

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Recommended Mitigation Measures: To reduce impacts to sensitive natural communities, wetlands, or riparian habitat to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends that the EIR include an assessment of potential impacts to sensitive natural communities, wetlands, or stream and riparian habitat and the below mitigation measure in the EIR (**Attachment 1**).

Mitigation Measure MM-BIO-4 (Habitat Restoration and Compensation and LSA Notification): The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to riparian habitat, sensitive natural communities, or wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, and trees shall be replaced at an appropriate ratio based on size and species, and temporal habitat loss, or provide habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long term management plan, unless otherwise approved in writing by CDFW.

Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to the lake, streams, and riparian habitat. The Project shall notify CDFW for potential Project impacts to the bed, bank, channel, or riparian habitat of the lake and streams and the ongoing operation of the dam, and shall comply with the LSA Agreement, if issued. More information for the Notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall not commence activities with potential to impact the lake and streams until the LSA Notification process has been completed. An LSA Agreement, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources. The Project shall also obtain permits from the Regional Water Quality Control Board and U.S. Army Corps of Engineers pursuant to the Clean Water Act if applicable.

IV. Water Rights and Operation of Diversion

COMMENT 6 and Recommended Action: CDFW advises that the Project coordinate with CDFW regarding the water rights change petition process and the development of the operational plan for the use of the inflatable gate. As mentioned above, Fish and Game Code section 1602 requires an LSA Notification for any activity that diverts or obstructs the natural flow of any river, stream, or lake, therefore an LSA Agreement is necessary to cover the ongoing operation of the inflatable gate and dam.

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ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

Questions regarding this letter or further coordination should be directed to Jordan Beaton, Environmental Scientist, at Jordan.Beaton@wildlife.ca.gov, or (707) 980-5172; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan and Recommendations

Attachment 2. Special-Status Species

ec: Office of Land Use and Climate Innovation (SCH No. 2025050077)
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov

REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS>.

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan and Recommendations

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
N/A	<p>Recommended Actions:</p> <p>To reduce potential impacts to habitat of fish or wildlife species downstream of Seeger Dam to less-than-significant, CDFW recommends that the EIR include instream flow studies to: 1) inform the decision of what is necessary to maintain fish and wildlife resources below Seeger Dam in good condition, and 2) assess the potential impacts of altered flows to Nicasio Creek by addressing the following concerns:</p> <ul style="list-style-type: none"> • Provide a flow study of the historical and current needs of the stream and how the inflatable gate operation will or will not affect aquatic species and their habitats. • How minimum flows in Nicasio Creek will be maintained during construction. • How adequate flows will be maintained for downstream aquatic resources in perpetuity. • How the Project will ensure that future operations of the new water conveyance system, inclusive of releases to meet minimum instream flow requirements, will meet existing water demands and priorities regarding Nicasio Reservoir water. 	During EIR Preparation	Lead Agency
N/A	<p>Recommended Action:</p> <p>CDFW advises that the Project coordinate with CDFW regarding the water rights change petition process and the development of the operational plan for the use of the inflatable gate. As mentioned above, Fish and Game Code section 1602 requires an LSA Notification to for any activity that diverts or obstructs the natural flow of any river, stream, or lake, therefore an LSA Agreement is necessary to cover the ongoing operation of the inflatable gate and dam.</p>	During EIR Preparation, Prior to Ground Disturbance and for Duration of Construction and Ongoing Dam Operation	Project Applicant

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<p>BIO-1</p>	<p><i>Special Status Fish Protection:</i> The Project shall consult with CDFW to evaluate impacts to special-status aquatic species. If take of any CESA listed or candidate aquatic species, such as coho salmon or California freshwater shrimp, cannot be avoided, the Project shall obtain a CESA ITP from CDFW prior to commencing Project activities and shall comply with the ITP including any habitat mitigation. The Project shall also consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service for any impacts to federally listed fish.</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>
<p>BIO-2</p>	<p><i>Northern Spotted Owl (NSO) Habitat Assessment and Surveys:</i> A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS' Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owl, dated (revised) January 9, 2012, unless otherwise approved in writing by CDFW. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding NSO are detected during surveys, CDFW shall be immediately notified and a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owl and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP and also consult with USFWS pursuant to the</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	federal ESA.		
BIO-3	<p><i>Special-Status Plant Surveys and Protection:</i> Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment for special-status plants where direct or indirect impacts could occur. If potential habitat for special-status plants is present, a qualified biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys shall include visiting reference population unless otherwise approved in writing by CDFW. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline). The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval, which may include topsoil salvage, transplanting, or habitat compensation. The Project shall obtain and comply with a CESA ITP from CDFW for any impacts CESA listed plants, and provide habitat compensation to mitigate impacts to CESA listed plant species at a minimum 3 to 1 mitigation to impact ratio, unless otherwise approved in writing by CDFW. Habitat compensation shall include placing a conservation easement over occupied habitat for the applicable species and preparing, funding, and implementing an interim and/or long term management plan, unless otherwise approved in writing by CDFW. The habitat compensation location, conservation easement, and all associated land conservation documents including but not limited to the management plan(s) shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of these documents, unless otherwise approved in writing by</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	<p>CDFW. The conservation easement shall be recorded and management plan(s) funding shall be completed prior to Project construction, unless otherwise approved in writing by CDFW.</p>		
<p>BIO-4</p>	<p><i>Habitat Restoration and Compensation and LSA Notification:</i> The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to riparian habitat, sensitive natural communities, or wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, and trees shall be replaced at an appropriate ratio based on size and species, and temporal habitat loss, or provide habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long term management plan, unless otherwise approved in writing by CDFW.</p> <p>Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to the lake, streams, and riparian habitat. The Project shall notify CDFW for potential Project impacts to the bed, bank, channel, or riparian habitat of the lake and streams and the ongoing operation of the dam, and shall comply with the Lake or Streambed Alteration Agreement (LSA), if issued. More information for the Notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall not commence activities with potential to impact the lake and streams until the LSA Notification process has been completed. An LSA Agreement, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources. The Project shall also obtain permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act if applicable.</p>	<p>Prior to Ground Disturbance and for Duration of Construction and Ongoing Dam Operation</p>	<p>Project Applicant</p>

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ATTACHMENT 2: Special-Status Species

Scientific Name	Common Name	Status
Birds		
<i>Elanus leucurus</i>	White-tailed kite	FP
<i>Aquila chrysaetos</i>	Golden eagle	FP, BGEPA
<i>Haliaeetus leucocephalus</i>	Bald Eagle	FP, BGEPA
<i>Strix occidentalis caurina</i>	Northern spotted owl	ST, FT
Amphibians		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Rana boylei pop. 1</i>	Foothill yellow-legged frog – North Coast DPS	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
Reptiles		
<i>Actinemys marmorata</i>	Northwestern pond turtle	FPT, SSC
Mammals		
<i>Lasiurus frantzii</i>	Western red bat	SSC
<i>Antrozous pallidus</i>	Pallid bat	SSC
<i>Corynorhinus townsendii</i>	Townsend’s big-eared bat	SSC
Fishes		
<i>Oncorhynchus kisutch pop. 4</i>	Coho salmon – Central California coast ESU	SE, FE
<i>Syncaris pacifica</i>	California freshwater shrimp	SE, FE
<i>Oncorhynchus mykiss irideus pop. 8</i>	Steelhead - Central California coast DPS	FT, SSC
<i>Hesperoleucus venustus subditus</i>	Southern coastal roach	SSC
Plants		

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<i>Hesperolinon congestum</i>	Marin western flax	ST, FT, CRPR 1B.1
<i>Castilleja affinis var. neglecta</i>	Tiburon paintbrush	ST, FE, CRPR 1B.2
<i>Pleuropogon hooverianus</i>	North Coast semaphore grass	ST, CRPR 1B.1
<i>Trifolium amoenum</i>	Two-fork clover	FE, CRPR 1B.1
<i>Hemizonia congesta ssp. congesta</i>	Congested-headed hayfield tarplant	CRPR 1B.1
<i>Fritillaria lanceolata var. tristulis</i>	Marin checker lily	CRPR 1B.1
<i>Alopecurus aequalis var. sonomensis</i>	Sonoma alopecurus	CRPR 1B.1
<i>Gilia capitata ssp. tomentosa</i>	Wolly-headed gilia	CRPR 1B.1
<i>Dirca occidentalis</i>	Western leatherwood	CRPR 1B.1
<i>Fritillaria liliacea</i>	Fragrant fritillary	CRPR 1B.2
<i>Sagittaria sanfordii</i>	Sanford's arrowhead	CRPR 1B.2
<i>Fritillaria liliacea</i>	Fragrant fritillary	CRPR 1B.2
<i>Sagittaria sanfordii</i>	Sanford's arrowhead	CRPR 1B.2
<i>Castilleja affinis var. neglecta</i>	Tiburon buckwheat	CRPR 1B.2
<i>Ceanothus decornutus</i>	Nicasio ceanothus	CRPR 1B.2
<i>Lessingia micradenia var. micradenia</i>	Tamalpais lessingia	CRPR 1B.2

FP = state fully protected under Fish and Game Code; BGEPA = Bald and Golden Eagle Protection Act (federal); FE = federally listed as endangered under the Endangered Species Act (ESA); FPT = federally listed as proposed threatened under the Endangered Species Act (ESA); FT = federally listed as threatened under the Endangered Species Act (ESA); SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SR = state listed as rare, SC = state candidate species under CESA; WL = CDFW Watch List; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank², DPS = Distinct Population Segment

² CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).