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From: Metzger, Annalise@Wildlife
Sent: Thursday, August 7, 2025 2:54 PM
To: Ford, Kristin@DWR
Cc: Wildlife R2 CEQA; Wilson, Billie@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the MND for the Sutter Bypass East Levee Project (SCH No. 2025070507)

Subject: Sutter Bypass East Levee
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2025070507

Dear Kristin Ford:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from California Department of Water Resources (DWR) for the Sutter Bypass East Levee Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) 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 along a 5.2-mile stretch of the east levee of the Sutter Bypass, between Gilsizer Slough to the south (levee mile 7.40) and Hughs Road to the north (levee mile 12.57) and runs through the Sutter National Wildlife Refuge. The Sutter Bypass East Levee is approximately 21.6 miles in length, beginning east of South Butte Road, through unincorporated Sutter County, south to Wadsworth Canal and the Sutter Bypass, and ending at the confluence of the Feather River and Sutter Bypass.

The Project consists of 5.2 miles of levee improvements along the Sutter Bypass East Levee (SBEL), including the installation of a 5.2 mile cured-in-place cutoff wall to address under seepage from the Sutter Bypass. The levee will be degraded by approximately one-third of the height of the levee, along the entire 5.2 miles, to create a staging area for trenching and installing a cutoff wall which will extend down 45 feet to 88 feet into the levee prism. The cutoff wall will be formed from a combination of soil-bentonite and soil-cement bentonite mixture. Waterside and landside levee access ramps impacted by degrading will be reconstructed in the same general location as existing ramps. Levee encroachments and penetrations (gas and electrical lines, pipes, etc.) will be removed during the cutoff wall construction and reinstalled to meet current safety standards. Penetrations have been designed to accommodate a possible future levee raise.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist DWR in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. 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 Giant garter snake (*Thamnophis gigas*).

COMMENT 1: Proposed Project Description; Chapter 2.4.1; page 2-4

Issue: The IS/MND states that 5.2 miles of levee will be degraded by approximately one-third of the levee's height but never provides quantitative estimates of that height.

Recommendation or Recommended Mitigation Measure: CDFW recommends the IS/MND provide the estimated vertical height the levee will be degraded.

COMMENT 2: Fish and Game Code; Table 2-2: Discretionary Permits or Approvals Potentially Required; page 2-11

Issue: The IS/MND states that a CDFW permit may be required per Fish and Game Code section 1602 "for changes to streambed and bank along level." This definition of California Fish and Game Code 1602 is incomplete, and 'levee' is misspelled. Fish and Game Code section 1602 requires any person, state or local government agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change or use any material from the bed, channel, or bank of any river, stream, or lake;
- Deposit or dispose of material into (or where it may pass into) any river, stream, or lake.

Recommendation or Recommended Mitigation Measure: CDFW recommends the relevant IS/MND table be modified to include the full language of Fish and Game Code section 1602. CDFW also recommends the editorial change of 'level' to 'levee'.

COMMENT 3: ECORP 2024 Biological Resources Assessment; Section 3.4: Biological Resources; page 3-19

Issue: The IS/MND references a Biological Resource Assessment conducted on December 10, 2021, and April 3, 2024, by ECORP, but the assessment is not provided in the IS/MND to review.

Recommendation or Recommended Mitigation Measure: To appropriately analyze the biological impacts associated with this project, the Biological Resource Assessment needs to be included in the IS/MND.

COMMENT 4: Deferred Mitigation; Mitigation Measure BIO-2.2b; page 3-37

Issue: The IS/MND states a Mitigation Plan will be developed for directly affected special-status plants, however CEQA Guidelines §15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. The environmental document contains mitigation measures for biological resources that rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all the involved entities will ultimately occur, the mitigation measures are unenforceable and do not explain how the impacts to biological resources would be reduced to a less than significant level.

Recommendation or Recommended Mitigation Measure: CDFW recommends that the environmental document include measures that are enforceable and do not defer the details of the mitigation to the future. Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented.

COMMENT 5: Jute Netting; Mitigation Measure BIO-2.3: Restoration to Temporarily Disturbed Areas; page 3-38

Issue: The IS/MND states "Seeded areas shall be covered with broadcast straw and/or jute netted." Jute netting may pose an entrapment risk for wildlife resources that are found within the Project site.

Recommendation or Recommended Mitigation Measure: CDFW recommends the use of hydroseeding/seeding the project site as the preferred method. However, if jute netting is deployed, it shall be loose-weave mesh that is **not** fused at the intersections of the weave and buried on all ends/sides to avoid wildlife entrapment.

COMMENT 6: Giant garter snake (*Thamnophis gigas*; GGS) Work Temperature; Mitigation Measure BIO-4.1; page 3-40

Issue: Measure BIO-4.1 states that air temperatures must exceed approximately 75°F for at least 3 consecutive days preceding work, but the word 'approximately' is not defined, and the location of temperature collection is not specified.

Recommendation or Recommended Mitigation Measure: CDFW recommends the word "approximately" be replaced with "a minimum of" and that the measure specify temperature shall be collected at the project site, using a thermometer or other tool that provides an accurate temperature of the project site.

COMMENT 7: GGS Focused Survey; Mitigation Measure BIO-4; page 3.40-3.41

Issue: The IS/MND does not include a focused survey measure for GGS.

Recommendation or Recommended Mitigation Measure: CDFW recommends including a mitigation measure requiring a designated biologist to survey for cracks, crevices, and burrows that may be used by GGS as refugia. In locations of wildlife exclusion fence installation, CDFW recommends hand excavation of burrows or cracks where snakes could be hiding along the planned fence perimeter and within the project area prior to fence installation or other ground-disturbing activity. This will have the effect of locating any snakes still using the planned work area and relocating them outside the project area, which will minimize injury or death to GGS during installation of the exclusion fence and throughout the life of the project.

COMMENT 8: Giant garter snake; Mitigation Measure BIO-4: Minimize Effects on Giant Garter Snake; Page 3-40 to 3-41.

Issue: As this project involves the excavation of the top 1/3 of the levee crown and placement of that excavated material on levee sides, and GGS are known to occur throughout the length of the project site, this project will result in a substantial impact to GGS upland habitat and may result in take of the state and federally listed species. The IS/MND does not discuss any methods for safe burrow excavation or compensatory mitigation associated with the multi-year impacts to GGS individuals or their upland habitat.

Recommendation or Recommended Mitigation Measure: To avoid impacts to GGS to the greatest extent possible, CDFW recommends inclusion of mitigation measures detailing safe and effective burrow excavation methods. CDFW also recommends the IS/MND contain a GGS mitigation proposal, identifying what type(s) of compensatory mitigation will be considered, impact acreages to be mitigated for, and how compensatory mitigation will be implemented.

COMMENT 9: Burrowing Owl; Mitigation Measure BIO-6; page 3-43

Issue: The IS/MND states that Burrowing Owls do have the potential to occur within the project area and references the 2012 *Staff Report on Burrowing Owl Mitigation*.

Recommendation or Recommended Mitigation Measure: The Staff Report was written before the BUOW became a candidate species for CESA listing, so please ensure the measures and any future compensatory mitigation proposal are appropriately captured in the IS/MND for the

species. Additionally, the guidance obtained on buffers, exclusion, translocation, and mitigation should consider the change in CESA listing status.

COMMENT 10: Riparian Impacts and Mitigation; Mitigation Measure BIO-9; page 3-49

Issue: The IS/MND states that seven (7) non-riparian trees are required to be removed from the landside of the levee, but no further description of the tree removal is provided. The impacts of tree removal cannot be adequately analyzed without this information. Regarding mitigation, Measure BIO-9 states “mitigation can be achieved through on-site restoration, in-lieu fee payment or purchase of mitigation credits at a CSACE- and/or CDFW-approved mitigation bank.” While the measure does state several methods of mitigation, the measure does not provide sufficient detail showing how these options may be used. Please note CDFW does not accept payments to in-lieu fee programs as appropriate compensatory mitigation.

Recommendation or Recommended Mitigation Measure: CDFW recommends the IS/MND include additional information regarding tree removal, including aerial images, tree species, existing canopy cover acreage, tree trunk diameters, and tree locations. For the impacted habitat to return to its former use by both listed and non-listed species, CDFW recommends DWR include onsite planting of native species which were removed as a result of the Project. Please note that acreage of mitigation is based on a variety of factors, including but not limited to: type of vegetation removed, location, timing, and type of removal, presence of bird nests, temporal loss of habitat, and type of mitigation (i.e., onsite, offsite, credits, etc.). Furthermore, if onsite habitat restoration is considered as a part of the mitigation strategy, CDFW recommends DWR consult with the Central Valley Flood Protection Board (CVFPB) for an Encroachment Permit to replant woody vegetation similar to that removed. Title 23, Division 1, Chapter 1, Article 8, Section 131 (b) allows the CVFPB to approve the planting of suitable woody vegetation within the floodway. Additional information to be provided in the IS/MND includes restrictions on land access, success criteria, long-term monitoring and management programs, adaptive management, proposed land dedications, control of illegal dumping, water pollution, increased human intrusion, etc.

COMMENT 11: Deferred Mitigation; Mitigation Measure BIO-9; page 3-49

Issue: Measure BIO-9 reads “Mitigation, as required in regulatory permits issues through CDFW, USACE, and/or the CVRWQCB, may be applied to satisfy this measure.” As stated previously, deferring protective measures to future permits is considered deferred mitigation. Section 15126.4 (a)(1)(B) of the CEQA guidelines states that formulation of mitigation measures should not be deferred until sometime in the future. Because there is no guarantee that these approvals or cooperation with all the involved entities will ultimately occur, the mitigation measures are unenforceable and do not explain how the impacts to biological resources would be reduced to a less than significant level.

Recommendation or Recommended Mitigation Measure: CDFW recommends that the IS/MND include measures that are enforceable and do not defer the details of the mitigation to the future.

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 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND for the Sutter Bypass East Levee Project to assist DWR 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 Annalise Metzger, Environmental Scientist, at 916-358-1097 or annalise.metzger@wildlife.ca.gov.

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