Haggerty, Nicole@Wildlife

From: Oswalt, Caitlyn@Wildlife
Sent: Thursday, November 5, 2026 4:44 PM
To: stepaniank@nidwater.com
Cc: Wilson, Billie@Wildlife; Kanz, Will@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: CEQA Comments for Scotts Flat Spillway Improvements Project; MND; SCH No. 2026100351

Dear Kris Stepanian:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from Nevada Irrigation District for the Scotts Flat Spillway Improvements 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 in Nevada County, California, approximately four miles east of Nevada City in Section 11 of Township 15, Range 9 East of Mt. Diablo Meridian and Baseline. The Proposed Project area is approximately 3,100 ft above mean sea level and is adjacent to Scotts Flat Reservoir.

The Project consists of the replacement of the existing Scotts Flat Spillway trapezoidal chute with a rectangular chute (i.e., new chute floor with vertical side walls) and a new subdrain system along with a flip bucket terminal structure. The upper plunge pool would be removed and replaced, the lower plunge pool would be excavated, and new rock armoring would be installed.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Nevada Irrigation District in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project. CDFW is primarily concerned with the project impacts to Foothill yellow-legged frog and nesting raptors and other nesting migratory birds.

COMMENT 1: Foothill Yellow-Legged Frog, MM BIO-4 and MM BIO-8, pages 3.43 & 3.46

Issue: Some construction activities will occur 300 feet downstream of the Scotts Flat Powerhouse discharge channel which ultimately connects to Deer Creek. The MND indicates the Project Site is within the range of the Northeast/Northern Sierra clade of foothill yellow-legged frog (*Rana bolyii*; FYLF); this clade is listed as threatened under the California Endangered Species Act (CESA). Please note that a season which completely avoids FYLF presence does not exist; therefore, FYLF may be encountered in various life stages year-round. In the MND, both the MM BIO-4 implementation instructions and in MM BIO-8, it details a qualified biologist may handle and relocate without mention of CESA take coverage. Please be advised that the capture and relocation of CESA listed species would necessitate the proper handling permits and CESA take coverage.

Recommendation 1.1: CDFW recommends the Proponent incorporate additional details on FYLF bioassessment survey methods and timing. The Proponent should review CDFW's Considerations for Conserving the Foothill Yellow-Legged Frog available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline.

For example, to increase the likelihood of detection, surveys should include at least one visual encounter survey (VES) during the breeding and/or oviposition period (generally April–June), a tadpole survey four to eight weeks after the breeding survey(s), and a subadult survey in late summer/early fall (generally late August–early October). VES conducted during the late summer are often the easiest method for determining presence (generally late August to early October); subadults and occasionally adults are observed along river margins, and subadult and adult frogs will likely also be observed in tributary streams (Crump and Scott 1994). If any survey fails to detect FYLFs within suitable habitat, a follow-up survey should be conducted two to four weeks after the initial survey.

Recommendation 1.2: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. If the FYLF survey results indicate the Project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of FYLF, CDFW recommends the Proponent pursue CESA take coverage. Examples of take coverage include an Incidental Take Permit (ITP) or a Consistency Determination (for dually-listed, federally and state listed species).

Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code § 2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the MND include measures to minimize and fully mitigate the impacts to any CESA species the Project has potential to take. Additionally, CDFW encourages early consultation with staff to facilitate future permitting processes and to engage 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.

COMMENT 2: Nesting Raptors and Other Nesting Migratory Birds, MM BIO-6, pages 3.44 & 3.45

Issue: MM BIO-6 states surveys shall be conducted within the Proposed Project area including all potential bird nesting habitat for passerine species within 150 feet and raptor species within 500 feet. These survey buffer sizes are smaller than the recommended 500 feet for passerine species and ½-mile for raptor species. Depending on project activity, construction equipment used, topography of the site, and presence of natural sound barriers, 150 feet and 500 feet respectfully may not be enough to ensure avoidance of disturbance.

Recommendation 2.1: CDFW recommends if project-related activities are scheduled between February 1 to August 31, a focused survey for nests should be conducted by a Designated Biologist prior to the beginning of Project-related activities. The Designated Biologist should survey a minimum radius of 500-feet (for migratory birds) and ½-mile (for raptors) around the Project area that can be accessed by the Project proponent. If an active nest is found, active nests should be avoided, and a no disturbance or destruction buffer should be determined and established by a Designated Biologist. The buffer should be kept in place until after the breeding nesting season or the Designated Biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. The extent of these buffers should be determined by the Designated Biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.

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 (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be submitted online or mailed electronically to CNDDB at the following email address: CNDDB@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 Scotts Flat Spillway Improvements Project to assist Nevada Irrigation District 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 Caitlyn Oswalt, Environmental Scientist at (916) 358-4315 or caitlyn.oswalt@wildlife.ca.gov.

Thanks,

Caitlyn Oswalt
(She/Her)
Environmental Scientist | 916.358.4315
North Central Region – Region 2
1701 Nimbus Road, Rancho Cordova
California Department of Fish and Wildlife