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**From:** Quillman, Gabriele@Wildlife <Gabriele.Quillman@wildlife.ca.gov>  
**Sent:** Friday, April 5, 2019 2:55 PM  
**To:** White, Nicholas@Waterboards  
**Cc:** Wildlife R2 CEQA; OPR State Clearinghouse  
**Subject:** CDFW's comments on the IS/MND for the Upper Blue Lake Dam Seismic Retrofit project (State Clearinghouse No. 2019039037)

GOVERNOR'S OFFICE OF PLANNING & RESEARCH

APR 05 2019

STATE CLEARINGHOUSE

Good afternoon Mr. White,

The Department of Fish and Wildlife (Department) appreciates the opportunity to review and comment on the draft Initial Study and Mitigated Negative Declaration (IS/MND) for the Upper Blue Lake Dam Seismic Retrofit project (State Clearinghouse No. 2019039037) and offers the following comments to assist in identifying and mitigating project impacts on biological resources.

### **Lake and Streambed Alteration**

Fish and Game Code section 1602 requires an entity to notify the Department prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, the Department will determine if the proposed project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. The Department may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

The Department's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, the IS/MND should fully identify the potential impacts to the lake, stream, and/or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain an LSA notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

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 Department to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, the Department does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

The following information will be required for the processing of a Notification of an LSA and the Department recommends incorporating this information into the final IS/MND:

1. A map showing the area(s) of the lake, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the proposed project, including impacts from access and staging areas. Please include an estimate of the area of impact to each habitat type.
2. Discussion of avoidance and minimization measures to reduce project impacts to fish and wildlife resources.
3. Discussion of potential specific mitigation measures to reduce the project impacts to a level less than significant.

Based on review of project materials and aerial photography, the project will impact part of the shore/bed of Upper Blue Lake and may impact Middle Creek. The Department recommends that the final IS/MND fully identify the project's potential impacts to the stream and/or its associated vegetation and wetlands.

### **Sierra Nevada Yellow-Legged Frog**

The IS/MND identifies the project area as potential upland habitat for Sierra Nevada yellow-legged frog (SNYLF; *Rana sierrae*), a state-listed Threatened species. As the IS/MND notes, the presence of predatory fish in Upper Blue Lake and Middle Creek likely precludes SNYLF from breeding in those areas; however, adult frogs may move through the area. Mitigation Measure Bio-MM-9 proposes to avoid take of SNYLF by having a qualified biologist survey the work site for SNYLF prior to the start of work, and having the biologist remain on-site during project activities to prevent SNYLF from entering the site or being harmed. However, it's not clear what will happen if SNYLF are found during the preconstruction survey, or if a SNYLF enters the work site. The Department recommends that the IS/MND identify how SNYLF will be avoided if they are discovered on the work site or, if avoidance is not possible, how incidental take of SNYLF will be mitigated.

If SNYLF are discovered on the work site and take cannot be avoided, the Department recommends the project obtain an Incidental Take Permit (ITP) pursuant to the California Endangered Species Act (CESA). Issuance of an ITP is a "project" subject to CEQA, and a supplemental CEQA analysis may be required to issue the ITP if the original IS/MND does not include an analysis of the possibility of take and sufficient mitigation to fully offset the impacts.

### **Conclusion**

The Department appreciates the opportunity to comment on the IS/MND for the Upper Blue Lake Dam Seismic Retrofit project (SCH.No. 2019039037) to assist in identifying and mitigating project impacts on biological resources. Department personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts.

Please let me know if you have any questions or concerns regarding this letter.

Thank you,

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