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Governor's Office of Planning & Research

**Oct 17 2022**

## **STATE CLEARINGHOUSE**

October 17, 2022

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Subject: MODIFICATION OF WATER RIGHT PERMIT 21112 PROJECT NOTICE  
OF PREPARATION - DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
SCH# 2020049042

Dear Mr. Deason:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of a Draft Environmental Impact Report (DEIR) from El Dorado Irrigation District (District) for the Modification of Water Right Permit 21112 Project (Project) in El Dorado County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.<sup>1</sup>

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, 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 (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

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<sup>1</sup> 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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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 location encompasses areas within and near the South Fork American River from Kyburz, California to Folsom Reservoir, including Jenkinson Lake, in El Dorado County, California.

The District seeks to modify its existing Water Right Permit 21112 to add authorized points of diversion and re-diversion to more effectively and efficiently meet the future water demands within El Dorado County. The additional point of diversion is proposed at the District's existing El Dorado Diversion Dam near Kyburz. In addition, the District proposes to add a point of re-diversion from the El Dorado Diversion Dam at Jenkinson Lake to allow for storage of Permit 21112 water in Jenkinson Lake.

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 DEIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations presented below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming DEIR address the following:

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**Project-Specific Comments**

The Notice of Preparation for the Project includes adding points of diversion and re-diversion to the District's existing water rights. CDFW has concerns over the potential direct and cumulative adverse impacts from changes in the quantity, timing, and duration of streamflow releases on the sensitive anadromous and/or resident fisheries within the Lower American River (LAR) and South Fork American River (SFAR). CDFW recommends that in the DEIR:

1. The District prepare operations, flow, and temperature modeling to address how adding points of re-diversion to the District's existing Water Right Permit 21112 may change the amount and timing of water releases within the basin. Moving diversion upstream from the existing point of diversion at Folsom Reservoir could impact water deliveries, power generation, local streamflow and water temperature in the SFAR, and water management downstream of Folsom in the LAR via changes to the cold-water pool.
2. The analysis of impacts to water users and beneficial uses should be based on site-specific multi-year hydrologic, daily water balance modeling, and biological information. The DEIR should disclose anticipated changes to operations by using an operations model or other spreadsheet-type analysis to analyze a full spectrum of potential future condition scenarios.
3. The operations modeling should be used to demonstrate how the amount and timing of inflow to SMUD and Pacific Gas and Electric's downstream hydroelectric projects may be impacted by the changes to points of diversion. The DEIR should disclose if and how the changes to points of diversion could incumber those operators from being able to meet agreed-upon instream flow, temperature management, pulse and recreation flows, and ramping rate terms of their Federal Energy Regulatory Commission (FERC) licenses (P-184, P-2155).
4. The District proposes a functional alternative streamflow regime if flow reductions are contemplated; for reference see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=162122&inline..>
5. If it is determined that aquatic organisms would be significantly affected by Project-induced flow fluctuations or decreases in streamflow, then appropriate avoidance, minimization and/or compensation should be analyzed.
6. If it is the District's intent to use the new infrastructure and permit modifications described in this Project to facilitate future long-term water transfers, the expected changes to operations should be disclosed in DEIR scenarios that show daily changes to stream flows in the SFAR and LAR.

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7. The District should disclose how adding points of diversion and re-diversion to Water Right Permit 21112 upstream of Folsom Reservoir is consistent with the 1996 State Water Resources Control Board (SWRCB) Decision 1635 authorizing consumptive use of up to 17,000 acre feet of water annually, made available from the SFAR watershed at Folsom Lake, and subsequent SWRCB Orders and Settlement Agreements on Decision 1635 ([https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/american\\_river\\_southfork/docs/d1635\\_augment.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/american_river_southfork/docs/d1635_augment.pdf)).
8. The District is separately pursuing a Petition for Extension of Time for Permit 21112 to extend the period of time in which the District must complete construction of permit related activities and put water to full beneficial use by 20-years, from December 31, 2020 to December 31, 2040. The DEIR should disclose this parallel process for Permit 21112 and discuss how SWRCB decisions on the petition for extension of time relate to the proposed new points of diversion, re-diversion, and storage. Project [modhttps://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/american\\_river\\_southfork/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/american_river_southfork/)). The DEIR should include scenarios that encompass the range of possible outcomes on the extension of time petition and the associated maximum storage and consumptive use volumes that may result from the eventual licensing of Permit 21112, including any resulting changes in the District's planned operation of its existing and proposed points of diversion and re-diversion.

CDFW is also concerned that the Kyburz diversion does not have a functional fish screen or fish ladder. CDFW and the District communicated regarding proposed modifications to the Kyburz fish ladder in 2015. Subsequent communications with FERC indicate that the District's Board of Directors approved renovations however, these modifications have yet to be prioritized for funding. The DEIR should disclose how and when the Kyburz diversion fish screen and fish ladder facilities have been, or will be, brought into compliance with CDFW guidance and all applicable State and Federal conditions for facilities at this location. CDFW's fish screen criteria are included in Appendix S of Volume One of the California Salmonid Stream Habitat Restoration Manual, which can be found at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>.

### Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the DEIR specifically include:

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1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following, *The Manual of California Vegetation*, second edition (Sawyer 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage [www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data](http://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data)). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

3. A complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § § 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. The DEIR should include the results of focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year

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and time of day when the sensitive species are active or otherwise identifiable. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends the District rely on survey and monitoring protocols and guidelines available at:

[www.wildlife.ca.gov/Conservation/Survey-Protocols](http://www.wildlife.ca.gov/Conservation/Survey-Protocols). Alternative survey protocols may be warranted; justification should be provided to substantiate why an alternative protocol is necessary. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought or deluge.

4. A thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see [www.wildlife.ca.gov/Conservation/Plants](http://www.wildlife.ca.gov/Conservation/Plants)).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

**Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources**

The DEIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the DEIR:

1. The DEIR 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 DEIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed, and it must permit the significant effects of the Project to be considered in the full environmental context.
2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The DEIR should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

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3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g., National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DEIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The DEIR should include a list of present, past, and probable future projects producing related impacts to biological resources 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. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

### Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends the environmental documentation 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 §§ 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. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Several Fully Protected Species (Fish & G. Code § 3511) have the potential to occur within or adjacent to the Project area, including, but not limited to: golden eagle (*Aquila chrysaetos*), white-tailed kite (*Elanus leucurus*), American peregrine falcon (*Falco peregrinus anatum*), bald eagle (*Haliaeetus leucocephalus*), California black rail (*Laterallus jamaicensis coturniculus*). Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification,

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loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the District include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.

2. *Species of Special Concern*: Several Species of Special Concern (SSC) have the potential to occur within or adjacent to the Project area, including, but not limited to: northern goshawk (*Accipiter gentilis*), tricolored blackbird (*Agelaius tricolor*), coast horned lizard (*Phrynosoma blainvillii*), Fisher (*Pekania pennanti*), western spadefoot (*Spea hammondi*), western pond turtle (*Emys marmorata*), Sierra Nevada mountain beaver (*Aplodontia rufa californica*), American badger (*Taxidea taxus*), California red-legged frog (*Rana draytonii*). Project activities described in the DEIR should be designed to avoid any SSC that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to SSC due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends the District include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce impacts to SSC.
3. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
4. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and



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management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be appropriately timed to ensure the viability of the seeds when planted. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles. Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of plants and wildlife for scientific, educational, and propagation purposes. Please see our website for more information on Scientific Collecting Permits at [www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations-](http://www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations-).

6. *Nesting Birds*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). 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. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take,

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possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the DEIR.

CDFW recommends the DEIR include specific avoidance and minimization measures to ensure that impacts to nesting birds or their nests do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g., Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

7. *Moving out of Harm's Way*: The future construction of new water diversion infrastructure associated with the Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the District should state in the DEIR a requirement for a qualified biologist with the proper handling permits, will be retained to be onsite prior to and during all ground- and habitat-disturbing activities. Furthermore, the DEIR should describe that the qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities, as needed. The DEIR should also describe qualified biologist qualifications and authorities to stop work to prevent direct mortality of special-status species. CDFW recommends fish and wildlife species be allowed to move out of harm's way on their own volition, if possible, and to assist their relocation as a last resort. It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
8. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful. Therefore, the DEIR should describe additional mitigation measures utilizing habitat restoration, conservation, and/or preservation, in addition

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to avoidance and minimization measures, if it is determined that there may be impacts to rare, threatened, or endangered species.

The DEIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the DEIR 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. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the DEIR should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

### California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if 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 State-listed CESA species, either through construction or over the life of the Project. State-listed species with the potential to occur in the area include but are not limited to: bald eagle (*Haliaeetus leucocephalus*), foothill yellow-legged frog (*Rana boylei*), Stebbins’ morning-glory (*Calystegia stebbinsii*), tricolored blackbird (*Agelaius tricolor*), Sierra Nevada yellow-legged frog (*Rana sierrae*), bank swallow (*Riparia riparia*), Swainson’s hawk (*Buteo swainsoni*), Sierra Nevada red fox (*Vulpes vulpes necator*).

The DEIR should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. 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 facilitate the issuance of an ITP, if applicable, CDFW recommends the DEIR include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

### Native Plant Protection Act

The Native Plant Protection Act (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of State-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

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**Lake and Streambed Alteration Program**

The DEIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including utilities, 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 the Project will result in significant impacts to these resources the DEIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of any river, stream or lake;
2. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
3. Deposit debris, waste or other materials where it may 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.

If upon review of an entity's notification, CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, (2) timber harvesting operations, or (3) routine maintenance operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. CDFW recommends lead agencies 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.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

## 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 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](mailto:CNDDDB@wildlife.ca.gov).

## FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the District 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.)

## Modification of Water Right Permit 21112 Project

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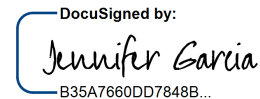
### CONCLUSION

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the 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](mailto:r2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the Notice of Preparation of the DEIR for the Modification of Water Right Permit 21112 Project and recommends that the District address CDFW's comments and concerns in the forthcoming DEIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Tiffanee Hutton, Water Rights Coordinator at (916) 906-2327 or [Tiffanee.Hutton@wildlife.ca.gov](mailto:Tiffanee.Hutton@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
B35A7660DD7848B...

Jennifer Garcia

Environmental Program Manager

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*Department of Fish and Wildlife*

Office of Planning and Research, State Clearinghouse, Sacramento

### Literature Cited

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation, 2<sup>nd</sup> ed. California Native Plant Society Press, Sacramento, California.  
<http://vegetation.cnps.org/>