

**Regional Water Quality Control Board
Central Valley Region
Board Meeting –18/19 August 2016**

RESPONSE TO WRITTEN COMMENTS ON
INITIAL STUDY/DRAFT MITIGATED NEGATIVE DECLARATION FOR
SIERRA FOOTHILL CONSERVANCY
BEAN CREEK MEADOW RESTORATION PROJECT
MARIPOSA COUNTY

At a public hearing scheduled for 18/19 August 2016, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) will consider adoption of a resolution to approve a Mitigated Negative Declaration (MND), which was circulated as draft on 30 June 2016. Written comments from interested parties were required to be received by the Central Valley Water Board by 5:00 p.m. on 1 August 2016 in order to receive full consideration. Comments were received in a timely manner from the California Department of Fish and Wildlife (CDFW) on 1 August 2016. This document contains the response to written comments received from CDFW.

Staff has made some minor changes to the draft Mitigated Negative Declaration based on the comments. Where specific changes are presented below, additions are in bold text and deletions are in strike-out.

CDFW COMMENTS

Below are the CDFW comments followed by staff's responses.

CDFW –COMMENT 1: Nesting birds: The trees, shrubs, and grasses within and in the vicinity of the Project site likely provide nesting habitat for songbirds and raptors. The MND states that the Project will occur outside of the avian nesting season (February 1 through September 15), therefore no mitigation is required. Mitigation Measure (MM) BIO-1 (Pallid Bat) states tree removal will occur between October 1st and May 31st, and if trees cannot be removed outside of the pallid bats maternal roosting season, then pre-construction surveys will occur. Based on MM BIO-1, it appears tree removal may occur within the nesting bird season. The Department encourages Project implementation to occur during the non-nesting bird season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes. Prior to work commencing; including staging, clearing, and grubbing, the Department recommends surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of any ground or vegetation disturbance and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by noise, vibration, odors, and movement of workers or equipment. Identified nests should be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, the work causing that change should cease and the Department consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, the Department recommends a minimum no disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no

longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended the Department be notified in advance of implementation of a no disturbance buffer.

RESPONSE 1: Central Valley Water Board staff has updated the MND to clarify the timeframe for Project activities and to include mitigation to protect nesting birds if work is performed within the avian nesting period. Central Valley Water Board staff added mitigation measure CDFW-6, which is consistent with the language pertaining to protection of nesting birds in the Lake and Streambed Alteration Agreement issued by CDFW for the Project (Notification No. 1600-2014-0180-R4).

CDFW –COMMENT 2: MND Mitigation Measures BIO-2 and BIO-3: MM BIO-2 includes consulting with a professional biologist on appropriate protection measures if special-status species are detected before or during Project implementation. If there is the likelihood that special-status species may be impacted by Project related activities, the Department recommends that species specific mitigation measures are not deferred and are incorporated into the Project design and made enforceable conditions of Project approval. We do not recommend that mitigation measures be developed after the Project has been approved, as should special-status species be detected on the Project site, the Project will need to be revised to avoid impacts to the population(s). The Department recommends the MND clearly describe when Project related activities will occur, and what species specific avoidance, minimization, and mitigation measures will be implemented to minimize the potential impacts to less than significant levels. If special status species are detected, then consultation with the Department is advised to determine appropriate minimization and mitigation measures for impacts to special-status species.

MM BIO-3 includes the implementation of Limited Operation Periods (LOP) to avoid disturbances to breeding activities and habitat of special-status wildlife species. However, species specific LOPs are not listed and neither are the general LOPs. It is unclear how these mitigation measures will be implemented and made enforceable. The MND includes specific mitigation measures for the golden eagle (MM CDFW-1), great gray owl (MM CDFW-2), willow flycatcher (MM CDFW-3), northern goshawk (MM CDFW-4), California spotted owl (MM CDFW-4), and western pond turtle (MM CDFW-5). Several of the MM CDFW mitigation measures include seasonal restrictions; however, they are not listed as LOPs. The Department recommends that the LOPs for special status species are clearly defined and made enforceable conditions of Project approval.

RESPONSE 2: The proposed MND has been updated to clearly describe when Project related activities will occur and to state that if special status species are detected, CDFW will be consulted to determine appropriate protection measures (See BIO-2). The specific species avoidance and minimization measures for special status species that are known to occur or are likely to occur on site are included in mitigation measures CDFW 1-5. Central Valley Water Board staff updated BIO 3 to state that the seasonal restrictions included in mitigation measures CDFW 1-6 shall be considered LOPs for the Project.

CDFW - COMMENT - 3: Sierra Nevada Yellow-Legged Frog: The MND indicates that the Project area is below the elevation range of mountain yellow-legged frog (*Rana muscosa*) and that the seasonal drainage does not provide suitable habitat for this species. The taxonomy and State and Federal status in the MND for this species are incorrect. Based on morphological and genetic data, the

species previously known as the 'mountain yellow-legged frog' is now recognized as two distinct species - the Sierra Nevada yellow-legged frog (*Rana sierrae*) and the southern mountain yellow-legged frog (*Rana muscosa*) (Vredenburg et al 2007). The Project is within the range of the Sierra Nevada yellow-legged frog (SNYF). Wengert (2008) found that stream-dwelling SNYF in the Plumas National Forest infrequently moved overland long distances from the main channel of the stream. When they were observed outside of the stream channel, they were found from one (1) meter to 22 meters from the channel. A Federal Register proposal for Critical Habitat designation for the Sierra Nevada yellow-legged frog (78 FR 24522) (USFS 2013) states that upland areas adjacent to, or surrounding, breeding and non-breeding aquatic stream habitats that provide area for feeding and movement, consist of an area extending 25 meters from the bank or shoreline of the watercourse.

On February 2, 2012, the SNYF was designated as a Candidate for listing as threatened under the California Endangered Species Act by the California Fish and Game Commission (Commission). The Commission approved the listing and adopted the regulation on December 12, 2012, and the effective date for the new regulation was on April 1, 2013. There can be no take of this species without authorization from the Department through the issuance of an Incidental Take Permit (ITP) pursuant to section 2081 (b) of the Fish and Game Code. If complete avoidance of the species is not feasible, then acquisition of an ITP is warranted. The Department advises the species information in the MND be reviewed and updated so as to properly reflect the State and Federal listing of the SNYF.

RESPONSE 3: The incorrect taxonomy and status of the mountain yellow-legged frog were made in error. Central Valley Water Board staff has updated the species information in the Initial Study, Section IV, Table 2, so as to properly reflect the State and Federal listing of Sierra Nevada yellow-legged frog. Additionally, according to the U.S. Fish and Wildlife Service Basic Species Information, the Sierra Nevada yellow-legged frog typical habitat includes lakes, ponds, marshes, meadows, and streams at elevations ranging from about 4,500 to 12,000 feet, but can occur as low as 3,500 feet in the northern portion of their range (Lake Tahoe area). The Project site is at an elevation of 3,000 feet, substantially outside of this range.

CDFW - COMMENT - 4: Mitigation Measures BIO-5, SOIL-2, SOIL-3, SOIL-5, SOIL-6, and HYDRO-2 indicate disturbed areas will be mulched with native material or weed-free straw (e.g. rice straw) and seeded with native species. Rice straw is commonly thought of as being free of weeds that can colonize dry-land since most aquatic weeds cannot persist without perennial water. However, weeds that prefer moist soils may be present on the earthen levees of rice fields, and seeds of these plants may be included in rice straw harvesting in the fall. Other "weed-free" straw is typically free of upland weeds. The Department has concerns regarding the use of rice straw, and other weed-free straw, in riparian, wetland, and other wet/moist areas.

Rice straw was used during post-wildfire remediation and restoration for the 2014 King Fire, and per the California Native Plant Society El Dorado Chapter professional botanists (D. Ayres, et al. personal communications, March 25, 2016); it is believed that the numerous invasive weeds found in the restoration area were introduced through the application of rice straw. For the King Fire, the California Native Plant Society El Dorado Chapter professional botanists recommended (1) prior to rice straw being used, the rice fields and their levees are thoroughly inspected for upland and aquatic weeds; (2) straw from levee areas never be used; and (3) avoid applying mulch to areas susceptible to weed invasion, like riparian areas (D. Ayres, et al. personal communications, March 25, 2016). The Department recommends following the above California Native Plant Society recommendations, and that certified weed-free straw or mulch application is limited within the riparian, wetland, and other wet/moist areas. The Department further recommends native material used as mulch, such as slash created from the removal of ponderosa pine trees, is created on site. The Department highly

encourages that mitigation measure BIO-6 (Control noxious and invasive weeds) is expanded to include post Project monitoring and removal of non-native and invasive weeds.

RESPONSE 4: The Project proponent has stated that it is not problematic to avoid using rice straw or any other certified weed free straw for the Project. This language has been omitted from mitigation measures BIO-5, SOIL-2, SOIL-3, SOIL-5, SOIL-6, and HYDRO-2. In addition Central Valley Water Board staff has updated BIO-6 to include monitoring and removal of non-native and invasive weeds.

CDFW - COMMENT - 5: Federal Endangered Species Act : The Department recommends any biological survey results also be sent to the United States Fish and Wildlife Service, which regulates activities that may result in take of species listed under the Federal Endangered Species Act.

RESPONSE 5: Response: A Monitoring and Reporting Program will be prepared as a Clean Water Act Section 401 Certification condition and will include a condition to contact the United States Fish and Wildlife Service if there is any detection of threatened, endangered, sensitive, or special-status wildlife species listed under the Federal Endangered Species Act, and to provide the United States Fish and Wildlife Service with any Project biological survey results.