

Appendix I

Comments and Responses to Comments Received on the Revised Initial Study/Environmental Assessment and Mitigated Negative Declaration

From: Buss, Stephanie@Wildlife <Stephanie.Buss@wildlife.ca.gov>
Sent: Tuesday, June 13, 2017 3:56:53 PM
To: Enstrom, Karen@DWR
Cc: Wildlife R2 CEQA
Subject: CDFW's comments on the Freemont Weir Adult Fish Passage Modification Project

Karen,

Below are CDFW's comments on the Freemont Weir Adult Fish Passage Modification Project.

Mitigation Measures WILD-7 and WILD-10 state that a qualified biologist may capture and relocate a giant garter snake to suitable habitat if the giant garter snake has not moved out of the construction area on its own. Please note that capturing or handling of a giant garter snake is considered "take" under the California Endangered Species Act. Please be advised that a California Endangered Species Act (CESA) Permit must be obtained if the Project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the Project.

Comment 1-1

Mitigation Measure WILD-19 was revised to limit pre-construction nesting bird surveys to only western yellow-billed cuckoo, least Bell's vireo, and migratory birds. Fish and Game Code § 3503.5 states it is unlawful to take, possess, or destroy any birds in the orders of Falconiformes or Strigiformes (birds-of-prey or raptors) or take, possess, or destroy the nest or eggs of any such bird. In addition Fish and Game Code 3503 protects nest or eggs of all birds. In order to avoid the destruction of nests or take of birds, CDFW recommends pre-construction nesting bird surveys be completed for all species of birds if construction or maintenance activities are to take place between February 1 and September 15. If nesting birds are found, the qualified avian biologist shall establish suitable buffers prior to construction and/or maintenance activities. To prevent encroachment, the established buffer(s) shall be clearly marked by high visibility material. The established buffer(s) shall remain in effect until the young have fledged and are independent or the nest has been abandoned as confirmed by the qualified avian biologist. If birds are showing signs of agitation within the established buffer(s), the buffer(s) shall be expanded to prevent birds from abandoning their nest. To more effectively identify active nests and to facilitate project scheduling, CDFW recommends initial nesting surveys begin as early as February when the foliage on the trees are at a minimum and the nest building activity is high. The USFWS and CDFW should be contacted for further guidance to ensure birds or nests are not disturbed.

Comment 1-2

Mitigation Measure WILD-22 discusses the mitigation ratios for the compensation of the permanent loss of riparian habitat shall be determined in coordination with CDFW and the US Army Corps of Engineers (USACE). CDFW believes this measure should be revised to state coordination of the mitigation ratios for the permanent loss of riparian habitat would be discussed with the CDFW and the USFWS during the permitting process.

Comment 1-3

Mitigation Measure FISH-4 discusses protective measures for ESA-listed fish habitat. As both CESA and ESA-listed fish are known to be in the area. CDFW recommends this measure be revised to state ESA- and CESA-listed fish habitat. **Comment 1-4**

Stephanie Buss

Senior Environmental Scientist (Specialist)

CA Dept of Fish and Wildlife

1701 Nimbus Road

Rancho Cordova, CA 95670

(916) 358-1185

Every Californian should conserve water.

Find out how at: SaveOurWater.com · Drought.CA.gov

**Response to Comments from the California Department of Fish and Wildlife Correspondence
Dated June 13, 2017**

Response 1-1

Comment is noted. DWR has requested an Incidental Take Permit (ITP) for the project. CDFW is in the process of issuing the ITP, which will cover ‘take’ of giant garter snake. Capture and handling of giant garter snake, if necessary, shall be conducted in accordance with the requirements of the ITP.

Response 1-2

Mitigation Measure WILD-19 (page 126) was revised to incorporate the suggested survey window and include surveys for all nesting bird species, as follows:

Mitigation Measures WILD-19: Conduct ~~pre-construction nesting bird surveys for western yellow-billed cuckoo, least Bell’s vireo, and migratory birds~~ nesting birds prior to construction and maintenance activities.

~~Pre-construction nesting bird surveys shall be conducted by a qualified~~ For construction and maintenance conducted between April 1 and August 31, a USFWS-approved February 1 and August 15, a qualified biologist shall conduct surveys for nesting migratory and non-migratory birds. Nesting surveys shall be conducted in accordance with the recommended timing, methodology, and/or protocol for ~~each bird species~~ western yellow-billed cuckoo, least Bell’s vireo, and migratory birds, including but not limited to *A Natural History Summary and Survey Protocol for the Western Yellow-billed Cuckoo Population* (Halterman et al. 2015), and *Least Bell’s Vireo Survey Guidelines* (United States Fish and Wildlife Service 2001). Surveys shall also include a 0.25-mile radius outside of the project area for ~~other nesting migratory birds such as Swainson’s hawk and western yellow-billed cuckoo,~~ and a 500-foot radius outside of the project area for other nesting ~~migratory~~ birds. For construction and maintenance conducted between April 1 and August 31, a USFWS-approved biologist ~~in all suitable nesting habitats within the project area~~ shall conduct passive surveys within a minimum of 500 feet of proposed activities to determine the presence of cuckoos and vireos. Surveys shall be conducted within 14 days prior to the start of construction or maintenance activities, ~~or as prescribed by established survey protocols.~~ If there is a break in construction of one week or more, surveys shall be conducted prior to the re-initiation of construction. ~~If birds or nests are located within this buffer, USFWS will be contacted for further guidance to ensure birds or nests are not disturbed.~~

In addition, Mitigation Measure 20 (which requires the establishment of nest protection buffers for active bird nests) and Mitigation Measure 21 (which requires monitoring of active nests within the nest protection buffer) remain unrevised in the document and provide adequate protection against encroachment.

Response 1-3

Mitigation Measure WILD-22 (page 128) was corrected to state that mitigation ratios to compensate for permanent loss of riparian habitat would be determined in coordination with CDFW and USFWS.

Response 1-4

Mitigation Measure FISH-4 (page 134) was revised to address ESA-listed fish species habitat and CESA-listed fish species habitat, as follows:

Mitigation Measure FISH-4: Implement protective measures for work during non-daylight hours near ESA- and CESA-listed fish species habitat.

If project activities must occur during non-daylight hours, a qualified biologist shall establish monitoring measures, including frequency and duration, based on species presence, individual behavior, and type of construction activities. When night work cannot be avoided, night lighting shall be used only within the portion of the project actively being worked on, and focused directly on the work area. Lights on work areas shall be shielded and focused to minimize lighting of ESA- and CESA-listed fish species habitat, if ESA- or CESA-listed fish species are expected to be present. If the work area is located near surface waters, the lighting shall be shielded such that it does not shine directly into the water. If ESA- or CESA-listed fish species are showing signs of distress or are attracted to the lighted areas, work activities shall be modified to prevent ESA- or CESA-listed fish species from altering their migration or feeding behavior. At any time, the biologist shall have the authority to halt work if there are any signs of distress or disturbance that may lead to delayed migrations or increased predation. Work shall not resume until corrective measures have been taken or it is determined that continued activity would not adversely affect ESA- or CESA-listed fish species.