

# Memorandum

**TO:** Central Files

**FROM:** Tonia M. Tabucchi Herrera, PE, Senior Engineer

**DATE:** November 16, 2020

**SUBJECT:** Hemphill Diversion Project (#7032) NOP/IS Public Comment Period –  
Written Comments Received

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***ENGINEERING***

Please find the below attached written comments received during the Hemphill Diversion Project NOP/IS Public Comment Period.

- Native American Heritage Commission (September 02, 2020)
- Friends of Auburn Ravine (September 13, 2020)
- SARSAS (September 17, 2020 attachment August 6, 2020)
- Laura Peters (September 21, 2020)
- Scott Johnson (September 23, 2020)
- Central Valley Regional Water Quality Control Board (September 24, 2020)
- California Department Fish and Wildlife (October 1, 2020)
- County of Placer (October 2, 2020)
- National Marine Fisheries Service (October 5, 2020)
- Foothill Water Network (October 5, 2020)

Scan - CF  
NDP-15 public comment  
# 7032



NATIVE AMERICAN HERITAGE COMMISSION

September 2, 2020

Tonia M. Tabucchi Herrera  
Nevada Irrigation District  
1036 Main Street  
Grass Valley, CA 95945

Re: 2020090032, NID Hemphill Diversion Structure Project, Nevada County

Dear Ms. Tabucchi Hererra:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

SECRETARY  
**Merri Lopez-Keifer**  
Luiseño

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

COMMISSIONER  
**Marshall McKay**  
Wintun

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Julie Tumamait-Stenslie**  
Chumash

COMMISSIONER  
[Vacant]

COMMISSIONER  
[Vacant]

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
    - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i.** Protecting the cultural character and integrity of the resource.
    - ii.** Protecting the traditional use of the resource.
    - iii.** Protecting the confidentiality of the resource.
  - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: [Nancy.Gonzalez-Lopez@nahc.ca.gov](mailto:Nancy.Gonzalez-Lopez@nahc.ca.gov).

Sincerely,



Nancy Gonzalez-Lopez  
Cultural Resources Analyst

cc: State Clearinghouse

STATE CLEARINGHOUSE  
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NEVADA IRRIGATION DISTRICT  
ENGINEERING

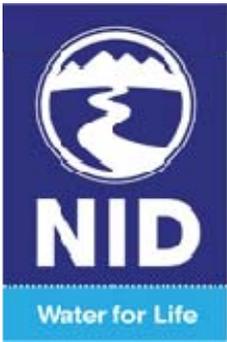
SEP 10 2020

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## Tonia Herrera

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**From:** Doug Roderick  
**Sent:** Monday, September 14, 2020 8:19 AM  
**To:** Tonia Herrera; Chris Stabenfeldt  
**Subject:** FW: Hemphill Dam - Note from Friends of Auburn Ravine



**Doug Roderick**  
Engineering Manager  
Nevada Irrigation District  
1036 W. Main Street  
Grass Valley, CA 95945  
Office: 530.271.6866  
Email: [roderick@nidwater.com](mailto:roderick@nidwater.com)

**From:** James Haufler [REDACTED]  
**Sent:** Sunday, September 13, 2020 4:17 PM  
**To:** Ricki Heck <[division1@nidwater.com](mailto:division1@nidwater.com)>; Chris Bierwagen <[division2@nidwater.com](mailto:division2@nidwater.com)>; Scott Miller <[division3@nidwater.com](mailto:division3@nidwater.com)>; Laura Peters <[division4@nidwater.com](mailto:division4@nidwater.com)>; Nick Wilcox <[division5@nidwater.com](mailto:division5@nidwater.com)>; Greg Jones <[jonesg@nidwater.com](mailto:jonesg@nidwater.com)>; Doug Roderick <[roderick@nidwater.com](mailto:roderick@nidwater.com)>  
**Cc:** Brad Cavallo <[bcavallo@fishsciences.net](mailto:bcavallo@fishsciences.net)>; Heath Wakelee [REDACTED]; Steve Hubbard [REDACTED]  
**Subject:** Hemphill Dam - Note from Friends of Auburn Ravine

**CAUTION:** This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Ms. Heck, Mr. Bierwagen; Mr. Miller, Ms. Peters, Mr. Wilcox, Mr. Jones, Mr. Roderick:

The Board of Directors of Friends of Auburn Ravine believes that the following goals should be addressed as part of the effort to improve the Hemphill water diversion facility:

1. Provide for continued delivery of untreated water to NID's customers that are presently served by the Hemphill canal, including some capacity to increase delivery of untreated water in the area served by the canal, if needed.
2. Minimize the risk of unplanned interruptions of water delivery to NID's customers.
3. Minimize the potential for increased expenses for NID's customers.
4. Avoid unnecessary negative impacts to NID's financial position.
5. Provide for unimpeded upstream and downstream passage of adult and juvenile salmonids, including Central Valley steelhead and Chinook salmon.

6. Provide for unimpeded upstream and downstream passage of Pacific Lamprey.
7. Prevent entrainment of juvenile salmonids into the Hemphill diversion, or other diversions impacted by any design alternative.
8. Avoid adverse impacts on other important aspects and functions related to the Auburn Ravine watershed and in-stream flows.
9. Conform to relevant state and federal regulatory requirements and guidelines.
10. Complete the project by mid-October 2022.

Thank you,

Jim

James Haufler – President  
Friends of Auburn Ravine



Web site: [www.auburnravine.org](http://www.auburnravine.org)

ENGINEERING  
NEVA IRRIGATION DISTRICT

SEP 30 2020

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DEAR TONIA:

9/17/20

This is a copy of a letter sent to N.I.D. Board members, the Acting General Manager, & Chief Engineer.

A fellow board member of S.A.R.S.A.S recommended that I forward a copy to you for your consideration

Respectfully yours,  
Tom Beattie  
SAR SAS Board member



Learn more about the Lakota (Sioux) culture at [stjo.org/culture](http://stjo.org/culture).



## **SARSAS (Save Auburn Ravine Salmon and Steelhead) Inc.**

**Mission Statement:** to return salmon and steelhead to the entire length of the Auburn Ravine

[www.sarsas.org](http://www.sarsas.org)

August 6, 2020

Nevada Irrigation District Business Center  
1036 West Main Street  
Grass Valley, California 95945

Re: Fish Passage at the Hemphill Dam

Dear Board Member:

With the recent settlement of the Water Audit law suit and the acquisition of new general manager, the District now has the opportunity to re-examine a resolution to the perennial problem of fish passage at the Hemphill dam.

Several years ago the District in collaboration with various governmental agencies succeeded in installing a model construction for fish passage at the Lincoln Gauging Station. We submit that the District might now review its success with the L.G.S. in light of alternatives which would be both economical and effective in facilitating fish passage at the Hemphill dam. Current Hemphill construction projects under consideration by the District may or may not meet this two fold test.

Of equal concern are the provisions of the stipulation which concluded Water Audit's recent law suit with the District. As you know, the stipulation requires the District to employ its best efforts to accomplish various tasks within specified deadlines. It must: (1) issue a draft CEQA by April of 2021 (just nine months from now); (2) certify an EIR and adopt a project by fall of 2021; and (3) award a construction project within 10 months of adopting a project. Coincidentally, the stipulation's "best efforts" requirement corresponds with the provisions of section 12025.1 of the Fish and Game Code which imposes a daily fine of \$8,000 for the bad faith violation of section 5901, which in turn prohibits the maintenance of obstructions to fish passage. There appears to be no dispute that Hemphill's obstruction to fish passage constitutes an ongoing and daily violation of section 5901.

Section 12025.1 notwithstanding, time is of the essence. By the Water Audit stipulation, the District has agreed to a series of time constraints designed to alleviate the obstruction to salmon and steelhead migration over the Hemphill dam. The District's timely, economical, and effective resolution of the fish passage problem at Hemphill is therefore paramount.

To promote the resolution of this longstanding problem, the undersigned submits that the District should resume T.A.C. (Technical Advisory Committee) meetings on a regular basis. The conduct of T.A.C. meetings, which was a requirement of the grant received by N.I.D. in December 2016, provides useful

*Jack L. Sanchez Volunteer Coordinator P.O. Box 4269 Auburn, CA 95604 530-888-0281*



## **SARSAS (Save Auburn Ravine Salmon and Steelhead) Inc.**

**Mission Statement:** to return salmon and steelhead to the entire length of the Auburn Ravine

**[www.sarsas.org](http://www.sarsas.org)**

information and insights by citizen groups and private individuals concerned with the obstruction to fish migration at the Hemphill dam.

Given the decrease of salmon and steelhead populations in recent years, the impediments to fish habitats such as the Hemphill dam must be addressed in a timely and effective manner. Presently, Hemphill dam blocks fish passage to upstream stretches of the Auburn Ravine which are critical to fish reproduction. We believe that the District wants to resolve the Hemphill dam issue as much as we do. That being the case, now is the time to reflect once again on the historical success of the L.G.S. and to devise a timely solution which is reliable, economical, effective, and maintainable.

Respectfully yours,

15/1

Thomas Beattie, SARSAS Board Member, by and for the SARSAS Board

cc. Greg Jones, Acting General Manager  
Doug Roderick, Chief Engineer

Hemphill Diversion Structure Project  
 Notice of Preparation of Draft EIR  
 Questions for 9/21/2020 Scoping Meeting  
 Submitted by: Laura L. Peters

Page No.	Question/Comment
General	<p><b>Alternative 3:</b> This alternative was investigated in the April 2016 Kleinschmidt Alternative Analysis. See their conclusion below from page 20 of that report:  <i>"5.7 OPTION 6 - LINCOLN CANAL / AUGUST RAVINE 1 CONNECTION</i>  <i>Another option for providing water to the Hemphill canal in the event of the removal of the diversion structure includes providing flow via a pipeline from nearby canals, such as the Lincoln canal / Auburn Ravine 1 (AR1). While simple on paper, an extensive study would be required to ensure that an adequate flow is available in the supply canal. Current data for the Lincoln canal indicate that it does not currently have sufficient capacity. Modifications to expand carrying capacity in the Lincoln canal would be needed in order to consider this a possible option. Construction of the pipeline and the required permitting could greatly increase costs, and these would also be major factors in assessing viability. "</i></p> <p><b>Questions:</b>            1) Have the necessary studies been completed to confirm this is a viable and feasible alternative?            2) Why wasn't the segment of the project necessary to get water to the NID Placer Yard included in the Alternative 3 project description?</p>
2-1	<p>The last sentence regarding Alternative 3 notes that <i>"...; so those parts of the pipeline west of Virginiatown Road are actually in the City."</i>            Virginiatown runs east-west. Do you mean west of Fowler Road? Please clarify.</p>
2-10	<p>The 2nd paragraph notes that <i>"Historically, NIDs goal is to keep the customer "whole" with modification projects such as these."</i>            How does this alternative propose to provide access to the ravine to facilitate pump accounts for existing customers not adjacent to it?</p>
4-35	<p>The 1st paragraph states that <i>"Additionally, implementation of Alternative 3 would result in the diversion of creek water at NID's Placer Yard on Gold Hill Road."</i>            Note that the creek is not adjacent to NID's Placer Yard, thus it would not be a direct diversion.            1) What is the proposed alignment from the creek to the Placer Yard?            2) The impacts at the diversion point, as well as to the selected alignment proposed to transport the water from the creek to the Placer Yard, need to be analyzed.</p>

Scott Johnson  
Registered Piano Technician



**REGISTERED PIANO TECHNICIAN**

September 23, 2020

Regarding: "Hemphill Diversion Structure Project"

To the attention of:

Kris Stepanian, Board Secretary, at Nevada Irrigation District  
1036 W Main Street, Grass Valley, CA 95945  
[stepiank@nidwater.com](mailto:stepiank@nidwater.com)

I urge the NID Board of Directors to adopt the Fish Passage Alternative 2, including an in-stream "riffle and pool" system similar to what was done at the Lincoln Gauging Station in 2012 combined with a self-cleaning conical screen at the intake to the Hemphill canal."

Sincerely

Scott Johnson



Member of and volunteer newsletter editor for Save Auburn Ravine Salmon and Steelhead

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## Central Valley Regional Water Quality Control Board

28 September 2020

Tonia M. Tabucchi Herrera  
Nevada Irrigation District  
1036 Main Street  
Grass Valley, CA 95945

### **COMMENTS TO REQUEST FOR REVIEW FOR THE NOTICE OF PREPARATION FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, NID HEMPHILL DIVERSION STRUCTURE PROJECT, SCH#2020090032, NEVADA COUNTY**

Pursuant to the State Clearinghouse's 1 September 2020 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Notice of Preparation for the Draft Environmental Impact Report* for the NID Hemphill Diversion Structure Project, located in Nevada County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

#### **I. Regulatory Setting**

##### **Basin Plan**

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)

### **Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

[https://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr\\_2018\\_05.pdf](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf)

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)

### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/)

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

### **Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrial\\_general\\_permits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml)

### **Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

### **Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic

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<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:  
[https://www.waterboards.ca.gov/centralvalley/water\\_issues/water\\_quality\\_certification/](https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/)

#### **Waste Discharge Requirements – Discharges to Waters of the State**

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:  
[https://www.waterboards.ca.gov/centralvalley/water\\_issues/waste\\_to\\_surface\\_water/](https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/)

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:  
[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2004/wqo/wqo2004-0004.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf)

#### **Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:

[https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r5-2018-0085.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf)

**Limited Threat General NPDES Permit**

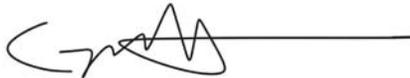
If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

[https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2016-0076-01.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf)

**NPDES Permit**

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

If you have questions regarding these comments, please contact me at (916) 464-4709 or [Greg.Hendricks@waterboards.ca.gov](mailto:Greg.Hendricks@waterboards.ca.gov).



Greg Hendricks  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,  
Sacramento



Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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1701 Nimbus Road, Suite A  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 1, 2020

Tonia M. Tabucchi Herrera  
Senior Engineer  
Nevada Irrigation District  
1036 West Main Street  
Grass Valley, CA 95945  
herrera@nidwater.com

Subject: Hemphill Diversion Structure Project  
Notice of Preparation  
SCH# 2020090032

Dear Ms. Tabucchi Herrera:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from Nevada Irrigation District (NID) for the Hemphill Diversion Structure Project (Project) in Placer 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 Hemphill Diversion Structure is located on Auburn Ravine northeast of the City of Lincoln, California. The structure diverts water from Auburn Ravine into the Hemphill Canal located south of the ravine for delivery to NID raw water customers. The structure is located at latitude 38.896731° and longitude -121.251885°.

NID proposes to remove or replace the existing diversion structure to allow for anadromous fish passage upstream within Auburn Ravine. The proposed Project includes four potential alternatives that will be analyzed in the EIR including: 1) Riverbank Infiltration Gallery Alternative, 2) Fish Passage Alternative, 3) Pipeline Alternative, and 4) Abandonment of Hemphill Canal Alternative. These alternatives vary as far as construction attributes and areas of potential disturbance. It is intended by NID that all these alternatives are designed to allow for fish passage beyond the Hemphill Diversion Structure.

The Project description in the EIR 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 EIR 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**

During 2017 NID was awarded a Proposition 1 Watershed Restoration Grant for Phase 2 of the Hemphill Diversion Assessment. CDFW staff participated in a technical advisory committee (TAC) alternative development process associated with this grant and submitted comments to NID for consideration. Some of the comments below reflect

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those interactions with NID staff during the TAC meetings for the purpose of compiling a complete alternatives analysis in the EIR.

CDFW offers the comments and recommendations presented below to assist NID 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 EIR address the following:

### **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 EIR 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 EIR specifically include:

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 et al. 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 (USGS) 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 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>.

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Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it a substitute for site-specific species surveys. 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 (CWHR) System, California Native Plant Society (CNPS) Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

3. A complete, 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). 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 EIR should include the results of focused species-specific surveys, completed by a qualified biologist, and conducted at the appropriate time of year 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 lead agency 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]).

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

The EIR 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 EIR:

1. The EIR 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 EIR 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 EIR 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.
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 EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR 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.

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## **Project Alternatives**

### *Alternative 1 – Riverbank Infiltration Gallery Alternative*

Alternative 1 proposes a subsurface streambed/bank infiltration gallery and removal of the existing diversion structure. CDFW recommends that the EIR utilize the results of the October 2018 Geotechnical Engineering and Hydraulics Report for the Hemphill Diversion Structure and May 2020 Auburn Ravine-Hemphill Diversion Assessment Sediment Transport Study to determine the amount of sedimentation or scour that could be expected to affect the infiltration gallery site. Although the proposed design of the infiltration gallery depicted in the NOP contemplates a back-flushing system, the EIR should also analyze whether the amount of sedimentation could be effectively and consistently cleared using these design components. The EIR should also discuss whether materials used to construct the infiltration gallery have a likelihood of scour during high flow events and could cause additional erosion or downcutting of the stream at this location.

The CDFW fish screen criteria that are included in Appendix S of the California Salmonid Stream Restoration Manual (document can be found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>) do not cover infiltration galleries or experimental technology. For this reason, CDFW recommends that the following National Oceanic and Atmospheric Administration Fisheries' (NOAA Fisheries) Salmonid Passage Design (document can be found at <https://www.fisheries.noaa.gov/resource/document/anadromous-salmonid-passage-facility-design>) criteria for siting of infiltration galleries be considered when analyzing the current project proposal in Alternative 1.

CDFW recommends that the EIR include a discussion of the monitoring and maintenance activities that would be implemented post-construction to determine consistency with NOAA's infiltration gallery siting criteria, as well as the long-term monitoring and maintenance necessary to maintain pumping and fish protection functionality.

### *Alternative 2 – Fish Passage Alternative*

Alternative 2 proposes the installation of a fish ladder at the existing dam/diversion structure site. The NOP states that this alternative could require modification or replacement of the existing diversion structure to construct a viable fish ladder as proposed in this alternative. CDFW recommends that the EIR include analysis of whether existing bypass flows would be sufficient to provide for safe and timely adult upstream fish passage in both sections of the two-stage ladder throughout the salmonid migration period. CDFW recommends that the EIR also analyze inclusion of a fish

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screen at the diversion as a part of this alternative to minimize the entrainment risk to juvenile salmonids and resident fish species.

#### *Alternative 3 – Pipeline Alternative*

Alternative 3 proposes to remove the existing diversion structure, decommission Hemphill Canal, and construct a 24-inch pipeline from NID's Placer Yard on Gold Hill Road to the Hemphill Canal. The canal is currently master planned for 18 cubic feet per second (cfs) with six existing service boxes on the canal that have a peak summer delivery of 12 cfs. Salmonid surveys and monitoring conducted in recent years have indicated that western Placer County streams, including Auburn Ravine, support in-river life stages (spawning and rearing) of naturally reproducing salmonids that contribute toward species recovery in the Central Valley (Maslin et. al, 1998; Titus 2003, 2013; and Healey 2014). This alternative could reduce the flows in Auburn Ravine by up to 12 cfs downstream from the Gold Hill diversion during the irrigation season. CDFW recommends that the EIR analyze the impacts to juvenile salmonids and resident fish populations due to the reduction in flows within Auburn Ravine (i.e. warmer water temperatures and less available habitat) associated with this alternative. Additionally, CDFW recommends that the proposed alternative considers the inclusion of a fish screen at the Gold Hill diversion to minimize the entrainment risk to resident fish species associated with the Project alternative.

#### *Alternative 4 – Abandonment of Hemphill Canal Alternative*

Alternative 4 proposes to remove the existing diversion structure and decommission Hemphill Canal, requiring the individual property owners to operate and maintain smaller diversion pump systems. Unscreened irrigation diversions have long been identified as having potential for causing harm to resident and migratory fish, mainly through entrainment (Poletto, et al. 2015). If Alternative 4 includes or would result in the installation of multiple unscreened diversions, CDFW recommends that the EIR analyze the impacts of unscreened diversions to adult and juvenile salmonids and resident fish species, including entrainment. Additionally, CDFW encourages the consolidation of diversions to reduce the potential impacts on adult and juvenile salmonids and other resident fish species.

#### *Other Alternatives not Described in the NOP*

The EIR should describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and the reasons underlying that determination (CEQA Guidelines, § 15126.6, subd. (c)). Other dam removal and fish screening alternatives were considered by NID during the 2018/2019 TAC process. One alternative discussed at the August 13, 2019, TAC meeting was dam removal and site grade restoration through a nature-like fishway or series of concrete weirs (similar to the Highway 65 gaging station ladder) coupled with the installation of conical fish screens at the diversion point to Hemphill Canal. Accordingly, CDFW recommends that NID consider Project alternatives in the EIR that include traditional fish screening practices

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at the existing diversion structure location that could feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen one or more of the significant effects. If these alternatives were rejected as infeasible the EIR should describe the rationale for that determination.

### **Placer County Conservation Program**

The Placer County Conservation Program (PCCP) was approved by the Placer County Board of Supervisors on September 1, 2020, and the South Placer Regional Transportation Authority Board of Directors on September 23, 2020. It is anticipated that the PCCP will be approved by the remaining PCCP Permittees with subsequent permits/approvals issued by the associated state/federal regulatory agencies during fall of 2020. The PCCP comprises three planning documents published by Placer County: the Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP), the Western Placer County Aquatic Resources Program, and the Western Placer County In-Lieu Fee Program.

CEQA Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans ). Because the PCCP is close to being implemented, CDFW recommends that the EIR include a discussion of each Project alternative's consistency with the PCCP and how NID will ensure that implementation of the Project alternatives do not impede the PCCP's ability to meet its biological goals and objectives.

The HCP/NCCP Conservation Strategy identifies the need to form private partnerships to remove high-priority fish passage barriers identified within the Plan Area, including Hemphill Dam (see HCP/NCCP Section 5.3.2.3.3, CM2 RAR-2, *Removal and/or Modification of Barriers to Fish Passage*). The CDFW recommends that the EIR evaluate the various Project alternatives' potential to form a partnership with the Placer County Authority (PCA) to implement the barrier modification/removal as a Covered Activity under the HCP/NCCP. If the proposed Project were able to proceed as a Covered Activity under the HCP/NCCP in partnership with the PCA, the Project would benefit from obtaining take coverage for applicable state/federally protected species as well as streamlined/programmatic permitting for impacts to state and federally protected aquatic resources. The final PCCP documents can be found at: [www.placer.ca.gov/3362/Placer-County-Conservation-Program](http://www.placer.ca.gov/3362/Placer-County-Conservation-Program).

### **Mitigation Measures for Project Impacts to Biological Resources**

The EIR 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 that 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

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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*: Fully Protected Species (Fish & G. Code sections 3511, 4700, 5050, and 5515) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the EIR 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 that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
2. *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 et al. 2009). The EIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR 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 and/or enhancement 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 EIR 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 management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

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4. *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 initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. 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-).

5. *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, 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

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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 EIR 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 EIR.

CDFW recommends that the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds 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 EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the EIR, CDFW recommends that they 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.

6. *Moving out of Harm's Way*: The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, the lead agency may condition the EIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. 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. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
7. *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.

The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR 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. To avoid deferring mitigation in this way, the EIR should describe

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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 the California Endangered Species Act (CESA). Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” If Project activities have the potential to cause take of state-listed species during construction or through operations and maintenance over the life of the Project, a CESA Incidental Take Permit (ITP) may be obtained to provide coverage in the event that take occurs. A CESA ITP may also be obtained to provide coverage for rare and endangered plants listed under the Native Plant Protection Act (Fish & G. Code §1900 *et seq.*).

To issue an ITP, CDFW must demonstrate that 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, the EIR should disclose the potential of the Project to take state-listed species and include measures to minimize and fully mitigate the impacts to those 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 to minimize and fully mitigate impacts to the extent required for the issuance of an ITP. Therefore, 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.

State-listed species with the potential to occur in the area include, but are not limited to: the State threatened Swainson’s hawk (*Buteo swainsoni*), tricolored blackbird (*Agelaius tricolor*), California black rail (*Laterallus jamaicensis coturniculus*), and foothill yellow-legged frog – Northern Sierra clade (*Rana boylei*).

### **Native Plant Protection Act**

The Native Plant Protection Act (NPPA) (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).

### **Lake and Streambed Alteration Program**

The EIR 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 access and

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staging areas). The EIR 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 that the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Fish and Game Code section 1602 requires an entity to notify CDFW 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, CDFW will determine if the 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 will include measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce adverse impacts to fish and wildlife resources.

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 EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments.

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 when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

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. For more information on LSA notification, please go to <https://www.wildlife.ca.gov/Conservation/LSA>.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. Addressing CDFW's input and

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comments during project planning helps the EIR appropriately address Project impacts and facilitates the issuance of an LSA Agreement.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into the EIR to avoid subsequent CEQA 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.

CDFW recommends that the EIR fully identify the Project's potential impacts to Auburn Ravine and any other stream and/or associated vegetation and/or wetlands that may be affected by the Project.

## **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 (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 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 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.

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CDFW appreciates the opportunity to comment on the NOP of the EIR for the Hemphill Diversion Structure Project and recommends that the NID address CDFW's comments and concerns in the forthcoming EIR. 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 Patrick Moeszinger, Senior Environmental Scientist (Specialist) at (916) 767-3935 or [Patrick.Moeszinger@wildlife.ca.gov](mailto:Patrick.Moeszinger@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
778EDA8AE45F4C9...

Kelley Barker  
Environmental Program Manager

ec: Patrick Moeszinger, Senior Environmental Scientist (Specialist)  
[patrick.moeszinger@wildlife.ca.gov](mailto:patrick.moeszinger@wildlife.ca.gov)

Juan Torres, Senior Environmental Scientist (Supervisory)  
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Tanya Sheya, Senior Environmental Scientist (Specialist)  
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Beth Lawson, Senior Hydraulic Engineer  
[beth.lawson@wildlife.ca.gov](mailto:beth.lawson@wildlife.ca.gov)  
*Department of Fish and Wildlife*

Office of Planning and Research, State Clearinghouse, Sacramento

#### Literature Cited

Healey, M.C. 2014. CDFW Memorandum dated July 10, 2014. Completion of the 2013 Auburn Ravine Rotary Screw Trap Monitoring Report. CDFW Fisheries Files R2, Rancho Cordova, CA.

Maslin, P., M. Lennox, and J. Kindopp. 1998. Intermittent streams as rearing habitat for Sacramento River Chinook salmon (*Oncorhynchus tshawytscha*). Report to the U.S. Fish and Wildlife Service, 4001 North Wilson Way, Stockton, CA 95205.

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Titus, R. 2003. CDFG Memorandum dated February 5, 2003. Fishes in Secret Ravine (Dry Creek Drainage, Placer County. CDFW Fisheries Files R2, Rancho Cordova, CA.

Titus, R. 2013. CDFW Memorandum dated November 20, 2013. Chinook salmon and steelhead use of Steelhead Creek. CDFW Fisheries Files R2, Rancho Cordova, CA.

October 2, 2020

Kris Stepanian  
Nevada Irrigation District  
1036 West Main Street  
Grass Valley, CA 95945

via email: [stepaniank@nidwater.com](mailto:stepaniank@nidwater.com)

Subject: Notice of Preparation of a Draft Environmental Impact Report for the NID Hemphill Diversion Structure

Dear Ms. Stepanian:

Placer County appreciates the opportunity to engage at this stage in the process. After reviewing the submitted information, the County offers the following comments for NID's consideration regarding the proposed project:

*From the Engineering & Surveying Division and Department of Public Works and Facilities*

GENERAL:

1. The EIR should address any proposed project phasing. Likewise, the proposed mitigations must be identified by the applicable phase.
2. The Placer County Flood Control and Water Conservation District should be included as responsible agencies.

ALTERNATIVES 1 AND 2:

1. The EIR should address whether the proposed project is within existing NID easements on the northeastern portion of the project boundary or if additional easements will need to be obtained.

GRADING:

1. The EIR should evaluate the grading required for all proposed alternatives, both on and off site, including waterline installation. The limits of the proposed grading, the potential grading impacts, and the appropriate mitigations should be discussed.
2. The EIR should include a preliminary grading plan prepared to an appropriate engineering scale so that accurate environmental impacts can be identified from the proposed improvements.
3. The EIR should indicate that either a Grading Permit and/or Improvement Plans/Encroachment Permit will be required for grading work within the County in excess of 250 cubic yards or within any County easements/right-of-way.

TRANSPORTATION/CIRCULATION

1. The existing access road to the Hemphill Diversion Structure is on Virginiatown Road within the City of Lincoln, close to the City of Lincoln and County boundary. The EIR should discuss if the existing access road will be improved or relocated, and if so, if it will remain within the City of Lincoln or be moved to the Placer County portion of Virginiatown Road. If moved into Placer County right-of-way, additional improvements and Improvement Plans/Encroachment Permit will be required.

#### WATER QUALITY/HYDROLOGY

1. The EIR should address that Placer County General Plan policy prohibits developing within a flood zone and policy states that the County shall attempt to maintain natural conditions within the 100-year floodplain of all rivers and streams. Discussion regarding compliance with Placer County Flood Control and Water Conservation District Stormwater Management Manual and the County Land Development Manual should also be included in the EIR.

#### ALTERNATIVE 3:

##### TRANSPORTATION/CIRCULATION

1. Impacts to County roads, both during and after construction, should be discussed in the EIR and appropriate mitigations included.
2. The EIR should identify that the applicant will be required to submit and obtain approval of Improvement Plans and Encroachment Permits for work proposed within the County right-of-way prior to the commencement of work.
3. The EIR should discuss that as part of the Improvement Plan/Encroachment Permit process, the applicant will be required to submit Traffic Control Plans per Caltrans Standard and that work hours will be limited to 8:30 AM to 3:30 PM.
4. The EIR should discuss that the segment of Virginiatown Road within Placer County from Gold Hill Road to Hungry Hollow Road was overlaid in Summer 2016 and the segment of Fruitvale Road from Gold Hill Road to Hungry Hollow Road was overlaid in Summer 2017 and Placer County has a 5-year moratorium on pavement cuts.

#### WATER QUALITY/HYDROLOGY

1. The EIR should identify and discuss any impacts to the wetland culvert crossings that are within the boundaries of Alternative 3.

#### UTILITIES

1. The EIR should discuss the potential impacts to any existing utilities within the Roadways and propose appropriate mitigation measures.

#### *From the Placer County Flood Control and Water Conservation District*

The proposed project has the potential to create the following impacts:

1. The potential to place structures and/or improvements within a 100-year Special Flood Hazard Area (SFHA) and regulatory floodway as mapped on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs).
2. The potential to modify a 100-year SFHA as mapped on FEMA FIRMs. Please have the applicant note that modifications to this SFHA and regulatory floodway may require FEMA approval. Please have the applicant also list FEMA in Section 2.2.1 of the IS under other public agencies that may require approvals.

Future EIRs must specifically quantify the incremental effect of the above impacts due to this project, and propose mitigation measures where appropriate.

*From the Planning Services Division*

1. Section 2.3.4 - Placer County Conservation Program

The project site is located ~~in the area identified as being~~ within the Placer County Conservation Program (PCCP) Plan Area. The PCCP is a County-proposed solution to coordinate and streamline the permitting process by allowing local entities to issue state and federal permits. The proposed PCCP is a Habitat Conservation Plan (HCP) under the federal Endangered Species Act (ESA) and a Natural Community Conservation Plan (NCCP) under the California Natural Community Conservation Planning Act. As proposed, the PCCP would include the County Aquatic Resources Program (CARP) to issue permits establish standard avoidance, minimization, and mitigation measures and cover projects requiring permits related to the Sections 401-404 of the Federal Clean Water Act and the California Fish and Game Code. At this time, the PCCP has ~~not~~ been adopted by the Placer County Board of Supervisors (County) and the South Placer Regional Transportation Authority (SPRTA) Board and will be considered for adoption by the Lincoln City Council (City) and the Placer County Water Agency (PCWA) Board of Directors in October 2020. is currently undergoing e Environmental review under CEQA and National Environmental Policy Act (NEPA) has been completed. † and the Final PCCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) is currently out of public review until June 22, 2020 has been certified by the County and SPRTA and will be considered for certification at the City of Lincoln and PCWA hearings mentioned noted above (Placer Conservation 2020). The PCCP has not yet been adopted

2. Section 4.4.2(f) – Biological Resources (IV) - Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

The Project is located ~~in the area identified as being~~ within the PCCP Plan Area. The PCCP is a County-proposed solution to coordinate and streamline the permitting process by allowing local entities to issue state and federal permits. The proposed PCCP is an HCP under the Federal ESA and a NCCP under the California Natural Community Conservation Planning Act. ~~As proposed, the~~ The PCCP ~~would~~ includes the CARP to establish standard avoidance, minimization, and mitigation measures and cover issue permits projects requiring permits related to the sections 401-404 of the federal Clean Water Act and the California Fish and Game Code. At this time, ~~the~~ The PCCP has ~~not~~ been adopted by the Placer County Board of Supervisors (County) and the South Placer Regional Transportation Authority (SPRTA) Board and will be considered for adoption by the Lincoln City Council (City) and the Placer County Water Agency (PCWA) Board of Directors in October 2020. ~~and is currently undergoing e~~ Environmental review under CEQA and NEPA has been completed and has been certified by the County and SPRTA and will be considered for certification at the City of Lincoln and PCWA hearings mentioned noted above (Placer Conservation 2020). The Final PCCP EIR/EIS is currently out for public review until June 22, 2020 (Placer Conservation 2020). While the PCCP has not yet been adopted, there is a potential for it to be adopted prior to approval of the Proposed Project. As such, † This impact area will be discussed in the Hemphill Diversion Structure EIR.

3. Consistency with the PCCP's HCP/NCCP

A well-coordinated project, consistent with the requirements of the PCCP, could result in streamlined state and federal Incidental Take and programmatic Section 401-404 permit coverage under the PCCP. The list of Covered Activities in Chapter 2 of the PCCP provides for projects that will be proposed by a Participating Special Entity (e.g. a special district that is involved in the production, generation, storage, treatment, or transmission of water that may propose to build a project in the

City of Lincoln or the unincorporated County). NID may be considered as such an entity and, per section 2.6.5.3 (Water Supply Programs), partnering with the Placer Conservation Authority (PCA) and adhering to the requirements of the PCCP could result in a project that would be covered and significantly streamlined, including CEQA and NEPA programmatic coverage for state and federal agency permits.

The following sections of the PCCP should be referred to during the development of the Draft EIR:

1. Section 2.6.7.2.1 (Stream Barrier Modification Projects) - Speaks to the PCCP's conservation strategy providing for removal of fish passage barriers and other projects that improve fish passage, based on recommendations from the *Anadromous Fish Screening and Passage Opportunities in Western Placer County and Southern Sutter County* report (Bailey 2005). The Hemphill Dam is included in this list of projects and, as such, the construction of a fish ladder and/or removal of the dam and restoration of the riparian zone should be evaluated with each of the four proposed alternatives.
2. Section 6.2.3 (Application Process for Participating Special Entity Projects) - Describes the application process for Participating Special Entities who wish to receive coverage under the Plan.
3. Section 6.2.4 (HCP/NCCP Participation Package) - Outlines detailed requirements of the documentation necessary to compile an application to the PCA.
4. Section 8.9.4 (Take Authorization for Participating Special Entities) - Explains the ability for Special Entities to propose projects or activities within the Plan Area that could affect listed species and that may require take authorization from USFWS, NMFS, or CDFW.

In conclusion, it is the County's recommendation that NID work proactively with the state and federal wildlife and regulatory agencies on the project design and permitting strategy. The Draft EIR should acknowledge that if the PCCP receives its state and federal Incidental Take Permits and Programmatic Section 401-404 permits prior to submittal of Improvement Plans for this project, or prior to the project's own State and federal permits being obtained for effects associated with listed species and their habitats, waters of the State, and waters of the U.S., then mitigation measures may be replaced with the PCCP's mitigation fees and conditions on covered activities to address resource impacts and avoidance and minimization measures, as set forth in the PCCP implementation document, to the extent compliance with the PCCP provides equal or greater mitigation or reduction in the significance of impacts. If NID applies for coverage as a Participating Special Entity or is otherwise required by the state and federal agencies for permitting or as mitigation for one or more biological resource area impacts, then the PCCP avoidance, minimization, and mitigation measures shall apply to those species, habitat types, and waters that are covered by the PCCP.

Thank you again for the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the NID Hemphill Diversion Structure project. Should you have any questions, please contact Leigh Chavez, Environmental Coordinator at [lchavez@placer.ca.gov](mailto:lchavez@placer.ca.gov) or 530-745-3077.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leigh Chavez", is written over a horizontal line. Below the line, the name and title are printed in a black, sans-serif font.

LEIGH CHAVEZ, PRINCIPAL PLANNER  
ENVIRONMENTAL COORDINATOR



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
650 Capitol Mall, Suite 5-100  
Sacramento, California 95814-4700

October 5, 2020

Kris Stepanian  
Board Secretary  
Nevada Irrigation District  
1036 W. Main Street  
Grass Valley, CA 95945

**RE: Notice of Preparation for the Draft Environmental Impact Report for the Nevada Irrigation District's (NID) Hemphill Diversion Structure**

The National Marine Fisheries Service (NMFS) has reviewed the Notice of Preparation for the Draft Environmental Impact Report for the Nevada Irrigation District's (NID) Hemphill Diversion Structure. Staff also attended the online presentation portion of the Public Scoping Meeting held on September 21, 2020.

The Proposed Project includes analysis of four potential alternatives including: 1) Riverbank Infiltration Gallery Alternative, 2) Fish Passage Alternative, 3) Pipeline Alternative, and 4) Abandonment of Hemphill Canal Alternative. We are encouraged by NID's reaffirmation of its longer-term commitment to improve fish passage at Hemphill Dam and the district's willingness to explore efforts to advance that goal and to accept NMFS's comments provided through this public process.

NMFS is responsible for the administration and enforcement of the Endangered Species Act of 1973 (ESA), as amended [16 U.S.C. 1531 *et seq.*] with regards to ESA listed anadromous fish species and their critical habitat. Listed species and critical habitat that the proposed activity will directly affect include federally threatened California Central Valley (CCV) steelhead (*Oncorhynchus mykiss*) and their designated critical habitat:

California Central Valley (CCV) steelhead distinct population segment (DPS)  
Threatened (71 FR 834; January 5, 2006)  
Designated critical habitat (70 FR 52488; September 2, 2005)

NMFS's Recovery Plan for Central Valley Chinook Salmon and Steelhead has identified Auburn Ravine as having CCV steelhead critical habitat and distribution, along with both spawning and rearing habitat within the system (NMFS 2014). Additionally, Auburn Ravine may also support the following Chinook salmon evolutionarily significant units (ESUs) a portion of the year, which include listed species with designated critical habitat downstream in the Sacramento River:



Fall-run and late-fall-run Chinook salmon ESU  
Threatened CV spring-run (70 FR 37160; June 28, 2005)  
Endangered Sacramento River winter-run (70 FR 37160, June 28, 2005)

Auburn Ravine contains essential fish habitat (EFH) for Pacific Coast Salmon to the current extent of anadromy at Gold Hill Dam.

CCV steelhead are known to use the habitat in the vicinity of Hemphill Dam as rearing habitat and a migration corridor habitat, and likely use nearby habitat in Auburn Ravine for spawning, particularly in the upper reaches (Bailey 2003). Based on the fish community surveys conducted by the California Department of Fish and Wildlife (CDFW) in 2004 and 2005, juvenile CCV steelhead have the potential to rear in this area throughout the year (Navicky 2008). Adult CCV steelhead generally migrate from the ocean to natal spawning grounds from October to May with peak spawning from January through March (Moyle 2002). However, on small streams such as Auburn Ravine, adult upstream migration is triggered by winter rainfall and increased instream flow. Therefore, NMFS generally expects adult CCV steelhead to be present in Auburn Ravine from December through May. Juvenile CCV steelhead emigrate as smolts between November and May, and peak in March and April (Jones and Stokes 2005).

During the 2004 and 2005 fish community surveys in November/December and April, respectively, CDFW found *O. mykiss* to be the most abundant species in all reaches in both years. An estimated average of 2,163 juvenile *O. mykiss* per mile were observed in the reach upstream of Hemphill Dam (Navicky 2008). Jones and Stokes (2005) estimated that CCV steelhead spawning habitat in Auburn Ravine could support approximately 1,594 redds.

Water temperatures in Auburn Ravine likely support rearing juvenile *O. mykiss* year-round, including at least part of the irrigation season (Bailey 2003). However, low stream flows in September and October substantially reduce the area of aquatic habitat available. Upstream migrating adult CCV steelhead passage is blocked at Hemphill Dam in most years, except during winter storm (December through March) events (Bailey 2003). Lack of access to upper reaches of Auburn Ravine has substantially reduced the quantity of migration and rearing habitat for CCV steelhead.

The “Salmon Spawning and Water Quality Surveys in Auburn Ravine” report (Helix 2019), suggests, “good water quality conditions suitable for salmonid passage and egg incubation in Auburn Ravine during the 2017 migratory period,” and “...water quality conditions in Auburn Ravine during the 2018 migratory period were suitable for salmonid passage and egg incubation.” The impacts to water quality should be analyzed for each alternative considered in the EIS. Anticipated impacts to temperature and dissolved oxygen should be quantified relative to applicable water quality objectives (from the Central Valley Regional and State Water Quality Control Board) and relevant benchmarks (U.S. Environmental Protection Agency 2003). Alternatives that affect the hydrologic regime of Auburn Ravine should be evaluated to determine their effects on flow conditions for salmonids.

The reach of Auburn Ravine of our primary focus is characterized by winter storms with spring-recession flows in mid-April, dry season in early June, a fall pulse in later October, and wet season centered in November (Lane *et al.* 2020, Yarnell *et al.* 2015). These functional flows overlap with the mid-April through mid-October irrigation season when the flashboards are installed on top of the dam. Selection of the preferred alternative should consider the functional flows necessary to support salmonid populations. Specifically, early fall storm events are key to attracting Chinook salmon into Auburn Ravine to spawn, stabilized spring flows support development of salmonid eggs and juveniles, and dry season minimum flows support important life history traits, especially for over-summering juveniles.

NMFS recommends all proposed alternatives meet the 2011 NMFS Anadromous Salmonid Passage Facility Design guidelines (or the most current criteria available) for safe, timely and effective fish passage.

**Alternative #1:**

The Riverbank Infiltration Gallery, in concept, may provide suitable fish passage conditions at a diversion site. However, if improperly sited, failure may occur that results in severe adverse habitat impacts and loss of habitat access in addition to the loss of the diversion. As such, any site proposed for an infiltration gallery must follow the experimental process described in section 16 of the 2011 Anadromous Salmonid Passage Facility Design document (NMFS 2011). Infiltration galleries are sensitive to a specific set of stream/river conditions, and due to their location, there is a mixing of shallow groundwater and surface water. One mode of infiltration gallery failure is plugging of the overlying porous material which subsequently reduces the overall effectiveness of the systems by reducing flow capacity, motivating the owner/operator to excavate and replace the buried sections to achieve full diversion rates, thereby impacting habitat.

Given the geologic conditions along Auburn Ravine, and the observed sediment accumulation, plugging of the infiltration gallery is considered likely. As stated in the NV5 Geotechnical Engineering and Hydraulics Report for the Hemphill Diversion Structure (Report) dated October 2018 and prepared for NID, a sediment transport model has not been prepared for the preliminary design raising concern on the potential plugging of the gallery due to the observed bank erosion and sediment accumulation in the vicinity of the proposed infiltration gallery (NV5 2018). The Report also states on Page 1, the low gradient of Auburn Ravine lacks the sufficient hydraulic characteristics to transport deposited material over time (NV5 2018). This validates the concern of plugging. It was stated at an October 23<sup>rd</sup> meeting with NID and the Technical Advisory Committee (TAC) the intent was to construct the infiltration gallery and operate it for one year before decommissioning the dam. This raises additional concerns of plugging for the infiltration gallery, as the sediment impounded behind the dam will be transported downstream once the dam is removed. Page 19 of the report states, "Upon removal of the Hemphill Diversion Structure, upstream degradation of the dam deposition material would be expected. It is anticipated that this sediment would be transported downstream and deposited." Without an engineered regrading plan the river channel will be allowed to naturally find its quasi-equilibrium state of rest adjusting and re-adjusting to find a new balance. This could mean a significant amount of latent sediment would settle on the gallery. The plugging of the interstices of gallery materials would take the facility out of criteria and potentially cause hot spots with an increase in the maximum interstitial velocity.

Spawning has also been documented within the proposed area for the infiltration gallery. Operations of an infiltration gallery are generally ceased when redds are in the area, which may result in large periods of non-operation of the facility. The facility may cause take of juvenile fish if they are present during pumping operations. Take may become more likely if large volumes of sediment blockage cause the gallery to not operate as intended.

Placement of the gallery should be far enough away from the backwater hydraulic effects of existing impoundments so that the maximum available head to drive water into the infiltration gallery is the normal depth of the stream at any given flow without the benefit of check structures. Use of temporary or permanent impoundments, such as push-up berms, stacked rock and plastic and other dams to raise the water level, is not permitted.

NMFS places several limitations on the siting and operation of infiltration galleries, as follows:

- *Should spawning occur on an infiltration gallery or within the zone of gallery influence to hyporheic flow to the redd, then all diversion and backwashing activities should cease for 90 days or until the eggs hatch so that the first life stage's biological processes associated with spawning are not interrupted.*
- *When juvenile salmonids are present at or downstream from the gallery, backwashing should not be conducted.*
- *All diversions must be conducted in accordance with all laws and authorities on water withdrawals and protections for aquatic species.*
- *Major repairs to the infiltration gallery that would disrupt the streambed may not be approved during critical life stages. Performing preventative maintenance such as backwashing the system on a regular basis can minimize the need for major repairs.*
- *Failed infiltration galleries will not be approved by NMFS to be replaced in kind unless the failure mechanism has been identified and a subsequent design is provided that adequately addresses the failure.*
- *Scour Depth Limitation is when the porous streambed material has been scoured to the calculated scour depth, or 1/2 of the original overlying material has been removed, diversion rate should be reduced or maintenance of the facility is required to bring the level of protection back to original design specifications in consultation with your engineer and NMFS.*
- *Infiltration galleries should not be operated when the bed has scoured such that streambed material has been scoured to less than 25% of its design thickness, until facility maintenance has replaced the original thickness of overlying material.*

**Recommendations:** NMFS recommends the EIR include a design report addressing the above mentioned limitations and an Operation and Maintenance plan demonstrating the backwashing capability of the system to prevent clogging of the infiltration pipes for operation of the gallery under a variety of environmental conditions, the full range of water diversion operations, and the procedures for periodic inspection and maintenance required to achieve fish screening effectiveness over the life of the facility.

### **Alternative #2:**

In general, NMFS appreciates the district's attempt at providing fish passage at Hemphill Dam. With this Fish Passage Alternative, however, this option does not address the unscreened diversion that could adversely affect downstream passage for juvenile salmonids.

**Recommendations:** NMFS encourages continued consideration of a passage solution looking at existing successful facilities, such as NID's Lincoln gauging station just downstream from Highway 65. This technology, coupled with fish screening at the diversion, could be a viable option for safe, timely and effective fish passage.

**Alternative #3:**

The proposed Pipeline Alternative consists of removing the existing Hemphill Dam and taking the diversion water from the existing Auburn Ravine 1 (AR1) diversion at Gold Hill Dam. This would reduce flows within the 6.25 mile section from Gold Hill Dam to Hemphill Dam during the irrigation season from April 15 to October 15, potentially causing an effect on water temperatures. As previously mentioned, the current water temperatures in Auburn Ravine likely support rearing juvenile *O. mykiss* year-round, including at least part of the irrigation season (Bailey 2003). Reductions in flow may result in severe adverse habitat impacts and loss of habitat access due to poor flows, increased temperatures, and degraded water quality.

NMFS Recovery Plan (Plan) establishes Auburn Ravine as a Core 2 watershed where listed species meet, or have the potential to meet, the biological recovery standard for moderate risk of extinction (NMFS 2014). The Plan identifies installing a fish ladder and screen on the diversion canal at Gold Hill Dam. Fish entrainment into agricultural and municipal water diversions may experience 100% mortality particularly if no egress route back to the river is provided (NMFS 2011).

**Recommendations:** NMFS recommends functional flows at a minimum of what is currently provided be continued if this alternative is selected to support salmonid populations. Specifically, early fall storm events are key to attracting Chinook salmon into Auburn Ravine to spawn, stabilized spring flows support development of salmonid eggs and juveniles, and dry season minimum flows all support important life history traits, especially for over-summering juveniles.

NMFS recommends this alternative include a fish screen and ladder on the AR1 diversion at Gold Hill Dam. The screen will minimize the entrainment of juvenile fish into the canal and the fishway would allow upstream migration for adults.

**Additional Information Request:** NMFS requests an in-depth analysis of this alternative to determine potential changes to water quality impacts to determine if the proposed alternative will affect flow conditions for salmonids. Information should include changes to water velocities during all seasons and any temperature data from nearby gauging stations.

**Alternative #4:**

The Abandonment of Hemphill Canal Alternative proposes to eliminate the one water withdrawal location at Hemphill Dam and continue to deliver water to individual property owners via Auburn Ravine. This option imposes on the responsibility on landowners to install, operate and maintain smaller pump systems and take water directly out of Auburn Ravine at multiple locations. The Report identifies four parcels where withdrawals would occur including but not limited to Turkey Creek Golf Course, Lincoln Hills Golf Course, Lincoln Crossing Community Association, and Lincoln Land Holdings. Under this alternative the action proposes

to increase from one water withdrawal to potentially four or more water withdrawal sites directly in Auburn Ravine.

**Recommendations:** If this alternative is selected, NMFS recommends all pump systems meet the current NMFS Anadromous Fish Passage Facility Design guidelines for fish screens (NMFS 2011). NMFS would also extend an invitation for landowners to reach out to NMFS staff to guide them through the fish screening criteria for anadromous salmonids.

**Additional Information Requested:** Please provide a list of all potential parcels NID water would be delivered to, their location on Auburn Ravine, their respective diversion withdrawal rates, and any future construction activities that may be associated with developing those diversions.

Thank you for allowing us to provide input during this public comment period to ensure the final alternative selected meets safe, timely, and effective fish passage. If you have questions regarding this matter, please contact Jean Castillo at (916) 203-9390 or [Jean.Castillo@noaa.gov](mailto:Jean.Castillo@noaa.gov).

Sincerely,



Cathy Marcinkevage  
Assistant Regional Administrator  
California Central Valley Office

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## FOOTHILLS WATER NETWORK

October 5, 2020

Kris Stepanian, Board Secretary  
Doug Roderick, Engineering Manager  
Nevada Irrigation District  
1036 W. Main Street  
Grass Valley, CA 95945

*Sent via email to [stepiank@nidwater.com](mailto:stepiank@nidwater.com) and via U.S. mail*

Re: Comments on the Initial Study and Notice of Preparation of an Environmental Impact Report for the Hemphill Diversion Structure Project

Dear Ms. Stepanian and Mr. Roderick:

The Foothills Water Network (FWN or Network) and its affiliated organizations respectfully respond to the Initial Study and Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Hemphill Diversion Structure Project (Project) prepared by Nevada Irrigation District (NID). The Network represents a broad group of non-governmental organizations (NGOs) and water resource stakeholders in the geographic area bounded by the Yuba River, Bear River, and American River watersheds. The overall goal of the Network is to provide a forum that increases the effectiveness of non-profit conservation organizations to achieve river and watershed restoration and protection benefits for the Yuba, Bear, and American rivers and adjacent watersheds.

Beginning in August of 2017, Network member organizations worked with a Technical Advisory Committee (TAC) comprised of NID Staff, Resource Agencies and NGOs to develop and discuss various options and considerations for improving fish passage and preventing entrainment at NID's Hemphill Diversion facility.

### **Summary**

In general, the Network is supportive of an approach and alternatives that prevent entrainment of juvenile salmonids into the Hemphill diversion or other diversions impacted by alternatives; avoid adverse impacts to Auburn Ravine; conform to state and federal regulatory requirements; and include passage and protections for all salmon, steelhead, and Pacific Lamprey; and meet the requirements for the protection of ESA-listed Central Valley steelhead and their designated critical habitat in Auburn Ravine. A key element in the analysis of alternatives is the time it will take to complete the project—every fall about 90% of all salmon that try to get past the Hemphill

facility do not succeed. The Network also recommends that the draft EIR consider a screen and other design options as part of the fish passage alternative.

The Initial Study notes that potentially significant Project related impacts may occur to biological resources, including to candidate, sensitive, or special status species and their habitat. Potential impacts are noted to the movement of native resident or migratory fish and to their migration corridors, or use of their nursery sites. The Study states that these and other potential impacts will be addressed as part of the DEIR. It is not clear precisely what responsibilities and authorizations may or will be managed through the traditionally responsible resource agencies (e.g, United States Fish and Wildlife Service [USFWS], California Department of Fish and Wildlife [CDFW], and National Marine Fisheries Service [NMFS]) versus the Placer County Habitat Conservation Plan and the Placer County Conservation Plan. The DEIR should clarify these responsibilities.

Auburn Ravine has been shown to be highly productive of rainbow and steelhead trout over much of its length. With average estimated relative abundance of 2,163 individuals per river mile from one CDFW study, and a range of relative abundance estimated at 337 to 7,985 individuals per river mile in the sampling locations.<sup>1</sup> Although not definitive at this point, analyses for Placer County Water Agency's (PCWA) Tunnel Outlet Modification upstream of Hemphill in Ophir concluded that Auburn Ravine constitutes a probable steelhead spawning area given the presence of very small juveniles during spring and may represent a year-round rearing area for juvenile steelhead, given the presence of both young-of-year and larger juveniles during November, December, and April.<sup>2</sup> Juvenile *O. mykiss* smolts have been reported in Auburn Ravine in several surveys by fisheries professionals.

Our comments are organized by the alternatives considered in the Initial Study. The Initial Study and NOP list four alternatives for the project, those include the Riverbank Infiltration Gallery (Alternative 1), Fish Passage Alternative (Alternative 2), Pipeline Alternative (Alternative 3), and Abandonment of Hemphill Canal (Alternative 4).

### **The Riverbank Infiltration Gallery (Alternative 1)**

According to the Initial Study, Alternative 1, the Riverbank Infiltration Gallery would include construction of an Infiltration Gallery within the north or south bank of Auburn Ravine to facilitate continued water deliveries to Hemphill Canal, and removal of the Hemphill Diversion Structure. The gallery is anticipated to be located about 75 feet downstream of the existing diversion structure. According to the diagrams provided in the Initial Study, the gallery would not truly be a "riverbank" system because it would extend under the creek bed to the middle of the creek.

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<sup>1</sup> Department of Fish and Game. 2008. Memo from James Navicky (SVCSR) to Fisheries Files: *Summary of 2004-2005 Fish Community in Auburn Ravine and Coon Creek (Placer County)*.

<sup>2</sup> Placer County Water Agency, Auburn Tunnel Outlet Modification, Public Draft Initial Study-Mitigated Negative Declaration, 2009.

If the Infiltration Gallery is placed along the north bank of the creek, a pipeline would have to be installed across the creek either underground or overhead to deliver water to the existing Hemphill canal that begins on the south bank of the creek.

Participants in the TAC were concerned that infiltration galleries are designated as “experimental” by the National Marine Fisheries Service (NMFS). Because of the risks they present to juvenile fish, and their high failure rate, NMFS has consistently declined to approve infiltration gallery designs unless they are prepared by an engineer who has previously designed a successful project.

The design presented to the TAC involved placement of over 500 cubic yards of angular rock into the stream bank and stream bed. During the TAC meetings, both NMFS and California Fish and Wildlife (CDFW) stated that only naturally rounded river rock would be allowed to be placed in those locations due to the risk that angular rock poses for the spawning success of salmon and steelhead. The design presented in the Initial Study still has this defect.

The DEIR should ground its analysis in the various sediment transport models described in the June 2020 Sediment Transport Study prepared by Balance Hydrologics for NID.<sup>3</sup> The analysis must disclose the impact that sediment transport will have on the potential for failure or success of an infiltration gallery and in particular, this alternative.

In addition, the alternative’s plan to leave the existing Hemphill Dam in place for one year after completion of the new infiltration gallery fails to account for the fact that dam removal will substantially alter the hydraulics of the infiltration gallery downstream of the removed dam. The proposed one-year delay in dam removal is not adequate mitigation for the potential for the clogging of the infiltration gallery with sediment.

### **Fish Passage Alternative (Alternative 2)**

According to the Initial Study, Alternative 2, the Fish Passage Alternative, would include the potential replacement or alteration of the Hemphill Diversion Structure to accommodate a fish ladder within Auburn Ravine. The fish ladder is anticipated to be located adjacent to or on the existing diversion structure.

The Network is concerned that the current fish ladder alternative does not address entrainment into the canal because it does not include a screen at the intake to the Hemphill Canal. A screen at the intake to the Hemphill Canal is necessary to prevent the entrainment of juvenile salmonids that at present can be drawn into the canal. For species listed under the Endangered Species Act, such entrainment constitutes illegal “take”. CDFW fish passage criteria and regulations require a screen to be included as part of this type of project.

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<sup>3</sup> Balance Hydrologics, Auburn Ravine-Hemphill Diversion Assessment Sediment Transport Study, June 2020 (Sediment Transport Study). Available at: [https://nidwater.com/wp-content/uploads/2020/06/FINAL\\_220031-Sediment-Transport-Study-06-01-20202.pdf](https://nidwater.com/wp-content/uploads/2020/06/FINAL_220031-Sediment-Transport-Study-06-01-20202.pdf)

The Network is also concerned that the ladder described in the Initial Study may result in high maintenance costs and intermittent failures caused by the large amount of large wood debris that surges down Auburn Ravine every fall and winter.

For both of these reasons, the Network recommends the addition of a second fish passage alternative, similar in design to the in-stream “riffle and pool” design of the fish passage facility at NID’s Lincoln Gauging Station, completed in 2012. This alternative should also include a fish screen. FWN recommends evaluation of an off-stream bay at the proper elevation on the south side of the creek and a self-cleaning conical screen, as was discussed in the TAC. Under this approach, water could be pumped into the Hemphill Canal and entrainment into the canal would be prevented.

The DEIR should describe a range of alternatives of the proposed Project and its location that will feasibly attain the project’s basic objectives while avoiding or substantially lessening the project’s significant impacts.<sup>4</sup>

### **Pipeline Alternative (Alternative 3)**

According to the Initial Study, Alternative 3, the Pipeline Alternative would entail construction of an underground pipeline extending from existing NID facilities on Gold Hill Road to Hemphill Canal, and remove the existing diversion structure at the Hemphill site. Construction of Alternative 3 would include installation of a 24-inch raw water pipeline in the Fruitvale Road, Fowler Road and Virginiatown Road rights-of-way (ROWS). This alternative would also include an above-ground stream crossing downstream and west of the existing Hemphill diversion.

Commenters during the September 21, 2020 scoping meeting addressed the importance of thorough consideration of all possible Project impacts to the aquatic community, particularly with the Pipeline Alternative. The potentially affected area with this alternative is part of the Auburn Ravine Critical Habitat for Central Valley steelhead; in addition to their presence, this area may support spawning, rearing, and migration of protected rainbow and steelhead trout.

In the Initial Study’s Mandatory Findings of Significance, potential impacts are noted, including cumulatively significant impacts, to critical fish and wildlife species, their habitat, range, numbers, and the physical environment. The Network sees these and other related Project impact assessments as particularly crucial.

The Initial Study describes the Pipeline as starting at the NID maintenance yard at Gold Hill and Fruitvale roads. However, the Study does not state where the water will come from. The DEIR needs to define where the water will be diverted from Auburn Ravine and specify whether that the associated water right permit will require a change in point of diversion.

If, as clarified in the September 21, 2020 scoping meeting, the water is to be diverted into the AR1/Gold Hill Canal and re-diverted into a pipeline at NID’s Placer Yard to Hemphill, there are several potential impacts to consider. First is the impact to the AR1/Gold Hill Canal. The DEIR should analyze whether there is capacity in Gold Hill Canal to add the needed 12 cfs (existing

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<sup>4</sup> See Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126(d).

peak) to serve existing Hemphill Canal customers. It must also evaluate the potential to add Gold Hill Canal or Hemphill Canal customers, or customers along the proposed new pipeline, and the impacts of such additions. The DEIR must evaluate whether the increased flow will increase maintenance costs for the canal. It must also evaluate whether the increased flow will increase the risk of canal failure. It must evaluate any impact on the diversion point at Gold Hill Dam.

Increased flow into the Gold Hill Canal could cause more rainbow and steelhead trout to be entrained into the canal. The DEIR must evaluate and disclose the entrainment impacts of increased flow into the unscreened AR1 diversion and propose mitigation for such impacts.

By diverting water at Gold Hill Dam instead of at the existing Hemphill Dam, flows in Auburn Ravine from Gold Hill Dam down to Hemphill would be reduced significantly. The DEIR should evaluate the percentage of flow reduction during irrigation season and the remaining flow in the reach of Auburn Ravine between Gold Hill Dam and the site of the existing Hemphill Dam if the Pipeline alternative is chosen. The DEIR must evaluate the impact of these reduced flows on the Chinook salmon, Central Valley Steelhead Trout and lamprey that may be migrating, spawning, rearing and holding in this area and on the Ravine. The DEIR should also analyze the impacts to aquatic communities, riparian habitat, and related resources in this reach. The DEIR should evaluate whether these potential impacts will affect compliance with requirements and guidelines that attach to this reach by virtue of its designation as Critical Habitat.

As a subset of the analysis of reduced flow in the reach between Gold Hill Dam and the site of the existing Hemphill Dam, the DEIR needs to evaluate the impacts of such reduction in the reasonably foreseeable event that PCWA ceased using Auburn Ravine to deliver water to customers downstream of Gold Hill and Hemphill dams. Currently PCWA delivers water west and downstream of Hemphill Dam. There are no existing NID customers along Auburn Ravine downstream of Hemphill Dam. In the future, PCWA may find it more cost-effective to not use the Ravine for deliveries. Alternatively, PCWA's agricultural customers downstream of Hemphill Dam may decide that the cost of the water does not warrant continued purchase. If the flow in Auburn Ravine associated with these PCWA deliveries is removed from the Ravine, the hydrological impacts on Auburn Ravine from Alternative 3 would increase dramatically.

The pipeline to be evaluated in Alternative 3 would remove the flow from Auburn Ravine for roughly a six-mile reach between Gold Hill and Hemphill dams. Putting the flow instead into a pipe and out of the natural river bed will have an impact on groundwater recharge. The DEIR should quantify the loss of groundwater recharge if flows are reduced from Gold Hill to Hemphill Dam. The DEIR must also look at the impact this alternative may have on domestic wells in the vicinity.

There has been no engineering study that details the design of the pipeline. Depending on design, this alternative could be costly. The Pipeline alternative should be analyzed to estimate a range of costs including potential costs that could be caused by unforeseeable underground impediments. The DEIR must disclose whether the pipeline would be pressurized, and if so, the pressure at which it will be maintained. It must disclose whether pressure sensors will be placed at intervals along the pipe and remotely monitored so that any damage caused by any pipe

failures can be minimized. It must also disclose whether a forebay will be needed to accommodate fluctuations in flow as customer usage varies during the day, and if so, must disclose the impacts of the forebay's construction and operation.

The Initial Study mentions that new customers may be added to the pipeline. The DEIR should detail the potential range of new customers, the cost for new customers to connect to the pipeline, and also the price they will have to pay for the water. The DEIR should specify the design and anticipated operation of this alternative and include a range of potential costs for the Pipeline.

The DEIR must disclose whether NID will need to construct a bridge to support the pipeline's crossing of the creek near the Turkey Creek Golf Course, and the impacts associated with any such bridge, during and after construction, and including visual and noise impacts.

#### **Abandonment of the Hemphill Canal (Alternative 4)**

According to the Initial Study, Alternative 4 would remove the Hemphill Diversion Structure and decommission Hemphill Canal as it travels through Turkey Creek Golf Course as well as adjacent land to the west.

The Initial Study states that if the Canal is abandoned, this alternative would also include restoration of the stream and stabilization so that it would permanently allow upstream and downstream fish passage. The Network believes this is a critical part of this alternative.

The abandonment of the Hemphill Canal, in conjunction with the removal of the Hemphill Dam and restoration of the Auburn Ravine Creek streambed could be the most cost-effective solution for the District. The Initial Study mentions the creation of "pump accounts" to serve existing customers if the Hemphill canal is abandoned. This option and range of costs should be explored thoroughly.

Hemphill Canal drains and eventually flows into Orchard Creek. If Hemphill Canal were no longer used and essentially dried up, there would be an impact to Orchard Creek. There are endangered swallows that now feed along Orchard Creek and nest nearby. The DEIR should evaluate the impact of canal abandonment to these birds.

#### **Additional Comments**

In addition to specific comments regarding the alternatives, the Network provides these additional comments to consider.

After one of the Alternatives is selected and implemented, it will be important to gather data on the actual numbers and species of fish that migrate past the Hemphill site, both upstream and downstream. The data collected will enable assessments of the success of the implemented Alternative to determine whether it meets regulatory requirements for fish passage and to determine its effect on the health of fish populations. To gather this data and communicate it effectively, a modern fish counting system that includes telecommunication features for remote access and reporting should be installed at the site. The DEIR should evaluate options for fish

counting systems that could be installed with each Alternative to gather and report data for at least ten years after the Alternative is implemented.

The DEIR needs to analyze the potential and cumulative impacts that could be caused if there are changes in the future to imported water quantity, timing, use, and/or contributing sources in Auburn Ravine. This is true for Alternative 3 in particular, but should also include the other alternatives.

The previously referenced June 2020 Sediment Transport Study states that some of the alternatives could create a “slope break” that would slowly degrade upstream after the dam is reduced in height or removed.<sup>5</sup> This slope break could be an impediment to upstream passage. The DEIR should analyze the potential for the development of such a slope break, evaluate its likely persistence, disclose its impacts, and propose feasible mitigation.

Section 3.1 of the Sediment Transport Study states that there was no high-flow gage data available to support the study. However, there is year-round flow data for the Lincoln Gaging Station that is collected by the Western Placer Wastewater Treatment Plant. The DEIR should make use of this dataset as appropriate.

In addition to the agencies listed in the NOP, NID should consider adding the Placer County Flood Control District to the list of agencies consulted on this project because the movement of sediment to locations downstream from the Hemphill site could increase flood risk. NID should also consult with the Placer County Conservation Plan.

Discussion at the September 21, 2020 scoping meeting indicated that not all comments, communications, and information related as part of the TAC were yet available. We encourage the preparers of the DEIR to seek out, disclose, and make careful use of this information, particularly the information developed by resource agencies. Attached you will find a bibliography of what we hope will be helpful background information.

### **Conclusion**

Thank you for consideration of the Network’s comments on the Initial Study for the Hemphill Diversion Structure Project. Please contact Traci Van Thull, Coordinator, Foothills Water Network, if you have any questions.

Respectfully submitted,



Foothills Water Network

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<sup>5</sup> Sediment Transport Study, op. cit., pp.22 ff.



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## **Attachment 1**

### **Nevada Irrigation District Hemphill Diversion Structure Project Comments to Initial Study**

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