



DEPARTMENT OF FISH AND GAME

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October 20, 2009

Debra Bates
Central Valley Regional Water
Quality Control Board
1685 E Street
Fresno, California 93706

Subject: Mitigated Negative Declaration
Old Ducey's Cove Stream Channel Armoring
SCH No. 2009101025

The Department of Fish and Game has reviewed the Mitigated Negative Declaration for the above Project. Approval of the Project would allow backfilling and riprapping of approximately 30 linear feet of Dogwood Creek below the high water mark of Bass Lake in Madera County. It is assumed that construction equipment would be required to implement the Project. The Department is concerned that noise disturbances resulting from implementation of the Project may negatively impact bald eagle (*Haliaeetus leucocephalus*) reproductive success. The bald eagle is a State endangered and fully protected species known to nest at multiple locations in the vicinity of the Project at Bass Lake.

While the bald eagle is no longer listed under the Federal Endangered Species Act, other Federal regulations still pertain, such as the Migratory Bird Treaty Act and the Bald and Golden Eagle Act. The bald eagle continues to be protected under the California Endangered Species Act. Additionally, there can be no "take" of the bald eagle as per Fish and Game Code Section 3511 which designates the bald eagle as a fully protected species. "Take" of fully protected species is prohibited in all circumstances, and the Department cannot authorize their "take." There are also other sections of the Fish and Game Code that protect birds, their eggs, and nests including Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird). "Take" is defined in Section 86 of the Fish and Game Code as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Human activities can often have a negative impact on the reproductive success of animals, especially during critical breeding periods. In the case of the bald eagle, disturbances such as direct contact with people, noise, light, etc., can interfere with courtship behavior, egg laying, egg incubation, and chick rearing. Disturbances near an

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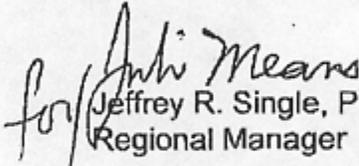
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active nest can ultimately lead to nest abandonment, preventing the eggs from hatching or, if they hatch, causing the young to succumb to starvation or predation. This type of response to disturbance would be a proximate cause of "take" and must be avoided.

The Department recommends that Project activities be prohibited during the normal bald eagle breeding season, defined as February 1 through July 1, in the Project area. For the protection of raptors, migratory birds, and other protected bird species, the Department recommends prohibiting Project activities during the general bird breeding season, generally defined as February 1 through September 15. If Project activities are to occur July 2 through September 15, prior to commencement of Project activities, a qualified biologist/ornithologist should conduct surveys for active bird nests within 250 feet of the Project boundary. If an active nest is found, Project activities shall be postponed until after the bird(s) have fledged and are no longer dependent on the nest or parental care as determined by the qualified biologist/ornithologist.

Thank you for the opportunity to provide comments on this Project. If you have any questions on this issue, please contact Lisa Gymer, Environmental Scientist, by telephone at (559) 243-4014, extension 238, or by electronic mail at lgymer@dfg.ca.gov.

Sincerely,


Jeffrey R. Single, Ph.D.
Regional Manager

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