



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Region 1 – Northern  
601 Locust Street  
Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



July 21, 2014

City of Fort Bragg  
Public Works Department  
416 North Franklin Street  
Fort Bragg, CA 95437

**Subject: Notice of Public Hearing and Notice of Intent to Adopt Mitigated  
Negative Declaration (SCH #2013092035), Mendocino County**

To Whom It May Concern:

On June 18, 2014, the California Department of Fish and Wildlife (CDFW) received from the State Clearinghouse a revised Mitigated Negative Declaration (MND) for the proposed Summers Lane Reservoir Project (Project) east of Fort Bragg, Mendocino County. CDFW staff visited the Project site on October 29, 2013, as attendees on the Pre-harvest Inspection for the proposed Timber Harvesting Plan (THP) No. 1-13-096 MEN. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, CDFW administers the California Endangered Species Act and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. CDFW's primary concerns involving the proposed Project include: (a) ongoing diversion of water without notification pursuant to FGC section 1602, (b) operation of a dam (i.e., Waterfall Gulch Reservoir) without provision of sufficient water for fish existing below the dam as required pursuant to FGC section 5937, and (c) impacts to and mitigation for special status fish and wildlife species.

CDFW provides the following feasible and Project-specific recommendations in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA; California Public Resources Code §21000 *et seq.*).

**Project Description and Current Conditions**

Currently, the City of Fort Bragg (City) diverts water from Newman Gulch (a tributary to the Noyo River), and re-diverts water from Waterfall Gulch (a tributary to Hare Creek) into the Newman Gulch Reservoir for municipal use. The Project site is located entirely within the Noyo River watershed.

According to the MND, the existing Newman Gulch Reservoir has a capacity of approximately 4 acre-feet and is located 200 linear feet north of the Project site. The proposed Project would construct a second reservoir with a capacity of 45 acre-feet to store raw water from Waterfall Gulch. To accommodate reservoir construction, the City proposes to harvest eight forested acres, and has submitted THP No. 1-13-096 MEN, which is currently under review by the California Department of Forestry and Fire

Protection. The MND describes the area to be harvested as consisting of “redwood dominated coastal mixed coniferous forest.” The MND further discloses that 72 Mendocino pygmy cypress trees (*Hesperocyparis pygmaea*) (State rank S2, imperiled) are present in the Project area, “constituting approximately 1/7<sup>th</sup> of the canopy cover.”

Additional Project elements include grading of approximately 43,000 cubic-yards of soil; installing a pipeline to transport water by gravity-feed from the reservoir to the City’s water treatment plant; connecting to the existing pipeline within Newman Gulch; and construction and operation of an overflow spillway.

### **Ongoing water diversion**

The Noyo River supports coho salmon (*Oncorhynchus kisutch*) (State endangered, federal threatened), Chinook salmon (*O. tshawytscha*) (federal threatened) and steelhead trout (*O. mykiss*) (federal threatened). Hare Creek supports coho salmon and steelhead trout. Populations of these salmonid fishes have undergone a substantial decline in abundance in previous decades. Coho salmon, for instance, has undergone at least a 70-percent decline in abundance since the 1960s, and is currently at 6 percent to 15 percent of its abundance during the 1940s. These species have been impacted by loss and degradation of habitat, including lack of adequate in-stream flow, high water temperatures due to a lack of streamside vegetation, siltation of spawning gravels, and lack of in-stream shelter and pools.

Over the past three years, CDFW has requested the City to enter into a Lake or Streambed Alteration Agreement (LSAA) pursuant to FGC section 1602 for its water diversions at Waterfall Gulch, Newman Gulch, and the Noyo River. Agreements are required for projects, new and ongoing, that “substantially divert or obstruct the natural flow” of any river, stream, or lake.

In a July 13, 2011 cover letter for LSAA 1600-2011-0084-R1, CDFW advised the City that the Waterfall Gulch diversion was substantial, and required notification pursuant to FGC section 1602. Subsequently, in a November 25, 2013 Pre-harvest Inspection Report for THP 1-13-096 MEN, CDFW requested the City provide notification for the diversion from Waterfall Gulch. A March 3, 2014 letter to the City from CDFW requested notification pursuant to FGC section 1602 and reiterated the potential impacts to public trust resources from ongoing water diversion. To date, notification has not been received by CDFW.

While the Summers Lane Reservoir site is not within a streambed, Project-related activities including connecting to the existing pipeline in Newman Gulch and/or the construction and operation of the Reservoir’s overflow device may affect the bed, bank, and/or channel of a stream, and thus require separate notification pursuant to FGC section 1602.

The MND’s February 2013 Biological Assessment by WRA Environmental Consultants, states “...impacts may include construction-related discharge of sediment or other

pollutants into surface waters or aquatic habitats. In addition, potential discharge of the proposed reservoir into Newman Gulch has the potential to alter the hydrology of this feature." FGC section 1602 requires notification for any and all project work which will change or use any material from the bed, channel, or bank of any river, stream, or lake, or deposit or dispose of debris, waste, or other material where it may pass into any river, stream, or lake.

### **Operation of a dam without provision of sufficient water for fish**

Waterfall Gulch contributes valuable flow to Hare Creek and provides habitat for sensitive amphibian species, coho salmon, and steelhead trout.

FGC section 5937 requires that the owner of a dam "shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that...exist below the dam." CDFW has inspected the Waterfall Gulch diversion on multiple occasions and have observed the City diverting up to 95 percent of the flow without bypassing sufficient water to maintain public trust resources downstream. Without appropriate bypass flows, impacts to listed and sensitive species, including take of listed salmonids, may occur.

In light of the City's potential impacts to listed species, current non-compliance with FGC sections 1602 and 5937, and potential impacts associated with construction of the proposed reservoir, a measurable conservation strategy to reduce water demand is advisable. The City currently lacks a comprehensive plan to address water use and water shortage concerns, especially during dry-year periods. CDFW generally supports the establishment of additional water storage by the City. However, CDFW must ensure water diversions occur in a manner that does not adversely impact fish and wildlife resources.

Conservation can provide an immediate and positive impact on water supply. The California Water Action Plan states that "in the future, most new water will come from a combination of improved conservation and water use efficiency." The first item on the Action list in this plan is to "Make conservation a California way of life." In 2009, the State adopted the Water Conservation Act through the passage of Senate Bill X7-7, requiring that California achieve a 20 percent reduction in urban per-capita water use by the end of December 2020. Some municipalities, such as the Sonoma County Water Agency, have implemented voluntary, but specific and quantifiable water conservation goals. The City should develop a long-term water plan, including measurable conservation goals.

### **Recommendations**

1. Pursuant to Fish and Game Code section 1602, the City of Fort Bragg shall enter into a Lake or Streambed Alteration Agreement (LSAA) for ongoing and future

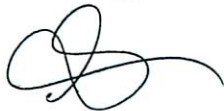


water diversion from all pertinent stream and river sources including Waterfall Gulch.

2. Pursuant to Fish and Game Code section 1602, the City of Fort Bragg shall enter into an LSAA for any and all Project-related activities that will change or use any material from the bed, channel, or bank of any river, stream, or lake, or deposit or dispose of debris, waste, or other material where it may pass into any river, stream, or lake.
3. Pursuant to Fish and Game Code section 5937, the City of Fort Bragg shall allow sufficient water bypass below the Waterfall Gulch dam to keep in good condition any fish that may exist downstream.
4. In order to reduce or avoid impacts to listed salmonids and other sensitive aquatic species, the City of Fort Bragg shall consult with the California Department of Fish and Wildlife to determine appropriate protective measures for immediate implementation at the Waterfall Gulch diversion.
5. The City of Fort Bragg should develop a long-term, comprehensive plan to address water use and water shortage concerns, including measurable conservation goals and strategies.

If you have questions or comments regarding this matter, please contact Environmental Scientist Angela Liebenberg at (707) 964-4830 or 619 Second Street, Eureka, CA 95501.

Sincerely,



Gordon Leppig for:

**Curt Babcock**  
Habitat Conservation Program Manager

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Fort Bragg Planning Commission  
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