

## Appendix A

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### Comments Received on the Draft PEIR

# Letter A

**Subject:** FW: CDFW Comments on the EIR for the El Dorado County  
Broadband Fiber Project (SCH No. 2024081255)

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**Subject:** CDFW Comments on the EIR for the El Dorado County Broadband Fiber Project (SCH No. 2024081255)

Subject: EL DORADO COUNTY BROADBAND FIBER PROJECT  
DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DPEIR)  
SCH No. 2024081255

Dear Kyle Zimbelman,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DPEIR from the County of El Dorado (County) for the El Dorado County Broadband Fiber Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. 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.

## 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental 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

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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 Project site is located within the unincorporated areas of El Dorado County (County) and two incorporated cities within the County, the City of Placerville and City of South Lake Tahoe.

The Project consists of installation of fiber optic lines either underground in buried conduits, overhead on existing or newly constructed utility poles, or in a combination of both. Most of the infrastructure is anticipated to be constructed within the typical roadway cross-section, or California Department of Transportation (Caltrans) public rights-of-way (ROW). However, broadband infrastructure could also be constructed on private disturbed and federal lands.

The Project description should include the whole action as defined in the CEQA Guidelines section 15070 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, and access and haul roads if applicable.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

CDFW is primarily concerned with the project impacts to existing fish and wildlife resources including California red-legged frog (*Rana draytonii*) and Sierra Nevada yellow-legged frog (*Rana sierrae*). As well as project impacts that may substantially adversely affect any river, stream, or lake.

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### **COMMENT 1:** 3.6.2 California Department of Fish and Wildlife (CDFW), page 3-6

**Issue:** This section describes requirements under Fish and Game Code Section 1602 for any project activity that may substantially adversely affect a river, stream, or lake.

**Recommendation:** CDFW recommends the County 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. The Project as currently proposed in the draft DPEIR may require an LSA Agreement. An LSA Agreement will include measures necessary to protect existing fish and wildlife resources.

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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, the draft DPEIR and any subsequent future project analyses should fully identify the potential impacts to lake, stream, or riparian resources, and provide adequate avoidance, minimization, mitigation, and monitoring and reporting commitments.

**COMMENT 2:** The Native Plant Protection Act (NPPA), pages 4.4-4 & 4.4-5

**Issue:** On page 4.4-4 and continuing to page 4.4-5 it states, *"provisions of the act prohibit the taking of listed plants from the wild and require notification of CDFW at least 10 days in advance of any change in land use other than changing from one agricultural use to another, which allows CDFW to salvage listed plants that would otherwise be destroyed."* Notifying CDFW at least 10 days in advance to salvage listed plants only pertains to projects that are changing from one agricultural use to another. The activities described within this DPEIR do not fall under this provision and plant species protected under the NPPA may be impacted by the project. The DPEIR does not contain adequate measures to reduce project impacts to State-listed, rare, and endangered plants to a less-than significant level.

**Recommendation:** CDFW recommends revising this language to the following: 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 Incidental Take Permit (ITP) or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b). Plant species not listed as rare, threatened, endangered, or candidates for listing under the California Endangered Species Act (CESA) or NPPA may nevertheless meet the definition of rare or endangered provided in CEQA (Cal. Code Regs., tit. 14, § 15380, subd. (b).). CDFW recommends the DPEIR, and future projects that will tier off of the DPEIR, include species specific measures and/or detail how to minimize and fully mitigate the impacts to any state-listed species the Project has potential to take.

**COMMENT 3:** Deferred Mitigation

**Issue:** The DPEIR covers multiple areas where habitats exist and there is potential to result in take of a species state-listed as rare, candidate, threatened, or endangered under CESA or NPPA, either through construction or over the life of the Project. This is reflected in Appendix F: Special-Status Species Potential to Occur Table, which lists over 100 species with the potential to occur within Project area(s). However, it is not described in the DPEIR how project impacts to listed species will be reduced to less-than significant, as the DPEIR does not contain any avoidance or minimization measures which describe how significant impacts will be mitigated.

Mitigation Measure BIO-1 states that each fiber project applicant shall ensure a biological resources assessment (BRA) is conducted prior to project approval and depending on the results of the BRA, the project applicant shall coordinate with appropriate agencies to determine avoidance and minimization measures. CDFW considered this to be deferred mitigation. Section 15126.4 (a)(1)(B) of the CEQA guidelines states that formulation of mitigation measures should not be deferred until sometime in the

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future. Measures BIO-1 through BIO-5 and BIO-6 rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all the involved entities will ultimately occur, the mitigation measures are unenforceable and do not explain how the impacts to biological resources would be reduced to a less than significant level.

**Recommendation:** CDFW recommends Section 4.4: Biological Resources of the DPEIR describe in further detail how impacts to species state-listed as rare, candidate, threatened, or endangered under CESA or NPPA will be avoided and mitigated. CDFW recommends including measures for each of the species referenced in Appendix F, detailing how impacts from specific fiber installation activities will be avoided, minimized, and mitigated.

**COMMENT 4:** California red-legged frog (*Rana draytonii*) and Sierra Nevada yellow-legged frog (*Rana sierrae*)

**Issue:** As stated within the DPEIR, within El Dorado County there are two critical habitat units for California red-legged frog (*Rana draytonii*) and Sierra Nevada yellow-legged frog (*Rana sierrae*). California red-legged frog is a California state Species of Special Concern and has been federally listed as Threatened since 1996. Sierra Nevada yellow-legged frog is state listed as Endangered since 2013 and federally listed as Endangered since 2014. Both species are protected through Cal. Code Regs. Tit. 14 § 40; California Fish and Game Code § 2080. Project activities associated with fiber optic installation have a potential to directly take these species or directly and indirectly impact their aquatic and upland habitats. There are no mitigation measures within the DPEIR describing how project impacts to these species will be reduced to a level less-than significant.

**Recommendation:** CDFW recommends that for each future Project tiered off the DPEIR, frog surveys should be conducted prior to construction. Recommended survey methodologies can be found in CDFW's *Considerations for Conserving the Foothill Yellow-Legged Frog* (2018), available here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. For example, CDFW recommends the following survey and species considerations be incorporated into the draft DPEIR for future Project implementation:

- a. As described in the CDFW's *Considerations for Conserving the Foothill Yellow-Legged Frog* (2018) document, Visual Encounter Surveys (VES) conducted during the late summer are often the easiest method for determining presence; subadults and occasionally adults are often observed along river margins, and subadult and adult frogs will likely also be observed in tributary streams (Crump and Scott 1994).
- b. To increase the likelihood of detection, surveys should include at least one VES during the breeding and/or oviposition period (generally April – June), a tadpole survey four to eight weeks after the breeding survey(s), a subadult survey in late summer/early fall (generally late August to early October), and a final VES within 3 to 5 days prior to starting work.

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- i. It is important to understand that frogs are ectothermic, so ambient temperature affects the likelihood of detection. Whether the life form is larval or subadult, both stages will shelter in place under substrate and emerge and become active with warmth (i.e., detection probability increases with temperature).
- c. If a survey fails to detect frogs within suitable habitat, a follow-up survey should be conducted two to four weeks after the initial survey.
- d. Develop measures to avoid incidental take on a site- and project-specific basis.
  - i. For example, measures may vary based on the type and extent of disturbance, duration and timing of disturbance, and influence of environmental factors. A season of operation that completely avoids frog presence does not exist; if frogs are present and breeding, they may be encountered in various life stages year-round. However, in locations that have periodic dry conditions, especially prolonged dry conditions, frogs are unlikely to be encountered. Under dry conditions, frogs usually seek refuge in wetted tributaries (or any wetted feature).

**COMMENT 5:** Incidental Take Permit (ITP)

**Issue:** As previously stated in Comment #4, the DPEIR covers multiple areas where habitats exist and there is potential to result in take of species state-listed as rare, candidate, threatened, or endangered under CESA or NPPA, either through construction or over the life of the Project. This is reflected in Appendix F: Special-Status Species Potential to Occur Table, which lists over 100 species with the potential to occur within Project area(s).

**Recommendation:** CDFW recommends that an ITP be obtained where the Project has the potential to result in take of a species state listed as rare, candidate, threatened, or endangered under CESA or NPPA, either through construction or over the life of the Project. Plant species not listed as rare, threatened, endangered, or candidates for listing under CESA or NPPA may nevertheless meet the definition of rare or endangered provided in CEQA (Cal. Code Regs., tit. 14, § 15380, subd. (b).). 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 for the issuance of an ITP. 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, CDFW recommends the DPEIR include species specific measures to minimize and fully mitigate the impacts to any state-listed species the Project activities have the potential to take.

**Editorial Comment:** California Fish and Game Code Section 1600, Page 4.4-6

Please add the term "Lake and" to the following sentence:

*"The CDFW also protects streams, water bodies, and riparian corridors through the Lake and Streambed Alteration Agreement (LSAA) process under Section 1601 to 1606 of the California Fish and Game Code."*

**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).

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## FILING FEES

The Project, as proposed, would have an impact on fish and/or 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.)

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## CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the DPEIR for the El Dorado County Broadband Fiber Project to assist the County in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt, Environmental Scientist at (916) 358-4315 or [caitlyn.oswalt@wildlife.ca.gov](mailto:caitlyn.oswalt@wildlife.ca.gov).

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Thank you,

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(she/her)

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