

**RESOLUTION NO. 2418**

**A RESOLUTION OF THE OLIVEHURST PUBLIC UTILITY DISTRICT ACCEPTING THE PROJECT PLANS AND AUTHORIZING STAFF TO COMPLETE PROJECT DESIGN; ADOPTING A MITIGATED NEGATIVE DECLARATION, AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE SOUTH YUBA COUNTY WATER AND WASTEWATER INFRASTRUCTURE IMPROVEMENT PROJECT**

**WHEREAS**, the Olivehurst Public Utility District (“District”) wishes to complete design, construct, and operate the South Yuba County Water and Wastewater Infrastructure Improvement Project, a multi-component water and wastewater project (collectively the “Project”) consisting of:

**Component 1.** Completion of sanitary sewer overflow (SSO) reduction measures to the existing wastewater collection system serving the community of Olivehurst,

**Component 2.** Modification of the District’s existing wastewater treatment plant to accommodate increased wet weather flows and replace equipment within the wastewater treatment plant that has reached the end of its operational life,

**Component 3.** Expansion of the District’s wastewater collection system to provide service to the recently annexed South County Service Area between Forty Mile Road and Rancho Road,

**Component 4.** Construction and operation of a Water Plant and backbone treated water distribution pipelines within the Yuba County General Plan growth area along Forty Mile Road and Rancho Road, and

**Component 5.** Construction and operation of a wastewater collection system to accept and treat the City of Wheatland’s untreated wastewater at the District’s existing wastewater treatment plant.

**WHEREAS**, pursuant to the California Public Resources Code section 21067 and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.) section 15051, the District is the lead agency for the proposed Project; and

**WHEREAS**, the Board of Directors is the decision-making body for the Project, and the Board of Directors is being asked to review and approve the Project’s environmental documentation (State CEQA Guidelines, § 15025(b)(1)); and

**WHEREAS**, District staff reviewed the Project and prepared an Initial Study pursuant to State CEQA Guidelines section 15063; and

**WHEREAS**, on the basis of the Initial Study, which concluded that the Project would have potentially significant impacts but that those impacts could be reduced to less than significant levels with implementation of proposed mitigation measures, the District determined that a Mitigated Negative Declaration (“MND”) should be prepared for the Project, and a MND, bearing the State Clearinghouse Number 2023030233, was prepared pursuant to Public Resources Code sections 21064.5 and 21080, subdivision (c), and the State CEQA Guidelines section 15070 et seq.; and

**WHEREAS**, the District distributed a Notice of Intent to Adopt a Mitigated Negative Declaration to responsible and trustee agencies, interested members of the public, and individuals who had previously requested to receive notice of CEQA documents on March 10, 2023, pursuant to State CEQA Guidelines section 15072; and

**WHEREAS**, the thirty-day public review and comment period began on March 13, 2018 and ended on April 11, 2023, pursuant to Public Resources Code section 21091(b); and

**WHEREAS**, the District also provided copies of the draft MND and Initial Study to the State Clearinghouse for a thirty-day state agency review and comment period beginning on March 13, 2023 and ending on April 11, 2023; and

**WHEREAS**, the District received three written comment letters during the public and state agency review periods; and

**WHEREAS**, the District has prepared written responses to the comment letters received during the public and state agency public review periods. The District's written responses to the comment letters received are compiled in Exhibit A; and

**WHEREAS**, no Native American tribes have registered with the District as of the date of circulation of the MND to receive formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe pursuant to Public Resources Code section 21080.3.1. Under these circumstances, Public Resources Code section 21080.3.1(b)(1) permits the District to adopt the Mitigated Negative Declaration without providing formal notification; and

**WHEREAS**, the District has modified the text of the final MND to revise Mitigation Measure AQ-1 to establish Measures AQ-1 A, B, and C to provide greater clarity in the timing of implementation of the three components of Measure AQ-1.

**WHEREAS**, the District has modified the text of the final MND to revise Mitigation Measures AQ-3 B and C to clarify the entities responsible for collecting and approving construction air emissions data.

**WHEREAS**, the District has modified the text of the final MND to revise Mitigation Measure BIO-5 to allow OPUD to obtain USFWS approved mitigation credits from sources other than purchase.

**WHEREAS**, the District has modified the text of the final MND to revise Mitigation Measure BIO-7 to require that OPUD offset the permanent loss of Giant Garter Snake habitat should any occur; and

**WHEREAS**, State CEQA Guidelines section 15073.5(c)(1) exempts the revision of a mitigation measure that is equally or more effective than the previous measure set forth within a circulated Negative Declaration from recirculation as is the case for Mitigation Measures AQ-1, AQ-3, BIO-5, and BIO-7; and

**WHEREAS**, in accordance with State CEQA Guidelines sections 15072 and 15073(e), on March 13, 2023, the District provided written notice to all public agencies of the public hearing to be held on the project for which the MND was prepared; and

**WHEREAS**, pursuant to Public Resources Code section 21081.6 and State CEQA Guidelines section 15074(d), the District has prepared a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects (the “Mitigation Monitoring and Reporting Program”); and

**WHEREAS**, as contained herein, the District has endeavored in good faith to set forth the basis for its decision on the proposed Project; and

**WHEREAS**, the District has endeavored to take all steps and impose all conditions necessary to ensure that impacts to the environment would not be significant; and

**WHEREAS**, all of the findings and conclusions made by the Board of Directors pursuant to this Resolution are based upon the oral and written evidence before it as a whole; and

**WHEREAS**, the Board of Directors has reviewed the MND, Initial Study, and all other relevant information contained in the record regarding the Project; and

**WHEREAS**, on April 20, 2023, at the District’s regularly-scheduled meeting, the public was afforded an opportunity to comment on the Project and the MND and the Initial Study, and the Board of Directors discussed and considered the Project and the MND and the Initial Study; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred;

**NOW THEREFORE**, the Board of Directors does hereby resolve as follows:

**SECTION 1.** Compliance with the California Environmental Quality Act. As the decision-making body for the Project, the Board of Directors has reviewed and considered the information contained in the MND, Initial Study, and administrative record, on file with the District and available for review at 1970 9<sup>th</sup> Street, Olivehurst, California. The Board of Directors finds that the MND and Initial Study have been completed in compliance with the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.: “CEQA”) and the State CEQA Guidelines.

**SECTION 2.** Adoption of Modifications to Mitigation Measures AQ-1, AQ-3, BIO-5, and BIO-7. The Board of Directors hereby finds that the textual modification of Mitigation Measures AQ-1, AQ-3, BIO-5, and BIO-7 attached hereto as Exhibit “B”, would be more effective or provide greater environmental protection than the previous measures set forth within the circulated Negative Declaration by clarifying the implementation timing of the various requirements of the measure, agency involvement and air emissions data needs, or the acquisition of mitigation credits, and that no recirculation of the MND is necessary consistent with the requirements of Section 15074.1(c) of the State CEQA Guidelines.

**SECTION 3.** Findings on Environmental Impacts. In the District’s role as the lead agency under CEQA, the Board of Directors finds that the MND and the Initial Study contain a complete and accurate reporting of the environmental impacts associated with the Project. The Board of Directors further finds that the documents have been completed in compliance with CEQA and the State CEQA Guidelines. The District further finds that all environmental impacts of the Project are either insignificant or can be mitigated to a less than significant level pursuant to the mitigation measures outlined in the MND, Initial Study and the Mitigation Monitoring and Reporting Program. The Board of Directors further finds that there is no substantial evidence in the record supporting a fair argument that the Project may result in significant environmental impacts, and that any comments

received regarding the Project have been examined and determined to not modify the conclusions of the MND. The Board of Directors finds that the MND and Initial Study contain a complete, objective, and accurate reporting of the environmental impacts associated with the Project and reflects the independent judgment of the Board of Directors.

**SECTION 4. Adoption of Mitigated Negative Declaration.** The Board of Directors hereby approves and adopts the Final Initial Study/MND prepared for the Project, attached hereto as Exhibit “C”.

**SECTION 5. Adoption of the Mitigation Monitoring and Reporting Program.** The Board of Directors hereby approves and adopts the Mitigation Monitoring and Reporting Program prepared for the Project, attached hereto as Exhibit “D”.

**SECTION 6. Approval of Plans and Direction to Complete Project Design.** The Board of Directors hereby approves of the Project plans and directs the General Manager to complete project design necessary to initiate the solicitation of construction bids for some or all of the Project components. The General Manager shall send any notices or take any actions necessary to complete the design of the Project.

**SECTION 7. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings are based are located at 1970 9<sup>th</sup> Street, Olivehurst, California. The General Manager is the custodian of the record of proceedings.

**SECTION 8. Notice of Determination.** Staff is directed to file a Notice of Determination with the County of Yuba and the State Clearinghouse within five (5) working days of approval of the Project.

**SECTION 9. Execution of Resolution.** The President of Board of Directors shall sign this Resolution and the Board Secretary shall attest and certify to the passage and adoption thereof.

PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF April 2023.

OLIVEHURST PUBLIC UTILITY DISTRICT

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President, Board of Directors  
Olivehurst Public Utility District

ATTEST:

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Deputy District Clerk & ex-officio Secretary

APPROVE AS TO FORM AND LEGAL  
SUFFICIENCY

\_\_\_\_\_  
Legal Counsel

\* \* \* \* \*

I hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted and passed by the Board of Directors of the Olivehurst Public Utility District, Yuba County, California, at a meeting thereof held on the 20<sup>th</sup> day of April 2023, by the following vote:

AYES, AND IN FAVOR THEREOF:

NOES :

ABSTAIN :

ABSENT :

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Deputy District Clerk and ex-officio Secretary

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**EXHIBIT "A"**

**RESPONSES TO COMMENTS**

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## **Responses to Comments on the South Yuba County Water and Wastewater Infrastructure Improvement Project Initial Study/Mitigated Negative Declaration**

### **Comment Letter 1:**

#### **California Water Boards, Central Valley Regional Water Quality Control Board**

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##### **Response to Comment 1-1**

The comment is an introductory statement and does not address the adequacy of the Initial Study/Mitigated Negative Declaration.

##### **Response to Comment 1-2**

The comment provides background information regarding potentially applicable regulations and required permits. Compliance with such regulations is discussed throughout Chapter 5, Section X, *Hydrology and Water Resources*, of the Initial Study/Mitigated Negative Declaration. The comment does not address the adequacy of the Initial Study/Mitigated Negative Declaration and has been noted for the record.

##### **Response to Comment 1-3**

The comment is a conclusory statement and does not address the adequacy of the Initial Study/Mitigated Negative Declaration.

### **Comment Letter 2:**

#### **California Department of Fish and Wildlife**

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##### **Response to Comment 2-1**

The comment is an introductory statement and does not address the adequacy of the Initial Study/Mitigated Negative Declaration.

##### **Response to Comment 2-2**

The comment outlines the jurisdiction and regulations of the California Department of Fish and Wildlife (CDFW) and identifies the requirements of Section 1602 of the Fish and Game Code to notify CDFW prior to commencing any activity that may 1) substantially divert or obstruct the natural flow of any river, stream or lake; 2) substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or 3) deposit debris, waste or other materials where it may pass into any river, stream or lake.

Mitigation Measure BIO-13A requires a delineation of aquatic resources to determine the extent of project impacts to jurisdictional aquatic resources or full avoidance of jurisdictional aquatic resources. Mitigation Measure BIO-13B requires that OPUD shall obtain all necessary permits for impacts to waters of the U.S. and wetlands from the Corps and RWQCB and/or for potential impacts to stream features from CDFW prior to project implementation. Mitigation Measure BIO-13B also requires compensatory mitigation consistent with permit requirements, with a minimum of 1:1 replacement ratio, and implementation of a Mitigation Plan that is approved by the permitting agencies.



The circulated Initial Study/Mitigated Negative Declaration concluded that the impact on aquatic resources would be less than significant with the implementation of identified mitigation measures. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary in response to this comment, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

### **Response to Comment 2-3**

The comment identifies the potential for occurrence of special-status plants and outlines the Native Plant Protection Act (NPPA) prohibition of take or possession of State-listed rare and endangered plants, unless authorized by CDFW or in certain limited circumstances.

The Initial Study/Mitigated Negative Declaration identifies limited potential for occurrence of special-status plant species due to the level of disturbance within proposed project impact areas and project design features intended to avoid impacts to drainage crossings through the use of trenchless pipeline construction methods. However, the Initial Study/Mitigated Negative Declaration identifies the potential for occurrence of two special-status plant species, both California Rare Plant Rank Species considered special-status for the purposes of California Environmental Quality Act (CEQA) review, but not State-listed rare or endangered plants. Mitigation Measure BIO-1 requires special-status plant surveys of project impact areas within potentially suitable habitat conducted in accordance with agency-approved survey protocols during the appropriate blooming period. Mitigation Measure BIO-2A requires avoidance of impacts to special-status plants, if feasible, or the implementation of Mitigation Measure BIO-2B that requires mitigation for impacts to special-status plant species if avoidance is not possible. Mitigation Measure BIO-2B also requires preparation of a Mitigation Plan for the restoration and/or mitigation appropriate for the species identified, monitoring requirements, and performance criteria to ensure successful establishment of special-status plants so that no net loss will occur.

Although State-listed rare and endangered plants are very unlikely to occur within the project impact areas, Fish & Game Code Section 1913 provides utilities with an exemption from CESA permitting requirements for listed plants within the utility right of way. Specifically, Section 1913(b) states: "...the removal of endangered or rare native plants from a canal, lateral ditch, building site, road, or other right-of-way by the owner of the land or his agent, or the performance by a public agency or a publicly or privately owned public utility of its obligation to provide service to the public, shall not be restricted because of the presence of rare or endangered plants." Section 1913(c) of the NPPA requires the landowner to provide the CDFW with at least 10 days' notice to allow for plant salvage prior to affecting the species.

The circulated Initial Study/Mitigated Negative Declaration concluded that the impact on sensitive plant species would be less than significant with the implementation of identified mitigation measures. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary in response to this comment, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

### **Response to Comment 2-4**

The comment identifies that Mitigation Measure BIO-7 does not require early consultation with CDFW regarding potential for take of Giant Garter Snake (GGS), and Incidental Take Permitting for the potential take of GGS. The comment further notes that consultation is not a requirement yet

is highly recommended to ensure proper coverage for listed species with potential to occur in the project area.

The Initial Study/Mitigated Negative Declaration identifies the potential for GGS occurrence in potentially suitable habitat within Kimball Creek and active rice fields, and the potential for occurrence within project impact areas in or near suitable habitat. Mitigation Measure BIO-7 requires measures to avoid take of GGS, primarily through seasonal restrictions requiring work to occur during the GGS active season and a requirement for construction of Lift Station 23 to occur when the rice field is inactive and has been dry for a minimum of 15 days, making the area no longer suitable GGS aquatic habitat. Mitigation Measure BIO-7 also requires notification and coordination with USFWS and CDFW if GGS are observed. Therefore, with implementation of these measures, the project would not result in the take of State listed species. The recommendation to coordinate with CDFW staff regarding the project and issuance of permits related to those activities is noted.

The circulated Initial Study/Mitigated Negative Declaration concluded that the impact on GGS would be less than significant with the implementation of identified mitigation measures. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary in response to this comment, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

### **Response to Comment 2-5**

The comment identifies the potentially significant impact of the project to GGS resulting from the loss of suitable GGS upland habitat from the construction of Lift Station 22 and loss of suitable GGS aquatic habitat from the construction of Lift Station 23, and recommends habitat replacement in the form of payment of the fee to a CDFW approved mitigation bank, or fee title acquisition with a conservation easement to protect managed marsh habitat. CDFW also recommends the applicant consider applying for an Incidental Take Permit and recommends early consultation with CDFW regarding potential impact to CESA listed species.

The Initial Study/Mitigated Negative Declaration identifies the loss of up to 0.22-acre of suitable GGS upland and aquatic habitat from the construction of Lift Stations 22 and 23. As noted in response to comment 2-4 above, Mitigation Measure BIO-7 requires procedures to avoid take of GGS and requires notification and coordination with USFWS and CDFW if GGS are observed. However, Mitigation Measure BIO-7 doesn't require compensatory mitigation for the loss of habitat and therefore, Mitigation Measure BIO-7 has been expanded to require compensatory mitigation for the loss of suitable GGS habitat. The revised Mitigation Measure BIO-7 is as follows with revised text as underlined:

### **Mitigation Measure BIO-7**

Implement the following measures:

- A. Prior to the initiation of construction, construction staff shall attend an Environmental Awareness Training Program that will include information regarding identification of giant gartersnake and its habitat, protection measures for the species, and procedures to follow if a giant gartersnake or unknown snake is observed.
- B. Construction of Lift Station 23 will occur when the rice field is inactive and has been dry for a minimum of 15 days.

- C. Construction of Lift Station 22, Lift Station 23, and the HDD installation of pipelines under Kimball Creek, including all activities within 200 feet of Kimball Creek and the rice field at Lift Station 23, shall be restricted to the period between May 1 and October 1. This is the active period for GGS when the potential for direct mortality is reduced because GGS can actively avoid disturbance.
- D. Prior to the start of the Kimball Creek HDD, construction of Lift Station 22, or the construction of Lift Station 23, a qualified biologist shall conduct a preconstruction survey for GGS at these locations prior to the initiation of disturbance. Exclusion fencing shall be installed, as directed by the qualified biologist, to isolate the workspace within 200 feet of suitable aquatic habitat and exclude snakes from the work areas. Exclusion fencing will be buried at the base to prevent snakes from moving under the fence into the construction area. Exclusion fencing shall be maintained for the duration of work in these areas and shall be routinely inspected by the qualified biologist to ensure the fencing is intact and effective. The workspace shall be inspected prior to the start of work each day to ensure that no snakes have entered the work area.
- E. If a GGS is observed, the USFWS and CDFW shall be notified immediately. Construction will be suspended in the area until the snake leaves the site of its own volition.
- F. All excavations within 200 feet of suitable GGS habitat shall be covered or have escape ramps installed to prevent entrapment prior to the end of work each day. These excavations shall be inspected by the qualified biologist prior to the start of work the following day.
- G. Erosion control materials shall consist of tightly woven fibers and netting to prevent entanglement of reptiles and amphibians. No monofilament materials will be allowed.
- H. For permanent impacts associated with construction of Lift Station 22 and Lift Station 23, loss of suitable GGS habitat shall be mitigated through the use of USFWS and CDFW approved mitigation credits or fee title acquisition with a conservation easement to protect managed marsh habitat in accordance with mitigation ratios approved by the USFWS and CDFW.

The circulated Initial Study/Mitigated Negative Declaration concluded that the impact on GGS habitat would be less than significant. Modification of the text of Mitigation Measure BIO-7 would require that OPUD would mitigate the permanent loss of GGS habitat, thereby increasing the effectiveness of Mitigation Measure BIO-7. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary in response to this comment, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

### **Response to Comment 2-6**

The comment identifies the potential for the project to disturb bird species or nests protected under the Migratory Bird Treaty Act (MBTA) and Fish and Game Code and outlines protections for raptors and other migratory birds. The comment notes that the mitigation requirement outlined in Mitigation Measure BIO-9 for the application of a minimum nest protection buffer of 0.25-mile from an active Swainson's hawk nest may not be suitable for birds with different disturbance thresholds, and that no-work buffers are not designed to reduce stress. The comment further indicates that CDFW recommends performance-based protection measures for all nests protected under MBTA and Fish and Game Code and provides an example of a performance-based protection measure.

The MND identifies the potential for project impacts to nesting Swainson's hawks and incorporates the Technical Advisory Committee (TAC) "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley" into the mitigation measure. Mitigation Measure BIO-9B requires protocol-level surveys in conformance with the TAC protocol and Mitigation Measure BIO-9B-1 requires a nest protection buffer with a minimum distance of 0.25-mile from an active nest. Mitigation Measure BIO-9B-1 also requires CDFW approval to reduce the nest protection buffer if existing site conditions warrant and Mitigation Measure BIO-9B-2 requires approval from CDFW before the project may proceed within the minimum nest protection buffer and requires monitoring of the nest by a qualified biologist to stop work if signs of distress are observed. Furthermore, Mitigation Measure BIO-9C requires a pre-construction survey report be submitted to CDFW. The survey methods and nest protection measures required by Mitigation Measure BIO-9 are consistent with the TAC protocol designed to meet CDFW recommendations for mitigation and protection of Swainson's hawks.

The circulated Initial Study/Mitigated Negative Declaration concluded that the impact on breeding bird species would be less than significant with the implementation of identified mitigation measures. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary in response to this comment, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

#### **Response to Comment 2-7**

The comment is a conclusory statement and does not address the adequacy of the Initial Study/Mitigated Negative Declaration.

#### **Comment Letter 3: California Water Boards, State Water Resources Control Board, Division of Financial Assistance**

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#### **Response to Comment 3-1**

The comment sets forth the jurisdiction and regulations of the State Water Resources Control Board (SWRCB), Division of Drinking Water (DDW). The DDW issues water supply permits to water purveyors to ensure compliance with the State Safe Drinking Water Act. For those existing purveyors, such as OPUD, an amendment of the District's existing water supply permit would be necessary to operate the new water reservoir adjacent to proposed Well 35.

The District intends to obtain a water supply permit amendment prior to operation of the new water reservoir. The comment does not address the adequacy of the Initial Study/Mitigated Negative Declaration and has been noted for the record.

#### **Response to Comment 3-2**

The comment submitted by the SWRCB Division of Financial Assistance (DFA) sets forth requirements for compliance with the CEQA and the National Environmental Policy Act (NEPA) for qualifying projects seeking State funding to construct and operate water or wastewater projects.

The proposed South Yuba County Water and Wastewater Infrastructure Improvement Project includes five facility components. Three of the components, those facilities that ameliorate existing sanitary sewer overflow (SSO) events, necessary improvements to the existing OPUD wastewater

treatment plant (WWTP) to accept and treat increased peak wet weather flows, and a new pipeline to allow the City of Wheatland's untreated wastewater to be treated at the OPUD WWTP in compliance with regionalization goals, have been identified by OPUD as candidates for State funding. In accordance with DFA regulations, OPUD will submit all required environmental information (as required by CEQA and NEPA) to the DFA upon certification and adoption of the Initial Study/Mitigated Negative Declaration.

State funds are not being sought for water supply and distribution facilities. Proposed water facilities have independent utility from the three components identified above, and are expected to be constructed with local funds. Although the Initial Study/Mitigated Negative Declaration has been subject to analysis under CEQA, the comment is mistaken in imposing State funding information requirements on the water supply and distribution components. Thus, the comment does not address the adequacy of the Initial Study/Mitigated Negative Declaration and has been noted for the record.

### **Response to Comment 3-3**

The comment requests that Chapter 3 of the Initial Study/Mitigated Negative Declaration be modified to add an amended water supply permit to the list of required approvals.

The final Initial Study/Mitigated Negative Declaration been modified to include the requested permit in Chapter 3. Because this addition merely clarifies the permits that would be required of the project, recirculation of the Initial Study/Mitigated Negative Declaration would not be necessary consistent with the requirements of State CEQA Guidelines Section 15073.5 (c).

### **Response to Comment 3-4**

The comment states that the proposed South Yuba County Water and Wastewater Infrastructure Improvement Project is located in a high priority groundwater basin and requests information regarding water use from future developed land uses.

As noted in the response to comment 3-2, no project water infrastructure would be funded by the State.

The comment is correct regarding the status of the Sacramento Valley-South Yuba groundwater subbasin (5-021.61) as a high priority basin. The primary Groundwater Sustainability Agency for this subbasin is the Yuba Water Agency (YWA). The Groundwater Sustainability Plan (GSP) prepared by the YWA was approved by the California Department of Water Resources in November 2021. According to the GSP:

- ! Groundwater levels in the South Yuba Subbasin were generally declining from the 1940s through the early 1980s but have recovered since the introduction of surface water deliveries to the subbasin in 1983.
- ! Water budgets were developed (*for the GSP*) to provide a quantitative accounting of surface water and groundwater entering and leaving the Yuba Subbasins under historical, current, future, and future with climate change conditions. The average annual groundwater storage is stable or increasing under all scenarios, suggesting sustainable conditions.
- ! The total sustainable yield (*for both basins*) is estimated as 239,000 acre-feet per year (AFY), with ... 146,000 AFY in the South Yuba Subbasin. This compares to recent use ... in the South Yuba Subbasin between 72,000 and 132,000 AFY.

- ! Unlike many medium- and high-priority basins and subbasins managed under GSPs, groundwater extraction in the Yuba Subbasins does not exceed the sustainable yield. The sustainable yield estimate exceeds current groundwater production by approximately 89,000 AFY.
- ! The Yuba County, ... and City of Wheatland General Plans were written to provide the covered areas with guidelines to successfully facilitate anticipated growth. Growth presents challenges for water resource management, notably when growth results in a shift from surface water irrigated agricultural uses to groundwater supplied urban use. The general plans contain goals, policies, and actions to address water supplies. For instance, Yuba County's General Plan includes Policy NE12.1, which states that "(f)or new developments, the County will manage land use change in a way that reduces the potential for overdraft of groundwater supplies, recognizes overlying groundwater rights and surface water rights, and helps to ensure that the combined use of surface and groundwater resources provides for current and future water demand." These and similar policies allow the General Plans in the Yuba Subbasins, when properly implemented, to likely have no negative influence on the ability of the GSAs to achieve sustainability.

The South County Infrastructure Project, by itself, does not propose or authorize any changes in land use or urban development within the project areas. Future land uses within the South County Service Area that occur pursuant to the adopted Yuba County 2030 General Plan would be required to conform to all applicable regulations, performance standards, and design standards of the General Plan, zoning code, and all other environmental regulations and requirements set forth in the County Code. The South County Infrastructure Project would not permit land uses of greater density or intensity than permitted under the 2030 General Plan, and would not allow new development in areas where such development is prohibited under the 2030 General Plan.

Summarily, groundwater extraction from the South Yuba subbasin within the service area of the water well and main component would be unlikely to exceed sustainable yield as documented in the GSP under all scenarios, including historical, current, future, and future with climate change conditions. Thus, implementation of the project would not interfere with groundwater sustainability. Rather it would be consistent with the land use and utility goals and policies of the Yuba County General Plan and the water demands evaluated in the Groundwater Sustainability Plan.

As set forth in the Initial Study/Mitigated Negative Declaration, implementation of the project would not adversely affect groundwater levels within the subbasin, nor would the project interfere with groundwater recharge. The project would be consistent with the sustainability goals of the Groundwater Sustainability Plan. The circulated Initial Study/Mitigated Negative Declaration concluded that the impact of these environmental issues would be less than significant. No modification of the environmental conclusions of the Initial Study/Mitigated Negative Declaration would be necessary, and recirculation of the document would not be required consistent with Section 15073.5 of the State CEQA Guidelines.

### **Response to Comment 3-5**

The comment sets forth the requirements to submit environmental information to the DFA should an application for funding be submitted.

In accordance with DFA regulations, OPUD will submit all required environmental information (as required by CEQA and NEPA) for the three wastewater components described in response to

Comment 3-2 to the DFA upon certification and adoption of the Initial Study/Mitigated Negative Declaration. The comment does not address the adequacy of the Initial Study/Mitigated Negative Declaration and has been noted for the record.!

**Response to Comment 3-6**

The comment requests that OPUD provide the following CEQA documents as part of its application for an amended water supply permit: the public review draft and the final Initial Study/Mitigated Negative Declaration; the Mitigation Monitoring and Reporting Program, the Resolution adopting the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; all comments received and OPUD's responses to the comments; and, the filed Notice of Determination.

In accordance with DDW requirements, OPUD will submit all required environmental information for the water well/reservoir component to the DDW subsequent to certification and adoption of the Initial Study/Mitigated Negative Declaration. The comment does not address the adequacy of the Initial Study/Mitigated Negative Declaration and has been noted for the record.

**Response to Comment 3-7**

The comment is a conclusory statement and does not address the adequacy of the Initial Study/Mitigated Negative Declaration.

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**EXHIBIT "B"**

**MODIFICATIONS TO PROPOSED MITIGATION MEASURES**

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## EXHIBIT “B”

### MODIFICATIONS TO PROPOSED MITIGATION MEASURES AQ-1, AQ-3, BIO-5 AND BIO-7

#### Mitigation Measure AQ-1 (As set forth in the circulated IS/MND)

Prior to construction, the applicant shall provide to the County a receipt of a FRAQMD approved Dust Control Plan or Construction Notification form in compliance with Rule 3.16 Fugitive Dust. Further, the applicant shall obtain an Authority to Construct (ATC) and Permit to Operate (PTO) for the proposed emergency generators above 50 horsepower in accordance with Regulation IV: Stationary Emission Sources Permit System and Registration. Additional applicable FRAQMD Rules and Regulations may include: Rule 3.0: Visible Emissions, Rule 3:15: Architectural Coatings, and Rule 7:10: Indirect Source Fee. The project applicant will be required to implement measures of applicable FRAQMD Rules and Regulations as determined by the FRAQMD.

#### Mitigation Measure AQ-1 (Revised)

- A.! Prior to construction, OPUD or its contractor shall obtain and implement a FRAQMD Dust Control Plan or Construction Notification form in compliance with Rule 3.16 Fugitive Dust.
- B.! OPUD or its contractor shall obtain and implement an Authority to Construct (ATC) and Permit to Operate (PTO) for the proposed emergency generators above 50 horsepower in accordance with Regulation IV: Stationary Emission Sources Permit System and Registration.
- C.! OPUD or its contractor additionally shall implement all applicable measures and requirements of FRAQMD Rules and Regulations as determined by the FRAQMD. Additional applicable FRAQMD Rules and Regulations may include: Rule 3.0: Visible Emissions, Rule 3:15: Architectural Coatings, and Rule 7:10: Indirect Source Fee.

#### Mitigation Measure AQ-3 (As set forth in the circulated IS/MND)

- B.! OPUD and its construction contractors shall provide a plan for approval by FRAQMD demonstrating that the heavy-duty (equal to or greater than 50 horsepower) off-road equipment to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project wide fleet-average 5 percent ROG reduction, 20 percent NOx reduction and 45 percent particulate reduction compared to the most recent CARB fleet average at time of construction. A Construction Mitigation Calculator (MS Excel) may be downloaded from the SMAQMD website to perform the fleet average evaluation <http://www.airquality.org/ceqa/index.shtml>. Acceptable options for reducing emissions may include use of late model engines (Tier 4), CARB Approved low-emission diesel products, alternative fuels, engine retrofit technology (Carl Moyer Guidelines), after-treatment products, voluntary off-site mitigation projects, provide funds for air district off-site mitigation projects, and/or other options as they become available. The FRAQMD should be contacted to discuss alternative measures.

The results of the Construction Mitigation Calculator shall be submitted and approved by the District **PRIOR TO BEGINNING WORK**. OPUD and its construction contractors shall provide a monthly summary of heavy-duty off-road equipment usage to the FRAQMD throughout the construction of the project.

- C.! OPUD may also contribute to the FRAQMD's Off-Site Mitigation Program to reduce project emissions to less than significant. OPUD shall compile a list of all emission sources and consult with the FRAQMD staff to implement this mitigation measure. The project contractors shall track emissions generated from equipment and vehicles throughout construction of the project. If determined necessary by the FRAQMD and before construction activities begin, OPUD shall pay a deposit to FRAQMD for contribution to the FRAQMD Off-site Mitigation Fund. This deposit will be held by FRAQMD and applied toward the final off-site mitigation amount to be paid after project construction is complete. Total construction emissions shall be calculated at the end of construction activities. Using these calculations, OPUD shall make a final payment to the FRAQMD Off-Site Mitigation Fund, if necessary, to further offset construction pollutant emissions that exceeded FRAQMD thresholds. (*Personal communications* with Sondra Spaethe, FRAQMD 2023)

### **Mitigation Measure AQ-3 (Revised)**

- B.! OPUD and its construction contractors shall provide a plan for approval by FRAQMD demonstrating that the heavy-duty (equal to or greater than 50 horsepower) off-road equipment to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project wide fleet-average 5 percent ROG reduction, 20 percent NOx reduction and 45 percent particulate reduction compared to the most recent CARB fleet average at time of construction. A Construction Mitigation Calculator (MS Excel) may be downloaded from the SMAQMD website to perform the fleet average evaluation <http://www.airquality.org/ceqa/index.shtml>. Acceptable options for reducing emissions may include use of late model engines (Tier 4), CARB Approved low-emission diesel products, alternative fuels, engine retrofit technology (Carl Moyer Guidelines), after-treatment products, voluntary off-site mitigation projects, provide funds for air district off-site mitigation projects, and/or other options as they become available. The FRAQMD should be contacted to discuss alternative measures.

The results of the Construction Mitigation Calculator shall be submitted and approved by the FRAQMD prior to beginning work. OPUD and its construction contractors shall provide a monthly summary of heavy-duty off-road equipment usage to the FRAQMD throughout the construction of the project.

- C.! OPUD may also contribute to the FRAQMD's Off-Site Mitigation Program to reduce project emissions to less than significant. OPUD shall compile a list of all construction emission sources and consult with the FRAQMD staff to implement this mitigation measure. The project contractors shall track emissions generated from equipment and vehicles throughout construction of the project. If determined necessary by the FRAQMD and before construction activities begin, OPUD shall pay a deposit to FRAQMD for contribution to the FRAQMD Off-site Mitigation Fund. This deposit will be held by FRAQMD and applied toward the final off-site mitigation amount to be paid after project construction is complete. Total construction emissions shall be calculated at the end of construction activities. Using these calculations, OPUD shall make a final payment to the

FRAQMD Off-Site Mitigation Fund, if necessary, to further offset construction pollutant emissions that exceeded FRAQMD thresholds. (*Personal communications* with Sondra Spaethe, FRAQMD 2023)

**Mitigation Measure BIO-5 (Direct impacts.) (As set forth in the circulated IS/MND)**

If avoidance of habitat features as described in BIO-4 is not feasible and direct impacts (temporary or permanent) will occur to seasonally inundated ditch and depression features, compliance with one of the following mitigation measures (5A or 5B) shall be required:

A.! Prior to the initiation of construction, surveys conducted in accordance with USFWS protocols shall be conducted in all potentially suitable habitat to be impacted. If protocol surveys determine that the seasonally inundated ditch and depression features are not occupied by federally listed vernal pool branchiopod species, no further mitigation is required for impact to species habitat (mitigation for jurisdictional aquatic features consistent with Mitigation Measures BIO-1 and BIO-2 may still apply). If protocol surveys detect the presence of federally listed species, then the following measures shall be implemented:

- 1.! Prior to the initiation of construction, construction crews shall attend an Environmental Awareness Training Program that will include information regarding the potential presence of listed vernal pool branchiopod species and the importance of avoiding impacts to these species and their habitat.
- 2.! All work shall be conducted during the dry season when potential habitat features on or near the proposed pipeline installation areas are dry.
- 3.! Fencing shall be placed and maintained around any avoided (preserved) seasonally inundated ditch and depression features to prevent encroachment. A qualified biologist shall oversee the installation of fencing. Once fencing is installed, a biologist will inspect fencing weekly to ensure its integrity and effectiveness.
- 4.! A USFWS approved biologist shall monitor construction activities in known or potential vernal pool branchiopod habitat that results in temporary or permanent impacts.
- 5.! For temporary impacts that will be restored after construction, a Site Restoration Plan outlining requirements for topsoil collection, preservation, and restoration will be prepared and approved by the USFWS. Implementation of the approved Plan shall include the following requirements at minimum. Prior to excavation in locations with potential or known vernal pool branchiopod habitat, the uppermost soil layer that may contain branchiopods eggs (cysts) shall be collected, labelled, and stored under appropriate climatic conditions until construction in temporary impact areas is complete. Once construction is complete, topsoil shall be placed back in the feature from which it was collected.
- 6.! For permanent impacts, loss of vernal pool branchiopod habitat shall be mitigated through the purchase of mitigation credits at a USFWS approved mitigation bank in accordance with mitigation ratios approved by the USFWS.

B.! If OPUD or its contractor chooses not to conduct protocol-level surveys, they may assume presence of listed vernal pool branchiopod species within seasonally inundated ditch and depression features that provide potentially suitable habitat. If presence of listed species is assumed, then measures BIO-5A (1) through (6) as set forth above shall apply to mitigate impacts to a less-than-significant level.

### **Mitigation Measure BIO-5 (Direct impacts.) (Revised)**

If avoidance of habitat features as described in BIO-4 is not feasible and direct impacts (temporary or permanent) will occur to seasonally inundated ditch and depression features, compliance with one of the following mitigation measures (5A or 5B) shall be required:

- A.! Prior to the initiation of construction, surveys conducted in accordance with USFWS protocols shall be conducted in all potentially suitable habitat to be impacted. If protocol surveys determine that the seasonally inundated ditch and depression features are not occupied by federally listed vernal pool branchiopod species, no further mitigation is required for impact to species habitat (mitigation for jurisdictional aquatic features consistent with Mitigation Measures BIO-1 and BIO-2 may still apply). If protocol surveys detect the presence of federally listed species, then the following measures shall be implemented:
- 1.! Prior to the initiation of construction, construction crews shall attend an Environmental Awareness Training Program that will include information regarding the potential presence of listed vernal pool branchiopod species and the importance of avoiding impacts to these species and their habitat.
  - 2.! All work shall be conducted during the dry season when potential habitat features on or near the proposed pipeline installation areas are dry.
  - 3.! Fencing shall be placed and maintained around any avoided (preserved) seasonally inundated ditch and depression features to prevent encroachment. A qualified biologist shall oversee the installation of fencing. Once fencing is installed, a biologist will inspect fencing weekly to ensure its integrity and effectiveness.
  - 4.! A USFWS approved biologist shall monitor construction activities in known or potential vernal pool branchiopod habitat that results in temporary or permanent impacts.
  - 5.! For temporary impacts that will be restored after construction, a Site Restoration Plan outlining requirements for topsoil collection, preservation, and restoration will be prepared and approved by the USFWS. Implementation of the approved Plan shall include the following requirements at minimum. Prior to excavation in locations with potential or known vernal pool branchiopod habitat, the uppermost soil layer that may contain branchiopods eggs (cysts) shall be collected, labelled, and stored under appropriate climatic conditions until construction in temporary impact areas is complete. Once construction is complete, topsoil shall be placed back in the feature from which it was collected.
  - 6.! For permanent impacts, loss of vernal pool branchiopod habitat shall be mitigated through the use of USFWS approved mitigation credits in accordance with mitigation ratios approved by the USFWS.
- B.! If OPUD or its contractor chooses not to conduct protocol-level surveys, they may assume presence of listed vernal pool branchiopod species within seasonally inundated ditch and depression features that provide potentially suitable habitat. If presence of listed species is assumed, then measures BIO-5A (1) through (6) as set forth above shall apply to mitigate impacts to a less-than-significant level.

### **Mitigation Measure BIO-7 (As set forth in the circulated IS/MND)**

Implement the following measures:

- A.! Prior to the initiation of construction, construction staff shall attend an Environmental Awareness Training Program that will include information regarding identification of giant gartersnake and its habitat, protection measures for the species, and procedures to follow if a giant gartersnake or unknown snake is observed.
- B.! Construction of Lift Station 23 will occur when the rice field is inactive and has been dry for a minimum of 15 days.
- C.! Construction of Lift Station 22, Lift Station 23, and the HDD installation of pipelines under Kimball Creek, including all activities within 200 feet of Kimball Creek and the rice field at Lift Station 23, shall be restricted to the period between May 1 and October 1. This is the active period for GGS when the potential for direct mortality is reduced because GGS can actively avoid disturbance.
- D.! Prior to the start of the Kimball Creek HDD, construction of Lift Station 22, or the construction of Lift Station 23, a qualified biologist shall conduct a preconstruction survey for GGS at these locations prior to the initiation of disturbance. Exclusion fencing shall be installed, as directed by the qualified biologist, to isolate the workspace within 200 feet of suitable aquatic habitat and exclude snakes from the work areas. Exclusion fencing will be buried at the base to prevent snakes from moving under the fence into the construction area. Exclusion fencing shall be maintained for the duration of work in these areas and shall be routinely inspected by the qualified biologist to ensure the fencing is intact and effective. The workspace shall be inspected prior to the start of work each day to ensure that no snakes have entered the work area.
- E.! If a GGS is observed, the USFWS and CDFW shall be notified immediately. Construction will be suspended in the area until the snake leaves the site of its own volition.
- F.! All excavations within 200 feet of suitable GGS habitat shall be covered or have escape ramps installed to prevent entrapment prior to the end of work each day. These excavations shall be inspected by the qualified biologist prior to the start of work the following day.
- G.! Erosion control materials shall consist of tightly woven fibers and netting to prevent entanglement of reptiles and amphibians. No monofilament materials will be allowed.

### **Mitigation Measure BIO-7 (Revised)**

Prior to construction, OPUD or its contractor shall obtain and implement a FRAQMD

Implement the following measures:

- A.! Prior to the initiation of construction, construction staff shall attend an Environmental Awareness Training Program that will include information regarding identification of giant gartersnake and its habitat, protection measures for the species, and procedures to follow if a giant gartersnake or unknown snake is observed.
- B.! Construction of Lift Station 23 will occur when the rice field is inactive and has been dry for a minimum of 15 days.
- C.! Construction of Lift Station 22, Lift Station 23, and the HDD installation of pipelines under Kimball Creek, including all activities within 200 feet of Kimball Creek and the rice field at Lift Station 23, shall be restricted to the period between May 1 and October 1. This is the active period for GGS when the potential for direct mortality is reduced because GGS can actively avoid disturbance.

- D.! Prior to the start of the Kimball Creek HDD, construction of Lift Station 22, or the construction of Lift Station 23, a qualified biologist shall conduct a preconstruction survey for GGS at these locations prior to the initiation of disturbance. Exclusion fencing shall be installed, as directed by the qualified biologist, to isolate the workspace within 200 feet of suitable aquatic habitat and exclude snakes from the work areas. Exclusion fencing will be buried at the base to prevent snakes from moving under the fence into the construction area. Exclusion fencing shall be maintained for the duration of work in these areas and shall be routinely inspected by the qualified biologist to ensure the fencing is intact and effective. The workspace shall be inspected prior to the start of work each day to ensure that no snakes have entered the work area.
- E.! If a GGS is observed, the USFWS and CDFW shall be notified immediately. Construction will be suspended in the area until the snake leaves the site of its own volition.
- F.! All excavations within 200 feet of suitable GGS habitat shall be covered or have escape ramps installed to prevent entrapment prior to the end of work each day. These excavations shall be inspected by the qualified biologist prior to the start of work the following day.
- G.! Erosion control materials shall consist of tightly woven fibers and netting to prevent entanglement of reptiles and amphibians. No monofilament materials will be allowed.
- H. For permanent impacts associated with construction of Lift Station 22 and Lift Station 23, loss of suitable GGS habitat shall be mitigated through the use of USFWS and CDFW approved mitigation credits or fee title acquisition with a conservation easement to protect managed marsh habitat in accordance with mitigation ratios approved by the USFWS and CDFW.