

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
DIRECTOR'S OFFICE  
POST OFFICE BOX 944209  
SACRAMENTO, CA 94244-2090



**CALIFORNIA ENVIRONMENTAL QUALITY ACT STATUTORY EXEMPTION FOR  
RESTORATION PROJECTS  
CONCURRENCE NO. 21080.56-2024-050-R1**

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**Project:** Lower Klamath National Wildlife Refuge Unit 2/3 Reroute Project  
**Location:** Siskiyou County  
**Lead Agency:** North Coast Regional Water Quality Control Board  
**Lead Agency Contact:** Jake Shannon; [Jacob.Shannon@waterboards.ca.gov](mailto:Jacob.Shannon@waterboards.ca.gov)

### **Background**

Project Location: The Lower Klamath National Wildlife Refuge Unit 2/3 Reroute Project (Project) is located about 15 miles northwest of the City of Tulelake, in Siskiyou County, and within the 50,092-acre Lower Klamath National Wildlife Refuge (LKNWR) complex, which is owned and managed by the U.S. Fish and Wildlife Service (USFWS) as habitat for native wildlife species and migratory birds. The LKNWR, which overlaps the California-Oregon state line, is a varied mix of intensively managed shallow marshes, open water, grassy uplands, and croplands that provide feeding, resting, nesting, and brood-rearing habitat for waterfowl and other water birds. Project work will be concentrated in Unit 1, a triangular-shaped 1,107-acre area consisting of degraded wetland habitat and lands managed for cooperative agriculture. The Project is approximately centered at 42.00265, -121.82477 (Figure 1).

The LKNWR, and surrounding area, have a history of land acquisitions and transfers, implementation of a federal irrigation project (the Klamath Project), and installation of an intricate and complicated network of water control and canal systems, which have resulted in significant alterations in land use, habitats, and hydrology. As a result, 47% of the wetlands, about 24,000 acres, are reliant on seasonal surface water diversions from the Klamath River through the Ady Canal or return flows from Tule Lake sumps.

Furthermore, about 15% of the LKNWR remains in agricultural production through cooperative and lease land agriculture. These types of agriculture practices are consistent with and directly contribute to the purposes for which the LKNWR was established: wildlife conservation for the major purpose of waterfowl management but with full consideration to optimum agricultural use that is consistent therewith. (16 U.S.C. § 695l.) USFWS may only authorize private economic use of a national wildlife refuge—including agricultural uses such as cattle grazing or the growing of grain, hay, or other crops—where USFWS determines the use contributes to the achievement of that national refuge's purposes or the National Wildlife Refuge system mission. (50 C.F.R. § 29.1.) That mission is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of

the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” (16 U.S.C. § 668dd.) USFWS may execute agreements for cooperative agriculture on a national wildlife refuge when such agreements are “in aid of or benefit to the wildlife management of the area.” (50 C.F.R. § 29.2.)

In USFWS’s Comprehensive Conservation Plan, Environmental Impact Statement, and Record of Decision for Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges, published December 2016, USFWS found that cooperative and lease land farming, grazing, and haying are appropriate uses at LKNWR and noted specific benefits that they provide to fish and wildlife or their habitats: providing grain to fall migrant waterfowl and sandhill cranes; maintaining units in early successional stage, which provides maximum production of moist soil seed plants and sago pondweed; when farmed lands are subsequently flooded, increasing aquatic productivity; maximizing habitat and wildlife species diversity; maintaining wetlands in a variety of successional stages to help achieve habitat and wildlife objectives, such as enhancing habitat for foraging and breeding birds; and reducing the extent of invasive, non-native plants to provide a competitive edge to native plants.

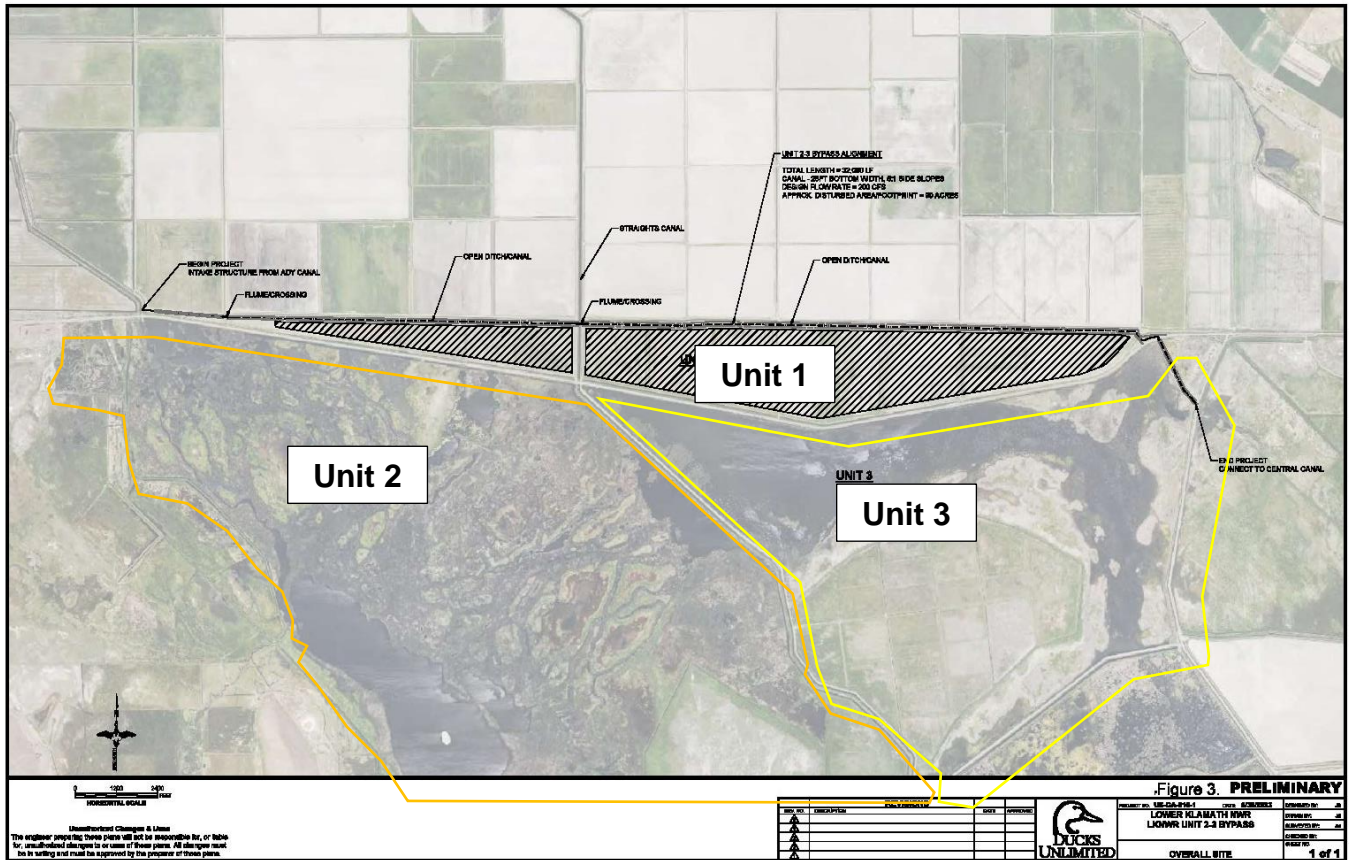


Figure 1. Map of Project Area

**Project Description:** The USFWS, in partnership with Ducks Unlimited, Inc., proposes to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend. The Project is designed to benefit wetland

habitat for migratory bird species. The LKNWR was established in 1908 as the first waterfowl refuge with a primary purpose of preserving habitat for migratory waterfowl in the Pacific Flyway. As part of the Southern Oregon and Northeastern California (SONEC) region of the Pacific Flyway, the LKNWR helps support approximately 80% of the Flyway's migrating waterfowl during the spring and fall migration, including over 5 million dabbling ducks, 500,000 geese, and 700,000 tundra swans (*Cygnus columbianus*). LKNWR also supports one of only two breeding colonies of American white pelican (*Pelecanus erythrorhynchos*) in California, over 10% of California's breeding population of white-faced ibis (*Plegadis chihi*), and critical breeding populations of eared grebe (*Podiceps nigricollis*), Franklin's gull (*Leucophaeus pipixcan*), Forster's tern (*Sterna forsteri*), and black tern (*Chlidonias niger*). In addition, LKNWR provides important habitat for other native wildlife populations and sensitive species including gray wolf (*Canis lupus*), listed as endangered under the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA); greater sandhill crane (*Antigone canadensis tabida*), listed as threatened under CESA and a California fully protected species; bank swallow (*Riparia riparia*), listed as threatened under CESA; and Swainson's hawk (*Buteo swainsoni*).

The Project would involve enhancements to the area's existing water conveyance system to allow for more efficient and reliable delivery of water from the Ady Canal (on the west side of Unit 2) to the Central Canal (on the east side of Unit 3) (Figure 1). Currently, water delivered to the LKNWR from the Ady Canal must completely fill Unit 2 before it is available to fill Unit 3. Unit 3 then needs to be completely filled before water can be delivered to approximately 13,000 acres of emergent wetlands located in the southern portion of the LKNWR. Since Unit 2 and Unit 3 are collectively 7,000 acres, during years with limited water supply such as drought, there is not enough water to fill both units and deliver water to the emergent wetlands.

In addition, water is only available to Unit 1, where there is also approximately 740 acres of cooperatively managed agricultural production, through a gravity fed system that relies on a complicated and inefficient system of culverts, ditches, and water control structures on the north and south sides of SR 161. Delivery of water to and within Unit 1 is also highly susceptible to drought conditions. In recent years, no water has been delivered to the west side of Unit 1, which has resulted in the loss of about 200 acres of emergent wetlands. Delivery of water to the agricultural areas on the east side of Unit 1 is also constrained by existing topography and the configuration of gravity fed ditches and water control structures.

In order to address these issues and provide a more efficient and reliable water source in the LKNWR for native fish and wildlife, the Project will include water conveyance measures to enhance approximately 20,200 acres of wetlands located within the LKNWR. This will require replacing the existing water conveyance systems in the Project area with a new 32,000-foot bypass canal and associated berms designed to convey flows up to 200 cubic feet per second to assist in providing habitat. The enhanced water conveyance system would extend east from the Ady Canal to the eastern extent of Unit 1, at which point the bypass canal would be routed south and into Unit 3 and also connect to the Central Canal. Once the water leaves the Central Canal it will be available for irrigating 13,000 additional acres of managed wetlands within LKNWR. During times of limited water supply the Project improvements will allow for enhanced water supply and flexibility in order to restore, conserve, and protect the

wetlands located throughout Unit 1, Unit 2, Unit 3, and the southern portion of the LKNWR.

New water control infrastructure would be installed at the Ady Canal and Central Canal to allow water to be directed into and through the new bypass canal, as well as along the new berm alignment to provide a more reliable water source to Unit 1. The new infrastructure would also facilitate improved irrigation management and rotation on 740 acres of land in Unit 1 currently managed under the Cooperative Farming Program, that would also provide a benefit through the production of food for wildlife or improvement of natural habitat. Habitat features, including shallow swales and depressions, would be created in the marginal wetland areas on the west side of Unit 1 to disperse water and improve habitat diversity. The agricultural fields on the east side of Unit 1 would be graded to improve water dispersal and drainage during the growing season and help to enhance foraging habitat.

Tribal Engagement: In August 2023, USFWS archaeological staff sent tribal consultation letters to the Fort Bidwell Indian Community, Burns Paiute Tribe, the Klamath Tribes, and Confederated Tribes of the Warm Springs Reservation of Oregon. A subsequent tribal consultation meeting was held with the Klamath Tribes to discuss the Project. USFWS will continue to collaborate with the Klamath Tribes as baseline data for the Project is collected and the Project design progresses.

Interested Party Coordination: Water delivery improvements within the LKNWR were broadly considered in the 2016 Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS). Development of the CCP and EIS included a NEPA scoping process that began in 2010 and included outreach to interested parties via newspapers, radio programs, direct mailings, and four in-person public scoping meetings. A copy of the Draft CCP and EIS were also made available to the Klamath Tribes; six federal agencies, including the Bureau of Reclamation and U.S. Environmental Protection Agency; five state agencies, including California Department of Fish and Wildlife (CDFW) and the North Coast Regional Water Quality Control Board; three local governments, including Modoc and Siskiyou counties; and 136 non-governmental organizations and businesses, including a wide range of wetland and wildlife conservation non-profits, ranching and farming business, and other stakeholders interested in water-related issues and public land management.

Anticipated Project Implementation Timeframes: Start date: July 2025  
Completion date: December 2026

Lead Agency Request for CDFW Concurrence: On February 1, 2024, the Director of the California Department of Fish and Wildlife (CDFW Director) received a concurrence request from North Coast Regional Water Quality Control Board (Lead Agency) pursuant to Public Resources Code section 21080.56, subdivision (e) (Request). The Request seeks the CDFW Director's concurrence with the Lead Agency's determination on February 1, 2024, that the Project meets certain qualifying criteria set forth in subdivisions (a) to (d), inclusive, of the same section of the Public Resources Code (Lead Agency Determination). The CDFW Director's concurrence is required for the Lead Agency to approve the Project relying on this

section of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.).

### **Concurrence Determination**

The CDFW Director concurs with the Lead Agency Determination that the Project meets the qualifying criteria set forth in Public Resources Code section 21080.56, subdivisions (a) to (d), inclusive (Concurrence).

Specifically, the CDFW Director concurs with the Lead Agency that the Project meets all of the following conditions: (1) the Project is exclusively to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or is exclusively to restore or provide habitat for California native fish and wildlife; (2) the Project may have public benefits incidental to the Project's fundamental purpose; (3) the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery; and includes procedures and ongoing management for the protection of the environment; and (4) Project construction activities are solely related to habitat restoration. Pursuant to Public Resources Code section 21080.56, subdivision (g), CDFW will post this Concurrence on its CEQA Notices and Documents internet page: <https://wildlife.ca.gov/Notices/CEQA>.

This Concurrence is based on best available science and supported, as described below, by substantial evidence in CDFW's administrative record of proceedings for the Project.

This Concurrence is also based on a finding that the Project is consistent with and that its implementation will further CDFW's mandate as California's trustee agency for fish and wildlife, including the responsibility to hold and manage these resources in trust for all the people of California.

### **Discussion**

- A. Pursuant to Public Resources Code section 21080.56, subdivision (a), the CDFW Director concurs with the Lead Agency that the Project will exclusively conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or restore or provide habitat for California native fish and wildlife.

The Project will provide more reliable water to existing wetlands at the LKNWR, including 200 acres of marginal emergent wetlands within Unit 1, 7,000 acres in Unit 2 and Unit 3, and over 13,000 acres of emergent wetlands located downstream of the Project. These wetlands provide critically important habitat to a wide range of California native fish and wildlife, including migratory and resident waterfowl and shorebirds. The Project would also facilitate more efficient use of limited water resources on 740 acres of land in Unit 1 being managed under the USFWS Cooperative Farmland Program, which would result in a net benefit to climate resiliency and result in improved habitat conditions for migratory birds and other native, wetland dependent wildlife species.

- B. Pursuant to Public Resources Code section 21080.56, subdivision (b), the CDFW Director concurs with the Lead Agency that the Project may have incidental public benefits, such as public access and recreation.

The Project may have incidental public recreation benefits resulting from improvements in habitat conditions that benefit bird populations, which could improve wildlife viewing and hunting opportunities within the LKNWR.

- C. Pursuant to Public Resources Code section 21080.56, subdivision (c), the CDFW Director concurs with the Lead Agency that the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery, and includes procedures and ongoing management for the protection of the environment.

Long-term Net Benefits to Climate Resiliency: The Project will result in long-term benefits to climate resiliency by improving the inefficient and irregular water delivery system delivering water to the Project area. The current system is impacting the extent, quality, and diversity of wetland habitats at the LKNWR. Currently, during years with limited water supply, there is not enough water to fill all the units and deliver water to downstream wetlands, and during drought years no water is delivered to the west side of Unit 1, which has resulted in the loss of about 200 acres of emergent wetlands. Delivery of water to the cooperatively farmed areas on the east side of Unit 1 is also constrained by existing topography and the current configuration of gravity fed ditches and water control structures, which makes irrigation susceptible to high evaporation rates and drought, and poorly suited to make good use of tailwater.

Long-term benefits to climate resiliency from the Project would be realized by the addition of an alternate water conveyance system and improvements in water delivery and distribution in Units 1 and 3, which would provide a more direct and reliable source of surface water to about 1,000 acres of habitat in Unit 1 and over 13,000 acres of wetlands south of the Project area that are irrigated by the Central Canal. Recontouring/reconfiguring the cooperatively farmed fields on the west side of Unit 3 would also make better use of limited water resources by providing for a more efficient and targeted irrigation system.

Long-term Net Benefits to Biodiversity: The Project will result in a long-term net benefit to biodiversity by increasing wetland habitats within the SONEC region of the Pacific Flyway. Approximately 80% of migrating waterfowl on the Pacific Flyway pass through the SONEC on both spring and fall migrations. This includes approximately five million dabbling ducks and a third of the continental pintail population. Spring goose populations exceed 500,000 birds, and nearly 70,000 tundra swans rely on emergent wetlands of the SONEC. In addition, the LKNWR provides important spring staging, brood rearing, and molting habitat for a wide variety of waterfowl, such as Tule greater white-fronted goose (*Anser albifrons elgasi*), greater scaup (*Aythya marila*), and ring-necked duck (*Aythya collaris*), in addition to many of the bird species already referenced.

Furthermore, the LKNWR has been identified as one of the most significant waterbird nesting sites in California. It is particularly important to migrant and breeding shorebirds, breeding American white pelican, white-faced ibis, Franklin's gull, Forster's tern, and black tern. More than 25 species of raptors are known to use the LKNWR as well, including the largest wintering population of bald eagle (*Haliaeetus leucocephalus*) in the United States outside of Alaska. The LKNWR also provides important habitat for numerous songbirds, as well as native mammals and amphibians such as the Western toad (*Anaxyrus boreas*), pallid bat (*Antrozous pallidus*), coyote (*Canis latrans*), and North American river otter (*Lontra canadensis*).

Long-term Net Benefits to Sensitive Species Recovery: The Project will result in a long-term net benefit to sensitive species by providing and enhancing wetland habitats. Many bird species that utilize the Project area are also protected under CESA or the federal ESA, are identified by USFWS as Birds of Conservation Concern, or are identified by CDFW as Species of Special Concern or fully protected under the California Fish and Game Code. These species include tri-colored blackbird (*Agelaius tricolor*), greater sandhill crane (*Antigone canadensis tabida*), short-eared owl (*Asio flammeus*), Swainson's hawk, black tern, northern harrier (*Circus cyaneus*), bald eagle, American white pelican, bank swallow, willet (*Tringa semipalmata*), and yellow-headed blackbird (*Xanthocephalus xanthocephalus*).

Aquatic habitats at the LKNWR also provide habitat for other sensitive species such as western pond turtle (*Emys marmorata*). Also, the Project area is within the range of gray wolf, which could forage onsite.

Procedures for the Protection of the Environment: The Project would use several procedures to ensure protection of the environment, including construction best management practices to protect water quality and avoid inadvertent disturbance of sensitive habitats outside of work areas, and species-specific measures to protect sensitive wildlife, including observing work windows that avoid the bird breeding season. These measures are summarized below:

- Work areas will be dry or isolated from surface water prior to operation of heavy equipment.
- Topsoil and vegetation will be removed from work areas and be placed along the side slopes of berms and swales to minimize erosion and facilitate re-establishment of vegetation onsite.
- Construction equipment that could leak fluids will be staged in designated areas away from water and sensitive natural communities. Stationary equipment will be outfitted with drip pans to capture any leaking fluids.
- Emergency spill cleanup kits will be immediately accessible in the Project area during construction.
- Construction traffic will observe a speed limit of 15 MPH on unpaved surfaces and roads to reduce dust and soil erosion, and to avoid conflicts with wildlife.
- Project-related trash will be properly contained in sealed receptacles that are removed from the work site at least weekly.

- The Project will install erosion control measures in work areas, as needed, to avoid the release of sediment or pollutants into surface waters.
- Areas temporarily disturbed during construction will be de-compacted and graded to pre-construction contours to facilitate voluntary revegetation.
- A qualified biologist will provide environmental awareness training prior to the start of work.
- To the extent practical, vegetation removal and ground disturbing activities will not be conducted during the bird breeding season (February 15 - August 31). If vegetation removal or ground disturbing activities must occur during the breeding season, work areas will be surveyed no more than 72 hours prior to the start of work by a qualified biologist to determine if nesting birds are present. Buffers will be placed around any nests identified.
- To prevent accidental entrapment of wildlife during construction, steep-walled excavations will be covered with appropriate material (e.g., plywood) at the end of the workday. Alternately, one or more escape ramps (fill dirt, wood planking) will be installed at an angle of no greater than 30 degrees to allow wildlife to escape. Before steep-walled excavations are filled or sealed, they will be inspected for trapped animals. If pipes are stored onsite or in staging areas, they will be capped when not in use or stored above ground level to minimize species entrapment. Any animals discovered will be allowed to escape voluntarily or will be relocated by a qualified biologist.

Ongoing Management for the Protection of the Environment: Ongoing management procedures employed for the protection of the environment would include operations and maintenance of new infrastructure, including water control structures, berms, and the new bypass canal. The Project area would continue to be managed by USFWS in accordance with the CCP, which sets forth management guidance for LKNWR staff for a period of 15 years. The CCP goals include providing wetland and agricultural habitats that support migratory waterfowl and non-game waterbird population objectives, as well as recovery and protection of sensitive species that occur within the LKNWR. In addition, the CCP incorporates a series of management strategies that addresses the importance and long-term disposition of Project-related infrastructure. Some of the management strategies include requiring the LKNWR to maintain existing water delivery facilities; improve water conservation and efficiencies to optimize existing water use; rotate wetlands and agricultural lands to allow for a gradation of successional stages (diversity) among wetlands and to provide small grains for waterfowl and sandhill cranes; to maintain wetland production throughout the year; and to monitor changes in the environment to assess the effects of climate change, among others. To comply with these management strategies, USFWS would monitor Project-related infrastructure for functionality and condition (e.g., erosion) and would address any issues that arise. Wetlands would continue to be managed using water level manipulation and periodic (annual) draining, drying, and mowing/disking, as needed, to support establishment of early seral or successional stage plant communities.



- D. Pursuant to Public Resources Code section 21080.56, subdivision (d), the CDFW Director concurs with the Lead Agency that the Project does not include any construction activities, except those solely related to habitat restoration.

Restoration activities are limited to excavation of the canal and creation of the associated berms; habitat enhancement features in the west side of Unit 1; earthwork to improve water reliability on leased farmlands on the east side of Unit 1; and installation of new or replacement water control infrastructure.

### Scope and Reservation of Concurrence

This Concurrence is based on the proposed Project as described by the Lead Agency Determination and the Request. If there are any subsequent changes to the Project that affect or otherwise change the Lead Agency Determination, the Lead Agency, or any other public agency that proposes to carry out or approve the Project, shall submit a new lead agency determination and request for concurrence from CDFW pursuant to Public Resources Code section 21080.56. If any other public agency proposes to carry out or approve the Project subsequent to the effective date of this Concurrence, this Concurrence shall remain in effect and no separate concurrence from CDFW shall be required so long as the other public agency is carrying out or approving the Project as described by the Lead Agency Determination and the Request.

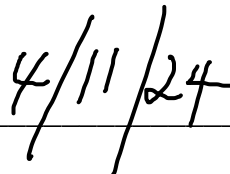
### Other Legal Obligations

The Project shall remain subject to all other applicable federal, state, and local laws and regulations, and this Concurrence shall not weaken or violate any applicable environmental or public health standards. (Pub. Resources Code, § 21080.56, subd. (f).)

### CDFW Director's Certification

By:  \_\_\_\_\_

Charlton H. Bonham, Director  
California Department of Fish and Wildlife

Date:  \_\_\_\_\_