

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2019-045-03**

**Jose Gutierrez, Westlands Water District**

**Lower Yolo Restoration Project**

**CEQA FINDINGS**

**INTRODUCTION:**

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Lower Yolo Restoration Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 *et seq.*). [See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a)].<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize Westlands Water District (Permittee), as represented by Jose Gutierrez, to incidentally take Giant Garter Snake (*Thamnophis gigas*) and Swainson's Hawk (*Buteo Swainsoni*), hereafter collectively referred to as Covered Species, during implementation of the Project. (See generally Fish and Game Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4). The Giant Garter Snake and Swainson's Hawk are species designated as Threatened (Cal. Code Regs., tit. 14, § 670.5, subds. (b)(4)(E) and (b)(5)(A), respectively).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, State and Federal Contractors Water Agency (SFCWA). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367). SFCWA analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report (EIR) titled Lower Yolo Restoration Project (SCH No. 2011032001), certified the Project on July 18, 2013, and prepared an addendum to the Project in September 2018. In so doing, SFCWA imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less-than-significant.

As approved by SFCWA, the primary objective of the proposed project is to enhance regional food web productivity and provide rearing habitat in support of native fish species, including Delta Smelt and out-migrating salmonids utilizing the Yolo Bypass. Project activities include the restoration of tidal marshes through the removal and

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

relocation of existing water control infrastructure elements, grading lands to facilitate establishment of intertidal wetlands, removing irrigation and grazing, and excavating new tidal channels. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 1,109 acres of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish and Game Code, § 86). These impacts fall within CDFW's permitting jurisdiction under CESA. [*Id.*, §§ 2080, 2081, subd. (b)].

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the SFCWA EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. [Pub. Resources Code, §21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g)]. Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4<sup>th</sup> 924, 935-941). Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1130).

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382). Because the EIR certified by SFCWA for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898).

## **FINDINGS:**

CDFW has considered the EIR certified by SFCWA as the lead agency for the Project. CDFW finds that the mitigation measures imposed as conditions of Project approval by SFCWA, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Designated Biologist and biological monitors at least 30 days before starting Covered Activities. The Designated Biologist or an approved biological monitor shall be present during all covered activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for maintaining a team of biological monitors who monitor Covered Activities to help minimize and fully mitigate or avoid the incidental take of Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain approval in advance in writing if the Designated Biologist must be changed. The Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species in consultation with CDFW.
- Erosion Control Materials. Permittee shall submit to CDFW a Stormwater Pollution Prevention Plan (SWPPP) to address Best Management Practices (BMPs) utilized to prevent erosion, sediment loss, and potential pollution within the project site for CDFW review and approval 30 days prior to initiation of Project activities. Permittee shall utilize erosion control measures throughout all phases of operation where sediment runoff from exposed slopes threatens to enter a river, stream, vernal pool, drainage ditch, or lake. All personnel involved in the use of hazardous materials shall be trained in emergency response and spill control. Diesel fuel and oil shall be used, stored, and disposed of in accordance with standard protocols for the handling of each hazardous material and as described in the SWPPP.
- Giant Garter Snake Work Window. Covered Activities shall be limited to the Covered Species active season of May 1 through October 1. If ground disturbing activities were initiated prior to October 1 and breaks in construction have not exceeded two weeks, CDFW may allow for construction beyond October 1 following additional consultation. CDFW may incorporate additional measures into this ITP at that time.

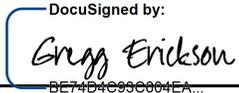
- Revegetating Temporary Impacts. Temporary impacts to grassland and marsh habitat due to staging, mobilization, demobilization, construction access, turnaround areas, soil cut and fill, stockpiling, and grading shall be restored to pre-project conditions by utilizing a CDFW-approved seed mixture and reseeding technique, or by utilizing stockpiled plants. The composition of the seed mixture shall be sent to CDFW for approval at least 7 days prior to use. Monitoring and management of these areas shall occur according to Condition of Approval 8.3 below.
- Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

*The Mitigation Monitoring and Reporting Program is adopted.*

*The Project is approved.*

DATE: 8/5/2020 \_\_\_\_\_

By:  \_\_\_\_\_  
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Gregg Erickson, Regional Manager  
Bay Delta Region  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE