

AUGUST 2019

## Exhibit B

Prospect Island Tidal Habitat Restoration  
Project, as analyzed in the 2019 FEIR,  
State Clearinghouse #20013052056

Findings of Fact and Statement of Overriding  
Considerations



# Table of Contents

<b>INTRODUCTION .....</b>	<b>1</b>
<b>Part I: FINDINGS ON ENVIRONMENTAL EFFECTS.....</b>	<b>4</b>
<b>A. Potentially Significant Effects Reduced to Less Than Significant.....</b>	<b>5</b>
A.1 Water Quality (Surface and Groundwater).....	5
A.2 Aquatic Biological Resources .....	10
A.3 Wetland and Terrestrial Biological Resources .....	13
A.4 Hazards and Hazardous Materials.....	22
A.5 Air Quality .....	25
A.6 Noise.....	29
A.7 Cultural Resources .....	30
A.8 Public Services .....	33
A.9 Recreation .....	33
A.10 Transportation and Traffic.....	34
A.11 Utilities .....	35
A.12 Cumulative Impacts .....	36
<b>B. Potentially Significant and Unavoidable Effects .....</b>	<b>38</b>
<b>Part II: FINDINGS RELATED TO PROJECT ALTERNATIVES.....</b>	<b>39</b>
<b>Part III: STATEMENT OF OVERRIDING CONSIDERATIONS.....</b>	<b>43</b>
<b>REFERENCES .....</b>	<b>46</b>

## INTRODUCTION

The California Department of Water Resources (DWR), acting as lead agency under the California Environmental Quality Act (CEQA), prepared a 2019 Final Environmental Impact Report (FEIR) that evaluated potential impacts on the physical environment associated with a proposed tidal habitat restoration project at Prospect Island, Solano County, CA. Prospect Island is located immediately east of, and technically is still an element of, the southern end of the Yolo Bypass in the Sacramento-San Joaquin River Delta. The fundamental project purpose and overarching goal of the proposal is to restore tidal action to the interior of Prospect Island, which is intended to partially fulfill legal obligations of DWR for tidal habitat restoration<sup>1</sup>.

The EIR identifies the No Project Alternative and two “build” alternatives (Alternatives 2 and 3) in addition to the Proposed Project, which was the preferred alternative in the 2016 Draft Environmental Impact Report (DEIR) process. After reviewing public comments and considering the impacts and benefits of the Alternatives identified in the EIR, DWR has decided to move forward with Alternative 2 (two breaches of the Prospect Island – Miner Slough levee at central and southern locations and a weir at the north end of the property) instead of the Proposed Project (two breaches of the Prospect Island – Miner Slough levee at northern and southern locations).

Acting as the CEQA lead agency, DWR has completed the 2019 FEIR for the Prospect Island Tidal Habitat Restoration Project (Project) in accordance with CEQA Guidelines Section 15089 and certified the 2019 FEIR as adequate in accordance with CEQA Guidelines Section 15090. The 2019 FEIR combines the 2019 Partial Recirculated DEIR with sections of the 2016 DEIR that were not recirculated. Additionally, clarifying and amplifying changes have been made, but no significant new information has been added. As required by CEQA Guidelines Section 15132, the 2019 FEIR includes a list of persons, organizations, and public agencies that commented on the DEIR; comments received on the 2016 DEIR and 2019 Partial Recirculated DEIR either verbatim or in summary; and the DWR’s responses to significant environmental points raised (see documents

---

<sup>1</sup> Reasonable and Prudent Alternative (RPA) 4 of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) (USFWS 2008); and RPA I.6.1 of the National Marine Fisheries Service (NMFS) Salmonid BiOp for SWP/CVP operations (NMFS 2009).

relating to comments on the 2016 DEIR in 2019 FEIR Appendix D and documents relating to comments on the 2019 Partial Recirculated DEIR in 2019 FEIR Appendix E).

In accordance with CEQA Section 21081 and CEQA Guidelines Section 15091, this document sets out relevant findings of fact regarding significant effects of the Project with regard to Alternative 2, including all adopted mitigation measures for specific impacts of the Project (see Parts I and II below). No mitigation measures proposed for potential significant impacts identified in the EIR were rejected as infeasible, although Mitigation Measure 3.17-2.1 (access settlement) was deleted as part of the 2019 Partial Recirculated DEIR since a property purchase rendered this mitigation measure redundant. Mitigation measures suggested by commenters on the 2016 DEIR and 2019 Partial Recirculated DEIR are considered and responded to in **Appendices D** and **E** of the 2019 FEIR.

Any summaries and/or references to the 2019 FEIR in this document are not intended to be a comprehensive restatement of the analysis in the 2019 FEIR or other information in the record, and do not substitute for these documents, but rather provide background and context for the findings. A full explanation of the findings and impact analysis rationale relating to all resource areas and all EIR alternatives can be found in the 2019 FEIR. Each specific finding is supported by substantial evidence. Mitigation measures are binding upon formal adoption of these findings and an enforceable Mitigation, Monitoring, and Reporting Program (MMRP) for the Project which includes these measures. The relevant mitigation measures that were identified for the Proposed Project in the 2019 FEIR also apply to Alternative 2, except for Mitigation Measure 3.2-2.1 which relates to dredging of the Miner Slough spur channel. No dredging of the Miner Slough spur channel will be undertaken for Alternative 2.

In accordance with CEQA Guidelines Section 15093, this document also includes a Statement of Overriding Considerations (see Part III below). EIR Impact 3.4-1 *Short-term impacts to perennial aquatic habitats and wetland communities from site preparation* is the only impact assessed as *significant and unavoidable* in the 2019 FEIR. DWR's finding pursuant to CEQA Guidelines Section 15093(a), supported by substantial evidence, is set forth in Part III of this document.

DWR has separately prepared a memorandum regarding the Project (August 19, 2019) and Decision Document that makes the decisions required by CEQA, including:

- certification of the EIR (Exhibit A to the memorandum) as adequate;

- adoption of Findings and the Statement of Overriding Considerations (Exhibit B to the memorandum; this document);
- adoption of a MMRP (Exhibit C to the memorandum); and
- submission of the Notice of Determination (Exhibit D).

As required by CEQA Guidelines Section 15091(e), the custodian and location of the 2019 FEIR are as follows:

Mitigation Restoration Branch  
Division of Environmental Services  
Department of Water Resources  
3500 Industrial Blvd.  
West Sacramento, CA 95691

Other documents included in the record of the proceedings may be found in other locations, but can be obtained by contacting the custodian of record identified above.

## Part I: FINDINGS ON ENVIRONMENTAL EFFECTS

The CEQA Guidelines Section 15091 (Findings) states:

- a) *“No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*
  1. *Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*
  2. *Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*
  3. *Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*
- b) *The findings required by subdivision (a) shall be supported by substantial evidence in the record.*
- c) *The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.*
- d) *When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements or other measures.*
- e) *The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.*

- f) *A statement made pursuant to Section 15093 does not substitute for the findings required by this section.*”

Please refer to Parts I and II below for the findings.

No potentially significant impacts are assessed in the 2019 FEIR for the following resource areas: Hydrology, Geology and Soils, Greenhouse Gases, Mineral and Gas Resources, Aesthetics, Agricultural Resources, and Land Use and Planning/Population and Housing. Impacts in these resource areas are all assessed as *beneficial, no impact, or less than significant* in the 2019 FEIR; therefore, these resource areas are not discussed further.

Potentially significant impacts are assessed in the 2019 FEIR for the following resource areas: Water Quality; Aquatic Biological Resources; Wetland and Terrestrial Biological Resources; Hazards and Hazardous Materials; Air Quality; Noise; Cultural Resources; Public Services; Recreation; Transportation and Traffic; and Utilities. *Significant and unavoidable* impacts are assessed in the 2019 FEIR for the following resource areas: Wetland and Terrestrial Biological Resources. Findings are provided for potentially significant impacts requiring mitigation and *significant and unavoidable* impacts below.

The numbering of the impacts set out below follows the format of the 2019 FEIR. The numbering of tables embedded in mitigation measures also follows the 2019 FEIR.

## **A. Potentially Significant Effects Reduced to Less Than Significant**

### **A.1 Water Quality (Surface and Groundwater)**

#### **Impact 3.2-1: Short-term construction-related water quality impacts**

##### *Discussion*

Dewatering discharges, stormwater run-off and erosion, leaking construction equipment, and accidental spills occurring during site preparation and construction of the Project could result in short-term discharges of salinity, turbidity, petroleum-based products, and floating materials to receiving waters. These potential short-term discharges could cause exceedances of Sacramento and San Joaquin River Basin Plan (Basin Plan) water quality objectives and impact associated beneficial uses. The mitigation measures listed below provide

for a site dewatering plan, Stormwater Pollution Prevention Plan (SWPPP), and a Spill Prevention, Control, and Response Plan.

*Mitigation*

*Mitigation Measure 3.2-1.1*

A site dewatering plan shall be developed by the construction contractor and submitted to DWR for approval prior to commencement of construction activities. The site dewatering plan shall include items such as the following:

1. Detailed description of work to be performed to control surface water at the Project site.
2. Detailed description of methods, installation and details of the dewatering systems proposed to be used.
3. Drawings showing the detailed layout of dewatering systems including pumps, ditches, berms, discharge lines, Best Management Practices (BMPs), and barriers to shield or divert flow.
4. Supporting design information including design calculations prepared by a California Registered Civil Engineer, type of systems, sizes, capacities, proposed number and layout of pumps, depths, filters, other needed equipment, and power supply.
5. Information related to backup pumping systems, backup power systems, and warning systems to protect against power failure, system failure, and high groundwater.
6. Information related to operation, maintenance, monitoring, removal, decommissioning pumps, and system abandonment procedures.
7. Information related to discharge, including methods to monitor turbidity and water treatment if necessary.
8. Provisions for handling significant rainfall events (greater than 0.5 in predicted in a 24-hour period as described in the Stormwater Pollution Prevention Plan [SWPPP]). This shall also include procedures to be followed prior to the forecasted significant rain events.
9. Provisions for handling emergency situations such as power outages, equipment failures, pumping system shutdowns and the proposed response.
10. Information on schedule and sequencing of dewatering activities.
11. Information on dewatering operations shall be coordinated with other construction operations including placement of compacted soil, removal and placement of pipe, and other miscellaneous items.



### *Mitigation Measure 3.2-1.2*

Upland areas of the Project associated with staging activities shall be covered by a Stormwater Pollution Prevention Plan (SWPPP). All contractors working in a capacity that could increase the potential for adverse water quality impacts would receive training regarding the need to minimize impacts. Contractors would also be familiar with general storm water construction-site BMPs for the protection of water quality. The SWPPP may include, but would not be limited to, the following:

1. Use of vegetated buffers, hay wattles or bales, sandbags, silt screens, or other erosion control measures to intercept runoff from construction, excavation, or staging areas to adjacent waterbodies.
2. BMPs for staging of construction supplies and waste management.

### *Mitigation Measure 3.2-1.3*

A Spill Prevention, Control, and Response Plan shall be developed by the construction contractor and submitted to DWR for approval prior to commencement of construction activities. Spill prevention and cleanup kits, equipment, and materials shall always be in close proximity to locations of hazardous materials (e.g., at fueling and staging areas) and conveniently located to allow rapid response. Prior to entering the work site, all field personnel would be informed of the location of the spill prevention and cleanup kits and appropriately trained in spill prevention, hazardous material control, and spill cleanup. The work site would be routinely inspected to verify that the Plan is properly implemented. The Plan would include:

1. A vehicle inspection and fueling plan.
2. BMPs for spill prevention and containment.
3. Locations and uses of spill prevention materials, cleanup kits, and equipment.
4. Qualification and reporting requirements for a federal reportable spill (CFR, Title 40, Section 110) including contact information for the RWQCB and the California Department of Toxic Substances Control (DTSC).

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.2-1.1, 3.2-1.2 and 3.2-1.3 would reduce short-term construction-related water quality impacts to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

[Note: Mitigation Measure 3.2-2.1 under EIR **Impact 3.2-2 Short-term construction-related increases in turbidity and/or mobilization of contaminants from dredging and excavation of the levee breaches** does not apply to Alternative 2, because no dredging is required].

### **Impact 3.2-3: Short-term construction-related effects from application of aquatic herbicides**

#### *Discussion*

Following initial dewatering during Project construction, application of approved aquatic herbicides could adversely affect beneficial uses of water. Overall, herbicide type (i.e., aquatic-approved), application method (i.e., to dewatered soils), application frequency (i.e., once immediately following dewatering), amount applied (i.e., according to label specifications), and toxicity potential (i.e., slightly toxic to practically nontoxic), suggest that there is a low likelihood of toxicity- and/or beneficial use-related water quality impacts due to aquatic herbicide application within Prospect Island. Given the broad-scale application involving aerial spraying and the potential for off-target spray drift and accidental spills, mitigation is proposed to ensure best management practices (BMPs) are followed during the application period.

#### *Mitigation*

##### *Mitigation Measure 3.2-3.1*

Best Management Practices (BMPs) shall be employed in order to minimize potential impacts to water quality from accidental spills. All contractors working shall receive training regarding the need to minimize impacts. Contractors shall be experienced and compliant in the environmentally safe application of herbicides. BMPs shall include, but not be limited to, the following:

1. Areas for storage, mixing, and loading of herbicides shall be located where accidental spills to nearby waterbodies cannot occur.
2. Applicators shall be trained in proper spill response, and rapidly report any spill to the appropriate agencies.
3. Applicators shall maintain on-site (near herbicide storage and loading equipment) appropriate initial spill-response items (e.g., absorbent materials).

##### *Mitigation Measure 3.2-3.2*

In order to minimize off-target spray drift and impacts to water quality from herbicide application, aerial pesticide application by helicopter shall be preferred

(over fixed wing aircraft). In addition, all appropriate, standard BMPs for aerial application of pesticides shall be followed, including but not limited to, the following:

1. Applicators shall develop an application plan--including maps of the Project site showing general spotter and flight plans with application areas clearly indicated--to be approved by the Lead Agency, before any application of herbicides.
2. Applicators shall adhere strictly to proper mixing and application guidelines as presented on herbicide labels and in product instructions.
3. Application of herbicides on levee vegetation shall not take place by air and otherwise avoided unless necessary, when it would be executed using spot application techniques.
4. Herbicide application by air shall only take place during the in-water work window from July 1 to October 31 of any one year, in order to reduce potential impacts to migrating fish species of concern.
5. Applicators shall maintain records of herbicide applications—including dates, times, weather conditions, amount of herbicide applied, problems experienced, etc.—in addition to or as required by federal, state, and/or local agencies.
6. Spraying shall at all times be halted when flying over levees, adjacent waterbodies (e.g., Miner Slough, DWSC), and agricultural fields.
7. Aerial application would occur only during light winds, non-gusty, relatively cool weather conditions.
8. Application would involve the use of appropriate spray nozzles, nozzle configurations, and nozzle orientations that minimize atomization of herbicide mixtures and production of fine droplets that tend to drift.
9. Herbicide tanks would not be operated at excessively high pressures.
10. If conditions require the use of aerial spray by fixed-wing aircraft, pilots shall be instructed to include an appropriate spray buffer (in addition to the width of the levee) where, to the extent possible, no herbicides would be directly applied (subject to overriding safety concerns).

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.2-3.1 and 3.2-3.2 would reduce the short-term effects of aquatic herbicide application to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen

the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **A.2 Aquatic Biological Resources**

### **Impact 3.3-3: Short-term direct construction-related injury or mortality of fish**

#### *Discussion*

During Project construction, mortality or direct injury to special-status fish and other native fish may occur as a result of pile driving and levee breaching. Use of an impact pile driver could exceed thresholds set by the Fisheries Hydroacoustic Working Group (2008). Implementation of an in-water work window of July 1 to October 31, restriction of work to low tide (when it corresponds with work hours), and implementation of Mitigation Measures 3.3-3.1 and 3.3-3.2 are proposed to reduce adverse individual or population-level effects on special-status and other native fish or their habitat.

#### *Mitigation*

##### *Mitigation Measure 3.3-3.1*

Pile driving activities shall be conducted using vibratory hammers, where feasible, to minimize sound attenuation from pile driving activities. If in-water pile driving activities become necessary, underwater sound monitoring shall be performed to ensure that peak sound pressure does not exceed 206 decibels and accumulated sound exposure level does not exceed 187 decibels at 10 meters. If work is performed at a time when special-status fish less than 2 grams are expected near the Project site, accumulated sound exposure levels shall not exceed 183 decibels at 10 meters. Underwater sound reduction measures shall be implemented as needed to ensure that sound levels do not exceed the above thresholds. Sound reduction measures may include impact cushions, pipe caissons, bubble curtains, fabric barriers, and limiting operational hours and impact frequency.

##### *Mitigation Measure 3.3-3.2*

DWR shall consult with CDFW and USFWS before conducting any in-water work during the month of July. DWR shall determine the extent of Delta Smelt presence in the CSC and Miner Slough by evaluating catch and distribution data

from CDFW's 20 mm Survey<sup>2</sup> and Summer Townet Survey<sup>3</sup>. The results shall be sent to USFWS and CDFW representatives to determine the extent of allowable in-water work.

20 mm Survey Stations 724 and 726 are located in Miner Slough at the lower and upper ends of Prospect Island and shall be used to determine Delta Smelt abundance in Miner Slough during July construction activities. Summer Townet Survey Station 715, just downstream of Miner Slough in Cache Slough; Station 723, just upstream from Miner Slough in the DWSC; and Station 716, just upstream from Miner Slough in Lindsey Slough, shall be used to determine Delta Smelt abundance in the vicinity of Miner Slough when the 20 mm Survey is not active.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.3-3.1 and 3.3-3.2 would reduce direct construction-related impacts on fish to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.3-4: Short-term construction-related noise impediments to fish migration**

*Discussion*

Construction activities at levee breach locations, including excavation and sheet pile installation, could generate sufficient noise within Miner Slough to affect the movement or migration of special-status fish species. Miner Slough is a known migratory corridor for many fish species. All four runs of Chinook Salmon, as well as Steelhead, Green Sturgeon, Pacific and River Lamprey, and Sacramento Splittail may migrate past the Project site in Miner Slough on their way to upstream to spawning areas or downstream rearing habitat. Impacts would be minimized through implementation of an in-water work window of July 1 to October 31 when special-status fish are less likely to be present at or near the

---

<sup>2</sup> The 20 mm Survey is an annual survey conducted by CDFW that monitors postlarval to juvenile Delta Smelt throughout the Delta from March through July. Surveys run every two weeks and include stations in Cache Slough, Lindsey Slough, the DWSC, and Miner Slough.

<sup>3</sup> The Summer Townet Survey is an annual survey that monitors young of the year fish throughout the Delta from June through August. Surveys run every two weeks and include stations in Cache Slough, Lindsey Slough, and the DWSC.

Project site, and fish are expected to avoid excavation areas by seeking a zone of passage away from any noise sources. The in-water work window does overlap with migration timing for Fall- and Late Fall-run Chinook Salmon, Central Valley Steelhead, and Green Sturgeon. Implementation of Mitigation Measure 3.3-3.1 listed above also applies to this impact.

*Mitigation*

See Mitigation Measure 3.3-3.1 above.

*Finding*

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.3-3.1 would reduce short-term noise impediments to fish migration to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

[Note: Mitigation Measure 3.2-2.1 under EIR **Impact 3.2-6 Short-term impairment of essential fish behaviors due to construction-related increases in turbidity** does not apply to Alternative 2, because no dredging is required].

**Impact 3.3-7: Short-term fish injury or mortality during dewatering**

*Discussion*

Dewatering of Prospect Island during Project construction would remove aquatic habitat from the site, which would eventually result in mortality of all fish remaining on the island. Due to the length of time required for initial dewatering (10–12 months), fish would have ample opportunity to escape shallow habitat in the northern portion of Prospect Island and avoid becoming trapped in isolated bodies of water. Eventually fish would congregate in the deep subtidal areas at the southern end of the island, near the pumps, where injury or mortality could occur due to continued loss of water or entrainment in the pumps. A Fish Rescue Plan is required by Mitigation Measure 3.3-7.1 to avoid fish mortality.

*Mitigation*

*Mitigation Measure 3.3-7.1*

To minimize mortality due to the dewatering process, a Fish Rescue Plan shall be prepared by DWR for approval by state and federal fish agencies (CDFW,

USFWS, NMFS). Development of the Fish Rescue Plan shall include consideration of numerous sampling methods (seines, electrofishing, traps) and events, performed during and potentially after initial site dewatering. Fish would be captured alive and transported to nearby suitable habitat for release. The fish rescue would occur under the direction of CDFW.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.3-7.1 would reduce potential short-term fish injury or mortality during dewatering to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**A.3 Wetland and Terrestrial Biological Resources**

[Note: EIR **Impact 3.4-1 Short-term impacts to perennial aquatic habitats and wetland communities from site preparation** is found to be *significant and unavoidable* and is, therefore, discussed in Part III below].

**Impact 3.4-3: Short-term loss of valley/foothill riparian habitat**

*Discussion*

Of the approximately 145 ac of existing valley/foothill riparian habitat on the Project site, clearing activities would result in short-term impacts to approximately 20 ac. Implementation of Mitigation Measure 3.4-3.1 would largely limit riparian clearing activities to scrub shrub and understory species.

*Mitigation*

*Mitigation Measure 3.4-3.1*

Potential short-term impacts to individual high value trees for nesting and roosting would be minimized during final design by avoidance and protection measures, as specified in Mitigation Measures 3.4-14.1 and 3.4-17.1. A map of high value trees for nesting to be protected will be made available to on-site construction management.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.4-3.1 would reduce short-term loss of valley/foothill riparian habitat to *less than*

*significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

#### **Impact 3.4-4: Short-term construction-related mortality or detrimental effects to sensitive plants**

##### *Discussion*

Special-status plant species were not found on the interior of Prospect Island. Plants with the potential to occur within Prospect Island are primarily limited to shallow water from one ft depth to perennially moist soils; therefore, site preparation and Project construction activities that may affect this zone would result in the temporary loss of suitable habitat for these species, and some special-status plants may be directly removed. Additionally, drift of herbicides, used for invasive plant species control following site dewatering, could negatively affect sensitive plant species. Mitigation Measure 3.4-4.1 requires pre-construction surveys and preservation measures if required, as well as best practice herbicide application practices. Additionally, Mitigation Measure 3.2-3.2 would minimize off-target spray drift.

##### *Mitigation*

See Mitigation Measure 3.2-3.2 above.

##### *Mitigation Measure 3.4-4.1*

Mitigation shall include conducting pre-construction surveys for special-status plants. If special-status plants are found within the affected footprint, preservation methods such as transplantation, salvage, or seed collection and dispersal would be considered and shall be implemented if deemed necessary to avoid a significant impact to the local population through consultation with CDFW. Herbicide application practices shall include following all application recommendations for the herbicide to be applied, and refraining from applying product under wind conditions which would increase the likelihood for drift.

##### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.3-3.2 and 3.4-3.1 would reduce short-term construction-related mortality or detrimental effects to sensitive plants to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid



or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-6: Long-term loss of valley/foothill riparian habitat**

#### *Discussion*

Breaching of the Miner Slough levees under the Project would result in the conversion of approximately 93 ac of existing valley/foothill riparian habitat below MHHW (6.5 ft [NAVD88]) to tidal freshwater emergent wetland habitat. Riparian planting would reduce the long-term loss of valley/foothill riparian habitat to approximately 41 ac, and potential long-term impacts to individual high value trees for nesting and roosting would be minimized through implementation of Mitigation Measure 3.4-3.1.

#### *Mitigation*

Mitigation Measure 3.4-3.1 above.

#### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.4-3.1 would reduce long-term loss of valley/foothill riparian habitat to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-8: Short-term construction-related impacts to valley elderberry longhorn beetle**

#### *Discussion*

Site preparation and construction activities under the Project would require the removal of one elderberry shrub at the location of the proposed overflow weir for Alternative 2. Mitigation Measures 3.2-3.1 and 3.2-3.2 would ensure Best Management Practices (BMPs) are employed in order to minimize potential impacts from accidental spills, and minimize off-target herbicide spray drift, reducing potential short-term impacts to valley elderberry longhorn beetle.

#### *Mitigation*

Mitigation Measures 3.2-3.1 and 3.2-3.2 (above).

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.2-3.1 and 3.2-3.2 would reduce short-term construction-related impacts to valley elderberry longhorn beetle to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment as identified in the 2019 FEIR (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-10: Short-term construction-related injury or mortality and loss of habitat for giant garter snakes**

#### *Discussion*

There is potential for mortality or injury to Giant Garter Snakes and/or prey species due to mechanical disturbance and accidental chemical and/or petroleum spills during construction. Injury or mortality of individual Giant Garter Snakes as a result of an accidental spill would be significant. Implementation of Mitigation Measure 3.2-1.2 would reduce the potential for this.

#### *Mitigation*

##### *Mitigation Measure 3.4-10.1*

This mitigation measure includes the following:

1. Require construction personnel to receive USFWS and CDFW-approved worker environmental awareness training to recognize giant garter snake and its habitat.
2. Install exclusion fencing around all staging areas.
3. Survey the site at least 24 hours prior to the initiation of ground-disturbing activities in suitable giant garter snake habitat. This survey shall be conducted by a USFWS and CDFW-approved biologist in suitable giant garter snake habitat. Surveys shall be repeated if a lapse in construction activity of two weeks or greater occurs. If giant garter snake is encountered during ground-disturbing activities, activities at that specific location shall cease until appropriate corrective measures, in concurrence with USFWS and CDFW coordination, have been completed or it has been determined that individual giant garter snakes would not be harmed. Sightings shall be reported to USFWS and CDFW.
4. Implement ground disturbing construction activity within giant garter snake habitat between May 1 and October 1. This is the active period for giant garter snake and direct mortality is lessened, because giant garter snakes

are expected to actively move and avoid danger. DWR would contact the USFWS and CDFW to determine if additional measures are necessary to minimize and avoid take for work between October 2 and April 30.

5. Vehicle speeds shall not exceed 15 miles per hour (MPH) to avoid hitting giant garter snakes and other special-status wildlife.
6. Remove temporary fill and construction debris after construction completion, and, wherever feasible, restore disturbed areas to pre- Project conditions.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.4-10.1 and federal and state endangered species permitting processes would reduce short-term construction-related injury or mortality and loss of habitat for Giant Garter Snakes to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-12: Short-term construction-related habitat loss and injury or mortality of individual western pond turtles**

#### *Discussion*

Project construction would result in a temporary loss and disturbance of aquatic and upland western pond turtle habitat during dewatering, site preparation, and construction. Site preparation and construction activities have the potential to obstruct the movement; decrease prey base; and result in the direct disturbance, displacement, injury and/or mortality of western pond turtles present. Additionally, an accidental chemical and/or petroleum spill during construction could result in the mortality or injury of western pond turtles and prey species. Short-term injury or mortality of individual western pond turtles as a result of site preparation and construction activities would be significant. Implementation of Mitigation Measure 3.4-12.1, which requires surveys for, and if necessary safe transfer of, western pond turtles out of harm's way, and Mitigation Measure 3.2-1.2, which provides a protocol for accidental spills, would reduce this potential impact.

#### *Mitigation*

##### *Mitigation Measure 3.4-12.1*

Prior to implementing restoration activities and/or scheduled dewatering, a qualified biologist would survey areas in or adjacent to suitable western pond

turtle aquatic habitat. Western pond turtles found in harm's way would be moved by a qualified biologist to a safe location outside of the work area in a manner consistent with applicable CDFW regulations. A qualified biologist would conduct periodic monitoring of suitable western pond turtle aquatic habitat until ground-disturbing/dewatering activities have ceased in those areas.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.4-12.1 and 3.2-1.2 would reduce short-term construction-related habitat loss and injury or mortality of individual western pond turtles to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.4-14. Short-term, construction-related injury or mortality, take of nests, and loss of nesting and foraging habitat of special-status and migratory birds**

*Discussion*

Removal of valley/foothill riparian habitat during construction of the eastern toe berm and levee breaches would result in short-term impacts to approximately 93 ac of existing valley/foothill riparian habitat that provides suitable habitat for nesting raptors and songbirds. Construction avoids the most valuable riparian habitat on the Project site, but Mitigation Measures 3.4-3.1 and 3.4-14.1 are proposed to reduce impacts on raptors and songbirds.

*Mitigation*

See Mitigation Measure 3.4-3.1 above.

*Mitigation Measure 3.4-14.1*

In order to minimize potential construction related impacts to special-status and migratory birds over the construction period, this mitigation measure includes the following:

1. Site preparation and construction activities should take place outside of nesting season (February 15–August 15) to avoid take via disturbance or destruction of nests or mortality of individuals. If work begins before this period and continues uninterrupted throughout the nesting season, the

- consistent disturbance may deter birds from nesting at the site and prevent take.
2. If work must take place during March 15 – August 15, a pre-construction survey would be conducted within 14 days prior to the initiation of construction activity by a qualified biologist to identify nesting Swainson's Hawks within 0.5 mi of the construction footprint. If active Swainson's Hawk nests are found, appropriate non-disturbance buffers and avoidance measures would be developed in coordination with CDFW to avoid disturbance of nesting Swainson's Hawks based on individual bird behavior and construction-related disturbance that occurs. Surveys shall be repeated if a lapse in construction of 14 days or greater occurs. Surveys would be repeated annually if work takes place during subsequent nesting seasons.
  3. If work must take place during April 1–August 31, a pre-construction survey would be conducted within 14 days prior to the initiation of construction activity to identify nesting raptors within 500 ft, and other nesting birds within 100 ft of the construction footprint. Appropriate non-disturbance buffers would be established until nestlings have fledged. Surveys shall be repeated if a lapse in construction of 14 days or greater occurs during the nesting season. Surveys would be repeated annually if work takes place during subsequent nesting seasons.
  4. If work must take place during March 15–August 15 and use of non-disturbance buffers is infeasible, a qualified biologist shall be on-site to monitor active nests. Monitoring requirements would be established in coordination with CDFW. Monitors would have authority to stop work if it appears that Swainson's Hawk nests are disturbed by construction activity, and CDFW would be contacted for further guidance.
  5. Remove or trim the minimal number of trees to satisfy the Project design. Trimming and removal would take place August 15 to February 15, outside of nesting season.
  6. If construction activity results in take of individual birds or their nests, appropriate mitigation would be determined in coordination with CDFW.
  7. Vehicle speed limits shall not exceed 15 MPH to avoid striking birds.
  8. Remove temporary fill and construction debris after construction completion, and, wherever feasible, restore disturbed areas to pre-project conditions.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.4-3.1, and 3.4-14.1 would reduce short-term, construction-related injury or mortality, take of nests, and loss of nesting and foraging habitat of special-status and migratory birds to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-15. Long-term conversion of nesting and foraging habitat for special-status and migratory birds**

#### *Discussion*

Project construction would result in a long-term loss of nesting and foraging habitat for several special status and migratory birds using Prospect Island. The total long-term loss of nesting and foraging habitat would be approximately 18 ac. The Project would also result in the permanent loss of 44 ac of freshwater emergent wetland, which provides foraging habitat for nesting raptors and nesting and foraging migratory birds. Implementation of Mitigation Measure 3.4-3.1 would reduce these impacts by protecting high value trees for nesting and roosting.

#### *Mitigation*

See Mitigation Measure 3.4-3.1 above.

### *Finding*

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.4-3.1 would reduce long-term conversion of nesting and foraging habitat for special-status and migratory birds to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-17 Short-term, construction-related injury or mortality and loss of roosting and foraging habitat for western red bats**

#### *Discussion*

Site preparation and other Project construction activities may cause individual injury or mortality or loss of suitable roosting and foraging habitat for western red

bats over the two-year construction period. Site preparation would result in the temporary loss of approximately 1,100 ac of freshwater emergent wetland habitat used for bat foraging due to its high insect concentrations, but additional wetland foraging habitat is available nearby. Removal of valley/foothill riparian habitat during construction of the eastern toe berm and levee breaches would result in the loss of approximately 93 ac of suitable roosting habitat for western red bat. Mitigation Measures 3.4-17.1 and 3.4-3.1 would reduce potential impacts.

*Mitigation*

See Mitigation Measure 3.4-3.1 above.

*Mitigation Measure 3.4-17.1*

In order to minimize potential construction related impacts to western red bats over the construction period, this mitigation measure includes the following:

1. Confine clearing of vegetation to only those areas necessary to facilitate construction activities and no greater.
2. A pre-construction survey shall be conducted by a qualified biologist to identify roosting western red bats during the maternity season (May through August). If roosting bats are present, construction activities that involve the removal of mature riparian trees, snags, and remnant structures suitable for roosting shall be timed to avoid bat maternity season (May through August).
3. Wherever feasible the Project design and implementation would avoid potential roosting habitat especially large mature trees like cottonwood and sycamore.
4. Coordinate with CDFW on measures to minimize impacts to individuals.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.4-3.1 and 3.4-17.1 would reduce short-term, construction-related injury or mortality and loss of roosting and foraging habitat for western red bats to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.4-18: Long-term removal of western red bat roosting and foraging habitat**

#### *Discussion*

Project construction would result in a long-term loss of roosting habitat for western red bats at the Project site, including a long-term loss of approximately 41 ac of potential roosting habitat, and 44 ac of freshwater emergent wetland, which provides foraging habitat for western red bats. However, the most valuable riparian habitat will be avoided, and bats will also forage over open water areas. Implementation of Mitigation Measure 3.4-3.1 would ensure high value trees are protected, and reduce these long-term impacts.

#### *Mitigation*

See Mitigation Measure 3.4-3.1 above.

#### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.4-3.1 would reduce long-term removal of western red bat roosting and foraging habitat to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **A.4 Hazards and Hazardous Materials**

### **Impact 3.6-1: Potential effects from abandoned gas wells**

#### *Discussion*

Project construction activities would create a potentially significant hazard to the public and/or the environment if natural gas is released from abandoned wells. Implementation of Mitigation Measure 3.6-1.1 would reduce this potential impact.

#### *Mitigation*

##### *Mitigation Measure 3.6-1.1*

Final construction plans shall be revised to avoid existing conflicts between grading and excavation areas and well locations. Once site dewatering is complete and prior to construction work, a geophysical survey shall be conducted to confirm locations of all known abandoned gas wells (DOGGR 2014), which shall be marked and avoided during construction. Also prior to construction,



DWR shall file an application under the DOGGR Well Review Program and the site would be inspected.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.6-1.1 would reduce potential effects from abandoned gas wells to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.6-2: Potential effects from contaminant migration via existing groundwater monitoring wells**

*Discussion*

Twenty groundwater monitoring wells are located along the levees surrounding the north property, including locations designated for breaching. The wells have the potential to be a direct conduit for vertical movement for any point and non-point pollution of surface waters into the groundwater if the wells are impacted during construction. Implementation of Mitigation Measure 3.6-2.1 would reduce this impact.

*Mitigation*

*Mitigation Measure 3.6-2.1*

The Project design shall incorporate the groundwater monitoring well locations into the grading and access plans and design any construction at those locations to avoid adversely affecting the wells. If any of the existing groundwater wells are located at planned breach sites, they shall be properly destroyed and capped. Wells shall be avoided or properly destroyed and/or replaced as required by Section 13750 through 13755 (Article 2, Chapter 7, Division 7) of the California Water Code.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.6-2.1 would reduce potential effects from contaminant migration via existing groundwater monitoring wells to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.6-6: Potential soil or water contamination from onsite equipment storage and fueling***Discussion*

Equipment refueling and maintenance activities could create a potentially significant hazard to the public and/or the environment due to potential fuel spills during routine transport and refueling, or maintenance of construction equipment. Implementation of Mitigation Measure 3.6-6.1 would reduce this impact.

*Mitigation**Mitigation Measure 3.6-6.1*

DWR's standard construction contract Section 01570 requires contractors to conduct fueling and lubrication of equipment in a manner that affords maximum protection against spills and evaporation. Consistent with this standard, the contractor for the Project shall be required to prepare an environmental protection plan, which shall include spill control and contaminant prevention components. The contractor shall be required to have spill kits on-site and to clean up any spill as soon as reasonably possible.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.6-6.1 would reduce potential soil or water contamination from onsite equipment storage and fueling to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.6-7: Potential effects on human health due to the short-term use of aquatic-approved herbicides prior to site construction***Discussion*

Following initial dewatering during Project construction, application of approved aquatic herbicides could result in adverse effects on human health. Although the Project site would be dewatered Prior to herbicide application, implementation of Mitigation Measure 3.6-7.1 would reduce this impact to less than significant.

*Mitigation**Mitigation Measure 3.6-7.1*

Herbicides shall be applied under the supervision of a certified pesticide applicator. Certified pesticide applicators are trained to ensure that algaecides and aquatic herbicides are applied at rates consistent with label requirements and in a manner that avoids potential adverse effects including, effects to human health. Prior to herbicide application, DWR or its contractor will obtain all relevant permits required by the federal, state, and local agencies.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.6-7.1 would reduce potential effects on human health due to the short-term use of aquatic-approved herbicides prior to site construction to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## A.5 Air Quality

### **Impact 3.7-1: Generation of criteria pollutant emissions that could contribute to air quality violations**

#### *Discussion*

In addition to dust generated by Project construction, short-term NO<sub>x</sub> emissions from diesel powered equipment used for Project construction would result in exceedances of thresholds set forth by the Yolo Solano Air Quality Management District (YSAQMD). Implementation of Mitigation Measure 3.7-1.1 to reduce ozone precursors from construction equipment exhaust, Mitigation Measure 3.7-1.2 to reduce fugitive dust during construction, and Mitigation Measure 3.7-1.3 requiring an offset fee for NO<sub>x</sub> emissions above YSAQMD thresholds for attainment and maintenance of the national and state ambient air quality standards (AAQS) would reduce this impact.

Note that short-term air quality impacts (Impacts 3.7-1 and 3.7-2) were originally assessed as *significant and unavoidable* in the 2016 DEIR; however, these significance determinations were revised as part of the 2019 Partial Recirculated DEIR, following coordination with the Yolo-Solano Air Quality Management District (YSAQMD) and the addition of Mitigation Measure 3.7-1.3 requiring an offset mitigation fee.

#### *Mitigation*

**Mitigation Measure 3.7-1.1**

The Project contractors shall implement the techniques listed in Table 3.7-8, below, to reduce impacts of ozone precursors such as NO<sub>x</sub> and ROG, and PM<sub>10</sub> and PM<sub>2.5</sub> emissions.

**Table 3.7-1. Techniques for Reducing Construction Equipment Exhaust**

	<b>Technique</b>
1	Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to five minutes [required by California Code of Regulations, Title 13, sections 2449(d)(3) and 2485]. Provide clear signage that posts this requirement for workers at the entrances to the site.
2	Maintain all construction equipment in proper working condition according to manufacturer's specifications. The equipment must be checked by a certified mechanic and determine to be running in proper condition before it is operated.

**Mitigation Measure 3.7-1.2**

Section 6.1 of the YSAQMD CEQA Handbook (YSAQMD 2007) presents a list of feasible measures to control fugitive dust from construction-sites. Common techniques for controlling dust (PM<sub>10</sub>) focus on minimizing dispersal of earth materials during excavation, transport, and disposal activities. Watering and covering (e.g., tarps, surfactants, and vegetation) are frequently relied on to minimize dust at construction-sites. The Project contractors shall implement the following techniques for controlling dust (Table 3.7-9). The implementation details of these techniques shall be adjusted based on field conditions.

**Table 3.7-2. Techniques for Reducing Fugitive Dust**

<b>Technique</b>	<b>Source Category</b>	<b>Effective</b>
Water all active construction sites (including soil piles, graded areas, unpaved parking areas, staging areas, and access roads) to reduce fugitive dust. Frequency should be based on the type of operation, soil condition, and wind exposure.	Fugitive emissions from active, unpaved construction areas	50%
Haul trucks shall maintain at least 2 ft of freeboard.	Spills from haul trucks	90%
Any haul trucks hauling dirt, sand, or loose materials that would be traveling along freeways or major roadways should be covered.	Spills from haul trucks	90%
Limit vehicle speeds on unpaved roads to 15 mi per hour (MPH).	Unpaved roads	

Technique	Source Category	Effective
Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days).	Wind erosion from storage piles	Up to 80%
Plant vegetative ground cover in disturbed areas as soon as possible.	Wind erosion from storage piles	5–99% (based on planting plan)
Cover inactive storage piles.	Wind erosion from storage piles	Up to 90%
Sweep streets if visible soil material is carried out from the construction site.	On-road entrained PM <sub>10</sub>	14%
Treat accesses to a distance of 100 ft from the paved road with a 6- to 12-in layer of wood chips or mulch.	Mud/dirt carryout on-road entrained PM <sub>10</sub>	27–33%
Treat accesses to a distance of 100 ft from the paved road with a 6-in layer of gravel.	Mud/dirt carryout on-road entrained PM <sub>10</sub>	42–52%

Note: The effectiveness of two or more mitigation measures that address the same source of emissions would not be the sum of both measures.

### *Mitigation Measure 3.7-1.3*

DWR and/or its contractor shall monitor construction activities throughout the construction period and pay an off-site mitigation fee. Construction activities data will be collected, emissions associated with construction activities will be calculated, and these data will be reported to Yolo Solano Air Quality Management District (YSAQMD). The specific details of construction monitoring and reporting will be determined in consultation with the YSAQMD. Construction activities data will include, but are not limited to the following items:

1. Barges – distance traveled by loaded and unloaded vessels, horsepower, idling time, fuel use and fuel type.
2. Construction equipment – type and number, horsepower, hours of operation.
3. Haul trucks (heavy-duty trucks) – number of trips, and total trip distance.
4. Construction workers—number of construction workers per day.

YSAQMD shall collect the construction activity and emissions reports for record keeping and monitoring purposes. The total offset mitigation fee will be calculated based on actual construction activities. DWR will work in coordination with YSAQMD to assess the specific mechanisms associated with construction monitoring, emission calculations, and payment logistics.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.7-1.1, 3.7-1.2, and 3.7-1.3 would reduce generation of criteria pollutant emissions that could contribute to air quality violations to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.7-2: Conflict with or obstruct applicable general plans or regional air quality plans**

*Discussion*

As discussed in the 2019 FEIR, to address non-attainment of ozone levels, YSAQMD and four other air districts in the Sacramento Valley Air Basin (SVAB) jointly prepared and adopted the Regional Ozone Plan. YSAQMD's ten-tons-per-year thresholds for the ozone precursors (ROG and NO<sub>x</sub>) are consistent with this Regional Ozone Plan. Implementation of Mitigation Measures 3.7-1.1 and 3.7-1.3 would reduce and offset construction-related emissions of ozone precursors. This would bring the net emissions into compliance with the Regional Ozone Plan.

*Mitigation*

See Mitigation Measures 3.7-1.1 and 3.7-1.3 above.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.7-1.1 and 3.7-1.3 would reduce the potential to conflict with or obstruct applicable general plans or regional air quality plans to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## A.6 Noise

### Impact 3.10-1: Potential for short-term noise disturbance to nearby residents

#### *Discussion*

Proposed construction activities would result in onsite short-term construction noise that could impact sensitive receptors. The estimated maximum construction noise level of 90 dBA L<sub>Max</sub>, and the long-term construction noise level of 70 L<sub>dn</sub>, are well above the ambient levels of 59 dBA L<sub>Max</sub> and 46 L<sub>dn</sub> respectively. Mitigation Measure 3.10-1.1 ensures noise sources are located as far away from the limited nearby sensitive receptors as possible. With regards to offsite noise impacts, the hauling of materials by truck is not expected to add more than three dBA to additional noise levels along Holland Road and Highway 84.

#### *Mitigation*

##### *Mitigation Measure 3.10-1.1*

The following mitigation measure would reduce the noise impact to residences in the Project area to a less-than-significant level:

1. The construction contractor shall locate stationary noise sources as far from existing residences as possible.
2. The DWR shall identify a disturbance coordinator, and the name and phone number of this person shall be conspicuously be posted at the Project site in an area that can be accessed by the general public. If noise complaints are received, the disturbance coordinator shall respond to the complaints and shall take the steps necessary to mitigate the problem.

#### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.10-1.1 would reduce the potential for short-term noise disturbance to nearby residents to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## A.7 Cultural Resources

### Impact 3.13-2: Inadvertent discovery of a shipwreck during in-water construction

#### *Discussion*

Although there are no known shipwrecks in the vicinity of proposed breach excavations, construction activities may result in damage to an important archaeological resource. In the event that a shipwreck is discovered during Project construction, implementation of Mitigation Measure 3.13-2.1 would reduce this impact.

#### *Mitigation*

##### *Mitigation Measure 3.13-2.1*

The title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the CSLC (PRC Section 6313[a]). In the case of an inadvertent discovery of a submerged shipwreck or related artifacts, all work must cease in the immediate vicinity of the find and DWR cultural resources staff and the USACE archaeologist shall be notified immediately in order to initiate consultation with the CSLC staff within two business days of such discovery pursuant to CFR Title 36 *Parks, Forests, and Public Property*, Chapter VIII *Advisory Council on Historic Preservation*, Part 800.13 (b)(3).

PRC 6313 (c) states any submerged historic resource remaining in state waters for more than 50 years shall be presumed to be archaeologically or historically significant. If the DWR and U.S. Army Corps of Engineers (USACE) archaeologist, in consultation with the CSLC staff, determine that a historical resource may be present within the Project site, DWR shall retain the services of a qualified maritime archaeological consultant. The maritime archaeological consultant would recommend whether the discovery is an historical/archaeological resource that retains sufficient integrity and is of potential historical or scientific significance. The maritime archaeological consultant also would recommend as to what action, if any, is warranted and would document all recommendations in writing. Based on this information, the USACE, in consultation with the CSLC, may require additional measures to be implemented by DWR.

Measures might include preservation *in situ* of the historical resource or a data recovery program. The Project maritime archaeological consultant shall submit a



Final Historical Resources Report to DWR, the USACE, and the CSLC staff. This report shall include an evaluation of the historical significance, with a description of the archaeological and historical research methods employed in any archaeological data recovery program undertaken.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.13-2.1 would reduce the potential inadvertent discovery of a shipwreck during in-water construction to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**Impact 3.13-3: Impacts to unknown archaeological resources**

*Discussion*

Although no known prehistoric or historic-era archaeological resources meeting California Register of Historical Resources (CRHR) or National Register of Historic Places (NRHP) eligibility criteria were previously recorded inside the Project area or found during archaeological surveys conducted at Prospect Island, construction activities may result in damage to an important archaeological resource. Should unknown archaeological resources be encountered during ground-disturbing activities during the construction and post-construction phases, Mitigation Measure 3.13-3.1 would be implemented.

*Mitigation*

*Mitigation Measure 3.13-3.1*

To reduce potential impacts to unknown archaeological resources, the following measures shall be implemented before the start of ground-disturbing activities:

1. An archaeologist shall conduct cultural resources awareness training for contractors and staff prior to the start of construction.
2. If historical or unique archaeological resources are discovered during construction, work must be halted within 100 ft of the find until a qualified archaeologist meeting the Secretary of the Interior's Standards for archaeologists (NPS 1997) visits the site and assess the significance of the resource. Work may continue on other parts of the Project while evaluation and mitigation takes place (CEQA Guidelines Section 15064.5(f)). After the assessment is completed, the archaeologist shall submit a report describing the significance of the discovery with treatment

- recommendations. If the find is determined to be an historical or unique archaeological resource, time allotment and funding sufficient to allow for implementation of avoidance measures or appropriate mitigation must be available.
3. Should unique archaeological resources be found, the resources shall be treated in compliance with Public Resources Code Section 21083.2. If the Project can be modified to accommodate avoidance, preservation of the resource is preferred. Data recovery of the damaged portion of the resource also shall be performed pursuant to PRC Section 21083.2(d).

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.13-3.1 would reduce potential impacts to unknown archaeological resources to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

### **Impact 3.13-4: Impacts to unknown human burials**

#### *Discussion*

Although no human remains, or archaeological contexts have been identified in the Project area, construction activities have the potential to result in the discovery or inadvertent damage of human remains. In the event of discovery, Mitigation Measure 3.13-4.1 would be implemented.

#### *Mitigation*

##### *Mitigation Measure 3.13-4.1*

If human remains are found, such remains are subject to the provisions of California HSC Section 7050.5-7055. The requirements and procedures shall be implemented, including immediately stopping work in the vicinity of the find and notification of the Solano County Coroner. The process for notification of the California NAHC and consultation with the individual(s) identified by the NAHC as the “most likely descendant” is set forth in Section 5097.98 of the California Public Resources Code. Work can restart after the remains have been investigated and appropriate recommendations have been made for the treatment and disposition of the remains.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.13-4.1 would reduce potential impacts to unknown human burials to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **A.8 Public Services**

### **Impact 3.15-1: Potential conflict with existing police and fire protection services**

#### *Discussion*

Although Prospect Island has no existing housing or commercial uses and the Project does not include such uses that would generate additional demand for police or fire protection, construction traffic and staff would create some additional demand during the construction period. Implementation of Mitigation Measure 3.17-1.1 would reduce this impact.

#### *Mitigation*

See Mitigation Measures 3.17-1.1 below.

#### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.17-1.1 would reduce any potential conflict with existing police and fire protection services to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **A.9 Recreation**

### **Impact 3.16-1: Short-term construction-related impacts to recreational boating in Miner Slough and Arrowhead Harbor Marina**

#### *Discussion*

Use of the Arrowhead Harbor Marina and Miner Slough may be limited, or prohibited, during levee breaching activities due to safety hazards. Additionally, leased recreation access on the south property may not be allowed during the

construction period due to safety hazards. Mitigation Measure 3.16-1.1 would ensure safe boating during construction.

### *Mitigation*

#### *Mitigation Measure 3.16-1.1*

Speed limit zones or channel closure shall be established by DWR during in-water construction along Miner Slough. The construction contractor shall post and distribute notifications at Arrowhead Harbor Marina and other local boating access sites of any scheduled imposition of boating safety speed limits or channel closure 14–30 days in advance of water-based construction work.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.16-1.1 would reduce short-term construction-related impacts to recreational boating in Miner Slough and Arrowhead Harbor Marina to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## A.10 Transportation and Traffic

### Impact 3.17-1: Potential traffic impacts during construction

#### *Discussion*

Although local roadways are currently used by large trucks and farm vehicles like those for the Project, the potential number of trips generated (up to 65 round-trips per work-day) means mitigation is required to reduce the potentially significant impact to local roads. Implementation of a traffic control plan (Mitigation Measure 3.17-1.1) and local road repairs if required (Mitigation Measure 13.17-1.2) are required mitigation.

#### *Mitigation*

##### *Mitigation Measure 3.17-1.1*

The construction contractor shall submit a traffic control plan to the California DWR for review and approval that shall limit impacts to affected land owners and businesses. The control plan shall include temporary measures, such as the following:

1. Advance public notification signage at areas that might be affected by traffic going to the Project site prior to the start of construction activities, to alert drivers to pending construction work and traffic restrictions.
2. Notification to Arrowhead Harbor Marina, the Port of West Sacramento, and property owners adjacent to haul routes used for site access during construction, 10 days prior to initiation of construction traffic.
3. Temporary railing, barricades, crash cushions, signage, lighting and flashing lights, pavement markings, and the service of qualified flaggers; all as required to provide for the safe passage of public traffic.
4. Other safety measures as required to control vehicular and pedestrian traffic.

*Mitigation Measure 3.17-1.2*

Before- and after-Project construction an assessment of road surface conditions, and photographic or videographic documentation, will be conducted by DWR and its contractor at the following locations, if used for site access during construction: segments of Courtland Road and/or Teal Road, Road 107, Holland Road, as well as the DWSC levee. If local road conditions deteriorate during construction, DWR or its construction contractor will implement necessary repairs to bring the road up to pre-Project construction conditions.

*Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measures 3.17-1.1 and 3.17-1.2 would reduce potential traffic impacts during construction to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

**A.11 Utilities**

**Impact 3.18-2: Potential for adverse effects on existing utilities**

*Discussion*

Removal of utilities in a state of disrepair, including inactive PG&E distribution lines, would not have adverse impacts. Although there are no active utilities on Prospect Island, it is possible that some unknown or unmarked subsurface utilities may exist on the site (i.e., old pipelines or septic tanks) that could be

encountered during grading operations. This impact would be reduced by implementation of Mitigation Measure 3.18-2.1.

### *Mitigation*

#### *Mitigation Measure 3.18-2.1*

In order to reduce the potential for adverse effects to existing utilities, the following actions will be taken by DWR and its contractor prior to any ground disturbing activities:

1. Coordinate with local utility owners to discuss the potential for the existence of underground utilities within the Project area.
2. If utility owners verify the potential for underground utilities, a qualified person shall perform a subsurface survey to identify the exact location of underground utilities within the Project area, so those utilities may be avoided. If the utilities cannot be avoided, they shall be removed in a manner consistent with CalOSHA Title 8, Sections 1539 through 1541.1.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that Mitigation Measure 3.18-2.1 would reduce the potential for adverse effects on existing utilities to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **A.12 Cumulative Impacts**

This EIR uses the “List Approach”, which involved developing a list of past, present, and probable future projects producing related or cumulative impacts. The list includes planned, approved, or reasonably foreseeable future: wetland restoration, structural fish habitat enhancement projects, resource management projects and programs, flood protection, water supply, and navigation projects and programs, and maintenance projects. Using the list, resource areas are assessed in the 2019 FEIR for cumulatively considerable impacts. The following resource areas would have *beneficial or less than significant* cumulative impacts, thus are not considered further below: Hydrology; Aquatic Biological Resources; Wetland and Terrestrial Biological Resources; Geology and Soils; Hazards and Hazardous Materials; Greenhouse Gases; Mineral Resources; Aesthetics; Agricultural Resources; Cultural Resources; Land Use and Planning/Population and Housing; Public Services; Recreation; Transportation and Traffic; Utilities;

and Climate Change Resiliency. The three resource areas (Water Quality, Air Quality, and Noise) described below require mitigation to ensure adverse effects would not be cumulatively considerable.

## **Water Quality**

### *Discussion*

There is potential for significant cumulative impacts due to short-term construction-related increases in turbidity, contaminants, and herbicides. Mitigation measures described in Part 1.A.1 *Water Quality (Surface and Groundwater)* of these *Findings* would reduce the impact, as would similar requirements to minimize impacts to water quality during construction activities for other projects.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that mitigation measures described in Part 1.A.1 *Water Quality (Surface and Groundwater)* of these *Findings* would reduce cumulative water quality impacts to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **Air Quality**

### *Discussion*

The SVAB was designated as non-attainment for ROG and NO<sub>x</sub>, therefore these pollutants are of regional concern. A project with ROG or NO<sub>x</sub> emissions that exceed the YSAQMD threshold is considered to have significant cumulative impact. As discussed for EIR Impact 3.7-1 in Section A.6 *Air Quality* above, the Project would generate annual NO<sub>x</sub> emissions exceeding the 10 ton per year YSAQMD threshold; however, Mitigation Measures 3.7-1.1 and 3.7-1.3 would reduce this impact.

### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that mitigation measures described in Part 1.A.6 *Air Quality* would reduce cumulative air quality impacts to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant

effects on the environment (Public Resources Code Section 21081(a)(1); CEQA Guidelines Section 15091(a)(1)).

## **B. Potentially Significant and Unavoidable Effects**

### **Impact 3.4-1: Short-term impacts to perennial aquatic habitats and wetland communities from site preparation**

#### *Discussion*

Site dewatering and site preparation activities required for Project construction is expected to result in temporary losses of up to 340 ac of non-tidal perennial aquatic and up to 1,100 ac of non-tidal freshwater perennial emergent wetland habitat for a period of approximately two years. This would reduce the local availability of wetland habitat functions, such as rearing and foraging by native fish and wildlife species. Although site replanting, as well as natural vegetation recruitment, following breaching would reduce the time required to reestablish wetland habitats, the short-term impacts to perennial aquatic habitats and wetland communities would be *significant and unavoidable*.

It is anticipated that emergent vegetation would colonize intertidal elevations within approximately the first three years post restoration and expand laterally into the shallow subtidal elevations within approximately 10–15 years following breaching.

#### *Mitigation*

No mitigation measures were identified that could reduce these impacts to *less than significant*.

#### *Finding*

For the reasons set out in the 2019 FEIR, DWR finds that potential short-term impacts to perennial aquatic habitats and wetland communities from site preparation would be *significant and unavoidable*. There are no feasible mitigation measures or alternatives that could reduce these impacts to less than significant. Therefore, specific economic, legal, social, technological, or other considerations were identified that make infeasible the mitigation measures or project alternatives identified in the 2019 FEIR (Public Resources Code Section 21081(a)(3); CEQA Guidelines Section 15091(a)(3)).



## Part II: FINDINGS RELATED TO PROJECT ALTERNATIVES

CEQA Guidelines Section 15126.6 *Consideration and Discussion of Alternatives to the Proposed Project* states:

- “(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives...”*
- “(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.”*

In addition, CEQA Guidelines Subsection 15091(a)(3) states that one of the findings an agency can make regarding significant environmental effects identified in the final EIR is that:

*“[S]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.”*

Subsections 15091(c) and (d) state that a finding made pursuant to subsection 15091(a)(3) must be supported by substantial evidence and the finding shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

The findings in Part I.B identified Impact 3.4.1: *Short-term impacts to perennial aquatic habitats and wetland communities from site preparation as significant and unavoidable.*

Except for short-term impacts to perennial aquatic habitats and wetland communities due to site dewatering for construction, there would be no significant and unavoidable adverse impacts due to the Project. No feasible mitigation measures were identified that could reduce these impacts to *less than*

*significant*. No findings identified alternatives, other than the No Project Alternative, that could reduce the impacts to a *less than significant* level.

The No Project Alternative would not enable DWR to accomplish its fundamental project purpose and overarching goal—to fulfil tidal habitat restoration at Prospect Island as part of its legal obligation under Reasonable and Prudent Alternative (RPA) 4 of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) (USFWS 2008), or any of the specific Project objectives identified from the outset in the Notice of Preparation (DWR 2013) and restated in the EIR Executive Summary and Section 1.2 Proposed Project Objectives. The six objectives are to:

1. Enhance primary and secondary productivity and food availability for Delta Smelt and other native fishes within Prospect Island and surrounding Delta waterways.
2. Increase the quantity and quality of salmonid rearing habitat within and in the areas surrounding Prospect Island.
3. Increase the amount and quality of habitats to support other listed species, to the extent they can be supported by site conditions and natural processes.
4. Provide other ecosystem benefits associated with increased Delta freshwater tidal marsh habitat, including water quality enhancement, recreation, and carbon sequestration.
5. To the greatest extent practical, promote habitat resiliency to changes in future Delta conditions, such as land use conversions, climate change, sea level rise, and invasive species.
6. Avoid promoting conditions adverse to Project biological objectives, such as those that would favor establishment or spread of invasive exotic species.

As the No Project Alternative would not enable DWR to achieve its overarching goal or above-listed objectives, the No Project Alternative is not a feasible alternative. The EIR examines three “build” alternatives, in addition to the No Project Alternative.

The Proposed Project in the EIR included two breaches at a northern and southern location, as well as removal of a portion of an internal cross-levee separating the north and south properties of Prospect Island (see EIR Figure 2.2-2). After reviewing public comments and considering the impacts and benefits of

the Alternatives, DWR plans to move forward with Alternative 2 (two breaches at a central and southern location and a weir, as well as removal of a portion of an internal cross-levee; see EIR Figure 4.5-1) instead of the Proposed Project. As discussed in EIR Section 4.7 *Comparison of Alternatives and Identification of Environmentally Superior Alternative*, environmental analysis generally showed that environmental effects for most of the resources would be similar among the three project alternatives. However, Alternatives 2 and 3 (three breaches and no weir) are both environmentally superior compared with the Proposed Project because neither would require dredging of the Miner Slough spur channel, resulting in reduced short-term construction-related impacts to water quality and aquatic species in Miner Slough. Alternative 2 is slightly more beneficial than Alternative 3 due to the proposed weir installation, instead of a breach, in northern part of the property, which reduces levee excavation required.

Due to the weir, Alternative 2 would result in slightly lower export of primary productivity to surrounding Delta waterways as compared to a breach in this location under the Proposed Project and Alternative 3, and would also result in lower potential export of water quality constituents of concern (e.g., DOC, methylmercury) to adjacent waterways. Although Alternative 2 would result in a greater conversion of valley/foothill riparian habitat to tidally influenced wetland compared to the Proposed Project (see 2019 FEIR Table 2.2-2 and Table 4.5-1), increased amounts of freshwater tidal emergent marsh would be relatively more beneficial to wetland-associated species (e.g., giant garter snakes, western pond turtles, special-status migratory birds, and western red bats). With regard to all of the EIR resource areas, impacts identified for Alternative 2 are the same as, or less than, those identified for the Proposed Project and Alternative 3. Except for Mitigation Measure 3.2-2.1 relating to dredging activities, the mitigation measures that were developed for the Proposed Project also apply to Alternatives 2 and 3.

### *Finding*

DWR has identified short-term impacts that are *significant and unavoidable* for all the “build” alternatives. No alternative, other than the No Project Alternative, has been identified that would avoid, or substantially lessen, any of the significant effects of the project. As set forth in the 2019 FEIR, the No Project Alternative would not meet the fundamental project purpose, or any of the specific objectives (i.e., the most basic of objectives) of the Prospect Island Tidal Habitat Restoration Project that have been identified from the outset in the NOP and subsequent CEQA documents. Therefore, specific economic, legal, social, technological, or other considerations make the No Project Alternative infeasible

(Public Resources Code Section 21081(a)(3); CEQA Guidelines Section 15091(a)(3)).

### Part III: STATEMENT OF OVERRIDING CONSIDERATIONS

The California Environmental Quality Act (CEQA) Guidelines Section 15093 states:

*“(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable”.*

*(b) When the lead agency approves a project, which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.”*

Part I.A. of this document identifies the Project's impacts that are potentially significant that can be reduced to *less than significant*. Part I.B. identifies the Project's impacts that are *significant and unavoidable*. Part II explains why DWR concluded that there are no feasible alternatives. In this Statement of Overriding Considerations, the Department discusses the single *significant and unavoidable* environmental impact (Impact 3.4.1: *Short-term impacts to perennial aquatic habitats and wetland communities from site preparation*) of the Project to determine whether it is acceptable in light of the environmental, economic, legal, social, technological, and other considerations.

#### *Fundamental Project Purpose and Objectives*

The landscape position and identified ecological functions of the Cache Slough Complex, where the Project is located, in combination with its sparse urban development and infrastructure, relatively intact hydrologic connections to tidal influence, and little land subsidence as compared with the central Delta, have made the region a focus for ecosystem restoration. The Project is intended to partially fulfill the 8,000 ac tidal habitat restoration obligations of DWR contained within Reasonable and Prudent Alternative (RPA) of the U.S. Fish and Wildlife Service (USFWS) Delta Smelt Biological Opinion (BiOp) for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) (USFWS 2008). Because restoration of tidal habitat would

provide access for salmonid rearing at Prospect Island, the Project would also be consistent with RPA I.6.1 of the National Marine Fisheries Service (NMFS) Salmonid BiOp for SWP/CVP operations (NMFS 2009). The basic project purpose and overarching goal of the Project is to restore tidal action to the interior of Prospect Island as part of DWR's legal obligation. The specific objectives of the Prospect Island Tidal Habitat Restoration Project are listed in Part II above.

### *Finding*

DWR, in determining whether or not to approve the Project, balanced the biological, water quality, human health, and geological benefits against the unavoidable short-term impact to perennial aquatic habitats and wetland communities and finds that the Project cannot be implemented in a way that accomplishes the fundamental project purpose or any of the specific objectives of the Project without resulting in the *significant and unavoidable* impact. Based on the following determinations, DWR finds that the *significant and unavoidable* short-term environmental impact to perennial aquatic habitats and wetland communities is acceptable because the long-term ecological benefits of the Project far outweigh the *significant and unavoidable* short-term ecological impact. In the long-term, the Project would have net *beneficial* ecological and other effects.

DWR also finds that:

- The habitat restoration activities of the Project would restore tidal connection to Prospect Island, in partial fulfillment of the 8,000-ac tidal habitat restoration obligations of DWR contained within Reasonable and Prudent Alternative (RPA) 4 of the U.S. Fish and Wildlife Service Delta Smelt Biological Opinion for long-term coordinated operations of the State Water Project (SWP) and the federal Central Valley Project (CVP) (USFWS 2008). Because salmonid rearing habitat would be restored, it would also be consistent with RPA I.6.1 of the National Marine Fisheries Service Salmonid Biological Opinion for the SWP and CVP operations (NMFS 2009).
- DWR must operate in a complex regulatory environment, conforming to multiple federal and state requirements that sometimes conflict. In many respects, DWR is required by Federal or State laws to take certain actions, including the aforementioned tidal habitat restoration obligations, and noncompliance is not a legally feasible option.

- The Project would have significant long-term benefits to aquatic, terrestrial (western pond turtle), and avian (foraging and migratory birds) biological resources by restoring tidal habitat and improving seasonal water temperatures for aquatic species. The Project would have beneficial effects to human health by reducing environmental hazards. Beneficial geological impacts would also help to reverse existing land subsidence, offset future subsidence, and promote resiliency.
- The only significant and unavoidable environmental impact assessed is short-term, concerning impacts to perennial aquatic habitats and wetland communities from site dewatering necessary to allow construction access and invasive aquatic plant species control.

## REFERENCES

DOGGR. 2014. Well Finder Web Viewer. California Resources Agency, Department of Conservation, Division of Oil, Gas, and Geothermal Resources. <http://maps.conservation.ca.gov/doggr/index.html>

DWR. 2013. Notice of preparation of a draft environmental impact report, Prospect Island Tidal Habitat Restoration Project. Sacramento.

Fisheries Hydroacoustic Working Group. 2008. Agreement in principle for interim criteria for injury to fish from pile driving activities. Memorandum.

NMFS (National Marine Fisheries Service). 2009. Biological opinion and conference opinion on the long-term operations of the Central Valley Project and the State Water Project. Prepared for U.S. Bureau of Reclamation. National Marine Fisheries Service, Southwest Region, Long Beach, California.

USFWS. 2008. Formal Endangered Species Act consultation on the proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP). Biological opinion. Prepared by USFWS, California and Nevada Region, Sacramento, California for U.S. Bureau of Reclamation, Central Valley Operations Office, Sacramento. <http://www.fws.gov/sfbaydelta/cvp-swp/cvp-swp.cfm>