



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 22, 2019

Governor's Office of Planning & Research

AUG 22 2019

STATE CLEARINGHOUSE

Mr. Daniel Wilson
Reclamation District No. 3
Post Office Box 1011
Walnut Grove, CA 95690

Dear Mr. Wilson:

Subject: Grand Island Levee Seepage Cutoff Wall Project, Initial Study/Mitigated Negative Declaration, SCH #2019079082, Sacramento County

The California Department of Fish and Wildlife (CDFW) received an IS/MND from Reclamation District No. 3 for the Grand Island Levee Seepage Cutoff Wall Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. [Fish and Game Code, §§ 711.7, subd. (a) and 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

PROJECT DESCRIPTION SUMMARY

Proponent: Reclamation District No. 3

Objective: The objective of the Project is to repair approximately 1,250 linear feet of levee on the west side of Grand Island, along the left river bank of Steamboat Slough between stations 245+00 and 265+00 (between Levee Mile 4.76 and 4.96). A cutoff wall will be constructed to address seepage problems. Primary Project activities include clearing the site of ruderal plants, debris, and major voids or variability in the levee slope and temporarily demolishing the County road (Grand Island Road). The cutoff wall will be constructed using one of the following cutoff wall construction methods: slurry-supported open trench, vertical or horizontal mixing, or vertical chain mixing. For this Project, it is assumed a soil-bentonite cutoff wall will be constructed using the slurry-supported open trench construction method. The slurry-supported trench construction method consists of the following steps: 1) degrading the existing levee by approximately 1/3 its landside height (6 to 8 feet), 2) excavating a 3-foot-wide by 60-foot-deep trench along the centerline of the levee, 3) introducing a bentonite-water slurry into the trench to prevent collapse of the trench, 4) mixing the permanent backfill on the working platform using material excavated from the trench and the temporary slurry, 5) backfilling the trench with the permanent cutoff wall material, 6) placing a temporary soil cap on the completed cutoff wall with settlement monitoring plates, 7) allowing three to four weeks for settlement of the cutoff wall, 8) removing the temporary cap and placing a permanent cap, and 9) reconstructing the levee embankment and road. The levee will be reconstructed with stockpiled material augmented with import levee fill. Disturbed landside and waterside areas will be revegetated with native grasses.

Location: Near Walnut Grove in Sacramento County on Grand Island. The island is accessible from the north via State Highway 160/Steamboat Slough Bridge, from the east via Walnut Grove Road and Walnut Grove Bridge, from the south via Highway 160/Isleton Bridge, and from the west via State Route 220 and California Department of Transportation ferry service across Steamboat Slough. Grand Island Road spans the western levee of Grand Island and provides access to the Project area. GPS coordinates are 38°14'49.32"N, -121°36'3.00"W.

Timeframe: Three to four months within the time frame of May 1 to November 30, 2020

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District No. 3 in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that an MND is appropriate for the Project.

COMMENT 1:

1.4.2 Cutoff Wall Construction Methods, Page 6

The IS/MND states: "The cutoff wall will be constructed using one of the following cutoff wall construction methods: slurry-supported open trench, vertical or horizontal mixing, or vertical

chain mixing." It goes on to identify the slurry-supported open trench construction method as the most likely to be chosen.

Provide brief descriptions and construction steps for the vertical or horizontal mixing and the vertical chain mixing to allow assessment of impacts to wildlife or habitats.

COMMENT 2:

BIO-4, Page 9

BIO-4 states: "In order to avoid take (Fish and Game Code § 86) of protected raptors (Fish and Game Code § 3503.5), a pre-construction raptor nest survey will be conducted within a 0.24-mile buffer of the Project Area, and within 15 days prior to the beginning of construction activities by a CDFW-approved biologist in order to identify active nests in the Project vicinity..."

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully Protected Species, such as white-tailed kite (*Elanus leucurus*) and northern harrier hawk (*Circus cyaneus*) may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Suitable Swainson's hawk nesting habitat is present within or surrounding the proposed Project area; therefore, the CEQA document should specify that protocol-level surveys will be conducted during the hawk nesting season, which is generally from March 1 until September 15. The CEQA document should also include a description of the survey area, survey methodology and timing of each survey visit. Surveys should be conducted according to the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). CDFW strongly recommends that the TAC survey method be strictly followed by starting early in the nesting season (late March to early April) in order to maximize the likelihood of detecting an active nest. Surveys should be conducted within a minimum 0.25-mile radius of the proposed Project area and should be completed for at least the two survey periods immediately prior to initiating any Project-related construction work. Raptor nests may be very difficult to locate during egg-laying or incubation, or chick brooding periods (late April to early June) if earlier surveys have not been conducted. These full-season surveys may assist with Project planning, development of appropriate avoidance, minimization and mitigation measures, and may help avoid any Project delays.

In order to avoid "take" or adverse impacts to Swainson's hawk in the event that an active nest is found during surveys, CDFW recommends avoiding all Project-related disturbance within a minimum of 0.25 miles (and up to 0.5 miles depending on site-specific conditions) of a nesting Swainson's hawk during the nesting season. Please refer to the CDFW guidance

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document on Swainson's hawk, *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*, which is available at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>, on take avoidance, minimization and mitigation measures.

If "take" or adverse impacts to Swainson's hawk or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA Permit must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

COMMENT 3:

Lake and Streambed Alteration Agreement

This Project will place slurry through levee cracks, voids, or animal burrows, that may enter the river. Additionally, excavation of the 60-foot-deep trench will extend below the riverbed elevation and the Project will encounter surface flows and will have to discharge these flows potentially to the river. CDFW may require a Lake and Streambed Alteration (LSA) Agreement, pursuant to Fish and Game Code §§ 1600 *et seq.* for Project-related activities. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 *et seq.*) as the responsible agency.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of CEQA filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist Reclamation District No. 3 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento