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Governor's Office of Planning & Research

APR 24 2020

STATE CLEARINGHOUSE

April 24, 2020

Gary Bardini
 Sacramento Area Flood Control Agency
 1007 7th Street, 7th Floor
 Sacramento, CA 95814

Dear Mr. Bardini:

Re: GROUNDWATER RECHARGE AND SWAINSON'S HAWK HABITAT
 PRESERVATION PROJECT (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND) SCH# 2020039072

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Sacramento Area Flood Control Agency (SAFCA) for the Project pursuant 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 & G. Code, §§ 711.7, subd. (a) & 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 & G. Code, § 1600 et seq.)

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

The Project is centrally located in unincorporated Sacramento County south of Sloughhouse Road and the Folsom South Canal and generally between Deer Creek and the Cosumnes River. The parcel to be acquired is Sacramento County Assessor's Parcel Number (APN) 126-0480-004-0000.

The Groundwater Recharge and Swainson's Hawk Habitat Preservation Project consists of protecting 129 acres for groundwater recharge and constructing a pipeline to allow surface water spreading and infiltration on the property. SAFCA will buy fee title to the property that will secure the right to recharge groundwater by surface application on the site. SAFCA will construct a pipeline from the adjoining Omochumne-Hartnell Water District (OHWD) groundwater recharge project (OHWD Project) onto the site. The source of recharge water is excess (winter) stormwater flow diversion from the Cosumnes River. Up to four monitoring wells or real-time transducers will be installed on or near the site.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: CDFW recommends continued consistency with the existing easement on the property.

CDFW has noted the proposed Project site includes property encumbered by a conservation easement and that SAFCA intends to maintain and implement only activities already specified in the management plan. As such, CDFW recommends the MND require consistency with the conservation easement through implementation of the Project.

Comment 2: CDFW recommends consultation under Section 1602 of the Fish and Game Code.

Notification to CDFW is required, pursuant to section 1602 of the Fish and Game Code if a project proposes activities that will substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Activities proposed under the MND include diversion of water and may potentially impact riparian vegetation. As a result, CDFW recommends SAFCA consult with CDFW early regarding Notification to comply with the Fish and Game Code.

Comment 3: CDFW supports sustainable groundwater management as it relates to fish and wildlife habits.

CDFW has an interest in the sustainable management of groundwater, as many sensitive ecosystems and public trust resources depend on groundwater and interconnected surface waters. Accordingly, CDFW encourages thoughtful groundwater management that

carefully considers fish and wildlife and the habitats on which they depend², including groundwater dependent ecosystems (GDEs), natural communities that rely on groundwater to sustain all or a portion of their water needs. According to the Natural Communities Commonly Associated with Groundwater Dataset³, there are potential vegetated and aquatic GDEs overlying or adjacent to the Project location. The MND specifies that the Project will provide groundwater storage benefits to agriculture and notes that, “in conjunction with other management efforts, may improve base flows that support fall anadromous fish migration”. This subsurface return flow, if achieved, would therefore likely support aquatic groundwater dependent ecosystems (interconnected surface waters).

Comment 4: CDFW recommends coordination with other local Groundwater Sustainability Agencies (GSAs).

Under the Sustainable Groundwater Management Act (SGMA), GSAs are responsible for, among other things, identifying and considering impacts to GDEs (23 Cal. Code Regs. § 354.16 (g) and Water Code § 10727.4(l)) and establishing groundwater management criteria to avoid undesirable results, including depletions of interconnected surface water (23 Cal. Code Regs. § 354.22 et seq. and Water Code §§ 10721 (x)(6) & 10727.2 (b)). The Department encourages close coordination with the Sacramento Valley – South American Subbasin and the San Joaquin Valley – Cosumnes subbasin GSAs in their Groundwater Sustainability Plan development, as the Project can inform and impact SGMA compliance and falls along the boundary of the two basins.

Comment 5: Assessment needed for special-status species not analyzed in the MND. The Project is included within the Plan Area for the South Sacramento Habitat Conservation Plan (SSHCP). While CDFW recognizes SAFCA is not a plan partner, the SSHCP designates 28 Covered Species (Attachment 1) that may occur in the Plan Area for protection under a local ordinance and that should be accounted for when answering section f of biological resources in the environmental checklist.

CDFW recommends the MND disclose the SSHCP status for these species already listed in Table 6 and evaluate potential to occur for any species covered under the SSHCP but not included in Table 6, so that the MND can more effectively assess potential environmental impacts. CDFW has identified the following species, covered under the SSHCP but not discussed in Table 6:

- Ricksecker’s water scavenger beetle (*Hydrochara rickseckeri*)
- Greater sandhill crane (*Grus canadensis*)
- Loggerhead shrike (*Lanius ludovicianus*)
- Western red bat (*Lasirurs blossevillii*)

² (California Department of Fish and Wildlife. 2019. [Fish & Wildlife Groundwater Planning Considerations](#). Groundwater Program, Water Branch.)

³ Department of Water Resources. 2018. [Natural Communities Commonly Associated with Groundwater Dataset](#).

Comment 6: Mitigation Measure BR-2 revisions needed to mitigate impacts to white-tailed kite to less-than-significant

White-tailed kite (*Elanus leucurus*) is a fully protected species under the Section 3511 of the Fish and Game Code. Take of fully protected may not occur at any time, no provision of the Fish and Game Code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no permit or license previously issued shall have any force or effect for that purpose. As such, Project activities should avoid impacts to white-tailed kite. The MND identifies that white-tailed kite has been observed in proximity to the Project area and thus, may occur within Project area. Mitigation Measure BIO-2 should consider the status of white-tailed kite and take into account that it may be detected through the course of the Project.

To address this, CDFW recommends the measure be revised to state:

“If it is determined during surveys or project implementation that project activities may impact white-tailed kite, project personnel shall fully avoid any impacts that may result in take if white-tailed kite is observed to be utilizing the project area or adjacent area.”

Comment 7: Mitigation Measure BR-2 revisions needed to mitigate impacts to Swainson’s hawk to less-than-significant

Mitigation Measure BIO-2 calls for Swainson’s hawk (*Buteo swainsoni*) surveys in accordance with the Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley⁴. Mitigation Measure BIO-2 also calls for the survey to be completed within 0.25 miles of the Project boundaries; however, this is inconsistent with the survey document referenced which advises surveys to be completed within 0.5 miles. Therefore, CDFW recommends the MND be consistent with the survey document and call for a 0.5-mile survey radius.

Comment 8: CDFW recommends monitoring data inform habitat management

Important for SGMA collaboration are the Project’s recharge operations monitoring and data collection efforts. The MND describes recharge operations conceptually but does not specify flooding duration, depth, extent, and frequency, in part because part of the Project’s purpose is to identify uncertain infiltration rates. Flooding duration, depth, extent, and frequency; and corresponding infiltration rates, groundwater elevations, and instream flows; will help characterize recharge Project efficacy and correlate potential impacts to habitat. The MND identifies up to four monitoring well installations with remote data collection capabilities. Effective monitoring will be able to detect hydrologic patterns and corresponding habitat/GDE trends to inform both Project operations (e.g. reconsidering operations if Swainson’s hawk foraging habitat is enhanced or degraded under certain flooding regimes) and groundwater management decisions (e.g., adjusting groundwater elevation criteria in response to GDE health over time). Accordingly, groundwater monitoring should be accompanied with vegetation monitoring and designed and deployed to capture seasonal and operational variability and follow accepted technical procedures

⁴ Recommended Timing and Methodology for [Swainson's Hawk \(PDF\)](#) Nesting Surveys in California's Central Valley (Swainson's Hawk Tech. Advis. Comm., 5/2000)

and best practices established by the United States Geological Survey⁵ and the Department of Water Resources⁶ respectively. CDFW recommends monitoring data should be made publicly accessible.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents 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 types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND and assist the Lead Agency in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Dylan Wood, Environmental Scientist at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Enclosure: South Sacramento Habitat Conservation Plan Covered Species

Sincerely,

Kevin Thomas
Regional Manager

⁵ Cunningham, W. L., and C. W. Schalk. 2011. [Groundwater Technical Procedures of the U.S. Geological Survey.](#)

⁶ (Department of Water Resources. [Best Management Practices for Sustainable Management of Groundwater.](#))

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