



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 16, 2020

Governor's Office of Planning & Research

Nov 17 2020

Mr. Gilbert Labrie, AIA
Brannan-Andrus Levee Maintenance District
Post Office Box 929
Walnut Grove, CA 95690
GLabrie@dcceng.net

STATE CLEARINGHOUSE

Subject: Sacramento River Erosion Control and Habitat Enhancement Project,
Mitigated Negative Declaration, SCH No. 2020100329, Sacramento County

Dear Mr. Labrie:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Brannan-Andrus Levee Maintenance District for the Sacramento River Erosion Control and Habitat Enhancement Project (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 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

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.

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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.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measure may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires a Lake and Streambed Alteration (LSA) Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Brannan-Andrus Levee Maintenance District

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Objective: The objective of the Project is to provide suitable, levee erosion control on approximately 1.2 nautical miles of levee on the left bank of the Sacramento River, fish-friendly habitat through the creation of riparian and wetland benches, and minimize long-term maintenance and repair costs by repairing existing areas of erosion using stable and effective erosion control methodologies. The Project activities include clearing, grubbing, and trimming of vegetation on levee slopes, removal and relocation of encroachments and concrete rubble, placement of rip rap, 6 inch minus fill, planting fill, and Terrabags for levee slope and bench construction, as well as direct impact to the bank, channel width, and riparian zone of the Sacramento River.

Location: Isleton, Sacramento County, State Highways 160 and 12, Latitude 38.172125, Longitude 121.649881

Timeframe: June 2021 to June 2022

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Brannan-Andrus Levee Maintenance District 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: Avoidance and Minimization Measures Section AMM 5, Vegetation Removal and Tree Protection.

Trees less than four inches in diameter may be considered AB 360 habitat. CDFW may require mitigation for AB 360 habitat permanently impacted. Mitigation required by CDFW will need to be conducted at a CDFW approved site.

Comment 2: Mitigation Measure BIO-1, Special-Status Plant Avoidance, Minimization, and Mitigation Measures.

Defined survey protocols for floristic surveys are not included. To correct this, CDFW recommends Mitigation Measures BIO-1 be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (2018)*, including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols.

Comment 3: Mitigation Measure BIO-1, Special Status Plant Avoidance, Minimization, and Mitigation Measures.

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Revisions are needed to mitigate impacts to special-status plants to less-than-significant. CDFW recommends Mitigation Measure BIO-1 be revised to require compensatory mitigation for impacts to special-status plant species at a minimum of 3:1 mitigation ratio for permanent impacts. CDFW also recommends inclusion of language defining the Project's obligation to obtain CESA-listed plant take coverage through an ITP issued by CDFW when take of Rare, Threatened, or Endangered plants cannot be fully avoided.

Comment 4: Mitigation Measure BIO-2, Roosting Bats Impact Avoidance and Minimization Efforts.

Should bat species be confirmed on the Project site during surveys, CDFW recommends that work windows for tree trimming or tree removal should only be conducted during seasonal periods of bat activity: between August 31 and October 15, when bats would be able to fly and feed independently, and between March 1 and April 15 to avoid hibernating bats, and prior to the formation of maternity colonies.

Comment 5: Mitigation Measure BIO-4, Raptor Avoidance and Minimization Efforts.

Surveys for Swainson's hawk require the use of a specific survey protocol. CDFW recommends the surveys should be conducted following the Swainson's hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990>). 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. 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 document on Swainson's hawk, which is available at: <https://www.wildlife.ca.gov/Conservation/SurveyProtocols#377281284-birds> on take avoidance, minimization and mitigation measures.

Comment 6: Mitigation Measure BIO-5, Non-Raptor Avoidance and Minimization Efforts.

Revisions are needed to mitigate impacts to nesting birds to less-than-significant. CDFW recommends the MND be revised to include the addition of the following specific and enforceable mitigation measure in the event nesting birds, including raptors, are detected:

"Nesting Bird Assessment and Avoidance: Prior to the initiation of construction, including ground disturbing activities scheduled to occur between February 15 and

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September 15, the Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project site. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, as described above, then no work shall be initiated until species-specific buffers have been established in consultation with CDFW. The buffer area(s) shall be demarked from work activities and avoided until the young have fledged, as determined by the Qualified Biologist. Active nests found inside the limits of species specific buffer zones or nests within the vicinity of the Project site showing signs of distress from Project activity as determined by the Qualified Biologist shall be monitored daily during the duration of the Project for changes in bird behavior. Buffer areas of active nests within the vicinity of the Project site showing signs of distress or disruptions to nesting behaviors from Project activity, as determined by the Qualified Biologist, shall have their buffers immediately adjusted by the Qualified Biologist until no further interruptions to breeding behavior are detectable.”

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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

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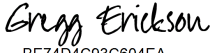
by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Brannan-Andrus Levee Maintenance District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Brianne O'Rourke, Senior Environmental Scientist (Specialist), at (209) 234-3456 or Brianne.ORourke@wildlife.ca.gov; or Mr. Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 234-3441 or Todd.Gardner@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse No. 2020100329