



Governor's Office of Planning & Research

Mar 19 2021

March 18, 2021

STATE CLEARINGHOUSE

Mr. Tim Mallen
Reclamation District 900
1420 Merkley Avenue, Suite 4
West Sacramento, CA 95691
tmallen@rd900.org

Subject: Blacker Canal Bank Stabilization and Access Road Improvement Project,
Mitigated Negative Declaration, SCH No. 2021020373, Yolo County

Dear Mr. Mallen:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Reclamation District 900 for the Blacker Canal Bank Stabilization and Access Road Improvement 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

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.

Mr. Tim Mallen
Reclamation District 900
March 18, 2021
Page 2

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 (LSA) 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 potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

Lake and Streambed Alteration

CDFW requires an 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 for 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: Reclamation District 900

Objective: The objective of the Project is to install gabion barriers along the length of Blacker Canal to provide bank stabilization and perform road grading. Primary Project activities include excavating unsuitable canal bank materials of an unlined urban drainage, constructing gabion barriers along the length of the canal, and placing fill behind the barriers to stabilize the canal banks. Bank excavation will occur along the

Mr. Tim Mallen
 Reclamation District 900
 March 18, 2021
 Page 3

north and south sides of the canal to the west of Linden Road, and along the south side of the canal to the east of Linden Road. Excavation depth will average approximately four (4) feet from the ground surface into the existing canal banks and channel. Gabion walls will measure an average of three (3) feet across and three (3) feet high. The gabions will be stacked and secured along the banks to conform to the desired slope and will be backfilled with compacted inorganic fill. Also, a 16-foot-wide maintenance road will be graded north of the canal to the west of Linden Road and the existing access road south of the canal that extends east and west of Linden Road will be graded to improve maintenance access. Removal of non-native trees will be required.

Location: City of West Sacramento, Yolo County. The Project is located along the Blacker Canal at the intersection of Jefferson Boulevard and Linden Road and the Reclamation District 900 Main Canal in the City of West Sacramento. The Project is within the U.S. Geological Survey (USGS) Sacramento West 7.5-minute quadrangle. The approximate center of the project is located at latitude 38.540505 ° and longitude - 121.555818°.

Timeframe: The timeframe of the project is unknown.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District 900 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.

Environmental Setting

The environmental setting should contain sufficient information to understand the Project's, and its alternatives', significant impacts on the environment (CEQA Guidelines, §§15125 and 15360).

According to a preliminary search of the California Natural Diversity Database (CNDDDB) and general knowledge, fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or that have the potential to occur in or near the Project area, include, but are not limited to the species listed below.

Common Name	Scientific Name	Status ²
Burrowing owl	<i>Athene cunicularia</i>	SSC
Swainson's hawk	<i>Buteo swainsonii</i>	ST
Tricolor blackbird	<i>Agelaius tricolor</i>	ST

Mr. Tim Mallen
 Reclamation District 900
 March 18, 2021
 Page 4

Song sparrow ("Modesto" pop.)	<i>Melospiza melodia</i>	SSC
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	FT, SE
White-tailed kite	<i>Elanus leucurus</i>	FP
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	FT

² Source: CDFW, California Natural Diversity Database, 2016

FT = Federally Threatened; SE = State Endangered; ST = State Threatened; SSC = State Species of Special Concern; FP = Fully Protected

Comment 1: Alternative design

CDFW recommends that the lead agency re-evaluate the design used for bank stabilization and consider other less environmentally damaging design alternatives. Gabions are not recommended for stream channel applications because experience has shown that gabions usually fail over time. The gabion wire, including galvanized and plastic-coated wire, will wear and break. Life expectancy of gabions is reduced when these structures are inundated by streams and other water sources. Failing gabions may result in uncontrolled bank failure and sediment deposition. Eroded or broken wires may pose a risk to fish and wildlife including catching gills of fish and other injuries. CDFW recommends using bioengineered designs for bank stabilization. The following are resources to inform about bioengineering techniques that can be used:

1. CDFW's *California Salmonid Stream Habitat Restoration Manual* at <https://wildlife.ca.gov/Grants/FRGP/Guidance>
2. U.S. Forest Service's *A Soil Bioengineering Guide for Streambanks and Lakeshore Stabilization* at https://www.fs.fed.us/t-d/php/library_card.php?p_num=FS-683P
3. USDA Natural Resources Conservation Service's *User's Guide for Natural Streambed Stabilization Techniques in the Arid and Semi-Arid Great Basin and Intermountain West* at https://www.nrcs.usda.gov/Internet/FSE_PLANT_MATERIALS/publications/idpmcpu116.pdf

If gabions are not used, but permanent hardscaping such as rock rip rap is used, CDFW recommends that geotextile fabric be avoided and gravel blankets be used instead where site constraints allow. If gabions or permanent hardscaping is required, the MND should be revised to include mitigation for permanent impacts at a 3:1 ratio. Finally, if alternative methods of bank stabilization have been considered (e.g., laying the banks back and creating vegetated earthen lifts with rock keyed in at the toe of the slope) and those methods will not provide effective bank stabilization, and if adding hardscaping is

Mr. Tim Mallen
Reclamation District 900
March 18, 2021
Page 5

the only feasible design, CDFW recommends that the MND is revised to say that the impacted areas will be vegetated with native plants.

Comment 2: Special-status plants impact avoidance

To avoid impacts to special-status plants, CDFW recommends Section IV. Biological Resources be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2019), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols prior to Project activities. The protocols can be found here:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

Comment 3: Mitigate special-status plants to a less-than-significant level special

CDFW recommends Section IV, Biological Resources be revised to include a statement of how impacts to special-status plants will be avoided in the event they are discovered in the Project area. If significant impacts to special-status plants are not fully avoidable, CDFW recommends the MND be revised to require compensatory mitigation for impacts to special-status plant species at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and those related to grading or compaction where the soils may take years to recover to baseline conditions.

Comment 4: Revisions needed to mitigate impacts to nesting birds to a level of less-than-significant

Section IV. Biological Resources does not include nesting survey protocol for nesting birds that may be utilizing the Project site prior to start of Project activities, including the CESA-listed tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsonii*). If tri-colored blackbird or Swainson's hawk occur on or near the Project site, then CDFW recommends the project obtain an ITP. CDFW's survey protocols for Swainson's hawk can be found online at: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

CDFW also recommends the MND be revised to include the following nesting bird assessment and avoidance measure:

"Nesting Bird Assessment and Avoidance - Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a 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

Mr. Tim Mallen
Reclamation District 900
March 18, 2021
Page 6

biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. 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 (48) 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, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the project site shall be monitored by the qualified biologist daily throughout the duration of project activities for changes in bird behavior or signs of distress related to project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.”

Editorial Comments and/or Suggestions

Additional Avoidance and Minimization Measures Recommended for Protection of Wildlife

CDFW recommends inclusion of the following avoidance and minimization measures in the MND:

- a) *“Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (i.e., deer) and small (i.e., snakes) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a Qualified Biologist or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.”*
- b) *“Bat Surveys and Mitigation. A qualified bat biologist shall conduct daytime and evening acoustic surveys for bats within 14 days prior to the beginning of project construction work planned either on or within 50 feet of the construction site. If bats are identified on-site, the biologist shall identify the species, estimated quantity*

Mr. Tim Mallen
Reclamation District 900
March 18, 2021
Page 7

present, roost type, and roost status, but shall avoid disturbing bats during surveys. If foraging bats, active roosts, or other signs of bat activity (i.e., guano, urine staining) are identified on-site, the qualified bat biologist shall flag or mark all roosts and actively used features for avoidance. If complete avoidance is not possible (i.e., roosts within the bridge structures), then the qualified bat biologist shall develop a Bat Mitigation and Monitoring Plan in consultation with CDFW. The Bat Mitigation and Monitoring Plan shall include: i) an assessment of all Project impacts to bats, including noise disturbance during construction; ii) effective avoidance and minimization measures to protect bats; iii) and compensatory mitigation for permanent impacts to bats or their nesting/roosting habitat. Once the Bat Mitigation and Monitoring Plan is implemented, Project activities may commence.”

- c) *“Maternal Roosts. “If a maternal roost site is found, then it is to be assumed that non-volant (young) bats are present in the roost area after June ^t. Because the young will not be able to fly away from the disturbance, there shall be no disturbance to their roost site until the young become volant (after August 31). CDFW recommends if a maternal roost site is found after construction activities have begun that a no-work buffer area be established around the maternal roost.”*

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 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 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.)

Mr. Tim Mallen
Reclamation District 900
March 18, 2021
Page 8

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Reclamation District 900 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 Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Bay Delta Region
Regional Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Marcus Bole, Marcus H. Bole and Associates – Mbole@aol.com