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July 26, 2021

Governor's Office of Planning & Research

July 27 2021

Mr. Jason Cashman
Port of Stockton
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STATE CLEARINGHOUSE

Subject: Port of Stockton Rail Bridge Replacement and Rail Improvements Project, Initial Study/Mitigated Negative Declaration, SCH No. 2021060578, City of Stockton, San Joaquin County

Dear Mr. Cashman:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from the Port of Stockton for the Port of Stockton Rail Bridge Replacement and Rail Improvements Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 (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

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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(CESA) (Fish and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Port of Stockton

Objective: The objective of the Project is to replace an obsolete rail bridge spanning the San Joaquin River and construct a new lead track to increase efficiency of train operations within the Port of Stockton. The existing swing bridge will be replaced by two (2) fixed bridges with removable center spans. Primary Project activities include replacement of the existing rail bridge between the East and West Complexes with a new expanded rail bridge, construction of a new lead track and associated modifications to road underpasses and overpasses near the terminus of the Ort J. Lofthus Freeway (Crosstown Freeway), construction of a new rail underpass at Fresno Avenue, construction of new yard track on the East Complex, and construction of a new rail classification yard in the West Complex.

Location: Stockton, San Joaquin County; within the Port of Stockton East and West Complexes – the BNSF (railroad) right-of-way adjacent to West Scotts Avenue, west of Ventura Avenue, and Fresno Avenue; 37°56'52.42"N, -121°20'13.99"W.

Timeframe: Construction will occur over approximately three (3) years; construction is proposed to start in 2023.

LAKE AND STREAMBED ALTERATION AGREEMENT

The Project has the potential to impact resources of the San Joaquin River known to occur within the identified limits of the Project. If proposed work will impact the bed, bank, channel, or riparian habitat, including the trimming or removal of trees and riparian vegetation, please be advised that the proposed Project may be subject to LSA Notification. This includes impacts to drainage systems that connect to tributaries of main stem creeks and tributaries that occur within the Project site. CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for or any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, bank or channel 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 generally subject to notification 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 species of plants or animals listed or a candidate under CESA, either during construction or over the life of the Project. Under

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CESA, take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA-listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

ENVIRONMENTAL SETTING

Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

- Delta Smelt (*Hypomesus transpacificus*), SE, FT
- Longfin Smelt (*Spirinchus thaleichthys*), ST
- Central Valley Spring Run Chinook Salmon (*Onchorhynchus tshawytscha*) ST, FT
- Sacramento Winter Run Chinook Salmon (*Oncorhynchus tshawytscha*) ST, FT
- Green Sturgeon (*Acipenser medirostris*), SSC, FT
- Central Valley Steelhead (*Oncorhynchus mykiss irideus*), FT
- Swainson’s hawk (*Buteo swainsoni*), ST
- White-tailed Kite (*Elanus leucurus*), FP
- Giant Garter Snake (*Thamnophis gigas*), FT, ST
- Western Pond Turtle (*Emys marmorata*), SSC
- Roosting Bats
- Nesting birds

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

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur at or near the Project site and should follow recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. If survey results are positive for special-status species (i.e., endangered, threatened, species of special concern, candidate species, and fully protected species), then CDFW recommends that specific avoidance, minimization, and mitigation measures are incorporated into a revised and recirculated IS/MND. Currently the IS/MND defers mitigation measures to assuming coverage in the San Joaquin Multi-Species

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Conservation and Open Space Plan (SJMSCP) and determining incidental take minimization measures through the SJMSCP in the future.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Port of Stockton 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.

COMMENT 1: Hydroacoustic Impact Analysis and Monitoring for Impact Pile Driving

The IS/MND explains that a vibratory hammer will be used, with the possibility of using cast-in-steel shell piles, and a "soft start" to ramp up pile driving. However, the use of an impact hammer is also proposed. The IS/MND did not analyze hydroacoustic impacts to fish from use of impact hammers.

To minimize pile driving impacts to aquatic resources, CDFW recommends that the Project is designed such that hydroacoustic impact is avoided or reduced to avoid exceeding threshold sound limits of 206 dB for peak output, 183 dB accumulated sound exposure level (SEL) limits (peak and SEL levels measured at 10 meters). The revised and recirculated IS/MND should analyze the hydroacoustic impacts and disclose the impacts. If impacts are found to be potentially significant (i.e., exceeding sound threshold levels previously stated, which could result in death, injury, and disturbance to special-status fish species that may be present during Project construction, such as green sturgeon), CDFW recommends inclusion of avoidance, minimization, and mitigation measures listed below. Also, the IS/MND should be revised and recirculated to include the revised impacts analysis and additional mitigation measures so that CDFW can evaluate the sufficiency of the IS/MND as a Responsible Agency.

CDFW recommends the following actions and measures are incorporated as new mitigation measures in a revised and recirculated IS/MND:

- a) Completion of the National Marine Fisheries Service pile driving acoustic impact worksheet to determine hydroacoustic impacts during construction; that information should be included in the revised and recirculated MND.
- b) Include the following avoidance measure: "Underwater Sound Reduction. Underwater sound reduction measures shall be used to ensure that sound levels do not exceed threshold levels. If necessary, sound reduction measures may include the following: use of an impact hammer cushion block; use of impact hammers during daylight hours only; pile driving during slack tides, 'ramping up'

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technique where pile strikes gradually increase energy and frequency of impacts until full force and frequency are achieved; use of cofferdams; pipe caissons installed with a vibratory hammer to isolate the piles from the water; and the use of a bubble curtain surrounding the pile to be driven.”

- c) Include a statement as to if the threshold sound limits will be exceeded or not (this includes impact hammer use for proofing piles).
- d) If threshold sound limits are exceeded that cannot be avoided, propose compensatory mitigation. Examples of compensatory mitigation are purchase of fish restoration credits at a CDFW-approved mitigation or conservation bank, a conservation easement and endowment with a third-party beneficiary to protect and manage fish habitat with the same or higher resource function, creation and protection in perpetuity on-site or along the same river or within the South Delta of fish habitat such as shaded riverine aquatic habitat or shallow water habitat, or other options that would create, conserve, and protect fish habitat in perpetuity. In the mitigation proposal, propose mitigation ratios and justification for those ratios.

Additionally, avoidance and minimization measures for sound monitoring have not been sufficiently proposed to ensure sound attenuation devices adhere to thresholds below potentially injurious sound levels.

CDFW recommends the following actions and measures are incorporated as a new mitigation measure in a revised and recirculated IS/MND:

Sound Monitoring Hydroacoustic Monitoring Plan. A minimum of 14 days prior to the initiation of construction, an acoustic monitoring plan to evaluate sound levels during impact pile driving activities shall be submitted to the Lead Agency for acceptance. The monitoring plan should be prepared by a qualified hydroacoustic monitoring specialist who possess the same authority as the qualified biologist and has the ability to direct the resident engineer to stop work as necessary. At minimum, the monitoring plan should include the following:

- Acoustical monitoring experience history for the qualified hydroacoustic monitoring specialist.
- A description of the methods necessary to continuously assess underwater sound pressure in real-time, including details on the number of strikes for each pile, the specific pile location, distance and depth of the wetted channel, the placement of hydrophones and distance to the action.
- A description of the Quality Assurance/Quality Control protocols for the appropriate monitoring equipment.

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- Provide a means of recoding the time, number of pile strikes, peak sound energy per strike and interval between strikes.
- Two hydrophone underwater sound monitoring systems (hydrophone, signal amplifier and calibrator) that utilize current National Institute of Standards and Technology traceable calibration method.
- All piles monitored shall be driven in water depths that are representative of mid channel or typical water depths at the Project location where piles will be driven.
- Indicate the location of the piles to be monitored and the approximate hydrophone locations for each pile being monitored. All hydrophones will be placed at least 1 m (3.3 feet) below the surface.
- In waters less than 4 meters (13 feet) deep, a single hydrophone at midwater depth is sufficient. Hydrophones will be located 10 meters from each pile with a clear acoustic line-of-sight between the pile and the hydrophone. Additional distances measured concurrently are desirable, if possible, to estimate the site-specific range to the threshold boundary. Include any additional distances or depths where hydrophones will be located.
- Require standard monitoring distance of 10 meters from each pile being monitored. Position a hydrophone at the estimated isopleths for peak and cumulative estimated action areas to ensure monitoring threshold data is available.
- Provide specific inputs and calculations for cumulative sound exposure limits in the monitoring reports. The results of hydroacoustic monitoring shall be made available to CDFW upon request and submitted in weekly, monthly or annual compliance reports.

COMMENT 2: Impacts to Native Bat Species

Bridges often provide roosting habitat for native bat species. To fully mitigate impacts to bats not covered by the SJMSCP, CDFW recommends incorporating the following measure as a condition of approval in the updated IS/MND:

Bat Surveys and Mitigation. A qualified bat biologist shall conduct daytime and evening acoustic surveys for bats within 14 days prior to beginning project construction or work at or within 50 feet of the bridges. If bats are identified on-site, the qualified biologist shall identify the species, estimated quantity present,

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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.

COMMENT 3: Impacts to Swallows

Bridges often provide nesting habitat for native swallow species. To minimize impacts to swallows, CDFW recommends incorporating the following measure as a condition of approval in the updated IS/MND:

Swallow Exclusion. Before nesting swallow season (February 1 to September 30), the Port of Stockton, in consultation with CDFW, will install exclusionary devices on existing bridge structures to prevent the establishment of swallow nests within the footprint of the Project area. Exclusionary devices shall be limited to *solid* materials and shall not contain monofilament netting or similar material due to documented evidence of birds becoming entangled or trapped in such material. Exclusionary devices shall be inspected weekly while in place to ensure they are in good condition and functioning properly. During inspection, if exclusionary devices need repair, the Port of Stockton will make repairs immediately upon discovery.

Swallow Nest Avoidance. Project activities will not be initiated or conducted if an active swallow nest is detected on-site. The qualified biologist shall conduct a survey of the bridges no more than 5 days prior to construction activity to ensure that no active nests are present. If any active nests are found, the qualified biologist will establish an appropriate buffer to comply with the Migratory Treaty Act of 1918 and Fish and Game Code 3503. The qualified biologist shall increase the buffer if nesting birds show signs of unusual or stressed work by project activities. The qualified biologist will have the authority to stop work of project activities near the nesting birds if the nesting birds exhibit abnormal behavior which may cause nest abandonment or the loss of eggs and/or young until an appropriate buffer is established. To avoid encroachment, the buffers shall be clearly marked for avoidance. The buffers shall remain in effect until the young

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have fledged or until the nest has been abandoned as confirmed by the qualified biologist.

COMMENT 4: Enforceable Measures to Avoid, Minimize, and Mitigate Project Impacts

The IS/MND fails to provide evidence that potentially significant impacts to sensitive habitats have been mitigated to a level of less-than-significant due to lack of mitigation measures enforceable by the Lead Agency in the IS/MND. On page 75 of the IS/MND, mitigation measure 5 (MM-BIO-5) indicates that impacts to waters of State (San Joaquin River, detention basin with planted cottonwoods, and topographic depression between rail lines) and riparian habitats will be minimized through measures prescribed in future permits obtained from the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and CDFW. The IS/MND should include fully enforceable measures to avoid, minimize, and mitigate potentially significant impacts and should not defer these measures to a future time Responsible Agencies (CEQA Guidelines §15126.4). Nor does the Lead Agency have the authority to compel a Responsible Agency to mitigate for potentially significant impacts that the Lead Agency has identified. To address this issue, the IS/MND should be revised and recirculated to incorporate quantifiable and enforceable mitigation measures to minimize impacts to the San Joaquin River and associated waters of State and riparian habitats. Otherwise, an Environmental Impact Report should be prepared to address any impacts that are identified as potentially significant where the Lead Agency has not incorporated or disclosed enforceable mitigation measures to demonstrate that these impacts will be mitigated to a level of less-than-significant with mitigation.

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 IS/MND to assist Port of Stockton in identifying and mitigating Project impacts on biological resources. The IS/MND should be revised and recirculated to address CDFW's concerns and comments identified above in this letter and we look forward to assisting the Lead Agency if assistance is needed.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Environmental Program Manager, at Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Stacy Sherman

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Stacy Sherman
Acting Regional Manager
Bay Delta Region

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