



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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February 16, 2022

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Subject: South Mokelumne River Setback Levee Project, Initial Study/Mitigated Negative Declaration, SCH No. 2022010311, San Joaquin County

Dear Mr. Wagner and Mr. Ervin:

The California Department of Fish and Wildlife (CDFW) has received a Notice of Intent to Adopt a Mitigated Negative Declaration (IS/MND) from Reclamation District 348 South Mokelumne River Setback Levee 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.

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

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Program

Notification is required, pursuant to CDFW's Lake and Streambed Alteration (LSA) Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities 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 section 21000 et seq.) as the responsible agency.

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 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Reclamation District 348

Objective: The objective of the Project is to construct three setback levees to meet the Delta Specific PL-84-99 Standard, which requires levee crown elevations to be 1.5 feet above the 100-year flood elevation, waterside slopes at a minimum of 2:1, and landside

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slopes at a minimum of 3:1. The three setback levee locations will occur from station 242+50 to 268+00, 293+00 to 300+00, and 311+00 to 322+00 and totals to approximately 4,350 feet.

Construction work include adding aggregate base on the setback levee crown to create an all-weather roadway. Waterside levee work includes the excavation of the existing levee above Mean Lower Low Water to construct a riparian and intertidal marsh bench for habitat enhancement. The habitat bench and setback levee water slope will be planted with native species and monitored/maintained for three years to ensure success criteria is met.

Location: See Attachment 1 at the end of this document. Along the South Fork Mokelumne River, New Hope Tract, San Joaquin County.

Timeframe: The Project is expected to occur in 2022; however, permit and/or easement acquisition could delay construction to 2023. Construction is expected to be completed in (6) six months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District 348 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 a Mitigated Negative Declaration is appropriate for the Project.

Comment 1: Section 1.5, BIO-1 Rare Plant Avoidance

To ensure any potentially significant impacts to rare plants will be less-than-significant, mitigation measure(s) should be added and BIO-1 should be renamed "Rare Plant Avoidance & Mitigation". CDFW recommends adding a conservation measure to require compensatory mitigation for impacts to special-status plant species at a minimum of 3:1 mitigation ratio for permanent impacts planted back on-site or as close as feasible with conditions similar to the location the impacts occurred. Mitigation plantings will need to be monitored for 3 years and replanting will be necessary if plants don't survive. 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, this will include the need for permanent protection and funding for perpetual maintenance and management.

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Comment 2: Section 1.5, HAZ-2 Prevent, Control, and Minimize Impacts from a Spill

To help minimize spills, CDFW recommends adding the following avoidance measure in addition to the measures already described in the IS/MND:

- *Stationary equipment such as motors, pumps, generators, compressors and welders located within or adjacent to the channel will be positioned over drip-pans.*

Comment 3: Section 3.4 Biological Resources, A. Special-Status Plants

The IS/MND did not analyze the potential for indirect impacts to special-status plant species. Any indirect impacts to special-status plant species resulting from the construction of the setback levees will need to be mitigated in the same manner as direct impacts (see Comment 1 above). Possible indirect impacts include but aren't limited to changing the hydrology at rare plant locations, shading due to new plantings, and competition from new vegetation. The IS/MND should be revised to analyze and disclose potential indirect impacts. If significant impacts are identified in the analysis, then CDFW recommends adding a bulleted point under BIO-1 to address this issue of indirect impacts.

Comment 4: Section 3.4 Biological Resources, A. Special-Status Plants

The IS/MND lacks defined survey protocols for floristic surveys and states that botanical surveys were conducted in September 2019 and May 2020. CDFW recommends revising the IS/MND to state that botanical surveys for special-status plants will be performed in adherence with CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Special-status plant surveys should be performed by a qualified botanist and reporting requirements should be followed according to the protocols.

Comment 5: List Of Acronyms And Abbreviations

The IS/MND does not define the RSP acronym, please add to the list.

ENVIRONMENTAL DATA

CEQA requires that information developed in 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, §

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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 can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT 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).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Reclamation District 348 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Mr. Dave Contreras, Environmental Scientist, at (209) 234-3431 or Dave.Contreras@wildlife.ca.gov; or Mr. Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 234-3441 or Todd.Gardner@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Alexis Stevens, Reclamation District No. 348 – astevens@somachlaw.com

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ATTACHMENTS

Attachment 1: Project Location

