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STATE CLEARINGHOUSE

From: Quillman, Gabriele@Wildlife
Sent: Tuesday, March 8, 2022 7:57 AM
To: kreese@rd1001.org
Cc: Wildlife R2 CEQA; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Barker, Kelley@Wildlife; Thomas, Kevin@Wildlife
Subject: CDFW's Comments on the IS/MND for the Natomas Cross Canal Berm and Channel Enhancements Project (SCH#2022010387)

Dear Ms. Reese,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from Reclamation District 1001 (RD 1001) for the Natomas Cross Canal Berm and Channel Enhancements Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines. (Public Resources Code § 2100 et seq.)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (Fish & G. Code., § 1802.) Similarly for purposes of CEQA, CDFW provides, 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.) 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.), related authorization as provided by the Fish and Game Code may be sought. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project site is located in Sutter County on the Natomas Cross Canal (NCC) about 16 miles north of the City of Sacramento; within Section 1, Township 11 North, Range 3 East, Mount Diablo Base and Meridian in the 'Verona, CA' quadrangle.

The Project consists of multiple improvements designed to improve flood protection and enhance habitat, including the construction of a buttress along portions of the NCC levee, planting riparian vegetation for erosion control, grading within the NCC to increase seasonally-inundated rearing habitat for Chinook salmon, and screening select diversions in

the NCC to prevent fish entrainment. Construction will include excavation and placement of fill along an estimated 27,380 feet of the NCC, impacting an approximately 31 acres.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist RD 1001 in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also included to improve the document.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project.

Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the IS/MND include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

Section 1.9.2 of the IS/MND states: "CESA listed species have the potential to be affected by the Project, but communication with CDFW 8/6/2020 resulted in the decision that a Memorandum of Understanding will be obtained for this project and that a CESA incidental take permit is not required".

CDFW communicated with Cramer Fish Sciences regarding obtaining a CESA Memorandum of Understanding (MOU) to authorize scientific collecting of Central Valley spring-run Chinook Salmon (*Oncorhynchus tshawytscha*, SRCS) and Sacramento River winter-run Chinook Salmon (*O. tshawytscha*) for monitoring associated with the Project in August of 2020. CDFW has the authority to issue CESA MOUs to authorize the import, export, take, or possession of CESA-listed species for scientific, educational, or management purposes. However, a CESA MOU is not the appropriate method to authorize take of CESA-listed species if that take is incidental to construction or other lawful activities. CDFW strongly recommends obtaining a CESA ITP for any potential incidental take of CESA-listed species associated with Project construction activities.

Giant Garter Snake

Giant garter snake (*Thamnophis gigas*, GGS) is a State- and federally-listed species with a high potential to occur within the Project area. A review of CDFW's California Natural Diversity Database (CNDDDB) revealed recent observations of GGS both within the NCC and in adjacent areas. The IS/MND describes the Project's potential to adversely impact the species by causing harassment, injury, or mortality to individual GGS. To reduce these potential impacts, the IS/MND proposes to implement mitigation measure BIO-4, which includes, but is not limited to, a pre-construction survey for GGS, worker environmental awareness training, installation of wildlife exclusion fencing, limiting construction activity within 200 feet of potential GGS habitat to May 1 – October 1, and revegetating temporarily-impacted areas after construction. However, CDFW does not concur that BIO-4 would reduce impacts to GGS to less-than-significant because (1) there is a high risk of take even with implementation of BIO-4; and (2) temporary and permanent habitat impacts may significantly adversely impact the local GGS population.

Limiting construction activity to the period when GGS are more likely to be active and above-ground (May 1 -October 1) reduces the potential for ground-disturbing activities to injure or kill GGS while they are in burrows or other

underground refuges. However, even during the summer months GGS in terrestrial habitats may spend 60% or more of their time underground (Halstead 2015). The Project area is directly adjacent to two reserves, the Lucich North and Frazer North tracts, managed specifically for GGS by the Natomas Basin Conservancy. As result, the likelihood for GGS presence is high. Due to the high likelihood that GGS is present in the area and the extent of the Project's proposed excavation and fill within and adjacent to GGS habitat, there is a high risk of take even during implementation of minimization measures, like the installation of exclusion fencing.

Mitigation Measure BIO-4 proposes relocation of GGS if any are found. "Catching" for the purpose of relocation falls within definition of "take" as defined by Section 86 of the Fish and Game Code. As such, to comply with CESA, the Project must have an appropriate CESA take authorization in addition to the federal 10(a)(1)(A) recovery permit for the GGS biologist to handle or relocate GGS. Mitigation Measure BIO-4 only vaguely describes relocation of GGS to "suitable habitat that is outside the exclusion area, but adjacent to, the Action Area." The majority of the Natomas Basin is considered "suitable habitat" for GGS, so CDFW recommends a more specified and biologically appropriate relocation area be identified and included within the larger project area described in the IS/MND.

CDFW strongly recommends RD 1001 obtain a CESA ITP authorizing incidental take of GGS associated with the Project.

The IS/MND does not include a detailed analysis of the Project's impacts to GGS habitat, but based on the Project description, CDFW expects that the Project will impact a significant amount of GGS habitat over the course of construction. Temporary impacts to GGS habitat may significantly adversely affect the species by reducing available habitat for foraging, basking, burrowing, cover, dispersal, and other activities during Project construction. In addition, planting riparian vegetation is likely to permanently reduce the suitability of areas of GGS habitat by increasing shading and reducing basking areas. To offset both temporal impacts and permanent impacts to GGS habitat, CDFW recommends the IS/MND include a plan to conserve, enhance, restore, and/or create GGS habitat on or near the Project area. Habitat mitigation may also include purchase of GGS credits from a CDFW-approved mitigation or conservation bank.

Swainson's Hawk

Swainson's hawk (*Buteo swainsoni*, SWHA) is a State-listed threatened species that the IS/MND identifies as present within the Project area. The IS/MND states that the Project includes removal of select large trees which may be used by SWHA for nesting, and proposes to implement mitigation measure BIO-6, which includes preconstruction nesting surveys and protection of trees observed to contain active nests, to avoid removal of active nesting trees and construction-related disturbance. CDFW does not concur that mitigation measure BIO-6 is sufficient to reduce potential Project impacts on SWHA to less than significant because (1) the timing of the surveys could result in nests being missed; and (2) the measure does not address potential removal of historic nesting trees that do not support active nests at the time of construction.

The effectiveness of Swainson's hawk nesting surveys are highly dependent on the time of year in which they are conducted. For example, nests are particularly difficult to locate during late spring (approximately April 21 to June 10) because most trees are fully leafed out, reducing nest visibility, and visible Swainson's hawk activity around the nest is typically minimal, with females brooding and males spending hours foraging away from the nest. A preconstruction survey conducted within 10 days of the start of construction, as proposed in the IS/MND, is therefore likely to miss instances of nesting if construction is scheduled to start between May 1 and June 20. Furthermore, nests may be missed circumstantially even by experienced surveyors during optimal survey periods. To avoid missing instances of nesting, CDFW recommends RD 1001 require nesting surveys in at least the two survey periods immediately prior to the start of construction, following the timing, methodology, and number of surveys described in the Swainson's Hawk Technical Advisory Committee's 'Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley' (Swainson's Hawk Technical Advisory Committee 2000). If an active Swainson's hawk nest is found during project surveys, CDFW recommends the IS/MND state that RD 1001 will consult with CDFW and comply with CESA through avoidance or if avoidance is not possible, will obtain take authorization prior to implementation of any activities that could disturb occupied SWHA nests or remove nesting trees. Unless take authorization is obtained, RD 1001 must fully avoid all take of Swainson's hawk. In addition to buffers described in the IS/MND, avoidance can include but should

not be limited to monitoring of the nest to observe any adverse behavior as a result of the Project; ensuring staging, storage, and employee break areas are located at least 1000 feet from any active nests; shielding or avoiding use of night lighting; and implementing a dust control program.

SWHA often but do not always reuse nesting trees (Gilmer and Stewart 1984). While SWHA in the Natomas Basin typically prefer to nest in large valley oaks (*Quercus lobata*), cottonwoods (*Populus fremontii*) and Goodding's black willow (*Salix gooddingii*), they will often nest in smaller trees due to the lack of larger trees (Estep 2001). Because suitable nesting trees are a limited resource, the removal of a historic or active nesting tree may have a significant adverse impact on SWHA even if the tree does not support an active nest at the time of removal. To determine the Project's potential impacts on historic nesting trees, CDFW recommends RD 1001 consult with the Natomas Basin Conservancy to obtain SWHA nesting records. CDFW recommends all historic and active nesting trees be avoided. If the Project must remove nesting trees, CDFW recommends the IS/MND include a way to mitigate the loss of SWHA habitat through a species-specific habitat enhancement, conservation, or restoration plan, and/or purchase of SWHA credits from a CDFW-approved mitigation or conservation bank.

Nesting Birds

Mitigation Measure BIO-5 describes preconstruction surveys and monitoring for nesting birds. CDFW does not concur that mitigation measure BIO-5 is sufficient to reduce potential Project impacts on nesting birds to less than significant because riparian habitat in the Project area and adjacent high quality foraging habitat have the potential to support a diverse set of migratory and resident birds which could be impacted during Project implementation. CDFW recommends a more robust nesting bird survey measure to properly assess nesting bird activity and respond appropriately in accordance with the Fish and Game Code if nesting birds are observed. CDFW recommends the following text replace Mitigation Measure BIO-5:

"Focused surveys for active nests of such birds shall be conducted by a Qualified Biologist no greater than three (3) days prior to the beginning of project-related activities. Surveys shall be conducted throughout the project site, in staging, storage and soil stockpile areas. The minimum survey radii surrounding the work area shall be the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; iii) ½ mile for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day, during appropriate nesting times, and shall concentrate on areas of suitable habitat. If a lapse in project-related activities of 14 days or longer occurs, another focused survey will be required before Project activities can be reinitiated.

If nesting birds are found, the Qualified Biologists shall develop a bird avoidance and minimization plan. The plan may consist of typical avoidance and minimization practices such as nest-specific buffers, biological monitoring, or changes to the project schedule depending on the species of bird and time of year. Any no work buffer area(s) shall be fenced or flagged off from work activities and avoided until the young have fledged, are feeding independently, and are no longer using the nest as determined by the Qualified Biologist. If nesting birds are showing signs of distress or disruptions to nesting behaviors, then the Qualified Biologist shall determine the appropriate change in response (e.g. buffer increase, temporary construction stop, etc.) until no further interruptions to breeding behavior are detectable."

OTHER COMMENTS

The Project is adjacent to the Natomas Basin Habitat Conservation Plan (NBHCP). Although the IS/MND states that the Project would have no impact on the NBHCP because most of the Project work will be done on the north bank of the NCC while the NBHCP only covers the south bank, CDFW is concerned that the Project's construction may indirectly impact the NBHCP's nearby reserve lands. Because the NBHCP is currently in implementation, CDFW recommends that RD 1001 ensure that implementation of the Project does not impede the NBHCP's ability to meet its permit conditions, biological goals and measurable objectives. To do this, CDFW recommends RD 1001 independently coordinate with the three adjacent land use entities under the NBHCP to inform the final environmental review and design of the Project: Reclamation District 1000 (RD 1000), the Sacramento Area Flood Control Agency (SAFCA), and the Natomas Basin Conservancy (TNBC), all of which manage land in the vicinity of the Project.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations 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 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 submitted online or mailed 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

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the IS/MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

Gabriele (Gabe) Quillman
She/Her
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REFERENCES

Estep, J.A. 2001. Nesting Swainson's Hawks in the Natomas Basin Habitat Conservation Plan Area 2000 Annual Survey Results. Swainson's Hawk Technical Advisory Committee.

Gilmer, D.S. and Stewart, R.E., 1984. Swainson's Hawk Nesting Ecology in North Dakota. *The Condor*, 86(1), pp. 12-18.

Halstead, B.J., Skalos, S.M., Wylie, G.D. and Casazza, M.L., 2015. Terrestrial ecology of semi-aquatic giant gartersnakes (*Thamnophis gigas*). *Herpetological Conservation and Biology*, 10(2), pp.633-644.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. 5 pages.