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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

March 7, 2022

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Mr. Michael Kynett, PE
Bouldin Island Reclamation District
455 University Avenue, Suite 100
Sacramento, CA 95825
kynett@mbkengeers.com

STATE CLEARINGHOUSE

Subject: Bouldin Island Levee Rehabilitation Project, Mitigated Negative Declaration, SCH No. 2022020076, San Joaquin County

Dear Mr. Kynett:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Reclamation District 756 for the Bouldin Island Levee Rehabilitation 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 & 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Reclamation District No. 756

Objective: The objective of the Project is to rehabilitate approximately 22,677 lineal feet of District levee along the South Mokelumne River corridor to sustainably meet the Bulletin 192-82 standard.

Location: Levee stations 665+00 – 726+00 and 781+00 – 947+00 along the South Mokelumne River, Bouldin Island, San Joaquin County

Timeframe: The Project is expected to begin approximately Spring 2022 and take fourteen months between May and November over a two-year period to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District 756 in 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: Section 1.4.10 Mitigation Measures

Section 1.2 states that the Project Area includes "...the associated top of the bank along the waterside perimeter of the Project levee above the High Tide Line (HTL) and Mean High Water (MHW)". Because work will occur on the waterside and has the potential to impact special-status fish species, CDFW recommends the MND be revised to include the addition of the following measure:

- *Waterside work will occur between August 1 to November 30, when special-status fish are least likely to be present and/or least vulnerable to waterside activities. This is the window recommended in the "California Department of Fish and Game's In-Channel Project Review Guidelines for the Protection of Delta Smelt (*Hypomesus transpacificus*), Winter-Run Chinook Salmon*

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(Onchorhynchus tshawytscha), and Spring-Run Chinook Salmon (Oncorhynchus tshawytscha) in the Sacramento-San Joaquin Estuary.”

Comment 2: Section 1.4.10 Mitigation Measures

CDFW believes bats could potentially be present within the Project area. The Project includes tree and structure removal which could have impacts to bats. The MND does not include avoidance and minimization measures for bats. To correct this, CDFW recommends the MND be revised to include the following language:

- *A Qualified Biologist, approved by CDFW, shall conduct a habitat assessment for potentially suitable bat habitat prior to project activities commencing. If the habitat assessment reveals suitable bat habitat, the Qualified Biologist shall submit an avoidance and protection plan to CDFW for review. The avoidance and protection plan shall: 1) evaluate the suitable habitat present within the Project area, 2) develop work windows for tree trimming and/or tree removal (typically August 31 through October 15 when young would be self-sufficiently volant and prior to hibernation, and March 1 to April 15 to avoid hibernating bats and prior to formation of maternity colonies), 3) identify appropriate protective buffers, and 4) outline timing of tree trimming and removal and structure removal.*

Comment 3: Section 1.4.10 Mitigation Measures BIO-3

The MND does not adequately address take authorization in the event CESA-listed and/or Native Plant Protection Act (NPPA)-listed plant species cannot be fully avoided during Project activities. Plants protected by CESA and the NPPA may not be taken (Fish & G. Code, § 86) without prior take authorization from CDFW.

CDFW recommends revising the MND to include the following language:

- *If take of California Endangered Species Act-listed and/or Native Plant Protection Act-listed plant species cannot be fully avoided, take coverage will be sought from CDFW.*

Comment 4: Section 1.4.10 Mitigation Measures BIO-5

The MND states measures, based on the U.S. Fish and Wildlife Service’s (USFWS) *Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat, from Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California* (USFWS 1997), will be implemented to minimize effects on giant garter snakes (GGS; *Thamnophis gigas*) or their habitat. These measures include 1) surveys for GGS by a qualified biologist 24 hours before

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construction activities begin and again if there is a lapse of construction activities of two weeks or more, 2) construction activities within GGS habitat will occur during the GGS active period (May 1 - October 1) and initiation of construction activities will be avoided during the GGS inactive season (October 2 – April 30), 3) sightings and/or incidental take will be reported to CDFW and the USFWS, 4) construction activities will cease if a GGS is encountered until appropriate corrective measures have been completed or it has been determined the GGS will not be harmed, 5) dewatering of suitable aquatic habitat, if necessary, will occur prior to initiation of construction activities and will remain dry for at least 15 days, 6) erosion control materials potentially harmful to GGS will be prohibited from use, 7) access routes, number and size of staging areas, and area of proposed construction activities will be limited to the minimum necessary during construction operations, and 8) project-related vehicles will observe a 20-mile per hour speed limit within construction areas.

The MND also acknowledges there is high potential for GGS to occur in the Project area. Please note that take (Fish & G. Code, § 86) of GGS is not currently authorized for this Project; therefore, the Project must avoid take entirely or seek take authorization from CDFW. If the Project has potential to take GGS, CDFW recommends the Project Proponent seek take coverage by acquiring an Incidental Take Permit pursuant to Fish and Game Code section 2081 subdivision (b) prior to construction.

CDFW recommends revising the MND to include the following language:

- *If take of giant garter snake (*Thamnophis gigas*) cannot be fully avoided, take coverage will be sought pursuant to Fish and Game Code section 2081 subdivision (b) prior to construction.*

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, § 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 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>.

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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 756 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Sara Taylor, Environmental Scientist, at (209) 234-3446 or Sara.Taylor@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
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

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