



State of California
Department of Fish and Wildlife

Memorandum

Governor's Office of Planning & Research

Date: March 24, 2022

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To: Robert Trang
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STATE CLEARINGHOUSE

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Erin Chappell

From: Erin Chappell, Regional Manager

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California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: West False River Drought Salinity Barrier, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022020528, Contra Costa County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) for a draft Environmental Impact Report (EIR) provided for the West False River Drought Salinity Barrier (Project), located at West False River approximately 0.4 miles east of its confluence with the San Joaquin River.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological resources). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act Permit, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Project is located at West False River, a tributary to the San Joaquin River, in the County of Contra Costa, State of California; Latitude 38.057057 N, Longitude - 121.670432 W; Assessor's Parcel Number 027-010-005-0.

The Project consists of the installation of approximately 84,000 cubic yards of 18-inch minus embankment rock to create an approximately 800-foot-long temporary rock barrier in the West False River, between the Jersey Island Levee and the Bradford Island Levee. The Project proponent, the California Department of Water Resources (DWR), is proposing to install the Project a maximum of two times between 2023 to 2032 and for a period of up to 20 months during drought conditions. The goal of the Project is to minimize the impacts of salinity intrusion on the beneficial uses of

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Sacramento-San Joaquin Delta (Delta), consistent with the Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region: the Sacramento River Basin and the San Joaquin River Basin (May 2018), during drought conditions.

When the temporary rock barrier is needed, installation will occur no sooner than April 1 and removal of the barrier will occur by November 30 of the same year or the subsequent year. DWR will remove the barrier based on hydrologic conditions (e.g., Delta outflow) and identification that the barriers beneficial use of minimizing saltwater intrusion into the interior Delta, are no longer needed. When the barrier is left in a subsequent year, a notch will be constructed in January to allow for fish passage and vessel navigation through West False River. The notch will be refilled as early as the first week of April.

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the following Project components in the Project description:

- Boat navigation and native fish presence (migration) occurs at the barrier site year-round, please describe how and why the January-April notch period was chosen as opposed to a year-round notch.
- Additional installations of the Project between the year 2023-2032 and increased installation length should be incorporated into the project description. Climate change has the potential to increase and intensify California droughts (Diffenbaugh et al. 2015, Mann and Gleick 2015). Therefore, it is reasonable to expect that the Project would be installed more than two times between 2023-2032.
- Any maintenance activities required (including dredging).
- Construction schedule, activities, equipment, and crew sizes.
- Specific hydrologic information DWR will be using to trigger installation and removal of the Project.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project's, and its alternative's (if applicable), significant impacts on the environment (CEQA Guidelines, §§15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare,

threatened, or endangered species prior to or during EIR preparation (CEQA Guidelines, §15380). Fully protected, threatened or endangered, candidate, 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:

Common Name	Scientific Name	Status
Central Valley spring-run chinook salmon	<i>Oncorhynchus tshawytscha</i>	ST
Delta smelt	<i>Hypomesus transpacificus</i>	SE
Delta tule pea	<i>Lathyrus jepsonii</i>	1B.2
Giant garter snake	<i>Thamnophis gigas</i>	FT, ST
Longfin smelt	<i>Spirinchus thaleichthys</i>	FC, ST
Mason's lilaeopsis	<i>Lilaeopsis masonii</i>	SR
Sacramento River winter-run chinook salmon	<i>Oncorhynchus tshawytscha</i>	SE
Song sparrow ("Modesto" population)	<i>Melospiza melodia</i>	SSC
Steelhead – Central Valley distinct population segment	<i>Oncorhynchus mykiss irideus</i>	FT
Suisun marsh aster	<i>Aster lentus</i>	1B.2
Swainson's hawk	<i>Buteo swainsoni</i>	ST
Western pond turtle	<i>Emys marmorata</i>	SSC
Woolly rose-mallow	<i>Hibiscus lasiocarpus</i> var. <i>occidentalis</i>	1B.2
Nesting and migratory birds		
Notes: FT = federally threatened under ESA; FC = candidate species under ESA; SE = state endangered under CESA; ST = state threatened under CESA; SR = state rare; SSC = state species of special concern; 1B = CNPS Plant Rank – Rare, Threatened, or Endangered in CA and Elsewhere; 0.2 = CNPS Threat Ranks – moderately threatened in CA		

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information

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from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends that prior to development of the draft EIR, baseline surveys be conducted for special-status species with potential to occur, specifically fish assemblages located within Franks Track. CDFW recommends following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols> and replicating the sample locations and methods used in the Young et al. 2018 study.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

ALTERNATIVE ANALYSIS

The CEQA Guidelines (§15126.6) necessitate that the draft EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives.

CDFW recommends that the draft EIR identifies a range of reasonable Project alternatives to the Project. Alternatives CDFW recommends including are:

- Increasing Delta outflow during periods of drought to prevent Delta salinity intrusion;
- A completely submerged temporary rock barrier constructed to the elevation of the hypersaline layer of the stream; and
- A temporary rock barrier that contains a notch for fish passage for the for the duration of barrier installation.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Potential for “take” of special-status species;
- Expansion and/or establishment of non-native aquatic weeds;

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- Increased predator habitat;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document also should identify reasonably foreseeable future projects in the Project vicinity (e.g., the Delta Conveyance Project), disclose any cumulative impacts associated with these projects (e.g., installation of other temporary rock drought salinity barriers, decreased Sacramento-San Joaquin Delta outflow during periods of drought), determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a listed species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (§§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

CDFW strongly recommends that DWR consider implementation the Franks Tract Futures Project to mitigate for project impacts as well as decrease the need for future drought salinity barriers.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit 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. Issuance of a CESA Permit is subject to CEQA documentation; 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 significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

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CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA §§ 21001(c), 21083, & CEQA Guidelines §§ 15380, 15064, 15065]. Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for 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 § 21000 et seq.) as the responsible agency.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

If you have any questions regarding operational comments, please contact Vanessa Kollmar, Environmental Scientist, at Vanessa.Kollar@wildlife.ca.gov or Sheena Holley, Senior Environmental Scientist (Supervisory), at (916) 903-6426 or Kimberly.Holley@wildlife.ca.gov. If you have any questions regarding construction comments, please contact Monica Oey, Senior Environmental Scientist (Specialist), at (707) 428-2088 or Monica.Oey@wildlife.ca.gov or Melissa Farinha, Environmental Program Manager, at (530) 351-4801 or Melissa.Farinha@wildlife.ca.gov.

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REFERENCES

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