



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 22, 2022

Brian Janowiak, Project Engineer
MBK Engineers
455 University Ave. Suite 100
Sacramento, CA 95825
janowiak@mbkengineers.com

Subject: Bacon Island Levee Rehabilitation Project, Connection Slough and Santa Fe Cut Corridor, Initial Study/Mitigated Negative Declaration, SCH No. 2022030744, San Joaquin County

Dear Mr. Janowiak:

The California Department of Fish and Wildlife (CDFW) has received an Initial Study/Mitigated Negative Declaration (IS/MND) from Reclamation District 2028, Bacon Island Levee Rehabilitation Project, Connection Slough and Santa Fe Cut Corridor (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. If "take" or adverse impacts cannot be avoided, a CESA Permit must be obtained (pursuant to Fish and Game Code section 2080 *et seq.*) for Swainson's hawk, giant garter snake, Mason's lilaeopsis, or other State listed species identified through pre-construction surveys.

PROJECT DESCRIPTION SUMMARY

Proponent: Reclamation District 2028

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Objective: The objective of the Project is to rehabilitate the north and south sides of Bacon Island's levee system (Connection Slough and Santa Fe Cut), approximately 3.5 miles in length total, to sustainably achieve the minimum requirements of Bulletin 192-82 standard. Levee rehabilitation consists of widening and raising the levee crest, armoring the raised portion of the levee crest, flattening the landside levee slope, and placing an all-weather surface on the finished levee crest. Soil fill material may be sourced from within Bacon Island (on-site borrow) or as import from regional off-site commercial locations. Existing levee encroachments or penetrations such as siphon pipes, drain pipes, and unused structures or remnants of structures may be removed or relocated to facilitate the levee rehabilitation.

Location: Bacon Island is located in the central Sacramento-San Joaquin River Delta, approximately halfway between the city of Antioch to the west and Stockton to the east, in San Joaquin County, California. It is situated south of Mandeville Island, west of Mildred Island and Lower Jones Tract, north of Woodward Island, and east of Holland Tract.

Timeframe: The Project is planned in two phases over two years. Estimated time frames are from May 2022 to October 2022, and from May 2023 to October 2023, with an estimated total of 180 working days.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District 2028 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: BIO-5 Breeding Birds and Raptors

The IS/MND did not provide details about the timing of the surveys in relation to the start of construction. It also did not provide locations associated with the Project that would be subject to the surveys.

In order to locate nests of birds that may begin to nest just prior to the beginning of construction, at least one nesting survey should be conducted within two weeks of the start of construction. Surveys will also be needed around any area with increased human activity due to the Project in order to identify and protect nesting birds that may be disturbed by the Project. This will include any staging or storage areas, haul routes, and stockpile and borrow sites.

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CDFW recommends changing the first sentence of BIO-5 to read “For Project activities conducted during the bird breeding season (February 1–August 15), at least one pre-construction nest survey will be conducted within two weeks of the beginning of construction activities.” CDFW also recommends that a sentence be added to BIO-5 stating, “Surveys shall be conducted around the Project Area, as well as all staging and storage areas, haul routes, and stockpile and borrow areas.”

Comment 2: BIO-6 Swainson’s Hawk

The IS/MND does not identify the methodology of which the Swainson’s hawk nest surveys will be performed.

CDFW has developed a document, *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley*, identifying the proper methods to follow to survey for Swainson’s hawk nests and that document should be identified as how the surveys will be conducted.

CDFW recommends that BIO-6 a) include the statement “Nest surveys for Swainson’s hawks shall be conducted in a manner consistent with the *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley*.”

Comment 3: BIO-7 California Black Rail

The IS/MND does not include details about surveys for the California black rail and how they will be performed.

California black rail is classified as a State Threatened species, and is fully protected under Fish and Game Code section 3511. The IS/MND needs to be clear on how the Project will ensure full avoidance of impacts to this species.

CDFW recommends that BIO-7 include that protocol level call-back/response surveys for California black rails will be performed by a qualified biologist with experience in California black rail surveying methods. Also, at least one survey will be conducted within two weeks of the beginning of construction-related activities.

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

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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 2028 in identifying and mitigating significant Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Cristina Autry, Environmental Scientist, at (209) 234-34353 or cristina.autry@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
Erin Chappell
Regional Manager
Bay Delta Region

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

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ATTACHMENT

Project Location

