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Governor's Office of Planning & Research

March 21 2023

STATE CLEARING HOUSE

March 20, 2023

Pablo Arroyave
San Luis and Delta-Mendota Water Authority
P.O. Box 2157
Los Banos, California 93635
(209) 832-6200
Pablo.arroyave@sldmwa.org

Subject: Delta-Mendota Canal Subsidence Correction Project – Initial Study/Mitigated Negative Declaration (IS/MND) Project (Project) SCH No.: 2023020323

Dear Pablo Arroyave:

The California Department of Fish and Wildlife (CDFW) received an Initial Study (IS)/ Mitigated Negative Declaration (MND) from the San Luis and Delta Mendota Water Authority for the above-referenced 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, CDFW appreciates 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 Fish and Game Code. While the comment period may have passed, CDFW would appreciate if the Fresno County Department of Public Works and Planning will still consider our comments.

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 (*Id.*, § 1802). Similarly, for

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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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 to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project will 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 will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams/lakes include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

PROJECT DESCRIPTION SUMMARY

Proponent: San Luis and Delta-Mendota Water Authority

Objective: Since its original construction, the Delta-Mendota Canal (DMC) has been affected by land subsidence which has reduced the capacity the DMC can convey while operating in accordance with Reclamation Safety Standards and Guidelines. These limits on conveyance capacity have introduced operational constraints that can affect deliveries to south-of-Delta Central Valley Project (CVP) contractors. The continued, safe, and reliable operation of the DMC is critical to the users that it serves and the economies that it supports. The proposed project would restore the designed conveyance capacity of the DMC (a maximum flow capacity of 4,600 cubic feet per

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second (cfs) at the origin and a minimum flow capacity of 3,210 cfs at the terminus) by (1) raising deficient concrete lining segments and bank segments to meet the minimum freeboard requirements; (2) installing riprap for erosion protection to stabilize the banks along the earthen-lined segment; (3) replacing bridges and pipeline crossings that do not have enough clearance above water surface elevation to meet minimum required clearings; (4) raising the gates of check structures and wasteways to design level and modify impacted structures; and (5) evaluating existing drainage structures to modify them for safe passage of stormwater.

Location: Per Project information, Project effects would occur within Alameda, San Joaquin, Stanislaus, Merced, Fresno, San Benito and Santa Clara Counties.

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the San Luis and Delta-Mendota Water Authority 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 environmental document for this Project.

Per California Natural Diversity Database (CNDDDB) 2023 records, the Project site is within the geographic range of the Federal endangered (FE)/State threatened (ST) San Joaquin kit fox (*Vulpes macrotis mutica*), the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*), the ST Swainson's hawk (*Buteo swainsoni*), the ST tricolored blackbird (*Agelaius tricolor*), and State Species of Special Concern (SSC) burrowing owl (*Athene cunicularia*).

San Joaquin Kit Fox (SJKF)

SJKF occurrences have been documented to the east of the DMC in the Firebaugh area (CDFW 2023). The Project has the potential to temporarily disturb and permanently alter suitable habitat for SJKF and directly impact individuals if present during construction, and other activities.

SJKF den in a variety of areas such as right-of-ways (ROW), agricultural and fallow/ruderal habitat, dry stream channels, and canal levees, and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. As a result, there is potential for SJKF to occupy all suitable habitat within the proposed Project boundary and surrounding area.

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The Project area is within, adjacent to, and crosses through several areas of highly suitable habitat. Therefore, subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.

For all Project-specific components including construction, CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity contains suitable habitat for SJKF in support of the CEQA document.

CDFW recommends assessing presence/absence of SJKF by having qualified biologists conducting surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign. CDFW also recommends following the United States Fish and Wildlife Service (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011).

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Crotch Bumble Bee (CBB)

The proposed Project location is within CBB range (CDFW 2023). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

CBB was once common throughout most of central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features prior to Project implementation to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from the approval of the IS/MND.

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If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through acquisition of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

Swainson's Hawk (SWHA)

SWHA have the potential to nest near the Project site. The CNDDDB shows SWHA occurrences throughout the Project vicinity (CDFW 2023).

Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young). Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Tricolored Blackbird (TRBL)

TRBL occurrences have been documented near certain portions of the Project site (CDFW 2023). TRBL colonies require suitable nesting habitat, nearby freshwater, and nearby foraging habitat including semi-natural grasslands, agricultural croplands or alkali scrub (Beedy et al. 2017). Habitat surrounding the Project area may provide suitable foraging habitat for TRBL.

CDFW recommends that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts in support of the CEQA document.

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony should be reassessed to determine the extent of the breeding colony within 10 days for Project initiation.

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Burrowing Owl (BUOW)

BUOW have been observed near the DMC Project site (CDFW 2023) throughout the length of the project area. BUOW inhabit open/disturbed grassland and/or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery

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indicates that some of the Project site is bordered by annual grassland and potentially fallow agricultural fields.

Potentially significant direct impacts associated with subsequent activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012) in support of the CEQA document. Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that

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burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

Lake and Streambed Alteration

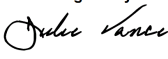
The Project includes evaluating existing drainage structures and may require modification for safe passage of stormwater. Therefore, the Project may be subject to CDFW's regulatory authority pursuant Fish and Game Code Section 1600 et seq. Fish and Game Code section 1602 requires the Project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or by electronic mail at R4LSA@wildlife.gov.

Federally Listed Species

CDFW also recommends consulting with the USFWS on potential impacts to Federal listed species including, but not limited to, SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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cc: Regional Water Quality Control Board
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