



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Dec 28 2023**

## STATE CLEARINGHOUSE

December 28, 2023

Jesse Barton  
Reclamation District 1601, c/o Gallery & Barton, APLC  
1112 I Street, Suite 240  
Sacramento, CA 95814  
[jbarton@gallerybartonlaw.com](mailto:jbarton@gallerybartonlaw.com)

Subject: Twitchell Island Wetland and Enhancement Project, Mitigated Negative Declaration, SCH No. 2023110643, Twitchell Island, Sacramento County

Dear Jesse Barton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Reclamation District 1601 (District) for the Twitchell Island Wetland and Enhancement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the District, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

### CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

### PROJECT DESCRIPTION SUMMARY

**Proponent:** Reclamation District 1601

**Objective:** The Project will enhance and restore approximately 40 acres of wetland and 80 acres of riparian and scrub-shrub habitat within a 185-acre Project boundary. The Project would plant native riparian tree and shrub species interspersed with native grasses and redistribute onsite soil to create a mosaic of shallow open-water habitat, habitat islands, and emergent wetland communities. Additionally, the Project would

---

<sup>1</sup> 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.

Jesse Barton  
Reclamation District 1601  
December 28, 2023  
Page 2

construct shallow swales, incorporate water control structures for water delivery, and include management within the improved wetland units. This project will be constructed on (entirely or a portion of) two parcels owned by the California Department of Water Resources. The property is currently used for agriculture, in particular alfalfa and cattle grazing.

**Location:** The Project is located approximately 3.5 miles south of Isleton and 3 miles southeast of Rio Vista, in the northern portion of Twitchell Island, just south of Sevenmile Slough. The approximate center of the site is located at Latitude 38.114785° N, Longitude -121.657261° W.

## **REGULATORY REQUIREMENTS**

### **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 plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson’s hawk (*Buteo swainsoni*) and giant garter snake (*Thamnophis gigas*), which are both CESA listed as threatened species, as further described below.** Issuance of an ITP 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 an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (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 CESA.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### **COMMENT 1: Swainson’s Hawk Survey Methodology and Protective Buffers**

**Issue:** The MND does not adequately mitigate potential impacts to Swainson’s hawk. Mitigation Measure BIO-4 does not provide any methodology by which to do nesting

Jesse Barton  
Reclamation District 1601  
December 28, 2023  
Page 3

surveys for Swainson's hawks and identifies that pre-construction surveys for nesting birds should be conducted within a quarter mile of the Project Area and if Swainson's hawk nests are found that a quarter mile buffer be established. CDFW's recommended survey protocols, *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>), should be identified as the methodology to be followed and call for a half mile survey distance and consult with CDFW if active nests are identified with the half mile.

The California Natural Diversity Database (CNDDDB) documents multiple occurrences of Swainson's hawks on the island containing the Project site and immediately adjacent islands (CNDDDB, 2023). The occurrence of Swainson's hawks closest to the Project is approximately 0.1 miles north of the Project (CNDDDB, 2023).

**Specific impacts and why they may be potentially significant:** The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young. The bird survey as proposed by Mitigation Measure BIO-4 (page 40) may not detect nesting Swainson's hawks and therefore may not prevent impacts to the species. Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which should be considered a significant impact.

**Recommended Mitigation Measures:** To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure specific to Swainson's hawks and modifying current BIO-4 as appropriate.

*Mitigation Measure BIO-7: Swainson's Hawk Surveys and Avoidance Buffer.*

If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall

Jesse Barton  
Reclamation District 1601  
December 28, 2023  
Page 4

be conducted within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless CDFW provides concurrence with a variance to this requirement in writing. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement an initial 0.5-mile avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. A designated on-site biologist/monitor shall be on-site daily while Project activities are taking place and shall have the authority to stop work if the hawks are exhibiting agitated behavior. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

**COMMENT 2: Permanent Loss of Swainson's Hawk Foraging Habitat**

**Issue:** The MND does not adequately identify the impact to Swainson's hawk due to loss of foraging habitat. On page 34, the MND identifies that the Project area provides foraging habitat for birds of prey, including Swainson's hawks, but that no permanent impacts are expected with this Project. Conversion of the foraging habitat into freshwater marsh and forested land is a permanent impact.

**Specific impacts and why they may be potentially significant:** The Project is permanently converting pasture fields, which is considered foraging habitat for the Swainson's hawk (CDFW, 2016) into freshwater marsh and upland forest and scrub which do not provide foraging opportunities for Swainson's hawks. The permanent loss of approximately 120 acres of foraging habitat within a core area of the species range as a result of this Project is a significant impact.

Regardless of habitat quality, the Project proponent should be required to mitigate at a minimum of 1:1 acres of foraging habitat lost by preserving foraging habitat in perpetuity. Many surrounding CEQA lead agencies for many years have concluded that a minimum of 1:1 mitigation for foraging habitat is necessary to mitigate impacts to the hawk. For example, the conservation strategy included within the South Sacramento Habitat Conservation Plan and the San Joaquin Multi-species Conservation Plan both contemplate a minimum of 1:1 for foraging habitat. Sacramento County's Swainson's hawk foraging habitat ordinance is based on a minimum of 1:1 for mitigation, and likewise so does the City of Elk Grove. Providing less than 1:1 mitigation for foraging habitat in this location would fall short of the standard required by all of these fellow surrounding CEQA Lead Agencies.

**Recommended Mitigation Measures:** To reduce significant impacts to Swainson's hawk to less-than-significant, CDFW recommends including the below mitigation measure.

Jesse Barton  
Reclamation District 1601  
December 28, 2023  
Page 5

*Mitigation Measure BIO-8: Swainson's Hawk Foraging Habitat Mitigation.*

The Project will mitigate at a minimum ratio of 1:1 of acres of foraging habitat lost by preserving foraging habitat in perpetuity to benefit Swainson's hawks within the core of the species' range. This mitigation land will be preserved and managed in perpetuity with a conservation easement and funding of an endowment.

**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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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 environmental document 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 environmental document filing 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**

CDFW appreciates the opportunity to comment on the MND to assist the District in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Alec Strachan, Senior Environmental Scientist (Specialist), at (209) 234-3454 or [Alexander.Strachan@wildlife.ca.gov](mailto:Alexander.Strachan@wildlife.ca.gov); or Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 401-0452 or [Todd.Gardner@wildlife.ca.gov](mailto:Todd.Gardner@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

Jesse Barton  
Reclamation District 1601  
December 28, 2023  
Page 6

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023110643)

## REFERENCES

CDFW. 2023. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 18 December 2023].

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>