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July 24, 2023

Omar Al-Hindi, Executive Project Manager
 San Joaquin Area Flood Control Agency
 22 E. Weber Avenue, Suite 301
 Stockton, CA 95202-2317
ceqacomment@sjafca.org

Subject: Lower San Joaquin River Reach TS_30_L Levee Improvement Project, Draft Supplemental Environmental Impact Report, SCH No. 2010012027, City of Stockton, San Joaquin County

Dear Mr. Al-Hindi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Supplemental Environmental Impact Report (draft SEIR) from San Joaquin Area Flood Control Agency (SJAFCA) for the Lower San Joaquin River Reach TS_30_L Levee Improvement Project (Project) located in the City of Stockton, San Joaquin County, California, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW has reviewed the draft SEIR and is submitting comments regarding potential impacts to biological resources associated with the proposed Project.

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 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 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

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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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

California Endangered Species Act

Please be advised that if the Project has the potential to result in “take” of plants or animals listed or a candidate under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.), the Project must demonstrate compliance with CESA, either through full avoidance measures or obtaining take coverage through a CESA Incidental Take Permit (ITP). Under CESA, take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP. If “take” or adverse impacts cannot be avoided, a CESA Permit must be obtained (pursuant to Fish and Game Code section 2080 et seq.). In this case, the draft SEIR acknowledges that the Project may impact the CESA-listed Swainson’s hawk, giant garter snake, and other State listed species that have the potential to be present on the Project site.

Lake and Streambed Alteration

CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et. seq., for activities affecting lakes or streams and associated riparian habitat. LSA notification is required for any activity that may 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 will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as the responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: San Joaquin Area Flood Control Agency

Objective: The objective of the Project is to meet the requirements of California Senate Bill (SB) 5 of 2007, the Central Valley Flood Improvement Act, to achieve a 200-year

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level of protection for urban and urbanizing areas, while focusing on a reduction of flood risk in the City of Stockton. Primary activities proposed under the Project include one mile of cutoff wall construction, levee reshaping, and runoff erosion protection of the TS_30_L levee, development of a borrow site, barge off-haul site, two co-located staging and stockpile areas, haul routes, and mitigation areas. It is anticipated that Project improvements will result in impacts to approximately 0.6 acres of wetland habitat, 2.3 acres of irrigation ditch, and 9 acres of agricultural rice fields. Two staging and stockpile areas are to be co-located adjacent to the northern and southern portions of the site. Three potential borrow sites are under consideration – one at the Stockton East Water District (SEWD) property located approximately nine miles east of the Project site and two commercial borrow sources. One commercial borrow source is Dutra Materials located at Decker Island and the other commercial site is Brown Sand Incorporated located in Lathrop.

The Project will be mitigated at one of five sites. Three mitigation sites were evaluated at a Project-level of detail (14-Mile Slough Pump Station, San Joaquin River (SJR) West Site, and SJR East Site), and two sites were evaluated at a program-level of detail (SJR South Site and Van Buskirk Park). The Project-level mitigation sites were evaluated for existing habitats and species on-site and are described in the draft SEIR. The program-level mitigation sites have not been evaluated and no specific site information is available. Because of this, their suitability as mitigation locations cannot be determined. Therefore, if SJR South Site or Van Buskirk Park (or an alternative biological mitigation site not evaluated in the draft SEIR) is chosen for development, additional environmental review under CEQA will be required prior to construction. Site preparation will include clearance of vegetation, the site(s) will be graded to establish a construction staging/stockpile area, topography will be graded to elevations that support wetland and riparian habitats and cut and fill will be balanced on-site.

Location: The Project is located on the northwestern side of the City of Stockton. The levee extends 1.1 mile in length and separates the Brookside residential neighborhood located on Sargent Barnhart Tract on the east and the Wright Elmwood Tract on the west. It is bounded on the south by West March Lane and on the north by White Slough/Fourteen Mile Slough. The Project midpoint is located at Latitude 37.98641, Longitude -121.369155. Staging and stockpile areas, the barge off-haul site, the SJR East Site, SJR West Site, Fourteen Mile Slough Pump Station Site, SJR South, and Van Buskirk Park mitigation sites, and the SEWD borrow site locations.

Timeframe: Construction for the Project from September 2024 through March 2026.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SJAFCA in adequately identifying and/or mitigating the Project's significant, or potentially

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significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Issue: CDFW has determined that the Project will require an LSA Agreement per Fish and Game Code 1602. On page 2-27, the draft SEIR states that all appropriate environmental permits for vegetation removal and construction activities will be obtained. SJAFCA has stated to CDFW staff that it is no longer pursuing permits from CDFW for the Project. However, via inter-agency communication, the U.S. Army Corps of Engineers (USACE) identified SJAFCA as a non-federal sponsor responsible for a portion of the Project's costs and therefore, State permits (e.g., an LSA Agreement and ITP), if needed, are the responsibility of SJAFCA to obtain. CDFW is concerned that if SJAFCA does not plan on obtaining permits for the Project, then the basis for the avoidance, minimization, and mitigation measures identified in the draft SEIR cannot be relied upon to reduce impacts on biological resources to a level of less-than-significant.

In addition, according to CEQA guidelines, all mitigation must be feasible and fully enforceable, and all feasible mitigation **must be imposed by lead agencies** (see CEQA Guidelines, § 15041). Therefore, the Lead Agency should neither defer identification of mitigation measures pending the findings and determinations from a Responsible Agency, nor should it rely on permits from those Responsible Agencies to reduce the impacts of a project approved by the Lead Agency to reduce the project's impacts to a level of less-than-significant.

Recommendation: CDFW recommends that SJAFCA identify enforceable and feasible measures in a revised draft SEIR and obtain an LSA Agreement and an ITP for the Project. CDFW also recommends that SJAFCA engage with CDFW early on during Project planning to develop and incorporate avoidance, minimization, and mitigation measures into the Project and any CEQA environmental documents.

CONCLUSION

Due to the draft SEIR's reliance on permits issued by Responsible Agencies, CDFW concludes that the draft SEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. The draft SEIR should be revised to incorporate specific and enforceable mitigation measures to offset the biological impacts identified that are the responsibility of the CEQA Lead Agency to ensure these impacts are reduced to a level of less-than-significant or less-than-significant with mitigation.

CDFW appreciates the opportunity to comment on the draft SEIR to assist SJAFCA in identifying and mitigating Project impacts on biological resources. Questions regarding

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this letter or further coordination should be directed to Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

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

cc: State Clearinghouse (SCH No. 2010012027)
Ashley Lopez, U.S. Army Corps of Engineers – Ashley.k.lopez@usace.army.mil
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