

Haggerty, Nicole@Wildlife

From: Mulloy, Lauren@Wildlife
Sent: Monday, October 30, 2023 9:05 AM
To: Martinez, Josh@DWR
Cc: Wildlife R2 CEQA; Wilson, Billie@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wilson, Danielle
Subject: CDFW CEQA Comments - Upper Swanston Ranch, INC., Irrigation and Fish Passage Improvement Project IS/MND



Dear Josh Martinez,

Subject: Upper Swanston Ranch, INC. Irrigation and Fish Passage Improvement Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2023090717

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from the California Department of Water Resources (DWR) for the Upper Swanston Ranch, INC. Irrigation and Fish Passage Improvement Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.^[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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 & 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act 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.

PROJECT DESCRIPTION SUMMARY

The Project site is located on agricultural lands adjacent to the Tule Canal within the Yolo Bypass, 2 miles west of the City of West Sacramento, and half a mile north of Interstate 80 in Yolo County, Latitude 38.584187, Longitude -121.585262.

The Project consists of installing a water intake structure with fish protective screens within the Tule Canal; installing a new pump site west of the Tule Canal to pull water from the proposed water intake screens through buried irrigation pipes to an improved existing holding reservoir; and modifying an existing irrigation channel adjacent to the Tule Canal to prevent fish entrainment.

COMMENTS AND RECOMMENDATIONS [^]

CDFW offers the comments and recommendations below to assist DWR in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the following items be addressed in the draft CEQA document:

COMMENT 1: Mitigation Measure BIO-10. Conduct Preconstruction Surveys for Swainson's Hawk and White-Tailed Kite; Avoid and Minimize Adverse Effects on Swainson's Hawk and White-Tailed Kite, page 3-45.

Issue: Mitigation Measure BIO-10 proposes to conduct surveys no more than seven (7) days prior to the initiation of ground disturbing activities within 0.25 mile of the Project area. The measure also indicates a 250-foot nest disturbance buffer will be established if active nests are found. For Swainson's hawk (*Buteo swainsoni*), a single survey 7 days prior to ground disturbing activities with a 0.25 survey radius may not be adequate to avoid impacts from construction related activities. For white-tailed kite (*Elanus leucurus*), a survey conducted 7 days prior to the initiation of ground disturbing activities may not be sufficient to avoid impacts from construction activities. White-tailed kite are known to have a breeding range that averages 0.2 square miles (Henry 1983). For both Swainson's hawk and white-tailed kite, the 250-foot buffer, as proposed, may be inadequate to reduce impacts to a less than significant level.

Recommendation: To address these comments, CDFW recommends the draft IS/MND incorporate the following considerations:

For Swainson's hawk, CDFW recommends that a qualified biologist conduct Swainson's hawk protocol-level surveys during all survey periods throughout the nesting season prior to the commencement of all construction activities scheduled between March 1 to September 30 (the Swainson's hawk nesting season), regardless of the initiation of ground disturbing activities. Protocol-level surveys should be conducted in all suitable Swainson's hawk nesting habitat within 0.5 mile of the Project area in accordance with *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee, 2000). Nests found within 0.50 miles should be monitored either continuously or periodically depending on the construction activities and level of disturbance until young have fledged, are feeding independently, and are no longer dependent on the nest.

For white-tailed kite, CDFW recommends that a qualified biologist conduct CDFW-approved protocol-level surveys in all suitable white-tailed kite habitat within 0.25 mile of the Project area no more than 7 days prior to the commencement of all construction activities during the nesting season (February 1 – August 31). Surveys should be conducted during the appropriate time of day to maximize detectability. If an active nest is discovered during surveys or during construction, the Project

proponent shall immediately halt all construction activities within ¼ mile of the nest and contact CDFW.

CDFW advises against pre-determined buffer zones. Buffer zones should be determined by the qualified biologist on a case-by-case basis depending on species, stage of nesting effort, type of construction activities, and any geographic or topographical barriers between the nest and the proposed activities. CDFW recommends that if any active nests are found, buffer zones shall be determined by the qualified biologist before commencement of construction activities.

Furthermore, all measures to protect nesting birds should be performance-based. While some raptors may tolerate disturbance within 250 feet of construction activities, others may have a different disturbance threshold and “take” could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the MBTA and Fish and Game Code. Additionally, CDFW recommends on-site monitoring by a qualified biologist familiar with the species, as buffers may need to be increased based on the birds’ tolerance level to the disturbance as activities change and as the birds’ transition through different stages of the nesting cycle.

COMMENT 2: Direct Physical Injury and Disturbance, page 3-48, paragraph 1

Issue: The draft IS/MND indicates special-status fish species are least likely to be present in the Project area from June 1 - August 31. However, special-status salmonid species have been documented upstream of the Project area as late as June 2nd at Wallace Weir in the Knights Landing Ridge Cut Slough (CDFW 2018, <https://www.calfish.org/ProgramsData/ConservationandManagement/CentralValleyMonitoring/SacramentoValleyTributaryMonitoring/YoloandSutterBypasses-Monitoring/WallaceWeirandColusaBasinDrain.aspx>). CDFW is concerned the stated in-water work window of June 1 - August 31 may not avoid impacts to special-status fish species.

Recommendation: CDFW recommends revising the proposed in-water work window from June 1 – August 31 to June 15 – October 31 to coincide with documented observances when special-status salmonids are least likely to be present in the Project area. Additionally, to be consistent, the proposed in-water work window should be revised throughout the draft document.

Comment 3: Mitigation Measure BIO-14. Avoid and Minimize Adverse Effects on Special-Status Fish Species by Implementing Fish Rescue and Relocation, page 3-49, last bullet.

Issue: Mitigation measure BIO-14 outlines what the fish rescue and relocation plan will be required to include. For dead fish, additional data will include fork length and a description of injuries and/or possible cause of mortality, if it can be determined. CDFW believes there is additional data that can be collected from dead fish that is not identified in the measure.

Recommendation: CDFW recommends additional data collected from dead fish include taking a fin clip from dead salmonids on site for genetic and positive identification of race designation, as well as retaining the head from any adipose fin clipped salmonids for coded wire tag extraction in order to determine hatchery of origin.

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 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND for the Upper Swanston Ranch, INC. Irrigation and Fish Passage Improvement Project to assist DWR in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Lauren Mulloy, Senior Environmental Scientist (Specialist) at (916) 358-2909 or Lauren.Mulloy@wildlife.ca.gov.

REFERENCES

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley.

Henry, M. E. 1983. "Home range and territoriality in breeding White-tailed Kites". Master's Thesis, San Diego State University, San Diego, CA

Kubo, H. 2018. Wallace Weir Catch Data 2017-2018. California Department of Fish and Wildlife.

Sincerely,

Lauren Mulloy

Senior Environmental Scientist (Specialist)

Central Valley Flood Protection Plan



North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Cell: (916) 358-2909

To report poachers and polluters please call 1-888-334-2258.

^[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.