

**Finding of No Significant Impact
for
Black Rascal Creek Watershed Plan and Environmental Assessment
Merced County, California**

Introduction

The Black Rascal Creek Flood Control Project (Project) is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. This act authorizes the Natural Resources Conservation Service to provide technical and financial assistance to local Project sponsors. The local sponsors of the Project are Merced County and City of Merced.

An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and tribal governments; federal agencies; and interested organizations and individuals. The Black Rascal Creek Watershed Plan and Environmental Assessment is available for public review at the following location:

U.S. Department of Agriculture
Natural Resources Conservation Service
430 G Street
Davis, California 95616

Recommended Action

The Project will provide flood reduction to the City of Merced and rural communities within Merced County downstream of Black Rascal Creek by temporarily detaining floodwaters during periods of heavy precipitation, thereby limiting flow in the diversion channel and reducing peak diversion channel flows entering Bear Creek downstream of the Project. The Project consists of a detention basin, spillways, channel modifications to Black Rascal Creek, and drainage facilities created by an external embankment aligned adjacent to the Merced Irrigation District's Fairfield Canal, East Yosemite Avenue, and North Arboleda Drive. The detention basin will temporarily detain a 200-year storm event and limit flow in the diversion channel to 3,000 cubic feet per second, reducing peak flows in Bear Creek and the flooding along the old Black Rascal Creek channel that flows through the City of Merced. The Project will also restore and enhance aquatic, riparian, and upland habitats in the footprint of the detention basin.

The recommended action will protect life and property of residential communities within the City of Merced and Merced County and surrounding agricultural properties by reducing the threat caused by uncontrolled runoff and flooding from Black Rascal Creek.

Effect of Recommended Action

The primary goal for the Project is to provide flood protection to communities within the City of Merced and rural Merced County that are downstream of Black Rascal Creek. The Project will minimize downstream flooding and erosion caused by excess flow and the risk of flooding will be reduced providing a significant floodplain management benefit for the City of Merced and nearby community of Franklin-Beachwood. The detention basin will attenuate future flood flows and prevent overflows into the community, preventing future water quality and public health violations and damages, which will be a beneficial impact.

A new channel will be graded within the detention basin to restore a tributary of Black Rascal Creek. The new channel will convey flow through the proposed basin and connect with a realigned segment of Black Rascal Creek. It is anticipated that approximately 2.08 acres of aquatic habitat will be restored in the basin, comprising approximately 0.85 acre of intermittent streambed bounded by 1.23 acres of vegetated wetlands. The aquatic habitat will be bounded by approximately 4.2 acres of riparian habitat. Permanent freshwater wetland impacts will occur and will be mitigated off-site at an approved mitigation bank that will ensure no net loss of habitat functions and values.

Loss and degradation of vernal pools will be minimized to the extent feasible. Measures to reduce impacts to water quality will include preparation of a Storm Water Pollution Prevention Plan to protect adjacent wetlands, and compensatory mitigation for wetland impacts and vernal pool brachiopod impacts. Consultation with the U.S. Army Corps of Engineers (USACE) is occurring concurrently with the National Environmental Policy Act process. Coordination will include Section 404 permitting for impacts to regulated aquatic resources. The Section 404 permitting process will determine the appropriate compensatory habitat mitigation, as necessary. Merced County, or its contractor, will be responsible for implementation of permit conditions and measures to reduce impacts to wetland and water resources.

Prior to Project implementation, a formal wetland delineation was conducted at the site and submitted to the agencies for review and verification (2019). The delineation identified the location and extent of aquatic habitats, including freshwater wetlands and other regulated habitats. Best management practices associated with the Project's Storm Water Pollution Prevention Plan will be implemented to reduce potential for indirect impact on freshwater wetland and aquatic habitats. Disturbed soils upslope of freshwater wetlands and aquatic habitats (such as embankment slopes and other disturbed areas) will be revegetated to minimize the transport of eroded soils into downslope wetlands. Construction of the Project would comply with requirements to control fugitive dust emissions to minimize dust and effects on water quality. Merced County, or its contractor, will be responsible for complying with requirements to minimize fugitive dust emissions. Other appropriate best management practices, such as use of concrete washout basins, proper waste management, and securely locating and maintaining portable toilets, will be used to prevent discharge of possible contaminants and chemicals associated with construction or operations activities to reduce potential impacts. Indirect wetland impacts will be reduced by installing fencing along perimeter of wetlands adjacent to Project footprint. Merced

County, or its contractor, will be responsible for implementation of the above measures and best management practices to reduce impacts to wetland and aquatic habitats.

The U.S. Fish and Wildlife Service (USFWS) was consulted pertaining to special-status species that have some potential to be affected by the Project, including California tiger salamander, Colusa grass, fleshy owl's-clover, hairy Orcutt grass, San Joaquin Valley Orcutt grass, vernal pool fairy shrimp, vernal pool tadpole shrimp, and San Joaquin Valley kit fox. A biological opinion was issued by USFWS for the Project on September 28, 2023. The USFWS concurred with the determinations that the proposed project: may affect but is not likely to adversely affect the kit fox; may affect but is not likely to adversely effect the listed vernal pool branchiopods; may affect, but is not likely to adversely affect Colusa grass, fleshy owl's clover, hairy Orcutt grass, or San Joaquin Valley Orcutt grass; and is not likely to jeopardize the continued existence of California tiger salamander. Compensatory mitigation for 1.6 acres of temporary impacts to California tiger salamander upland dispersal habitat (non-native annual grassland) and 0.198 acre of permanent impacts to Riverine Predictive Ecosystem will be purchased from a USFWS approved mitigation or conservation bank. The following are the proposed amounts and ratios of compensation: Permanent impacts on aquatic habitat (0.198 acre) will be mitigated at a ratio of 3:1 (0.594 acre); temporary impacts on upland habitat (1.6 acres) will be mitigated at a ratio of 0.5:1 (0.8 acre). Merced County, or its contractor, will be responsible for implementation of permit conditions.

Measures to reduce potential impacts to special-status species will include conducting surveys for all federal- and state-listed species that may occur on the Project footprint prior to construction, establishing buffer zones for special-status plant populations, avoiding and minimizing impacts on freshwater marsh and aquatic habitats, and avoiding and preserving special-status plants to the extent feasible. If one or more identified populations of special-status plant species cannot be avoided and may be directly or indirectly affected by the Project, a species-specific impact determination will be made by a qualified botanist to determine if compensatory mitigation is necessary. Compensatory habitat mitigation will be implemented from an approved conservation bank or other restoration/enhancement measures as determined necessary with USACE, USFWS, and the California Department of Fish and Wildlife. Avoidance buffers will be implemented for nesting raptors and other native birds, and passive relocation of burrowing owls will occur during the non-nesting season. Tree removal will occur after September 1 if roosting bats are identified in Project footprint. Merced County, or its contractor, will be responsible for implementation of permit conditions and measures to reduce impacts to special-status species and their habitat.

Additional measures to reduce impacts from Project activities include implementing construction minimization measures such as observing speed limits, covering holes and trenches, conducting daily inspection of construction equipment, implementing an employee awareness program, and revegetating disturbed soils. Encroachment permits will be obtained and a traffic control plan implemented to address emergency responder access and management of local traffic. An environmental education program will be presented to construction crews by a qualified biologist. Standard erosion control and slope stabilization measures will be installed in areas for work where runoff could enter wetland areas. Machinery will be refueled at least 50 feet from any wetland habitat, and a spill prevention and response plan will be maintained onsite during all construction

using motorized equipment. Merced County, or its contractor, will be responsible for implementation of permit conditions and measures to reduce impacts from construction activities.

A cultural resources inventory of the area of potential effects was undertaken. No direct or indirect impacts to cultural resources listed in or eligible for listing in the National Register of Historic Places or California Register of Historical Resources were identified to result from implementation of the Project. If cultural resources are discovered during ground-disturbing activities, the procedures included in Part 601.29 of the Natural Resources Conservation Service National Cultural Resources Procedures Handbook will be followed. The State Historic Preservation Officer concurred on April 2, 2022, that no historic properties will be affected as a result of the Project.

Alternatives

The Watershed Project Plan and Environmental Assessment fully evaluates the No-Action Alternative (future-without-project alternative) and the Preferred Alternative. The Project is the culmination of several environmental studies including an Environmental Impact Statement (1980), a Merced County Feasibility Study (2009), and an Environmental Impact Report (2017). These studies evaluated numerous alternatives to provide flood protection during 200-year flood events while reducing potential environmental impacts.

Under the Preferred Alternative, the Project will substantially reduce downstream flooding along Bear Creek and provide flood protection for public safety, particularly in disadvantaged communities (for example, Franklin-Beachwood); minimize property damage caused by flooding on residential and prime agricultural lands; and improve water quality by minimizing erosion and sedimentation. No significant adverse environmental impacts will result from installations except for minor inconveniences to local residents in the vicinity of the Project footprint during construction. The benefit-cost ratio for the Preferred Alternative is 4.5, which is the net benefit calculated for the 200-year flood protection facility.

The No-Action Alternative (future-without-project alternative) assumed the Project would not be implemented and Black Rascal Creek would have continued to be unmanaged. The No-Action Alternative would have resulted in continued flooding and flood-related damage in wetter years downstream from the Project.

The Preferred Alternative is the most practical means to protect life and property of residential communities within the City of Merced and Merced County and the surrounding agricultural properties by reducing the threat caused by uncontrolled runoff and flooding from Black Rascal Creek. Because no significant adverse environmental impacts will result from installation of the measures, the only other alternative fully considered in the watershed Plan EA was the future-without-project alternative.

Consultation—Public Participation

The draft watershed Plan EA was transmitted to all participating and interested agencies, groups, and individuals for review and comment from June 28 to July 27, 2023. The public and interested parties were invited to comment on the draft document. A public hearing was held during a regularly scheduled meeting of the Merced County Board of Supervisors on July 11, 2023. The hearing included a presentation informing the public of the Project and inviting the public to comment. No comments were received during the public hearing. During the 30-day public circulation period, two comment submittals were received from the California Natural Resources Agency Department of Water Resources Division of Safety of Dams. One submittal requested information regarding clarification on the jurisdictional determination. The response clarified that the principal spillway remains at-grade and ungated, which is understood to be the basis of the non-jurisdictional determination. The second submittal requested minor revisions to the Plan EA to include removing references to Division of Safety of Dams design standards and instead clarifying that the Project is being constructed in accordance with Project standards and specifications.

Specific consultation was conducted with the State Historic Preservation Officer and native American tribes concerning cultural resources and historic properties in the watershed.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

Based on the environmental assessment summarized above, I find that the proposed action is not a major federal action significantly affecting the quality of the human environment, and I have determined that an environmental impact statement for the Black Rascal Creek Watershed Plan is not required.

Acting for

2/1/2024

Signature

Date

Carlos Suarez, State Conservationist
Natural Resources Conservation Service