



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

GAVIN NEWSOM, Governor
MEGHAN HERTEL, Director

Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
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March 2, 2026

Chad Fein, President
Reclamation District 2110
Post Office Box 408
Walnut Grove, CA 95690
Chad.Fien@water.ca.gov

Dear Chad Fein:

Subject: McCormack-Williamson Tract 2026 Levee Erosion Repair Project Sites 1–14, Initial Study/Mitigated Negative Declaration, SCH No. 2026010976, Sacramento County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from Reclamation District 2110 (RD 2110) for the McCormack Williamson Tract 2026 Levee Erosion Repair Sites 1-14 Project (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, we appreciate 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 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. (*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.

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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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 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

Proponent: Mike Kynett

Objective: The objective of the Project is to repair 14 critical erosion sites along the exterior (outboard) levee on McCormack Williamson Tract. These sites are located along Lost Slough, Snodgrass Slough, the East Levee, and Dead Horse Cut. These sites range from 50 to 250 feet in length, and have experienced bank loss through undercutting, toe scour, and erosion to the near vertical levee sections. Primary Project activities include flattening the waterside levee slope, placing riprap and fill material, and constructing a toe berm. The Project proposes two repair types, depending on site characteristics.

Repair Type 1 involves removal of existing habitat, excavating the levee to a back cut slope of 1.5-2H:1V, placing soil filling rock slope protection (RSP) on the flattened back cut, installing a soil bench behind the rock toe near Mean High Water (MHW) and filling with soil on the created bench to allow for planting of mitigated riparian habitat. This design consists of nine repair sites.

Repair Type 2 consists of 3 repair sites. This repair design consists of excavating only the lower bank slope, leaving the upper portion and any existing habitat intact. RSP will be placed as a toe berm from the channel bed/bank to just above MHW. Soil will be placed from the RSP toe to the mid- levee slope or levee crest, depending on the site.

Location: This Project is located in the North Delta, near the towns of Walnut Grove and Thornton, Sacramento County. Access to McCormack Williamson Tract is on Bean Ranch Road, cross street of Franklin Boulevard. GPS coordinates are 38°15'12.6"N, 121°29'2.9"W.

Timeframe: The Project is expected to begin construction July 2026 through October 2026.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction

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or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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 a CESA Permit.

California Environmental Quality Act

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final MND and complied with its responsibilities as a responsible agency under CEQA.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513

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(regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Section 3.2.2 Page 3.2.2-33: BIO-6 (Giant Garter Snake Avoidance Measure)

Issue: The IS/MND does not address take authorization in the event that the CESA-listed species, Giant Garter Snake (*Thamnophis gigas*; GGS), cannot be fully avoided. This species is protected by CESA and may not be taken without prior take authorization from CDFW.

Specific impacts and why they may occur and be significant: Project activities have the possibility of resulting in the incidental take of GGS. The activities that could result in incidental take of GGS include vegetation removal, earth moving, sheet pile and cofferdam installation, excavation, grading, grubbing, levee construction, moving vehicles/equipment, block net or turbidity wall installation, and surfacing new and existing levees.

Recommended Mitigation Measure: To comply with CESA, CDFW recommends modifying the current BIO-6 to identify that take coverage for GGS will be sought.

COMMENT 2: Section 3.2.2. Page 3.2.2-35: BIO-7 (Nesting Bird Surveys and Avoidance)

Issue: The no-disturbance buffer for nesting Swainson's hawk (*Buteo swainsoni*, SWHA) may be inadequate, and the IS/MND does not address take authorization in the event that the CESA-listed species, SWHA, cannot be fully avoided. This species is protected by CESA and may not be taken without prior take authorization from CDFW.

Specific impacts and why they may occur and be significant: The IS/MND states Project activities may occur within a 0.25-mile no-disturbance buffer of an active SWHA nest. Working within a 0.25-mile no-disturbance buffer of an active nest has the potential to result in a significant impact to nesting SWHA. The activities that could result in these impacts include vegetation removal, presence of project personnel, and moving vehicles/equipment.

Recommended Mitigation Measure: To reduce potential impacts to less-than-significant, CDFW recommends that the Project avoid all activities within the 0.25-mile buffer from any active SWHA nest. In addition, CDFW also recommends modifying BIO-7 to identify that take coverage for SWHA will be sought.

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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 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 IS/MND to assist RD 2110 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW staff Cristina Autry, Environmental Scientist, at (209) 234-3453 or Cristina.Autry@wildlife.ca.gov; or Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 401-0452 or Todd.Gardner@wildlife.ca.gov.

Sincerely,

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

ec: Office of Land Use and Climate Innovation SCH No. 2026010976
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