



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

GAVIN NEWSOM, Governor
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February 26, 2026

Michael Kynett, District Engineer
Reclamation District 756
455 University Avenue, Suite 100
Sacramento CA, 95825
Kynett@mbkengineers.com

Dear Michael Kynett:

Subject: Bouldin Island Multi-Benefit Levee Setback Project, Initial Study/Mitigated Negative Declaration, SCH No. 2026011047, San Joaquin 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 756 (RD 756) for the Bouldin Island Multi-Benefit Levee Setback Project (Project) pursuant 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.

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 (LSA) 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: Michael Kynett

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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Objective: The objective of the Project is to rehabilitate 5,000 linear feet (ft) of levee, along the Mokelumne River, between levee stations 500+00 and 550+00 by setting back the levee. Primary Project activities will include creating a 20-foot wide waterside habitat bench, planted with native species for Shaded Riverine Aquatic (SRA) habitat, that spans the entire 5,000 linear ft; the existing crown of the levee will be degraded to an approximate elevation of 5.43 ft NGVD29. It will also include rehabilitating the levee to sustainably meet Bulletin 192-82 standards and replacing the District's Camp 5 Pump Station.

Location: City of Rio Vista, San Joaquin County, between Little Potato Slough Bridge and Mokelumne River Bridge off Highway 12, 121.5648200°W 38.0963300°N.

Timeframe: The Project activities are expected to occur over two years in six-month periods, between May 1 and November 1.

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 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.

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

COMMENTS AND RECOMMENDATIONS

I. Project Description and Related Impact Shortcoming

COMMENT 1: Section 1.4.6, Page 9 (Schedule); Appendix A, Section 5.1, (Construction Schedule)

Issue: Section 1.4.6 states the timing of the construction activities but does not include the specific years when work will be conducted. Appendix A, Section 5.1 states construction activity that is outdated.

Recommendation: CDFW recommends adding the year(s) to Section 1.4.6 and current construction schedule in Appendix A.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 2: Section 1.4.8, Page 11: MM-2 (Minimization measure for sensitive natural communities)

Issue: The IS/MND does not include measures that would adequately address a substantial adverse effect on riparian habitat or other sensitive natural community identified in existing regulations.

Specific impacts and why they may occur and be significant: The Project is funded by the Department of Water Resources' Delta Levees Special Flood Control Projects Program (Special Projects Program), where CDFW is required to make a determination that expenditures are consistent with no net loss and net long-term habitat improvement in the Delta as required by California Water Code Section 12314. Habitat communities assessed by CDFW when making this determination include Riparian Forest (RF), Scrub Shrub (SS), SRA, and Freshwater Marsh. Project activities are likely to result in impacts to some or all of these habitat types.

Recommended Mitigation Measure: In order to lessen the Projects' impacts to riparian habitat to a level of less-than-significant, CDFW recommends adding a mitigation measure to the IS/MND demonstrating that any impacts to RF and SS habitats and habitat communities assessed by CDFW within the Special Projects Program will be mitigated by creating appropriate habitat or purchasing mitigation bank credits at a location and manner acceptable to CDFW.

COMMENT 3: Section 1.4.8, Page 11: MM-2 (Minimization Measure for Special-Status Plants)

Issue: CESA-listed and/or Native Plant Protection Act (NPPA)-listed plant species may not be fully avoided during Project activities and the IS/MND does not indicate if take authorization will be sought.

Specific impacts and why they may occur and be significant: Project activities could result in significant impacts to and the incidental take of Mason's lilaepsis (*Lilaeopsis masonii*), State Rare, during the construction of the waterside berm. Documented occurrences of this plant are less than one mile from where waterside bench construction will occur. The document

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does not describe if the survey was conducted during low tide; therefore, timing of tides during botanical surveys in 2025 could have resulted in a lack of positive detection, if methodology did not include botanical surveys during low tide. Plants protected by CESA and the NPPA may not be taken (Fish & G. Code, § 86) without prior take authorization from CDFW.

Recommended Mitigation Measure: To address proper timing of surveys for Mason's lilaeopsis and to lessen the potential impacts to below significance, CDFW recommends indicating in MM-2 what the tides were on the date of the surveys. If tides were not considered, CDFW recommends conducting surveys during low tide and modifying the IS/MND to include measures to mitigate any potential impacts to below significance if Mason's lilaeopsis is found. Additionally, if take of CESA-listed and/or NPPA-listed plant species cannot be fully avoided, CDFW recommends modifying the current MM-2 to identify that take coverage will be sought after coordination with CDFW.

COMMENT 4: Section 1.4.8, Page 12: MM-5 (Minimization measure for Giant Garter Snake)

Issue: Giant Garter Snake (GGS) survey timing is inadequate and temporary habitat modification for GGS habitat is not addressed in the IS/MND.

Specific impacts and why they may occur and be significant: The California Natural Diversity Database (CNDDDB) documented an occurrence of GGS on the waterside levee of Bouldin Island within 0.25 miles of the Project area. The IS/MND states that 'All Project Areas would be surveyed for GGS by a qualified biologist within 48 hours prior to the start of construction activities...' Survey timing of 48 hours prior to the start of construction activity is inadequate due to the high mobility of this species. In addition, the Project area is suitable GGS habitat and Project activities could have a substantial adverse effect on GGS through habitat modification.

Recommended Mitigation Measure: Current avoidance and minimization measures support a 24-hour survey requirement (B.J. Halstead, et al. 2016; G.D. Wylie, et al., 2010; U.S. Fish and Wildlife 1997) and repeat in surveys if there is a lapse in Project activity of two weeks or more (U.S. Fish and Wildlife 1997). To reduce potential impacts to less-than-significant, CDFW recommends modifying the current MM-5 to 'All Project Areas would be surveyed for GGS by a qualified biologist within 24 hours prior to the start of construction activities...' In addition, the IS/MND should be modified to include restoring all suitable GGS habitat to pre-project conditions.

COMMENT 5: Section 1.4.8, Page 12: MM-5 (Minimization measure for Giant Garter Snake)

Issue: The IS/MND does not address take authorization in the event that the CESA-listed species, 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 MM-5 to identify that take coverage for GGS will be sought.

COMMENT 6: Section 1.4.8, page 12 and 13: MM-7 (Minimization measure for Swainson's hawk)

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

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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 MM-7 to identify that take coverage for SWHA will be sought.

COMMENT 7: Section 1.4.8, pages 11-14: Minimization Measure for Bats

Issue: Mexican free-tailed bat (*Tadarida brasiliensis*) and silver-haired bat (*Lasionycteris noctivagans*) are known to occur in the vicinity of the Project and could potentially be present and roost within trees and structures within the Project area. The IS/MND does not include a habitat assessment for bats or provide avoidance and minimization measures should bats be present.

Specific impacts and why they may occur and be significant: The Project identifies a pump structure that will be removed and potential removal of trees. Removal of these trees could result in impacts to bat.

Recommended Mitigation Measure: To reduce potential impacts to bat to less-than-significant, CDFW recommends adding a Mitigation Measure that includes the following language 'A Qualified Biologist, approved by CDFW, shall conduct a habitat assessment for potentially suitable bat habitat within six months of Project activities. If the habitat assessment reveals suitable bat habitat, the Qualified Biologist shall submit an avoidance and protection plan to the Lead Agency for evaluation and acceptance. The avoidance and protection plan shall: 1) Evaluate the suitable habitat present within the Project area, 2) Develop work windows for tree trimming and/or tree removal (typically August 31 through October 15, when young would be self-sufficiently volant and prior to hibernation, and March 1 to April 15 to avoid hibernating bat and prior to formation of maternity colonies), 3) identify appropriate buffers outside of this work window, and 4) outline timing of tree trimming and removal and structure removal.

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 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

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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 756 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Sara Taylor, Environmental Scientist, at (209) 234-3446 or Sara.Taylor@wildlife.ca.gov; or Todd Gardner, Senior Environmental Scientist (Supervisory) at Todd.Gardner@wildlife.ca.gov.

Sincerely,

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

ec: Office of Land Use and Climate Innovation SCH No. 2026011047
Melissa Farinha, CDFW Bay Delta Region – Melissa.Farinha@wildlife.ca.gov

REFERENCES

- B. J. Halstead, P. Valcarcel, G. D. Wylie, P. S. Coates, M. L. Casazza, and D. K. Rosenberg, "Active Season Microhabitat and Vegetation Selection by Giant Gartersnakes Associated with a Restored Marsh in California," *Journal of Fish and Wildlife Management*, vol. 7, no. 2, pp. 397–407, Sept. 2016, <https://doi.org/10.3996/042016-JFWM-029>.
- G. D. Wylie, M. L. Casazza, C. J. Gregory, and B. J. Halstead, "Abundance and Sexual Size Dimorphism of the Giant Gartersnake (*Thamnophis gigas*) in the Sacramento Valley of California," *Journal of Herpetology*, vol. 44, no. 1, pp. 94–103, Feb. 2010, doi: <https://doi.org/10.1670/08-337.1>.
- U.S. Fish and Wildlife Service. 1997. *Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, and Yolo Counties, California*. File No. 1-1-F-97-149. Sacramento Fish and Wildlife Office. November 1997.