



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
wildlife.ca.gov

July 13, 2026

Martin Berber, Wagner & Bonsignore, Project Manager
Reclamation District 38
2379 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
MBerber@wbecorp.com

Subject: Mokelumne River Confluence Multi-Benefit Project, Mitigated Negative Declaration, SCH No. 2026060465, San Joaquin County

Dear Martin Berber:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Reclamation District 38 for the Mokelumne River Confluence Multi-Benefit 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

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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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: Martin Berber

Objective: The objective of the Project is to rehabilitate Staten Island levee between levee stations 822+00 and 1038+00 to the Delta Specific Public Law 84-99 standard and create approximately 1 acre of Delta Waterside Habitat between levee stations 857+00 and 864+00. Primary Project activities include excavating the existing aggregate base road surfacing, placing fill to create a compacted embankment, and constructing an all-weather patrol road on the landside and excavating the existing levee section to create a waterside bench, placing soil-filled riprap armoring, and planting native riparian species on the slope of the setback levee on the waterside.

Location: Staten Island, San Joaquin County, along the North and South Forks Mokelumne Rivers, 38.146419°N -121.543247°W.

Timeframe: May 1 through October 31, 2027, and May 1 through October 31, 2028.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Reclamation District 38 in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a MND is appropriate for the Project.

COMMENT 1:

Section 1.4.9, Page 11: MM-2 Pre-construction biological surveys and resource avoidance.

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Issue: The 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), Shaded Riverine Aquatic (SRA), and Freshwater Marsh (FM). 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 MND demonstrating that any impacts to 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 2:

Section 1.4.9, Page 12: MM-4 Crotch's bumble bee (*Bombus crotchii*) surveys and protection.

Issue: Crotch's bumble bee survey methodology and the no-distance buffer may be inadequate and the MND does not address take authorization in the event that the CESA candidate species 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: Crotch's bumble bee have the potential to occur within the Project area. The MND states a pre-construction survey for Crotch's bumble bee will be conducted and a 25-foot no-distance buffer will be established if nests are found. Survey protocols are not identified and the no-distance buffer may be inadequate. Additionally, the MND does not address take authorization in the event that the CESA candidate species cannot be fully avoided. This species is protected by CESA and may not be taken without prior take authorization from CDFW.

Recommended Mitigation Measure: CDFW recommends modifying the current MM-4 to follow survey protocols as stated within the California Department of Fish and Wildlife Survey Considerations for California Endangered Species Act (CESA)

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Candidate Bumble Bee Species

(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>) and that CDFW will be notified to determine a no-distance buffer if Crotch's bumble bee nests are found. In addition, to comply with CESA, the MND should be modified to identify that take coverage for Crotch's bumble bee will be sought.

COMMENT 3:

Section 1.4.9, Page 12: MM-6 Giant garter snake (*Thamnophis gigas*) surveys and protection.

Issue: The MND does not address take authorization in the event that the CESA-listed species, giant garter snake, 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 giant garter snake. The activities that could result in incidental take of giant garter snake include vegetation removal, earth moving, excavation, grading, grubbing, levee construction, and moving vehicles/equipment.

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

COMMENT 4:

Section 1.4.9, Page 13: MM-8 Swainson's hawk (*Buteo swainsoni*) surveys and protection.

Issue: The MND does not address take authorization in the event that the CESA-listed species, Swainson's hawk, 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 Swainson's hawk. The activities that could result in incidental take of Swainson's hawk include noise from levee construction such as operation of heavy equipment, vehicles, and generators.

Recommended Mitigation Measure: To comply with CESA, CDFW recommends modifying the current MM-8 to identify that take coverage for Swainson's hawk 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 MND to assist Reclamation District 38 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brianne O'Rourke, Senior Environmental Scientist (Specialist) at (209) 234-3456 or Brianne.Orourke@wildlife.ca.gov; or Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 401-0452 or Todd.Gardner@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation SCH No. 2026060465
Melissa Farinha, CDFW Bay Delta Region – Melissa.Farinha@wildlife.ca.gov