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CDFW-1

January 2, 2018

Karen Dulik
California Department of Water Resources (DWR)
South Central Region Office
3374 East Shields Avenue
Fresno, California 93726

Subject: Request for Time Extension to Review Eastside Bypass Improvements Project Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (SCH # 2017121026)

Dear Ms. Dulik:

The Department of Fish and Wildlife (Department) respectfully requests two additional weeks to review and provide comments to the Eastside Bypass Improvements Project Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (SCH # 2017121026). Preliminary staff review of the initial study and proposed mitigated negative declaration indicates that the Department of Water Resources (DWR) has made significant changes to the document since the previous administrative draft. We request additional time to allow for thorough review of the unusually detailed contents of the initial study, and proposed mitigation measures, as required by section 15071 of the CEQA Guidelines. In addition to its responsible and trustee agency authority, the Department is a San Joaquin River Restoration Program implementing agency along with DWR, and wishes to ensure that comments and recommendations are adequate and sufficient to assist DWR with its lead agency role. The Department requests until January 23, 2018 to review and provide comments on the initial study and proposed mitigated negative declaration.

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Thank you for your understanding and prompt response. If you have any questions, please contact Gerald Hatler, Environmental Program Manager, at the address provided on the letterhead or by telephone at (559) 243-4005, extension 127.

Sincerely,

Julie Vance
Regional Manager

cc: Office of Planning and Research
1400 10th St
Sacramento, CA 95814

Paul Romero, DWR
3374 E Shields Ave
Fresno, CA 93726



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EDMUND G. BROWN JR., Governor
 CHARLTON H. BONHAM, Director



CDFW-2

January 19, 2018

Karen Dulik
 California Department of Water Resources
 South Central Region
 3374 East Shields Avenue
 Fresno, California 93726

**Subject: Eastside Bypass Improvements Project (Project)
 Mitigated Negative Declaration (MND)
 State Clearinghouse No.: 2017121026**

Dear Ms. Dulik:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Department of Water Resources for the above-referenced 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.

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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 & Game 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.

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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

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.

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 & Game 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 & Game Code, § 2050 *et seq.*), related authorization as provided by the Fish and Game Code will be required.

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In addition to serving as a Trustee Agency and Responsible Agency under CEQA, CDFW acts as one of the Implementing Agencies for the San Joaquin River Restoration Program (SJRRP). CDFW recognizes that there has yet to be a determination of how to implement modifications to San Joaquin River channel capacity through Reach 4B, as required by the Settlement Agreement.

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CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Water Resources (DWR) and United States Department of Interior, Bureau of Reclamation (Reclamation)

Objective: The proposed Project is part of the SJRRP. DWR proposes to design, permit, and implement the following three project elements to facilitate fish migration and increase Restoration Flow capacity in the Eastside Bypass by 2020: (1) Reinforce approximately 2 miles of levee along the Eastside Bypass to improve levee stability and reduce seepage (Reach O levee improvements); (2) Modify the existing Eastside Bypass Control Structure to improve fish passage; and (3) Replace the existing culvert at the Dan McNamara Road crossing at the Eastside Bypass to improve fish passage. In addition, Reclamation proposes to design, permit, and implement the following project element to facilitate fish migration in the Eastside Bypass by 2020: Improve fish passage by removing two weirs located in the Eastside Bypass that the United States Fish and Wildlife Service (USFWS) operates to provide water to the Merced National Wildlife Refuge, and replace an existing abandoned well with a new well to provide replacement water supply for the Merced National Wildlife Refuge.

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Location: The Project site is located between the Cities of Merced and Los Banos in Merced County within the Eastside Bypass just east of the San Joaquin River. The site is approximately 15 to 20 miles southwest of Merced in Merced County.

Timeframe: Construction is anticipated to begin in 2019 and finish in 2020.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist DWR 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.

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The Mitigated Negative Declaration (MND) prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the MND outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened and federally threatened California tiger salamander (*Ambystoma californiense*); State threatened Swainson's hawk (*Buteo swainsoni*); State threatened and federally threatened giant garter snake (*Thamnophis gigas*); the State endangered and federally endangered Fresno kangaroo rat (*Dipodomys nitradoides exilis*); the State fully protected white-tailed kite (*Elanus leucurus*); and the western mastiff bat (*Eumops perotis californicus*), recognized as State species of special concern.

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CDFW recommends that the following modifications and/or edits be incorporated into the MND.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: California Tiger Salamander (CTS)

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Section 3.5 – Biological Resources (Vegetation and Wildlife), Pages 3-90 through 3-92

Issue: The MND indicates that presence of CTS is assumed, and impacts to upland or aquatic habitat within the Project footprint would be potentially significant. CTS occupy grassland upland habitat and seek refugia in underground in burrows of California ground squirrels (*Otospermophilus beecheyi*) or valley pocket gophers (*Thomomys bottae*); and migrate to seasonal wetlands, stock ponds, or other seasonal or perennial ponds for breeding (CDFW 2015). The Project area contains suitable aquatic and upland habitat. The MND proposes establishing a 250-foot

buffer around burrows within 1.3 miles of known or potential breeding habitat and having a biological monitor present during construction activities, if feasible. The MND further states that CDFW and the USFWS will be consulted prior to work within the proposed buffer. It is not stated what would constitute consultation, what alternatives would be proposed, whether consultation would be intended to avoid significant impacts and specifically to avoid take of CTS, and whether CDFW recommendations would be implemented. CDFW recommends the MND be revised to include the CTS mitigation measures below. In addition, Mitigation Measure BIO-9 suggests that the Project site has not yet been evaluated for the presence of CTS habitat, and that a biologist will make that determination at a later time. Mitigation Measure BIO-10 proposes the use of exclusion fencing; excavation/trenching and other fence installation methods could result in take (as defined pursuant to § 86 of Fish and Game Code) and other impacts to CTS, and it is not clear if the MND has evaluated these effects, nor whether fence installation would be subject to the other Mitigation Measures of the MND. It is also not clear what effects to CTS or its habitat would warrant development of a compensatory mitigation plan as mentioned in Mitigation Measure BIO-11.

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Specific impact: Without appropriate avoidance and minimization measures for CTS, potentially significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals.

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Evidence impact is potentially significant: Up to 75 percent of historical CTS habitat has been lost to urban and agricultural development (Shaffer *et al.* 2013). Loss, degradation, and fragmentation of habitat is the primary threat to CTS in both the Central and San Joaquin Valleys (CDFW 2015, USFWS 2017). The Project area is within the range of CTS and is bordered by suitable upland habitat (i.e., grasslands interspersed with burrows) and potentially also suitable aquatic breeding habitat. As a result, there is potential for CTS to occupy or colonize the Project area and for the Project to impact CTS.

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Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to CTS, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

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Focused CTS Surveys

CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS prior to ground-disturbing activities using the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a

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Negative Finding of the California Tiger Salamander” (2003). CDFW recommends that the Site Assessment be completed to describe the conditions of the Project site and to inform the MND analysis of CTS, including whether the site is within 1.3 miles of aquatic breeding habitat, to provide clarification for the proposed Mitigation Measures of the MND. CDFW also advises that the surveys include a minimum 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS.

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CTS Avoidance

CDFW advises that avoidance for CTS include a minimum 50-foot no-disturbance buffer delineated around all small mammal burrow entrances within and/or adjacent to the Project construction footprint. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

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CTS Take Authorization

If through surveys it is determined that CTS are occupying the Project area and take cannot be avoided, incidental take authorization may be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code § 2081(b). Alternatively, in the absence of protocol surveys and if avoidance of burrows is not feasible, the applicant can assume presence of CTS within the Project area and obtain an ITP from CDFW. CDFW cannot issue an ITP until a CEQA document has been completed that discloses the impacts to CTS through the implementation of the Project and includes specific feasible, measureable, and enforceable avoidance, minimization and mitigation measures to reduce these impacts to less than significant. In addition, CDFW recommends that the final CEQA document quantify and describe the direct and indirect potential impacts to CTS habitat and outline specific proposed mitigation measures for impacts.

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COMMENT 2: Swainson’s Hawk (SWHA) and White-Tailed Kite (WTKI)

Section 3.5– Biological Resources (Vegetation and Wildlife), Pages 3-94 through 3-95

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Issue: The MND states that a 0.5-mile no-disturbance buffer will be maintained around active SWHA nests, if feasible. The threshold of feasibility to avoid and minimize is not described within the MND. The MND also states that if encroachment into the buffer area is required, DWR will consult with CDFW to determine appropriate measures for this species. As with other species discussions where the MND takes a similar approach, this statement appears to defer the analysis of a potential impact and the determination of appropriate mitigation to a

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later date, after Project approval and potentially during Project implementation. There are no specific measures for avoidance of WTKI, which are necessary to ensure that take of this fully protected species does not occur as a result of Project implementation.

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The CEQA Guidelines (§ 15370) require mitigation measures to “avoid, minimize, rectify, reduce or eliminate” those project impacts that are potentially significant. Deferring mitigation actions in measures does not comply with the CEQA Guidelines; it is the responsibility of the Lead Agency to ensure that mitigation measures listed in the MND are feasible, measureable, and implemented and enforced. Absent the measures in the MND meeting the CEQA Guidelines requirements, CDFW is unable to concur that potentially significant impacts to both species would be reduced to less than significant.

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The MND also describes the presence of mature trees within the Project area that have the potential to support nesting SWHA and WTKI. As described in the MND, the contractor hired to complete the Project would determine if any mature trees in the construction footprint could be preserved and marked to be saved. The MND does not account for the potential loss of a nest tree in the mitigation measures.

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Specific impact: SWHA and WTKI are known to occur in the vicinity of the Project and potentially suitable nest trees adjacent to the levees and high terraces are present within the Project area. In addition, as described in the MND, foraging habitat for SWHA and WTKI exists within the vicinity of the Project site: the Project area is surrounded by annual and perennial grasslands and croplands that may be used for foraging. The presence of these two requisite habitat features increases the likelihood of occurrence of SWHA and WTKI within the Project area. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts associated with the Project’s construction include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

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Evidence impact is potentially significant: The mature trees and agricultural field provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA. In addition, depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA and WTKI.

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Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

SWHA Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of an ITP for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision(b).

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Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified WTKI nest(s) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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COMMENT 3: Fresno Kangaroo Rat:

Section 3.5– Biological Resources (Vegetation and Wildlife), Page 3-98.

Issue: Although MND Mitigation Measure BIO-21 describes preconstruction trapping surveys for Fresno kangaroo rat, enforceable avoidance measures for potential impacts are not specified in the MND, which indicates that if Fresno kangaroo rat is detected, additional measures may be developed, and CDFW will be consulted.

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Specific impact: Without appropriate avoidance and minimization measures for Fresno kangaroo rat, potentially significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals.

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Evidence impact is potentially significant: Historic Fresno kangaroo rat habitat has been lost to urban and agricultural development (US Fish and Wildlife Service 1998). Loss, degradation, and fragmentation of habitat is the primary threat to Fresno kangaroo rat in the San Joaquin Valley. In addition, if an extant population of Fresno kangaroo rats is in the area, breaks in levees pose a risk of mortality through flooding. The Project area is within the range of Fresno kangaroo rat and contains and is bordered by suitable habitat (i.e., grasslands, alkali sink, and chenopod scrub). As a result, there is potential for Fresno kangaroo rat to occupy or colonize the Project area and for the Project to impact Fresno kangaroo rat.

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Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to Fresno kangaroo rat, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

Surveys

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If burrow avoidance is not feasible, CDFW recommends that focused protocol-level trapping surveys be conducted by a qualified wildlife biologist that is permitted to do so by both CDFW and USFWS to determine if Fresno kangaroo rat occurs at the Project site. CDFW advises that these surveys be conducted in accordance with USFWS's (2012) "Survey Protocol for Determining Presence of San Joaquin

Kangaroo Rats.” CDFW recommends that these surveys be conducted well in advance of ground-disturbing activities in order to determine if impacts to the species could occur.

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Avoidance

If suitable habitat is present and surveys or trapping are not feasible, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances of suitable size for Fresno kangaroo rat.

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Take Authorization

If Fresno kangaroo rat is found within the Project area either during preconstruction surveys or during construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities.

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COMMENT 4: Giant Garter Snake

Section 3.5– Biological Resources (Vegetation and Wildlife), Pages 3-92 through 3-93.

Issue: The MND states that giant garter snake and its upland and aquatic habitats could be impacted by the Project, but does not indicate where suitable habitats occur within the Project sites. Some avoidance and minimization is proposed in Mitigation Measure BIO-12, but it is not clear where or under what circumstances the measure would be applied. In addition, the proposed actions in the measure are described as being implemented if feasible, and that if the actions are not feasible CDFW will be consulted. The MND does not define what constitutes infeasibility, what would constitute consultation, what alternatives would be proposed, whether consultation would be intended to avoid significant impacts and specifically to avoid take of giant garter snake, and whether CDFW recommendations would be implemented. It is also not clear what effects to giant garter snake or its habitat would warrant development of a compensatory mitigation plan as mentioned in Mitigation Measure BIO-13. The CEQA Guidelines (§ 15370) require mitigation measures to “avoid, minimize, rectify, reduce or eliminate” those project impacts that are potentially significant. Deferring mitigation actions in measures does not comply with the CEQA Guidelines; it is the responsibility of the Lead Agency to ensure that mitigation measures listed in the MND are feasible, measureable, and implemented and enforced. Absent the measures in the MND meeting the CEQA Guidelines requirements, CDFW is unable to concur that potentially significant impacts to giant garter snake would be reduced to less than significant.

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Specific impact: Without appropriate avoidance and minimization measures for giant garter snake, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals.

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Evidence impact is potentially significant: Habitat loss due to diversion of water and the conversion of habitat to agriculture; habitat fragmentation; threats related to flooding and associated flood control activities; pest control and predation from invasive aquatic species; introduced competitors; introduced plant species; and diseases have contributed to the species' listing status and remain threats to the species (USGS 2015). The Project area is within the range of the giant garter snake and contains the aquatic and upland habitat. As a result, there is potential for giant garter snake to occupy the Project area and for the Project to impact giant garter snake.

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Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to giant garter snake, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

Avoidance

CDFW recommends that Project areas be dewatered for a minimum of 15 consecutive days immediately preceding the start of Project activity. In addition, CDFW recommends surveys within habitat areas immediately prior to ground disturbance, and hand removal of vegetation within those areas prior to ground disturbance. CDFW recommends avoidance of suitable refugia (e.g., burrows, cracked soils) by a minimum of 50 feet.

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Take Authorization

If surveys detect giant garter snakes or if Project sites within habitat for the species provide suitable refugia for the species, consultation with CDFW is advised to discuss how to implement the Project and avoid take or, if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities.

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II. Editorial Comments and/or Suggestions

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any

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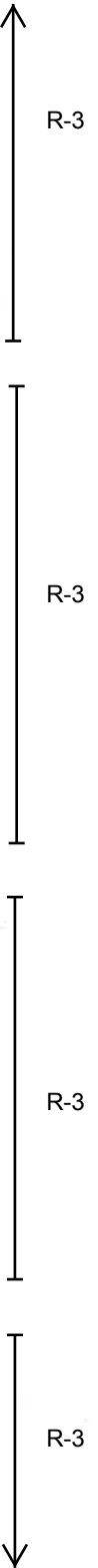
bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Comments Intended to Assist with Successfully Meeting the Restoration Goal: As an Implementing Agency of the SJRRP, CDFW is providing the below comments to assist in meeting the SJRRP Restoration Goal which is: "to restore and maintain fish populations in 'good condition' in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-reproducing and self-sustaining populations of salmon and other fish."



Eastside Bypass Outflow Structure: Depending on design and flow, the gated culvert outflow structure downstream of the Eastside Bypass Control Structure may present an entrainment risk to migrating spring- and fall-run Chinook salmon or other native fishes. However, not enough information is provided to assess the level of risk. CDFW recommends the final design incorporate elements to prevent adult salmonids from accessing this outfall.

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Fish Stranding Risk Caused by Wetland Depressions: The Merced National Wildlife Refuge weirs are currently used to flood the Mariposa Wetlands located within the bypass levees on the left overbank. The Proposed Project would remove the weirs and install a groundwater well to provide water to flood this area; however, the wetlands would still be connected to the main channel during higher flows. Under higher flow conditions, migrating juvenile salmon and other native fish could enter into these wetland depressions and become stranded as high flows recede and there is no longer connectivity between the wetlands depressions and the main channel. CDFW recommends monitoring to determine whether additional measures are necessary to prevent stranding that could limit the ability to meet the Restoration Goal.

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Grazing and Livestock in Channel: The Project includes removing and replacing fencing that traverses the flood bypass channel on either side of Dan McNamara Road. If the flood bypass channel is intended to serve as the primary migration corridor for sensitive and special-status aquatic species, CDFW is concerned about impacts due to the continued presence of livestock in and adjacent to the channel, channel stability as a result of fences crossing the channel, riparian recruitment, water quality, and physical risks to fish and humans occupying the water column where submerged fences are present. While not a change from baseline conditions, continued grazing in the bypass may limit the ability of the SJRRP to its Restoration Goal.

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Culvert Design at Dan McNamara Road: CDFW believes that vacation and removal of Dan McNamara Road is a preferable fish passage option to the proposed box culvert and low flow crossing. Vacation has considerable benefits to the passage of native fish species, which is of particular importance given the potential for long-term use of the Eastside Bypass to route flows and fish.

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Public Trust: Unless or until further actions are taken under the Reach 4b project, the bypass will essentially serve as the main channel for flows, fish and habitat development. As reintroduction has begun, there are public trust resources in the flood bypass for which CDFW is a Trustee Agency. CDFW recommends close coordination with the SJRRP Implementing Agencies and the California State Lands Commission, which has jurisdiction and authority for the public land trusts.

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Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite,

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which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore notification is warranted. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

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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 found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 & Game Code, § 711.4; Pub. Resources Code, § 21089.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist DWR in identifying and mitigating Project impacts on biological resources.

↑
R-3
↓

Karen Dulik
Department of Water Resources
January 19, 2018
Page 14

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Primavera Parker, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 309, or by electronic email at Primavera.Parker@wildlife.ca.gov.

R-3

Sincerely,



Julie A. Vance
Regional Manager

cc: Rebecca Victorine
Bureau of Reclamation
San Joaquin River Restoration Program
2800 Cottage Way
Sacramento, California 95825

Office of Planning and Research
State Clearinghouse
Post Office Box 3044
Sacramento, California

REFERENCES

CDFW, 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander. California Department of Fish and Game. 2003.

CDFW, 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California. California Department of Fish and Game.

CDFW, 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.

SWHA TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

U.S. Fish and Wildlife Service, 1998. Recovery Plan for Upland Species of the San Joaquin Valley, California. U.S. Fish and Wildlife Service. September 30, 1998.

USGS, 2015. Literature Review of Giant Garter Snake (*Thamnophis gigas*) Biology and Conservation. File Report 2015-1150. 38 pages.

From: [Justin Fredrickson](#)
To: rvictorine@usbr.gov; Dulik.Karen@DWR
Subject: Public Comment Re: Eastside Bypass Improvements Project IS/DEA & Proposed MND
Date: Tuesday, January 09, 2018 5:35:01 PM
Attachments: [2017-01-09 Eastside Bypass Groundwater Excerpts.pdf](#)
[2016-11-01 2012 CVFPP Att8L Groundwater Recharge Opportunities Analysis EXCERPTS.pdf](#)

Dear Ms. Victorine and Ms. Dulik:

The following brief comments are offered on the Eastside Bypass Improvements Project Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (“IS/DEA & Proposed MND”), specifically from groundwater recharge and land subsidence standpoint.

The Eastside Bypass Improvements Project is focused on fish passage within the context of the San Joaquin River Restoration Agreement. As such, groundwater recharge and land subsidence reversal are not identified as project purposes in Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (“IS/DEA”). Despite this, there is enough information in the IS/DEA to at least suggest the possibility of some potential ancillary groundwater recharge benefits from the proposed project. At the same time, the California Farm Bureau Federation is aware that landowner concerns relating to seepage and potential impacts on existing infrastructure have been generally raised in connection with several of the River Restoration river reach projects in Valley—and it appears that some such local concerns may exist in connection with the Eastside Bypass project as well. Out of respect for any such local concerns, the intent of these comments is *not* to advocate either in favor or against any particular outcome or direction on the proposed project, but rather only to point out the potential for some possible groundwater recharge and even land subsidence reversal benefits. In this regard, Table 3.8-1 in the IS/DEA indicates that “Project Site Soil Types and Characteristics” in the vicinity of the proposed “Eastside Bypass Levee Improvements” portion of the project include Fresno and Pozo clay loam soil types exhibiting “moderate high” permeability characteristics. Figure 3.11-10 in the IS/DEA shows areas of significant land subsidence in vicinity of the Eastside Bypass project, while Monitoring Well Locations, Hydrogeologic Cross Sections, and Groundwater Elevations shown in Figures 3.11-2 through 3.11-7 show a mix of gaining and losing condition along the Bypass, depending on a variety of factors as indicated in the accompanying text. (See related IS/DEA excerpts accompanying this submission.) Given the proposed large increase in flows that would be eventually routed through the modified Bypass (from a current maximum capacity to 300 cfs to an eventual proposed capacity of up to 3,500 cfs by 2029), it appears that potential ancillary groundwater recharge benefits of the project could be substantial. If project features were included to extend inundation periods at select times in losing sections of the Bypass without exacerbating seepage or flood concerns or causing other unacceptable local impacts, it may be that potential groundwater recharge and land subsidence reversal benefits could be increased still further.

R-5

R-5

Despite the apparent potential for possible groundwater recharge and land subsidence benefits, as mentioned, any direction on the Eastside Bypass project must, of course, fully consider associated impacts and the views of affected stakeholders. Among these stakeholders, the IS/DEA & Proposed MND identifies the Farmers Water District, Aliso Water District, Patterson Irrigation District, West Stanislaus Irrigation District, and San Joaquin River Exchange Contractors Water Authority as local Groundwater Sustainability Agencies. (See IS/DEA & Proposed MND at 3-188.) In addition to the project's possible relevance to local groundwater management efforts, it appears that the project is also potentially relevant to local flood planning efforts of the Lower San Joaquin Levee District, as well as the Department of Water Resources' Central Valley Flood Protection Plan efforts, including a Groundwater Recharge Opportunities Study completed in January 2012. (See accompanying excerpts from DWR's CVFPP Attachment 8L: Groundwater Recharge Analysis.) From these regional water supply and flood management perspectives, further studies, including more precise quantification of potential groundwater recharge and land subsidence benefits of the project, may be warranted.

R-5
R-5

Thank you for the opportunity to provide these comments on the Eastside Bypass Improvements Project IS/DEA & Proposed MND.

Justin E. Fredrickson
Environmental Policy Analyst
Legal Department
California Farm Bureau Federation
Direct: 916-561-5673
E-mail: jfredrickson@cfbf.com

From: Martinez, Steven R@DOT [<mailto:Steven.R.Martinez@dot.ca.gov>]
Sent: Tuesday, January 09, 2018 5:13 PM
To: Dulik, Karen@DWR <Karen.Dulik@water.ca.gov>
Cc: State.Clearinghouse@opr.ca.gov
Subject: Caltrans Local Development-Intergovernmental Review (LD-IGR) - Eastside Bypass Improvements Project SCH#2017121026

Ms. Dulik,

Thank you for the opportunity to review the Initial Study for the Eastside Bypass Improvements Project (SCH#2017121026).

The Department would like to be informed, to provide further review and comment, if there are anticipated changes in water flow under State Route 152 (SR 152) at:

- Eastside Bypass Bridge (Bridge 39-34 at SR 152 Postmile R39.308)
- San Joaquin River Bridge (Bridge 39-28 at SR 152 Postmile R37.188)

R-2

Please keep us updated if there are changes to the provided documents and as the project develop, we would like to review and provide further comment.

Thank you,

Steven R. Martinez
Metropolitan Planning
Caltrans District 10
(209) 942-6092



----- Forwarded message -----

From: **Douglas DeFlicht** <ddeflicht@friantwater.org>

Date: Mon, Jan 22, 2018 at 11:28 AM

Subject: Comments on EIS

To: "rvictorine@usbr.gov" <rvictorine@usbr.gov>

On page 2-11, the text states:

“Improve fish passage by removing two weirs located in the Eastside Bypass that USFWS operate to provide water to the Merced NWR. Reclamation would replace an existing non-operational well with a new well to provide replacement water supply for the Refuge, first drilling an exploratory well as a near-term action. (Reclamation would coordinate with the Merced NWR to offset the additional expense the Merced NWR is expected to incur from operating a new well.)”

R-2,
R-5

There is no information given on what alternatives there are in case the well does not produce enough or if there are water quality problems; and whether or not the Refuge is part of a Groundwater Sustainability Agency under DWR's Sustainable Groundwater Management Program.

On page 3-9, the text states:

“No state plans, policies, regulations, or laws related to aesthetics apply to the proposed project.”

R-5

What about SGMA? Does it apply?

Douglas DeFlicht , COO

Friant Water Authority

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General Counsel

January 19, 2018

VIA E-MAIL

Rebecca Victorine
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Karen Dulik
California Department of Water Resources
South Central Region Office
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E-mail: Karen.Dulik@water.ca.gov

Re: Comments on IS/MND and EA for the Eastside Bypass Improvements Project

Dear Ms. Victorine and Ms. Dulik,

Grassland Water District and Grassland Resource Conservation District (collectively, GWD) provide the following comments regarding draft Initial Study/Mitigated Negative Declaration and Environmental Assessment (IS/EA) for the proposed Eastside Bypass Improvements Project (Project), issued jointly by the Bureau of Reclamation (Reclamation) and Department of Water Resources (DWR). The Project, as part of the San Joaquin River Restoration Program, would increase flow capacity in the Eastside Bypass by improving levee stability and modifying existing structures, in order to facilitate fish passage for federally and state-listed salmonids and other native fish.

Unfortunately, the Project would significantly alter the water supply, as well as portions of both the native and managed landscapes of the Merced National Wildlife Refuge (NWR). We believe that these impacts to the Merced NWR and the numerous species that use the refuge are inadequately identified, analyzed, and mitigated in the draft IS/EA. The IS/EA and any

↓
R-2

subsequent environmental documents must be revised to comply with the requirements of CEQA, NEPA, and federal reclamation law and contract.

↑ R-2

GWD concurs with and urges Reclamation and DWR to pay special attention to the comments submitted by U.S. Fish and Wildlife Service (USFWS) refuge manager Kim Forest, who is very familiar with the habitat, water, and funding needs of the Merced NWR. The impacts and proposed revisions identified by the USFWS should be addressed in full, and the USFWS should be treated as an essential landowner and required partner for any future implementation of the proposed Project.

↑ R-1

These comments provide additional context regarding the broader adverse effects of diminished (or unfunded) refuge waters supplies, the United States' legal obligations to the Merced NWR and other refuges, and the time-learned importance of providing upfront, written commitments to fully mitigate the adverse water supply impacts that a proposed project will have on a wildlife refuge in the San Joaquin Valley, where more than 95% of historic wetlands have been lost.

↑ R-1

The Project would remove two weirs that provide surface water supply to Merced NWR. As part of the proposed Project, rather than as a mitigation measure (which would be a more appropriate course), the IS/EA states that "Reclamation would replace an existing non-operational well with a new well to provide replacement water supply for the Refuge, first drilling an exploratory well as a near-term action. (Reclamation would coordinate with the Merced NWR to offset the additional expense the Merced NWR is expected to incur from operating a new well.)" (IS/EA p. 2-13.) The IS/EA goes on to propose Mitigation Measure BIO-18(d): "The Merced NWR will be coordinated with to minimize potentially adverse impacts to wetland habitat attributed to the removal of the two weirs." (IS/EA pp. MND-11.)

↑ R-2

Both the Project description related to water supply replacement, as well as Mitigation Measure BIO-18, are overly vague, inadequate to meet the public disclosure, environmental impact analysis, and mitigation requirements of CEQA and NEPA, and constitute *improperly deferred mitigation*. A more comprehensive analysis of the adverse water supply impacts, the feasibility of mitigating those impacts through new groundwater pumping, and the funding impacts of operating a new groundwater well must be included in a revised environmental document.

↑ R-2

First, there is no analysis of how much water supply the Merced NWR will lose as a result of the proposed Project, including both the loss of diverted water for distribution to wetlands and the immediate physical water supply benefit provided by operating the weirs, such as backing up water behind them. There is also no analysis of potential adverse differences in water quality between the refuge's existing surface water supply and locally available groundwater. Reclamation and DWR must analyze and disclose the full picture of potential water supply impacts to the Merced NWR, and assess whether local groundwater supplies are of suitable quantity and quality to fully replace those supplies.

↑ R-2

Second, Merced County recently adopted a stringent groundwater ordinance that makes it much more difficult to drill new wells. The ordinance does contain provisions for replacement wells, but sets fairly strict parameters on such wells. Reclamation and DWR must analyze the

↓ R-5

feasibility of constructing a new groundwater well of sufficient depth and size to fully replace existing surface water diversions. The revised IS/EA should also address the implications of the Sustainable Groundwater Management Act as they relate to the feasibility of the proposed replacement well. Finally, Reclamation and DWR must acknowledge that because a test well has not yet been drilled and permits from the County have not been received, it may not be feasible to fully mitigate the refuge's water supply impacts through the provision of replacement groundwater supplies. Accordingly, Reclamation and DWR must put in place a mitigation measure that commits to full replacement of the refuge's surface water diversions, if not through groundwater then through other methods such as surface water pumps from the Eastside Bypass.

↑ R-5
| R-5
| R-2, R-5

Third, Reclamation has a legal and contractual obligation to deliver water to 19 refuges in the Central Valley, pursuant to the Central Valley Project Improvement Act (CVPIA). In those refuge water supply agreements, including the agreement for the Merced NWR, Reclamation committed to not adversely interfere with the refuges' right and ability to receive water. Unless the IS/EA is revised, that commitment (as well as legal obligations under the CVPIA) may be breached.

| R-2

Finally, the issue of funding is very controversial and very important. Currently, the only source of funding to provide water to all 19 CVPIA refuges is the CVPIA Restoration Fund, which is underfunded and insufficient to meet all refuge water supply needs. Groundwater pumping for refuges incurs annual costs that already take up a portion of Reclamation's budget for the Restoration Fund. Reclamation and DWR *must* identify, in a revised IS/EA, alternative sources of reliable annual funding to pump the replacement groundwater supplies to be provided by the proposed Project.

| R-2

Otherwise, if those costs are to be born by the Restoration Fund, significant adverse water supply effects and attendant effects on biological resources will be felt by the remaining 18 CVPIA refuges. The impacts of having less funding to deliver water to those refuges include reduced spring and summer irrigations, which grow the needed food supplies for migratory waterfowl, and provide habitat to resident breeding birds and threatened species such as the giant garter snake. For the Merced NWR and other CVPIA refuges, reliable annual funding is synonymous with reliable water supply, and reliable water supply is synonymous with meeting the habitat and food requirements of hundreds of different species, plus providing recreational opportunities for the public. Accordingly, building a new groundwater well is insufficient to mitigate the adverse effects of the proposed Project. The vague commitments in the IS/EA to "coordinate with" the Merced NWR "to minimize potentially adverse impacts" is inadequate and must be improved.

| R-2

Thank you for your consideration of these comments.

Sincerely,



Ellen L. Wehr, General Counsel

Lower San Joaquin Levee District
11704 West Henry Miller Avenue, Dos Palos, CA 93620
Telephone: (209) 387-4545
FAX: (209) 387-4237



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Case Vlot

Secretary-Manager
Reggie N. Hill

Superintendent
Darrell Chism

January 19, 2018

Ms. Rebecca Victorine
Bureau of Reclamation
San Joaquin River Restoration Program Office, MP-170
2800 Cottage Way
Sacramento, CA 95825-1898

RE: Initial Study/Draft Environmental Assessment and Proposed Mitigation Negative Declaration - Eastside Bypass Improvements Project

This letter is the Lower San Joaquin Levee District's (LSJLD) comments on the San Joaquin River Restoration Program's Initial Study/Draft Environmental Assessment and Proposed Mitigation Negative Declaration - Eastside Bypass Improvements Project.

The LSJLD has been corresponding with the State Department of Water Resources (DWR) regarding the Eastside Bypass Control Structure proposal, which is part of this document that is being reviewed. Our comment letter to DWR is attached.

R-6

The enclosed pages are other comments, which are organized referencing the page, section and lines of the document.

Sincerely,

A handwritten signature in blue ink that reads "Reggie N. Hill".

Reggie N. Hill

Enclosures

Chapter 2 - Description of the Proposed Project

Section 2.1 Existing Structures to be Modified

Page 2-1, Section 2.1.1, Eastside Bypass Levees, first paragraph, last sentence. The statement of the design capacities needs clarification. The capacity numbers stated do not correspond with the numbers we use, per the O&M manual. The O&M Appendix D map displays a capacity of 8,000 cfs between the Mariposa Bypass and Owens Creek confluence. The map also displays a future capacity of 12,000 cfs for this reach. This increase pertains to the completion of upstream reservoirs on the Fresno and Chowchilla Rivers by the Army Corps of Engineers. These two reservoirs, Hensley and Eastman, were completed after the flood project was constructed. The Appendix D map displays the future channel capacities per those reservoir completions.

R-6

The aforementioned capacities are the numbers that should be listed in the document for evaluation since all of the constructed segments and upstream construction has been completed.

Page 2-2, Section 2.1.1, second bullet, bottom of page. Per direction from DWR, all pipe drains through the levees will be inspected for possible replacement. The comment of modifying or replacement of these drains should be coordinated with the DWR Deferred Maintenance Program to avert duplicate costs.

R-6

Page 2-2, Section 2.1.2 Eastside Bypass Control Structure, first paragraph, second sentence. Reference to “These flows are subject to O&M rules . . .”, does not reflect the actual operation of the Eastside Bypass Control Structure (EBCS). It is not stated in the O&M, but the proper function of the EBCS must be operated in the manner to coordinate with possible inflows from the Merced Streams Group to allow those stream flows to enter the bypass system. This coordination requires proper operation of the Eastside and Mariposa Bypass Control Structures for allowance of the stream flows into the system, averting flooding problems on the landside of the bypass.

R-6

Page 2-4, Section 2.1.2, second paragraph, first sentence. See comment referencing “Page 2-1, Section 2.1.1, Eastside Bypass Levees, first paragraph, last sentence”.

R-6

Page 2-7, Section 2.1.3 Dan McNamara Road Crossing, second paragraph, third sentence. Reference to an agreement between the LSJLD and Merced County needs substantiation. There is mention in the O&M of Merced County’s maintenance requirement for the described levee section, but no signed document per your statement is in the LSJLD’s possession.

R-6

Page 2-13, Section 2.3.1 Project Design Considerations, first paragraph. This an issue that has been discussed repeatedly, “minimal increases in flood risk”. Referencing what is acceptable

R-6

per the CVFPB, which is a statement from Army Corps of Engineers' text, does not bode well with the LSJLD in its obligation to prevent flood damages. Minimal risk toward public safety for fish considerations is not acceptable. No increase in flood risk toward public safety is the target.

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R-6

Page 2-17, Section 2.3.2 Proposed Project Elements, Eastside Bypass Control Structure Modifications. This entire section on the structure modifications is not acceptable. See attached letter to DWR.

R-6

Page 2-22, Section 2.3.2 Proposed Project Elements, Eastside Bypass Control Structure Modifications, last paragraph, last sentence. Placing limitations on the LSJLD's maintenance obligations is not in line with the SJRRP's statement that flood operations will not be compromised. The statement ". . . maintenance can be scheduled when salmonids are not present." is not acceptable. Our maintenance scheduling is very focused on adhering to our obligation with this flood project, without compromise, unless flood matters impact this action.

R-6

Page 2-25, Section 2.3.2 Proposed Project Elements, Merced National Wildlife Refuge Weir Removal and Well Placement, first paragraph, second sentence. Stating that a new deep well installation would be adequate in replacing water supply lost due to removal of two weirs is hypocritical. The State's directive is to move landowners from deep well dependency due to land subsidence created by such deep well use. It is documented that land surrounding a Merced Wildlife Refuge well has subsided, and yet SJRRP is directing the use of a deep well. What are the impacts on adjacent lands and their resources with this approach?

R-2

Page 2-27, Section 2.3. Proposed Land Acquisitions/Easements. The statement of "not anticipated" land acquisition is paramount to the LSJLD. However, if you anticipate something, you realize in advance that it may happen. This will not be acceptable to us. We are already strapped with minimal operating funds in complying with our obligation. Any further reduction in our revenue source (land assessments on private landowners) through federal/state acquisition of private lands is detrimental to the LSJLD.

R-6

Lower San Joaquin Levee District
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Secretary-Manager
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Superintendent
Darrell Chism

December 19, 2017

Paul Romero, P.E.
Flood Management Section
DWR So. Central Region Office
3374 E. Shields Avenue
Fresno, CA 93726

SUBJECT: East Side Bypass Control Structure Rock Ramp

Dear Paul:

This letter is being sent on behalf of the Lower San Joaquin Levee District (the "District"). We are in receipt of your Draft Preliminary Design Report (60%) and accompanying plans for the above identified project. As part of the San Joaquin River Restoration Program, the Department of Water Resources (DWR) is proposing modifications to the existing East Side Bypass control structure (EBCS), which is operated and maintained by the Levee District. DWR's proposed modifications to the EBCS would involve removal of the stoplogs at the entrance to the control structure, removal of the energy dissipater blocks downstream of the gates, removal of a 2-foot high concrete sill at the downstream edge of the structure, and construction of a 380-foot long rock ramp downstream of the structure. The purpose for the modifications, as described in the design report, would be to improve fish passage for a variety of species.

The District has serious concerns about the proposed modifications to the EBCS. The structural features that would be removed currently work in conjunction with the gates to control flow through the EBCS. The energy dissipater blocks and concrete sill currently help create a

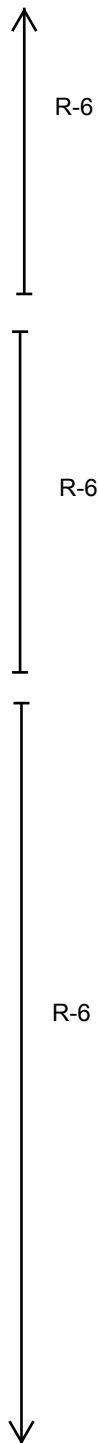
R-6

Paul Romero
Flood Management Section
DWR So. Central Region Office

hydraulic jump within the reinforced concrete structure. The District is aware that downstream of the hydraulic jump, velocities are subcritical and much less erosive to the earth channel. However, removal of the energy dissipater blocks and concrete sill would permit supercritical flow at highly erosive velocities to extend beyond the concrete structure under certain conditions. The District does not believe the rock sizes proposed for the rock ramp (1.8-foot maximum diameter) would be stable at these supercritical flows.

The conditions described above would occur when high flows in the East Side Bypass are primarily diverted into the Mariposa Bypass, with some flow passing the EBCS. If the control gates are set to limit the flow and there is a several foot head differential across the structure, velocities downstream of the gates could easily exceed 10 feet per second prior to the hydraulic jump. Without the energy dissipater blocks and the sill, the hydraulic jump may occur beyond the reinforced concrete structure resulting in erosion of the rock ramp and potential damage to the structure from undercutting.

Although DWR's design report for this project (p.24) considers this risk and seems to suggest the structure could be operated during flood flows in such a way as to minimize the risk of the hydraulic jump occurring over the rock ramp, such an approach to the District's operations would be nearly impossible to achieve in practice and would certainly conflict with the operation & maintenance (O&M) manual for the flood control project. The design report correctly states (p. 3) that, historically, the EBCS is not always operated in accordance with the O&M manual. The reasoning for the operational change is due to observations of previous flood events where this adjustment is necessary for the best operation of this structure in conjunction with other flows entering the channel. The O&M does not take this other flow observation into consideration. DWR's proposal to alter the manner in which this structure is operated is detrimental to this project's design purpose, public safety. Also, the proposed rock ramp would prevent the structure from being operated in accordance with the O&M manual without risking damage to the rock ramp and possibly the structure itself. DWR's design report (p. 24) further indicates that further analysis is needed to determine if portions of the rock ramp should be grouted for improved stability. The District does not believe grouted rocks will perform as



Paul Romero
Flood Management Section
DWR So. Central Region Office

14 cont'd

reliably as the existing reinforced concrete structure.

The EBCS is operated in conjunction with the Mariposa Control Structure. Any operational change needs to consider this conjunctive operation, as it will affect the MCS flows.

Based on the above noted concerns, the District objects to DWR's proposed modifications to the EBCS and recommends the alternative construction of a dedicated fish ladder for DWR to comply with River Restoration objectives. Please do not hesitate to contact me should you have any questions or request further clarification from the District.

Please note that during the 2017 flood flows through the EBCS, Levee District personnel observed multiple salmon jumping over the downstream concrete sill without difficulty.

↑ R-6
| R-6
| R-6

Very truly yours,



Reggie N. Hill, Secretary-Manager

cc: Summers Engineering, Inc.

LONE TREE MUTUAL WATER COMPANY

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El Nido, CA 95317
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Becky Victorine
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2800 Cottage Way
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January 15, 2018

Lone Tree Mutual Water Company "LTMWC" is located in the area of discussion for the EA of projects 2.1.1 and 2.1.4 of the Eastside Bypass Improvement Projects. The following comments are meant to address concerns and uncertainties raised in the EA of the two projects referenced.

Project 2.1.1 describes Levee stabilization on the "right" or East bank of the Middle Eastside Bypass. Page 2-2 describes facilities owned and operated by LTMWC consisting of:

- Irrigation canal penetrating the existing levee. This is not identified in the report as belonging to LTMWC, but it is.
- A siphon owned and operated by LTMWC on the landside of the levee moving water from eastside to westside of the bypass depending on conditions.

The concerns are as follows:

The siphon noted would be subject to cracking and excessive leakage if subjected to continued heavy equipment operation, with excavation and upheaval in the general area of it's location and route.

The irrigation canal that penetrates the existing levee is pictured in Fig 2-1. The north bank of the canal is described in the EA as a secondary route for mobilization of the levee stabilization project. The canal bank is used as a maintenance road by LTMWC. It is subject to very light travel. It is constructed out of native soil that was placed above grade when the canal was constructed. The soil type is sandy silty and with minimal clay content. It will not stand up to heavy equipment passage over a period of time and will rut, turn into powder, and blow away in

R-6

R-6

R-6

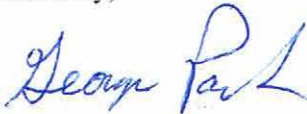
the wind. Utilization of this road would require improvement by the Contractors for the levee stabilization project before it's usage as intended.

↑ R-6

Project 2.4 describes removal of two weirs within the Merced National Wildlife refuge and the drilling of a replacement irrigation well to provide water to 200 acres of ponds in the "Mariposa" unit that currently are serviced with a tractor powered low lift pump utilizing water from other wells on the refuge. Project 2.4 describes drilling an irrigation well of unspecified depth, except to say it would be screened in the shallow aquifer. It further states that the well would utilize a 120 HP electrically powered vertical turbine pump of 1500 gallon per minute capacity at 250-foot total dynamic head. It is LTMWC's experience with wells immediately south of the proposed site, as well as documented on County maps that the shallower unconfined aquifer there only extends to a depth below ground surface of 180 feet, at which point the Corcoran Clay layer is encountered. The Corcoran Clay layer is approximately 60 feet thick at the proposed well site. The confined deep aquifer begins below the Corcoran clay at approximately 240' below ground surface. It is highly unlikely that a well drilled only in the shallow aquifer would yield this volume or need that much horsepower. It is more likely that the volume desired would require drilling thru the Corcoran Clay and penetrating the confined aquifer. The confined aquifer is already stressed and pumping from the same is claimed to be contributing to subsidence in the region.

↑ R-2

Sincerely,

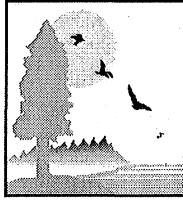


George Park
Manager
Lone Tree Mutual Water Company

Cc: John Kinsey of Wanger Jones Helsley PC

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
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January 19, 2018

File Ref: SCH # 2017121026

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**Subject: San Joaquin River Restoration Program - Eastside Bypass
Improvements Project Initial Study/Draft Environmental Assessment
(IS/DEA) and Proposed Mitigated Negative Declaration, Merced County**

Dear Ms. Dulik and Ms. Victorine:

The California State Lands Commission (Commission) staff appreciates the opportunity to comment on the IS/DEA for the Draft San Joaquin River Restoration Program - Eastside Bypass Improvements Project (Project) along the San Joaquin River and the Eastside Bypass, which was prepared by the U.S. Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR), Fresno Office. Staff also appreciates Reclamation and DWR staffs taking the time to meet with Commission staff on this matter. Commission staff looks forward to engaging with Reclamation and DWR staff in the future to further discuss this Project and how it will interact with the Commission's jurisdiction. Staff has reviewed the Project IS/DEA and respectfully submits the following comments.

Reclamation and DWR are the federal and state lead agencies under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), respectively, for the Project. The Commission is a trustee agency under CEQA for projects, including the proposed Project, that could directly or indirectly affect sovereign land and accompanying Public Trust resources or uses. (Pub. Resources Code, § 21070.)

Commission’s Jurisdiction and Public Trust Lands

The Commission has exclusive jurisdiction and management authority over all ungranted tidelands, submerged lands owned by the State, and the beds of navigable lakes and waterways. (Pub. Resources Code, §§ 6009, 6301.) The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6009, subd. (c), 6301, and 6306.) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high-water mark, which is often reflected in the mean high tide line, except for areas of fill or artificial accretion, or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, the State holds fee ownership of the bed of the waterway landward to the ordinary low-water mark, and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

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After review of the information contained in the IS/DEA and Commission records, the Project does not appear to include State-owned sovereign land; however, Commission staff’s preliminary investigation into the State’s sovereign interest at the Project location is not conclusive at this time and additional information could reveal that the State possesses some sovereign interest at the Project location. Commission staff requests that as the Project proceeds, Reclamation and DWR contact Randy Collins, Public Land Management Specialist (see contact information below), to ensure that no components of the proposed Project will encroach on State property, triggering the requirement of a lease from the Commission. Further, please note that the historic channel of the San Joaquin River is sovereign state property and the Commission has both the authority and responsibility to protect Public Trust resources and uses therein.

Promotion of public access to and use of California’s navigable waters is promoted in the California Constitution (Art. X, § 4), and a responsibility of the Commission. The State Legislature has stated “that it is essential to the health and well-being of all citizens of this state that public access to public natural resources be increased. It is the intent of the Legislature to increase public access to public natural resources” (Gov. Code, § 66478.3). The Commission is charged with the responsibility of maintaining and increasing public access to Public Trust resources.

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Please also be advised that the San Joaquin River, and potentially the Eastside Bypass, are subject to a public right of navigation. This public right provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-

propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses.

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Commission staff requests formal consultation as a trustee agency with DWR to discuss the issues affecting the State’s sovereign land in the bed of the San Joaquin River and how the future use of the Eastside Bypass as a permanent fish channel will affect Public Trust resources. Staff respectfully requests consultation to commence as soon as possible and that copies be forwarded of any comment letters on the Project from the three implementing wildlife agencies, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

General Comments

1. In reviewing the Project IS/DEA, Commission staff identified several mitigation measures that appear to defer mitigation, and the analyses made do not appear to accurately or completely mitigate impacts as required by the State CEQA Guidelines. Guidelines section 15126.4, which sets forth requirements for mitigation measures under CEQA, states in part that “formation of mitigation measures should not be deferred until some future time...” (§ 15126.4, subd. (a)(1)(B)). As a trustee agency, the Commission will need to rely on the IS/EA for any discretionary action to consider a lease, should one be required for any Project component.

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2. On page 2-15, in Project Design Considerations, the IS/DEA identifies the need to recalculate the current, compared to the proposed, channel capacity within the Eastside Bypass. The statement that upgrading the standards to U.S. Army Corps of Engineers (USACE) and Central Valley Flood Protection Board (CVFPB) standards indicates that modification to the state and federal plans of flood control may need to be secured, and thus a section 408 (33 USC 408) permit may be needed from the USACE pursuant to section 14 of the Rivers and Harbors Act of 1899. On pages 3-132 and 3-184, the IS/DEA suggests that Reclamation and DWR do not feel the need to apply for a section 408 permit for the Project. Due to a significant importance of the proposed modification of the state and federally adopted plans of flood control for the protection and safety of the levee system within the San Joaquin River levee system should be a high priority. The levee system is important to the protection of the Public Trust resources and sovereign land in the area and Commission staff encourages the lead agencies to consult with the USACE regarding any required section 408 permitting.

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3. Please add the Commission as a trustee agency for the Project. The Commission has the authority and responsibility to oversee the activities that are not on sovereign land but will affect Public Trust resources and uses. For example, pages 3-188 and 3-201 should include the Commission as an agency with jurisdiction over Public Trust resources affected by the Project. These resources include native salmonids as well as public waterways. In addition, Commission staff requests that the Commission be added as a trustee agency to Table 5-1 on pages 5-2 and 5-5.

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4. Page 5-1, section 5.1, states that the Project was separated from the larger Reach 4B/Eastside Bypass Project because it was identified as a near-term element with independent utility that was ripe for project-level environmental analysis. However,

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chapter 5.1 also references public scoping meetings and notice documents from the larger Reach 4B/Eastside Bypass Project Environmental Impact Statement/Review (EIS/R), which is yet to be approved or certified. Relying on outreach conducted for the larger Reach 4B/Eastside Bypass Project and documents prepared for that project, raises some concerns with Commission staff that separation of the Eastside Bypass piece from the larger project could be construed as piecemealing. Please note that the lead agencies have responsibility to show independent utility by illustrating the requirements of the proposed Project. Commission staff recommends that Reclamation and DWR bolster the IS/DEA by providing additional clarification on why this Project has independent utility. Commission staff also cautions against relying on previous outreach efforts for the larger project to satisfy requirements for the current Project. Commission staff encourages Reclamation and DWR to engage in additional outreach for this Project to ensure the public is educated and aware that this Project is separate and apart from the larger Reach 4B/Eastside Bypass Project.

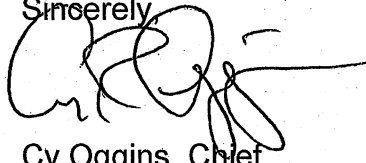
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These comments are made without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information come to our attention. In addition, these comments are not intended, nor should they be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

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Thank you for the opportunity to comment on the IS/DEA. Commission staff acknowledges the importance of the San Joaquin River Restoration Project and looks forward to working with DWR and Reclamation moving forward. Should you have any questions concerning the leasing jurisdiction of the Commission, please contact Randy Collins, Public Land Management Specialist, at (916) 575-0900, or via email at Randy.Collins@slc.ca.gov. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or via e-mail at Christopher.Huitt@slc.ca.gov. Commission staff requests that DWR (and Reclamation) continue to consult with Commission staff on this Project and keep us advised of changes to the Project description and all other important developments.

Sincerely



Cy Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
R. Collins, Commission
C. Connor, Commission
P. Griggs, Commission
J. Garrett, Commission
E. Gillies, Commission
C. Huitt, Commission



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

January 16, 2018

Regulatory Division (SPK-2017-00550)

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Fresno, California 93726

Ms. Becky Victorine
Bureau of Reclamation
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2800 Cottage Way
Sacramento, California 95825

Dear Ms. Dulik and Ms. Victorine:

We are responding to your December 2017, request for comments on Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration for the Eastside Bypass Improvements Project. The project site is as identified in the enclosed map with its location being in the Eastside Bypass in Section 31, Township 9 South, Range 13 East, MDB&M, Latitude 37.15602°, Longitude -120.61917°, Merced County, California.

The Corps of Engineers' jurisdiction within the study area is under the authority of Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States. Waters of the United States include, but are not limited to, rivers, perennial or intermittent streams, lakes, ponds, wetlands, vernal pools, marshes, wet meadows, some canals, and seeps. Project features that result in the discharge of dredged or fill material into waters of the United States will require Department of the Army authorization prior to starting work.

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To ascertain the extent of waters on the project site, you should prepare a wetland delineation, in accordance with the "Minimum Standards for Acceptance of Preliminary Wetlands Delineations" and "Final Map and Drawing Standards for the South Pacific Division Regulatory Program" under "Jurisdiction" on our website at the address below, and submit it to this office for verification. A list of consultants that prepare wetland delineations and permit application documents is also available on our website at the same location.

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The range of alternatives considered for this project should include alternatives that avoid impacts to wetlands or other waters of the United States. Every effort should be made to avoid project features which require the discharge of dredged or fill material into waters of the United States. In the event it can be clearly demonstrated there are no practicable alternatives to filling waters of the United States, mitigation plans should be developed to compensate for the unavoidable losses resulting from project implementation. A full project description will be necessary for our review including the acreage totals of the proposed impacts to waters of the United States for each project feature. Very little information is presented in this document that quantifies the proposed amount of impacts to waters of the United States for the construction of this project. Therefore, if a permit is needed from the Corps of Engineers for this project we will need more information to fully assess the proposal and how it may impact waters of the United States.

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If waters of the United States are going to be impacted, cultural resource sites within the defined federal permit area, will need to be evaluated according to the standards of the National Environmental Policy Act. All eligible or potentially eligible cultural resource sites in the permit area will be subject to Section 106 of the National Historic Preservation Act, 1966, as amended. The Corps of Engineers must also comply with the terms and conditions of the Federal Endangered Species Act with regards to our permitting process.

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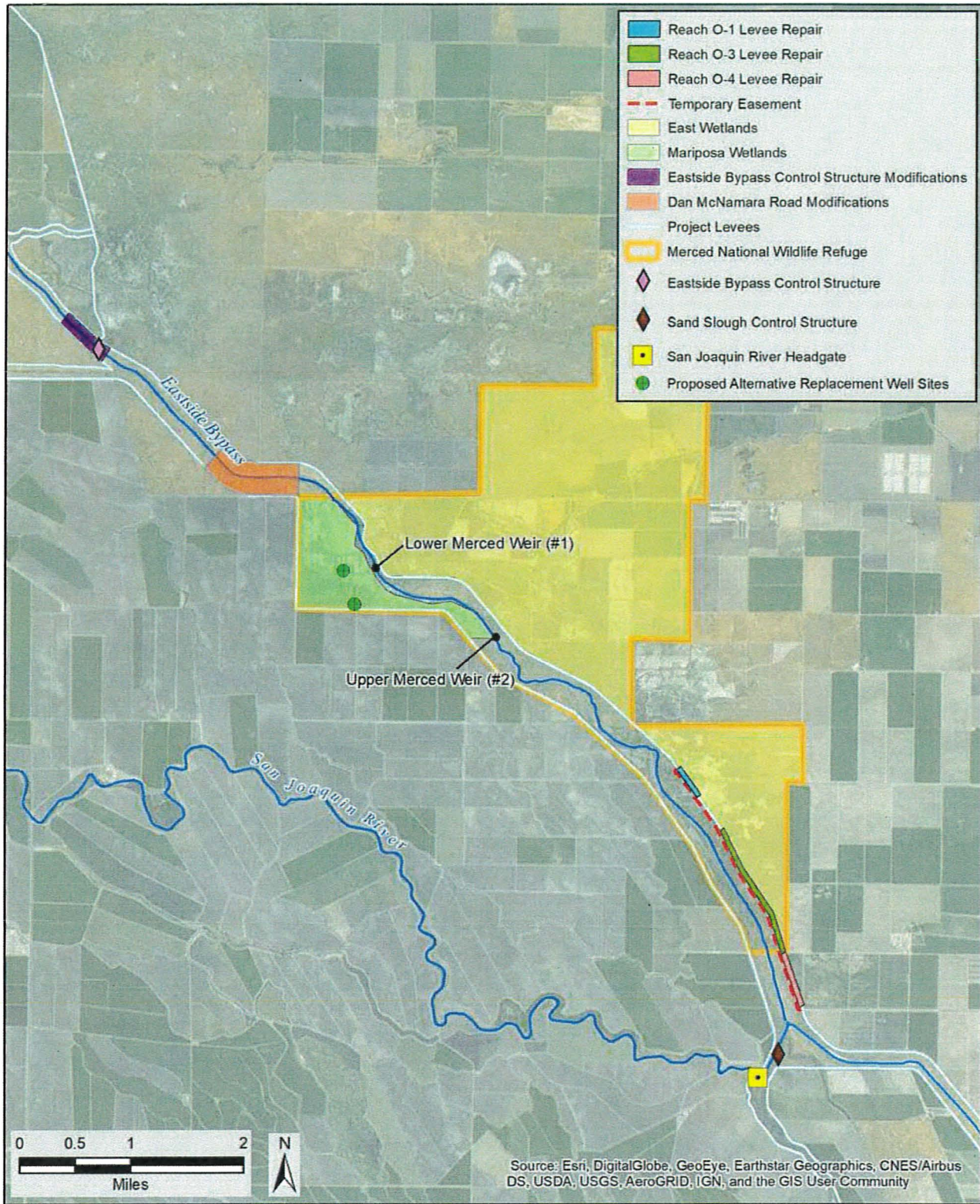
Please refer to identification number SPK-2017-00550 in any correspondence concerning this project. If you have any questions, please contact me at the letterhead address, Room 1350, by email at *Kathy.Norton@usace.army.mil*, or telephone at (916) 557-5260. For more information regarding our program, please visit our website at *www.spk.usace.army.mil/Missions/Regulatory.aspx*.

Sincerely,



Kathy Norton
Sr. Project Manager
California South Section

Figure 1-2. Proposed Eastside Bypass Improvements Project Location



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Source: California Department of Water Resources 2017, adapted by GEI Consultants, Inc., 2017