

FINAL ENVIRONMENTAL ASSESSMENT / INITIAL STUDY

RECLAMATION DISTRICT 2091

LEEVE IMPROVEMENT PROJECT

August, 2020



Prepared For:



California Department of Water Resources

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1. INTRODUCTION

This Final Environmental Assessment/Initial Study (EA/IS) includes comments and responses to comments on the Draft EA/IS for the Reclamation District 2091 (RD 2091) Levee Improvement Project. Reclamation District (RD) 2091, as the non-federal sponsor and lead agency under the California Environmental Quality Act (CEQA), must consider the IS/Mitigated Negative Declaration (MND) portion of this document before it adopts an MND and approves the proposed action.

The United States Army Corps of Engineers (USACE) and RD 2091 prepared the Draft EA/IS to address the environmental issues, alternatives, and impacts associated with implementation of the proposed action. This Final EA/IS satisfies the legal and regulatory requirements pursuant to NEPA and CEQA. The Draft EA/IS also includes a Biological Assessment (BA) and was provided to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) for consultation under Section 7 of the Federal Endangered Species Act (ESA).

1.1 ORGANIZATION OF THE DOCUMENT

This Final EA/IS incorporates by reference the Draft EA/IS. It includes a list of the persons and agencies that commented on the Draft EA/IS, their comments, the lead agencies' responses to the comments, changes to the Draft EA/IS, and a Mitigation Monitoring and Reporting Program (MMRP).

The Final EA/IS is organized into the following chapters:

- **Chapter 1** – Introduction. This chapter provides a summary of the proposed action and a discussion of the environmental review process.
- **Chapter 2** – Comments and Responses to Comments on the Draft EA/IS. This chapter provides a list of commenters, copies of their comments (alpha-numerically coded for reference), and the lead agencies' responses to the comments.
- **Chapter 3** – Changes to the Draft EA/IS. This chapter identifies all changes and additions to the text of the Draft EA/IS made as a result of public review of the Draft EA/IS. It also includes clarifications and minor revisions to the proposed action and required mitigation measures. The clarifications and minor revisions to the proposed action do not constitute new potentially significant environmental effects. The revisions to the required mitigation measures are not necessary to mitigate new significant effects, but instead function to replace or supplement the mitigation measures in the Draft EA/IS with equally or more effective measures.
- **Chapter 4** – This chapter discusses the Mitigation Monitoring and Reporting Program (MMRP), as required by the CEQA Guidelines (Section 15097). Appendix A contains the MMRP. It is intended to provide a stand-alone document that will be used to fulfill the requirements of the MMRP over the course of project implementation.



1.2 PROJECT OVERVIEW

1.2.1 PROPOSED ACTION

RD 2091 is responsible for operation and maintenance of the State Plan of Flood Control (SPFC) facilities located in the San Joaquin River system.

DWR repairs significant levee damage due to erosion, seepage, and/or stability deficiencies. Damaged levee sections were identified during levee inspections throughout the San Joaquin River Flood Control System.

RD 2091 is proposing levee repair construction to address seepage and boil damage on the San Joaquin River at five locations in Stanislaus County that threaten the stability of the existing levee. The RD 2091 Levee Repair Project (proposed project) will repair seepage and stability issues at the five sites which total approximately 11,038 feet.

The proposed project repairs, in accordance with DWR Division of Flood Management Rural Levee Repair Guidelines, would include clearing, grubbing, and stripping of berm before placing a drainage system that includes a minimum of a 12-inch filter layer, a 12-inch drain rock layer, followed by a geotextile to prevent movement of material into the drain rock.

1.2.2 PROJECT LOCATION

The five repair sites addressed in this document are located within Stanislaus County and encompass approximately 11.5 acres. The project is located east of Interstate 5 (I-5), approximately 3.2 miles east of the City of Patterson. It is bound by the San Joaquin River on the west, the San Joaquin River East Levee on the north, Vivian Road, S. Carpenter Road and Crows Landing Road on the east, and Linwood Avenue and Simmons Road to the south. A location map of the project and the proposed staging areas is presented in Figure 1.

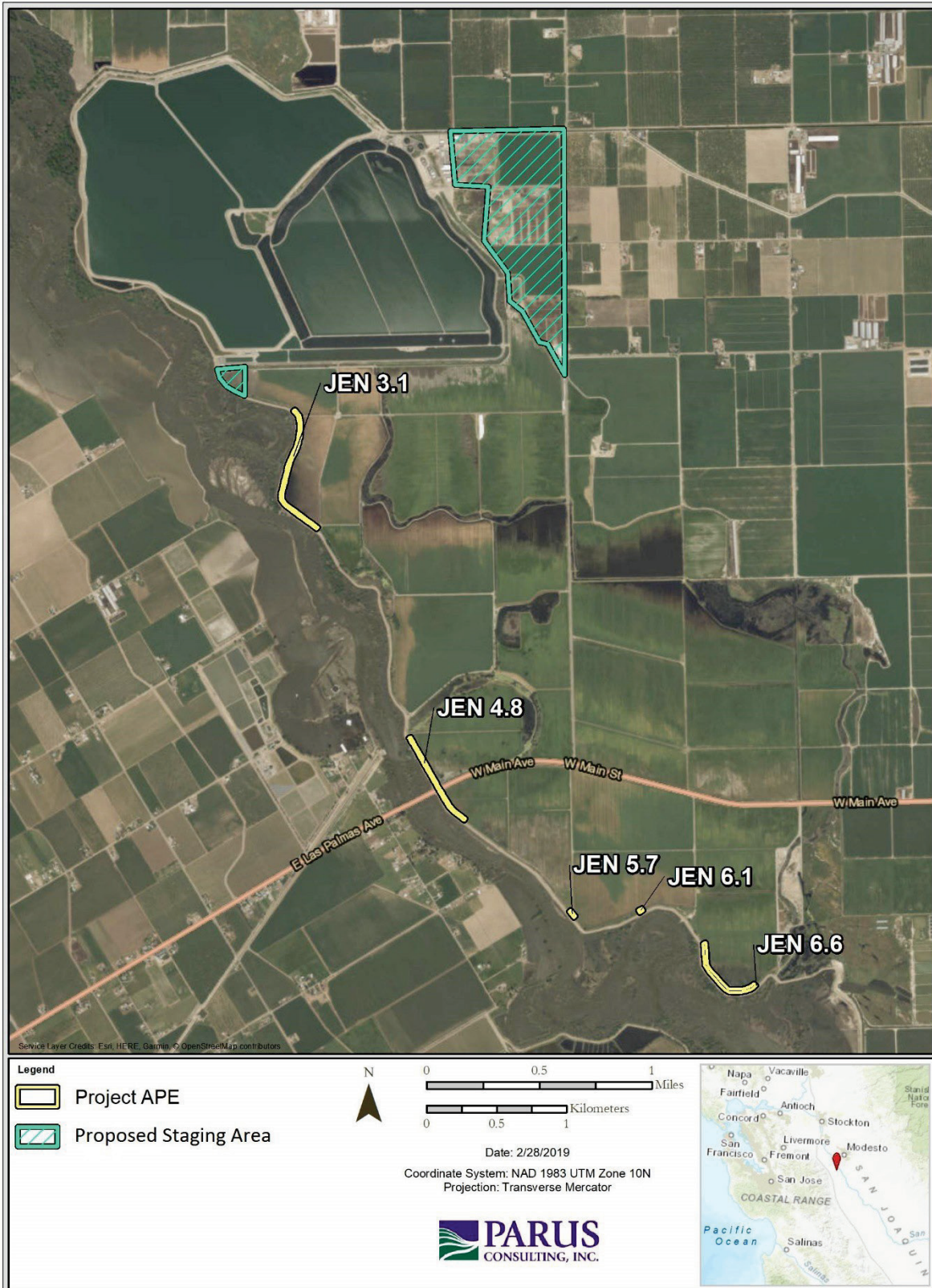
1.2.3 AUTHORITY

RD 2091 is responsible for operation and maintenance of the State Plan of Flood Control facilities located in the San Joaquin River system in California's Central Valley. Under FSRP guidelines, RD 2091 is an eligible local maintaining agency for implementing flood risk reduction projects with State cost share.

RD 2091 identified five levee sites in need of repair in order to reduce the risk of flooding in the surrounding neighborhoods. Repair sites are defined for the purpose of this review as sites at risk as the result of seepage or boils during floods and/or normal conditions. Sites are designated as *critical* and *potentially critical* based upon past experience with levees and known mechanics of the particular river. All five sites in the proposed project have been designated *critical* for seepage and boils.



Figure 1: Location of Project Area



1.2.4 PURPOSE OF THE EA/IS

This document is a joint EA/IS and is intended to satisfy the requirements of the National Environmental Policy Act (NEPA) as well as the California Environmental Quality Act (CEQA) for determining environmental effects and recommended mitigation measures. By preparing a single document that complies with both NEPA and CEQA requirements, the involved agencies were able to avoid unnecessary duplication. While similar, NEPA and CEQA are not identical. Where they differ, the more stringent of the regulations is followed.

1.2.5 DECISIONS NEEDED

The primary purpose of this EA/IS is to determine whether the proposed action would have a significant impact on the environment, and therefore require the preparation of an Environmental Impact Report / Environmental Impact Statement (EIR/EIS). If the findings of this study show less than significant impacts on the environment, then a Finding of No Significant Impact (FONSI) and a Negative Declaration will be prepared as required by NEPA and CEQA, respectively. If they show a significant impact on the environment, then an EIR/EIS will be prepared.

1.3 ALTERNATIVES

1.3.1 ALTERNATIVES ELIMINATED FROM FURTHER CONSIDERATION

As part of the proposed project design process, multiple methods of approach were considered for repair of the project sites. The criteria for evaluating each alternative included the identification of the primary cause of the seepage and boils, slope stability, surrounding land use as well as determining the ability of each design to remedy the levee deficiency. Other factors included construction cost and long-term maintenance requirements.

1.3.2 CONSTRUCTION OF SLURRY WALL ALTERNATIVE

This alternative would consist of constructing slurry walls. Slurry walls are designed to reduce levee through and under-seepage by providing a barrier of low-permeability material in the levee and the levee foundation. Slurry walls are generally installed to depths needed to limit under-seepage. The most common construction materials consist of a soil-bentonite mix, cement-bentonite mix, or soil- cement-bentonite mix using conventional trench methods, deep soil mixing method, trench remixing deep techniques, and one pass trench techniques. This approach was eliminated as an alternative, as it would widen the area of repair of the levee sites with possible encroachment into surrounding agricultural lands. Acquiring the lands could take several years, leaving the surrounding areas vulnerable to levee failure.

1.3.3 NO ACTION ALTERNATIVE

Under this alternative, no action would be taken to repair the levee at the seepage sites. Forces causing seepage would persist and current seepage sites would likely grow. Allowing continued seepage within the levee system would increase the risk of levee failure or possible flooding of surrounding areas.



Existing conditions would not be changed, and normal development and agricultural activities would still occur.

Should levee failure result from the No Action Alternative, resultant emergency measures would likely be of a nature that limits the ability to properly implement best management practices (BMP), site-specific mitigation, and other measures that would minimize impacts to surrounding communities.

1.4 PROPOSED ACTION

This section describes the proposed action. This includes the discussion of features, construction equipment, staging areas, disposal of excess materials, construction schedule, and long-term maintenance of the project.

1.4.1 FEATURES

The proposed project consists of construction of seepage stability berms to prevent ongoing seepage and increase levee stability. Repairs to each levee site will be completed as directed by the Rural Levee Repair Guidelines.

The project area lies on the landside of the east San Joaquin River levee and would not encroach into the channel geometry or affect channel hydraulics of the San Joaquin river. No slope protection would be placed on the waterside levee slopes. Proposed construction activities would not, therefore, have an impact on waterside levee characteristics, and no change to in-water structure would occur.

Vegetation along the approximately 3.5-mile repair section is primarily ruderal and abuts irrigated cropland. Repairs at the seepage sites would involve minimal loss of ruderal and non-native vegetation and vegetation communities. These vegetation types are typically dominated by short-lived annual and biennial, introduced grasses and broad-leaved forbs that are adapted to periodic disturbance as well as valley oaks that have been isolated from the adjacent riparian areas. Construction would be conducted in a manner that minimizes disturbance to existing vegetation wherever possible.

Repair measures will be implemented at each of the five sites and, in total, the overall Project would consist of: (1) clearing, grubbing, and stripping of berm; (2) placement of at least a 12-inch filter layer; placement of at least a 12-inch layer of drain rock; (4) placement of a geotextile to prevent movement of berm materials into the drain rock. Construction at all five sites occur from the landside and are located at Levee Miles (LM) 3.18, 4.80, 5.73, 6.08, and 6.63.

Site JEN3.1 RD2091_01_0199_LM03.18

This site extends from LM 2.87 to LM 3.94 and covers approximately 3.67 acres. It has experienced severe seepage and several boils running clear 30 feet from the landside toe. The length of the repair will be approximately 5,718 feet and would require approximately 16,403 cubic yards of material.



Site JEN4.8 RD2091_01_0199_LM04.80

This site extends from LM 4.50 to 5.10 and covers approximately 3.6 acres. It has experienced severe seepage and boils carrying material during past high-water events. In 1997, crushed rock and filter fabric were placed on an existing landside berm to control seepage and sandbags were used to control the boils about 25 feet from the toe. This area sees high amounts of seepage and boils during every high-water event. The length of the repair will be approximately 2,370 feet, requiring approximately 22,284 cubic yards of material.

Site JEN5.7 RD2091_01_0199_LM05.73

This site extends from LM 5.70 to 5.75, covers approximately .33 acres, and has experienced several boils carrying a small amount of material about 25 feet from the landside toe. Seepage and boils have occurred during every high-water event. The length of the repair will be approximately 542 feet and will require approximately 2,138 cubic yards of material.

Site JEN6.1 RD2091_01_0199_LM06.08

The site at LM 6.08 has a 5-inch diameter boil that carries material during high flows. A sandbag ring has been placed around the boil during rain events. Rock and filter fabric have been used in the past to control seepage and boils carrying material. The repair length is approximately 253 feet, with approximately 570 cubic yards of material required.

Site JEN6.6 RD2091_01_0199_LM06.63

This site extends from LM 6.38 to 6.88, and covers approximately 4.03 acres. It has experienced a total of 17 boils, some of which run clear and some which carry materials. Severe seepage was noted in 1997. The site has experienced seepage and boils carrying material or running clear during past high-water events. Sandbag rings were used to control boils while rocks and fabrics were used to control seepage. The repair will be approximately 2,155 feet long, requiring approximately 21,514 cubic yards of material.

1.4.2 CONSTRUCTION DETAILS

Access and Staging

Jennings Wastewater Treatment Facility is the designated staging area for the proposed project. This area will be the sole location used for staging of vehicles, plant materials, and other associated construction equipment. The staging areas (Figure 1) have been subject to the same environmental and cultural review as the project footprint, to ensure that any potential resources will not be adversely affected.

Construction materials would be delivered to the site and stored in a designated area in the Jennings Wastewater Treatment Facility. Deliveries would be made by concrete trucks, flatbed trucks and tractor-trailer rigs. An estimated 1,258 truckloads of material would be delivered to the site, with each load



containing 50 cubic yards of materials. Truck hauling routes would follow West Main street and Jennings Road onto the Jennings Wastewater Treatment Facility. If temporary lane closures occur, signs would be posted along the haul routes and flaggers would be used, as necessary, to minimize traffic problems and ensure public safety near the construction sites.

Site Preparation

Prior to construction, all construction areas, including staging area, would be fenced off to limit access onsite. Ruderal vegetation, along with the few solitary valley oaks, would be removed, as necessary, to facilitate movement of equipment and levee repair operations. In addition, any onsite trash or concrete rubble would be removed and disposed of at an appropriate facility. Temporary erosion control methods would be used as needed to prevent soil from encroaching onto adjacent property. Disturbed areas would be seeded and mulched to prevent erosion following completion of project.

Construction Sequencing and Equipment

Construction work will occur during one construction season. The work would begin with mobilization and site preparation including transporting equipment to the site, clearing and grubbing. Mobilization would take approximately one week. The construction period would begin with levee degradation followed by excavation and installation of filter and drainage rock finishing with geotextile material. The rebuilding of the levee crown and road would require an additional week. Demobilization would include removal of equipment and materials from the project site, disposal of excess materials at appropriate facilities, and restoration of staging areas and temporary access roads to pre-project conditions. Demobilization activities would take an additional week to complete.

Construction Equipment

All construction will be conducted from only the landside of the east San Joaquin River levee and would not encroach into the channel geometry or affect channel hydraulics of the San Joaquin river. As such, no slope protection would be placed on the waterside levee slopes.

The following equipment is likely to be used for construction at each repair site:

- Scraper
- Compactor
- Grader
- Excavator
- Dump Trucks
- Pickup Trucks
- Loader
- Dozer

Restoration and Cleanup

Upon completion of construction activity, all equipment and excess materials would be transported off site using the same routes used for set up. Levee slopes would be seeded to promote re-vegetation and



minimize soil erosion. Any damage caused from construction activities to the levee road or surrounding areas would be repaired. The staging area would then be cleaned of any rubbish and all parts of the work area would be left in its original condition.

Borrow and Disposal Sites

Procurement of construction materials would be the responsibility of the contractor. Materials would be from a permitted source that could include approved borrow sites or commercial sources.

An estimated 62,909 cubic yards of material would be required for the proposed project and levee crown reconstruction. The reuse of excavated materials from the project site would be used whenever possible to reduce the need for borrow materials.

An estimated 21,000 cubic yards of material would be excavated from the sites. The reuse of the excavated materials would occur to the extent possible in the proposed improvements.

The estimated disposable material is approximately 13,000 cubic yards and the material would be temporarily stockpiled at the staging area before being transported from the project area to approved disposal sites by haul trucks via identified access routes.

Operation and Maintenance

Upon completion of the project, responsibility would be turned over to RD 2091 which would then be responsible for the operation and maintenance of the levee. Regular maintenance activities could include rodent control, clearance of levee roads, and levee inspections.

1.5 SUMMARY OF IMPACTS AND MITIGATION MEASURES

The affected environment and the environmental consequences (impacts) of the proposed action are described in Chapter 3 of the Draft EA/IS, which is incorporated by reference. An MMRP is also provided as Appendix 1 to this Final EA/IS.

1.6 ENVIRONMENTAL REVIEW PROCESS

The Draft EA/IS was circulated for public comment from March 2, 2020 to April 7, 2020. Copies of the Draft EA/IS were submitted to the State Clearinghouse for distribution to state agencies that have jurisdiction over resources affected by the project.

A digital version of the EA/IS and Appendices are available online at:

<https://ceqanet.opr.ca.gov/2020019082/2>. Additionally, hard copies are available at: Stanislaus County Library, 1500 I St., Modesto, CA 95354 and The Jennings Wastewater Treatment Office, 1221 Sutter Ave., Modesto, CA 95351. The NEPA process will be completed with the USACE adoption of the Categorical Exemption, and the CEQA process will be complete with the RD 2091's adoption of the MND and filing of a Notice of Determination (NOD).



2. COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EA/IS

2.1 INTRODUCTION

Nearly every Final EA/IS prepared pursuant to NEPA/CEQA includes new information provided in response to concerns raised in public and agency comments. These comments and their accompanying responses, however, are generally not “significant new information” that would require the recirculation of some, or all of the Draft EA/IS for additional formal public review and comments.

None of the comments received on the Draft EA/IS for the RD 2091 Levee Improvement Project constitute significant new information that would require recirculation of the Draft EA/IS, as set forth in CEQA Guidelines Section 15073.5. More specifically, none of the new information reveals any significant environmental effects not previously identified or any substantial increase in the severity of any previously identified effects. For these reasons, RD 2091, the CEQA lead agency, directed that a Final EA/IS be prepared, and a MND be adopted with an MMRP.

2.2 LIST OF COMMENTERS ON THE DRAFT EA/IS

Table 1: Commenters on the Draft EA/IS

	Individual or Signatory	Agency/Affiliation	Date Prepared	Date Received
1	Nicholas White	Central Valley Regional Water Quality Control Board	4-24-20	4-26-20
2	Eric Gillies	California State Lands Commission	4-26-20	4-27-20

2.3 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EA/IS

RD 2091 received two comment letters commenting on the Draft EA/IS. These letters are reproduced on the following pages. Immediately following each of the comment letters are the responses to each of the comments made in the letters.

To assist in referencing comments and responses, each commenter has been assigned a number and each specific comment a letter of the alphabet. Responses are coded to correspond to the codes used in the margin of the comment letters. Where changes to the Draft EA/IS text have been made in response to comments, those changes are shown in Chapter 3 of this Final EA/IS. Comments that present opinions about the proposed project or that raise issues not directly related to the substance of the Draft EA/IS are not provided a detailed response.





Central Valley Regional Water Quality Control Board

24 February 2020

Cindy Fosi
Reclamation District 2091
P.O. Box 642
Modesto, CA 95354

CERTIFIED MAIL
7019 0700 0002 0111 6753

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, RECLAMATION DISTRICT 2091 LEVEE IMPROVEMENT PROJECT, SCH#2020019082, STANISLAUS COUNTY

Pursuant to the State Clearinghouse's 29 January 2020 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Reclamation District 2091 Levee Improvement Project, located in Stanislaus County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office

KARL E. LONGLEY, Sr., P.E., CHAIR | PATRICK P. LUPA, Esq., EXECUTIVE OFFICER

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of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

<http://www.waterboards.ca.gov/centralvalley/water issues/basin plans/>

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

<https://www.waterboards.ca.gov/centralvalley/water issues/basin plans/sacsjr 201 805.pdf>

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

1-a

I. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:



<http://www.waterboards.ca.gov/water issues/programs/stormwater/constpermit.ssh.html>

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit - Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

<https://www.waterboards.ca.gov/centralvalley/water issues/water quality certification/>

Waste Discharge Requirements - Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/water issues/waste to surface water/>

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more



information on the General Order 2004-0004, visit the State Water Resources Control Board website at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-00.03 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) RS-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Threat-Waiver and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/rs-2018-0085.pdf

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/rs-2016-0076-01.pdf

If you have questions regarding these comments, please contact me at (916) 464-4856 or Nic;r White@waterboards.ca.gov.



Nicta White
Water Resource Control Engineer

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento (via email)



2.3.1 RESPONSE TO COMMENT LETTER 1

Comment 1-a

Section 4.7 of the IS/EA evaluates potential impacts to water resources consistent with Appendix G of the CEQA guidelines.



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890

February 26, 2020

File Ref: SCH #2020019082

Cindy Fosi
Reclamation District 2091
P.O. Box 542
Modesto, CA 95354

VIA REGULAR & ELECTRONIC MAIL (cfosi@modestogov.com)

**Subject: Environmental Assessment/Initial Study (EA/IS) for the RD 2091 Levee
Repair Project, Stanislaus County**

Dear Ms. Fosi:

The California State Lands Commission (Commission) staff has reviewed the subject EA/IS for the RD2091 Levee Repair Project (Project), which is being prepared by Reclamation District (RD) 2091. RD 2091, in partnership with the California Department of Water Resources (DWR) on a cost-share basis, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the U.S. Army Corps of Engineers (USACE) is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, if the Project involves work on State sovereign land, the Commission will act as a responsible agency.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. 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); 6009.1; 6301; 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 navigable non-tidal waterways, including lakes, 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.

After reviewing the available Project documents and internal records of the California State Lands Commission, the extent of the State's sovereign interest at the proposed location is undetermined at this time. Supplemental information is requested from the Project proponent for future review and assessment, including detailed site maps and existing easement documents. Should the scope of work or staging functions require use of State land below the low-water mark in the San Joaquin River, the Project proponent must submit an Application for Lease of State Land.

As the Project advances towards implementation, the Commission requests future communications related to the Project. Supplemental information should be forwarded to the attention of Joanne Holt (contact information is provided at the end of this letter). All communications should reference State Clearinghouse #2020019082 and Inquiry #1762.

Project Description

RD 2091 is proposing levee repair construction to address seepage and boil damage on the San Joaquin River at five Levee Mile (LM) locations in Stanislaus County that threaten the stability of approximately 11,038 feet of existing levee. The Project's objective is to repair seepage and stability issues.

From the Proposed Action, Commission staff understands that the Project would include repair at the following locations that, although unlikely, may have potential to affect State sovereign land:

- **Site JEN3.1 RD2091 01 0199 LM03.18**

This site extends from LM 2.87 to LM 3.94 and covers approximately 3.67 acres. It has experienced severe seepage and several boils running clear 30 feet from the landside toe. The length of the repair will be approximately 5,718 feet and would require approximately 16,403 cubic yards of material.

- **Site JEN4.8 RD2091 01 0199 LM04.80**

This site extends from LM 4.50 to 5.10 and covers approximately 3.6 acres. It has experienced severe seepage and boils carrying material during past high-water events. In 1997, crushed rock and filter fabric were placed on an existing landside berm to control seepage and sandbags were used to control the boils about 25 feet from the toe. This area sees high amounts of seepage and boils during every high-



water event. The length of the repair will be approximately 2,370 feet, requiring approximately 22,284 cubic yards of material.

- **Site JEN5.7 RD2091 01 0199 LM05.73**

This site extends from LM 5.70 to 5.75, covers approximately 0.33 acres and has experienced several boils carrying a small amount of material about 25 feet from the landside toe. Seepage and boils have occurred during every high-water event. The length of the repair will be approximately 542 feet and will require approximately 2,138 cubic yards of material.

- **Site JEN6.1 RD2091 01 0199 LM06.08**

The site at LM 6.08 has a 5-inch diameter boil that carries material during high flows. A sandbag ring has been placed around the boil during rain events. Rock and filter fabric have been used in the past to control seepage and boils carrying material. The repair length is approximately 253 feet, with approximately 570 cubic yards of material required.

- **Site JEN6.6 RD2091 01 0199 LM06.63**

This site extends from LM 6.38 to 6.88, and covers approximately 4.03 acres. It has experienced a total of 17 boils, some of which run clear and some of which carry materials. Severe seepage was noted in 1997. The site has experienced seepage and boils carrying material or running clear during past high-water events. Sandbag rings were used to control boils while rocks and fabrics were used to control seepage. The repair will be approximately 2,155 feet long, requiring approximately 21,514 cubic yards of material.

The proposed Project repairs, in accordance with DWR Division of Flood Management Rural Levee Repair Guidelines, would include clearing, grubbing, and stripping of the berm before placing a drainage system that includes a minimum 12-inch filter layer, a 12-inch drain rock layer, followed by a geotextile to prevent movement of material into the drain rock.

Environmental Review

Commission staff requests that the DWR consider the following comments on the Project's EA/IS, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EA/IS to support consideration of a future lease for the Project, should it be determined that a lease is required.

General Comments

2-a

1. **Proposed Action:** Although as noted in Section 3.1, The Project area lies on the landside of the east San Joaquin River levee, Figure 1. *Action Area* from the Biological Assessment (BA) indicates that activities may extend to onto State lands, which may include portions of the banks of the San Joaquin River. For example, the rebuilding of the levee crown could result in materials falling down the waterside of the levee onto adjacent State lands. Commission staff requests that this potential impact be addressed and specific measures (not just a reference to an erosion plan)



be provided on how this impact would be avoided during construction. Furthermore, access to the Project area through lands under the Commission's jurisdiction may be required at some time during construction.

2-b

1. Public Agency Approvals: Section 6 identifies the laws and regulations of federal, state, and local agencies; however, the EA/IS does not list what specific agency approvals are needed for Project implementation. Commission staff request that these agencies are clearly identified as public agencies that have a discretionary approval over the Project. As there is the potential for the Project to affect State lands, please include the Commission on the list.

2-c

2. Terminology and Clarity. Commission staff suggest that the following items be modified to provide for better reference and clarity throughout the EAMS:
 - a. **Numbering Mitigation Measures (MMs)**. Although mitigation (as needed) is provided after the appropriate header (Mitigation) in Section 4, the lack of an identifying number (e.g., CR-1 810-1, etc.) makes it difficult to reference said mitigation throughout the document and also makes the MMs indistinguishable from Applicant Proposed Measures (APMs) or best management practices (BMPs). Commission staff request that each type of measure be clearly identified.
 - b. **APMs and BMPs as part of the Proposed Action**. APMs and BMPs are measures that are usually considered part of the Project Action (or Project Description) and, therefore, reduce potential impacts prior to a significance determination. When assessing environmental effects these measures should be referred to, but as they are not "mitigation" it is better if they do not appear under a Mitigation header. For example, under "CEQA Checklist: Recreation," specific measures are presented under section 4.3.4 *Mitigation*; followed by "No mitigation would be required." This can be very confusing to the reader. A suggested modification to this example would be to add a table of APMs and BMPs to the end of Section 3, and then state under *Mitigation* that "With the inclusion of BMP-1 outlined in Section 3.x, the impact is less than significant, and no mitigation is required."

2-d

3. Deferred Mitigation: In order to avoid the improper deferral of mitigation, MMs must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and "shall not be deferred until some future time." (State CEQA Guidelines, §15126.4, subd. (a)). For example, references to the preparation of a Stormwater Pollution Prevention Plan (SWPPP) to reduce an impact, without calling out the specific activities that will be included in the SWPPP to reduce that particular impact to a less than significant level, is considered deferral. Commission staff requests that more specific information be provided in such MMs to demonstrate how the MM is going to mitigate potential significant impacts to less than significant.



Wildlife, Fish, and Vegetation Resources

2-e

1. As stated in the provided BA on page 1, only federally listed species were considered in the BA; therefore, there is no documentation for surveys for state listed species conducted within the Action Area. Commission staff requests that DWR consult with the California Department of Fish and Wildlife (CDFW) prior to adoption of this EA/IS to verify what state-listed species have the potential to occur in the Action Area. In addition, staff suggests that CDFW and USFWS be consulted in regard to size and shape of proposed avoidance buffers, site restoration, etc., and a statement to that effect included in the MMs.

Hydrology and Water Quality

2-f

2. Table 11, *CEQA Checklist: Hydrology and Water Quality*, indicates that no MMs are required; however, Section 4.7.3 does not state that the impacts are less than significant, and measures are provided under Section 4.7.4. *Mitigation*. Please refer to Comment #3 regarding terminology and clarity.

Cultural Resources

2-g

3. Title to Resources: As noted on page 21, "...former or current riparian areas within the San Joaquin Valley are considered highly sensitive for prehistoric and historic-era cultural resources." The EA/IS should also mention that the title to all abandoned archaeological sites, and historic or cultural resources on or in submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the DWR consult with Staff Attorney Jamie Garrett should any cultural resources on State lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EA/IS's Mitigation and Monitoring Plan: "The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Air Quality

2-h

4. Greenhouse Gas (GHG): Although page 54 of the EA/IS states that "*Emissions from construction related trips would fall well below the Small Project Analysis Level (SPAL) criteria for significance based on number of trips per day,*" a GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the EA/IS. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify MMs that would reduce them to the extent feasible.



In addition, under *CEQA Checklist: Air Quality*, there is one checklist category that was determined to be less than significant with mitigation (Criteria b). On page 54, under *Proposed Project* it states that "*Implementation of the SWPPP and BMPs would help to reduce impacts from dust-generating activities.*" However, a MM regarding a SWPPP is not proposed under Section 4.9.4 *Mitigation* and it is not clear whether the BMPs under that section are actually part of a MM reducing the Criteria (b) impact, or are just Project BMPs (please see Comment #3 regarding terminology and clarity).

Thank you for the opportunity to comment on the EA/IS for the Project. As a responsible and trustee agency, the Commission will need to rely on the Adopted Mitigated Negative Declaration (**MND**) for the issuance of any lease as specified above and, therefore, we request that you consider our comments prior to adoption of the EAMS.

Please send copies of future Project-related documents, including electronic copies of the adopted MND, Mitigation Monitoring and Reporting Program, Notice of Determination, and approving resolution when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or cynthia.herzog@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Joanne Holt Public Land Management Specialist, at (916) 574-1832 or Joanne.Holt@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Herzog, Commission
J. Garrett, Commission
J. Holt, Commission
T. Lagerquist, Parus Consulting (tom@parusconsulting.com)



2.3.2 RESPONSE TO COMMENT LETTER 2

Comment 2-a

The proposed project does not include the bank of the San Joaquin River. It is located entirely outside of State Lands Commission jurisdiction. No access will be required or allowed through lands under the Commission's jurisdiction.

The Action Area noted in the Biological Assessment may be slightly wider than the actual project limits in the CEQA analysis to ensure full coverage of the biological survey. However, the entire project will be conducted on lands outside of State Lands Commission jurisdiction.

Since the proposed levee repairs will be located entirely on the landside toe of the levee, no potential impact to lands under State Lands Commission jurisdiction were identified.

Comment 2-b

As stated in Response to Comment 2-a, the proposed project does not have the potential to affect State Lands. The project sponsor is well aware of the concerns of the State Lands Commission, and will ensure that all project activities avoid incursion onto State Lands.

Comment 2-c

Mitigation measures have been numbered and identified as APMs or BPMs per the comment.

Comment 2-d

The objective and contents of SWPPPs is already well defined through code and practice. As stated in the EA/IS, a SWPPP is necessary to comply with the requirements of the county's erosion control ordinance and the state's NPDES general construction activity storm water permit. Such compliance will result in avoidance of any potentially significant impacts.

Comment 2-e

The purpose of the Biological Assessment was specifically to meet Federal Endangered Species Act (FESA) requirements. Thus, state-listed species are not included unless they are also federally listed. However, as stated in the EA/IS, a comprehensive general biological survey was conducted for all species. All extant habitat types on the site were described, and all observed wildlife species are noted on Table 7. Table 9 lists special status plants with the potential occur. Table 10 lists special status wildlife species with the potential to occur on the site. Listing status of all species is also noted on Tables 9 and 10.

All relevant agencies have been consulted, including USFWS, which was consulted by USACE under Section 7 of the Endangered Species Act. CDFW received a copy of the Draft EA/IS. Since the proposed project does not affect any stream, river, or lake, a Lake and Streambed Alteration agreement under Section 1602 of the California Fish and Game Code is not required.



Comment 2-f

The absence of a check mark in the column “Less than Significant Impact with Mitigation” in Table 11 is indicative of the fact that no mitigation measures are required. BMPs are routine measures taken by conscientious contractors and project proponents to ensure that their projects are executed in clean and professional manner.

Comment 2-g

Please see response to comment 2-a.

Comment 2-h

An air quality technical analysis (Appendix C) was conducted for the project in February of 2019 and submitted to USACE as a part of its review under Section 408 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The Greenhouse Gas Emissions analysis found that:

“The estimated GHG emissions associated with the proposed project would be approximately 507 metric tons of CO₂e. The project would be considered to have a significant impact if the proposed project would be in conflict with State plans, policies and regulations adopted for the purpose of reducing GHG emissions, such as AB32, with the assumption that State plans, policies, and regulations, such as AB 32, will be successful in reducing HG emissions and reducing the cumulative GHG emissions statewide by 2020 and beyond It is important that the State has taken these measures, because no project individually could have a major impact (either positively or negatively) on the global concentration of GHG. The proposed project would not be in conflict with State plans, police and regulations adopted for the purpose of reducing GHG emissions. Therefore, GGG emissions impacts associated with the proposed project would be less than significant.”



3. CHANGES TO THE DRAFT EA/IS

3.1 INTRODUCTION

Minor changes to the text of the Draft EA/IS have been identified in the responses to comments provided in Chapter 2. None of the changes constitutes new significant information or results in new significant impacts.

3.2 CHANGES TO THE DRAFT EA/IS IN RESPONSE TO COMMENT LETTERS

3.2.1 GLOBAL CHANGES WITHIN DRAFT EA/IS

In response to comment 2-c, all mitigation measures have been numbered and categorized by grouping. Additionally, BMPs have been specified within each mitigation measure and a Mitigation Measure table has been included in Appendix C of the MMRP for clarity.

3.2.2 AIR QUALITY ENVIRONMENTAL EFFECTS

Appendix C is a technical memorandum addressing Air Emissions Calculations associated with the proposed levee repair construction and has been added to the document in response to comment 2-h.

