Public Notice

US Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice Number: 199001376
Date: June 7, 2006
Comments Due: July 7, 2006
In reply, please refer to the Public Notice Number

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application for the first stage of the South Delta Improvements Program (SDIP). The applicants estimate this project would permanently fill 1.16 acres of waters of the United States, including wetlands (waters) in Old and Middle Rivers, and Grant Line, and Fabian-Bell Canals in the south Delta region for construction of four permanent operable gates. The applicant estimates the project would temporarily impact 269.33 acres of waters from dredging portions of Middle River, Old River, and West Canal. This notice is to inform interested parties and the public of the proposed activity and to solicit comments. This notice may also be viewed at the Corps web site at http://www.spk.usace.army.mil/regulatory.html.

AUTHORITY: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the United States.

CO-APPLICANTS:

Paul Marshall, Project Manager
California Department
Of Water Resources
1614 Ninth Street, 2nd Floor
Sacramento, CA 95814
916-653-2118

Sharon McHale, Project Manager
U.S. Bureau of Reclamation
2800 Cottage Way, W-2830
Sacramento, CA 95825
916-978-5086

LOCATION: All actions in the proposed project, including the construction, operation, and maintenance of four permanent operable gates to control fish and flows and conveyance dredging to improve flows in the south Delta, would occur in the south Delta region in both San Joaquin and Contra Costa Counties, California. The project location of each of the components is described below and on Figure 1.

Location of Project Components:

1. Head of Old River Gate
   121.328513 latitude; 37.808166 longitude
   Located at the divergence of the head of Old River and the San Joaquin River

2. Middle River Gate
   121.482544 latitude; 37.885629`longitude
   Located in Middle River, San Joaquin County, near its confluence with Victoria Canal, North Canal, and Trapper Slough, approximately 13 miles southwest of Stockton

3. Grant Line Canal Gate
   121.544434 latitude; 37.819324`longitude
   Located near the confluence of Grant Line Canal and Old River

4. Old River at DMC Gate
121.544579 latitude; 37.810875 longitude
Located east of the Delta Mendota Canal (DMC) approximately 4,000 feet southeast of the intersection of the Alameda, Contra Costa, and San Joaquin County lines

5. Middle River Dredging North End:
121.3858618 latitude; 37.8814382 longitude
South End:
121.3750688 latitude; 37.8220296 longitude
From the head of Old River to approximately 5.3 miles west

6. Old River Dredging
Near the area where Old River, Paradise Cut, and Tom Paine Slough meet

7. West Canal Dredging North end:
121.5654559 latitude; 37.8577726 longitude
South end:
121.5532200 latitude; 37.8299900 longitude
From the channel bottom from the Clifton Court Forebay (CCF) intake north to the point where Victoria Canal meets West Canal

PROJECT DESCRIPTION: The applicants' stated purpose is to construct the south Delta permanent operable gates and dredging project (project), which is a cooperative effort between the California Department of Water Resources (DWR) and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation); DWR and Reclamation have identified the following project objectives:

1. Reduce the movement of San Joaquin River watershed Central Valley fall and late fall run juvenile Chinook salmon into the south Delta via Old River.

2. Maintain adequate water levels and, through improved circulation, water quality available for agricultural diversions in the south Delta, downstream of the head of Old River.

3. Increase water deliveries and delivery reliability to State Water Project (SWP) and Central Valley Project (CVP) water contractors south of the Delta and provide opportunities to convey water for fish and wildlife purposes by increasing the maximum permitted level of diversion through the existing intake gates at Clifton Court Forebay (CCF) to 8,500 cubic feet per second (cfs).

The applicants state that the added flexibility and adaptability provided by the proposed project alone would achieve, to some extent, each of the project objectives, regardless of the operational decision made during Stage 2, which will address increases in diversions to CCF. Meeting these objectives by implementing the project will provide increased operational flexibility and the ability to respond to real-time fish conditions while maintaining water delivery reliability. The applicants also state a detailed discussion of the need for the project, including background information, is contained in the Draft and Final Environmental Impact Report/Environmental Impact Statement. Water bodies affected by the project include the Old and Middle rivers, West, Grant Line, and Fabian-Bell canals (all navigable waterways under Section 10 of the Rivers and Harbors Act).
The primary actions proposed by the applicants include:

1. Construct, operate, and maintain a permanent fish control gate at the head of Old River to reduce the downstream movement of San Joaquin River watershed Central Valley fall-/late fall run juvenile Chinook salmon into the south Delta via the head of Old River.

The fish control gate would be operated to keep outmigrating juvenile salmonids in the San Joaquin River where their exposure to the CVP and SWP export facilities is minimized. The fish control gate

would be operated primarily for this purpose in spring and fall. The gate could also be operated during other times of the year to improve water quality or other conditions in the south Delta channels.

2. Construct, operate, and maintain up to three permanent flow control structures (gates) to improve existing water level and circulation patterns for south Delta water users:
Middle River (near the confluence of Middle River with Victoria Canal), Grant Line Canal (near the confluence of Grant Line Canal and Old River), and Old River (east of the Delta-Mendota Canal [DMC] approximately 4,000 feet southeast of the intersection of the Alameda, Contra Costa, and San Joaquin County lines).

The flow-control gates would be operated during the irrigation season (usually between April and October) to provide adequate water quality and quantity for agricultural diverters along the south Delta channels west of the San Joaquin River. This would be achieved by maintaining a minimum stage of one foot. Figure 2 shows the operation of the gates and specifically how the flow-control gates would be operated to maintain a minimum stage.

3. Dredge portions of Middle River, Old River, and West Canal to improve conveyance, including one round of maintenance dredging that would occur up to five years after the initial dredging.

Dredging would be conducted from a barge or from the crown of the adjacent levees along Middle River, Old River, and West Canal. All dredging would occur between August 1 and November 30. The project also includes one round of maintenance dredging that would remove any accumulated sediments within 5`years of the initial dredging. Further maintenance dredging would be addressed in a separate permit application.

DWR and Reclamation have stated the project has been designed to avoid or minimize impacts to waters and other resources and the project is intended to reduce the environmental and economic effects of installing and removing temporary rock barriers. The temporary barriers alternative includes several tons of riprap rock placed across the head of Old River, Middle River, Grant Line and Fabian-Bell Canal, and Old River at DMC. The placement of the rocks results in temporary disturbances to waters and the aquatic environment each time the temporary barriers are installed and removed. The applicants state that permanent operable gates would cause substantial temporary disturbance only during the construction of the gate and that subsequent dredging maintenance and other maintenance activities associated with the gates are expected to be minimal and implemented only during times when impacts to aquatic resources, such as fish would be minimal.

DWR and Reclamation state they have coordinated closely with the resource agencies including the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NOAA Fisheries), and California Department of Fish and Game (DFG) to design the project to have the least amount of effects on aquatic resources. As an example, the applicants state the gate design was modified from the original radial design that would potentially affect more waters more often, to the bottom-hinged gate, which would lie on the channel bottom when opened and cause minimal disturbance to waters when not in operation.

The applicants have provided the following estimates of discharges of dredged & fill material associated with the Project Flow Control Structures. Where the following letters indicate the type of material or activity, a)Riprap (tons), b)Concrete (cy), c)Sheetpiles (square feet), d)Piles (each), e)Excavation (cy), f)Backfill (cy)

Head of Old River: a) 9,000 b) 900 C) 11,500 d)30 e) 6,200; Old River at DMC: a) 13,880 b) 1,000 c) 19,000 d) 60 e)7,600 f) 1,320; Grant Line Canal: a) 8,500 b) 1,000 c) 33,900 d) 62 e) 2,800; Middle River: a) 3,800 b) 510 c) 8,550 d) 60 e) 8,200 f)1,320

The applicants have provide the following estimates for the proposed Channel Dredging, where cy = cubic yards: Middle River: 164,000 cy sediment, 656,000 cy water, West Canal: 73,000 cy sediment, 292,000 cy water, Tom Paine Slough: 10,000 cy sediment, 40,000 cy water

The applicants have stated the sediment would not be discharged to any waters because it would be dried in spoils ponds or runoff management basins and waters would be avoided when it is subsequently spread on agricultural lands or levees.

Additional project facilities include staging areas adjacent to each gate location; spoils ponds on Union Island, Roberts Island, Stewarts Tract, and Fabian Tract; and haul roads on levee crowns. The location of each of these additional facilities have not been specifically identified but the applicant indicates they will be selected to avoid impacts to waters.

ADDITIONAL INFORMATION: Environmental Setting. The project area is a primarily agricultural area. Open space and some structures such as residences and farm storage buildings are also present in the project vicinity. The gates, dredging, and staging areas would be located on both public and private property.

Alternatives: The applicants have screened alternatives potentially capable of meeting the project objectives. The applicants indicate the selection of their preferred alternative was based on its ability to meet the project purpose, engineering and economic feasibility, and avoidance and minimization of environmental impacts. The applicants' subsequent Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) considered six project alternatives, including a no project alternative. The applicants state the selected alternative minimizes impacts to waters, including wetlands, while also minimizing other impacts associated with traffic, air quality, recreation, and navigation. Additional information concerning project alternatives is available from the applicant or their agent and in Appendix A of the draft EIS/EIR.

Mitigation: To minimize impacts to waters, the applicants have stated they would implement several mitigation measures, including adaptive management of gate operations, various best management practices during construction, and restoring all temporarily affected areas to pre-construction contours. The primary method of avoidance would rely on restricting conveyance dredging activities to the center channel of Middle River, Old River, and West Canal. Their calculation of dredge impacts assumed impacts on all tidal perennial aquatic habitat within the dredge area. Actual loss of tidal perennial aquatic habitat may be substantially less if dredge activities are confined to the center of the channel. To further avoid impacts to waters. The applicants state the dredge spoils ponds/drying areas and disposal areas would be placed in areas that would not affect waters, including wetlands. Staging areas would be used during construction and would be located at least 100 feet from waterbodies, where feasible. The applicants state that if aquatic resources are present within a potential staging area site that would be disturbed by staging activities, an appropriate buffer zone would be staked and flagged to avoid or minimize direct and indirect impacts. Based on reliance on buffers and alternative sites when necessary, the applicants state it is unlikely that staging areas would result in discharge to jurisdictional waters of the United States. The applicants are proposing to provide and implement mitigation plan that would create or restore wetlands and other waters at off-site location(s) not yet determined. Mitigation will be implemented consistent with the conceptual mitigation plan.

OTHER GOVERNMENTAL AUTHORIZATIONS: Based on available information Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Central Valley Regional Water Quality Control Board, is required for this project. The applicant has indicated they would apply for this certification. The applicant would also apply for a Section 1602 Streambed Alteration Agreement with the DFG. DWR and Reclamation are currently in the process of responding to comments and producing a Final EIS/EIR. The Final EIS/EIR will be used by DWR to issue a Notice of Determination and used by Reclamation to issue a Record of Decision (ROD) for the physical/structural component, which is the portion of SDIP for which this permit is sought.

HISTORIC PROPERTIES: A cultural/historic resources inventory and evaluation report was prepared by the applicants' agent. The report indicates that the project would not affect known historical or cultural resources. Reclamation will initiate consultation with the State Historic Preservation Officer under Section 106 of the NHPA, and will request SHPO concurrence with the findings of the inventory report that the proposed project would have no impact on historical or cultural resources. The Corps will review the outcome of Section 106 consultation prior to issuance of any Corps permit, to insure the requirements of the NHPA relative to the Corps action have been met.

ENDANGERED SPECIES: Reclamation, the lead federal agency for the project, will initiate consultation with USFWS and NOAA Fisheries, pursuant to Section 7 of the federal Endangered Species Act. Biological opinions may be issued by each agency and include terms and conditions to protect species listed under the federal Endangered Species Act, including the San Joaquin Kit Fox (*Vulpes macrotis mutica*), Riparian Brush Rabbit (*Sylvilagus bachmani riparius*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) Delta smelt (*Hypomesus transpacificus*), Central Valley steelhead (*Oncorhynchus mykiss*), winter-run chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run chinook salmon (*Oncorhynchus tshawytscha*), Green Sturgeon (*Acipenser medirostris*), and the Giant garter snake (*Thamnophis gigas*), or their designated critical habitat, as applicable. The Corps will insure the requirements of the ESA have been met prior to any Corps permit action.

ESSENTIAL FISH HABITAT: The applicants have stated that an Essential Fish Habitat (EFH) assessment is integrated into this Action Specific Implementation Plan (ASIP), and the EFH consultation process will be integrated into the NOAA Fisheries Programmatic BO for the project. NOAA Fisheries will provide EFH conservation recommendations for any action that would adversely affect EFH. The Corps will insure the EFH requirements of the Magnuson-Stevens Act are met prior to any Corps action.

OTHER AQUATIC RESOURCE IMPACTS: A comprehensive wetland delineation has been submitted to the Corps and is currently being evaluated. The actual acreage of waters impacted by the project may be different from those stated above once the Corps has verified the mapping of waters in the project area.

EVALUATION FACTORS: The decision whether to issue a permit would be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity would be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest would include application of the Section 404(b)(1) guidelines promulgated by the Administrator, U.S. Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments will be used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the NEPA. Comments also will be used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 199001376, must be submitted to the office listed below on or before June 29, 2006:

William Guthrie, Project Manager
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1480
Sacramento, California 95814-2922
Email: William.H.Guthrie@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties would be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps project manager William Guthrie.

Attachments: 9 Figures