



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

May 15, 2023

Environmental Resources Branch (CESPK-PDR)

Mr. Donald Ratcliff
Field Supervisor
Attn: Kim Squires, Section 7 Division Manager
San Francisco Bay-Delta Fish and Wildlife Office
U. S. Fish and Wildlife Service
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4718

Dear Mr. Ratcliff:

The U.S. Army Corps of Engineers (USACE) is requesting reinitiation of formal consultation under Section 7(a) of the Endangered Species Act (16 U.S.C. 1536[a]) for levee improvements on the TS-30L reach of the Lower San Joaquin River (LSJR) Project, San Joaquin County, California. This action is covered under the Lower San Joaquin River Feasibility Study Recommended Plan (LSJRFS) Biological Opinion (BO) (08ESMF00-2015-F-0206) issued by the U. S. Fish and Wildlife Service on June 13, 2016.

The LSJR Project is a cooperative flood risk management effort by the USACE with its non-Federal sponsors (NFS) – the San Joaquin Area Flood Control Agency (SJAFCA) and the Central Valley Flood Protection Board (CVFPB), represented by California Department of Water Resources (DWR). The overall purpose of the LSJR Project is to decrease flood risk by achieving a 200-year level of protection to north and central Stockton. This letter and the enclosed Supplemental Biological Assessment (SBA) summarize the project features and potential effects to Federally listed species that occur in the TS-30L project area. Details of the final design for TS-30L were unknown at the time of the original 2016 BO.

The LSJR Project was authorized for construction in America's Water Infrastructure Act of 2018 (P.L. 115-270), which expedited the completion of the feasibility study and allowed the study to proceed directly to the preconstruction engineering and design phase of the project, as described in Section 1322(b)(2)(F) of the Water Resources Development Act of 2016 (130 Stat. 1707).

USACE is requesting reinitiation for two reasons: (1) Compensation measures in the 2016 BO for the Valley Elderberry Longhorn Beetle (VELB) direct that transplants and compensatory seedlings of elderberry occur within the Fourteen Mile Slough setback area, or to an approved conservation bank; otherwise, USACE will coordinate the use of a new

site through reinitiation of formal consultation; and (2) where removal of vegetation is not otherwise required for construction of the project features, conservation measures for all species direct that USACE evaluate the suitability of the levees for a vegetation variance (now called a design deviation). If that evaluation is not completed or a deviation is not approved, then USACE would reinitiate consultation. While the original design contemplated removal of vegetation on the land and waterside slopes to accommodate project features, inclusion of an armored patrol road within the waterside easement, and associated vegetation removal was not analyzed in the original consultation.

The ESA-listed or candidate species that may be affected by the proposed action are Giant garter snake (*Thamnophis gigas*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and Monarch Butterfly (*Danaus plexippus*).

We request the USFWS review the above information and provide an amended BO within 135 days of the receipt of this letter. If you need any additional information or have questions regarding this action, please contact Ms. Lorena Guerrero, Environmental Manager, at (916) 557-7134 or by e-mail: Lorena.G.Guerrero@usace.army.mil. Thank you for your attention to this matter.

Sincerely,

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Kevin Harper
Chief, Environmental Resources Branch
Planning Division

Enclosures

cc: (w/encl)

Zach Kearns, California Department of Fish and Wildlife,

zachary.kearns@wildlife.ca.gov

Lyla Pirkola, National Marine Fisheries Service, lyla.pirkola@noaa.gov

cc: (w/o encl)

Chris Elias, SJAFCA, chris.elias@stocktonca.gov

Larry Ito, DWR, larry.ito@water.ca.gov



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

Environmental Resources Branch

Subject: Continuing National Historic Preservation Act (NHPA) Section 106 Compliance for the Lower San Joaquin River Project – Reach TS30L (COE120921B).

Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The U.S. Army Corps of Engineers (Corps), Sacramento District, is writing to continue Section 106 consultation on the Lower San Joaquin River Project (Project) – Reach TS30L in Stockton, California. The Project was authorized under the Corps Section 905(b) Analysis [in accordance with the Water Resources Development Act (WRDA) 1986, Public Law (PL) 99-662] dated September 23, 2004. The Section 905(b) Analysis was approved by the Commander, Corps South Pacific Division on June 10, 2005. The Section 905(b) Analysis was prepared in response to House Report 105-190, which accompanied the Energy and Water Development Appropriations Act of 1998 (PL 105-62). Its purpose was to determine the level of Federal interest in providing increased flood protection that is adaptable to future physical and environmental conditions and then implement any necessary flood protection improvements in the study areas.

The Corps is complying with Section 106 of the National Historic Preservation Act (NHPA) for the Project through the implementation of a Programmatic Agreement (PA) regarding the Project executed on May 11, 2016. Pursuant to Stipulation V of the PA, we are now consulting on the Area of Potential Effects (APE) and sharing inventory results for the proposed Reach TS30L, and requesting concurrence in our determination of eligibility for the Tenmile Slough Levee.

The Corps is currently preparing the design for levee improvements to remediate seepage at select locations within the TS30L reach of the Tenmile Slough Levee, located within Tenmile Slough in Stockton, California. Because the design for levee improvements is in progress, the Corps may adjust the APE as the design is refined. Proposed repairs for this reach include a cutoff wall along the centerline of the levee. Potential staging areas thus far are located within or immediately adjacent to the levee prism, and access routes include existing dirt and paved roads. Borrow location(s) are being identified for this reach and will be added to the APE as they are identified. Therefore, the current APE for identification and evaluation of historic properties includes the entire length of the TS30L Reach and a buffer of 300 meters on either side of the centerline of the levee, as well as all known access and staging routes, as required by Stipulation III of the PA. The APE (Enclosure 1) encompasses all identified construction and staging areas for the proposed TS30L Reach, a total of approximately 160 acres.

The Corps sent letters to Native American tribes identified in the PA as invited Concurring Parties, as well as those identified in a list for the area provided by the Native American Heritage Commission on November 8, 2019. The Corps invited comments on geotechnical explorations for the Reach TS30L. No responses were received. In March 2020, the Corps sent documentation of historic property identification efforts for Reach TS30L. One response was received from Wilton Rancheria on April 20, 2020, via e-mail, requesting the lead California Environmental Quality Act (CEQA) agency as well as any records searches or reports completed for the project. Corps Senior Archaeologist Jessica Tudor Elliott responded via e-mail the same day notifying Wilton Rancheria that the lead CEQA agency is the San Joaquin Area Flood Control Agency, and providing previously completed documentation for the Project via secure file transfer. Mrs. Tudor Elliott followed up via email and telephone on May 4, 2020, and on May 29, 2020, and no responses were received.

Further historic property identification efforts for Reach TS30L are documented in the attached Memorandum for Record (Enclosure 2). The Tenmile Slough Levee and Fourteenmile Slough Levee are the only potential historic properties identified within the APE for Reach TS30L. The Corps has determined that the Tenmile Slough Levee and Fourteenmile Slough Levee are not eligible for listing in the National Register of Historic Places (NRHP). Further discussion of this determination can be found in Enclosure 2.

In future correspondence, the Corps will initiate renewal of the PA for the Lower San Joaquin River Project, which is set to expire in May 2021. We will provide a proposed amendment, pursuant to Stipulation XVIII.A, to extend the duration of the PA for an additional five years, beginning on the date of expiration of the current document.

At this time, we are seeking your comments on our APE designation for the proposed Reach TS30L pursuant to Stipulation V of the PA and requesting concurrence in our determinations of eligibility for the Tenmile Slough Levee and Fourteenmile Slough Levee. Correspondence may be sent to Attn: Jessica Tudor Elliott, Senior Archaeologist, U.S. Army Corps of Engineers, CESP-K-PDR-C, 1325 J Street, Sacramento, CA 95814. If you are able, please send your response to Mrs. Tudor Elliott by email at Jessica.L.TudorElliott@usace.army.mil. Mrs. Tudor Elliott can also be reached by telephone at (916) 557-7133. Please refer to the Lower San Joaquin River Project in all future correspondence concerning this project.

Sincerely,

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Daniel F. Artho
Acting Chief, Environmental Resources Branch

Enclosures



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

November 3, 2021

Environmental Resources Branch

SUBJECT: Continuing Consultation for National Historic Preservation Act Section 106 Compliance for the Lower San Joaquin River Project (COE120921B) – Reach TS30L.

Ms. Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The US Army Corps of Engineers, Sacramento District (USACE) is continuing consultation on the Lower San Joaquin River Project in Stockton, California. USACE completed the feasibility study and construction of the Lower San Joaquin River Project (LSJRP) was authorized by the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322) Title I, Subtitle C, Section 1322(b)(2)(F) and the America's Water Infrastructure Act of 2018 (Public Law 115-270), Title I, Subtitle D, Section 1401(2)1. The purpose of the current phase, Reach TS30L, is to bring the Tenmile Slough Levee into compliance with Federal and State safety and engineering standards. Reach TS30L is on the northwest side of Stockton, California.

USACE is complying with Section 106 of the National Historic Preservation Act for the LSJRP through implementation of the *Programmatic Agreement Between the US Army Corps of Engineers and the California State Historic Preservation Officer Regarding the Lower San Joaquin River Feasibility Study Project, San Joaquin County, California* (PA), signed by USACE and the California State Historic Preservation Officer (SHPO) on May 11, 2016, and renewed on May 11, 2021. USACE previously consulted with your office and interested Native American tribes regarding Reach TS30L in letters dated September 4, 2020, pursuant to Stipulation V of the PA. In those letters, USACE delineated the Area of Potential Effects for Reach TS30L (APE) and provided documentation of identification and evaluation efforts for Reach TS30L. USACE received your comments in a letter dated September 28, 2021. You had no comments on the APE. You concurred that the Tenmile and Fourteenmile Slough Levees, the only cultural resources identified in the APE, are not eligible for listing in the National Register of Historic Places. USACE received responses from the United Auburn Indian Community, voicing no concerns, and the Northern Valley Yokuts Tribe, requesting

further project information. USACE provided the requested information on November 5, 2020 and have not received a response.

Pursuant to Stipulations III and V of the PA, we are now consulting on a revision to the APE and associated inventory and evaluation. We are requesting your agreement that the refuse scatter SEWD-01 is not eligible for listing on the National Register of Historic Places and, pursuant to Stipulation VI of the PA, requesting your agreement with our finding of *No Historic Properties Affected* (800.4[d][1]) for Reach TS30L.

All construction, staging, and access routes for Reach TS30L are contained in the previously defined APE. In this consultation, we are adding the proposed borrow area for Reach TS30L levee repairs, an actively farmed field between the Stockton East Water District (SEWD) percolation pond and Stockton Diversion Canal. It is approximately 122 acres (Enclosure 1). The vertical APE is up to 17 feet below surface. Ingress will be from Cardinal Avenue using SEWD's northern access road and gate.

The proposed borrow area for Reach TS30L was subject to consultation by the US Bureau of Reclamation, Mid-Pacific Regional Office (BOR) in 2017 for a separate undertaking. Native American tribes did not identify any properties of cultural or religious significance in or near the area. A records search through the Central California Information Center returned no previously recorded resources within the proposed borrow area or access route. Intensive pedestrian survey of the proposed borrow area (but not the proposed access route) was conducted by qualified personnel (Enclosure 2). BOR identified two historic-era refuse scatters – SEWD-01 and SEWD-02 – and nine isolates and ultimately consulted on the eligibility of SEWD-02 (not eligible) but not SEWD-01. BOR found *No Historic Properties Affected*, with SHPO concurrence (BUR_2017_1017_001).

USACE conducted a sacred lands file search with the Native American Heritage Commission on June 7, 2021, for the proposed borrow area for Reach TS30L and sent letters to all potentially interested tribes on July 28, 2021, providing the revised Reach TS30L APE. USACE also described BOR's prior consultation and requested input regarding any nearby sites of religious or cultural importance. Follow-up calls were made September 16, 2021. No tribe has expressed concern to this point. Consultation continues and USACE will consider any future tribal input.

USACE archaeologist Andrew Ugan conducted an intensive pedestrian survey of the borrow site access route on August 27, 2021. Dr. Ugan identified no additional cultural resources and established that BOR's records search, survey, and findings regarding the borrow area remain valid. USACE has determined SEWD-01 ineligible for listing on the National Register of Historic Places. Documentation of inventory and consultation efforts and a buried site sensitivity analysis are provided in Enclosure 2.

There are no known historic properties within the APE, and USACE finds *No Historic Properties Affected* for Reach TS30L, pursuant to Stipulation VI of the PA. In accordance with the stipulations of the PA, USACE is now seeking your comments regarding the addition of the SEWD borrow area to the APE and the adequacy of inventory efforts. USACE is also seeking your agreement with our determination that SEWD-01 is *ineligible* for listing on the National Register of Historic Places and with our finding of effect for Reach TS30L. USACE is also providing the enclosed documents to interested tribes for comment at this time. In the event of a post-review discovery, USACE would comply with 36 CFR § 800.13(b), pursuant to Stipulation VI of the PA.

USACE respectfully requests your response within 30 days. Pursuant to Stipulation I of the PA, failure to respond within 30 days will not preclude USACE from moving forward with the project. Correspondence may be sent to Attn: Tatum Clinton-Selin, Historian, US Army Corps of Engineers, CESPCK-PDR-C, 1325 J Street, Sacramento, CA 95814. Ms. Clinton-Selin can be reached by telephone at (916) 557-7283 or by email at Caitlin.C.Clinton-Selin@usace.army.mil. Please cc USACE archaeologist Dr. Andrew Ugan on email correspondence at Andrew.S.Ugan@usace.army.mil. Dr. Ugan can be reached by telephone at (916) 557-5136.

Sincerely,

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Daniel F. Artho
Deputy Chief, Planning Division

Enclosures



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

June 07, 2022

Environmental Resources Branch

SUBJECT: Continuing Consultation for National Historic Preservation Act Section 106 Compliance for the Lower San Joaquin River Project (COE120921B) – Reach TS30L.

Ms. Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The US Army Corps of Engineers, Sacramento District (USACE) is continuing consultation on the Lower San Joaquin River Project (LSJRP) in Stockton, California. Construction of the LSJRP was authorized by the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322) Title I, Subtitle C, Section 1322(b)(2)(F) and the America's Water Infrastructure Act of 2018 (Public Law 115-270), Title I, Subtitle D, Section 1401(2)1. USACE is complying with Section 106 of the National Historic Preservation Act for the LSJRP through implementation of the *Programmatic Agreement Between the US Army Corps of Engineers and the California State Historic Preservation Officer Regarding the Lower San Joaquin River Feasibility Study Project, San Joaquin County, California* (PA), executed on May 11, 2016, and renewed on May 11, 2021. The purpose of the current phase, Reach TS30L, is to bring the Tenmile Slough Levee into compliance with Federal and State safety and engineering standards. Reach TS30L is on the northwest side of Stockton, California.

USACE previously consulted with your office and interested Native American tribes regarding the Area of Potential Effects (APE), identification and evaluation, and USACE's finding of *No Historic Properties Affected* (36 CFR § 800.4[d][1]) for Reach TS30L pursuant to Stipulation V of the PA (Identification and Evaluation before Historic Properties Management Plan Approval) in letters dated September 4, 2020, and November 1, 2021. USACE received responses from the United Auburn Indian Community (UAIC) and the North Valley Yokuts Tribe (NVYT) in October and November 2020, respectively. UAIC and NVYT had no specific concerns about the project.

In letters dated September 28, 2020, and December 1, 2021, you concurred that the Tenmile and Fourteenmile Slough Levees and resources SEWD-1, ISO-1, ISO-7, and ISO-8 are not eligible for listing in the National Register of Historic Places (NRHP). You did not object to our finding of *No Historic Properties Affected* for Reach TS30L.

Pursuant to Stipulations III and V of the PA (Area of Potential Effects and Identification and Evaluation before Historic Properties Management Plan Approval), we are now consulting on a revision to the APE, associated inventory and evaluation, and a continued finding of *No Historic Properties Affected* for Reach TS30L. In this consultation, we are adding to the APE the Fourteenmile Slough Sanitary Complex (a potential mitigation site), a barge landing area and access route southwest of Reach TS30L, and a perimeter road of the Stockton East Water District (SEWD) (Enclosure, Figure 2). The horizontal extent of the APE expansion is approximately 145 acres. The vertical extent of disturbance within the additions to the APE is two feet.

On November 5, 2021, USACE conducted a California Historic Resources Inventory System records search at the Central California Information Center for areas being added to the APE. Further information regarding the records search is in the enclosure. The search indicated that a segment of one previously recorded resource, the Southern Pacific Railroad (SPRR, P-39-000002), is within the APE addition. In letters dated March 28, 2022, USACE contacted all potentially interested tribes regarding the proposed APE expansion. To date, USACE has received no responses.

USACE Archaeologist Andrew Ugan and USACE Historian Tatum Clinton-Selin conducted an intensive pedestrian survey of the Fourteenmile Slough Sanitary Complex APE addition on March 4, 2021. The Fourteenmile Slough Sanitary Complex is more than 50 years old, and thus is a potential historic property. Dr. Ugan conducted an intensive pedestrian survey of the proposed barge landing area and access route and the SEWD Borrow Area perimeter road on August 27, 2021. Dr. Ugan identified one previously unrecorded cultural resource: the Wright-Elmwood Tract. Dr. Ugan also identified a segment of the SPRR (P-39-000002). The segment of P-39-000002 within the APE addition is part of the SPRR Oakdale Branch.

USACE has determined that the Wright-Elmwood Tract, the Fourteenmile Slough Sanitary Complex, and the SPRR Oakdale Branch are ineligible for listing on the NRHP. Documentation to support our determinations, as well as California Department of Parks and Recreation 523 forms, are provided in the enclosure. We are requesting your agreement that the Wright-Elmwood Tract, Fourteenmile Slough Sanitary Complex, and SPRR Oakdale Branch are not eligible for listing on the NRHP.

Given the results of inventory, evaluation, and consultation, there are no known historic properties within the APE. Pursuant to Stipulation VI of the PA (Assessment of Effects), we are requesting your agreement with our continued finding of *No Historic Properties Affected* for Reach TS30L. USACE is also providing the enclosure to interested tribes at this time and will consider any tribal input. In the event of a post-review discovery, USACE would comply with 36 CFR § 800.13(b), pursuant to Stipulation IX of the PA (Discovery of Unknown Potential Historic Properties).

USACE respectfully requests your response within 30 days. Pursuant to Stipulation I of the PA (Review Procedures and Timeframes), failure to respond within 30 days will not preclude USACE from moving forward with the project. Please direct your response to Tatum Clinton-Selin by email at Caitlin.C.Clinton-Selin@usace.army.mil. Ms. Clinton-Selin can also be reached by telephone at (916) 557-7283 or by postal service (not preferred) at Attn: Tatum Clinton-Selin, Historian, U.S. Army Corps of Engineers, CESPCK-PDR-C, 1325 J Street, CA 95814. Please cc USACE Archaeologist Dr. Andrew Ugan on email correspondence at Andrew.S.Ugan@usace.army.mil. Dr. Ugan can be reached by telephone at (916) 557-5136.

Sincerely,

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Marshall K. Harper
Chief, Environmental Resources Branch

Enclosure



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

February 2, 2023

Environmental Resources Branch

SUBJECT: Continuing Consultation under Section 106 of the National Historic Preservation Act regarding a Revision to the Area of Potential Effects for Reach TS30L of the Lower San Joaquin River Project (COE120921B)

Julianne Polanco
State Historic Preservation Officer
Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Ms. Polanco:

The US Army Corps of Engineers, Sacramento District (USACE) is continuing consultation regarding the Lower San Joaquin River Project (LSJRP) in Stockton, California. Construction of the LSJRP was authorized by the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322) Title I, Subtitle C, Section 1322(b)(2)(F) and the America's Water Infrastructure Act of 2018 (Public Law 115-270), Title I, Subtitle D, Section 1401(2)1. USACE is complying with Section 106 of the National Historic Preservation Act for the LSJRP through implementation of the Programmatic Agreement between the US Army Corps of Engineers and the California State Historic Preservation Officer Regarding the Lower San Joaquin River Feasibility Study Project, San Joaquin County, California (PA), executed on May 11, 2016, and amended on May 11, 2021.

Pursuant to Stipulations III.C (Area of Potential Effects [APE]) of the PA, USACE is requesting your comments on the delineation of the revised APE for Reach TS30L (Enclosure 1). The purpose of the current phase, Reach TS30L, is to bring the Tenmile Slough Levee into compliance with Federal and State safety and engineering standards. Reach TS30L is on the northwest side of Stockton, California. USACE is revising the Reach TS30L APE to include the Kumar and Solari properties to be used as habitat mitigation sites (HMS). This letter will describe the activities proposed for both HMS. The Kumar property is approximately 50 acres in size and is currently being used as an olive orchard. The Solari property is approximately 53 acres in size and has been used for growing rice and row crops in the past. Both sites are located just west of the original TS30L APE.

The proposed activities at both HMS would consist of changing the topography to support wetland and riparian habitats. Throughout the sites, the surface elevation would be lowered between 1.5 feet (ft) to 3 ft to allow for riparian and wetland habitats. The

depth of the APE for both HMS is a maximum of 3 ft. The height of the APE is approximately 20 ft, to account for temporary construction trailers, lighting, fencing and passage of heavy machinery during construction. USACE's rationale for using the APE for the proposed HMS is that, at the current point of the design phase for Reach TS30L, all known construction activities for the HMS are contained within these locations. As the design progresses, it is possible that additional HMS construction activities will be introduced that fall outside of, or entail additional ground disturbance within, the currently proposed APE. If this is the case, USACE will consult on the revision to the APE in accordance with Stipulation III of the PA.

At this time, USACE requests your comments on the proposed APE. Please provide your comments within 30 days of receiving this letter. Comments or questions may be sent to Robert Gudiño, Archaeologist, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, California 95814-2922; by phone at (916) 557-5104; or by email at: Robert.Gudino@usace.army.mil.

Sincerely,

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Geneva Kraus
Chief, Cultural, Recreational, and Social
Assessment Section

Enclosure