



Central Valley Regional Water Quality Control Board

6 December 2023

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NOTICE OF APPLICABILITY FOR COVERAGE UNDER ORDER NO. WQ 2022-0048-DWQ, ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND WASTE DISCHARGE REQUIREMENTS FOR RESTORATION PROJECTS STATEWIDE, SWANSTON IRRIGATION AND FISH PASSAGE IMPROVEMENT PROJECT (WDID#5A57CR00210), YOLO COUNTY

On 13 July 2023, Swanston Ranch, Inc. submitted a Notice of Intent (NOI) to enroll under and comply with State Water Resources Control Board (State Water Board) Order No. WQ 2022-0048-DWQ, Order for Clean Water Act (CWA) Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide.

The Central Valley Water Quality Control Board (Central Valley Water Board) has reviewed your enrollment materials and finds the Swanston Irrigation and Fish Passage Improvement Project (Project) meets the requirements of, and is hereby enrolled under, Order No. WQ 2022-0048-DWQ. You may proceed with your Project in accordance with the Order.

A copy of [Order No. WQ 2022-0048-DWQ](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf) can be found on the State Water Resources Control Board's General Orders webpage and is enclosed.

Please familiarize yourself with the requirements of Order No. WQ 2022-0048-DWQ. You are responsible for complying with all applicable Order requirements. Failure to comply with Order No. WQ 2022-0048-DWQ constitutes a violation of the California Water Code and may result in enforcement action or termination of enrollment under the Order.

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

PROJECT DESCRIPTION:

The project consists of installing a new fish friendly water intake structure and modifying an existing water diversion structure within Tule Canal to provide improved fish passage and connectivity to the Sacramento River in Tule Canal.

An existing water diversion structure, located at the junction of Tule Canal and an interior drainage canal, will be modified. The drainage canal, being open to the Tule Canal, is currently a fish entrainment risk. A new flashboard riser, one fish-friendly flap gate and 36-inch culvert pipe and backfill would be installed to create a barrier to fish entry from Tule Canal into the interior drainage canal. The new backfill grade would consist of approximately 1,000 cubic yards and would be brought up to approximately 11 feet to match the existing height of the Tule Canal so that it would not be breeched during high flows. One new fish-friendly flap 36-inch culvert pipe set in a precast concrete box, approximately 8 feet tall and 5 feet wide, would be installed to allow water drainage from irrigation to return to Tule Canal. The culvert would be protected with rock slope protection to protect slopes and minimize maintenance. A turbidity curtain to support dewatering and deter fish from entering the irrigation canal, would be installed prior to the start of construction at this location. Removal of existing abandoned wood piers and structures will be removed as part of the project.

A new fish-friendly screened intake diversion structure will be installed in the Tule Canal. The design of the new intake is consistent with current National Marine Fisheries Service (NMFS) fish screening criteria and anadromous salmonid passage facility design criteria. The design consists of two 14 foot-diameter stainless steel mechanical brush-cleaned cone screens (model C168-48EA) on a concrete pad within a sheet pile alcove. The concrete pad will be approximately 52.5 feet wide at the channel, approximately 35 feet wide set into the bank and approximately 20 feet deep. The sheet pile alcove would be approximately 52 feet wide by 20 feet deep. The sheet piles (65 total), which are approximately 2 feet wide by 30 feet tall, would be installed with a vibratory pile hammer. Cofferdams, silt curtains, turbidity curtains and dewatering pumps will be used to dewater the construction areas.

The Project will temporarily impact 0.002 acre of freshwater emergent marsh habitat, 0.024 acre/25 linear feet of stream channel habitat, and 0.037 acre/114 linear feet of agricultural ditch. The project will permanently impact 0.009 acre of freshwater emergent marsh habitat and 0.075 acre/150 linear feet of stream channel habitat. Temporarily impacted areas will be restored to pre-Project condition.

PROJECT LOCATION:

The Project is located on agricultural lands adjacent to the Tule Canal, two miles west of the city of West Sacramento, and half a mile north of Interstate 80 within the Yolo Bypass.

County: Yolo

Assessor's Parcel Number: 42-260-026-000

Nearest City: Sacramento

Latitude: 38.584187° and Longitude: -121.585262°

PROJECT TYPE:

Improvements to Stream Crossings and Fish Passage – Fish Screens.

PROJECT SCHEDULE:

Construction will occur in four phases in a single year between 2024 and 2026. Phase 1 is move-in and preparation; Phase 2 is grading; Phase 3 is trenching, installation of the intake screens, headwall, pipe, and pump station; and Phase 4 is backfilled and cleanup. The project anticipated start date would be 1 May 2024, and the end date would be approximately 31 October 2024.

APPLICATION FEE RECEIVED:

\$3,665.00 was received on 20 July 2023. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A. Environmental Review

On 30 October 2023, the Department of Water Resources, as lead agency, adopted an Initial Study/Mitigated Negative Declaration (IS/MND) (State Clearinghouse (SCH) No. 2023090717) for the Project and filed a Notice of Determination (NOD) at the SCH on 29 November 2023. The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must presume that the Department of Water Resource's adopted environmental document comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3.) The Central Valley Water Board has reviewed and considered the environmental document and finds that the environmental document prepared by the Department of Water Resources addresses the Project's water resource impacts. (California Code of Regulations, title 14, section 15096, subd. (f).) The environmental document includes the mitigation monitoring and reporting program (MMRP) developed by the Department of Water Resources for all mitigation measures that have been adopted for the Project to reduce potential significant impacts. (Public Resources Code, section 21081.6, subd. (a)(1); California Code of Regulations, title 14, section 15074, subd. (d).)

B. Incorporation by Reference

Pursuant to CEQA, these Findings of Facts (Findings) support the issuance of this Order based on the Project IS/MND, the application for this Order, and other supplemental documentation.

All CEQA project impacts, including those discussed in subsection C below, are analyzed in detail in the Project Final IS/MND which is incorporated herein by reference. The Project IS/MND is available at: [Upper Swanston Ranch, Inc. Irrigation and Fish Passage Improvement Project \(ca.gov\)](https://ceqanet.opr.ca.gov/2023090717/2) (https://ceqanet.opr.ca.gov/2023090717/2).

Requirements under the purview of the Central Valley Water Board in the MMRP are incorporated herein by reference.

The Permittee's application for this Order, including all supplemental information provided, are incorporated herein by reference.

C. Findings

The IS/MND states that there are no potentially significant environmental effects to water resources after the mitigation measures imposed by the lead agency.

Mitigation measures have been required in the Project which avoid or mitigate to a less than significant level the potentially significant environmental effect as described in the IS/MND.

a.i. Potential Significant Impact:

The Project may have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS).

a.ii. Facts in Support of Finding:

In-water work related to construction of the new backfill grade, installation of the new flap culvert pipe, and placement of rock slope protection for construction of the new concrete headwall fish barrier would not result in the injury, mortality, or disturbance of special-status fish species because the project would implement measures to avoid and minimize effects on fish, including restricting in-water construction activities to June 15 (or June 1 with resource agency approval) through October 31 when special-status fish species are least likely to be present in the project area. For the new intake screens, vibratory driving will be used to install the sheet piles surrounding the new screen. Vibratory pile driving is an alternative to impact driving that minimizes single-strike peak sound pressure and reduces adverse effects on fish (Caltrans 2020). Furthermore, the method proposed for installing the turbidity curtain prior to cofferdam installation would result in fish being guided out of the area where the cofferdam would be installed. Implementation of Mitigation Measures BIO-7, BIO-8, BIO-13, BIO-14, and BIO-15 would further protect special-status fish species during construction activities. These impacts would be less than significant with the proposed construction techniques and with mitigation incorporated.

b.i. Potential Significant Impact:

The Project may have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means.

b.ii. Facts in Support of Finding:

The proposed project would result in permanent impacts on 0.009 acre of freshwater emergent wetland and 0.075 acre of canal. The proposed project would also result in temporary impacts on 0.024 acre of canal, 0.002 acre of freshwater emergent wetland, and 0.037 acre of agricultural ditch. The project proponent will acquire all applicable permits, including a CWA Section 404 permit from U.S. Army Corps of Engineers (USACE), a CWA Section 401 water quality certification from the Central Valley Water Board, and/or a Section 1600 lake and streambed alteration agreement from CDFW. Due to the nature and ecological benefit of the project (i.e., fish passage improvement) and the minimal number of impacts on aquatic features, no compensatory mitigation is proposed.

D. Determination

The Central Valley Water Board has determined that the Project, when implemented in accordance with the MMRP and the conditions in this Order, will not result in any significant adverse water resource impacts. (California Code of Regulations, title 14, section 15096, subd (h).) The Central Valley Water Board will file a NOD with the SCH within five (5) working days from the issuance of this Order. (California Code of Regulations, title 14, section 15096, subd. (i).)

MITIGATION AND MINIMIZATION MEASURES:

The project proponent will comply with all General Protection Measures identified in Attachment A of the Statewide Restoration General Order. In addition, the project proponent will implement the following Best Management Practices (BMPs) and Avoidance and Minimization Measures (AMMs), which have been developed pursuant to the IS/MND that was prepared for the project:

Mitigation Measure BIO-1. Conduct Preconstruction Surveys for Giant Garter Snake. The project proponent will retain a qualified biologist to conduct preconstruction clearance surveys using USFWS-approved methods. Surveys will occur within 24 hours prior to construction activities. Surveys will be conducted along the banks of the canals and within fresh emergent wetland, valley foothill riparian, ruderal grassland, and fallow rice field. If construction activities stop for a period of 2 weeks or more, another preconstruction clearance survey will be conducted within 24 hours prior to resuming construction activity.

Mitigation Measure BIO-2. Provide Environmental Awareness Training. All construction personnel will participate in a worker environmental training program given by a qualified biologist. The training will provide education regarding sensitive natural communities and covered species and their habitats, the need to avoid adverse effects, state and federal protection, and the legal implications of violating the Endangered Species Act (ESA).

Mitigation Measure BIO-3. Identify Work Area Boundaries. The project proponent will clearly identify the boundary of work areas using temporary fencing or the equivalent. All personnel and equipment will be restricted to those areas. Movement of heavy equipment will be restricted to established roadways

to minimize habitat disturbance and potential for injury or mortality of special-status species.

Mitigation Measure BIO-4. Install Wildlife Exclusion Fencing. Prior to the start of construction, exclusion fencing will be installed along the edge of the construction and staging footprint to preclude wildlife from entering the work area, where feasible. A biological monitor will be present during the installation of the fencing.

Mitigation Measure BIO-5. Install Temporary Fencing Around Environmentally Sensitive Areas. Temporary fencing will be installed to identify and protect wetland, riparian, and aquatic habitats adjacent to work areas. Construction equipment and personnel will not encroach on these fenced areas.

Mitigation Measure BIO-6. Stop Construction and Notify Monitor if a Giant Garter Snake Is Observed. If a live giant garter snake is encountered during construction activities, the biological monitor will stop construction in the vicinity of the snake, monitor the snake, and allow the snake to leave on its own. The monitor will remain in the area for the remainder of the workday to ensure the snake is not harmed, or, if it leaves the site, does not return. No work will recommence until the giant garter snake has left on its own volition or until authorized by the USFWS.

Mitigation Measure BIO-7. Acquire a National Pollutant Discharge Elimination System (NPDES) General Construction Activity Stormwater Permit; Prepare and Implement a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP will be prepared by the construction contractor prior to initiating construction activities. The SWPPP will describe the BMPs that will be implemented to control accelerated erosion, sedimentation, and other pollutants during and after project construction. Specific BMPs that will be incorporated into the SWPPP will be site-specific and will be prepared in accordance with the regional water board field manual. Measures will specifically exclude tightly woven cloth or monofilament meshes, because wildlife can become trapped or entangled in the material. Coconut coir matting is an acceptable erosion control material. Where feasible, the edge of the material would be buried in the ground to prevent wildlife from crawling underneath the material.

Mitigation Measure BIO-8. Maintain Water Quality and Limit Construction Runoff. The contractor will maintain water quality and limit construction runoff into wetland areas using hay bales, filter fences, vegetative buffer strips, or other accepted practices. No plastic, monofilament, jute, or similar erosion-control matting that could entangle snakes or other wildlife will be permitted.

Mitigation Measure BIO-9. Avoid and Minimize Adverse Effects on Western Pond Turtle and its Habitat. The project proponent will retain a qualified biologist to conduct a preconstruction survey for western pond turtles. Surveys will occur immediately prior to construction activities (including vegetation removal) and will be conducted along the banks of the canals and in upland areas. The biologist will assess the likelihood of western pond turtle nests

occurring in the disturbance area (based on sun exposure, soil conditions, and other species habitat requirements). If the biologist determines that there is a moderate to high likelihood of western pond turtle nests within the disturbance area, the biologist will monitor all initial ground-disturbing activity for nests that may be unearthed during the disturbance. If a western pond turtle nest is discovered during the preconstruction survey or during project construction, the project proponent will coordinate with CDFW to determine whether additional avoidance measures (e.g., no-disturbance buffer or monitoring) are prudent. If a western pond turtle is found within the immediate work area during the preconstruction survey or during project activities, work will cease in the area until the turtle is able to move out of the work area on its own.

Mitigation Measure BIO-13. Avoid and Minimize Adverse Effects on Special-Status Fish Species from Cofferdams. The following restrictions will be implemented during installation of the cofferdams and cofferdam dewatering:

- The extent of cofferdam footprints will be limited to the minimum necessary to support construction activities.
- Sheet piles used for cofferdams will be installed and removed using a vibratory pile driver.
- Cofferdams will be installed and removed only during the proposed in-water work window (between June 15 [or June 1 with resource agency approval] and October 31).
- All pumps used during dewatering of cofferdams will be screened according to CDFW and National Marine Fisheries Service (NMFS) guidelines for pumps (CDFG 2010; NMFS 1997).

Mitigation Measure BIO-14. Avoid and Minimize Adverse Effects on Special-Status Fish Species by Implementing Fish Rescue and Relocation. The project proponent or their contractor will develop and implement a fish rescue and relocation plan to recover any fish trapped in cofferdams. The fish rescue and relocation plan will be submitted to the resource agencies (CDFW, NMFS, and USFWS) for approval at least 60 days before initiating activities to install cofferdams. At a minimum, the plan will include the following:

- Fish rescue and relocation activities will commence immediately after cofferdam closure and dewatering has sufficiently lowered water levels inside cofferdams to make it feasible to rescue fish.
- All gear and tools (e.g., waders, boots, nets, buckets) will be decontaminated to minimize and avoid spreading aquatic invasive species and diseases (e.g., chytrid fungus), as briefly summarized below.
 - Soak equipment and gear for 10 minutes in a 7 percent bleach solution: 9 liquid ounces of bleach per gallon of water; or
 - Soak equipment and gear for 30 seconds in 0.015 percent Quat 128: 1/8 teaspoon per gallon of water.

- The methods and equipment proposed to collect, transfer, and release all fish found trapped within cofferdams will be described. Capture methods may include seining, dip netting, and electrofishing, as approved by CDFW, NMFS, and USFWS. The precise methods and equipment to be used will be developed cooperatively by CDFW, NMFS, USFWS, and the project proponent or their contractor.
- Only CDFW-, NMFS-, and USFWS-approved fish biologists will conduct the fish rescue and relocation.
- Fish biologists will contact CDFW, NMFS, and USFWS immediately if any listed species are found dead or injured.
- A fish rescue and relocation report will be prepared and submitted to CDFW, NMFS, and USFWS within 5 business days following completion of the fish relocation. Data will be provided in tabular form and at a minimum will include the species and number rescued and relocated, approximate size of each fish (or alternatively, approximate size range if a large number of individuals are encountered), date and time of their capture, and general condition of all live fish (e.g., good—active with no injuries; fair—reduced activity with some superficial injuries; poor—difficulty swimming/orienting with major injuries). For dead fish, additional data will include fork length and description of injuries and/or possible cause of mortality if it can be determined. Fish biologists conducting fish rescue and relocation efforts will coordinate with DWR and CDFW fisheries staff in advance of conducting fish rescue and relocation activities to determine what, if any, additional data on dead fish needs to be collected and reported.

Mitigation Measure BIO-15. Develop and Implement a Spill Prevention, Containment, and Countermeasure Plan (SPCCP). The SPCCP will describe the measures to minimize effects from spills of hazardous or petroleum substances during construction and operation/maintenance by implementing measures such as physically-distancing equipment from waterways, maintaining spill prevention kits at facilities where hazardous materials may be used, providing the equipment and materials necessary for cleanup of accidental onsite spills, and storing hazardous materials in double containment to avoid and reduce localized water quality degradation and prevent direct injury or mortality to fish and their prey, and degradation of their habitat. The SPCCP will also describe pertinent emergency notification requirements, such as those outlined by the Governor's Office of Emergency Services (Cal OES 2014), in the event that a hazardous materials spill/release were to occur.

ADDITIONAL CONDITION(S)

The Applicant shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, as amended

for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavations, and other land disturbance activities of one or more acres, 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.

REPORTING AND NOTIFICATION REQUIREMENTS

The Permittee shall follow notification and reporting requirements described in this Notice of Applicability (NOA), and those found in Attachment D of the Order WQ 2022-0048-DWQ, unless specified as an optional requirement and excluded from this NOA.

1. Annual Reporting

The Permittee shall submit an Annual Report each year within one month of the anniversary of the effective date of this Notice of Applicability. Annual reporting shall continue until the active discharge period is complete and the project enters the post-construction monitoring phase where upon the Permittee shall annually submit a Post-Construction Monitoring Report (Report Type 2) The Post-Construction Monitoring Report shall be submitted on the anniversary of the date that the project restoration activities were completed.

The Annual Report and Post Construction Monitoring Report shall include the information specified in Attachment D, Part A of Order No. WQ 2022-0048-DWQ. The Permittee shall submit the report in accordance with the report submittal instructions in Attachment D of Order No. WQ 2022-0048-DWQ and email it to centralvalleysacramento@waterboards.ca.gov with a cc to Nicholas Savino at Nicholas.Savino@waterboards.ca.gov. The WDID No. for this Project is 5A57CR00210.

2. Notification for In-Water Work and Diversions

The project proponent shall notify the Water Board at least forty-eight (48) hours prior to initiating work in flowing or standing water or stream diversions. Notification may be via e-mail, delivered written notice, or other verifiable means. Within three (3) working days following completion of work in water or stream diversions an In-Water Work and Diversions Water Quality Monitoring Report must be submitted to the Water Board.

3. Water Quality Monitoring Plan for In-Water Work or Diversions

A Water Quality Monitoring Plan shall be submitted to the approving Water Board for acceptance at least thirty (30) days in advance of commencement of project activity. Standards for in-water work or diversions are discussed in General In-Water Measures, specifically IWW-6, presented in Attachment A. The Permittee shall comply with the approving Water Board-specific water quality control plan water quality objectives and reporting requirements.

4. Environmental Monitoring

Per General Protection Measure 5 (GPM-5) of the Order, a resource specialist shall ensure that all applicable protective measures are implemented during project

construction. The resource specialist shall have authority to stop any work if they determine that any permit requirement is not fully implemented. The resource specialist shall prepare and maintain a monitoring log of construction site conditions and observations, which will be kept on file.

NOTICE OF COMPLETION:

Upon completion of the Project, the Permittee shall submit a Notice of Completion (NOC) no later than 30 days after Project completion. The NOC shall demonstrate the Project was carried out in accordance with the Project description, include a map of the Project location with final boundaries of the restoration area, and include post-project photographs. More information on the NOC is listed in attachment D (report type 4) of the Order.

If you have questions concerning this matter, please contact Nicholas Savino by phone at (916) 464-4920 or by email at Nicholas.Savino@waterboards.ca.gov.

Original Signed by Anne Walters for:
Patrick Pulupa
Executive Officer

Attachments: Figure 1: Project Location
 Figure 2: Project Area
 Figure 3: Project Impacts to Aquatic Resources
 Figure 4: Project Impacts to Aquatic Resources

cc: Distribution List, page 11

DISTRIBUTION LIST
[Via email only]

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Figure 1: Project Location

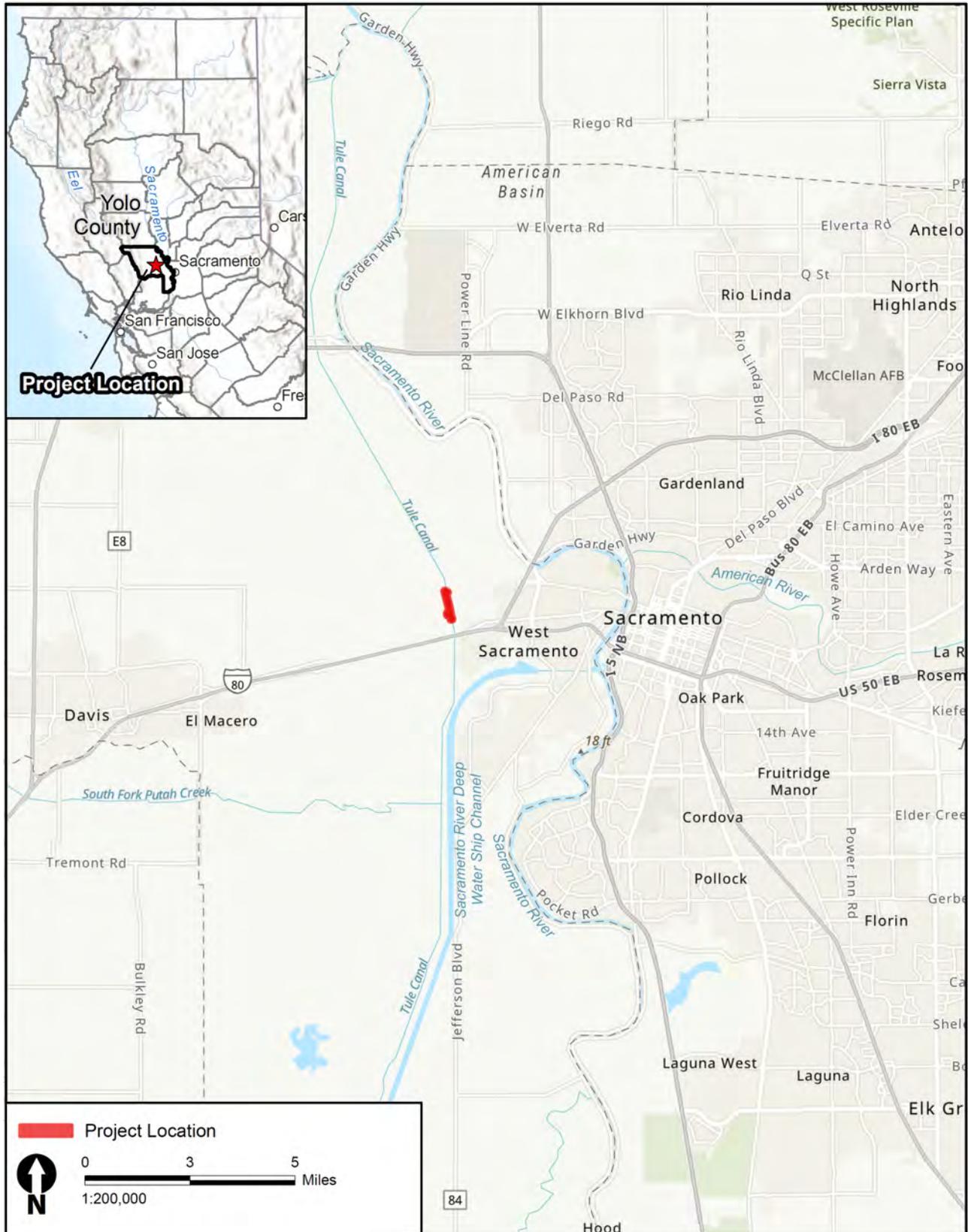


Figure 2: Project Area



Figure 3: Project Impacts to Aquatic Resources

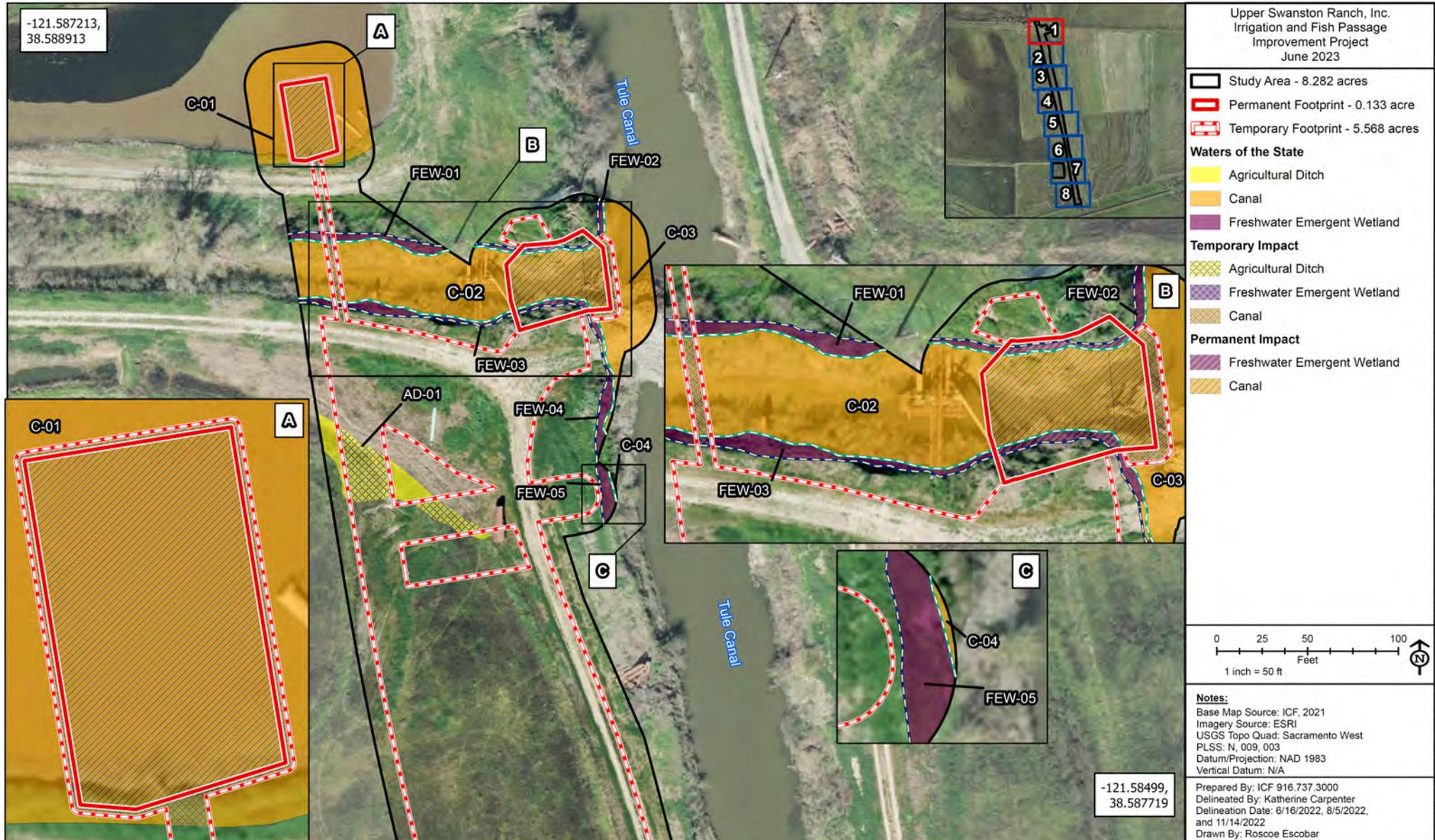
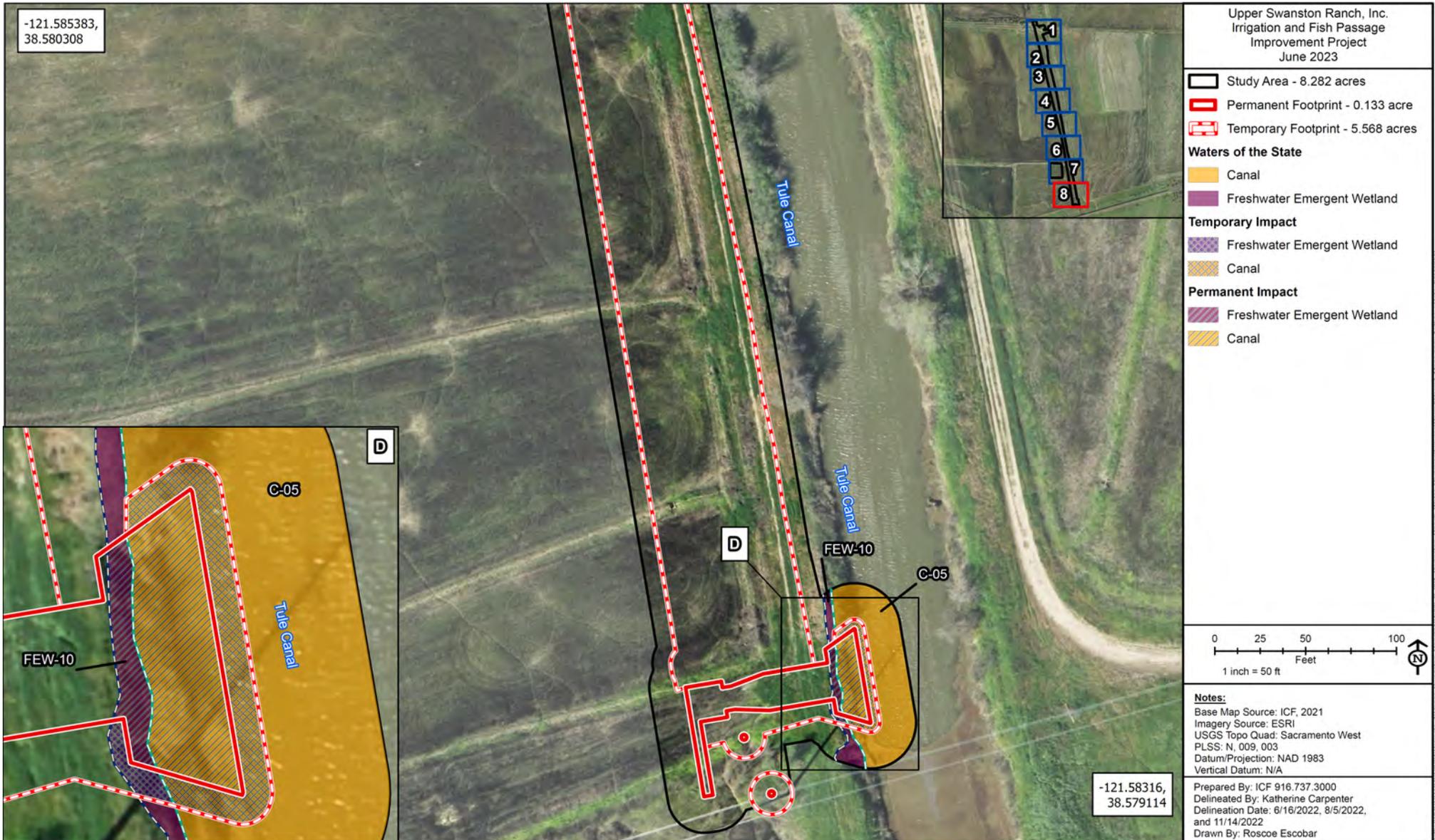


Figure 4: Project Impacts to Aquatic Resources



-121.585383,
38.580308

Upper Swanston Ranch, Inc.
Irrigation and Fish Passage
Improvement Project
June 2023

- Study Area - 8.282 acres
 - Permanent Footprint - 0.133 acre
 - Temporary Footprint - 5.568 acres
- Waters of the State**
- Canal
 - Freshwater Emergent Wetland
- Temporary Impact**
- Freshwater Emergent Wetland
 - Canal
- Permanent Impact**
- Freshwater Emergent Wetland
 - Canal

0 25 50 100
Feet
1 inch = 50 ft

Notes:
Base Map Source: ICF, 2021
Imagery Source: ESRI
USGS Topo Quad: Sacramento West
PLSS: N, 009, 003
Datum/Projection: NAD 1983
Vertical Datum: N/A

-121.58316,
38.579114

Prepared By: ICF 916.737.3000
Delineated By: Katherine Carpenter
Delineation Date: 6/16/2022, 8/5/2022,
and 11/14/2022
Drawn By: Roscoe Escobar