



MEMORANDUM

TO: San Luis & Delta-Mendota Water Authority Board of Directors

AUTHORS: Joe McGahan, Drainage Coordinator
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DATE: 7/09/20

RE: Mud Slough Restoration Project – Board action requested

SUMMARY OF ISSUE

The Grassland Basin Drainers (GBD) Activity Agreement members are seeking to implement the Mud Slough Restoration Project. To move forward with the project, the GBD Steering Committee has, at their May 15, 2020 meeting, recommended that the Water Authority act as lead agency with respect to CEQA and as permit applicant with respect to the following: Army Corps 404, CDFW 1602, and RWQCB 401 permit obligations. The Water Authority is the logical lead agency for the reasons explained below, and is also the logical applicant for the various permits.

BACKGROUND

When the Grassland Bypass Project was initiated in 1996, agricultural subsurface drainage water was discharged from the Grassland Drainage Area into the San Luis Drain and then into Mud Slough (north) and the San Joaquin River. The Regional Board adopted a Basin Plan Amendment that provided a compliance period for water quality objectives in Mud Slough (north) for selenium, and during that compliance period, the Grassland Bypass Project discharges contained selenium at a level that would not meet Mud Slough ultimate water quality objectives. As a result, a number of actions were undertaken to mitigate these Mud Slough impacts. One was an agreement between Panoche Drainage District and the Newman Land Company, a private duck club that took water for its duck ponds from Mud Slough, to provide replacement water until the water in Mud Slough met water quality objectives.

The second was an agreement between the Water Authority and the California Department of Fish and Wildlife (CDFW) to provide mitigation water because the footprint of Mud Slough within the State China Island Refuge contained selenium above the water quality objective and was not suitable for use on its habitats.

On January 1, 2020, the Mud Slough compliance period ended and water in Mud Slough must now meet the objective set by the Regional Board. Starting in January 2020, agreements and

Regional Board permits for Use of the San Luis Drain only permit storm-related discharges from the Grassland Drainage Area0, under the Long-Term Storm Water Management Plan. Because the selenium water quality objectives in Mud Slough are now being met, the obligation to provide mitigation water is no longer applicable. However, this benchmark requires certain actions to be taken to eliminate the mitigation obligations.

Newman Land Company

Newman operates as a duck club north of Highway 140. One of the features of the Newman property is Newman Lake. Prior to the Grassland Bypass Project, it was replenished from Mud Slough and/or Los Banos Creek.

Panoche Drainage District was the original sponsor in 1990 of the Grassland Bypass Project. The Grassland Basin Drainers had not yet been formed. In 1990 Panoche Drainage District prepared an Environmental Assessment and Initial Study and ultimately issued a Negative Declaration for the Project. Comments on a subsequent 1995 addendum by Newman Land Company at that time, and a threat to sue over the project, prompted Panoche to enter into the agreement (and subsequent amendments) with Newman so that the Grassland Bypass Project could move ahead.

In 1996, the Panoche Drainage District entered into an agreement with Newman Land Company (Newman) that required Mud Slough to be blocked as a source of replenishment of Newman Lake and also the provision of an alternate source of water to Newman, to mitigate impacts associated with the Grassland Bypass Project. The Grassland Basin Drainers/members of the GBD Management Activity Agreement paid for associated expenses. The Panoche-Newman agreement has been amended four times to add an option where GBD pays for power charges for groundwater pumping as an alternative to providing substitute water supply. The 4th amendment continues the option for GBD to pay for power to pump wells. In FY 21 the amount in the amendment to pump groundwater is \$111,963. This payment is included in the GBD FY 21 budget as "Newman Water Costs." This continues at an escalating rate until the Mud Slough water is returned to Newman Lake.

Over the years 1,663 acre-feet per year has been provided to Newman, either as surface supplies or through payment of power costs so Newman could pump wells on their property. From 1996 to 2008 surface supplies were provided for a total of 22,000 acre feet of mitigation water. Since 2009 payment for power has varied from \$82,000 to \$125,000 for a total of \$1,368,000. Water has been provided from a multitude of sources, but primarily from the contractual water supplies of Panoche Water District and other GBD entities. The power costs have all been paid by the GBD through the Water Authority under the Activity Agreement.

The "Mud Slough Restoration Project" would restore Newman's direct access to Mud Slough and Los Banos Creek water and nullify the requirements to provide mitigation water or pay for power to pump wells.

CDFW China Island Unit Refuge

The Water Authority has a memorandum of understanding (MOU) with CDFW to mitigate for water in Mud Slough (North) (which runs through the State China Island Refuge) that did not meet water quality objectives. The MOU required the GBD to install structures in side channels of Mud Slough within the Refuge that would prevent high selenium drainage water from entering those side channels. It also required monitoring and provision of mitigation water. Once water quality objectives are being met (which occurred in January 2020), the mitigation water goes away but the conditions of Mud Slough that existed prior to the MOU must be restored. Part of the Mud Slough Restoration Project is to remove these structure that were installed in side channels. In addition, the necessary work to restore Mud Slough water to Newman Lake is on the State China Island Refuge and State approval of the solution is required. Approximately 1,320 acre-feet of water has been provided to CDFW annually which since 1990 amounts to about 40,000 acre feet. Similar to Newman, water was provided from a multitude of sources but primarily from the contractual water supplies of Panoche Water District and other GBD entities. Payment has been made in some years to the agencies providing the water in proportion to their dues from the GBD Activity Agreement.

Other issues

The location of the project is on private property of Newman Land Company or State property in the China Island Refuge. The China Island MOU and obligation to provide mitigation water is included in the proposed action in the 2009 EIS/EIR. The Newman Land Co. obligation under the Panoche Agreements is not covered in the 2009 EIS/EIR but was carried over into the GBD because of the obligation that the Panoche agreement be honored or the Grassland Bypass Project would be jeopardized. CEQA is required for the project as are NEPA/ESA compliance for the permits.

ISSUE FOR DECISION

Whether the Water Authority should be the Lead Agency / Applicant for the Mud Slough Restoration Project.

RECOMMENDATION

Staff recommend that the Board authorize the Water Authority to act as Lead Agency for the Mud Slough Restoration Project and as Applicant for the associated permits on behalf of its members participating in the GBD Activity Agreement, who shall pay all costs associated with the Project, including any litigation costs.

ANALYSIS

The Mud Slough Restoration Project described above will require a CEQA document and associated permits, including an Army Corps 4040 permit, CDFW streambed alteration 1602 permit, and RWQCP or SWRCB 401 permit.

Staff recommends that the Water Authority act as lead agency under CEQA for the Mud Slough Restoration Project, including the two components of (1) removing structures from side channels near China Island, and (2) installing structures to restore the diversion of water from Mud Slough to Newman Lake. The Water Authority would carry out the project and through the GBD Activity Agreement, would fund the project. The Water Authority has the sole obligation under its agreement with CDFW to restore CDFW land, and access for the Newman improvements requires permission from CDFW, so the two activities are linked. Thus, it is logical for SLDMWA to serve as lead agency with respect to CEQA, and to be the permit applicant for the various related permits.

Pending Board approval, staff anticipates submitting the relevant permit applications to the Army Corps, RWQCB/SWRCB, and CDFW in July 2020, with an anticipated Notice of Intent (NOI) expected in August 2020. Approximately one year is anticipated to obtain necessary permits and complete environmental review, with an additional year anticipated for construction subsequent.

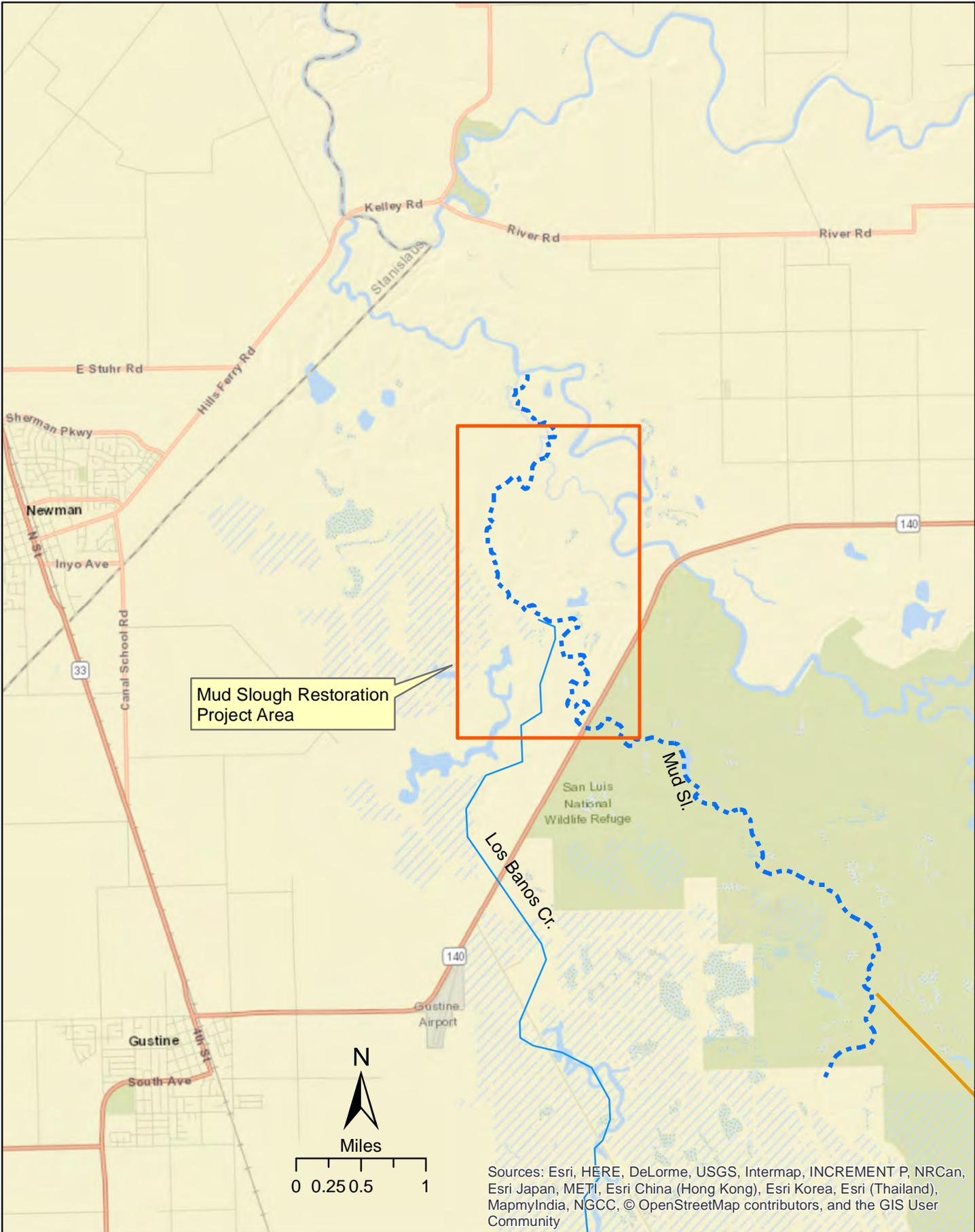
BUDGET

An increased GBD Fund 22 FY 21 budget for this work will be required from current approved budget of \$180,000 to \$258,600; the modification will be included in a Steering Committee recommendation of a broader budget amendment expected to be presented at the August Board meeting.

ATTACHMENTS

- Location Map

FIGURE 1



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

**Mud Slough Restoration Project
Location Map**