



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 20, 2020

Governor's Office of Planning & Research

Aug 20 2020

STATE CLEARINGHOUSE

Wendy Pierce
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

**Subject: South Kaweah Mutual Water Company, Three Rivers Water Tanks
Replacement Project Mitigated Negative Declaration (MND)
SCH# 2020070416**

Dear Ms. Pierce:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from State Water Resources Control Board for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Conserving California's Wildlife Since 1870

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

PROJECT DESCRIPTION SUMMARY

Proponent: Bryan K Elkington; State Water Resources Board

Objective: The objective of the Project is to remove an existing 24-foot tall, 32-foot diameter, 150,000-gallon bolted steel water storage tank and replace it with two new 24-foot, 28-foot diameter, 100,000-gallon water storage tanks. Primary Project activities include widening the unnamed roadway by 10-feet with asphalt for approximately 52-feet which leads to Terminus Court to the water tanks. Five oak trees will be removed to make room for the additional tank and excavation, which will be replaced on a 1:1 ratio. Two hundred feet of additional 6-foot chain link fence will be installed for security.

Location: East of Interstate 5 (I5) and West of Sequoia National Park, off State Route (SR) 198 in the City of Three Rivers, in Tulare County. Terminus Court and Unnamed Road (~40707 Terminus Court).

Timeframe: Unspecific

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist State Water Resources Control Board in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The MND indicates there is potentially significant impact unless mitigation measures are taken but the measures listed are general and non-specific and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*), the State and federally endangered and State fully protected California condor (*Gymnogyps californianus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), and the State fully protected golden eagle (*Aquila chrysaetos*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

Would the Project 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 CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Crotch Bumble Bee (CBB) the State candidate listed as endangered

Issue: CBB have the potential to occur in the Project site. Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014;

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Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

Specific impact: Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with implementation of the Project, and related future projects, could include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

Evidence impact is potentially significant: CBB was once common throughout most of the central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CBB associated with the Project, CDFW recommends incorporating the following mitigation measures into the MND prepared for this Project and implementing the following mitigation measures as a condition of approval for the Project.

Recommended Mitigation Measure 1: CBB Surveys

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features prior to Project implementation to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from the adoption of the MND.

Recommended Mitigation Measure 2: CBB Avoidance and Take Authorization

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to determine what, if any, take authorization is necessary to comply with CESA.

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COMMENT 2: Nesting Raptors, Including California Condor (CACO), Bald Eagle (BAEA), and Golden Eagle (GOEA)

Issue: CACO and BAEA are known to occur in the vicinity of the Project area (CDFW 2020). GOEA are known to nest in riparian habitat, which is present in the Project vicinity. These species, and other nesting raptors, can forage in open grasslands, woodland foothills and riparian habitats.

Specific impact: Without appropriate avoidance and minimization measures for nesting raptors, potential significant impacts associated with the Project's construction include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: Without appropriate survey methods, CACO, BAEA, and GOEA nesting in the vicinity of a project can remain undetected resulting in avoidance and minimization measures not being effectively implemented (AERI 2010). In addition, human activity near nest sites can cause reduced provisioning rates of GOEA chicks by adults (Steidl et al. 1993, Kochert et al. 2002). Depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting raptors.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to nesting raptors associated with Project construction, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of approval.

Recommended Mitigation Measure 3: Focused Surveys for Nesting Raptors

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the survey methodology developed in the "Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment" (Driscoll 2010), and the "Protocol for Evaluating Bald Eagle Habitat and Populations in California" (Jackman & Jenkins 2004), as appropriate for each species. If ground-disturbing activities take place during the normal bird breeding season (February 1 through September 15), CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

Recommended Mitigation Measure 4: Nest Avoidance

If an active CACO, BAEA, or GOEA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding

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season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Recommended Mitigation Measure 5: Take Avoidance

If nesting CACO, BAEA, or GOEA are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. Please note that CACO, BAEA and GOEA are State fully protected species. Therefore, no take, incidental or otherwise, of those species can be authorized by CDFW.

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be

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concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CACO, and BAEA. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

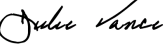
CDFW appreciates the opportunity to comment on the MND to assist State Water Resources Control Board in identifying and mitigating Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

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Please see the enclosed Mitigation Monitoring (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

California Native Plant Society (CNPS), Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org>

CDFW. 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed August 3, 2020.

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Hatfield, R, S. Colla, S. Jepsen, L. Richardson, R. Thorp, and S. Foltz Jordan. 2014. Draft IUCN Assessments for North American *Bombus* spp. for the North American IUCN Bumble Bee Specialist Group. The Xerces Society for Invertebrate Conservation, www.xerces.org, Portland, OR.

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: South Kaweah Mutual Water Company, Three Rivers Water Tanks
Replacement Project**

SCH No.: 2020070416

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: CBB Surveys	
Mitigation Measure 2: CBB Avoidance and Take Authorization	
Mitigation Measure 3: Focused Surveys for Nesting Raptors	
<i>During Construction</i>	
Mitigation Measure 4: Nest Avoidance	
Mitigation Measure 5: Take Avoidance	