



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 13, 2020

Governor’s Office of Planning & Research

Oct 13 2020

STATE CLEARINGHOUSE

Sean Geivet
General Manager
Porterville Irrigation District
22066 Avenue 160
Porterville, California 93257
sgeivet@ocsnet.net

Subject: Porterville Irrigation District
Sun Pacific Farming Recharge Facility Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
State Clearinghouse No.: 2020090219

Dear Mr. Geivet:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Porterville Irrigation District (PID), as Lead Agency, for the Project pursuant to 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, CDFW appreciates 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.

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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 will be required.

CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

PROJECT DESCRIPTION SUMMARY

Proponent: PID is the Project applicant and Lead Agency for the purpose of CEQA.

Project Description: The proposed Project will consist of recharge water banking facilities being constructed at two sites located near the city of Porterville:

Falconer East Banking Site. The Project includes the construction of approximately 78 acres of enhanced levees at existing temporary recharge basins, and construction of associated facilities on the former Falconer property, east of the Friant-Kern Canal. The Falconer APE currently includes temporary recharge basins, three existing irrigation wells, and a temporary turnout from the Friant-Kern Canal consisting of seven diesel suction pumps and appurtenant water pipelines. The Project specifically includes construction of:

- 78 acres of recharge basins to replace the existing temporary basins
- 3,600 linear feet of 15-inch diameter pipelines, controls, and a check structure
- An overflow monitoring and alarm system to prevent overfilling of the recharge basins.

Los Robles Water Bank. The Project area includes approximately 47 acres of existing recharge basins on the Los Robles property, along the Porter Slough Ditch, west of Los Robles Ave. The Project would use existing wells in the area to recover banked water back into local conveyances. The Project includes construction of a turn-out from the Porter Slough Ditch and new pipelines. The Los Robles property includes two existing turnouts from Ditch #2 to the existing irrigation system and wells and four existing irrigation wells. The Project specifically includes construction of:

- A pump station and/or gravity turnout from the Porter Slough Ditch
- Pipeline from the existing Ditch #2 turnout to the recharge basins

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- Pipelines, controls, and a check structure to enable delivery of recovered water back into the Porter Slough Ditch and Ditch #2 (total of 2,200 linear feet of 15-inch diameter pipe)
- An overflow monitoring and alarm system to prevent overflowing of the recharge basins

Location: The Falconer site is located approximately 0.4 miles west of the City of Porterville and the Area of Potential Effect is approximately 92 acres. Avenue 152 runs along the south boundary of the Area of Potential Effect, with the Friant-Kern Canal on the west and the Tule River to the east with agricultural plots on all sides.

The Los Robles site is located approximately 1.3 miles northwest of the City of Porterville and the Area of Potential Effect is approximately 53 acres. The north, south, east, and west sides border agricultural farmland plots; Avenue 168 runs along a portion of the Area of Potential Effect to the east; Road 208 is approximately 0.60-miles to the west, and Highway 65 is approximately 2.5 miles east.

Timeframe: No timeframe given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority 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.

The MND prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the MND outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened and fully protected Bald eagle (*Haliaeetus leucocephalus*), the State fully protected golden eagle (*Aquila chrysaetos*), the State fully protected white-tailed kite (*Elanus leucurus*), and the State species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), and western spadefoot (*Spea hammondi*). In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

Aquatic features in and near the Project area include the Friant Kern Canal, intermittent streams (Tule River and Porter Slough), and associated riparian and fresh emergent

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wetlands, groundwater recharge basins, detention basins, agricultural ditches and canals, and agricultural ponds.

CDFW recommends that the following modifications and/or edits be incorporated into the MND.

I. Project Description and Related Impact Assessment Shortcoming

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: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Issue: Mitigation Measures BIO-1a-c in Table 4-1 of the Mitigation Monitoring and Reporting Program specifies that if construction occurs between February 1 and August 31, a 30-day preconstruction survey for SWHA and other raptors and migratory birds will be conducted. A minimum survey area around the Project site will be a ½-mile radius for SWHA and 500 feet for other raptors and migratory birds. On discovery of active nests, the biologist will determine the appropriate construction setback distances based on applicable CDFW guidelines and/or the biology of the species in question.

Specific impact: The MND states that SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and other mature trees located within the Project site and within ½ mile of the Project. In addition, suitable foraging habitat for these species exists within the vicinity of the Project site; annual grassland, alfalfa or grain fields, and livestock pasture that may be used for foraging are present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: The trees and riparian habitat within the Project area represent some of the only remaining suitable nesting habitat in the local vicinity. Depending on the timing of construction, activities including noise, vibration, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA. In addition, agricultural cropping patterns can directly influence distribution and abundance of SWHA. For example, SWHA can forage in grasslands, pasture, hay crops, and low growing irrigated crops; however, other agricultural crops such as orchards and vineyards are incompatible with SWHA foraging (Estep 2009, Swolgaard *et al.* 2008).

In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in

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proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA related to special status species and nursery sites, and, in the case of SWHA, it could also result in take under CESA. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nesting success, significantly impacting local nesting SWHA and WTKI.

Recommended Potentially Feasible Mitigation Measures:

To evaluate potential Project-related impacts to SWHA, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the MND.

Recommended Mitigation Measure 1: Focused SWHA and WTKI Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation, within each Project area and a ½-mile buffer around each Project area. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

Recommended Mitigation Measure 2: SWHA and WTKI Nest Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer 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 site or parental care for survival.

Recommended Mitigation Measure 3: SWHA and WTKI Nest Tree Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts.

Recommended Mitigation Measure 4: SWHA and WTKI Nest Tree Replacement

If potential or known SWHA and WTKI nesting trees will be removed, CDFW recommends that they be replaced with an appropriate native tree species, planted at a

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ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation would offset potential impacts of the loss of nesting habitat.

Recommended Mitigation Measure 5: SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of a State Incidental Take Permit (ITP) for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Golden Eagle (GOEA) and Bald Eagle (BAEA)

Issue: Suitable nesting and overwintering habitat for GOEA and BAEA exists within the Project area and its vicinity, including the Tule River and Porter Slough corridors. The MND does not include survey methodology or mitigation measures to avoid impacts to overwintering or roosting BAEA, or to nesting GOEA.

Specific impact: Without appropriate avoidance and minimization measures, potentially 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, eagles nesting in the vicinity of a project can remain undetected resulting in avoidance and minimization measures not being effectively implemented (American Eagle Research Institute 2010). In addition, human activity near nest sites can cause reduced provisioning rates of GOEA chicks by adults (Steidl *et al.* 1993 *in* 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 also have the potential to result in nest abandonment, significantly impacting local nesting raptors.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to overwintering or nesting eagles 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 6: Focused Surveys for Nesting and Overwintering Eagles

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting and overwintering eagles following 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 and Jenkins 2004). If ground-disturbing activities take place during the typical bird breeding season (i.e., February 1 through September 15), CDFW recommends that additional pre-construction

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surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

Recommended Mitigation Measure 7: GOEA and BAEA Avoidance

If an active eagle nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer 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 parental care for survival. If nesting eagles 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.

If overwintering eagles are observed, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer while the birds are present.

Please note that pursuant to Fish and Game Code section 3511, BAEA and GOEA are State fully protected species and no take, incidental or otherwise, of those species can be authorized by CDFW.

COMMENT 3: San Joaquin Kit Fox (SJKF)

Issues: SJKF occurrences have been historically documented within the Project area (CDFW 2020). The MND acknowledges the potential to temporarily disturb and permanently alter suitable habitat for special-status species including SJKF, and directly impact individuals if present during construction activities.

SJKF den in rights-of-way, agricultural and fallow/ruderal habitat, dry stream channels, canal levees, etc., and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. As a result, there is potential for SJKF to occupy all suitable habitat within the Project boundary and surrounding area.

BIO-2a of Table 4-1 of the Mitigation Monitoring and Reporting Program discusses the use of 30-day preconstruction survey and monitoring within a 200-foot radius of the Project site for potential and active SJKF dens. The protocol methodology for these surveys is not cited by the MND.

BIO-2b discusses SJKF den excavation and destruction if three days of monitoring show no sign of activity by SJKF. Such activity may warrant obtaining an ITP pursuant to Fish and Game Code section 2081 subdivision (b); the MND does not specify consultation with CDFW regarding these activities.

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Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with construction include habitat loss, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (Cypher *et al.* 2013). Tulare and Kern Counties support relatively large areas of high suitability habitat and one of the largest remaining populations of SJKF (Cypher *et al.* 2013). The Project area is within and bordered by this remaining highly suitable habitat, which is otherwise intensively managed for agriculture. Therefore, subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to SJKF associated with subsequent land conversion, ground disturbance and construction, CDFW recommends conducting the following evaluation of Project areas and implementing the following mitigation measures.

Recommended Mitigation Measure 8: SJKF Habitat Assessment

For all Project-specific components including potential pipeline and other structure construction and land conversion, CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if the Project area or its immediate vicinity contains suitable habitat for SJKF.

Recommended Mitigation Measure 9: SJKF Surveys

CDFW recommends assessing presence or absence of SJKF by having qualified biologists conducting transect or similar coverage surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign.

Recommended Mitigation Measure 10: SJKF Avoidance and Minimization

CDFW recommends following the USFWS “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance” (2011), including no-disturbance buffers maintained around burrows suitable for SJKF use that are found during surveys. CDFW also recommends consultation with CDFW in the event that SJKF are detected, to determine whether take avoidance is feasible.

Recommended Mitigation Measure 11: SJKF Take Authorization

If avoidance of take of SJKF is not feasible, acquisition of a State ITP would be warranted prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

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COMMENT 4: Tricolored Blackbird (TRBL)

Issue: TRBL are known to occur in the Project vicinity (CDFW 2020, UC Davis 2020). Review of aerial imagery indicates that the Project boundary includes flood-irrigated agricultural land, which is an increasingly important nesting habitat type for TRBL, particularly in the San Joaquin Valley (Meese *et al.* 2017).

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated subsequent development include nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: As mentioned above, flood-irrigated agricultural land is an increasingly important nesting habitat type for TRBL, particularly in the San Joaquin Valley (Meese *et al.* 2014). This nesting substrate is present within the Project vicinity. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese *et al.* 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub *et al.* 2016). In addition, TRBL have been forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause nest entire colony site abandonment and loss of all unfledged nests, significantly impacting TRBL populations (Meese *et al.* 2014).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to TRBL associated with subsequent development, CDFW recommends conducting the following evaluation of Project areas and implementing the following mitigation measures.

Recommended Mitigation Measure 12: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the typical bird-breeding season of February 1 through September 15. If Project activity that could disrupt nesting must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence or absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 13: TRBL Colony Avoidance

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer, in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored

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Blackbird Breeding Colonies on Agricultural Fields in 2015” (CDFW 2015), until the breeding season has ended or until a qualified biologist has determined that nesting has ceased and the young have fledged and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time, and for this reason CDFW recommends that following any delays, an active colony be reassessed to determine its extent within 10 days prior to Project initiation. If this avoidance is not feasible, CDFW recommends consultation with CDFW to determine if avoidance of take of TRBL is feasible.

Recommended Mitigation Measure 14: TRBL Take Authorization

If TRBL take avoidance is not feasible, acquisition of a State ITP would be warranted, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any Project activities.

COMMENT 5: Burrowing Owl (BUOW)

Issue: Suitable habitat for BUOW occurs within and in the vicinity of the Project (CDFW 2020). BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Habitat both within and surrounding the Project supports grassland habitat. Therefore, there is potential for BUOW to occupy or colonize the Project.

Specific impact: Potentially significant direct impacts associated with subsequent activities and land conversion include habitat loss, burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California’s Central Valley (Gervais *et al.* 2008). The Project and surrounding area contain remnant undeveloped land but is otherwise intensively managed for agriculture; therefore, subsequent ground-disturbing activities associated with subsequent constructions have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential impacts to BUOW associated with subsequent development, CDFW recommends conducting the following evaluation of Project areas and implementing the following mitigation measures.

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Recommended Mitigation Measure 15: BUOW Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for BUOW.

Recommended Mitigation Measure 16: BUOW Surveys

If suitable habitat is present on or in the vicinity of the Project areas, CDFW recommends assessing presence or absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), which suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (i.e., April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot buffer area around the Project areas.

Recommended Mitigation Measure 17: BUOW Avoidance

CDFW recommends that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 18: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. If it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such

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as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

COMMENT 6: Other State Species of Special Concern

Issue: Western spadefoot and American badger can inhabit grassland and upland scrub habitats (Thomson *et al.* 2016). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2020).

Specific impact: Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss and nest/den/burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

Evidence impact is potentially significant: Habitat loss threatens all of the species mentioned above (Thomson *et al.* 2016). Habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. As a result, ground-and vegetation-disturbing activities associated with development of the Project have the potential to significantly impact local populations of these species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status species associated with subsequent development, CDFW recommends conducting the following evaluation of project areas and implementing the following mitigation measures.

Recommended Mitigation Measure 19: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if project areas or their immediate vicinity contain suitable habitat for the species mentioned above.

Recommended Mitigation Measure 20: Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

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Recommended Mitigation Measure 21: Avoidance

Avoidance whenever possible is encouraged via delineation and observance a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

II. Editorial Comments and/or Suggestions

Incomplete Project Description: The MND does not include the locations or description for the construction of pipelines, controls, check structures, and overflow monitoring and alarm systems. Without this information, the impact analysis of the MND is incomplete. CDFW recommends that the MND include a detailed Project description and locations for all Project-related components and provide a revised biological analysis of all potential Project-related impacts.

Numbering of Mitigation Measures in the MND: MND Section 3.4.3 (Pages 3-21 and 3-22) refer to SWHA mitigation measures BIO 2a-c and SJKF mitigation measures BIO 1a-e. These measures appear to be misnumbered, and reflect the measures in the Mitigation Monitoring and Reporting Program in Table 4-1 of BIO 1a-c and BIO 2a-e.

SJKR Reporting: Measure BIO-2e of the Mitigation Monitoring and Reporting Program states that CDFW and USFWS will be notified within three days of the discovery of SJKF mortality. Any SJKF mortality must be reported to CDFW and USFWS immediately upon discovery. CDFW recommends that the MND require that construction activities cease and CDFW be notified immediately upon the discovery of SJKF mortality.

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species. 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 Project activities.

Lake and Streambed Alteration: Project activities have the potential to substantially change the bed, bank, and channel of lakes, streams, and associated wetlands onsite and/or substantially extract or divert the flow of any such feature that is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 *et seq.* Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial.

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CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact the Central Region Lake and Streambed Alteration Program at R4LSA@wildlife.ca.gov or (559) 243-4593.

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).

CDFW encourages Project implementation to occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., 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 disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a 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 that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work causing that change cease and CDFW be consulted 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 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 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.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, 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 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 PID in identifying and mitigating Project impacts on biological resources. If you have questions regarding these comments, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at the address on this letterhead, by phone at (559) 243-4014 extension 231, or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1

ec: Office of Planning and Research
State Clearinghouse
state.clearinghouse.opr.ca.gov

Craig Bailey
Annette Tenneboe
California Department of Fish and Wildlife

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Attachment 1

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

PROJECT: Sun Pacific Farming Recharge Facility Project

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Before Project Implementation</i>	
Recommended Mitigation Measure 1: Focused SWHA and WTKI Surveys	
Recommended Mitigation Measure 4: SWHA and WTKI Nest Tree Replacement	
Recommended Mitigation Measure 5: SWHA Take Authorization	
Recommended Mitigation Measure 6: Focused Surveys for Nesting and Overwintering Eagles	
Recommended Mitigation Measure 8: SJKF Habitat Assessment	
Recommended Mitigation Measure 9: SJKF Surveys	
Recommended Mitigation Measure 11: SJKF Take Authorization	
Recommended Mitigation Measure 12: TRBL Surveys	
Recommended Mitigation Measure 14: TRBL Take Authorization	
Recommended Mitigation Measure 15: BUOW Habitat Assessment	
Recommended Mitigation Measure 16: BUOW Surveys	
Recommended Mitigation Measure 18: BUOW Passive Relocation and Mitigation	
Recommended Mitigation Measure 19: Habitat Assessment (Other Species of Special Concern)	
Recommended Mitigation Measure 20: Surveys (Other Species of Special Concern)	
<i>During Project Implementation</i>	
Recommended Mitigation Measure 2: SWHA and WTKI Nest Buffers	
Recommended Mitigation Measure 3: SWHA and WTKI Nest Tree Avoidance	
Recommended Mitigation Measure 7: GOEA and BAEA Avoidance	
Recommended Mitigation Measure 10: SJKF Avoidance and Minimization	
Recommended Mitigation Measure 13: TRBL Colony Avoidance	
Recommended Mitigation Measure 17: BUOW Avoidance	

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Recommended Mitigation Measure 21: Avoidance (Other Species of Special Concern)	