CEQA DECISIONS REGARDING THE MILBURN POND ISOLATION PROJECT
FINAL ENVIRONMENTAL IMPACT REPORT
SCH #2020100145

A. CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT

If, after review and consideration of the Final Environmental Impact Report (FEIR) for the Milburn Pond Isolation Project (Project) attached as **Exhibit A** (CD), you decide that DWR can certify that the FEIR complies with the California Environmental Quality Act (CEQA), you should indicate the following decision by executing the certification below in accordance with State CEQA Guidelines Section 15090, which states:

(a) Prior to approving a project, the lead agency shall certify that
(1) The final EIR has been completed in compliance with CEQA.
(2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
(3) The final EIR reflects the lead agency's independent judgment and analysis.

I certify that the FEIR has been completed in compliance with CEQA, that DWR is the lead agency for the FEIR, that the FEIR was presented to me in my capacity as DWR's decision-maker, and that the FEIR reflects DWR's independent judgment and analysis. I have reviewed and considered the information contained within the FEIR prior to approval of the Project.

By: Kevin Faulkenberry Date: 6/29/2022

Kevin Faulkenberry, Region Manager
South Central Region Office
Division of Regional Assistance
Department of Water Resources

B. ADOPTION OF FINDINGS, STATEMENT OF OVERRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND REPORTING PROGRAM; APPROVAL OF THE PROJECT; AND EXECUTION OF THE NOTICE OF DETERMINATION

If you determine that the FEIR complies with CEQA and have certified this above and desire to move forward with the Project, you should adopt the Findings and Statement of Overriding Considerations, attached as **Exhibit B,** and the Mitigation Monitoring and Reporting Program, attached as **Exhibit C;** approve the project pursuant to CEQA; and authorize the execution and filing of the Notice of Determination, attached as **Exhibit D**.

1. Findings and Statement of Overriding Considerations

State CEQA Guidelines Section 15091(a) states: *"No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:*

(1) *Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.*
(2) *Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*
(3) *Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.*

State CEQA Guidelines Section 15093 (b) states: 'When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record."

I have determined to move forward with the Project as described in the FEIR. The FEIR identifies potentially significant effects from the Project, one of which would not be avoided or substantially lessened with implementation of all feasible mitigation measures. Therefore, I adopt the Findings and Statement of Overring Considerations, attached as **Exhibit B**, in order to meet CEQA requirements. To the extent that the Findings conclude that various mitigation measures are feasible for the Project and within DWR's responsibility and jurisdiction, I direct DWR to implement these measures, thereby incorporating them as part of the Project.

2. Mitigation Monitoring and Reporting Program

State CEQA Guidelines Section 15091 (d) states that the lead agency *"…shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects."*

DWR has prepared a Mitigation Monitoring and Reporting Program for the Project, attached as **Exhibit C**, that meets CEQA requirements. Therefore, I adopt **Exhibit C**.

3. Project Approval and Execution of the Notice of Determination

State CEQA Guidelines Section 15092 states:

(a) *After considering the final EIR and in conjunction with making findings under Section 15091, the Lead Agency may decide whether or how to approve or carry out the project.*
(b) *A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:*
    (1) *The project as approved will not have a significant effect on the environment, or*

(2) *The agency has:*

(a) *Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and*

(b) *Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.*

(c) *With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.*

I have determined that DWR has eliminated or substantially lessened all significant effects of the Project on the environment to the extent feasible as shown in the findings attached as **Exhibit B**. In addition, I have determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the overriding consideration described in **Exhibit B**.

Therefore, after considering the certified FEIR, including all issues raised by commenters during preparation of the Draft EIR and in conjunction with adopting the Findings and Statement of Overring Considerations attached as **Exhibit B** and the Mitigation Monitoring and Reporting Program attached as **Exhibit C**, I approve the Milburn Pond Isolation Project as described in the FEIR.

As required under State CEQA Guidelines, Section 15094, I further direct DWR staff to complete, execute, and file the Notice of Determination, attached as **Exhibit D**, with the State Clearinghouse, Governor's Office of Planning and Research within five (5) business days of this decision to approve the project and to pay any necessary Department of Fish and Wildlife filing fees at the time of filing the Notice of Determination.

By: Kevin Faulkenberry Date: 6/29/2022

Kevin Faulkenberry, Region Manager
South Central Region Office
Division of Regional Assistance
Department of Water Resources

Attachments:

Exhibit A FEIR (CD)
Exhibit B Findings and Statement of Overriding Considerations
Exhibit C Mitigation Monitoring and Reporting Program
Exhibit D Notice of Determination

Exhibit B

Milburn Pond Isolation Project, as Analyzed in the FEIR, State Clearinghouse No. 2020100145

Findings and Statement of Overriding Considerations

State of California

Department of Water Resources

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INTRODUCTION

The California Department of Water Resources (DWR), acting as lead agency under the California Environmental Quality Act (CEQA), prepared a Final Environmental Impact Report (FEIR) that evaluated potential impacts on the physical environmental associated with the proposed Milburn Pond Isolation Project (Proposed Project) at Milburn Pond, Fresno County, California.

Milburn Pond is located on the south side of the San Joaquin River approximately three miles east of State Route 99, along the northern boundary of Fresno County, California. The project site includes the Milburn Unit and the Hansen Unit of the San Joaquin River Ecological Reserve, which is owned and managed by the California Department of Fish and Wildlife (DFW). The project is the first phase of a potentially three-phase Milburn Habitat Restoration and Improvements Project, which was developed to a preliminary design level by DWR in 2019 with funding from the Wildlife Conservation Board, the San Joaquin River Conservancy, and DWR's San Joaquin River Restoration Program (SJRRP). This initial project would isolate the abandoned gravel pit known as Milburn Pond from the San Joaquin River channel to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond. Isolating the pond from the river would also improve DFW access to the Milburn Unit and its ability to manage invasive plants in the pond area.

The Draft Environmental Impact Report (DEIR) analyzed three "build" alternatives, including the Proposed Project, Alternative 1 (No High-Flow Side Channel with On-Site Borrow) and Alternative 2 (No High-Flow Side Channel with Off-Site Borrow), as well as the No Project Alternative. DWR is proposing to proceed with the Proposed Project.

Under the Proposed Project, DWR would:

- construct an equalization saddle between Pond 1 and Milburn Pond;
- install a "modified" French drain under the equalization saddle;
- modify the main berm to eliminate breaches;
- construct a new high-flow side channel;
- install rock slope protection and biotechnical erosion protection to minimize erosion;
- modify a portion of North Milburn Avenue to raise the berm elevation if deemed necessary to avoid premature overtopping during flood releases from Friant Dam;
- plant native trees and other vegetation and manage invasive species for project mitigation and soil stabilization;
- and install and improve fencing, gates, and signage at Milburn and Hansen Unit boundaries.

As discussed in the Executive Summary; Section 6.4, *Comparison of Impacts of the Alternatives;* and Section 6.5, *Environmentally Superior Alternative* of the FEIR,

environmental analysis generally showed that environmental resource effects would be similar among the “build” alternatives and the Proposed Project was determined to be the environmentally superior alternative. Alternatives 1 and 2 do not include construction of the high-flow side channel, which offers additional benefit to channel habitat complexity (increased fish production in the San Joaquin River) and hydrology/hydraulics (reduced flood risk).

Acting as the CEQA lead agency, DWR completed the FEIR for the Project in accordance with State CEQA Guidelines Section 15089 and certified the FEIR as adequate in accordance with State CEQA Guidelines Section 15090. The FEIR includes the DEIR. As required by the State CEQA Guidelines Section 15132, the FEIR includes a list of persons, organizations, and public agencies that commented on the DEIR; comments received on the DEIR in summary or verbatim; and DWR’s responses to potential environmental issues raised.

DWR has separately approved a memorandum regarding the Project and completed a Decision Document (dated June 28, 2022 and June 29, 2022, respectively) that makes the decisions required by CEQA, including:

- certification of the FEIR (Exhibit A to the Decision Document) as adequate
- adoption of Findings and the Statement of Overriding Considerations (Exhibit B to the Decision Document)
- adoption of a Mitigation Monitoring and Reporting Program (MMRP) (Exhibit C to the Decision Document) and
- approval of the Project in the FEIR.

In accordance with CEQA Public Resources Code Section 21081 and State CEQA Guidelines Section 15091, this document sets out relevant findings of fact regarding significant effects of the Project as proposed in the DEIR, including all adopted mitigation measures for specific impacts (see Parts I and II below). No mitigation measures proposed for potential significant impacts identified in the DEIR were rejected as infeasible. Mitigation measure changes suggested by commenters on the DEIR are considered and responded to in the FEIR.

Any summaries and/or references to the FEIR are not intended to be a comprehensive restatement of the analysis in the FEIR or other information in the record and do not substitute for these documents but rather provide background and context for the findings. A full explanation of the findings and impact analysis rationale relating to all resource areas and all Project alternatives can be found in the FEIR. Each specific finding is supported by substantial evidence. Mitigation measures are binding because an enforceable MMRP for the Project has been adopted. The mitigation measures were identified in the FEIR.

In accordance with State CEQA Guidelines Section 15093, this document also includes a Statement of Overriding Considerations. DWR’s finding pursuant to

State CEQA Guidelines Section 15093(a), supported by substantial evidence, is set forth in Part III of this document.

As required by State CEQA Guidelines Section 15091(e), the custodian and location of the FEIR are as follows:

Environmental Compliance and Statewide Planning Branch
South Central Region Office
Division of Regional Assistance
Department of Water Resources
3374 East Shields Avenue
Fresno, California 93726

Other documents included in the record of the proceedings may be found in other locations but can be obtained by contacting the custodian of record identified above.

Part I: FINDINGS ON ENVIRONMENTAL EFFECTS

The State CEQA Guidelines Section 15091 (Findings) states:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects if the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alteration have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alteration are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures

and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

No potentially significant impacts are identified in the FEIR for the following resource areas: Aesthetics; Agriculture and Forestry; Energy; Greenhouse Gas Emissions; Land Use Planning; Mineral Resources; Noise; Paleontology; Population and Housing; Public Services; Utilities and Service Systems; and Transportation. The FEIR concludes these resource areas would experience beneficial impacts, no impact, or less-than-significant impacts; therefore, these resource areas are not discussed further.

Potentially significant impacts are identified in the FEIR for the following resources areas: Air Quality; Biological Resources; Cultural and Tribal Resources; Geology and Soils; Hazards and Hazardous Materials; Hydrology and Water Quality; and Wildfire. *Significant and unavoidable impacts* are identified in the FEIR for the following resource area: Recreation.

Findings regarding potentially significant impacts requiring mitigation and significant and unavoidable impacts are provided below. See Section II for findings regarding Project alternatives. The numbering of the impacts set out below follows the format of the FEIR. The numbering of tables embedded in the mitigation measures also follows the FEIR.

A. Potentially Significant Effects Reduced to Less Than Significant

A.1 Air Quality

Impact 3.4.2: Increase in Criteria Pollutant Concentrations

Discussion

Criteria air pollutant emissions would be below San Joaquin Valley Air Pollution Control District's (SJVAPCD) annual thresholds of significance. However, the project would generate maximum daily on-site construction-related nitrogen oxides (NO_x) above SJVAPCD's screening level for ambient air quality. Mitigation Measure 3.4.2a and Mitigation Measure 3.4.2b would reduce construction exhaust emissions for construction and require implementation of SJVAPCD measures to reduce fugitive dust. Implementing these mitigation

measures would reduce construction-related emissions impacts to less than significant.

Mitigation

Mitigation Measure 3.4.2a

DWR will reduce exhaust emissions for construction equipment greater than 50 horsepower used or associated with the proposed project by the following amounts from the Statewide average as estimated by the California Air Resources Board:

- 20 percent of the total NO_x emissions
- 45 percent of the total PM_{10} exhaust emissions

Emissions accounting methods will be as described in SJVAPCD Rule 9510. Construction emissions may be reduced on site by using add-on controls, cleaner fuels, or newer lower emissions equipment, thus generating less pollution. Additional strategies for reducing construction emissions may include:

- Providing sufficient commercial electric power to the project site to avoid or minimize the use of portable electric generators.
- Substituting electric-powered equipment for diesel engine-driven equipment.
- Limiting the hours of operation of heavy-duty equipment and/or the amount of equipment used at any one time.
- Minimizing idling time (e.g., 10-minute maximum).
- Replacing equipment that uses fossil fuels with electrically driven equivalents (if they are not run via a portable generator set).

Mitigation Measure 3.4.2b

All projects are subject to SJVAPCD rules and regulations in effect at the time of construction. Control of fugitive dust is required by SJVAPCD Regulation VIII. DWR will implement or require its contractor to implement all SJVAPCD measures (SJVAPCD 2004) listed below:

- Apply water to unpaved surfaces and areas.
- Use non-toxic chemical or organic dust suppressants on unpaved roads and traffic areas.
- Limit or reduce vehicle speed on unpaved roads and traffic areas.
- Maintain areas in a stabilized condition by restricting vehicle access.
- Install wind barriers.
- During high winds, cease outdoor activities that disturb the soil.
- Keep bulk materials sufficiently wet when handling.
- Store and handle material in a three-sided structure.

- When storing bulk material, apply water to the surface or cover the stage pile with a tarp.
- Do not overload haul trucks (overloaded trucks are likely to spill bulk materials).
- Cover haul trucks with a tarp or other suitable cover. Or, wet the top of the load enough to limit visible dust emissions.
- Clean the interior of cargo compartments on emptied haul trucks prior to leaving the site.
- Prevent trackout by installing a trackout control device.
- Clean up trackout at least once a day. If along a busy road or highway, clean up trackout immediately.
- Monitor dust-generating actives and implement appropriate measures for maximum dust control.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measures 3.4.2a and 3.4.2b would reduce criteria pollutant concentrations impacts to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.2 Biological Resources

Impact 3.5.1: Impacts on Special-status Plants

Discussion

Special-status plant species were not observed during initial project surveys. Sanford's arrowhead has been documented on the project site and could be impacted by construction activities. The DFW has mapped this species along the water's edge of the pond, but the last known population was not within the project footprint. Implementing Mitigation Measure 3.5.1 would avoid or minimize impacts on Sanford's arrowhead plants, if present in the construction area, including working with DFW to relocate and monitor plants that cannot be avoided during project construction.

Mitigation

Mitigation Measure 3.5.1

DWR and its construction contractor(s) will implement the following measures to reduce potential effects on Sanford's arrowhead:

- Within 1 year before ground-disturbing project activities begin, a qualified botanist shall conduct at least two focused surveys of suitable habitat for Sanford's arrowhead in and within 50 feet of the project disturbance footprint. The surveys shall be conducted during the specific blooming period for Sanford's arrowhead (May – October). If no individuals are found, no further mitigation is required.

- If Sanford's arrowhead is detected, impacts shall be avoided wherever possible by implementing a protective buffer around occupied habitat. A 50-foot buffer shall be implemented where feasible; where not feasible, the maximum buffer feasible shall be implemented. If feasible, given the site conditions, a protective barrier shall be installed and maintained during construction activities to minimize impacts on occupied habitat that will be preserved adjacent to the construction footprint. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means.

- If direct loss of Sanford's arrowhead plants cannot be avoided, a relocation and monitoring plan shall be developed and implemented in consultation with DFW, as both a regulatory agency and the landowner. To ensure relocation is successful, DWR will work with DFW to identify the relocation site and success monitoring protocol. The relocation and monitoring plan shall outline methods for relocating unavoidable Sanford's arrowhead plants to other areas of suitable on-site habitat that will not be subject to project impacts, including potential future project phases. The plan shall include details about relocation methods, receptor site preparation, transplant survival criteria, post-transplantation monitoring, remedial measures, and long-term protection and management. If at least 50 percent of the transplants (based on occupied acreage/density) do not survive through at least 1 year after transplantation occurs, remedial habitat enhancement, such as invasive weed control, will be implemented to improve the habitat suitability and likelihood for the on-site Sanford's arrowhead population to increase in the long term.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.1 would reduce impacts to Sanford's arrowhead to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.5.2: Impacts on Special-status Reptiles

Discussion

Construction activities would temporarily disturb potential upland and aquatic habitat for western pond turtle. Western pond turtle has a potential to occur on the project site and could be impacted by construction activities, if present. Implementing Mitigation Measure 3.5.2 which requires surveys for, and if necessary safe transfer of, western pond turtles out of harm's way and an environmental awareness training program for construction staff, would reduce this potential impact to less than significant.

Mitigation

Mitigation Measure 3.5.2

DWR and its construction contractor(s) will implement the following measures to reduce potential for death or injury of western pond turtle during project construction:

- A qualified biologist shall conduct a focused survey for western pond turtle in suitable aquatic and basking habitat within the construction footprint 10 days before onsite construction activities begin. If construction activities would begin during the pond turtle nesting season (March through August), surveys shall also include suitable nesting habitat within the construction footprint.
- If a pond turtle nest is found, it shall remain undisturbed, if feasible, until the eggs have hatched.

- Before on-site project activities begin, all on-site project personnel shall attend a training program conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist.

- A survey for western pond turtle shall be conducted before construction work in suitable pond turtle habitat begins each day. If a pond turtle is discovered in the construction area before or during construction activities, it shall be allowed to move out of the area on their own.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.2 would reduce impacts to western pond turtle to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.5.3: Impacts on Special-status and Colonial-nesting Waterbirds

Discussion

Construction activities could disturb occupied burrowing owl burrows and would remove suitable nest trees for Swainson's hawk, white-tailed kite, and colonial-nesting waterbirds. In addition, project activities adjacent to suitable burrows and nest trees could result in disturbance of nesting activities and potential abandonment. By implementing Mitigation Measures 3.5.3a and 3.5.3b, the impacts of construction activities would be reduced to less than significant.

Mitigation

Mitigation Measure 3.5.3a

To minimize potential effects of project construction and maintenance on burrowing owl, DWR will ensure that the following measures are implemented, consistent with the Staff Report on Burrowing Owl Mitigation (DFG 2012).

- A qualified biologist shall conduct focused surveys for burrowing owls, in accordance with Appendix D of the Staff Report on Burrowing Owl Mitigation (DFG 2012). At a minimum, surveys shall be conducted during the breeding season of the year in which ground-disturbing project activities begin, and one survey shall be conducted within 10 days before on-site project construction or maintenance activities begin.

- If occupied burrows are observed, protective buffers shall be established and implemented. A qualified biologist, in consultation with DFW, shall determine the appropriate buffer for each occupied burrow; the buffer will depend on type and intensity of project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the owl(s) to disturbance. A qualified biologist shall monitor the occupied burrows during project activities and adjust buffers, if needed, to ensure their effectiveness.

- Before on-site project activities begin, all on-site project personnel shall attend a Worker's Environmental Awareness Program (WEAP) conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist.

- If it is not feasible to implement a buffer of adequate size and it is determined, in consultation with DFW, that passive exclusion of owls from the area of

direct disturbance is an appropriate means of minimizing impacts, an exclusion and passive relocation plan shall be developed and implemented in coordination with DFW. This plan shall be developed and implemented in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). Passive exclusion will not be conducted during the breeding season (February 1 – August 31), unless a qualified biologist verifies through noninvasive means that either (1) the birds have not begun egg laying or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.

- If passive exclusion is conducted, an artificial burrow creation, monitoring, and maintenance plan shall be developed and implemented in coordination with DFW and in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). Each occupied burrow that is destroyed will be replaced with at least one artificial burrow on a suitable portion of the project site that will not be subject to project impacts, including potential future project phases.

Mitigation Measure 3.5.3b

To minimize potential effects of project construction and maintenance on nesting Swainson's hawk, white-tailed kite, and colonial-nesting waterbirds, DWR will ensure that the following measures are implemented:

- A qualified biologist shall conduct surveys of potential Swainson's hawk nesting habitat within 0.5 mile of the project site, in accordance with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee 2000). Surveys shall be conducted during the breeding season before construction begins to determine if an active nest is present within 0.5 mile of the project site. In addition, surveys shall be conducted during the breeding season of the year in which ground-disturbing project activities begin, including within at least the two survey periods immediately before on-site construction or maintenance activities begin. If a lapse in project-related activities of 14 days or longer occurs, another focused survey shall be conducted before project activities resume.

- A qualified biologist shall conduct surveys of suitable nesting habitat for white-tailed kite and colonial-nesting waterbirds within 500 feet of project activities. Surveys shall be conducted within 10 days before on-site construction or maintenance activities begin near suitable nesting habitat during the nesting season (March through August). If a lapse in project-related activities of 14 days or longer occurs, another focused survey shall be conducted before project activities resume.

- If active nests are found, DFW shall be consulted to determine if incidental take authorization may be required. Protective buffers shall be established and implemented during project construction until the nests are no longer active. A qualified biologist, in consultation with DFW, shall determine the appropriate buffer for each nest; the buffer will depend on type and intensity of project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the nest to disturbance. A qualified biologist shall monitor the nests during project activities and adjust buffers, if needed, to ensure their effectiveness.

- Before on-site project activities begin, all on-site project personnel shall attend a WEAP conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist.

- If a Swainson's hawk nest is found on the project site and the nest tree must be removed during project construction, compensation shall be provided by planting three appropriate native trees for each known Swainson's hawk nest tree that is removed. Replacement trees shall be planted at or near the project site or in another area that will be protected in perpetuity.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.3a and Mitigation Measure 3.5.3b would reduce potential impacts to burrowing owl and/or nesting Swainson's hawk, white-tailed kite, and colonial-nesting waterbirds to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.5.5: Construction-related Impacts on Special-status Fish

Discussion

Construction activities in and adjacent to aquatic habitat have potential to result in sediment and hazardous materials entering surface waters and indirectly affecting special-status fish. Work in and adjacent to open water also could result in short-term increases in suspended sediment and turbidity during and following construction. Depending on the extent of such increases, fish could be negatively impacted through reduced availability of food, reduced feeding efficiency, and exposure to potentially toxic sediment released into the water

column. By implementing Mitigation Measure 3.5.5a and Mitigation Measure 3.5.5b, DWR would reduce the temporary construction impacts to special-status fish species to less than significant.

Mitigation

Mitigation Measure 3.5.5a

Implement Mitigation Measure 3.7.2, “Prepare and Implement a Stormwater Pollution Prevention Plan and Best Management Practices to Reduce Erosion.” See Mitigation Measure 3.7.2 below for full text of this measure.

Mitigation Measure 3.5.3b

Implement Mitigation Measure 3.9.1, “Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities.” See Mitigation Measure 3.9.1 below for full text of this measure.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.5a and Mitigation Measure 3.5.5b would reduce potential construction-related impacts to special-status fish to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.5.7: Riparian Habitat Removal

Discussion

Project construction would remove up to approximately 5 acres of riparian habitat. Although habitat quality is relatively low due to past mining activities and presence of nonnative and invasive plant species, riparian habitat has been greatly reduced along the San Joaquin River. This habitat is critical in sustaining wildlife populations. Implementing the Project, including Mitigation Measure 3.5.7, would result in a net benefit to the surrounding riparian habitat.

Mitigation

Mitigation Measure 3.5.7

DWR and its construction contractor(s) will implement the following measures to minimize and compensate for riparian vegetation removal:

- Impacts on riparian vegetation outside the construction footprint shall be avoided by installing and maintaining a protective barrier, if feasible given the site conditions. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means.

- An on-site Habitat Restoration and Enhancement Plan shall be developed and implemented in coordination with DFW land managers. The benefit of increased acreage or improved ecological function of on-site riparian habitat resulting from plan implementation will be considered before additional compensatory measures are proposed.

- If implementing the on-site Habitat Restoration and Enhancement Plan would not ensure no net loss of riparian habitat function or acreage, additional compensation shall be provided by otherwise creating, restoring, or enhancing riparian habitat elsewhere within the San Joaquin River watershed at a sufficient ratio to ensure no net loss of habitat function or acreage. The appropriate ratio shall be determined in coordination with DFW during the FGC Section 1602 permitting process.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.7 would reduce construction-related impacts to riparian habitat to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.5.8: Impacts on Federally and State-Protected Waters

Discussion

Project construction would include activities in the San Joaquin River channel and ponds and connecting channels that are waters of the United States and waters of the State. Approximately 2 acres of waters would be at least partially filled along the north edge of Milburn Pond and channels connecting the river and pond. Project implementation would result in an overall improvement of habitat quality, but temporary impacts on water quality could occur during construction. Implementation of Mitigation Measure 3.5.8a and Mitigation Measure 3.5.8b would reduce these impacts to less than significant.

Mitigation

Mitigation Measure 3.5.8a

Implement Mitigation Measure 3.7.2, “Prepare and Implement a Stormwater Pollution Prevention Plan and Best Management Practices to Reduce Erosion.” See Mitigation Measure 3.7.2 below for full text of this measure.

Mitigation Measure 3.5.8b

Implement Mitigation Measure 3.9.1, “Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities.” See Mitigation Measure 3.9.1 below for full text of this measure.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.5.8a and Mitigation Measure 3.5.8b would reduce construction-related impacts to Federally and State-protected waters to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.3 Cultural Resources and Tribal Cultural Resources

Impact 3.6.1: Substantial Adverse Change in the Significance of a Historical Resource or an Archaeological Resource

Discussion

Although no known historical or archaeological resources meeting California Register of Historical Resources or National Register of Historic Places eligibility criteria were previously recorded inside the Project area or found during archaeological surveys conducted at Milburn Pond, it is possible buried historical or archaeological resources are present on the project site. Should unknown archaeological resources be encountered during ground-disturbing project activities, Mitigation Measure 3.6.1a and Mitigation Measure 3.6.1b would be implemented to reduce these potential impacts to less than significant.

Mitigation

Mitigation Measure 3.6.1a

If an inadvertent discovery of buried or otherwise previously unidentified historical resources, including archaeological resources (e.g., unusual amounts of shell, animal bone, any human remains, bottle glass, ceramics, building remains), is made at any time during project-related construction activities or project planning, DWR, with input from other interested parties, will develop and implement

appropriate protection and avoidance measures, where feasible. If such resources are discovered during project construction, all work within a 100-foot-radius of the find shall cease. DWR shall retain a professional archaeologist meeting the Secretary of the Interior's Professional Standards for Archaeologists to assess the discovery and recommend what, if any, further treatment, or investigation is necessary for the find. Culturally affiliated Native American Tribes will also be contacted concerning resources of Native American origin. In addition, DWR will allow a monitor from a culturally affiliated Tribe to be present during ground-disturbing activities. Avoidance is the preferred mitigation measure for cultural resources. If avoidance is not possible, any necessary treatment/investigation shall be developed in coordination with interested Native American Tribes providing recommendations to DWR and shall be completed before project activities continue in the vicinity of the find. The final disposition of archaeological, historical, and paleontological resources recovered on state lands under State Lands Commission (SLC) jurisdiction will be approved by SLC. An inadvertent discovery plan shall be developed before construction begins and shall be implemented in the event of a discovery during project construction. <u>This plan shall include a process for determining what procedures would be implemented for discoveries that cannot be protected in place.</u>

Mitigation Measure 3.6.1b

DWR will conduct a pre-construction training session for all construction personnel before beginning any project-related, ground-disturbing work. Participants will sign a form acknowledging that they have received the training and agree to keep resource locations confidential and to stop work within 100 feet of any unanticipated discovery. Topics to be addressed in training sessions will include but are not limited to: regulations protecting cultural resources, including archaeological sites and Tribal Cultural Resources (TCR); basic identification of archaeological resources and potential TCRs; and proper discovery protocols. Training will be provided by DWR and conducted by a qualified archaeologist who meets the Secretary of the Interior's Standards for Archaeology (36 CFR Part 61). If requested by a culturally affiliated Tribe, the training presentation will be developed in consultation with Tribal representatives. Topics will include the potential presence and type of Native American and non-Native American resources potentially found during construction or other activities, required procedures in the event of a discovery, proper behavior in the presence of sacred remains and human remains, and necessary reporting protocols. Written materials will be provided to trained personnel, as appropriate.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.6.1a and Mitigation Measure 3.6.1b would reduce potential impacts to Historical and Archaeological resources to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the

Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.6.2: Disturbance of Human Remains including Remains Interred Outside of Dedication Cemeteries

Discussion

Though unlikely, it is possible that undiscovered, buried, human remains are present on the project site and could be encountered during project-related, ground-disturbing activities. In the event of such a discovery, Mitigation Measure 3.6.2 would be implemented to reduce these potential impacts to less than significant.

Mitigation

Mitigation Measure 3.6.2

If an inadvertent discovery of human remains is made at any time during project-related construction activities or project planning, DWR will implement the procedures listed below. If human remains are identified on the project site, the following performance standards shall be met prior to implementing or continuing actions, such as construction, that may result in damage to or destruction of human remains:

- In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, DWR will immediately halt potentially damaging excavation in the area of the burial and notify the Fresno County Coroner and a professional archaeologist to determine the nature of the remains. The Coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or State lands (California Health and Safety Code Section 7050.5[b]). If the Coroner determines that the remains are those of a Native American, he or she must contact Native American Heritage Commission (NAHC) by phone within 24 hours of making that determination (California Health and Safety Code Section 7050[c]). After the Coroner's findings have been made, the archaeologist and the NAHC-designated Most-likely Decedent (MLD), in consultation with the landowner, shall determine the ultimate treatment and disposition of the remains. The responsibilities of DWR for acting upon notification of a discovery of Native American human remains are identified in PRC Section 5097.9 et seq.

- Upon the discovery of Native American human remains, DWR will require that all construction work within 100 feet of the discovery stop, until consultation with the MLD has taken place. The MLD will have 48 hours to

complete a site inspection and make recommendations to the landowner after being granted access to the site. A range of possible treatments for the remains, including nondestructive removal, preservation in place, relinquishment of the remains and associated items to the descendants, or other culturally appropriate treatment may be discussed. PRC Section 5097.98(b)(2) suggests that the concerned parties may mutually agree to extend discussions beyond the initial 48 hours to allow for the discovery of additional remains. DWR will record the site with NAHC or SSJVIC and record a document with Fresno County.

- If agreed to by the MLD and DFW land managers, DWR or its authorized representative will rebury the Native American human remains and associated grave goods with appropriate dignity on the project site, in a location not subject to further subsurface disturbance. If NAHC is unable to identify an MLD, the MLD fails to make a recommendation within 48 hours after being granted access to the site, or recommendation of the MLD is rejected and mediation by NAHC fails to provide measures acceptable to DWR, DWR or its authorized representative may also reinter the remains at a location not subject to further disturbance. DWR will implement mitigation to protect the burial remains. Construction work in the vicinity of the burials shall not resume until the mitigation is completed.

- If the human remains are of historic age and are determined not to be of Native American origin, DWR will follow the provisions of the California Health and Safety Code Section 7000 (et seq.) regarding the disinterment and removal of non-Native American human remains.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.6.2 would reduce potential impacts to previously unknown human remains to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

Impact 3.6.3: Substantial Adverse Change in the Significance of an Unidentified Tribal Cultural Resource

Discussion

Though unlikely, it is possible that unidentified TCRs, in the form of a subsurface site, occur on the project site. If such a TCR is inadvertently discovered during project-related, ground-disturbing activities, it could be substantially impacted. In the event of such a discovery, Mitigation Measure 3.6.3a would be implemented to reduce these potential impacts to less than significant.

Mitigation

Mitigation Measure 3.6.3a

Implement Mitigation Measure 3.6.1a, “Implement Procedures for Inadvertent Discovery of Cultural Material” See Mitigation Measure 3.6.1a above for full text of this measure.

Mitigation Measure 3.6.3b

Implement Mitigation Measure 3.6.1b, “Conduct Cultural Resource Awareness and Sensitivity Training” See Mitigation Measure 3.6.1b above for full text of this measure.

Mitigation Measure 3.6.3c

Implement Mitigation Measure 3.6.2, “Avoid Potential Effects to Previously Unknown Human Remains” See Mitigation Measure 3.6.2 above for full text of this measure.

Finding

For the reasons set out in the FEIR, DWR finds that Mitigation Measure 3.6.3a, Mitigation Measure 3.6.3b, and Mitigation Measure 3.6.3c, would reduce potential impacts to previously unidentified TCRs to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.4 Geology, Soils, and Paleontology

Impact 3.7.2: Potential Temporary, Short-term Construction-related Erosion

Discussion

The project includes construction activity adjacent to the San Joaquin River and Millburn Pond. Soil materials exposed during construction would be subject to wind and water erosion hazards. Project-related earth-moving activities would also result in temporary and short-term disturbance of soil and could expose disturbed areas to storm events. Rainfall of sufficient intensity could dislodge soil particles from the soil surface causing localized erosion to occur. Implementing Mitigation Measure 3.7.2 would reduce this potentially significant impact to less than significant.

Mitigation

Mitigation Measure 3.7.2

In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement the following measures to further reduce construction-related erosion:

- Construction activities would likely be subject to construction-related stormwater permit requirements of the National Pollution Discharge Elimination System (NPDES) program. Any permits by the Central Valley Regional Water Quality Control Board (CVRWQCB) will be obtained by DWR before any ground-disturbing construction activity. A Storm Water Pollution Prevention Plan (SWPPP) will be prepared that identifies best management practices (BMPs) to prevent or minimize the introduction of contaminants into surface waters. Such BMPs could include, but would not be limited to, silt fencing, straw bale barriers, fiber rolls, storm drain inlet protection, hydraulic mulch, and a stabilized construction entrance. The SWPPP will include development of site-specific structural and operational BMPs to prevent and control impacts on runoff quality, measures to be implemented before each storm event, inspection and maintenance of BMPs, and monitoring of runoff quality by visual and/or analytical means.

- Water (e.g., trucks, portable pumps with hoses) will be used to control fugitive dust during construction activities that could cause substantial wind erosion.

Finding

For the reasons set out in the FEIR, DWR finds that implementing Mitigation Measure 3.7.2, would reduce potential temporary, short-term construction-related impacts from erosion to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.5 Hazards and Hazardous Materials

Impact 3.9.1: Possible Accidental Spills of Hazardous Materials used during Construction Activities

Discussion

Project construction activities would include use of hazardous materials, including fuels, oils, lubricants, solvents, and corrosives. Construction contractors

would be required to use, store, and transport hazardous materials in compliance with Federal, State, and local regulations during project construction. However, an accidental spill of hazardous materials could occur during project construction. In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement Mitigation Measure 3.9.1 to further reduce these potential significant impacts from the risk of accidental spills to less than significant.

Mitigation

Mitigation Measure 3.9.1

In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement the measures described below to further reduce the risk of accidental spills and protect the environment.

- Prepare and Implement a Spill Prevention Control and Countermeasures Plan (SPCCP). A written SPCCP will be prepared and implemented. The SPCCP and all material necessary for its implementation will be accessible onsite prior to initiation of project construction and throughout the construction period. The SPCCP will include a plan for the emergency cleanup of any spills of fuel or other material. Construction personnel will be provided the necessary information from the SPCCP to prevent or reduce the discharge of pollutants from construction activities to waters and to use the appropriate measures should a spill occur. In the event of a spill in waters, work will stop, and the spill will be addressed immediately with equipment such as a deflection boom to contain the spill and a sorbent boom to absorb the spilled material. DFW and CVRWQCB will be notified within 24 hours of an in-water spill.

- Dispose of All Construction-related Debris and Materials at an Approved Disposal Site. All debris, litter, unused materials, sediment, rubbish, vegetation, or other material removed from the construction areas that cannot reasonably be secured will be removed daily from the project work area and deposited at an appropriate disposal or storage site.

- Use Safer Alternative Products to Protect Waters. Every reasonable precaution will be exercised to protect waters from pollution with fuels, oils, and other harmful materials. Safer alternative products (such as biodegradable hydraulic fluids) will be used where feasible.

- Prevent Any Contaminated Construction By-products from Entering Flowing Waters; Collect and Transport Such By-products to an Authorized Disposal Area. Petroleum products, chemicals, fresh cement, and construction by-products containing, or water contaminated by, any such materials will not be allowed to enter flowing waters and will be collected and transported to an authorized upland disposal area.

- Prevent Hazardous Petroleum or Other Substances Hazardous to Aquatic Life from Contaminating the Soil or Entering Waters. Gas, oil, other petroleum products, or any other substances that could be hazardous to aquatic life and resulting from project-related activities, will be prevented from contaminating the soil and/or entering waters.

- Properly Maintain All Construction Vehicles and Equipment and Inspect Daily for Leaks; Remove and Repair Equipment/Vehicles with Leaks. Construction vehicles and equipment will be properly maintained to prevent contamination of soil or water from external grease and oil or from leaking hydraulic fluid, fuel, oil, and grease. Vehicles and equipment will be checked daily for leaks. If leaks are found, the equipment will be removed from the site and will not be used until the leaks are repaired.

- Refuel and Service Equipment at Designated Refueling and Staging Areas. Equipment will be refueled and serviced at designated refueling and staging sites. All refueling, maintenance, and staging of equipment and vehicles will be conducted in a location where a spill will not drain directly toward aquatic habitat. Appropriate containment materials will be installed to collect any discharge, and adequate materials for spill cleanup shall be maintained onsite throughout the construction period.

- Store Heavy Equipment, Vehicles, and Supplies at Designated Staging Areas. All heavy equipment, vehicles, and supplies will be stored at the designated staging areas at the end of each work period.

- Install an Impermeable Membrane between the Ground and Any Hazardous Material in Construction Storage Areas. Storage areas for construction material that contains hazardous or potentially toxic materials will have an impermeable membrane between the ground and the hazardous material and will be bermed as necessary to prevent the discharge of pollutants to groundwater and runoff water.

- Use Water Trucks to Control Fugitive Dust during Construction. Water (e.g., trucks, portable pumps with hoses) will be used to control fugitive dust during temporary access road construction.

- Use Only Nontoxic Materials and Materials with No Coatings or Treatments Deleterious to Aquatic Organisms for Placement in Any Waters. All materials placed in the river or other waters will be nontoxic and will not contain coatings or treatments or consist of substances deleterious to aquatic organisms that may leach into the surrounding environment in amounts harmful to aquatic organisms.

Finding

For the reasons set out in the FEIR, DWR finds that implementing Mitigation Measure 3.9.1, would reduce potential accidental spills of hazardous materials used throughout construction to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.6 Hydrology and Water Quality

Impact 3.10.1: Impacts on Water Quality or Implementation of a Water Quality Control Plan

Discussion

Stormwater run-off and erosion, leaking construction equipment, and accidental spills occurring during site preparation and construction of the Project could result in short-term discharges of turbidity, petroleum-based products, and floating materials to the San Joaquin River and on-site ponds. These potential short-term discharges could cause exceedances of San Joaquin River Basin Plan water quality objectives and impact associated beneficial uses. Implementing Mitigation Measure 3.10.1a and Mitigation Measure 3.10.1b, preparing and implementing a SWPPP and BMPs, will reduce the potentially significant impacts to less than significant.

Mitigation

Mitigation Measure 3.10.1a

Implement Mitigation Measure 3.7.2, “Prepare and Implement a Stormwater Pollution Prevention Plan and Best Management Practices to Reduce Erosion.” See Mitigation Measure 3.7.2 above for full text of this measure.

Mitigation Measure 3.10.1b

Implement Mitigation Measure 3.9.1, “Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities.” See Mitigation Measure 3.9.1 above for full text of this measure.

Finding

For the reasons set out in the FEIR, DWR finds that implementing Mitigation Measure 3.10.1a and Mitigation Measure 3.10.1b would reduce potential impacts to water quality during construction to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into,

the Project which avoid or substantially lessen the significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

A.7 Recreation

[Note: EIR **Impact 3.13.2 Impacts on Existing Water-based Recreation** is found to be *significant and unavoidable* and is, therefore, discussed in Section B and Part III below.]

A.8 Wildfire

Impact 3.15.1: Increase in Wildfire Risk

Discussion

The project site is not located in an area designated by the California Department of Forestry and Fire Protection as a high or very-high fire hazard severity zone. The portion of the project site in which construction would occur is relatively flat and likely of lower wildfire hazard, although scrub and woodland vegetation occur along the San Joaquin River and pond edges. Areas of grassland vegetation are scattered throughout and adjacent to the project site, primarily in the eastern portion and along the southwestern boundary, including on the slope of the bluff between the site and adjacent residential development. Such grassland areas can be a fire hazard if not maintained. Although the project does not include any components that would permanently increase wildfire risk, operation of heavy equipment and presence of construction personnel could temporarily increase fire risk during construction. Mitigation Measure 3.15.1 has been identified to reduce this potentially significant impact to less than significant.

Mitigation

Mitigation Measure 3.15.1

DWR will prepare and implement an emergency fire plan complying with all sections of California Fire Code Chapter 33 during project construction. The plan shall include preventative measures and emergency procedures specific to the project and site, current emergency telephone numbers, and an area map.

Finding

For the reasons set out in the FEIR, DWR finds that implementing Mitigation Measure 3.15.1 would reduce potential impacts to wildfire risks in the area to *less than significant*. Therefore, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the

significant effects on the environment (Public Resources Code Section 21081 (a)(1); State CEQA Guidelines Section 15091(a)(1)).

B. Potentially Significant and Unavoidable Effects

Impact 3.13.2 Impacts on Existing Water-based Recreation

Discussion

Although motorized boat use is not allowed on the Milburn Unit of the San Joaquin River Ecological Reserve, the ponds are currently accessible from the San Joaquin River, and boaters use the existing connection to enter the ponds. Isolating the ponds from the river would prevent direct boat access to the site. Because Milburn Pond is by far the largest pond accessible by boat from the San Joaquin River in the Fresno area, it provides a unique recreational opportunity. Therefore, eliminating direct boat access from the river to Milburn Pond would substantially degrade the recreational experience for users of this resource, and the resulting impact would be *significant and unavoidable*.

Mitigation

No feasible mitigation measure was identified that could reduce this impact to less than significant.

Finding

For the reasons set out in the FEIR, DWR finds that impacts on existing water-based recreation by the isolation of Milburn Pond would be *significant and unavoidable.* There are no feasible mitigation measures or feasible project alternatives that could reduce this impact to less than significant and effectively accomplish most of the basic project objectives. Therefore, specific economic, legal, social, technological, or other considerations were identified in the FEIR that make implementing a project alternative that would not permanently eliminate direct boat access to Milburn Pond infeasible (Public Resources Code Section 21081(a)(3); State CEQA Guidelines Section 15091(a)(3)).

Part II: FINDINGS RELATED TO PROJECT ALTERNATIVES

State CEQA Guidelines Section 15126.6 *Consideration and Discussion of Alternatives to the Proposed Project* states:

> *"(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant*

effects of the project, and evaluate the comparative merits of the alternatives…

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."

In addition, State CEQA Guidelines Subsection 15091(a)(3) states that one of the findings an agency can make regarding significant environmental effects identified in the final EIR is that:

"Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR."

Subsections 15091(b) and (c) state that a finding made pursuant to subsection 15091(a)(3) must be supported by substantial evidence and the finding shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

The findings in Part I. B identified Impact 3.13.2: *Impacts on existing water-based recreation* as significant and unavoidable.

No feasible mitigation measures were identified that could reduce the identified significant and unavoidable impact to *less than significant*. No alternatives, other than the No Project Alternative, were identified that could reduce the potentially significant and unavoidable impact to a *less than significant* level.

Pond isolation is the critical component of the overall project purpose to isolate Milburn Pond, and it was determined during project and alternative development that Milburn Pond isolation cannot feasibly be accomplished in a way that does not preclude direct boat access between the river and the pond. The No Project Alternative does not meet the overall project purpose whatsoever, as salmon mortality would continue under existing and future conditions. As the No Project Alternative would not enable DWR to achieve its fundamental project purpose, the No Project Alternative is not a feasible alternative. The EIR examines three "build" alternatives, in addition to the No Project Alternative.

The Proposed Project described in the EIR includes the construction of an equalization saddle between Pond 1 and Milburn Pond; installation of a "modified" French drain under the equalization saddle; modification to the main berm to eliminate breaches;

construction of a new high-flow side channel; installation of rock slope protection and biotechnical erosion protection to minimize erosion; modification to a portion of North Milburn Avenue to raise the berm elevation to avoid premature overtopping during flood releases from Friant Dam; planting native trees and other vegetation and management of invasive species for project mitigation and soil stabilization; and the installation and improvement of fencing, gates, and signage at Milburn and Hansen Unit boundaries.

Alternative 1 (No High-flow Side Channel Alternative with On-site Borrow) would have less overall impact than the proposed project, but would not eliminate any significant impacts. It would also lack the substantial beneficial effects constructing the high-flow side channel would have on channel habitat complexity (increased fish production in the San Joaquin River) and hydrology/hydraulics (reduced flood risk).

Alternative 2 (No High-flow Side Channel Alternative with Off-site Borrow) would have additional adverse impacts compared to Alternative 1 (and the proposed project), with greater impacts to air quality, GHG emissions, noise, and transportation due to the import of off-site borrow materials. Like Alternative 1, Alternative 2 would also lack the substantial beneficial effects constructing the high-flow side channel would have on channel habitat complexity (increased fish production in the San Joaquin River) and hydrology/hydraulics (reduced flood risk).
All the mitigation measures that were developed for the Proposed Project also apply to Alternatives 1 and 2.

After reviewing public comments and considering the impacts and benefits of the Alternatives, DWR plans to move forward with the Proposed Project.

Finding

DWR has identified project-related impacts that are potentially *significant and unavoidable* for all the “build” alternatives. No alternative, other than the No Project Alternative, has been identified that would avoid, or substantially lessen, the potentially significant and unavoidable effects of the project. As set forth in the FEIR, the No Project Alternative would not meet the fundamental project purpose, or any of the project objectives and the other “build” alternatives would have the same significant and unavoidable impact but lack the beneficial effects of the high-flow side channel of the Milburn Pond Isolation Project that have been identified from the outset in the Notice of Preparation.

Part III: STATEMENT OF OVERRIDING CONSIDERATIONS

The State CEQA Guidelines Section 15093 states:

> *“(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or*

other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable'.

(b) When the lead agency approves a project, which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record."

Part I.A. of this document identifies the Project's impacts that are potentially significant that can be reduced to *less than significant.* Part I.B. identifies the Project's impacts that are *significant and unavoidable*. Part I explains why DWR concluded that there are no feasible mitigation measures that can be implemented to reduce the significant and unavoidable impact to recreation. Part II explains why DWR concluded that there are no feasible alternatives that would attain most of the basic project objectives and avoid or substantially lessen the significant and unavoidable effects on recreation. In this Statement of Overriding Considerations, DWR discusses the single *significant and unavoidable* environmental impact (Impact 3.13.2 *Impacts on Existing Water-based Recreation*) of the Project to determine whether it is acceptable in light of the environmental, economic, legal, social, technological, and other considerations.

Fundamental Project Purpose and Objectives

The purpose of the Project is to increase native fish survival in the San Joaquin River by isolating Milburn Pond from the San Joaquin River channel to prevent fish from passing between the river and this abandoned gravel pit. Specific Project objectives are to:

- reduce the likelihood of future berm breaches during high-flow events to ensure the pond does not become reconnected,
- reduce movement of non-native warmwater fish species from the pond to the river to increase native fish survival in the river,
- reduce movement of native salmonids from the river to the pond to increase native fish survival in the river, and
- minimize the potential for project-related impacts that would reduce pond or riparian habitat quality.

Isolating the pond from the river would also improve DFW's management access to the site.

Finding

DWR, in determining whether or not to approve the Project, balanced the biological benefits through increased habitat quality and reduced salmon mortality, and the benefits to hydrology and hydraulics in reduced flood risk, against the unavoidable impact to existing water-based recreation and finds that the Project cannot be implemented in a way that accomplishes the fundamental project purpose or any of the specific objectives of the Project without resulting in the *significant and unavoidable* environmental impact described in the FEIR and summarized above.

Based on the following determinations, DWR has balanced the economic, legal, social, technological, and other benefits of the Project and has determined the *significant and unavoidable* environmental impact to existing water-based recreation is outweighed by the long-term ecological benefits of the Project. In the long- term, the Project would have net *beneficial* ecological and other effects.

DWR determines that:

- The isolation of Milburn Pond and the other restoration activities associated with the Proposed Project would be a benefit to native fish survival in the San Joaquin River as well as the restored Chinook salmon population.

- As one of the implementing agencies of the SJRRP, by moving forward with the Proposed Project, DWR is consistent with actions identified in the SJRRP Program Environmental Impact Statement/ Environmental Impact Report, including isolating gravel pits or ponds, modifying floodplain and side-channel habitat, reducing potential for aquatic predation of juvenile salmonids, reducing potential for fish entrainment, and enabling fish passage.

- The Project would have significant long-term benefits including increasing channel habitat complexity, increasing channel flood capacity, and creating additional aquatic habitat. Eliminating the hydraulic connection between the river and Milburn Pond, particularly during low flows in the river, would help maintain cooler river temperatures that are more suitable for special-status fish and would result in a long-term improvement of habitat quality. This disconnect would improve habitat conditions in the San Joaquin River for special-status fish species and reduce exposure to warmwater predators. Project components would improve the existing on-site drainage patterns and reduce long-term potential for erosion and siltation, improve on-site stormwater drainage, and reduce likelihood of berm failure during a flood event. The project would maintain the design channel capacity in the San Joaquin River and would improve the ability of this reach to accommodate rising flows.

Exhibit C

Mitigation Monitoring and Reporting Program for the Milburn Pond Isolation Project

State Clearinghouse No. 2020100145

State of California

Department of Water Resources
June 2022

Mitigation Monitoring and Reporting Program

for the

Milburn Pond Isolation Project

State Clearinghouse No. 2020100145

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June 2022

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Mitigation Monitoring and Reporting Program

In accordance with the California Environmental Quality Act (CEQA), the California Department of Water Resources (DWR) prepared a Draft Environmental Impact Report (EIR) in March 2021 to provide the public and responsible and trustee agencies with information about the potential environmental impacts associated with implementation of the Milburn Pond Isolation Project (hereafter referred to as the "project"). DWR subsequently prepared a Final EIR in January 2022, incorporating comments received on the Draft EIR and responses to those comments.

The Final EIR concludes that implementation of the proposed project would generate significant and potentially significant adverse effects on the environment. The Final EIR identifies feasible mitigation measures that avoid, mitigate, or reduce these impacts.

Section 21081.6(a)(1) of the California Public Resources Code and Section 15097 of the State CEQA Guidelines require a public agency to adopt a reporting and monitoring program on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental impacts on the physical environment.

This Mitigation Monitoring and Reporting Program will be used by DWR to ensure that mitigation measures identified in the Final EIR are implemented as described in the Final EIR and that their implementation is documented.

The Mitigation Monitoring and Reporting Program is presented in tabular format. The table columns contain the following information:

Mitigation Number: Lists each mitigation measure by number, as designated in the Final EIR.

Mitigation Measure: Provides the text of each mitigation measure as adopted and incorporated into the project.

Timing/Schedule: Lists the time frame in which each mitigation measure is expected to take place.

Implementation Responsibility: Identifies the entity responsible for implementing each mitigation measure.

Completion of Implementation: DWR is responsible for reporting on implementation of each mitigation measure. The "Completion of Implementation" column is to be used by DWR to indicate when implementation of a mitigation measure has been completed. DWR, at its discretion, may delegate implementation responsibility or portions thereof to qualified consultants or contractors.

Mitigation Monitoring and Reporting Program for the Milburn Pond Isolation Project

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
Air Quality				
3.4.2a	**Implement Construction Equipment Nitrogen Oxides and Particulate Matter Controls.** DWR will reduce exhaust emissions for construction equipment greater than 50 horsepower used or associated with the proposed project by the following amounts from the Statewide average as estimated by the California Air Resources Board: ▪ 20 percent of the total NO_x emissions ▪ 45 percent of the total PM_{10} exhaust emissions Emissions accounting methods will be as described in SJVAPCD Rule 9510. Construction emissions may be reduced on site by using add-on controls, cleaner fuels, or newer lower emissions equipment, thus generating less pollution. Additional strategies for reducing construction emissions may include: ▪ Providing sufficient commercial electric power to the project site to avoid or minimize the use of portable electric generators. ▪ Substituting electric-powered equipment for diesel engine-driven equipment. ▪ Limiting the hours of operation of heavy-duty equipment and/or the amount of equipment used at any one time. ▪ Minimizing idling time (e.g., 10-minute maximum). ▪ Replacing equipment that uses fossil fuels with electrically driven equivalents (if they are not run via a portable generator set).	During construction activities	DWR	
3.4.2b	**Implement San Joaquin Valley Air Pollution Control District Regulation VIII Fugitive PM10 Prohibitions Best Management Practices.** All projects are subject to SJVAPCD rules and regulations in effect at the time of construction. Control of fugitive dust is required by SJVAPCD Regulation VIII. DWR will implement or require its contractor to implement all SJVAPCD measures (SJVAPCD 2004) listed below that apply to the proposed project: ▪ Apply water to unpaved surfaces and areas. ▪ Use non-toxic chemical or organic dust suppressants on unpaved roads and traffic areas.	During construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	▪ Limit or reduce vehicle speed on unpaved roads and traffic areas. ▪ Maintain areas in a stabilized condition by restricting vehicle access. ▪ Install wind barriers. ▪ During high winds, cease outdoor activities that disturb the soil ▪ Keep bulk materials sufficiently wet when handling. ▪ Store and handle material in a three-sided structure. ▪ When storing bulk material, apply water to the surface or cover the stage pile with a tarp. ▪ Do not overload haul trucks (overloaded trucks are likely to spill bulk materials). ▪ Cover haul trucks with a tarp or other suitable cover. Or, wet the top of the load enough to limit visible dust emissions. ▪ Clean the interior of cargo compartments on emptied haul trucks prior to leaving the site. ▪ Prevent trackout by installing a trackout control device. ▪ Clean up trackout at least once a day. If along a busy road or highway, clean up trackout immediately. ▪ Monitor dust-generating actives and implement appropriate measures for maximum dust control.			
3.5 Biological Resources				
3.5.1	**Minimize Potential Loss of Sanford's Arrowhead.** DWR and its construction contractor(s) will implement the following measures to reduce potential effects on Sanford's arrowhead: ▪ Within 1 year before ground-disturbing project activities begin, a qualified botanist shall conduct at least two focused surveys of suitable habitat for Sanford's arrowhead in and within 50 feet of the project disturbance footprint. The surveys shall be conducted during the specific blooming period for Sanford's arrowhead (May – October). If no individuals are found, no further mitigation is required. ▪ If Sanford's arrowhead is detected, impacts shall be avoided wherever possible by implementing a protective buffer around occupied habitat. A 50-foot buffer shall be implemented where feasible; where not feasible, the maximum buffer feasible shall be implemented. If feasible, given the	Before, during, and after project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	site conditions, a protective barrier shall be installed and maintained during construction activities to minimize impacts on occupied habitat that will be preserved adjacent to the construction footprint. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means. ▪ If direct loss of Sanford's arrowhead plants cannot be avoided, a relocation and monitoring plan shall be developed and implemented in consultation with DFW, as both a regulatory agency and the landowner. To ensure relocation is successful, DWR will work with DFW to identify the relocation site and success monitoring protocol. The relocation and monitoring plan shall outline methods for relocating unavoidable Sanford's arrowhead plants to other areas of suitable on-site habitat that will not be subject to project impacts, including potential future project phases. The plan shall include details about relocation methods, receptor site preparation, transplant survival criteria, post-transplantation monitoring, remedial measures, and long-term protection and management. If at least 50 percent of the transplants (based on occupied acreage/density) do not survive through at least 1 year after transplantation occurs, remedial habitat enhancement, such as invasive weed control, will be implemented to improve the habitat suitability and likelihood for the on-site Sanford's arrowhead population to increase in the long term.			
3.5.2	**Minimize Potential for Death and Injury of Western Pond Turtle.** DWR and its construction contractor(s) will implement the following measures to reduce potential for death or injury of western pond turtle during project construction: ▪ A qualified biologist shall conduct a focused survey for western pond turtle in suitable aquatic and basking habitat within the construction footprint 10 days before onsite construction activities begin. If construction activities would begin during the pond turtle nesting season (March through August), surveys shall also include suitable nesting habitat within the construction footprint. ▪ If a pond turtle nest is found, it shall remain undisturbed, if feasible, until the eggs have hatched. ▪ Before on-site project activities begin, all on-site project personnel shall attend a training program conducted by a qualified biologist. The	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist. ▪ A survey for western pond turtle shall be conducted before construction work in suitable pond turtle habitat begins each day. If a pond turtle is discovered in the construction area before or during construction activities, it shall be allowed to move out of the area on their own.			
3.5.3a	**Conduct Focused Surveys for Burrowing Owls and Avoid Loss of Occupied Burrows and Failure of Active Nests.** To minimize potential effects of project construction and maintenance on burrowing owl, DWR will ensure that the following measures are implemented, consistent with the Staff Report on Burrowing Owl Mitigation (DFG 2012). ▪ A qualified biologist shall conduct focused surveys for burrowing owls, in accordance with Appendix D of the Staff Report on Burrowing Owl Mitigation (DFG 2012). At a minimum, surveys shall be conducted during the breeding season of the year in which ground-disturbing project activities begin, and one survey shall be conducted within 10 days before on-site project construction or maintenance activities begin. ▪ If occupied burrows are observed, protective buffers shall be established and implemented. A qualified biologist, in consultation with DFW, shall determine the appropriate buffer for each occupied burrow; the buffer will depend on type and intensity of project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the owl(s) to disturbance. A qualified biologist shall monitor the occupied burrows during project activities and adjust buffers, if needed, to ensure their effectiveness. ▪ Before on-site project activities begin, all on-site project personnel shall attend a Worker's Environmental Awareness Program conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist. ▪ If it is not feasible to implement a buffer of adequate size and it is determined, in consultation with DFW, that passive exclusion of owls from the area of direct disturbance is an appropriate means of minimizing impacts, an exclusion and passive relocation plan shall be developed and implemented in coordination with DFW. This plan shall be developed and implemented in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). Passive exclusion will not be conducted during the breeding season (February 1 – August 31), unless a qualified biologist verifies through noninvasive means that either (1) the birds have not begun egg laying or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival. ▪ If passive exclusion is conducted, an artificial burrow creation, monitoring, and maintenance plan shall be developed and implemented in coordination with DFW and in accordance with Appendix E of the Staff Report on Burrowing Owl Mitigation (DFG 2012). Each occupied burrow that is destroyed will be replaced with at least one artificial burrow on a suitable portion of the project site that will not be subject to project impacts, including potential future project phases.			
3.5.3b	**Conduct Focused Surveys for Swainson's Hawk, White-tailed Kite, and Colonial-nesting Waterbirds, Implement Buffers Around Active Nests, and Compensate for Removal of Known Swainson's Hawk Nest Trees.** To minimize potential effects of project construction and maintenance on nesting Swainson's hawk, white-tailed kite, and colonial-nesting waterbirds, DWR will ensure that the following measures are implemented: ▪ A qualified biologist shall conduct surveys of potential Swainson's hawk nesting habitat within 0.5 mile of the project site, in accordance with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (SWTAC 2000). Surveys shall be conducted during the breeding season before construction begins to determine if an active nest is present within 0.5 mile of the project site. In addition, surveys shall be conducted during the breeding season of the year in which ground-disturbing project activities begin, including within at least the two survey periods immediately before on-site construction or	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	maintenance activities begin. If a lapse in project-related activities of 14 days or longer occurs, another focused survey shall be conducted before project activities resume. ▪ A qualified biologist shall conduct surveys of suitable nesting habitat for white-tailed kite and colonial-nesting waterbirds within 500 feet of project activities. Surveys shall be conducted within 10 days before on-site construction or maintenance activities begin near suitable nesting habitat during the nesting season (March through August). If a lapse in project-related activities of 14 days or longer occurs, another focused survey shall be conducted before project activities resume. ▪ If active nests are found, DFW shall be consulted to determine if incidental take authorization may be required. Protective buffers shall be established and implemented during project construction until the nests are no longer active. A qualified biologist, in consultation with DFW, shall determine the appropriate buffer for each nest; the buffer will depend on type and intensity of project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the nest to disturbance. A qualified biologist shall monitor the nests during project activities and adjust buffers, if needed, to ensure their effectiveness. ▪ Before on-site project activities begin, all on-site project personnel shall attend a Worker's Environmental Awareness Program conducted by a qualified biologist. The program shall address special-status species that could occur on the project site and include a discussion of species identification, life history, general behavior, habitat, and sensitivity to human activities; State and Federal legal protections; and required avoidance and minimization measures. All on-site personnel also shall be provided contact information for the project biologist. ▪ If a Swainson's hawk nest is found on the project site and the nest tree must be removed during project construction, compensation shall be provided by planting three appropriate native trees for each known Swainson's hawk nest tree that is removed. Replacement trees shall be planted at or near the project site or in another area that will be protected in perpetuity.			

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
3.5.7	**Minimize Riparian Vegetation Removal and Compensate for Unavoidable Removal.** DWR and its construction contractor(s) will implement the following measures to minimize and compensate for riparian vegetation removal: ▪ Impacts on riparian vegetation outside the construction footprint shall be avoided by installing and maintaining a protective barrier, if feasible given the site conditions. If a barrier is not feasible, the avoidance area(s) shall be clearly marked with high-visibility flagging, stakes, and/or other means. ▪ An on-site Habitat Restoration and Enhancement Plan shall be developed and implemented in coordination with DFW land managers. The benefit of increased acreage or improved ecological function of on-site riparian habitat resulting from plan implementation will be considered before additional compensatory measures are proposed. ▪ If implementing the on-site Habitat Restoration and Enhancement Plan would not ensure no net loss of riparian habitat function or acreage, additional compensation shall be provided by otherwise creating, restoring, or enhancing, or preserving riparian habitat elsewhere within the San Joaquin River watershed at a sufficient ratio to ensure no net loss of habitat function or acreage. The appropriate ratio shall be determined in coordination with DFW during the FGC Section 1602 permitting process.	Before and after project construction activities	DWR	
3.6 Cultural Resources and Tribal Cultural Resources				
3.6.1a	**Implement Procedures for Inadvertent Discovery of Cultural Material.** If an inadvertent discovery of buried or otherwise previously unidentified historical resources, including archaeological resources (e.g., unusual amounts of shell, animal bone, any human remains, bottle glass, ceramics, building remains), is made at any time during project-related construction activities or project planning, DWR, with input from other interested parties, will develop and implement appropriate protection and avoidance measures, where feasible. If such resources are discovered during project construction, all work within a 100-foot-radius of the find shall cease. DWR shall retain a professional archaeologist meeting the Secretary of the Interior's Professional Standards for Archaeologists to assess the discovery and recommend what, if any, further treatment or investigation is necessary for the find. Culturally	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	affiliated Native American Tribes will also be contacted concerning resources of Native American origin. In addition, DWR will allow a monitor from a culturally affiliated Tribe to be present during ground-disturbing activities. Avoidance is the preferred mitigation measure for cultural resources. If avoidance is not possible, any necessary treatment/investigation shall be developed in coordination with interested Native American Tribes providing recommendations to DWR and shall be completed before project activities continue in the vicinity of the find. The final disposition of archaeological, historical, and paleontological resources recovered on state lands under State Lands Commission jurisdiction will be approved by the State Lands Commission. An inadvertent discovery plan shall be developed before construction begins and shall be implemented in the event of a discovery during project construction. This plan shall include a process for determining what procedures would be implemented for discoveries that cannot be protected in place.			
3.6.1b	**Conduct Cultural Resource Awareness and Sensitivity Training.** DWR will conduct a pre-construction training session for all construction personnel before beginning any project-related, ground-disturbing work. Participants will sign a form acknowledging that they have received the training and agree to keep resource locations confidential and to stop work within 100 feet of any unanticipated discovery. Topics to be addressed in training sessions will include but are not limited to: regulations protecting cultural resources, including archaeological sites and TCRs; basic identification of archaeological resources and potential TCRs; and proper discovery protocols. Training will be provided by DWR and conducted by a qualified archaeologist who meets the Secretary of the Interior's Standards for Archaeology (36 CFR Part 61). If requested by a culturally affiliated Tribe, the training presentation will be developed in consultation with Tribal representatives. Topics will include the potential presence and type of Native American and non-Native American resources potentially found during construction or other activities, required procedures in the event of a discovery, proper behavior in the presence of sacred remains and human remains, and necessary reporting protocols. Written materials will be provided to trained personnel, as appropriate.	Before project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
3.6.2	**Avoid Potential Effects to Previously Unknown Human Remains.** If an inadvertent discovery of human remains is made at any time during project-related construction activities or project planning, DWR will implement the procedures listed below. If human remains are identified on the project site, the following performance standards shall be met prior to implementing or continuing actions, such as construction, that may result in damage to or destruction of human remains: ▪ In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, DWR will immediately halt potentially damaging excavation in the area of the burial and notify the Fresno County Coroner and a professional archaeologist to determine the nature of the remains. The Coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or State lands (California Health and Safety Code Section 7050.5[b]). If the Coroner determines that the remains are those of a Native American, he or she must contact NAHC by phone within 24 hours of making that determination (California Health and Safety Code Section 7050[c]). After the Coroner's findings have been made, the archaeologist and the NAHC-designated MLD, in consultation with the landowner, shall determine the ultimate treatment and disposition of the remains. The responsibilities of DWR for acting upon notification of a discovery of Native American human remains are identified in PRC Section 5097.9 et seq. ▪ Upon the discovery of Native American human remains, DWR will require that all construction work within 100 feet of the discovery stop, until consultation with the MLD has taken place. The MLD will have 48 hours to complete a site inspection and make recommendations to the landowner after being granted access to the site. A range of possible treatments for the remains, including nondestructive removal, preservation in place, relinquishment of the remains and associated items to the descendants, or other culturally appropriate treatment may be discussed. PRC Section 5097.98(b)(2) suggests that the concerned parties may mutually agree to extend discussions beyond the initial 48 hours to allow for the discovery of additional remains. DWR will record the site with the NAHC or Southern San Joaquin Valley Information Center and record a document with Fresno County.	During project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	▪ If agreed to by the MLD and DFW land managers, DWR or its authorized representative will rebury the Native American human remains and associated grave goods with appropriate dignity on the project site, in a location not subject to further subsurface disturbance. If NAHC is unable to identify an MLD, the MLD fails to make a recommendation within 48 hours after being granted access to the site, or recommendation of the MLD is rejected and mediation by NAHC fails to provide measures acceptable to DWR, DWR or its authorized representative may also reinter the remains at a location not subject to further disturbance. DWR will implement mitigation to protect the burial remains. Construction work in the vicinity of the burials shall not resume until the mitigation is completed. ▪ If the human remains are of historic age and are determined not to be of Native American origin, DWR will follow the provisions of the California Health and Safety Code Section 7000 (et seq.) regarding the disinterment and removal of non-Native American human remains.			
3.7 Geology, Soils, and Paleontology				
3.7.2	**Prepare and Implement a Stormwater Pollution Prevention Plan and Best Management Practices to Reduce Erosion.** In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement the following measures to further reduce construction-related erosion: ▪ Construction activities would likely be subject to construction-related stormwater permit requirements of the NPDES program. Any permits by the CVRWQCB will be obtained by DWR before any ground-disturbing construction activity. A SWPPP will be prepared that identifies BMPs to prevent or minimize the introduction of contaminants into surface waters. Such BMPs could include, but would not be limited to, silt fencing, straw bale barriers, fiber rolls, storm drain inlet protection, hydraulic mulch, and a stabilized construction entrance. The SWPPP will include development of site-specific structural and operational BMPs to prevent and control impacts on runoff quality, measures to be implemented before each storm event, inspection and maintenance of BMPs, and monitoring of runoff quality by visual and/or analytical means.	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	▪ Water (e.g., trucks, portable pumps with hoses) will be used to control fugitive dust during construction activities that could cause substantial wind erosion.			
3.9 Hazards and Hazardous Materials				
3.9.1	**Implement a Spill Prevention Control and Countermeasures Plan and Other Measures to Reduce the Potential for Environmental Contamination during Construction Activities.** In addition to compliance with all applicable Federal, State, and local regulations, DWR will implement the measures described below to further reduce the risk of accidental spills and protect the environment. ▪ A written SPCCP will be prepared and implemented. The SPCCP and all material necessary for its implementation will be accessible onsite prior to initiation of project construction and throughout the construction period. The SPCCP will include a plan for the emergency cleanup of any spills of fuel or other material. Construction personnel will be provided the necessary information from the SPCCP to prevent or reduce the discharge of pollutants from construction activities to waters and to use the appropriate measures should a spill occur. In the event of a spill in waters, work will stop, and the spill will be addressed immediately with equipment such as a deflection boom to contain the spill and a sorbent boom to absorb the spilled material. and DFW and CVRWQCB will be notified within 24 hours of an in-water spill. ▪ Dispose of All Construction-related Debris and Materials at an Approved Disposal Site. All debris, litter, unused materials, sediment, rubbish, vegetation, or other material removed from the construction areas that cannot reasonably be secured will be removed daily from the project work area and deposited at an appropriate disposal or storage site. ▪ Use Safer Alternative Products to Protect Waters. Every reasonable precaution will be exercised to protect waters from pollution with fuels, oils, and other harmful materials. Safer alternative products (such as biodegradable hydraulic fluids) will be used where feasible. ▪ Prevent Any Contaminated Construction By-products from Entering Flowing Waters; Collect and Transport Such By-products to an Authorized Disposal Area. Petroleum products, chemicals, fresh cement, and construction by-products containing, or water contaminated by, any	Before and during project construction activities	DWR	

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	such materials will not be allowed to enter flowing waters and will be collected and transported to an authorized upland disposal area. ▪ Prevent Hazardous Petroleum or Other Substances Hazardous to Aquatic Life from Contaminating the Soil or Entering Waters. Gas, oil, other petroleum products, or any other substances that could be hazardous to aquatic life and resulting from project-related activities, will be prevented from contaminating the soil and/or entering waters. ▪ Properly Maintain All Construction Vehicles and Equipment and Inspect Daily for Leaks; Remove and Repair Equipment/Vehicles with Leaks. Construction vehicles and equipment will be properly maintained to prevent contamination of soil or water from external grease and oil or from leaking hydraulic fluid, fuel, oil, and grease. Vehicles and equipment will be checked daily for leaks. If leaks are found, the equipment will be removed from the site and will not be used until the leaks are repaired. ▪ Refuel and Service Equipment at Designated Refueling and Staging Areas. Equipment will be refueled and serviced at designated refueling and staging sites. All refueling, maintenance, and staging of equipment and vehicles will be conducted in a location where a spill will not drain directly toward aquatic habitat. Appropriate containment materials will be installed to collect any discharge, and adequate materials for spill cleanup shall be maintained onsite throughout the construction period. ▪ Store Heavy Equipment, Vehicles, and Supplies at Designated Staging Areas. All heavy equipment, vehicles, and supplies will be stored at the designated staging areas at the end of each work period. ▪ Install an Impermeable Membrane between the Ground and Any Hazardous Material in Construction Storage Areas. Storage areas for construction material that contains hazardous or potentially toxic materials will have an impermeable membrane between the ground and the hazardous material and will be bermed as necessary to prevent the discharge of pollutants to groundwater and runoff water. ▪ Use Water Trucks to Control Fugitive Dust during Construction. Water (e.g., trucks, portable pumps with hoses) will be used to control fugitive dust during temporary access road construction. ▪ Use Only Nontoxic Materials and Materials with No Coatings or Treatments Deleterious to Aquatic Organisms for Placement in Any			

Mitigation Number	Mitigation Measure	Timing/Schedule	Implementation Responsibility	Implementation Completion
	Waters. All materials placed in the river or other waters will be nontoxic and will not contain coatings or treatments or consist of substances deleterious to aquatic organisms that may leach into the surrounding environment in amounts harmful to aquatic organisms.			
3.15 Wildfire				
3.15.1	**Prepare and Implement an Emergency Fire Plan.** DWR will prepare and implement an emergency fire plan complying with all sections of California Fire Code Chapter 33 during project construction. The plan shall include preventative measures and emergency procedures specific to the project and site, current emergency telephone numbers, and an area map.	Before and during project construction activities	DWR	

Acronyms and abbreviations

BMPs = best management practices, CVRWQCB = Central Valley Regional Water Quality Control Board, DFW = California Department of Fish and Wildlife, DWR = California Department of Water Resources, MLD = Most Likely Descendant, NAHC = Native American Heritage Council, NO_x = nitrogen oxides, NPDES = National Pollution Discharge Elimination System, PM_{10} = particulate matter equal to or less than 10 micrometers in aerodynamic diameter, PRC = California Public Resources Code, SJVAPCD = San Joaquin Valley Air Pollution Control District, SPCCP = Spill Prevention Control and Countermeasures Plan, SWPPP = Storm Water Pollution Prevention Plan, TCR = Tribal Cultural Resource

References

DFG (California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA. Available: https://wildlife.ca.gov/Conservation/Survey-Protocols. Accessed: February 8, 2022.

SJVAPCD (San Joaquin Valley Air Pollution Control District). 2004. Fugitive PM10 Prohibitions. Available: http://www.valleyair.org/rules/1ruleslist.htm#reg8. Accessed: November 17, 2020.

SWTAC (Swainson's Hawk Technical Advisory Committee). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Available: https://wildlife.ca.gov/Conservation/Survey-Protocols. Accessed: February 8, 2022.

Print Form

Notice of Determination

Appendix D

To:

☒ Office of Planning and Research

U.S. Mail: P.O. Box 3044, Sacramento, CA 95812-3044

Street Address: 1400 Tenth St., Rm 113, Sacramento, CA 95814

☐ County Clerk
County of: _____
Address: _____

From:

Public Agency: California Dept. of Water Resou
Address: 3374 E. Shields Ave
Fresno, CA 93726
Contact: Karen Dulik
Phone: 559-230-3361

Lead Agency (if different from above):

Address: _____

Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2020100145

Project Title: Milburn Pond Isolation Project

Project Applicant: California Department of Water Resources

Project Location (include county): Fresno County

Project Description:

The project site is bounded by the San Joaquin River to the north and the City of Fresno to the south. The project would isolate the abandoned gravel pit known as Milburn Pond from the San Joaquin River channel to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond. This would be accomplished by modifying the existing berm to fill existing breaches, strengthen weaker berm sections, and raise elevations of low berm sections to minimize the potential for future breaches. Other

This is to advise that the CA Department of Water Resources has approved the above
(☒ Lead Agency or ☐ Responsible Agency)

described project on 06/29/2022 (date) and has made the following determinations regarding the above described project.

1. The project [☒ will ☐ will not] have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☒ was ☐ was not] adopted for this project.
6. Findings [☒ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
https://ceqanet.opr.ca.gov/Project/2020100145

Signature (Public Agency): Kevin Faulkenberry Title: Principal Engineer

Date: 6/29/2022 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2011

M e m o r a n d u m

Date: June 28, 2022

To: Kevin Faulkenberry
Manager
South Central Region Office

Karen Dulik
Environmental Program Manager
From: **Department of Water Resources**

Subject: CEQA Project Approval for the Milburn Pond Isolation Project (SCH #2020100145)

The purpose of this memorandum is to request that you review and certify the Final Environmental Impact Report (FEIR) for the Milburn Pond Isolation Project (Project). In addition, this memorandum requests that you make the other decisions described below in relation to the FEIR, including approval of the proposed Project analyzed in the EIR pursuant to the California Environmental Quality Act (CEQA). Once all the decisions are made, the California Department of Water Resources (DWR) has met all CEQA requirements for project implementation.

Milburn Pond is located on the south side of the San Joaquin River, approximately 3 miles east of State Route 99, along the northern boundary of Fresno County, California. The Project site includes the Milburn Unit and the Hansen Unit of the San Joaquin River Ecological Reserve, which is owned and managed by the California Department of Fish and Wildlife (DFW). The Project is the first phase of a potentially three-phase Milburn Habitat Restoration and Improvements Project, which was developed to a preliminary design level by DWR in 2019 with funding from the Wildlife Conservation Board (WCB), the San Joaquin River Conservancy (SJRC), and DWR's San Joaquin River Restoration Program (SJRRP).

This FEIR focuses on pond isolation only; pond isolation is in no way dependent on potential future improvements. This initial Project would isolate the abandoned gravel pit known as Milburn Pond from the San Joaquin River channel to increase native fish survival by reducing movement of non-native warmwater fish species from the pond to the river and movement of native salmonids from the river to the pond. Isolating the pond from the river would also improve DFW access to the Milburn Unit and ability to manage invasive plants in the pond area.

Alternative Selection

The FEIR analyzed three "build" alternatives, including the proposed Project, Alternative 1 (No High-flow Side Channel with On-Site Borrow) and Alternative 2 (No High-flow Side Channel with Off-Site Borrow), as well as the No-Project Alternative. DWR is proposing to proceed with the proposed Project.

Under the proposed Project described in the FEIR, DWR would construct an equalization saddle between Pond 1 and Milburn Pond, install a "modified" French

drain under the equalization saddle, modify the main berm to eliminate breaches, construct a new high-flow side channel, install rock slope protection and biotechnical erosion protection to minimize erosion, modify a portion of North Milburn Avenue to raise the berm elevation to avoid premature overtopping during flood releases from Friant Dam, plant native trees and other vegetation and manage invasive species for project mitigation and soil stabilization, and install and improve fencing, gates, and signage at the Milburn and Hansen Unit boundaries.

As discussed in the Executive Summary; Section 6.4, *Comparison of Impacts of the Alternatives;* and Section 6.5, *Environmentally Superior Alternative* of the FEIR, environmental analysis generally showed that environmental resource effects would be similar among the "build" alternatives and the proposed Project was determined to be the environmentally superior alternative. Alternatives 1 and 2 do not include construction of the high-flow side channel, which offers additional benefit to channel habitat complexity (increased fish production in the San Joaquin River) and hydrology/hydraulics (reduced flood risk).

CEQA Compliance

DWR filed a Notice of Preparation (NOP) on October 8, 2020; a virtual public scoping meeting was held on October 22, 2020, to solicit input from the community and public agencies to be considered in the selection and design of project alternatives and on the scope and content of the EIR. The Draft EIR (DEIR) was circulated for a 45-day public review period that began April 2, 2021, and ended May 17, 2021. DWR received comment letters on the DEIR from two agencies, one tribal entity, and thirteen individuals.

There were several similar comments on topics that addressed different aspects of common issues on the DEIR. To present more complete and concise responses that addressed all aspects of these related comments, seven master responses were prepared. The master responses were a means of providing a broader context and more meaningful response than possible when making individual responses. In some cases, an individual comment may be answered by one or more of the master responses. The master responses apply to many comment letters and comments and respond to the most significant comments made by the public. FEIR master responses are summarized as follows:

<u>Master Response 1: DEIR Review Process</u>

Several members of the public expressed concern regarding compliance with CEQA procedural requirements, including notifying the public about the Project and DEIR availability, accessibility of the DEIR, and comment submittal.

Because of a typographical error, the email address provided in the notice of availability and the DEIR (Karen.Dulik@water.co.gov) was incorrect. Those who

attempted to send comments to the incorrect email address received a notice indicating their message could not be delivered. The phone number provided was correct, however. In addition, the DEIR provided a mailing address and fax number to which comments could be sent. Therefore, DWR did not violate State CEQA Guidelines by inadvertently providing an incorrect email address because there were multiple alternative means by which commentors could reasonably resolve the issue. The 45-day public review period for the DEIR complied with State CEQA Guidelines Section 15105 and provided agencies and the public adequate and reasonable opportunities to review and comment, as indicated by numerous agencies and individuals that successfully submitted comments to DWR.

Master Response 2: Project Justification

Several members of the public expressed concern over the reason this Project was being proposed and why the pond should be isolated from the river.

According to SJRRP scientists, Milburn Pond poses a substantial risk to juvenile salmon of entrainment and serves as a source of non-native predatory fish species. The SJRRP has also stated that Milburn Pond's connection to the river has been determined to be a population source of piscivorous predators to the river. DFW has also cited fisheries studies that indicate Milburn Pond poses a high risk as a false migration pathway for Chinook salmon. Moreover, the SJRRP Restoration Goal in the Stipulation of the Settlement in Natural Resources Defense Council et al. v. Rodgers, et al., is to restore and maintain fish populations in "good condition" in the mainstem of the San Joaquin River below Friant Dam to the confluence of the Merced River. Paragraph 11(b)(3), the basis for SJRRP goals, states that one of the necessary improvements is "filling and/or isolating the highest priority gravel pits in Reach 1."

Milburn Pond is recognized by SJRRP scientists as one of the highest priority pits for isolation. The proposed Project shares objectives of the Restoration Goal by improving floodplain habitat, reducing the pond's effect on river water temperature, reducing predation, and improving salmon migration. Therefore, the overall Project purpose is to increase native fish survival in the San Joaquin River by isolating gravel pits on the Milburn Unit from the San Joaquin River channel to prevent fish from passing between the river and Milburn Pond. Furthermore, the proposed Project is supported by WCB, SJRC, and the regulatory agencies responsible for implementing the SJRRP. The proposed Project would restore the main river flow to the historical channel, where it flowed long before miners created the gravel pits, while still allowing water to pass into Milburn Pond and maintain habitat in the ecological reserve.

Master Response 3: Alternatives Analysis

A few commentors expressed concern that DWR did not do enough research into alternatives for pond isolation.

CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed Project, consider and analyze Project alternatives that would reduce significant adverse environmental impacts and that are feasible to attain most of the Project objectives (Public Resources Code Section 21061 and Section 15126.6 of the State CEQA Guidelines). Two Project alternatives were adequately described and the potential environmental impacts of each was analyzed in Chapter 6 of the DEIR. Because DWR evaluated a range of reasonable alternatives and other proposed alternatives are economically infeasible, do not achieve most Project objectives, and/or do not substantially lessen the significant environmental impacts of the Project, the FEIR need not evaluate additional alternatives further.

Master Response 4: Recommended Seine Alternative

Several members of the public recommended using a mesh screen or net to isolate Milburn Pond; this is referred to as the Seine Alternative. Commentors felt that the Seine Alternative should be an option considered in the CEQA process.

The landowner and ecological reserve manager (DFW) expressed doubt during Project development that a seine concept would work effectively and consistently for fish exclusion and indicated its preference for a solid isolation solution with minimal maintenance needs. DWR evaluated the Seine Alternative recommended by the commentors and found that it was highly unlikely to achieve most project objectives and would have prohibitive maintenance needs and costs that render the Seine Alternative infeasible.

Master Response 5: French Drains

Several commentors raised issues or questions on the use of French drains in the Project design. These concerns are primarily based on observations of the color of the water in ponds connected by French drains at other locations along the San Joaquin River (Sycamore Island Pond Isolation Project). Specific concerns include water quality degradation in the ponds, leading to warmer and more turbid water and eventual death of surrounding trees and vegetation.

Milburn Pond currently acts as a backwater with no flow-through connection at low flows. This currently causes conditions where algae blooms and cloudy water occur. The proposed Project is not intended to prevent this phenomenon that occurs under existing conditions.

The modified French drain design included in the proposed Project has very different design criteria than the Sycamore Island Pond Isolation Project and a specific objective to minimize the potential for project-related impacts that would reduce pond or riparian habitat quality. Although the feature appears to be like what was built at Pit 46e, the goals and designs are quite different. The Milburn modified French drain design incorporates features that would maintain a water source to the pond after it is

isolated from the river. The design process included a review of estimated maximum water losses to the pond and incorporates a modified French drain feature to offset those losses by allowing water to pass from the river channel to the pond at the same rate. The result is expected to seasonally lower Milburn Pond water levels, approximately two feet or less, because the river connection point would be downstream of the current one and some head loss is expected through the drain structure. Water levels in the pond would change during the year in response to fluctuating river flows. These seasonal changes would alter habitat conditions at Milburn Pond and could result in vegetation composition changes over time. However, the overall habitat quality is not anticipated to be degraded and may become more like conditions before the berm failed during flooding in 1994-1995.

Master Response 6: Recreation Access Policies and Regulations

Several comments addressed loss of public access to fishing and other recreation on Milburn Pond and asserted that to deny this access would violate the law and conflict with SJRC's mission and policies. Concerns also were raised regarding loss of navigable water along the San Joaquin River.

In the case of the proposed Project, the issue involves access to a pond that became available when the berm separating Milburn Pond from the river failed due to flood flows. If not for flooding in the years 1994 to 1995, the berm would not have been breached and the pond would not have become accessible from the river. There is no officially allowable public access from the river to the pond in the Milburn Unit of the San Joaquin Ecological Reserve, nor has there been since the reserve was established. Prior to the land being held by the State, it was a private gravel mining operation with no public access. The Milburn Unit was acquired with the intention that it would become part of a future parkway along the San Joaquin River (Department of Fish and Game [DFG] 1987); this intention was reiterated in the initial reserve management plan (DFG 1990). The property was designated an ecological reserve by the Fish and Game Commission in 1990; in 1993, an overlook platform and interpretive signs were installed, but the area was never formally opened to the public. Visitor use on ecological reserves is limited to those that are compatible with the purpose of the property. The only permissible recreation on the Milburn Unit is fishing from boats and the shore at times and in places designated by DFW, although DFW has not designated any times or places for those activities to date.

Formally opening the Milburn Unit of the San Joaquin River Ecological Reserve to public access would require a change to the Fish and Game Code and additional funding for increased staffing to operate and maintain the site; DFW has indicated this is not something it is able to do at this time.

Master Response 7: Alleged Road Purpose/Objective

Several commentors alleged that at least one purpose or objective of the proposed Project is to build a road along the berm, and some cited similarities to the Sycamore Island Pond Isolation Project.

Existing roads would be used for Project access. The existing dirt access road around the west, south, and east sides of Milburn Pond would be improved for construction access and left in an improved state for DFW reserve managers to use for reserve management and maintenance. The equalization saddle would include a maintenance road; however, this road would take the place of an existing road on the berm in that location. Milburn Avenue, the existing paved road, may need improvements to ensure overtopping will not occur at flows less than the design flows. The road would not be extended or expanded as part of this Project.

DWR independently prepared an EIR that analyzes all the potential environmental impacts of the proposed Project and the alternatives. Based on the review of and comments received on the DEIR, the FEIR was prepared. As required by State CEQA Guidelines Section 15132, the FEIR includes a list of persons, organizations, and public agencies that commented on the DEIR; comments received on the DEIR in summary or verbatim; and DWR's responses to potential environmental issues raised. A copy of the FEIR is attached as **Exhibit A** to the attached Decision Document. Copies of the responses to comments were sent to the public agencies that commented on the DEIR. This meets the requirements of Public Resources Code Section 21092.5.

The EIR identified several impacts of the "build" alternatives that were *beneficial* and *less than significant.* The primary potentially significant adverse environmental impacts under any of the "build" alternatives would be short-term impacts due to construction-related activities. These include impacts to air and water quality, special-status species and their habitats, the public and/or the environment from hazardous substances, cultural resources from any discoveries, soils from erosion during construction activities, and neighbors due to wildfire. All these short-term impacts would be *less than significant with mitigation*. In the long-term, the Project would have *beneficial* effects on special-status fish in the San Joaquin River by improving habitat and reducing exposure to warmwater predators. Project components also would improve the existing on-site drainage patterns and reduce long-term potential for erosion and siltation, improve on-site stormwater drainage, and reduce likelihood of berm failure during a flood event.

One *significant and unavoidable* long-term impact was identified; the Project would permanently remove direct access by boat to Milburn Pond from the San Joaquin River. Although similar recreational activities exist nearby, this impact would be potentially *significant and unavoidable* as there are no means for DWR to mitigate this

impact on recreation (see 2021 EIR Table ES-1). This *significant and unavoidable* long-term impact would occur under all the "build" alternatives.

Consequences of Project Approval/Denial and Cost

Approval of the proposed Project would support the SJRRP goal to benefit native salmonids and other native fish species on the San Joaquin River. By isolating the pond from the river and allowing the salmon population to succeed on the San Joaquin River, DWR would be assisting DFW in protecting the reintroduced salmon population. DWR would also create riverine habitat by constructing the side channel. Isolating the pond from the river also would improve access for DFW to better manage and patrol the site.

Not moving forward with this Project would not prevent the movement of salmonids and non-native fish between the river and the abandoned gravel pit, facilitating predation of salmonids by non-native fish. The berm would continue to be breached during high flows, erosion would continue, and the habitat in the area would continue to degrade. Additionally, 15 years of DWR and DFW staff time and funds have gone into Project planning and design, including extensive input from other agencies and interested parties.

Recommended Action

CEQA requires public agencies, such as DWR, to make several determinations when approving a proposed project which could have a significant impact on the environment. The first step for this Project is certification of the FEIR. Following certification of the FEIR, DWR can decide whether to approve or carry out the Project consistent with other CEQA requirements.

After reviewing and considering the attached FEIR (**Exhibit A** to the Attached Decision Document), please review the attached document: "CEQA Decisions Relating to the Milburn Pond Isolation Project "(**Decision Document**), which describes each portion of the CEQA approval process and provides blocks for your signature. If you determine that the CEQA EIR is adequate, and that the Findings and the Statement of Overriding Considerations (**Exhibit B** to the Decision Document) and the Mitigation Monitoring and Reporting Program (**Exhibit C** to the Decision Document) should be adopted, the Project should be approved, and the CEQA Notice of Determination (**Exhibit D** to the Decision Document) should be executed and filed with the Office of Planning and Research, then please sign the blocks as indicated. These decisions complete the review and consideration required by CEQA for approving the Milburn Pond Isolation Project as proposed.

Filing of the Notice of Determination by staff at the Office of Planning and Research will mark the beginning of a 30-day statute of limitations to challenge the adequacy of

the 2022 FEIR as set forth in §15112(c) (1) of the State CEQA Guidelines. At this time, DWR will also pay any necessary DFW filing fees.

This memo and attachments will be kept as part of the Administrative Record for the Project and will be maintained as an electronic file by the South Central Region Office and with the DWR Environmental Coordination Committee online (unless an alternative archive system is established).

Please call Karen Dulik, Environmental Program Manager, at 559-230-3361 if you have any questions or need additional information about the Project.

APPROVAL RECOMMENDED

I recommend that, after reviewing and considering the attached Final EIR, you make the decisions included in the attached Decision Document.

Karen Dulik
Karen Dulik
Environmental Program Manager

6/28/2022
Date

Approved for legal form

Laurence Kerckhoff
Laurence Kerckhoff
Attorney IV

6/28/2022
Date

Attachments

Decision Document
Exhibit A FEIR (CD)
Exhibit B Findings and Statement of Overriding Considerations
Exhibit C Mitigation Monitoring and Reporting Program
Exhibit D Notice of Determination