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Governor's Office of Planning & Research

Dec 18 2020

December 18, 2020

STATE CLEARINGHOUSE

Dana Munn, General Manager
Shafter-Wasco Irrigation District
P.O. Box 1168
Wasco, California 93280
dmunn@swid.org

**Subject: Shafter-Wasco Irrigation District Pipeline Improvements for Bell Recharge Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
State Clearinghouse No. 2020110246**

Dear Mr. Munn:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Shafter-Wasco Irrigation District (SWID) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

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

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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

Water Rights: The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200 et seq. CDFW, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

PROJECT DESCRIPTION SUMMARY

SWID proposes the installation of a new, one-mile-long, Class 125, 21-inch diameter bi-directional PVC pipe within the Kern County road right-of-way (ROW) along Merced Avenue and Mannel Avenue. The new bi-directional pipeline would connect the north and south systems and facilitate water movement through the District. The pipeline would also connect to three existing turnouts west of Mannel Avenue (1.7-1.5-8, 1.7-1.5-10, and 1.7-1.5-12) and another existing 15-inch diameter pipe section of Lateral 134.4-1.7S-1.5E, west of Mannel Avenue. The proposed project would also increase the capacity of an existing pump station from three cubic feet per second (cfs) to 10 cfs, on Beech Avenue.

Proponent: SWID

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Objectives: The Project would provide a bi-directional connection between SWID's north and south distribution systems. By connecting the north and south systems, SWID would convey surplus surface water, when available during wet years, to the recharge facility for storage as groundwater. The recharged water would be available to growers to withdraw using existing grower wells during dry years, to help meet irrigation demands in dry periods.

Location: The Project area is located within SWID boundary, approximately one mile north of the City of Shafter, Kern County, California

Timeframe: Project construction is expected to be completed prior to November 2021.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SWID in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife, i.e., biological resources. Editorial comments or other suggestions may also be included to improve the document. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, a review of aerial photographs of the Project and surrounding habitat, several special status species could potentially be impacted by Project activities.

In particular, CDFW is concerned regarding potential impacts for the following special status wildlife species and habitats known to occupy the Project area: the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State fully protected white-tailed kite (*Elanus leucurus*), and the State species of special concern burrowing owl (*Athene cunicularia*).

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

CDFW recommends that the following modifications and/or edits be incorporated into the MND, including proposed avoidance, minimization, and compensatory measures, prior to its adoption by SWID.

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Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin kit fox (SJKF)

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

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

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

Evidence impact is potentially significant: Habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). Kern County supports relatively large areas of high and medium suitability SJKF habitat (Cypher et al. 2013). The Project area is bordered by highly suitable habitat in an area that is otherwise under intensive agriculture.

Recommended Mitigation Measure 1: SJKF Habitat Assessment

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

Recommended Mitigation Measure 2: SJKF Surveys and Minimization

CDFW recommends assessing presence or absence of SJKF by having qualified biologists conduct surveys of Project areas and a 500-foot buffer of Project areas to

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detect SJKF and their sign. CDFW also recommends following the USFWS (2011) “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance” during Project implementation.

Recommended Mitigation Measure 3: SJKF Take Authorization

Mitigation Measure BIO-2 of the MND states that if SJKF activity is documented, the appropriate exclusion zone will be established and maintained, in accordance with the *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox* (USFWS 2011). If it is infeasible to implement the prescribed exclusion zone, USFWS will be consulted and alternative measures will be implemented to ensure that impacts are adequately minimized.

SJKF activity or detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Swainson’s Hawk (SWHA) and White-Tailed Kite (WTKI)

Issue: Mitigation Measure BIO-1b specifies that a qualified biologist will conduct surveys of potential Swainson’s hawk nesting trees within ¼ mile of the Project site within 14 days before Project activities begin during the nesting season of April through August. Surveys for WTKI shall be conducted within a minimum 500-foot radius of the Project activities. If any active nests are observed, protective buffers will be established and implemented until the nests are no longer active. A qualified biologist will monitor the nest during project activities to confirm effectiveness of the buffer. The size of 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.

The DEIR analysis does not provide a biological basis for employing a ¼-mile survey radius for SWHA nests without a robust protocol to maximize detection, or for how no-disturbance buffers would be determined as adequate to avoid significant impacts, including but not limited to take (“take” defined pursuant to Fish & G. Code section 86) of individuals through nest failure or other means, as a result of Project implementation.

Specific impact: The MND states that SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and other mature trees located within the Project site and within ½ mile of the Project. In addition, suitable foraging habitat for these species exists within the vicinity of the Project site; annual grassland, alfalfa or grain fields, and livestock pasture that may be used for foraging

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are present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

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

In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA during active nesting. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest, and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nesting success, significantly impacting local nesting SWHA and WTKI.

Recommended Mitigation Measure 4: SWHA and WTKI Avoidance and Tree Replacement

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of the year. The removal of such trees is a potentially significant impact to special status birds of prey by reducing nesting opportunities and affecting local productivity, and CDFW advises mitigation for these impacts. As described above, removal of known nest trees is a potentially significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be

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protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Recommended Mitigation Measure 5: Focused SWHA and WTKI Surveys

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

Recommended Mitigation Measure 6: SWHA and WTKI Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys or at any time during the Project, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

Recommended Mitigation Measure 7: SWHA Take Authorization

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

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI.

COMMENT 3: Tricolored Blackbird (TRBL)

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

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated subsequent development include

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nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

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

Recommended Mitigation Measure 8: TRBL Surveys

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

Recommended Mitigation Measure 9: TRBL Colony Avoidance

If an active TRBL nesting colony is found during preconstruction (preactivity) surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer, in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015), until the breeding season has ended or until a qualified biologist has determined that nesting has ceased and the young have fledged and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, CDFW recommends that an active colony be reassessed to determine its extent within 10 days prior to Project initiation.

Recommended Mitigation Measure 10: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss whether the Project can avoid take and, if take

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avoidance is not feasible, to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b), prior to any Project activities.

COMMENT 4: Burrowing Owl (BUOW)

Issue: Suitable habitat for BUOW occurs within and in the vicinity of the Project (CDFW 2020). BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Habitat both within and bordering the SWID supports suitable grassland habitat.

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

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

Recommended Mitigation Measure 11: BUOW Habitat Assessment

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

Recommended Mitigation Measure 12: BUOW Surveys

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

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Recommended Mitigation Measure 13: BUOW Avoidance

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

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

* meters (m)

Recommended Mitigation Measure 14: BUOW Eviction and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to CDFG (2012), evicting birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. If it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW then recommends mitigation in the form of replacement of occupied burrows with artificial burrows at a minimum ratio of one burrow collapsed to one artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

Editorial Comments and/or Suggestions

SJKF Reporting: Mitigation Measure BIO-2 states that if SJKF are detected in a trench or inside a pipe and are unable to escape voluntarily, the USFWS will be contacted immediately to determine what actions should be taken to adequately minimize potential impacts. The MND does not specify consultation with CDFW regarding these activities. Also, any SJKF mortality must be reported to CDFW and USFWS immediately upon discovery. CDFW recommends that the MND require construction activities to cease and for CDFW be notified immediately upon the discovery of trapped or injured SJKF, and if SJKF mortality is detected.

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Lake and Streambed Alteration: Project activities that have the potential to substantially change the bed, bank, and channel of streams and associated wetlands may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at (559) 243-4593 or R4LSA@wildlife.ca.gov, and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

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

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

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

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causing that change cease and that CDFW be consulted for additional avoidance and minimization measures.

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

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS prior to Project ground disturbance, due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act (FESA) is more stringently defined than under CESA; take under FESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of Project implementation.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be obtained at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data> . The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be


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operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist SWID in identifying and mitigating Project impacts on biological resources. If you have questions regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at the address on this letterhead or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
ec: Annette Tenneboe, California Department of Fish and Wildlife

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REFERENCES

- California Burrowing Owl Consortium (CBOC). 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The Burrowing Owl, Its Biology and Management. Raptor Research Report Number 9.
- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- California Department of Fish and Wildlife (CDFW). 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- CDFW. 2016. Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.
- CDFW. 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 14 December 2020.
- Cypher, B. and N. Frost. 1999. Condition of San Joaquin kit foxes in urban and exurban habitats. *Journal of Wildlife Management* 63: 930–938.
- Cypher, B.L., S.E. Phillips, and P.A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology & Conservation* 16(7): 25-31.
http://www.canids.org/CBC/16/San_Joaquin_kit_fox_habitat_suitability.pdf
- Estep, J. 2009. The influence of vegetation structure on Swainson's hawk (*Buteo swainsoni*) foraging habitat suitability in Yolo County, California. Prepared for the Yolo Natural Heritage Program, Woodland, CA.
- Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California (W. D. Shuford and T. Gardali, editors). *Studies of Western Birds* 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Kelsey, R. 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.

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Meese, R. J., E. C. Beedy, and W. J. Hamilton, III. 2014. Tricolored blackbird (*Agelaius tricolor*), The Birds of North America (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna-org.bnaproxy.birds.cornell.edu/Species-Account/bna/species/tribla>. Accessed December 15, 2017.

Meese, R. J. 2017. Results of the 2017 Tricolored Blackbird Statewide Survey. California Department of Fish and Wildlife, Wildlife Branch, Nongame Wildlife Program Report 2017-04, Sacramento, CA. 27 pp. + appendices.

Orians, G. H. 1961. The ecology of blackbird (*Agelaius*) social systems. Ecological Monographs 31(3): 285–312.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

Swolgaard, C. A., K. A. Reeves, and D. A. Bell. 2008. Foraging by Swainson's hawks in a vineyard-dominated landscape. Journal of Raptor Research 42(3): 188-196.

University of California, Davis (UC Davis). 2020. Tricolored blackbird portal. <https://tricolor.ice.ucdavis.edu/>. Accessed 14 December, 2020.

USFWS. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.

Weintraub, K., T. L. George, and S. J. Dinsmore. 2016. Nest survival of tricolored blackbirds in California's Central Valley. The Condor 118(4): 850–861.

Attachment 1

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

**PROJECT: Shafter-Wasco Irrigation District Pipeline Improvements
for Bell Recharge Project
SCH No.: 2020110246**

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Before Project Activity</i>	
Recommended Mitigation Measure 1: SJKF Habitat Assessment	
Recommended Mitigation Measure 2: SJKF Surveys and Minimization	
Recommended Mitigation Measure 3: SJKF Take Authorization	
Recommended Mitigation Measure 4: SWHA and WTKI Avoidance and Tree Replacement	
Recommended Mitigation Measure 5: Focused SWHA and WTKI Surveys	
Recommended Mitigation Measure 6: SWHA and WTKI Buffers	
Recommended Mitigation Measure 7: SWHA Take Authorization	
Recommended Mitigation Measure 8: TRBL Surveys	
Recommended Mitigation Measure 9: TRBL Colony Avoidance	
Recommended Mitigation Measure 10: TRBL Take Authorization	
Recommended Mitigation Measure 11: BUOW Habitat Assessment	
Recommended Mitigation Measure 12: BUOW Surveys	
Recommended Mitigation Measure 13: BUOW Avoidance	
Recommended Mitigation Measure 14: BUOW Eviction and Mitigation	
Recommended Mitigation Measure 36: Stream and Wetland Mapping	
<i>During Project Activity</i>	

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Recommended Mitigation Measure 2 SJKF Surveys and Minimization	
Recommended Mitigation Measure 4: SWHA and WTKI Avoidance and Tree Replacement	
Recommended Mitigation Measure 6: SWHA and WTKI Buffers	
Recommended Mitigation Measure 9: TRBL Colony Avoidance	
Recommended Mitigation Measure 13: BUOW Avoidance	