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**GAVIN NEWSOM, Governor**  
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Governor's Office of Planning & Research

**Apr 15 2021**

April 15, 2021

## STATE CLEARINGHOUSE

Tim Ashlock, Manager  
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**Subject: Daley Ranch Groundwater Recharge Pond Project (Project)**  
**MITIGATED NEGATIVE DECLARATION (MND)**  
**State Clearinghouse No.: 2021030404**

Dear Mr. Ashlock:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Buena Vista Water Storage District (BVWSD) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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.

**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**

BVWSD proposes the construction of a 40-acre recharge pond within a 92-acre site that would expose sand for percolation at various depths from six to 14 feet deep. Approximately 650,000 cubic yards of soil would be excavated and retained on-site. Maximum recharge estimates, based on a full-year operation schedule, would average 12,000 acre-feet per year. Water from existing BVWSD sources (e.g., Kern River, State Water Project) would be delivered to the groundwater recharge pond via the existing Main Drain Canal. Operation and maintenance activities consisting of sediment removal and regrading the pond are expected to occur every 48 months.

**Proponent:** BVWSD

**Objectives:** The Project has two primary objectives:

- Increase conjunctive management on the west side of Kern County by expanding the area's ability to accept surface water for groundwater recharge during periods when surface water is available; and

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- Reduce agricultural demand by replacing approximately 68 acres of irrigated farmland with spreading grounds.

**Location:** The Project area is located approximately two miles south of the community of Buttonwillow, Kern County, California. The exact location is within Assessor's Parcel Numbers (APNs) 102-080-18, 102-080-19, and 102-080-20. The Project site is bound by Buerkle Road to the north, Wasco Way to the east, and the Main Drain Canal to the south and west.

**Timeframe:** Project construction is proposed to begin in Spring/Summer of 2021 and take approximately 60 days to complete.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist BVWSD 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, and 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 Nelson's antelope squirrel (*Ammospermophilus nelsoni*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), and San Joaquin pocket mouse (*Perognathus inornatus*). Suitable habitat for Crotch bumble bee (*Bombus crotchii*) occurs in the Project vicinity.

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.

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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 BVWSD.

**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 vicinity of the Project boundary (CDFW 2021). 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.

Mitigation Measure BIO-2 (MM 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. MM BIO-2 also states that if SJKF are detected and it is infeasible to implement the prescribed exclusion zone, the USFWS will be consulted and alternative measures will be implemented to ensure impacts are adequately minimized.

**Specific impact:** SJKF den in rights-of-way, 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

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SJKF, and Kern County supports relatively large areas of high and medium suitability SJKF habitat (Cypher et al. 2013). The Project area is currently inactive or fallowed agricultural land that can provide 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 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**

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(b).

### **COMMENT 2: Swainson's Hawk (SWHA)**

**Issue:** Mitigation Measure BIO-1b (MM BIO-1b) specifies that a qualified biologist will conduct surveys of potential Swainson's hawk nesting trees within a ½ mile of the Project site to the extent practicable 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). At a minimum, at least one survey will be conducted within 10 days before Project activities begin during the nesting season. If active SWHA nests are observed, protective buffer 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.

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The MND analysis does not provide a biological basis for how no-disturbance buffers would be determined as adequate to avoid significant impacts, including but not limited to take of individuals through nest failure or other means, as a result of Project implementation.

**Specific impact:** SWHA are known to the Project area and have the potential to nest in mature trees located within ½ mile of the Project. In addition, suitable foraging habitat for these species exists within the Project site and surrounding area; annual grassland, alfalfa or grain fields, and livestock pasture that may be used for foraging are present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA, 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:** Lack of suitable nesting habitat in the San Joaquin Valley limits the local distribution and abundance of SWHA (CDFW 2016). Trees 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).

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.

#### **Recommended Mitigation Measure 4: Focused SWHA Surveys**

To reduce potential Project-related impacts to SWHA, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA, 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.

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### **Recommended Mitigation Measure 5: SWHA Buffers**

If an active SWHA 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 6: 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).

### **COMMENT 3: San Joaquin Antelope Squirrel (SJAS)**

**Issue:** The MND does not include a biological assessment of potential impacts to special status small mammal species known to occur in Project vicinity. SJAS have been documented to occur within areas of suitable habitat in the Project vicinity (CDFW 2021). Suitable SJAS habitat includes areas of grassland, upland scrub, and alkali sink habitats that contain requisite habitat elements, such as small mammal burrows.

**Specific impact:** Without appropriate avoidance and minimization measures for SJAS, potential significant impacts include loss of habitat, burrow collapse, inadvertent entrapment of individuals, reduced reproductive success such as reduced health or vigor of young, and direct mortality of individuals.

**Evidence impact is potentially significant:** Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJAS. Very little suitable habitat for this species remains along the western floor of the San Joaquin Valley (ESRP 2021). Areas of suitable habitat within the Project Area vicinity represent some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture, and ground-disturbing activities are anticipated during Project implementation.

### **Recommended Mitigation Measure 7: SJAS Habitat Assessment**

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

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### **Recommended Mitigation Measure 8: SJAS Surveys**

In areas of suitable habitat, CDFW recommends that a qualified biologist conduct focused daytime visual surveys for SJAS using line transects with 10- to 30-meter spacing within Project areas and a 50-foot buffer around those areas. CDFW further advises that these surveys be conducted between April 1 and September 20, during daytime temperatures between 68° and 86° F (CDFG 1990), to maximize detectability.

### **Recommended Mitigation Measure 9: SJAS Avoidance**

If suitable habitat is present and surveys are not feasible, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances of suitable size for SJAS use until the completion of Project activities.

### **Recommended Mitigation Measure 10: SJAS Take Authorization**

SJAS detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire a State ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

### **COMMENT 4: Burrowing Owl (BUOW)**

**Issue:** BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. BUOW may also occur in some agricultural areas, ruderal grassy fields, vacant lots and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in the area (Gervais et al. 2008). Habitat both within and bordering the Project site supports suitable habitat for BUOW (CDFW 2021).

Mitigation Measure BIO-1a (MM BIO-1a) states if any occupied BUOW burrows are observed, protective buffers will be established and implemented. The MND proposes protective buffers for BUOW based upon whether the burrow supports an active nest, the type and intensity of Project disturbance, presence of visual buffers, and other variables that could affect susceptibility of the owls to disturbance. The MND analysis does not provide a biological basis how no-disturbance buffers would be determined as adequate to avoid significant impacts, including but not limited to take of individuals through nest failure or other means, as a result of Project implementation.

**Specific impact:** Potentially significant impacts to nesting and non-nesting burrowing owls can occur as a result of ground-impacting activity, such as grading

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and flooding within active and fallow agricultural areas, and as a result of noise, vibration, and other disturbance caused by equipment and crews. Potential impacts associated with Project 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.

#### **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

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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.

#### **COMMENT 5: Other State Species of Special Concern**

**Issue:** San Joaquin pocket mouse and American badger are known to inhabit grassland areas with friable soils (Williams 1986). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2021).

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

**Evidence impact is potentially significant:** Habitat loss threatens San Joaquin pocket mouse and American badger. Ruderal habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. As a result, ground-and

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vegetation-disturbing activities associated with development of the Project may have the potential to significantly impact local populations of these species.

**Recommended Mitigation Measure 15: Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if Project areas or their immediate vicinity contain suitable habitat for San Joaquin pocket mouse and American badger.

**Recommended Mitigation Measure 16: Surveys**

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

**Recommended Mitigation Measure 17: Avoidance**

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

**COMMENT 6: Crotch Bumble Bee (CBB)**

**Issue:** Suitable habitat for CBB, a rare and endemic bumble bee species, has been documented to occur within the vicinity of the Project area (CDFW 2020). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014, Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local CBB populations.

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

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

### **Recommended Mitigation Measure 18: CBB Avoidance**

CDFW recommends that all small mammal burrows and thatched/bunch grasses be surveyed for the species during the optimal flight period (April 1-July 31) during peak blooming period of preferred plant species prior to Project implementation. Avoidance of detected CBB queens or workers is encouraged to allow CBBs to leave the project site on their own volition. Avoidance and protection of a detected CBB nest prior to or during Project implementation is encouraged with delineation and observance of a 50-foot no-disturbance buffer.

### **Editorial Comments and/or Suggestions**

**Project Description Clarification:** One of the two Project objectives listed in the MND includes replacing irrigated farmland with 68 acres of spreading grounds, which are not evaluated elsewhere in the MND. It is unclear whether the spreading grounds are related to the proposed Project, including the proposed 40-acre recharge pond. CDFW recommends that the MND describe in greater detail the proposed 68-acre spreading grounds and evaluate their biological impacts.

**Water Rights:** The MND states in page 17 of Appendix D that the source of water available for use in the Daley Ranch Project will include water from the Kern River diverted under BVWSD's rights to Kern River water available at the Second Point of Measurement on the river, a location commonly referred to as Second Point. Other sources of water will include BVWSD's contract with the Kern County Water Agency for State Water Project (SWP) water and SWP Article 21 water when available under contract. The Project is part of an initiative being undertaken by BVWSD to become recognized by the United States Bureau of Reclamation (Reclamation) as an acknowledged groundwater bank, eligible to store water received from Central Valley Project (CVP) contractors. Therefore the Project may, in the future, also receive water from the CVP, if approved by Reclamation.

CDFW recommends that the MND include a detailed description of the water rights and water entitlements for the points of diversion and places of use that pertain to the proposed Project. CDFW recommends including information on the historic and current water rights and water use agreements/contracts including pre-1914 and appropriative rights, riparian rights, prescriptive rights, and adjudications.

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CDFW recommends that the MND address whether BVWSD will be filing a change petition or a new application for additional surface water. As stated previously, CDFW, as Trustee Agency, is consulted by the 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. Given the potential for impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

**Surface Water Diversions from outside the Project Boundary:** Project-related diversions acquiring surface water from outside of the Project boundary, including the Sacramento-San Joaquin River Delta (Delta) and the San Joaquin and Kern River watersheds may impact additional riparian, wetland, fisheries, and terrestrial (i.e., upland) wildlife species and habitats. Special-status species and habitats located in watersheds outside of the Project area vary depending upon location. They may include, but are not limited to, the Federal threatened Central Valley distinct population segment steelhead (*Oncorhynchus mykiss*), the Federal and State threatened Central Valley spring-run evolutionary significant unit (ESU) Chinook salmon (*O. tshawytscha*), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), the State species of special concern hardhead (*Mylopharodon conocephalus*), the State and Federal threatened giant garter snake (*Thamnophis gigas*), the State threatened Swainson's hawk and tricolored blackbird, the State species of special concern burrowing owl and western pond turtle, and numerous additional special-status species and habitats. CDFW recommends that the MND analyze the proposed acquisition of surface water from all watersheds and any potential direct, indirect, and cumulative biological impacts to fish and wildlife species and their habitats, as well as to properties permanently conserved to protect those resources.

**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

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Central Region LSA Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto: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 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.

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

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## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist BVWSD 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, at (559) 243-4014 extension 231, or by email at [Annette.Tenneboe@wildlife.ca.gov](mailto:Annette.Tenneboe@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Enclosure

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). 1990. Approved Survey Methodologies for Sensitive Species. San Joaquin Antelope Squirrel, *Ammospermophilus nelsoni*. California Department of Fish and Game, Region 4. May 8, 1990.
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- CDFW. 2016. Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.
- CDFW. 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 6 April 2021.
- 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](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.
- Endangered Species Recovery Program (ESRP). 2021. San Joaquin antelope squirrel. <http://esrp.csustan.edu/speciesprofiles/profile.php?sp=amne>. Accessed 6 April, 2021.
- 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.

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- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R., S. Colla, S. Jepsen, L. Richardson, R. Thorp, and S. F. Jordan. 2014. Draft IUCN Assessments for North American *Bombus* spp. for the North American IUCN Bumble Bee Specialist Group. The Xerces Society for Invertebrate Conservation, [www.xerces.org](http://www.xerces.org), Portland, OR.
- Hatfield, R., S. Jepsen, R. Thorp, L. Richardson, and S. Colla. 2015. *Bombus crotchii*. The IUCN Red List of Threatened Species.  
<http://dx.doi.org/10.2305/IUCN.UK.2015--2.RLTS.T44937582A46440211.en>. Accessed October 27, 2020.
- Swainson's Hawk Technical Advisory Committee (SWHA TAC). 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.
- 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.
- Williams, D. F. 1986. Mammalian species of special concern in California. Calif. Dept. Fish and Game, Sacramento. Admin. Rep. 86-1. 112pp.
- Williams, P. H., R. W. Thorp, L. L. Richardson, and S. R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the State of California Fish and Game Commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

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

**PROJECT: Daley Ranch Groundwater Recharge Pond Project  
STATE CLEARINGHOUSE No.: 2021030404**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Project Activity</i>	
<b>Recommended Mitigation Measure 1: SJKF Habitat Assessment</b>	
<b>Recommended Mitigation Measure 2: SJKF Surveys and Minimization</b>	
<b>Recommended Mitigation Measure 3: SJKF Take Authorization</b>	
<b>Recommended Mitigation Measure 4: Focused SWHA Surveys</b>	
<b>Recommended Mitigation Measure 5: SWHA Buffers</b>	
<b>Recommended Mitigation Measure 6: SWHA Take Authorization</b>	
<b>Recommended Mitigation Measure 7: SJAS Habitat Assessment</b>	
<b>Recommended Mitigation Measure 8: SJAS Surveys</b>	
<b>Recommended Mitigation Measure 9: SJAS Avoidance</b>	
<b>Recommended Mitigation Measure 10: SJAS Take Authorization</b>	
<b>Recommended Mitigation Measure 11: BUOW Habitat Assessment</b>	
<b>Recommended Mitigation Measure 12: BUOW Surveys</b>	
<b>Recommended Mitigation Measure 13: BUOW Avoidance</b>	
<b>Recommended Mitigation Measure 14: BUOW Eviction and Mitigation</b>	
<b>Recommended Mitigation Measure 15: San Joaquin Pocket Mouse and American Badger Habitat Assessment</b>	
<b>Recommended Mitigation Measure 16: San Joaquin Pocket Mouse and American Badger Surveys</b>	

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<b>Recommended Mitigation Measure 17: San Joaquin Pocket Mouse and American Badger Avoidance</b>	
<b>Recommended Mitigation Measure 18: CBB Avoidance</b>	
<i>During Project Activity</i>	
<b>Recommended Mitigation Measure 2 SJKF Surveys and Minimization</b>	
<b>Recommended Mitigation Measure 5: SWHA Buffers</b>	
<b>Recommended Mitigation Measure 9: SJAS Avoidance</b>	
<b>Recommended Mitigation Measure 13: BUOW Avoidance</b>	
<b>Recommended Mitigation Measure 17: San Joaquin Pocket Mouse and American Badger Avoidance</b>	
<b>Recommended Mitigation Measure 18: CBB Avoidance</b>	