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June 3, 2021

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City of King
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Subject: King City Wastewater Treatment Plant Improvements (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH No.: 2021050084

Dear Mr. Aguilar:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of King (City) 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 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

[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.

proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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

Water Rights: Prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, the City as owner of the wastewater treatment plant shall obtain approval of the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1211. The City as petitioner must provide a copy of the complete petition and request consultation with CDFW regarding the potential effects of the proposed change(s) on water quality, fish, wildlife, and other instream beneficial uses (Cal. Code Regs., tit. 23, § 794). CDFW, as Trustee Agency, is consulted by the SWRCB during the petition 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 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

The proposed improvements would result in the construction of a new wastewater treatment facility intended to comply with new discharge requirements, produce unrestricted re-use quality recycled water and provide adequate treatment capacity for the next 20 years. Project construction would involve: 1) the construction of wastewater treatment facilities that would provide 1.3 million gallons per day (mgd) of secondary treatment capacity after completion of Phase I of construction with an ultimate total facility capacity of 2.0 mgd. Current permitted capacity of the treatment plant is 1.2 mgd. Phase I represents an increase of 0.1 mgd (or 100,000 gallons per day) of total facility capacity; 2) provision of tertiary treatment facilities that would produce recycled water for agricultural and landscape irrigation; 3) construction of a recycled water distribution system utilizing existing and future pipelines along San Antonio Drive with one branch along Spreckles Road and the second branch leading to the northeast industrial area of the City and 4) provision of effluent disposal facilities.

Proponent: City of King

Location: The proposed Project is located north of the City limits, on the east side of Highway 101.

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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 (CNDDB) 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 and Federally endangered least Bell's vireo (*Vireo bellii pusillus*), the State threatened bank swallow (*Riparia riparia*) and tricolored blackbird (*Agelaius tricolor*), the California Rare Plant Rank (CRPR) 1B.2 Davidson's bush-mallow (*Malacothamnus davidsonii*), CRPR 1B.3 umbrella larkspur (*Delphinium umbraculorum*), and the State species of special concern Monterey hitch (*Lavinia exilcauda harengus*), burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), western pond turtle (*Emys marmorata*), and Northern California legless lizard (*Anniella pulchra*). Suitable habitat for the rare and endemic western bumble bee (*Bombus occidentalis*) also occurs in the Project vicinity. The Salinas River supports the South-Central California Coast Steelhead (*(Oncorhynchus mykiss*) (SCCCS) Distinct Population Segment (DPS), which is a State species of special concern and Federally threatened. The Salinas River is designated by the Federal Endangered Species Act (ESA) as critical habitat for the SCCCS DPS.

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB 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 the City.

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 and to directly impact individuals if present during construction activities. However, the MND does not address potential impacts to SJKF.

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 SJKF, and the Project area in Monterey County supports areas of high and medium suitability SJKF habitat (Cypher et al. 2013). The Project area is currently urban area surrounded by grassland 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 recommendations by USFWS (2011) 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 subdivision (b).

COMMENT 2: Least Bell's Vireo (LBVI)

Issue: LBVI occurrences have been documented south of the Project boundary in the vicinity of San Lucas, and suitable riparian habitat for nesting occurs in the Project vicinity (CDFW 2021). The MND acknowledges the potential for the Project to temporarily disturb and permanently alter suitable habitat for special-status species and to directly impact individuals if present during construction activities. However, the MND does not address potential impacts to LBVI.

Specific impact: Without appropriate avoidance and minimization measures, potential significant impacts associated with subsequent activities may include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: The reduction of LBVI numbers and distribution is associated with widespread loss of riparian habitats and brood parasitism by the brown-headed cowbird (*Molothrus ater*) (USFWS 1994). A reduction in discharge could affect the sustainability of the riparian woodland and aquatic habitats within the Salinas River by reducing the amount of water available to native plant species within the riparian woodland. This may subsequently lead to a reduction in the native plant species composition of the riparian woodland, and

allow adjacent nonnative plant species to invade and colonize the habitat, reducing the quality of habitat for and presence of sensitive species such as the LBVI.

The MND is not clear whether the Project will involve tree removal or other disturbance to nests. CDFW considers removal of known nest trees and habitat, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of LBVI, it could also result in take under CESA. In addition, depending on the timing of construction, 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 LBVI.

Recommended Mitigation Measure 4: Focused LBVI Surveys

To reduce potential Project-related impacts to LBVI, CDFW recommends that a qualified wildlife biologist conduct surveys following the survey methodology developed by USFWS (2001) 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 5: LBVI Buffers

If an active LBVI nest is found during protocol or preconstruction surveys, CDFW recommends implementing a maintaining a minimum 500-foot 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: LBVI Nest Avoidance and Habitat Mitigation

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. Regardless of nesting status, if potential or known LBVI nesting habitat is removed, CDFW recommends it be replaced with appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Recommended Mitigation Measure 7: LBVI Take Authorization

If a 500-foot no-disturbance nest buffer is not feasible, consultation with CDFW is warranted and acquisition of an ITP for LBVI may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 3: Bank Swallow (BASW)

Issue: BASW occurrences have been documented in the Project vicinity (CDFW 2021). The MND acknowledges the potential for the Project to temporarily disturb and permanently alter suitable habitat for special-status species and to directly impact individuals if present during construction activities. However, the MND does not address potential impacts to BASW.

Specific impact: Without appropriate avoidance and minimization measures, potential significant impacts associated with subsequent activities may include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: In the summer BASW are restricted to riparian, lacustrine, and coastal areas with vertical banks, bluffs, and cliffs with fine-textured or sandy soils, into which it digs nesting holes. The range in California has been significantly reduced since 1900 (CDFW 1989). While beeding colonies used to be common in California, now only about 110 to 120 colonies remain within the state. The majority of breeding population in California occurs along banks of the Sacramento and Feather rivers. Other colonies persist along the central coast from Monterey to San Mateo counties (Remsen 1978, CDFW 1999).

Channelization and stabilization of banks of nesting rivers, and other destruction and disturbance of nesting areas, are major factors causing the marked decline in numbers in recent decades. The CDFW is concerned that, depending on the timing of construction, 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 BASW.

Recommended Mitigation Measure 8: Focused BASW Surveys

To reduce potential Project-related impacts to BASW, CDFW recommends that a qualified wildlife biologist conduct focused surveys for BASW following standard survey methodology developed by the Bank Swallow Technical Advisory Committee (2017) prior to Project initiation, within the Project area and a 500-foot buffer around

the Project area. In addition, if Project activities will take place during the typical avian 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 9: BASW Buffers

If an active BASW nest, or nest colony, is found during protocol or preconstruction surveys, CDFW recommends implementing and maintaining a minimum 500-foot 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 10: BASW Take Authorization

If a 500-foot no-disturbance nest buffer is not feasible, consultation with CDFW is warranted and acquisition of an ITP for BASW may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 4: Tricolored Blackbird (TRBL)

Issue: TRBL are known to occur in the Project vicinity (CDFW 2021, 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 (Meese et al. 2017).

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

Evidence impact would be significant: 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 11: 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 12: TRBL Colony Avoidance

If an active TRBL nesting colony is found during surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer, in accordance with CDFW's (2015) "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 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 13: 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 avoidance is not feasible, to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b), prior to any Project activities.

COMMENT 5: Western Bumble Bee (WBB)

Issue: WBB occurrence has been documented within the vicinity of the Project area (CDFW 2021). Formerly found throughout of much of California, the abundance of Western bumble bee is now greatly reduced. Suitable WBB habitat includes areas of grasslands and meadows with abundant floral resources that contain requisite habitat elements, such as small mammal burrows. WBB may also be found in natural areas within urban environments (Williams et al. 2014, Hatfield et al. 2015). WBB primarily nest underground in abandoned small mammal burrows but may also be able to nest aboveground such as in log cavities (Hobbs 1968, Macfarlane et al. 1994). Overwintering sites utilized by WBB may include areas with soft, friable soil, leaf litter, or other debris (Goulson 2010, Williams et al. 2014).

Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

Specific impact: Without appropriate avoidance and minimization measures for WBB, 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 (Xerces 2018).

Evidence impact is potentially significant: WBB populations, formerly common, have declined sharply since the late 1990s from central California to southern British Columbia. Factors affecting WBB ability to survive and reproduce include agricultural intensification, habitat loss and degradation, pesticide use, pathogens from managed pollinators, competition with non-native bees, genetic factors, and climate change (Goulson 2010, Williams et al. 2009, Hatfield et al. 2012).

Recommended Mitigation Measure 14: WBB Avoidance

CDFW recommends that all small mammal burrows and areas with leaf litter or debris be surveyed for the species during the optimal flight period from early April to early November and during peak blooming period of preferred plant species prior to Project implementation (Thorp 1983). Avoidance of detected WBB queens or workers is encouraged to allow WBBs to leave the Project site of their own volition. Avoidance and protection of a detected WBB nest prior to or during Project implementation is encouraged with delineation and observance of a 50-foot no-disturbance buffer.

COMMENT 6: Special-Status Plants

Issue: The MND does not address whether special-status plant species have potential to occur within the Project area. Special-status plant species meeting the definition of rare or endangered under CEQA section 15380 are known to occur within the Project and surrounding area. Davidson's bush-mallow and umbrella larkspur have been documented within the Project vicinity.

Specific impact: Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts associated with subsequent construction include loss of habitat, loss or reduction of productivity, and direct mortality.

Evidence impact would be significant: Davidson's bush-mallow, umbrella larkspur, and many other special-status plant species are threatened by grazing and agriculture, maintenance activities, erosion, and urban development (CNPS 2021).

Recommended Mitigation Measure 15: Special-Status Plant Surveys

CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (CDFG 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Recommended Mitigation Measure 16: Special-Status Plant Avoidance

CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW may be warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 17: Listed Plant Species Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is warranted. Take authorization would occur through issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 7: 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). BASW occurrences have been documented in the Project vicinity, and habitat both within and bordering the Project site supports suitable habitat for BUOW (CDFW 2021).

Specific impact: Potentially significant impacts to nesting and non-nesting BUOW can occur as a result of ground-impacting activity, such as grading 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. The Project and surrounding area contain remnant undeveloped land but is otherwise intensively managed for agriculture; therefore, subsequent ground-disturbing activities associated with subsequent constructions have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Mitigation Measure 18: BUOW Habitat Assessment

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

Recommended Mitigation Measure 19: BUOW Surveys

Where 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 (1993) "*Burrowing Owl Survey Protocol and Mitigation Guidelines"* 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 20: 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 21: 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 8: Other State Species of Special Concern

Issue: American badger and Northern California legless lizard are known to inhabit grassland areas with friable soils (Williams 1986, Thomson et al. 2016). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2021).

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

Evidence impact is potentially significant: Habitat loss threatens all of the species mentioned above (Williams 1986, Thomson et al. 2016). Habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. As a result, ground-and vegetation-disturbing activities associated with development of the Project have the potential to significantly impact local populations of these species.

Recommended Mitigation Measure 22: Habitat Assessment

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

Recommended Mitigation Measure 23: 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 24: 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.

Editorial Comments and/or Suggestions

Project Description: The MND states that the Project includes the construction of new wastewater treatment facilities, effluent disposal facilities, and recycled water distribution system utilizing existing and future pipelines along San Antonio Drive, Spreckles Road, and the northeast industrial area of the City. However, the Project description lacks details such as location maps of the individual Project components. CDFW recommends that the MND describe in greater detail the proposed Project in order to be able to evaluate and provide adequate feedback regarding potential biological impacts.

Biological Impact Analysis and Proposed Mitigation Measures: The MND acknowledges the potential for impacts to sensitive biological resources and states, "The Salinas River and its surrounding riparian habitat are located immediately west of the existing WWTP. The adjacent areas contain the dense, highly vegetated riparian habitat that could support candidate, sensitive or special status plant and/or animal species. Given its proximity to these significant biological resources, the proposed Project could result in adverse effects upon sensitive biological habitats, candidate, sensitive or special status species or may result in significant impacts to existing riparian habitats or other sensitive natural communities, federally protected wetlands, or established migratory wildlife corridors." A biological impact analysis was not included in the MND.

Mitigation Measure BR-1(MMBR-1) of the MND states that a Biological Resources Assessment shall be prepared by a qualified local field biologist to assess potential impacts to biological resources and identify any potentially significant impacts that cannot be reduced to a less-than-significant level. Mitigation Measure BR-2 (MMBR-2) states that prior to any construction activities, the City shall secure all required state and/or federal permits relative to the proximity of the WWTP to the Salinas River and its adjacent habitats.

Mitigation includes measures that avoid, minimize, reduce or eliminate, restore, and/or compensate for impacts (CEQA Guidelines § 15370). MMBR-1 and MMBRf-2 do not meet the CEQA definition of mitigation in that the preparation of a subsequent Biological Resources Assessment and potential acquisition of state and/or federal permits are not, in and of themselves, adequate mitigation for impacts to biological resources. CDFW recommends that the City recirculate the MND with an analysis of impacts to biological resources prepared by a qualified biologist, and provide appropriate mitigation measures that avoid, minimize and mitigate for potential biological impacts. CDFW recommends that the biological analysis incorporate the biological surveys and recommendations listed above.

Water Rights: The MND did not provide information on whether the Project will result in decreased discharge of treated wastewater into the adjacent Salinas River. CDFW recommends that the MND clarify whether or not the Project will result in diversions of treated wastewater from the Salinas River, and include a detailed description of the water rights and water entitlements for points of diversion and places of use that pertain to the Project.

CDFW recommends that the MND address whether the City will be filing a change petition or a new application regarding diversion of treated wastewater. 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.

Salinas River Riparian Impacts: A reduction in discharge into the Salinas River of treated wastewater may affect the aquatic and riparian habitat and associated species of the river by reducing the amount of surface flow in the active stream channel at the discharge location and downstream, as well as reducing the amount of subsurface flow from percolation.

Watershed and habitat protection are vital to the management of California's diverse fish, wildlife, and plant resources. The riparian zone of the Salinas River in the vicinity of the City's wastewater treatment plant supports mature riparian woodland habitat and

may potentially support several sensitive species listed as threatened or endangered under CESA and the ESA, as well as several State species of special concern. This includes least Bell's vireo, San Joaquin kit fox, bank swallow, tricolored blackbird, western pond turtle, Monterey hitch, and the SCCCS steelhead DPS.

CDFW is concerned that the proposed Project may result in direct and cumulative adverse impacts to these fish and wildlife and other public trust resources supported by the Salinas River and its associated riparian habitats, and that any proposed reduction in discharge will affect the sustainability of the riparian woodland and aquatic habitats within the stream. CDFW recommends that the MND be amended and recirculated with a hydrologic study or other information that identifies and analyzes the impacts of surface and subsurface water reduction on the riparian woodland and aquatic habitats associated with the Salinas River and the species supported by these habitats, and includes appropriate measures to avoid, minimize, and mitigate potential biological impacts due to surface flow reduction.

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 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 ESA is more stringently defined than under CESA; take under ESA 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. Similarly, for potential effects to steelhead and its critical habitat, CDFW recommends consultation with the National Marine Fisheries Service (NMFS). Consultation with the USFWS and NMFS in order to comply with ESA 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 (CNDDB). The CNDDB field survey form can be obtained at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data . The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City 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.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

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

ec: Annette Tenneboe, California Department of Fish and Wildlife

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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: King City Wastewater Treatment Plant Improvements

STATE CLEARINGHOUSE No.: 2021050084

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Before Project Activity	
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: Focused LBVI Surveys	
Recommended Mitigation Measure 5: LVBI Buffers	
Recommended Mitigation Measure 6: LBVI Nest Avoidance and Habitat Mitigation	
Recommended Mitigation Measure 7: LVBI Take Authorization	
Recommended Mitigation Measure 8: Focused BASW Surveys	
Recommended Mitigation Measure 9: BASW Buffers	
Recommended Mitigation Measure 10: BASW Take Authorization	
Recommended Mitigation Measure 11: TRBL Surveys	
Recommended Mitigation Measure 12: TRBL Colony Avoidance	
Recommended Mitigation Measure 13: TRBL Take Authorization	
Recommended Mitigation Measure 14: WBB Avoidance	
Recommended Mitigation Measure 15: Special-Status Plant Surveys	
Recommended Mitigation Measure 16: Special-Status Plant Avoidance	

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Recommended Mitigation Measure 17: Listed Plant Species Take Authorization	
Recommended Mitigation Measure 18: BUOW Habitat Assessment	
Recommended Mitigation Measure 19: BUOW Surveys	
Recommended Mitigation Measure 20: BUOW Avoidance	
Recommended Mitigation Measure 21: BUOW Eviction and Mitigation	
Recommended Mitigation Measure 22: Habitat Assessment – American badger, California legless lizard	
Recommended Mitigation Measure 23: Surveys – American badger, California legless lizard	
Recommended Mitigation Measure 24: Avoidance – American badger, California legless lizard	
During Project Activity	
Recommended Mitigation Measure 2 SJKF Surveys and Minimization	
Recommended Mitigation Measure 5: LVBI Buffers	
Recommended Mitigation Measure 6: LBVI Nest Avoidance and Habitat Mitigation	
Recommended Mitigation Measure 9: BASW Buffers	
Recommended Mitigation Measure 12: TRBL Colony Avoidance	
Recommended Mitigation Measure 14: WBB Avoidance	
Recommended Mitigation Measure 16: Special-Status Plant Avoidance	
Recommended Mitigation Measure 20: BUOW Avoidance	
Recommended Mitigation Measure 24: Avoidance – American badger, California legless lizard	