



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



May 18, 2022

Kim Mayfield  
Riverdale Irrigation District  
P.O. Box 683  
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[riverdaleirrig@gmail.com](mailto:riverdaleirrig@gmail.com)



**Subject: Blythe Avenue Recharge Basin Project (Project)  
Mitigated Negative Declaration (MND)  
State Clearinghouse No.: 2022040362**

Dear Ms. Mayfield:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Riverdale Irrigation District (Riverdale ID) 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 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

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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.

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 2

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.

**Bird Protection:** CDFW has jurisdiction over actions that may 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 section 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

**Water Rights:** The capture of unallocated stream flows to artificially recharge groundwater aquifers is 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**

Riverdale ID is a water contractor in the North Fork Kings Subbasin. Due to the implementation of the Sustainable Groundwater Management Act, Riverdale ID is pursuing the Project to enhance groundwater levels and achieve sustainability through groundwater recharge and banking for recovery in dry years. The Project involves one phase of construction including two groundwater recharge basin facilities. Construction of the project will include equipment mobilization, excavation of earthwork for recharge basins, and construction of basin perimeter berms at both sites. Project components could include constructing ponds/cells within the two separate basins, as well as performance testing and demobilization. Depth of cut is estimated to be in the range of three to six feet, with an estimated volume of 100,000 cubic yards of material, which will be excavated and compacted on site. New berm construction would not exceed six feet in height, measured from the exterior toe to the top of new berm. The Project will also require modification or replacement of existing structures and a flow measurement standpipe structure.

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 3

There are two tie-in locations to the existing Turner Ditch canal. One proposed 500-foot-long pipeline will connect the southern property to the canal, and a 50-foot pipeline will connect the northern property. Diameter of the pipelines will be 60 inches or less. The proposed project will include two turnouts with capacity for 35 cubic feet per second. The Project will also include a proposed flow measurement standpipe structure.

**Proponent:** Riverdale ID

**Location:** The Project consists of approximately 24 acres west of the community of Riverdale in Fresno County. The nearest cross streets are West Mount Whitney Avenue and South Blythe Avenue. The Project properties are located in Assessor's Parcel Numbers 053-200-09S (05320028ST), 053-440-18S, and 053-440-39S.

**Timeframe:** Active construction of the basins is estimated to take six months.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Riverdale ID 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 including but not limited to the State threatened and federal endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*). Other species of birds, amphibians, reptiles, mammals, fish, and plants also compose the local ecosystem.

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.

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 4

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 Riverdale ID

**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)**

**Issues and Impacts:** SJKF occurrences have been documented within the vicinity of the Project boundary (CDFW 2022). The MND states that a reconnaissance-level survey of the Project area field conducted on January 6, 2022 did not include focused surveys for special status species. Table 4-7 of the MND states that the potential for SJKF is unlikely because the Project area and surrounding areas are frequently cultivated agricultural lands. CDFW reviewed aerial photographs taken between 1997 and 2022 showing that the Project site consists of fallow/ruderal habitat that is subject to periodic disturbance consistent with discing activities.

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. Absence in any one year is not necessarily a reliable predictor of future SJKF potential to occur on a site. As a result, there is potential for SJKF to occupy all suitable habitat within the Project boundary and surrounding area. Habitat fragmentation and loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (ESRP 2022). 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.

**Recommended Mitigation Measure 1: 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 recommends that presence/absence of SJKF be assessed by conducting surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground-disturbing activities, and that den avoidance buffers be implemented by following the USFWS

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 5

(2011) “Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance”.

**Recommended Mitigation Measure 2: 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: Swainson’s Hawk (SWHA)**

**Issues and Impacts:** SWHA occurrences have been documented within the Project vicinity (CDFW 2022). The MND acknowledges the potential for the Project to impact nesting SWHA and Mitigation Measure BIO-3 states that the biologist would determine appropriate setback distances based on applicable CDFW and/or USFWS guidelines and/or the biology of the species. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Approval of the Project may lead to ground-disturbing activities that involve noise, groundwork, and movement of workers and equipment. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

**Recommended Mitigation Measure 3: SWHA Surveys**

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson’s Hawk Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation, within a ½-mile survey distance from the construction area. The SWHA TAC survey protocol includes early season surveys to assist the Project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

**Recommended Mitigation Measure 4: SWHA No-Disturbance Buffer**

If Project activities will take place during the nesting season of March 1 through August 31, CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends that a minimum no-disturbance buffer of ½-mile be delineated around active nests 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.

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 6

**Recommended Mitigation Measure 5: SWHA Take Authorization**

CDFW recommends that in the event an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP pursuant to Fish and Game Code section 2081, subdivision (b) is necessary to comply with CESA.

**COMMENT 3: Burrowing Owl (BUOW)**

**Issues and Impacts:** Table 4-7 in the MND lists the potential for BUOW as unlikely because the Project site is frequently cultivated. Based on CDFW review of aerial photographs taken over a timespan of several years, the Project site appears to be fallow/ruderal habitat with periodic disturbance consistent with discing activities. 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). Ruderal habitat with small mammal burrows both in the Project site and the Project vicinity supports suitable habitat for BUOW (CDFW 2022). 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.

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 6: BUOW Surveys**

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

Kim Mayfield  
 Riverdale Irrigation District  
 May 18, 2022  
 Page 7

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 7: 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 8: BUOW Eviction and Mitigation**

If BUOW are found within the recommended buffers and avoidance is not possible, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW then recommends mitigation in the form of replacement of occupied burrows with artificial burrows at a minimum ratio of one burrow collapsed to one artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

**Editorial Comments and/or Suggestions**

**Riparian and Aquatic Impacts:** Watershed and habitat protection are vital to the management of California's diverse fish, wildlife, and plant resources. The Project area is located adjacent to Turner Ditch and is approximately 3.5 miles north of the Fresno Slough and the North Fork Kings River. The MND Section 4.4.1.3 states that the Project lies within the Murphy Slough - Fresno Slough watershed; Hydrologic Unit Code (HUC): 1803000901 and a single subwatershed: Turner Ditch-Fresno Slough subwatershed; HUC: 180300090103.

The Project description is vague about the quantity of surface flow diverted to storage, and whether the Project will result in reduced surface flow in streams for the purpose of

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 8

groundwater recharge and storage. CDFW is concerned that the proposed Project may result in direct and cumulative adverse impacts to the fish and wildlife and other public trust resources supported by the Fresno Slough and Kings River and associated riparian habitats, and that any proposed reduction in surface flow would affect the sustainability of the riparian woodland and aquatic habitats within these streams.

CDFW recommends preparation of 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 these streams and the species supported by these habitats, and includes appropriate measures to avoid, minimize, and mitigate potential biological impacts due to surface flow reduction. CDFW recommends that the analysis be added to the MND and that the amended MND be recirculated for review of this analysis.

**Water Rights:** The MND does not specify whether the Project diverts unallocated surface flow for the purpose of groundwater storage. As stated previously, the capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by SWRCB pursuant to Water Code section 1200 et seq. CDFW recommends that the MND include a detailed description of the water rights and water entitlements that would pertain to the Project and address any applications or change petitions that Riverdale ID or other entities will be filing for the Project. 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. 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.

**Lake and Streambed Alteration:** Project activities that will substantially change the bed, bank, and channel of streams and associated wetlands are 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](mailto:R4LSA@wildlife.ca.gov) and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 9

**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 (i.e., February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game 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 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

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 10

death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting.

## 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).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Riverdale ID 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 (559) 580-3202 or by email at [Annette.Tenneboe@wildlife.ca.gov](mailto:Annette.Tenneboe@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Valerie Cook  
Acting Regional Manager

cc: See Page Eleven

Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 11

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Kim Mayfield  
Riverdale Irrigation District  
May 18, 2022  
Page 12

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**Attachment 1**

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

**PROJECT: Blythe Avenue Recharge Basin Project  
Riverdale Irrigation District**

**SCH No.: 2022040362**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Project Activity</i>	
<b>Recommended Mitigation Measure 1: SJKF Surveys and Minimization</b>	
<b>Recommended Mitigation Measure 2: SJKF Take Authorization</b>	
<b>Recommended Mitigation Measure 3: SWHA Surveys</b>	
<b>Recommended Mitigation Measure 4: SWHA No-disturbance Buffer</b>	
<b>Recommended Mitigation Measure 5: SWHA Take Authorization</b>	
<b>Recommended Mitigation Measure 6: BUOW Surveys</b>	
<b>Recommended Mitigation Measure 7: BUOW Avoidance</b>	
<b>Recommended Mitigation Measure 8: BUOW Eviction and Mitigation</b>	
<i>During Project Activity</i>	
<b>Recommended Mitigation Measure 1 SJKF Surveys and Minimization</b>	
<b>Recommended Mitigation Measure 4: SWHA No-disturbance Buffers</b>	
<b>Recommended Mitigation Measure 7: BUOW Avoidance</b>	