



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**May 25 2022**

May 25, 2022

## STATE CLEARINGHOUSE

Brian Guerrero  
Merced County  
Department of Community and Economic Development  
2222 M Street  
Merced, California 95340  
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**Subject: Merced Biogas Pipeline Expansion Project CUP20-017 (Project)  
Mitigated Negative Declaration (MND)  
State Clearinghouse No. 2022040525**

Dear Mr. Guerrero:

The California Department of Fish and Wildlife (CDFW) received a MND from the Merced County Department of Community and Economic Development 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 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 and 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.

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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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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.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Maas Energy Works, Inc.

**Objective:** The Project involves the extension of the underground pipeline network to serve additional dairy digesters not included in the currently permitted biogas pipeline system. Approximately 39.5 miles of new pipeline is proposed, with 31.8 miles of the pipeline alignment located in Merced County, and 7.7 miles of additional pipeline located in Madera County. The proposed pipeline would transport biogas to the previously approved biogas upgrade facility from a cluster of individual dairy digesters in the surrounding area. The upgraded biomethane would be piped to an injection point with a Pacific Gas and Electric Company gas transmission pipeline.

**Location:** The complete pipeline network would be generally located over an area centered on State Route 59 and stretching from south of the City of Merced to south of the Merced/Madera County line. The pipelines would be located predominantly on privately owned agricultural property via easements and/or within or across Merced or Madera County public rights-of-way.

**Timeframe:** N/A

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist Merced County Department of Community and Economic Development in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

As addressed in the MND, there are many special-status resources that may be impacted by the Project. CDFW is concerned with potential impacts to special-status species

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including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*; CTS), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the following Species of Special Concern: burrowing owl (*Athene cunicularia*), and western spadefoot toad (*Spea hammondi*). With a few exceptions, CDFW finds that the majority of the mitigation measures for special status species in the MND are acceptable.

### **Mitigation Measure BIO-4(B)(3)**

Mitigation Measure BIO-4(B)(3) states that "if CTS ... is observed or burrows or other suitable summer refugia are identified within the construction work area, the biologist will coordinate with CDFW and USFWS to ensure that the individuals are not harmed. If burrow excavation and/or relocation of amphibians is necessary, they will be relocated the shortest distance possible to a location that contains suitable habitat that will not be affected by activities associated with the proposed Project."

The Project route along Sandy Mush and Rahilly Roads transects through suitable CTS habitat that is known to be occupied with CTS. It is critical to understand that if the measures proposed for the Project are implemented without obtaining an Incidental Take Permit, take, as defined by Fish and Game Code section 86, will result. Therefore, prior to ground-disturbing activities, CDFW recommends the Project proponent obtain take authorization through the acquisition of an Incidental Take Permit (ITP) issued by CDFW, pursuant to Fish and Game Code Section 2081(b). Absent obtaining a 2081 ITP for CTS, the proposed measures must not be implemented, and full avoidance measures put in place instead to avoid all take to CTS as a result of the project. CDFW recommends that the Lead Agency encourage the Project Proponent to contact us as soon as possible for early consultation relative to acquisition of an ITP to help streamline the permit application and issuance process.

### **Lake and Streambed Alteration**

CDFW agrees that the Project may be subject to CDFW's regulatory authority pursuant Fish and Game Code Section 1600 et seq. Fish and Game Code Section 1602 requires the Project proponent 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; or (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 in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

### **Federally Listed Species**

CDFW agree that the USFWS will be contacted regarding potential impacts to federally listed species including, but not limited to, CTS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes 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

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nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

It has been determined that the Project has the potential to impact biological resources, therefore an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist Merced County Department of Community and Economic Development in identifying and mitigating the Project's impacts on biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Valerie Cook  
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California Department of Fish and Wildlife