DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***
Governor's Office of Planning & Research

Oct 20 2022

STATE CLEARING HOUSE

October 20, 2022

Mr. Joe Broadhead, Principal Water Resources Specialist
Eastern Municipal Water District
2270 Trumble Road, PO Box 8300
Perris, CA 92570
broadhej@emwd.org

Subject: Mitigated Negative Declaration
Quail Valley Regional Water Tank III Project
State Clearinghouse No. 2022090314

Dear Mr. Broadhead:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Eastern Municipal Water District (EMWD) for the Quail Valley Regional Water Tank III Project (Project) for the EMWD (Project Applicant/Proponent) 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, we appreciate 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 (Fish & G. Code, § 1802.). Similarly, for purposes of CEQA, CDFW provides, 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

[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.

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, et seq., of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. CDFW is providing the following comments as they relate to the Project's consistency with the MSHCP and CEQA.

## PROJECT DESCRIPTION SUMMARY

*Project Location*

The Project site comprises approximately 2.45 acres in the City of Menifee within Riverside County, California, in Section 30 West, Township 5 South, Range 3 West, of the U.S. Geological Survey (USGS) 7.5" Romoland, California topographic quadrangle map. The Project is located east of Goetz Road, west of Valley Boulevard, and southeast of South Canyon Drive. The Project is located within Assessor's Parcel Numbers (APN) 341-050-006 and 341-050-007.

*Project Description*

The Project proposes to construct a 1.63-million-gallon potable water tank, detention basin, and components that would connect to the existing adjacent water facilities infrastructure. The tank would have a height of 40 feet and a diameter of 101 feet. The Project is anticipated to require 6,105 cubic yards of cut and 28,741 yards of fill, for a total import of 22,636 cubic yards. Off-site grading to 0.072 acre would also occur to support Project activities along South Canyon Drive.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist EMWD in adequately identifying and/or mitigating the Project's potentially significant direct and indirect impacts to biological resources, and in Attachment 1 "Mitigation Monitoring and Reporting Program" for consideration by EMWD prior to adoption of the MND for the Project. The comments and recommendations are also offered to enable the CDFW to adequately review and comment on the proposed Project's consistency with the MSHCP.

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**Western Riverside County Multiple Species Habitat Conservation Plan**

*Western Riverside MSHCP Implementation:*

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP.

EMWD is the lead agency but is not signatory to the MSHCP; in order to participate in the MSHCP, EMWD would need to act as a Participating Special Entity (PSE). Within the MND, it states that EMWD is choosing to act as a PSE and obtain take through the MSHCP; therefore, all of the MSHCP policies will apply to this Project, and the MND and subsequent CEQA documents should discuss how the Project will demonstrate consistency with the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. If the Project is not processed through the MSHCP for covered species, then the Project may be subject to the Federal Endangered Species Act (FESA) and/or CESA for threatened, endangered, and/or candidate species.

The MSHCP identifies that the California Department of Fish and Wildlife and the U. S. Fish and Wildlife Service (collectively known as the Wildlife Agencies) shall be notified in advance of approval of public and private projects for the identified MSHCP activities which includes the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.11 of the MSHCP). CDFW requests that to demonstrate compliance with the MSHCP, EMWD complete the PSE process and MSHCP implementation **prior to adoption of the MND for the Project.**

To demonstrate consistency with the MSHCP, as part of the CEQA review, EMWD, as a PSE, shall ensure the Project implements the following:

1. Contributes to MSHCP implementation through payment of a fee based on the type of proposed activity.

2. Demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of the MSHCP; 2) the Protection of Narrow Endemic Plant Species set forth in Section 6.1.3; 3) the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; 4) the policies set forth in Section 6.3.2; and 5) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



Section 7.0 and Appendix C of the MSHCP. All obligations must be satisfied prior to impacts to Covered Species and their Habitats.

*Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools*

The MSHCP Protection of Species Associated with Riparian/Riverine and Vernal Pool Resources Section 6.1.2 indicates that if avoidance of onsite impacts to Section 6.1.2 resources is not feasible, then the impacts should be identified and mitigated for through a Determination of Biologically Equivalent or Superior Preservation (DBESP) process prior to or in parallel to CEQA. The assessment of Riparian/Riverine and Vernal Pool Resources should include mapping of riparian/riverine areas and vernal pools, species composition, topography/hydrology, and soil analysis which may be completed during the CEQA process (Section 6.1.2 of the MSHCP). If the mapping noted above identifies suitable Habitat for the species listed in the MSHCP and the proposed project design does not incorporate avoidance of the identified Habitat, focused surveys for those species shall be conducted, and avoidance and minimization measures implemented in accordance with the species-specific objectives for those species. The MSHCP identifies that the Wildlife Agencies **shall** be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Wetland Habitats and Species policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). As required by MSHCP, completion of the DBESP process prior to adoption of the environmental document ensures that the project is consistent with the MSHCP and provides public disclosure and transparency during the CEQA process by identifying the project impacts and mitigation for wetland habitat, a requirement of CEQA Guidelines, §§ 15071, subds. (a)-(e).

The MND and accompanying *General Biological Resources Assessment and MSHCP Consistency Analysis* (located in Appendix B-1) indicate that 0.057 acres of riparian/riverine or vernal pool resources are located within the proposed Project area. CDFW appreciates the analysis of impacts provided within the MND and General Biological Resource Assessment, however, because the DBESP has not been completed the impact analysis and required mitigation may change based on Wildlife Agencies review to demonstrate that the proposed mitigation proposed for the impacts to riparian/riverine resources is biologically equivalent or superior preservation to avoidance. To ensure the mitigation included in the final environmental document accurately represents what is required for MSHCP implementation and addresses protection of riparian/riverine resources, a DBESP should be prepared and submitted to the Wildlife Agencies for review and response prior to adopting the MND. CDFW requests that to demonstrate consistency with the MSHCP, EMWD complete the DBESP process and recommends the inclusion of the following measure in the MND per the edits below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program”.

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



MM Bio 4: Acquire Permits and Mitigation for Aquatic Impacts. Prior to project activities occurring within jurisdictional aquatic resources, the project proponent shall prepare for approval by the RCA, USFWS, and CDFW **a** Determination of Biologically Equivalent or Superior Preservation (DBESP) for impacts to MSHCP Section 6.1.2 **riparian/**riverine resources**.** ~~and~~ **As identified in the** DBESP report, as described in Section 6.1.2 of the MSHCP, **the** proposed impacts **are [update with numbers] of acres**, and **the** proposed mitigation sufficient to offset impacts MSHCP riparian/riverine areas **is** [**Update with DBESP results and findings**]

**The project proponent** shall also apply for and obtain the following regulatory permits and approvals from the USACE, RWQCB, and/or CDFW, as applicable:

- Clean Water Act Section 404 Permit;
- Clean Water Act Section 401 Water Quality Certification; and/or
- ~~California Fish and Game Code Section 1602 Streambed Alteration Agreement.~~

~~The project proponent shall mitigate impacts to jurisdictional aquatic resources off site at a 2:1 ratio to include a minimum 1:1 establishment/re-establishment component through purchase of 0.06 acre of re-establishment credits and 0.06 acre of re-establishment or rehabilitation credits from the Riverpark Mitigation Bank, which is located within the MSHCP planning area and San Jacinto River watershed approximately 8.0 miles to the northeast of the impact site, unless otherwise required by the RCA, USFWS, USACE, RWQCB, and/or CDFW during project permitting~~

Lake and Streambed Alteration Program

Based on review of material submitted with the MND and review of aerial photography the Project has the potential to impact of fish and wildlife resources subject to Fish and Game Code section 1600 et seq. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the EMWD condition the MND to include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may occur within the proposed Project alignment. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code, § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

CDFW recommends the inclusion of the following measure in the MND per the edits below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".:

MM Bio XX: **Prior to the grading the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streamed Alteration Agreement is not needed.**

**Nesting Birds**

It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests.

CDFW is concerned that potential impacts to nesting birds are not identified or discussed within the MND and strongly suggests the City evaluate the direct, indirect, and cumulative impacts to nesting birds, before approval and certification of the MND. Appropriate analysis would include conducting focused nesting bird surveys throughout the project site. To address the above issues and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW requests the District include the following mitigation measures in the MND per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program”.

MM BIO-3: Nesting Bird Survey. ~~Vegetation clearing~~ **Site preparation activities (ground disturbance, construction activities, and/or removal of trees and vegetation) for all Project activities** ~~should be conducted outside~~ **shall be avoided, to the greatest extent possible, during the nesting season of potentially occurring nesting species.** ~~which is generally defined as February 15 to August 31.~~ Additionally, raptors (birds of prey) are known to begin nest building in January or February. If vegetation clearing is to occur between January 1 and February 15, a nesting raptor survey shall be conducted within the project site, including a 500-foot buffer, no more than ~~seven~~ **three** days prior to vegetation removal.

**If** ~~vegetation clearing~~ **site-preparation activities** must take place during the nesting**/breeding** season, ~~a~~ a qualified biologist shall be retained to perform a pre-construction survey for nesting birds. ~~A pre-construction nesting bird survey would not be required unless direct impacts to vegetation are proposed to occur~~, **A pre-activity field survey shall be conducted by a qualified biologist prior to the issuance of grading permits for such project to determine if active nests of species protected by the MBTA or the California Fish and Game Code are present in the construction zone in addition to ongoing monitoring, and if necessary, establishment of minimization measures. The Project Applicant shall adhere to the following:**

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



1. **Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**

2. ~~The nesting bird survey shall occur no more than seven days prior to vegetation removal~~. **Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.**

**If active nests are not located within the implementing project site, no biological monitor is needed.** If active bird nests are confirmed to be present during the pre-construction survey, an appropriate buffer zone shall be established by a qualified biologist **immediately based on their best professional judgement and experience, the buffer around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines nesting species have fledged and the nest is no longer active or the nest has failed. A minimum buffer of 500 feet around an active listed species or raptor nest, 300 feet around active passerine (perching birds or songbirds), sensitive, or protected bird nests (non-listed), or 1000 feet of sensitive or protected songbird nests.** ~~until a biologist has verified that the young have fledged or the nest has otherwise become inactive.~~ **The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. All work within these buffers will be halted until the nesting effort is finished (i.e., the juveniles are surviving independent**

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**from the nest). The onsite qualified biologist will review and verify compliance with these nesting avoidance buffers and will verify the nesting effort has finished. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to EMWD for mitigation monitoring compliance record keeping.**

**Coastal California Gnatcatcher**

There is approximately 0.98 acre of Riversidean sage scrub and 1.38 acres of disturbed Riversidean sage scrub habitat for coastal California gnatcatcher within the Study Area. Therefore, the proposed Project activities would remove 2.36 acres of coastal California gnatcatcher habitat. The MND identifies that targeted protocol-level bird surveys were completed for coastal California gnatcatcher from May 6, 2021 through June 10, 2021. This area is occupied by coastal California gnatcatcher; two pairs were detected nesting on site in 2021 during the general biological surveys.

CDFW is concerned that impacts on nesting gnatcatcher could be significant under CEQA [CEQA Guidelines, §§ 15002(g), 15065, 153820]. Coastal California gnatcatcher is an ESA-listed species as Threatened, and the USFWS permit for the MSHCP restricts clearing of coastal California gnatcatcher-occupied habitat during the nesting season: "clearing of occupied habitat within [Public/Quasi-Public (PQP)] lands and the Criteria Area between March 1 and August 15 is prohibited." (per Condition 5b of the USFWS MSHCP permit). This condition protects gnatcatchers during the nesting season and prevents take of active nests. Gnatcatchers are territorial, year-round residents with high-site fidelity, and can be extremely quiet during brooding and therefore difficult to detect when nesting. There must be a clear understanding of habitat use by coastal California gnatcatcher before any vegetation removal or ground disturbance occurs.

The Project Applicant cannot rely on nesting bird surveys just prior to grading to determine gnatcatcher use of coastal sage scrub and chapparal on the Project site. To avoid take of active nests, CDFW recommends protocol surveys[2] to determine coastal California gnatcatcher use of the site within one year of start of project activities or adherence to the vegetation removal restriction periods in the permits. If disturbance of occupied habitat can't avoid the nesting season, then surveys should be conducted far enough in advance so that gnatcatcher use of the habitat is understood otherwise nesting gnatcatchers could be missed. CDFW recommends that EMWD adopt the Mitigation Measure provided below.

MM BIO-XX: **Coastal California Gnatcatcher Survey. Prior to grading or other ground-disturbing activities, a qualified biologist shall survey all**

[2] United States Fish and Wildlife Service (USFWS). 2019. Coastal California Gnatcatcher (*Polioptila californica californica*) Presence/Absence Survey Protocol. Available for download at: https://www.fws.gov/sites/default/files/documents/surveyprotocol-for-coastal-california-gnatcatcher.pdf

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**potential nesting vegetation within and adjacent to the site for nesting coastal California gnatcatcher according to United States Fish and Wildlife Service (USFWS) 2019 survey protocol guidelines. EMWD shall conduct focused surveys prior to ground disturbance or discing activities. A minimum of three (3) surveys shall be conducted at least one week apart to determine presence/absence of coastal California gnatcatcher. Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, during the nesting season as described in the 2019 survey protocol guidelines. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Written and mapped qualitative descriptions of plant communities (including dominant species and habitat quality) on and adjacent to the area surveyed will also be provided with survey results to USFWS and California Department of Fish and Wildlife (CDFW), within 45 days following the field surveys, prior to ground disturbing activities. The results of the focused surveys shall be provided to the EMWD, CDFW, and USFWS for review and approval prior to commencement of ground disturbing or discing activities.**

**In the event that the focused surveys do not identify the presence of California gnatcatcher, habitat has been confirmed to be unoccupied by California gnatcatcher, and nesting bird surveys have been completed, then ground disturbance or discing may occur during the nesting season (i.e., between March 1 and August 15). If the focused surveys identify the presence of California gnatcatchers, then ground disturbance or discing of the occupied areas shall be prohibited between March 1 and August 15. If an active coastal California gnatcatcher nest is located, the nest site shall be fenced with a buffer of a minimum of 500 feet in all directions, and this area shall not be disturbed until after the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, or the young have left the area, as confirmed by a qualified biologist. If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate. Project contractors shall be required to ensure compliance**

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**with these requirements and permit periodic inspection of the construction site EMWD staff or its designee to confirm compliance.**

**Burrowing Owl**

For burrowing owl, the habitat assessment and focused burrow survey were conducted concurrently in 2021 and no suitable habitat was identified through aerial imagery and focused burrowing owl surveys. In California, burrowing owl are in decline primarily as a result of habitat loss, as well as disease, predation, and drought. CDFW recommends the inclusion of a process to avoid direct take of burrowing owls and to avoid project delays if the owls are detected during the pre-construction surveys.

CDFW requests EMWD evaluate the direct, indirect, and cumulative impacts to burrowing owl through the DBESP process, before approval and certification of the MND. Appropriate analysis would include a discussion of the results of the focused burrowing owl surveys and suitable habitat surveys for the Project site. To avoid take of active nests, appropriate avoidance and minimization measures need to be identified in the MND to protect burrowing owl during the burrowing owl nesting season. CDFW recommends creation of a Burrowing Owl Plan if owls are detected on the Project Site.

To avoid take of active burrowing owl burrows (nests), CDFW requests the addition of the following mitigation measure. References to creating a DBESP are removed because the DBESP should have been sent to the Wildlife Agencies for 60-day review and response prior to approval of the Project. Requested additions are identified in **bold** and removed measures are in ~~strikeout~~.

MM BIO-1: Burrowing Owl Survey. A 30-day pre-construction survey for burrowing owls is required prior to initial ground-disturbing activities (e.g., vegetation clearing, clearing, and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities. ~~If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the Regional Conservation Authority (RCA) and the Wildlife Agencies and will need to coordinate further with RCA and the Wildlife Agencies, including the possibility of preparing a Burrowing Owl Protection and Relocation Plan, prior to initiating ground disturbance.~~ If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl have not colonized the site since it was last disturbed.

**If burrowing owl are not detected during the pre-construction survey, no further mitigation is required. If burrowing owl are detected, CDFW shall be sent written notification within 3 days of detection of burrowing owls. If active burrowing owl burrows are detected, EMWD**

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.**

**The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and MSHCP. The qualified biologist and Project Applicant shall coordinate with the EMWD, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the EMWD, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. EMWD shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.**

**If burrowing owls are observed within Project Site(s) during Project implementation and construction, EMWD shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. EMWD shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.**

**If ground-disturbing activities occur but the site is left undisturbed for more than 30 days, a preconstruction survey for burrowing owl shall be conducted and reported to CDFW as described above. If a burrowing owl is found, the same coordination described above shall be necessary.**

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



**A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Project activities.**

## MITIGATION AND MONITORING REPORTING PLAN

CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). EMWD is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the EMWD with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

## 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 California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



CDFW appreciates the opportunity to comment on the MND for the Quail Valley Regional Water Tank III Project, State Clearinghouse No. 2022090314 to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that Eastern Municipal Water District addresses CDFW's comments and concerns prior to adoption of the MND for the Project.

Questions regarding this letter or further coordination should be directed to Katrina Rehrer, Environmental Scientist, at katrina.rehrer@wildlife.ca.gov.

**ATTACHMENTS**

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn,
Environmental Program Manager

ec: **California Department of Fish and Wildlife**
Heather Pert, Senior Environmental Scientist Supervisory
Heather.Pert@wildlife.ca.gov

**U.S. Fish and Wildlife Service**
Karin Cleary-Rose
Karin_Cleary-Rose@fws.gov

**Western Riverside County Regional Conservation Authority**
Tricia Campbell
tcampbell@rctc.org

**REFERENCES**

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency.

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



Available for download at:
https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



## ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

### PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during Project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

### TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigationmeasure will be implemented. The Responsible Party column identifies the person oragency that is primarily responsible for implementing the mitigation measure.

| Biological (BIO) Mitigation Measures (MM) | Implementation Schedule | Responsible Party |
|---|---|---|
| MM BIO-4: Acquire Permits and Mitigation for Aquatic Impacts. Prior to project activities occurring within jurisdictional aquatic resources, the project proponent shall prepare for approval by the RCA, USFWS, and CDFW a Determination of Biologically Equivalent or Superior Preservation (DBESP) for impacts to MSHCP Section 6.1.2 riparian/riverine resources. As identified in the DBESP report, as described in Section 6.1.2 of the MSHCP, the proposed impacts are [update with numbers] of acres, and the proposed mitigation sufficient to offset impacts MSHCP riparian/riverine areas is [Update with DBESP results and findings].<br><br>The project proponent shall also apply for and obtain the following regulatory permits and approvals from the USACE, RWQCB, and/or CDFW, as applicable:<br><br>• Clean Water Act Section 404 Permit;<br><br>• Clean Water Act Section 401 Water Quality Certification; and/or | Prior to start of Project activities | Eastern Municipal Water District |
| MM Bio XX: Prior to the grading the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation | Prior to start of Project activities | Project Proponent |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| from CDFW that a Streamed Alteration Agreement is not needed. | | |
| MM BIO-3: Nesting Bird Survey. Site preparation activities (ground disturbance, construction activities, and/or removal of trees and vegetation) for all Project activities shall be avoided, to the greatest extent possible, during the nesting season of potentially occurring nesting species. Additionally, raptors (birds of prey) are known to begin nest building in January or February. If vegetation clearing is to occur between January 1 and February 15, a nesting raptor survey shall be conducted within the project site, including a 500-foot buffer, no more than three days prior to vegetation removal.<br><br>If site-preparation activities must take place during the nesting/breeding season, a qualified biologist shall be retained to perform a pre-construction survey for nesting birds. A pre-activity field survey shall be conducted by a qualified biologist prior to the issuance of grading permits for such project to determine if active nests of species protected by the MBTA or the California Fish and Game Code are present in the construction zone in addition to ongoing monitoring, and if necessary, establishment of minimization measures. The Project Applicant shall adhere to the following:<br><br>1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. | Prior to commencing ground- or vegetation disturbing activities | Project Proponent |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.<br><br>If active nests are not located within the implementing project site, no biological monitor is needed. If active bird nests are confirmed to be present during the pre-construction survey, an appropriate buffer zone shall be established by a qualified biologist immediately based on their best professional judgement and experience, the buffer around the nest shall be delineated and flagged, and no construction activity shall occur within the buffer area until a qualified biologist determines nesting species have fledged and the nest is no longer active or the nest has failed. A minimum buffer of 500 feet around an active listed species or raptor nest, 300 feet around active passerine (perching birds or songbirds), sensitive, or protected bird nests (non-listed), or 1000 feet of sensitive or protected songbird nests. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. All work within these buffers will be halted until the nesting effort is finished (i.e., the juveniles are surviving independent from the nest). The onsite qualified biologist will review and verify compliance with these | | |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| nesting avoidance buffers and will verify the nesting effort has finished. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to EMWD for mitigation monitoring compliance record keeping. | | |
| MM Bio-XX. Coastal California Gnatcatcher Survey. Prior to grading or other ground-disturbing activities, a qualified biologist shall survey all potential nesting vegetation within and adjacent to the site for nesting coastal California gnatcatcher according to United States Fish and Wildlife Service (USFWS) 2019 survey protocol guidelines. EMWD shall conduct focused surveys prior to ground disturbance or discing activities. A minimum of three (3) surveys shall be conducted at least one week apart to determine presence/absence of coastal California gnatcatcher. Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, during the nesting season as described in the 2019 survey protocol guidelines. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Written and mapped qualitative descriptions of plant communities (including dominant species and habitat quality) on and adjacent to the area surveyed will also be provided with survey results to USFWS and California Department of Fish and Wildlife (CDFW), within 45 days following the field surveys, prior to ground disturbing activities. The results of the focused surveys shall be provided to the EMWD, CDFW, and USFWS for review and approval prior to commencement of ground disturbing or discing activities.<br><br>In the event that the focused surveys do not identify the presence of California gnatcatcher, habitat has been confirmed to be unoccupied by California gnatcatcher, and nesting bird surveys have been completed, then ground disturbance or discing may occur during | Prior to commencing ground- or vegetation disturbing activities | Project Proponent |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| the nesting season (i.e., between March 1 and August 15). If the focused surveys identify the presence of California gnatcatchers, then ground disturbance or discing of the occupied areas shall be prohibited between March 1 and August 15. If an active coastal California gnatcatcher nest is located, the nest site shall be fenced with a buffer of a minimum of 500 feet in all directions, and this area shall not be disturbed until after the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, as confirmed by a qualified biologist. If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate. Project contractors shall be required to ensure compliance with these requirements and permit periodic inspection of the construction site EMWD staff or its designee to confirm compliance. | | |
| MM BIO-1: Burrowing Owl Preconstruction Survey. A 30-day pre-construction survey for burrowing owls is required prior to initial ground-disturbing activities (e.g., vegetation clearing, clearing, and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground-disturbing activities. If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl have not colonized the site since it was last disturbed.<br><br>**If burrowing owl are not detected during the pre-construction survey, no further mitigation is required. If burrowing owl are detected, CDFW shall be sent written notification within 3 days of detection of** | Prior to commencing ground- or vegetation disturbing activities | Project Proponent |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| **burrowing owls. If active burrowing owl burrows are detected, EMWD shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.**<br><br>**The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and MSHCP. The qualified biologist and Project Applicant shall coordinate with the EMWD, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the EMWD, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. EMWD shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.**<br><br>**If burrowing owls are observed within Project Site(s) during Project implementation and construction, EMWD shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan shall be submitted to CDFW for review and approval within two weeks of detection and no Project activity shall continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl** | | |

DocuSign Envelope ID: 4F7CD2EF-3A70-4C59-A764-AAA184417F2E



| | | |
|---|---|---|
| **Plan. EMWD shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan**<br><br>**If ground-disturbing activities occur but the site is left undisturbed for more than 30 days, a preconstruction survey for burrowing owl shall be conducted and reported to CDFW as described above. If a burrowing owl is found, the same coordination described above shall be necessary.**<br><br>**A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Project activities.** | | |