



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Desert 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

May 23, 2023
Sent via email

May 24 2023

STATE CLEARING HOUSE

William Patterson
Environmental Supervisor
Coachella Valley Water District
75-519 Hovley Lane East
Palm Desert, CA 92211

North Cathedral City Regional Stormwater Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023040675

Dear Mr. Patterson:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Coachella Valley Water District (CVWD) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines¹.

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. (*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

¹CEQA 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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Coachella Valley Water District

Objective: The Project proposes to construct a regional stormwater channel that would provide a connection from north of Interstate 10 (I-10) to the Whitewater River to the south. The storm flow from north would be conveyed under I-10 and two Union Pacific Railroad (UPRR) tracks to the existing Whitewater River. The design would collect existing flows passing under I-10.

The proposed Project would include concrete channel lining both upstream and downstream of the UPRR bridge location. Channel lining would extend approximately 500 feet upstream of the bridge, and a berm would be graded on the east bank to direct flows through the bridge crossing. Downstream of the bridge, channel lining would extend approximately 300 feet. The concrete-lined portion of the channel would be at an approximate three-percent grade. The proposed Project would include excavation, concrete lining of the bridge undercrossing, and other required improvements (e.g., bracing). The Project would lower the invert of the bridge approximately 2.5 feet from the flowline. The bottom width of the bridge undercrossing would be approximately 200 feet. The proposed Project would grade a new earthen channel south of the bridge and concrete channel lining improvements described above. This channel would be graded at a one-percent slope until it meets existing grade. The earthen channel would be approximately 200 feet wide with 3:1 side slopes. Concrete slope protection would be placed at the east overbank of the channel. The existing overbank is located approximately 800 feet southeast of the existing UPRR bridge. A row of tamarisk trees exists at the top of the existing slope, and the concrete slope protection improvements would occur immediately west of the trees (i.e., the trees would be protected in place). The slope protection would extend for a length of approximately 4,800 linear feet and will be constructed at a ratio of 1:1.5 (vertical: horizontal). The ultimate grade will be less than 10%. An access road, maintenance ramp to the channel invert, and turnaround area will be part of the slope protection. The Project would not include any fencing, structures, or other facilities that would impede wildlife movement under the UPRR bridge.

Location: The Project Area is located in Cathedral City, within Riverside County, California; located in portions of Section 32, T.3.S, R.5.E and Section 5, T.4.S, R.5.E. The proposed 26.44-acre Project site is located within the northwestern portion of the City, approximately 130 feet southwest of Interstate 10 and 0.8 miles east of Gene Autry Road. Approximately 4.86 acres of the Project site are located on lands managed by the Bureau of Land Management.

Timeframe: The proposed Project construction would occur as a single phase and is anticipated to last approximately nine months.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist CVWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information to facilitate a meaningful review by CDFW, including both a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND may provide an incomplete analysis of Project-related environmental impacts.

The MND lacks a recent and complete assessment of biological resources within the Project site and surrounding area. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to

both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CEQA requires that a MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support CVWD in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for an assessment of biological resources, salvage of sand-dependent Covered Species, artificial nighttime lighting, and the Lake and Streambed Alteration Program as well as revising the mitigation measures for burrowing owl (*Athene cunicularia*) and nesting birds.

1) Assessment of Biological Resources

Page 23 of the MND indicates that habitat assessment surveys were last conducted on October 20, 2020, to document the extent and conditions of the vegetation communities occurring within the boundaries of the survey area and to assess the potential for special-status species to occur within the survey area. Page 21 of the Project's Biological Assessment indicated that focused rare plant surveys were last conducted in spring 2016. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed. CDFW recommends that the MND is revised to include the findings of a complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Based on findings from a recent biological inventory, CDFW recommends that the MND is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures. Recent and complete information on biological resources; analysis of a Project's direct, indirect, and cumulative impacts; and appropriate avoidance, minimization, and mitigation measures support the Lead Agency in demonstrating that Project impacts to biological resources are less than significant.

CDFW recommends that CVWD add in a revised MND the following mitigation measure:

Mitigation Measure BIO-[A]: Assessment of Biological Resources

Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

2) *Burrowing Owl*

Burrowing owl (*Athene cunicularia*) is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Burrowing owl is a Covered Species under the CVMSHCP, which requires that avoidance and minimization measures be implemented for this species.

Page 31 of the MND indicates that focused surveys for burrowing owl were last conducted in 2016, nine suitable burrows were found within the Project site, and several owls were observed east of the 500-foot survey buffer. The MND indicates that burrowing owl have a moderate potential to occur on the Project site. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. CDFW recommends the MND is revised to include summary reports from *recent* focused surveys for burrowing owl as described in the *Staff Report on Burrowing Owl*

Mitigation (CDFW 2012²). Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, 3503.5, and 3513. If focused surveys confirm occupied burrowing owl habitat in or adjacent to the Project area, CDFW recommends that the MND is revised to include an impact assessment per guidelines in the *Staff Report on Burrowing Owl Mitigation*. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project. Burrowing owl surveys and an impact assessment will also inform appropriate avoidance, minimization, and mitigation measures for the Project and help demonstrate that impacts to burrowing owls are less than significant.

Although the MND includes Mitigation Measure BIO-5 for burrowing owl (page 65), CDFW considers the measure to be inadequate in scope and timing to reduce impacts to less than significant. CDFW recommends that CVWD revise Mitigation Measure BIO-5 in a revised MND as follows, with additions in **bold** and removals in ~~strike through~~:

Mitigation Measure BIO-5 Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as

² California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities. ~~A pre-construction clearance survey for burrowing owl(s) shall be conducted within 30 days of the start of any ground-disturbing activities to ensure burrowing owls remain absent from the survey area. Should burrowing owl(s) be found within the project footprint during the pre-construction clearance survey, CDFW shall be contacted for consultation prior to clearing and grubbing. If burrowing owl(s) are found to occupy the project site at the time of the pre-construction clearance survey, a relocation plan shall be written, consistent with LUPA BIO IFS 12, 13, and 14, approved by BLM and CDFW, and implemented prior to site development. Determination of the appropriate method of relocation, such as eviction/passive relocation or active relocation, shall be based on the specific site conditions (e.g., distance to nearest suitable habitat and presence of burrows within that habitat) in coordination with BLM and CDFW. Active relocation and eviction/passive relocation require the preservation and maintenance of suitable burrowing owl habitat determined through coordination with BLM/CDFW.~~

3) Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 states that it is 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 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or 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. Fish and Game Code

section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.).

Page 14 of the Project's Habitat Assessment and MSHCP Consistency Analysis, dated March 2016, indicates that on-site vegetation provides nesting opportunities for avian species, "particularly in larger clumps of creosote bushes and in the tamarisk windrows." Although the MND includes Mitigation Measure BIO-4 for nesting birds (pages 64-65), CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided **any time birds are nesting on-site.**

CDFW recommends CVWD revise Mitigation Measure BIO-4 in a revised MND, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-4: Nesting Birds

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. Pursuant to the MBTA and California Fish and Game Code, removal of any trees, shrubs, or any other potential nesting habitat shall be conducted outside the avian nesting season. The nesting season generally extends from January 15 through August 31 but can vary slightly from year to year based on seasonal weather conditions. A pre-construction clearance survey for nesting birds shall be conducted within three days of the start of any ground-disturbing activities to ensure no nesting birds will be disturbed during construction. The biologist conducting the clearance survey

~~shall document a negative survey with a brief letter report indicating no impacts to active avian nests will occur. If an active avian nest is discovered during the pre-construction clearance survey, construction activities shall stay outside of a 300-foot buffer around the active nest. For raptor species, this buffer is expanded to 500 feet. The Biological Monitor shall be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, normal construction activities can occur.~~

4) Coachella Valley Multiple Species Habitat Conservation Plan

Like Exchange Analysis

Page 10 of the Project's Biological Assessment, dated October 2022, indicates that in September 2021 the Project underwent changes to the grading boundaries, which resulted in changes to both permanent and temporary grading limits of the Project. The Biological Assessment further indicates that "within the WFCA [Whitewater Floodplain Conservation Area], temporary impacts would decrease from 17.3 acres to 13.42 acres and increase permanent impacts from 5.7 acres to 8.56 acres, for an overall decrease of impacts in the WFCA from 23 acres to 21.98 acres. CVWD is currently in negotiations with the CVCC to facilitate an administrative approval process of the acreage change. If approved, there would be a revised net increase of conserved lands in the WFCA from 19 acres to 20.02 acres." These changes in Project design—including an increase in permanent impacts associated with the Project—were proposed after the Wildlife Agencies (CDFW and the U.S. Fish and Wildlife Service) issued a concurrence letter dated March 15, 2017, regarding the Project's Like Exchange Equivalency Analysis. In addition to coordinating with CVCC to re-evaluate the Project's consistency with the CVMSHCP, CDFW recommends that CVWD submit a revised Like Exchange Analysis to the Wildlife Agencies and CVCC as described in Section 6.12.2. Per Measure 6.12.2, the revised equivalency analysis should include "maps clearly and precisely delineating the proposed Boundary Adjustment, showing land to be removed from the Conservation Area in the context of the entire Conservation Area, and land to be added to this or another Conservation Area."

Salvage of Sand-Dependent Covered Species

Page 27 of the MND indicates that "the project site has a moderate or higher potential to support several CVMSHCP-covered wildlife species, including [...] flat-tailed horned lizard (*Phrynosoma mcallii*), Coachella Valley fringe-toed lizard (*Uma inornata*), and Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*)." Coachella Valley milk vetch (*Astragalus lentiginosus* var. *coachellae*) was observed during focused surveys, and approximately 266 individuals were observed throughout the survey area (MND page 61).

Mitigation Measure BIO-7 and BIO-8 of the MND (pages 65-66) discuss plant salvage activities specifically for Coachella Valley milk vetch on Bureau of Land Management (BLM) land. The MND does not indicate if salvage activities will be conducted on non-federal lands within the Project site for sand-dependent Covered Species. Section 6.6.1 of the CVMSHCP indicates that “within and outside conservation areas, on parcels approved for development, the Permittees *shall* encourage the opportunity to salvage Covered sand-dependent species.” To comply with Local Permittee obligations under the CVMSHCP, CDFW recommends that CVWD coordinate with CVCC to plan and implement a salvage of sand-dependent Covered Species—in particular, Coachella Valley fringe-toed lizard, Coachella Valley milkvetch, flat-tailed horned lizard, and Coachella Valley round-tailed ground squirrel as indicated in CVMSHCP Measure 8.2.4.2—over the entire Project area. CDFW recommends the following mitigation measure be added to a revised MND:

Mitigation Measure BIO-[B]: Salvage of Sand-Dependent Covered Species

Prior to grading or vegetation removal activities, CVWD shall coordinate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species.

Local Development Mitigation Fees

The MND lacks a discussion regarding the payment of a local development mitigation fee for this Project. CVMSHCP Section 6.6.1, Obligations of the Local Permittees, indicates that if “CVWD develops any of its land in a Conservation Area consistent with the Conservation Objectives, CVWD may commit an equivalent dollar value of its lands in the Conservation Areas to permanent conservation in lieu of paying the Development Mitigation fee.” Exhibit 6 of the MND shows that the Project’s impact areas overlap with CVWD easements within the Whitewater Floodplain Conservation Area. CVCC’s Like Exchange and Consistency Determination letter, dated April 7, 2023, discusses CVWD’s Like Exchange request to deed 42 acres of land within the Whitewater Floodplain Conservation Area to the CVCC for permanent conservation (also shown in Exhibit 6). CDFW recommends that CVWD consult with CVCC regarding the Like Exchange request to determine if it fulfills the local development fee mitigation requirement or if additional local development mitigation fees will be required for the Project.

5) Artificial Nighttime Lighting

Page 8 of the Project’s Biological Assessment, dated October 2022, indicates that “although construction activities would generally occur during diurnal hours, if construction occurs in the summer concrete would likely be poured overnight.” Page 86 of the MND indicates that the proposed Project would not require any additional lighting. CDFW requests that the MND and its supporting documents are revised to accurately

and consistently state the use of artificial nighttime lighting to allow CDFW to conduct a meaningful review and provide expertise on activities that have the potential to adversely affect fish and wildlife resources.

The MND also lacks an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources surrounding the Project site as a result of Project construction activities. Because the Project is located within and adjacent to open-space areas that support sand-dependent Covered Species under the CVMSHCP, in addition to migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife, CDFW recommends that avoidance and minimization measures for lighting are implemented to reduce impacts to less than significant. Available research indicates that artificial nighttime lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural predators; and navigation³. Further, many of the effects of artificial nighttime lighting on population- or ecosystem-level processes are still poorly understood suggesting that a precautionary approach should be taken when determining appropriate avoidance and minimization measures concerning artificial nighttime lighting.

To support CVWD in reducing the impacts associated with artificial nighttime lighting to a level less than significant, CDFW recommends that CVWD include in a revised MND the following mitigation measure:

Mitigation Measure BIO-[C]: Artificial Nighttime Lighting

During construction of the Project, CVWD shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. CVWD shall ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). CVWD shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

³ Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. *The ecological impacts of nighttime light pollution: a mechanistic appraisal*. *Biological Reviews*, 88.4 (2013): 912-927.

6) CDFW's Lake and Streambed Alteration Program

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. Note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Page 15 of the MND indicates "based on the results of the Delineation of State and Federal Jurisdictional Waters Report, prepared under separate cover (Michael Baker, 2016), State jurisdictional areas (Morongo Wash) were identified within the Project site that are subject to the Regional Water Quality Control Board (Regional Board) and California Department of Fish and Wildlife (CDFW) and approval." Accordingly, CDFW recommends that CVWD add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[D]: Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, CVWD shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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 (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

William Patterson, Environmental Supervisor
Coachella Valley Water District
May 23, 2023
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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.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the MND to assist CVWD in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete and accurate assessment of biological resources on the Project site. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND with a current Project description, a recent and complete assessment of impacts to biological resources, and mitigation to avoid and reduce those impacts to less than significant be recirculated for public comment.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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Kim Freeburn

Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
Heather.Brashear@Wildlife.ca.gov

William Patterson, Environmental Supervisor
 Coachella Valley Water District
 May 23, 2023
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Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Rollie White, U.S. Fish and Wildlife Service
rollie_white@fws.gov

Vincent James, U.S. Fish and Wildlife Service
vincent_james@fws.gov

Peter Satin, Coachella Valley Conservation Commission
psatin@cvag.org

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-[A]: Assessment of Biological Resources</p> <p>Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are</p>	<p>Timing: Prior to Project construction activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVWD</p> <p>Monitoring and Reporting: CVWD</p>

<p>completed during periods of drought.</p>		
<p>Mitigation Measure BIO-5 Burrowing Owl Surveys</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.</p>	<p>Timing: Prior to the start of Project-related activities for focused surveys. No less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance for preconstruction surveys.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVWD Monitoring and Reporting: CVWD</p>

<p>Mitigation Measure BIO-4: Nesting Birds</p> <p>Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of the Project</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVWD</p> <p>Monitoring and Reporting: CVWD</p>
<p>Mitigation Measure BIO-[B]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to grading or vegetation removal activities, CVWD shall coordinate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species.</p>	<p>Timing: Prior to grading or vegetation removal activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVCC and CVWD</p> <p>Monitoring and Reporting: CVWD</p>
<p>Mitigation Measure BIO-[C]: Artificial Nighttime Lighting</p> <p>During construction of the Project, CVWD shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. CVWD shall ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). CVWD shall ensure use of LED lighting with a correlated color temperature of</p>	<p>Timing: During Project construction activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVWD</p> <p>Monitoring and Reporting: CVWD</p>

<p>3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>		
<p>Mitigation Measure BIO-[D]: Lake and Streambed Alteration Program</p> <p>Prior to construction and issuance of any grading permit, CVWD shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Timing: Prior to construction and issuance of any grading permit</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: CVWD</p> <p>Monitoring and Reporting: CVWD</p>