



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 27, 2023

Pamela Arifian
County of Napa
1195 Third Street, Suite 210
Napa, CA 94559
Pamela.Arifian@countyofnapa.org

Subject: Constellation Brands Inc. 2155 Ramal Road Water Storage Reservoir,
Grading Permit Application #ENG23-00002, Negative Declaration,
SCH No. 2023060194; Napa County

Dear Ms. Arifian:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) from Napa County (County) for the Constellation Brands Inc. 2155 Ramal Road Water Storage Reservoir, Grading Permit Application #ENG23-00002 (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

CDFW is submitting comments on the ND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Harinder Dhaliwal, Constellation Brands Inc.

Objective: The Project involves grading and constructing an approximately 75-acre-foot water storage reservoir that would store reclaimed water from the Napa Sanitation District. The footprint, or development area, of the proposed reservoir is approximately

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.

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6.5 acres and would be within an existing fallow vineyard. No native vegetation would be removed or disturbed, and no trees would be removed. The development area would maintain the County-required setbacks from blueline streams and property lines.

There would be approximately 65,000 cubic yards of cut and 65,000 cubic yards of fill, with no off-site hauling. Construction would require approximately 25 truck trips for Project mobilization and demobilization and for equipment and materials delivery and pickup. Construction equipment is anticipated to include a crawler tractor (D-8), two scrapers, a compactor, one excavator, dump truck, skid steer, grader, and water truck at various times during the construction period.

Location: The Project parcel is located at 2155 Ramal Road, Napa, CA 94558, Assessor's Parcel Number 047-271-002. The proposed reservoir is located approximately 0.4 miles north of Ramal Road, 0.35 miles west of the intersection of Duhig Road and Las Amigas Road, and approximately 0.25 miles west of Huichica Creek, and at approximately 38.229623°N, -122.361073°W.

Timeframe: Construction would occur between April 1 and October 15.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

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Fully Protected Species

Fully Protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a **Mitigated Negative Declaration** is more appropriate for the Project and the below recommended mitigation measures should be implemented. The recommended mitigation measures are also included in **Attachment A: Draft Mitigation Monitoring and Reporting Program**.

I. **Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

Comment 1: Swainson's Hawk – Environmental Setting Shortcoming

Issue: The Project may impact nesting Swainson's hawk, which occur in Napa County. The California Natural Diversity Database (CNDDDB) documents multiple Swainson's hawk nesting occurrences within approximately 5 miles of the Project site including a 2013 record approximately 2 miles to the northeast. In addition, there is a series of eBird (<http://ebird.org>) records east of the Project site near Duhig Road spanning multiple years. There are potential nesting trees for Swainson's hawk within 0.5 miles of the Project site, the distance at which the species may be disturbed.

Specific impacts and why they may occur and be significant: If active Swainson's hawk nests are not detected by surveys or appropriate buffer zones are not established, Swainson's hawk could experience indirect impacts from noise and

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visual disturbance from Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young.

Swainson's hawk is CESA listed as a threatened species and; therefore, is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends adding the following mitigation measure:

Mitigation Measure (MM) Bio-1 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on the Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk (2000)² survey protocol, within 0.5-mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

II. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service?

Comment 2: Nesting Birds – Environmental Setting Shortcoming

Issue: The ND concludes that there are no potential impacts to nesting birds as a result of the proposed Project due in part to a lack of nesting structures in or around

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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the development area, lack of tree canopy within 500 feet, and because the nearest isolated trees are approximately 150 to 310 feet north of the Project site along an existing reservoir. Based on 2023 Google imagery, the existing reservoir and associated vegetation within 500 feet northeast of the Project site appears to be potentially suitable nesting habitat for white-tailed kite, a fully protected species, and other avian species. Additionally, some avian species may nest on the ground.

Specific impacts and why they may occur and be significant: If appropriate surveys are not conducted and appropriate buffer zones are not established, nesting birds including, but not limited to, fully protected species, such as white-tailed kite, could be disturbed by Project activities resulting in nest destruction or abandonment and loss of eggs or reduced health and vigor and loss of young. Additionally, nesting birds are protected by Fish and Game Code section 3500 et seq. and the federal MBTA. Therefore, if nesting birds such as passerines or waterfowl occur on or within 250 feet of the Project site, or nesting raptors occur within 500 feet of the Project site, impacts to nesting birds would be potentially significant.

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to less-than-significant, and to comply with Fish and Game Code and MBTA, CDFW recommends including the following mitigation measure:

MM Bio-2: Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.

- a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a qualified biologist within 7 days prior to the beginning of Project-related activities. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before Project work can be reinitiated.
- b) Active Nest Buffers. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.
 - Buffers shall be at a distance necessary to ensure disturbance to nesting birds is avoided. The buffer distance shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on site conditions and specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The

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buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

- The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist.
- c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a qualified biologist.

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 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

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).


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CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Sara Keeler, Environmental Scientist, at (916) 594-4485 or Sara.Keeler@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
B77F9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment A: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023060194)

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ATTACHMENT A

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM Bio-1	<p>Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk (2000) survey protocol, within 0.5-mile of the Project site each year that Project activities occur (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline). Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation and continuing over the course of the Project</p>	<p>Project Applicant</p>
MM Bio-2	<p>Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation and</p>	<p>Project Applicant</p>

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	<p>activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a qualified biologist within 7 days prior to the beginning of Project-related activities. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before Project work can be reinitiated.</p> <p>b) Active Nest Buffers. Active nest sites shall be designated as ESA and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.</p> <ul style="list-style-type: none"> • Buffers shall be at a distance necessary to ensure disturbance to nesting birds is avoided. The buffer distance shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on site conditions and specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established. • The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no 	<p>continuing over the course of the Project</p>	
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	<p>longer being fed by the parents), as determined by the qualified biologist.</p> <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a qualified biologist.</p>		
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