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July 5, 2023

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**Subject: Los Padres Dam Outlet Modifications Project  
Mitigated Negative Declaration,  
State Clearinghouse No. 2023060251, Monterey County**

Dear Maureen Hamilton:

The California Department of Fish and Wildlife (CDFW) received the Draft Mitigated Negative Declaration (MND) regarding the Los Padres Dam Outlet Modifications Project (Project) from the Monterey Peninsula Water Management District (MPWMD) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW Role**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines, § 15386, subd. (a)). CDFW, in the trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent that implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

**Bird Protection:** CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

**Water Rights:** CDFW, as Trustee Agency, is consulted by the State Water Resources Control Board (SWRCB) during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction -related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

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## PROJECT DESCRIPTION SUMMARY

**Lead Agency:** MPWMD

**Description:** California American Water is proposing to modify the existing low-level regulating outlet at the Los Padres Dam and Reservoir. The Project is intended to accomplish the following three primary goals: 1) meet the California Department of Water Resources Division of Safety of Dams mandated requirement to drain the reservoir in case of emergency; 2) supply water to the Carmel River during low-flow summer months to meet instream flow requirements and sustain aquatic organisms including South Central California Coast Steelhead; and 3) restore water supply to the existing fish trap and ladder necessary to provide upstream fish passage to adult steelhead.

Achieving these goals is essential for restoring the original purpose of the outlet and reliably achieving existing environmental mandates regarding sustaining aquatic organisms within the Carmel River and providing upstream fish passage at Los Padres Dam. The Project includes the following components: 1) Site preparation and access improvements; 2) Relocation of the upstream entrance; 3) Replacement of emergency outlet valves; 4) Installation and connection of new pipeline to existing pipeline; and 5) Site restoration and demobilization.

**Location:** Los Padres Dam, Carmel River, Monterey County

## COMMENTS AND RECOMMENDATIONS

### Biological Resources

CDFW offers the comments and recommendations below to assist MPWMD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (i.e. biological resources). Editorial comments or other suggestions may also be included to improve the document. Based on a review of the Project description and Table 5 in the Biological Resources section of the MND, a review of California Natural Diversity Database (CNDDDB) records, and a review of aerial photographs of the Project boundary and surrounding habitat, several special-status species could potentially be impacted by Project activities. Project-related construction activities within the Project boundary could impact the special-status plant and wildlife species and habitats known to occur in the area.

In particular, CDFW is concerned regarding potential impacts for special-status species and habitats known to occupy the Project area, including the federal threatened steelhead (south central California coast Distinct Population Segment (DPS) and Critical Habitat) (*Oncorhynchus mykiss irideus* pop. 9); the State fully protected golden eagle (*Aquila chrysaetos*), white-tailed kite, and American peregrine falcon (*Falco peregrinus*

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*anatum*); the State and federal threatened California tiger salamander – central California Distinct Population Segment (DPS) (*Ambystoma californiense* pop. 1); the federal proposed endangered California spotted owl (Coastal-Southern DPS) (*Strix occidentalis*); the federal threatened and State species of special concern (SSC) California red-legged frog (*Rana draytonii*); the State candidate for listing western bumble bee (*Bombus occidentalis*); the State species of special concern American badger (*Taxidea taxus*), Monterey dusky-footed woodrat (*Neotoma macrotis luciana*), Townsend's big-eared bat (*Corynorhinus townsendii*), pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus blossevillii*), yellow-breasted chat (*Icteria virens*), loggerhead shrike (*Lanius ludovicianus*), yellow warbler (*Setophaga petechia*), western pond turtle (*Emys marmorata*), two-striped garter snake (*Thamnophis hammondi*), California legless lizard (*Anniella pulchra*); coast horned lizard (*Phrynosoma blainvillii*), Coast Range newt (*Taricha torosa*), and Pacific lamprey (*Entosphenus tridentatus*).

The MND concludes that suitable habitat is present for the following special-status plant species: the State endangered and California Rare Plant Rank (CRPR) 1B.1 seaside bird's beak (*Cordylanthus rigidus* ssp. *littoralis*); the State rare and CRPR 1B.1 Pacific Grove clover (*Trifolium polyodont*); the State rare and CRPR 1B.2 Dudley's lousewort (*Pedicularis dudleyi*); the CRPR 1B.1 Pajaro manzanita (*Arctostaphylos montereyensis*), Santa Cruz Mountains pussypaws (*Calyptridium parryi* var. *hesseae*), Santa Cruz clover (*Trifolium buckwestiorum*), Oregon meconella (*Meconella oregana*), and Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*); the CRPR 1B.2 Toro manzanita (*Arctostaphylos montereyensis*), sandmat manzanita (*Arctostaphylos pumila*), Hospital Canyon larkspur (*Delphinium californicum* ssp. *interius*), Jolon clarkia (*Clarkia jolonensis*), San Francisco collinsia (*Collinsia multicolor*), Hutchinson's larkspur (*Delphinium californicum* ssp. *interius*), talus fritillary (*Fritillaria falcata*), Carmel Valley bush-mallow (*Malacothamnus palmeri* var. *involucratus*), Arroyo Seco bush-mallow (*Malacothamnus palmeri* var. *lucianus*), Carmel Valley malacothrix (*Malacothrix saxatilis* var. *arachnoidea*), hooked popcornflower (*Plagiobothrys uncinatus*), and pine rose (*Rosa pinetorum*); and the CRPR 1B.3 Cone Peak bedstraw (*Galium californicum* ssp. *lucianense*) and Pinnacles buckwheat (*Eriogonum nortonii*).

Other species of birds, amphibians, reptiles, mammals, fish, and plants also compose the local ecosystem within the Project boundary. Coast live oak (*Quercus agrifolia*) woodland, annual grassland, riparian, and wetland habitats are present within the Project boundary. These habitats, as well as the special-status species that inhabit these habitats, would be impacted by any proposed activities on lands not already under row or tree crop cultivation.

The CNDDDB is populated by records that are voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist/botanist during the appropriate survey period(s) and

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using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

### **COMMENT 1: Golden Eagle (GOEA)**

The MND states that GOEA occurrences have been documented within the vicinity of the Project boundary. Nesting GOEA have the potential to occur in the Project area and its vicinity. Without appropriate avoidance and minimization measures, potentially significant impacts associated with the Project's construction include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

MM-BIO-13 states that if raptor nests are identified, nest buffers shall be established in coordination with CDFW. Without appropriate survey methods, eagles nesting in the vicinity of a project can remain undetected resulting in avoidance and minimization measures not being effectively implemented (American Eagle Research Institute 2010). In addition, human activity near nest sites can cause reduced provisioning rates of GOEA chicks by adults (Steidl et al. 1993). Depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and also have the potential to result in nest abandonment, significantly impacting local nesting raptors.

#### **Recommended Mitigation Measure 1: Focused Surveys for Nesting Eagles**

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the *Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment* (Driscoll 2010). If ground-disturbing activities take place during the typical bird breeding season of February 1 through September 15, CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

#### **Recommended Mitigation Measure 2: Eagle Avoidance**

If an active GOEA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest for survival. If nesting eagles are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

Please note that GOEA is a State fully protected species and pursuant to Fish and Game Code section 3511, CDFW cannot authorize its incidental take. CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified GOEA nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site for survival.

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## **COMMENT 2: White-tailed Kite and American Peregrine Falcon:**

The MND states that suitable nesting habitat occurs in the vicinity of the Project boundary, and MM-BIO-13 states that if raptor nests are identified, nest buffers shall be established in coordination with CDFW. Without appropriate avoidance and minimization measures for white-tailed kite and peregrine falcon, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Due to its fully protected status, take of white-tailed kite and peregrine falcon cannot be authorized and would be a violation of Fish and Game Code.

### **Recommended Mitigation Measure 3: Focused Surveys for White-Tailed Kite and Peregrine Falcon**

To avoid potential Project-related impacts, CDFW recommends that prior to commencing Project-related activities, a qualified avian biologist conduct surveys for nesting white-tailed kites and peregrine falcons within areas of Project activity and a ¼-mile buffer.

### **Recommended Mitigation Measure 4: White-Tailed Kite and Peregrine Falcon Avoidance:**

CDFW recommends that a minimum no-disturbance buffer of ¼ mile be delineated around active nests of white-tailed kites and peregrine falcons until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest for survival. CDFW advises that reductions in no-disturbance buffer size not be allowed for white-tailed kites, peregrine falcon, or any fully protected bird of prey species absent a compelling biological or ecological reason to do so.

## **COMMENT 3: California Spotted Owl (CSO)**

The MND states that suitable nesting habitat is present in the Project area. Habitat loss and degradation are the primary threats to CSO (Shuford et al. 2008). Other potential threats to CSO population viability, including the invasion of the barred owl, secondary ingestion of rodenticides used in marijuana cultivation, timber harvest and forest management, wildfire, disease, and reduced genetic diversity (Keane 2017).

### **Mitigating Measure 5: CSO Surveys**

CDFW recommends that suitable nesting habitat for CSO be surveyed for occupancy and nesting by a qualified wildlife biologist, utilizing established protocols, prior to the commencement of vegetation removal activities in areas to be harvested that year.

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**Mitigation Measure 6: CSO Avoidance**

If nesting CSO are found, CDFW recommends a minimum no-vegetation disturbance buffer of ¼ mile around the active nests until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from this no-vegetation disturbance buffer may be implemented when there is compelling biological or ecological reason to do so. Any variance is advised to be supported by a qualified wildlife biologist and that CDFW be notified in advance of implementation of a no-vegetation disturbance buffer variance.

**COMMENT 4: California Tiger Salamander (CTS)**

CTS occurrences have been documented in the vicinity of the Project (CDFW 2023a). The MND states that suitable breeding habitat is located 1.7 miles from Los Padres Dam. In addition, the Project area or its immediate surroundings may support small mammal burrows, a requisite upland habitat feature for CTS. Without appropriate avoidance and minimization measures for CTS, potential significant impacts associated with any construction or ground disturbing activity include burrow collapse; inadvertent entrapment; reduced reproductive success; reduction in health and vigor of eggs, larvae and/or young; and direct mortality of individuals. In addition, depending on the design of any activity, the Project has the potential to result in creation of barriers to dispersal.

**Recommended Mitigation Measure 7: CTS Habitat Assessment**

CDFW recommends that a qualified biologist conducts a habitat assessment well in advance of Project implementation, to determine if any Project area or its vicinity contains suitable upland or breeding habitat for CTS.

**Recommended Mitigation Measure 8: Focused CTS Surveys**

If the Project area does contain suitable habitat for CTS, CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS prior to ground-disturbing activities using the United States Fish and Wildlife Service (USFWS) (2003) *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander*. CDFW advises that the survey include a 100-foot buffer around the areas in wetland and upland habitats that could support CTS.

**Recommended Mitigation Measure 9: CTS Avoidance**

CDFW advises that avoidance for CTS include a minimum 50-foot no disturbance buffer delineated around all small mammal burrows and a minimum 250-foot no-disturbance buffer around potential breeding pools within and adjacent to the Project area. CDFW also recommends avoiding any impacts that could alter the hydrology or result in sedimentation of breeding pools.

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### **Recommended Mitigation Measure 10: CTS Take Authorization**

If CTS occupy the Project area and take cannot be avoided, take authorization would be warranted prior to initiating Project activities, by acquiring an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081, subdivision (b), before Project ground or vegetation disturbing activities occur. Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP for CTS.

### **COMMENT 5: California Red-Legged Frog (CRLF)**

CRLF have been documented to occur within the Carmel River corridor and the Project Area (CDFW 2023a). CRLF primarily inhabits ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). Review of aerial imagery indicates the presence of several ponded wetland features within the vicinity of the Project area that may be suitable to support CRLF. As a result, the Project has the potential to impact CRLF.

MM-BIO-10 proposes to relocate CRLF in consultation with USFWS. Consultation with CDFW would also be warranted. Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with Project activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals. CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017).

### **Recommended Mitigation Measure 11: CRLF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity contain suitable habitat for CRLF.

### **Recommended Mitigation Measure 12: CRLF Surveys**

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF within 48 hours prior to commencing work (two-night surveys immediately prior to construction or as otherwise required by USFWS) in accordance with the *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.



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### **Recommended Mitigation Measure 13: CRLF Avoidance**

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for CRLF with relocation conducted by a qualified biologist who holds a Scientific Collecting Permit for the species. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas, November 1 to March 31. When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily for CRLF.

### **COMMENT 6: Special-Status Plants**

The MND states that multiple special-status plant species have potential to occur on the Project site, including State and federal listed, State rare, and other special-status plant species meeting the definition of rare or endangered under CEQA section 15380. Many special-status plants are narrowly distributed endemic species. These species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, road maintenance, and introduction of non-native plant species (CNPS 2021). The impacts of the Project have the potential to significantly impact populations of the species mentioned above. Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts associated with subsequent Project-specific activities include loss of habitat, loss or reduction of productivity, and direct mortality.

### **Recommended Mitigation Measure 14: Special-Status Plant Surveys**

CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFG 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Note that due to variations in annual rainfall that CDFW recommends plant surveys be conducted over one season (spring through fall) and repeated over two separate seasons to maximize detection of special-status plants.

### **Recommended Mitigation Measure 15: Special-Status Plant Avoidance**

CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW may be warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

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### **Recommended Mitigation Measure 16: Listed Plant Species Take Authorization**

If a State-listed plant species is identified during botanical surveys and the above no-disturbance buffers cannot be maintained, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is required. Take authorization would occur through issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b).

### **COMMENT 7: Special-Status Bat Species**

The MND acknowledges that habitat features are present that have the potential to support Townsend's big-eared bat, pallid bat, and western red bat. Pallid and Townsend's big-eared bats are known to roost in buildings, caves, tunnels, cliffs, crevices, and trees. (CDFW 2023b, Lewis 1994, and Gruver 2006). Western red bat are highly associated with riparian habitat (Peirson et al. 2006 and CDFW 2023b). Project activities have the potential to affect habitat upon which special-status bat species depend for successful breeding and have the potential to impact individuals and local populations. Without appropriate avoidance and minimization measures, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project activities include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality.

### **Recommended Mitigation Measure 17: Bat Roost Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if the Project area or its immediate vicinity contains suitable roosting habitat for special-status bat species.

### **Recommended Mitigation Measure 18: Bat Roost Surveys**

If suitable habitat is present, CDFW recommends assessing presence of special-status bat roosts by conducting surveys during the appropriate seasonal period of bat activity. CDFW recommends methods such as evening emergence surveys or bat detectors to determine whether bats are present.

### **Recommended Mitigation Measure 19: Bat Roost Disturbance Minimization and Avoidance**

If bats are present, CDFW recommends that a 100-foot no-disturbance buffer be placed around the roost and that a qualified biologist who is experienced with bats monitor the roost for signs of disturbance to bats from Project activity. If a bat roost is identified and work is planned to occur during the breeding season, CDFW recommends that no disturbance to maternity roosts occurs and that CDFW be consulted to determine measures to prevent breeding disruption or failure.

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### **COMMENT 8: Western Pond Turtle (WPT)**

WPT are documented in the Project area (CDFW 2023a), and a review of aerial imagery shows requisite habitat features that WPT utilize for nesting, overwintering, dispersal, and basking occur in the Project area. These features include aquatic and terrestrial habitats such as rivers, lakes, reservoirs, ponded areas, irrigation canals, riparian and upland habitat. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Noise, vegetation removal, movement of workers, construction, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations. Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

#### **Recommended Mitigation Measure 20: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT within 10 days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season of March through August.

#### **Recommended Mitigation Measure 21: WPT Avoidance and Minimization**

CDFW recommends that any WPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If WPT individuals are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

### **COMMENT 9: Western Bumble Bee (WBB)**

The draft MND acknowledges that the Project area contains suitable habitat and small mammal burrows for nesting. Suitable habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. The species primarily nests in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, underneath brush piles, in old bird nests, and in dead trees or hollow logs, and in structures (Williams et al. 2014). Overwintering sites used by mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014).

WBB have experienced range-wide declines in abundance and range restrictions, including historic areas of California's Central Valley (Central Valley Xerces Society et al. 2018). Without appropriate avoidance and minimization measures, potentially significant impacts associated with ground- and vegetation-disturbing activities

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associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality.

**Recommended Mitigation Measure 22: WBB Surveys and Avoidance**

CDFW recommends that all small mammal burrows and thatched/bunch grasses be surveyed for the species and their nests during the optimal flight period of April 1 through July 31 during the peak blooming period of preferred plant species prior to Project implementation. CDFW recommends avoidance of detected queens and workers, and to allow WBB to leave the Project site of their own volition. Avoidance and protection of detected nests prior to or during Project implementation is recommended with delineation and observance of a 50-foot no-disturbance buffer.

**Recommended Mitigation Measure 23: WBB Take Authorization**

Any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization would be warranted through issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b).

**COMMENT 10: Other State Species of Special Concern**

American badger, Monterey dusky-footed woodrat, two-striped garter snake, California legless lizard, Coast horned lizard, and Coast Range newt are known to inhabit grassland and upland shrub areas with friable soils (Williams 1986, Thomson et al. 2016). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2023a). Habitat loss threatens these species (Williams 1986, Thomson et al. 2016), and habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss and nest/den/burrow abandonment and may result in reduced health or vigor of eggs and/or young, and direct mortality.

**Recommended Mitigation Measure 24: Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if Project areas or their immediate vicinity contain suitable habitat for the species mentioned above.

**Recommended Mitigation Measure 25: Surveys**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

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**Recommended Mitigation Measure 26: Avoidance**

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

**COMMENT 11: Wetland and Riparian Habitats**

The Project area contains riparian and wetland habitat. Project activities such as water recharge and any associated ground disturbances have the potential to involve temporary and permanent impacts to these habitat features. Project activities have the potential to result in temporary and permanent impacts to these features through habitat conversion, grading, fill, conveyance and infrastructure construction, and related development. Riparian and associated floodplain and wetland areas are valuable for their ecosystem processes such as protecting water quality by filtering pollutants and transforming nutrients; stabilizing stream banks to prevent erosion and sedimentation/siltation; and dissipating flow energy during flood conditions, thereby spreading the volume of surface water, reducing peak flows downstream, and increasing the duration of low flows by slowly releasing stored water into the channel through subsurface flow. The Fish and Game Commission policy regarding wetland resources discourages development or conversion of wetlands that results in any net loss of wetland acreage or habitat value. Habitat conversion, construction, grading, and fill activities within these features also have the potential to impact downstream waters as a result of Project site impacts leading to erosion, scour, and changes in stream morphology.

**Recommended Mitigation Measure 27: Stream and Wetland Mapping**

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist or hydrologist, as warranted, to determine the baseline location, extent, and condition of streams (including any floodplain) and wetlands within and adjacent to the Project area. Please note that while there is overlap, State and federal definitions of wetlands differ, and complete stream mapping commonly differs from delineations used by the United States Army Corps of Engineers specifically to identify the extent of Waters of the United States. Therefore, it is advised that the wetland delineation identify both State and federal wetlands in the Project area as well as the extent of all streams including floodplains, if present. CDFW advises that site map(s) depicting the extent of any activities that may affect wetlands, lakes, or streams be included with any Project site evaluations, to clearly identify areas where stream/riparian and wetland habitats could be impacted from Project activities.

**Recommended Mitigation Measure 28: Stream and Wetland Habitat Mitigation**

CDFW recommends that the potential direct and indirect impacts to stream/riparian and wetland habitat be analyzed according to each Project activity. Based on those potential impacts, CDFW recommends that the MND include measures to avoid,

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minimize, and/or mitigate those impacts. CDFW recommends that impacts to riparian habitat, including biotic and abiotic features, take into account the effects to stream function and hydrology from riparian habitat loss or damage, as well as potential effects from the loss of riparian habitat to special-status species already identified herein. CDFW recommends that losses to wetland or riparian habitats be offset with corresponding habitat restoration incorporating native vegetation to replace the value to fish and wildlife provided by the habitats lost from Project implementation. If on-site restoration to replace habitats is not feasible, CDFW recommends offsite mitigation by restoring or enhancing in-kind riparian or wetland habitat and providing for the long-term management and protection of the mitigation area, to ensure its persistence.

## II. Editorial Comments and/or Suggestions

**Fisheries:** MND MM-BIO-7 states that fish will be relocated in accordance with the Programmatic Biological Opinion for the Memorandum of Agreement between California American Water, the National Marine Fisheries Service, and the California Coastal Conservancy. CDFW recommends that the MND include the methodology proposed for fish capture and relocation and also require consultation with CDFW in advance of implementation of a fish relocation plan.

CDFW recommends the use of seine nets to capture fish for relocation whenever possible to prevent damage to fish. If backpack electrofishing is the only option for fish capture, it is recommended to check the conductivity of the water prior to beginning electrofishing, as increased sediment and turbidity from construction upstream may alter stream conductivity levels. CDFW also recommends adjusting equipment settings to comply with the National Oceanic and Atmospheric Administration electrofishing protocol (NOAA 2000). When transporting fish, the dissolved oxygen and water temperature levels must be sufficient for steelhead. To minimize shock and stress on the fish, the water temperature of their holding tanks should be close to that of the sites that they are removed from and released into. CDFW may have additional recommendations after a relocation plan is provided.

**Water Rights:** The MND states that the Project is needed because rockslides originating from the left bank of the reservoir occurring in 2018, 2019, and 2020, have covered the existing lower outlet with mud, rock, and debris and reduced its overall reliability and capacity. Since the summer of 2021, the lower outlet has only been able to convey between 1 and 3 cubic feet per second (cfs) downstream of the dam. Its normal operating flow was generally between 10 and 15 cfs and it had a maximum capacity of between 30 and 50 cfs. The license to operate the dam issued by SWRCB requires a minimum of 5 cfs to be released, with some exceptions for operational control. This requirement can no longer be met through the lower outlet alone and other means are needed to supplement releases, including use of a siphon and an emergency pump, which are not as reliable as a gravity-fed outlet.

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CDFW recommends that the MND include a detailed description of the water rights and water entitlements that would pertain to the Project and address any applications or change petitions that may be filed. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to special-status species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

**Lake and Streambed Alteration:** Project activities that have the potential to substantially change the bed, bank, and channel of streams and associated wetlands may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov), and the CDFW website: <https://wildlife.ca.gov/Conservation/LSA>.

**Nesting birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). CDFW encourages that Project implementation occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts to nesting birds, CDFW recommends that a qualified biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of

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workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends that the work causing that change cease and that CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers.

**Endangered Species Act Consultation:** CDFW recommends consultation with the USFWS and the National Marine Fisheries Service well in advance of Project implementation, due to potential impacts to federal listed species. Take under the federal Endangered Species Act is more stringently defined than under CESA, and may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be obtained at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by



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CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist MPWMD in identifying and mitigating Project impacts on biological resources. If you have questions regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or by email at [Annette.Tenneboe@wildlife.ca.gov](mailto:Annette.Tenneboe@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
12950B95267A4F5...

Krista Tomlinson for Julie A. Vance  
Regional Manager

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Kristine Atkinson  
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**Attachment 1**

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

**PROJECT: Los Padres Dam Outlet Modifications Project**

**STATE CLEARINGHOUSE No.: 2023060251**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Project Activity</i>	
Recommended Mitigation Measure 1: Focused Surveys for Nesting Eagles	
Recommended Mitigation Measure 2: Eagle Avoidance	
Recommended Mitigation Measure 3: Focused Surveys for White-Tailed Kite and Peregrine Falcon	
Recommended Mitigation Measure 4: White-Tailed Kite and Peregrine Falcon Avoidance	
Recommended Mitigation Measure 5: CSO Surveys	
Recommended Mitigation Measure 6: CSO Avoidance	
Recommended Mitigation Measure 7: CTS Habitat Assessment	
Recommended Mitigation Measure 8: Focused CTS Surveys	
Recommended Mitigation Measure 9: CTS Avoidance	
Recommended Mitigation Measure 10: CTS Take Authorization	
Recommended Mitigation Measure 11: CRLF Habitat Assessment	
Recommended Mitigation Measure 12: CRLF Surveys	
Recommended Mitigation Measure 13: CRLF Avoidance	
Recommended Mitigation Measure 14: Special-Status Plant Surveys	
Recommended Mitigation Measure 15: Special Status Plant Avoidance	
Recommended Mitigation Measure 16: Listed Plant Species Take Authorization	

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
Recommended Mitigation Measure 17: Bat Roost Habitat Assessment	
Recommended Mitigation Measure 18: Bat Roost Surveys	
Recommended Mitigation Measure 19: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 20: WPT Surveys	
Recommended Mitigation Measure 21: WPT Avoidance and Minimization	
Recommended Mitigation Measure 22: WBB Surveys and Avoidance	
Recommended Mitigation Measure 23: WBB Take Authorization	
Recommended Mitigation Measure 24: Habitat Assessment for American badger, Monterey dusky-footed woodrat, two-striped garter snake, California legless lizard, Coast horned lizard, and Coast Range newt	
Recommended Mitigation Measure 25: Surveys for American badger, Monterey dusky-footed woodrat, two-striped garter snake, California legless lizard, Coast horned lizard, and Coast Range newt	
Recommended Mitigation Measure 26: Avoidance of American badger, Monterey dusky-footed woodrat, two-striped garter snake, California legless lizard, Coast horned lizard, and Coast Range newt	
Recommended Mitigation Measure 27: Stream and Wetland Mapping	
Recommended Mitigation Measure 28: Stream and Wetland Habitat Mitigation	
<i>During Project Activity</i>	
Recommended Mitigation Measure 2: Eagle Avoidance	
Recommended Mitigation Measure 4: White-Tailed Kite and Peregrine Falcon Avoidance	
Recommended Mitigation Measure 6: CSO Avoidance	
Recommended Mitigation Measure 9: CTS Avoidance	

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
Recommended Mitigation Measure 13: CRLF Avoidance	
Recommended Mitigation Measure 15: Special Status Plant Avoidance	
Recommended Mitigation Measure 19: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 21: WPT Avoidance and Minimization	
Recommended Mitigation Measure 22: WBB Surveys and Avoidance	
Recommended Mitigation Measure 26: Avoidance of American badger, Monterey dusky-footed woodrat, two-striped garter snake, California legless lizard, Coast horned lizard, and Coast Range newt	