State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

September 13, 2023
Sent via email

Ryan Molhoek
Senior Engineer
Desert Water Agency
1200 S. Gene Autry Trail
Palm Springs, CA 92264

Well 46 Palm Oasis (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023080352

Dear Ryan Molhoek:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Desert Water Agency (DWA) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines.[1]

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*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.

[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.

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

PROJECT DESCRIPTION SUMMARY

Proponent: Desert Water Agency

Objective: The Project proposes the construction of one domestic groundwater production well on Desert Water Agency's (DWA) existing property (Project Site) and connecting the well to the Well 17 forebay via a proposed pipeline for subsequent use in the distribution system. The Project is intended to improve water system operational flexibility by strengthening the water supply in the Palm Oasis area and DWA's Main Pressure Zone within the City of Palm Springs. The well is expected to be approximately 14 to 20 inches in diameter and to extend to a depth of up to 1,500 feet below ground surface. The well is anticipated to have an approximate capacity between 1,500 gallons per minute (gpm) and 4,000 gpm and to operate up to 365 days per year. Construction of the Project includes, but is not limited to, grading and installing temporary sound attenuation panels at the well site; grading of an area of approximately one half (1/2) acre to two (2) acres to create a pump-to-waste retention basin; constructing an access road extending north from the northerly terminus of Sterling Avenue to the well site, and constructing up to 1,600 linear feet of well discharge pipeline up to 24" in diameter from the new well site to the existing Well 17 forebay.

Location: The proposed Project is located north of Palm Oasis Avenue, south of Range View Drive and Highway 111, and east of Margee Road in the community of Palm Oasis, near the City of Palm Springs, Riverside County, California, on land identified as Assessor's Parcel Numbers 669-680-024, 669-191-005, 669-191-006, and 669-191-009. The Project site is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) area and outside of a Conservation Area. The Project is located approximately 190 feet south of the Whitewater Floodplain Conservation Area and 1,200 feet from the Santa Rosa and San Jacinto Mountains Conservation Area. The proposed well is located 0.25 miles from the West Whitewater River Subbasin Groundwater Replenishment Facility, where water imported from the Colorado River Aqueduct and diverted from Snow and Falls Creeks is discharged and percolated into the aquifer.

Timeframe: The MND does not indicate a timeline for Project construction.

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 the DWA 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 a complete and accurate Project description. 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.

Project Description

Compliance with CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate Project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the Project description.

The MND lacks a discussion of plans for artificial nighttime lighting. CDFW requests that the MND is revised to include design plans for artificial nighttime lighting and lighting specifications. Artificial nighttime lighting can negatively impact biological resources in a variety of ways as discussed in the Artificial Nighttime Lighting section below. To conduct a meaningful review and provide biological expertise on how to protect fish and wildlife resources, CDFW requires a complete and accurate Project description.

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 the DWA in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation

measures for artificial nighttime lighting, CVMSHCP compliance, and salvage of Covered sand dependent species, as well as revising the mitigation measures for nesting birds and burrowing owl.

1) 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: 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 21 of the MND indicates that "the Project Site provides suitable habitat for nesting birds." The MND includes Mitigation Measure BIO-2 for nesting birds, which indicates that "in the event that construction or vegetation removal will commence during the breeding season of January 15 through August 31, then a nesting bird preconstruction survey will be required." CDFW recommends the completion of nesting bird surveys *regardless* of the time of year to ensure compliance with all applicable laws pertaining to nesting and migratory birds. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017[2]). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. 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 considers the Mitigation Measure BIO-2 to be insufficient in scope and timing to reduce impacts to nesting birds to less than significant. CDFW recommends the DWA revise Mitigation Measure BIO-2, with additions in **bold** and removals in ~~strikethrough~~:

[2] Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

Mitigation Measure BIO-2: 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. ~~Project construction, including vegetation removal, will commence during the period of September 1 through January 14 to avoid the general bird breeding season. In the event that construction or vegetation removal will commence during the breeding season of January 15 through August 31, then a nesting bird preconstruction survey will be required. A preconstruction nesting bird survey, if required, will be conducted by a qualified biologist and will take place no less than 3 days and not more than 7 days prior to commencement of construction activities, including vegetation removal. If no nesting birds are found during the preconstruction survey, then construction and vegetation removal may commence. If nesting birds are found during the preconstruction survey, then the qualified biologist will establish an exclusionary buffer around the nest. The buffer will be clearly marked in the field by construction personnel under guidance of the qualified biologist. No construction activities will be allowed within the buffer area until the qualified biologist determines that the young have fledged or the nest is no longer active. If more than 7 days have lapsed since the preconstruction survey and construction or vegetation removal have not yet commenced, then another preconstruction nesting bird survey will be conducted to determine whether any nesting birds have moved into the site.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1 and 2, as well as CDFW-recommended MM-BIO [A] through [C] (see Attachment 1).

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."

Page 15 of the Project's Biological Resources Assessment and CVMSHCP Consistency Analysis (Biological Assessment) indicates that "the project site contains suitable habitat for burrowing owl and other nesting bird species." Page 11 of the Biological Assessment states that "this species and its sign were not observed during the November 15, 2022, field survey." Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008[3]; Coulombe 1971[4]). CDFW is concerned about the potential for burrowing owls to move into the Project site between the time that burrowing owl surveys were last conducted and the start of Project construction activities. Although the MND includes Mitigation Measure BIO-1 for burrowing owl, CDFW considers this measure to be inadequate in scope and timing to reduce impacts to less than significant. CDFW recommends that DWA revised Mitigation Measures BIO-1, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-1: Burrowing Owl Avoidance

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 proponent 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

[3] Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. Journal of Raptor Research 42(2): 87-98.

[4] Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. Condor 73:162–176.

burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS 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 prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.
~~Within fourteen (14) days prior to commencement of construction activities, including vegetation removal, a preconstruction burrowing owl survey will be conducted by a qualified biologist in accordance with California Department of Fish and Wildlife's 2012 Staff Report on Burrowing Owl Mitigation. If no burrowing owl or burrowing owl sign is detected, the Project construction may commence. If burrowing owl is detected, then a burrowing owl mitigation plan is required in coordination with the California Department of Fish and Wildlife prior to commencement of construction.~~

3) Coachella Valley Multiple Species Habitat Conservation Plan

Page 11 of the Biological Assessment indicates that Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*; Species of Special Concern; CVMSHCP Covered Species) has a moderate probability of occurring on the Project site, and "suitable habitat (desert scrub and sandy soil) is present, and there are known CNDDB records of this species in the immediate project area." CDFW notes that the Project site is also within modeled habitat for Palm Springs round-tailed ground squirrel,

as identified in the CVMSHCP. As indicated in the MND, DWA is not a permittee under the CVMSHCP and does not have authorized take of CVMSHCP Covered Species under the CVMSHCP. Because the Project site has a moderate potential to support at least one CVMSHCP Covered Species, CDFW recommends that DWA contact the Coachella Valley Conservation Commission (CVCC; Implementing Entity for the CVMSHCP) to discuss receiving take authorization for Covered Species as a Participating Special Entity (PSE). The process for requesting take authorization under the CVMSHCP as a PSE is discussed in Section 11.7 of the CVMSHCP Implementing Agreement. To be consistent with the CVMSHCP, CDFW recommends that the DWA include in a revised the MND the following mitigation measure:

Mitigation Measure BIO-[A]: CVMSHCP Compliance

Prior to initiation of Project activities, DWA will request Take Authorization for its activities as a Participating Special Entity under the CVMSHCP. If DWA is granted Take Authorization for its activities, DWA will comply with applicable sections of the CVMSHCP and with requirements for Participating Special Entities outlined in Section 11.7.3 of the CVMSHCP Implementing Agreement.

If DWA does not receive Take Authorization for its activities as a Participating Special Entity under the CVMSHCP, CDFW recommends that DWA offset Project impacts to occupied habitat for Palm Springs round-tailed ground squirrel through the conservation of habitat for Palm Springs round-tailed ground squirrel at a 2:1 mitigation ratio for every acre impacted.

Further, Section 6.6.1 of the CVMSHCP (Obligations of Local Permittees) states that within and outside Conservation Areas “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.” To be consistent with the CVMSHCP, CDFW recommends that DWA include in a revised MND the following mitigation measure:

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

Prior to vegetation removal or ground-disturbing activities, DWA will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of Covered sand-dependent species within the Project site.

4) Artificial Nighttime Lighting

Page 13 of the MND states that the “the Project may include lighting at the new well site for use in the event that operation or maintenance activities need to be conducted at the facilities outside of daylight hours. Said lights would be directed downward.” The MND lacks any additional details on the Project’s lighting plans and lighting specifications or

additional avoidance and minimization measures associated with nighttime lighting. New sources of artificial nighttime lighting associated with the Project have the potential to negatively impact biological resources in nearby open-space areas including the Whitewater Floodplain Conservation Area.

Additionally, because the Project is located near open-space areas including the Whitewater Floodplain Conservation Area, an area that supports habitat for nesting birds, migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife, CDFW recommends the MND is revised to include an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources within the nearby Whitewater Floodplain Conservation Area. Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial 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; and the detection of resources and natural enemies; and navigation.[5] Many species use photoperiod cues for communication (e.g., bird song[6]), determining when to begin foraging,[7] behavioral thermoregulation,[8] and migration. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.[9]

To support the DWA in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends that the DWA add to a revised MND the following mitigation measure:

Mitigation Measure BIO-[C]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the DWA shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The DWA shall ensure that all lighting for the Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding

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[5] Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biological Reviews, 88.4: 912-927.
[6] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
[7] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127.
[8] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of Bufo americanus, in relation to light and temperature. Ecology 58:98–108.
[9] Longcore, T., and C. Rich. 2004. Ecological light pollution -Review. Frontiers in Ecology and the Environment 2:191–198.

areas including the Whitewater Floodplain Conservation Area or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The DWA 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.

5) Groundwater-Dependent Ecosystems and Species

Page 30 of the MND posits that "the proposed well is located close to the West Whitewater River Subbasin Groundwater Replenishment Facility, where water imported from the Colorado River Aqueduct and diverted from Snow and Falls Creeks is discharged and percolated into the aquifer, typically several times per year. The operation of this facility results in periodic increases in local groundwater levels during replenishment events. Thus, although operation of the well may result in localized and temporary lowering of groundwater levels, no net increase in groundwater production or long-term, significant lowering of groundwater levels is currently anticipated as a result of the Project." The MND lacks quantitative data on the Project's potential impacts to groundwater levels. The MND also lacks analysis of the Project's potential impacts to groundwater-dependent ecosystems and species that depend on them including Peninsular bighorn sheep (*Ovis canadensis nelsoni*; Fully Protected Species). The Project site is located approximately 0.5 miles from U.S. Fish and Wildlife Service critical habitat for Peninsular bighorn sheep. Especially during the summer months and through times of drought, Peninsular bighorn sheep rely on vegetation in washes and alluvial fans where groundwater is generally closer to the surface and in greater quantity compared to mountain sides.[10] CDFW recommends that the MND is revised to include an analysis of Project impacts to groundwater-dependent ecosystems and Peninsular bighorn sheep.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The

[10] United States Fish and Wildlife Service. 2009. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Peninsular Bighorn Sheep and Determination of a Distinct Population Segment of Desert Bighorn Sheep (*Ovis canadensis nelsoni*). Federal Register 74(70): 17321.

types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the MND to assist the DWA 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 project description. 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, including a complete Project description with lighting plans and specifications, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and 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:
Kim Freeburn
84F92FFEEFD24C8...
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

Office of Planning and Research, State Clearinghouse, Sacramento
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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	**Timing and Methods**	**Responsible Parties**
Mitigation Measure BIO-2: 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.**	**Timing**: No more than 3 days prior to vegetation removal or ground-disturbing activities. **Methods:** See Mitigation Measure	**Implementation**: Desert Water Agency **Monitoring and Reporting**: Desert Water Agency
Mitigation Measure BIO-1: Burrowing Owl Avoidance **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 proponent 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**	**Timing: Focused surveys:** Prior to vegetation removal or ground-disturbing activities. **Pre-construction surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to	**Implementation**: Desert Water Agency **Monitoring and Reporting**: Desert Water Agency

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 compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS 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 prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.**	ground disturbance. **Methods:** See Mitigation Measure	

Mitigation Measure BIO-[A]: CVMSHCP Compliance **Prior to initiation of Project activities, DWA will request Take Authorization for its activities as a Participating Special Entity under the CVMSHCP. If DWA is granted Take Authorization for its activities, DWA will comply with applicable sections of the CVMSHCP and with requirements for Participating Special Entities outlined in Section 11.7.3 of the CVMSHCP Implementing Agreement.**	**Timing**: Prior to initiation of Project activities **Methods:** See Mitigation Measure	**Implementation**: Desert Water Agency **Monitoring and Reporting**: Desert Water Agency
Mitigation Measure BIO-[B]: Salvage of Sand-Dependent Covered Species **Prior to vegetation removal or ground-disturbing activities, DWA will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of Covered sand-dependent species within the Project site.**	**Timing**: Prior to vegetation removal or ground-disturbing activities **Methods:** See Mitigation Measure	**Implementation**: Desert Water Agency **Monitoring and Reporting**: Desert Water Agency
Mitigation Measure BIO-[C]: Artificial Nighttime Lighting **Throughout construction and the lifetime operations of the Project, the DWA shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The DWA shall ensure that all lighting for the Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas including the Whitewater Floodplain Conservation Area or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The DWA 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.**	**Timing**: Throughout construction and the lifetime operations of the Project **Methods:** See Mitigation Measure	**Implementation**: Desert Water Agency **Monitoring and Reporting**: Desert Water Agency