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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



December 8, 2023

Sent via e-mail

Governor's Office of Planning & Research

Dec 08 2023

STATE CLEARINGHOUSE

Jane Hauptman
 Manager of Environmental Planning and Assessment
 Los Angeles Department of Water and Power
 111 North Hope Street, Room 1044
 Los Angeles, CA 90012
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Dear Ms. Hauptman:

**Little Lake Aqueduct Crossover Project
 Initial Study/Mitigated Negative Declaration
 SCH# 2023110035**

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt the IS/MND from the Los Angeles Department of Water and Power (LADWP) (Lead Agency) for the Little Lake Aqueduct Crossover Project (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.

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: LADWP

Objective: The objective of the Project is to connect the First Los Angeles Aqueduct (LAA1) (concrete conduit) and the Second Los Angeles Aqueduct (LAA2) so that the Haiwee Power Plant can continue to generate power when the LAA1 is out of service or under maintenance. Construction is anticipated to take approximately nine months.

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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Primary Project activities include:

- Constructing approximately 183 feet of a 60-inch diameter steel pipe to connect both aqueducts, downstream of the LAA1-LAA2 intersection.
- Installing an isolation structure on the LAA1 downstream of the LAA Crossover connection, which includes two sets of slide gates and reinforcement of the LAA.
- Installing two 60-inch diameter butterfly valves on the Crossover pipeline to prevent backflow into the LAA1 when the LAA2 is in service.
- Installing a new crossover pipe below grade with a new mechanical platform constructed atop the replacement segment of the LAA1.
- Installing a new connection structure to allow for the connection of the LAA Crossover pipeline to the LAA1 concrete channel; and
- Installing a galvanic cathodic protection system for corrosion control.

Location: West of, and accessible from, the United States (U.S.) Route 395 located in Rose Valley, in Inyo County, at Latitude 35.956836⁰, and Longitude -117.936881⁰.

CDFW offers the comments and recommendations below to assist LADWP in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

**COMMENT #1: Desert Tortoise (*Gopherus agassizii*)
 IS/MND Section 2, Page 2-12**

Issue: The Project may have impacts to the desert tortoise, a CESA threatened species, proposed endangered. The IS/MND does not fully describe the impacts and avoidance, minimization, and mitigation measures, including compensatory mitigation, sufficient to reduce impacts to desert tortoise to less than significant. CDFW recommends incorporating avoidance, minimization, or mitigation measures specific to desert tortoise.

Specific impact: The Project is located within the geographic range of the desert tortoise and the Project site provides potentially suitable desert tortoise habitat. Desert tortoise are known to have historically occurred within the vicinity of the Project area. This species is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat, due to development. Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and related activities may result in collision with, or crushing by, vehicles, heavy equipment; entrapment within open trenches and pipes, entrapment or entanglement within materials and equipment staged and moved, crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation.

Why impact would occur: The IS/MND does not provide sufficient information for CDFW to determine if a qualified biologist, experienced in locating desert tortoise individuals in all life stages and their sign, completed surveys specific to desert tortoise following CDFW-approved desert tortoise survey protocols. While CDFW appreciates the inclusion of Mitigation Measure (MM) BIO-3, CDFW is concerned that the measure lacks sufficient detail on the methodology regarding surveys, avoidance, and adequate planning if avoidance is not achievable. Additionally, should desert tortoise presence be confirmed during surveys, the IS/MND lacks avoidance, minimization, and mitigation measures to avoid 'take' of desert tortoise. '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."

Evidence impact would be significant: Desert tortoise is a CESA-listed species. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

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Desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

The desert tortoise section of the IS/MND acknowledges that the potential for desert tortoise to occur within the Project area is high². The Project area offers suitable habitat, including suitable soils for denning and plants for foraging. Despite this likelihood of desert tortoise occurrence, only general biological pre- and during construction monitoring methods have been proposed to reduce potential impacts to less than significant levels. CDFW is concerned that protocol-level surveys specific to desert tortoise were not conducted and thus desert tortoise presence/absence on the Project site has not been established.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends the following Mitigation Measure be added to the MND:

MM BIO-9: Desert Tortoise

Prior to ground disturbance or vegetation clearing within the proposed project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service (USFWS) 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure desert tortoise do not enter the Project area during construction. If a desert tortoise enters the project area, work shall cease and the animal will be allowed to safely leave the site. A Watershed Resources Specialist supervisor will be notified immediately, and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities. If a federally endangered species is found prior to or during ground disturbance of the site, the USFWS shall also be notified.

If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.

² The IS/MND defines 'high' on page 2-11 as: *The project area and immediate vicinity contain suitable habitat for a particular species as well as occurrences of the species. The presence of the species and/or suitable habitat may have also been confirmed during a recent biological survey or surveys. The proposed project may incorporate measures to avoid and/or minimize impacts to the species, but there could still be direct and/or indirect impacts to the species.*

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**Comment #2: Mohave Ground Squirrel (*Xerospermophilus mohavensis*)
 IS/MND Section 2, Page 2-11**

Issue: The Project may have impacts to Mohave ground squirrel. The IS/MND does not fully describe the impacts and avoidance, minimization, and mitigation measures, including compensatory mitigation, sufficient to reduce impacts to Mohave ground squirrel to less than significant. CDFW recommends incorporating avoidance, minimization, or mitigation measures specific to the CESA-listed as threatened Mohave ground squirrel.

Specific impact: The Project is within the geographic range of the Mohave ground squirrel and includes suitable soils for burrow construction and key plant species for forage. There are 11 California Natural Diversity Database (CNDDDB) occurrences of Mohave ground squirrel documented from two miles southeast to 13 miles northeast of the Project area. The initial phase of the Project requires excavating areas that support key plant species that Mohave ground squirrel forage on, particularly during drought years. The IS/MND has also identified small burrow complexes, possibly housing Mohave ground squirrel, in and around 300 feet of the Project area.

Why impact would occur: The IS/MND does not provide sufficient information for CDFW to determine if a qualified biologist, experienced in locating Mohave ground squirrel individuals in all life stages and their sign, completed surveys specific to Mohave ground squirrel following CDFW-approved Mohave ground squirrel survey protocols. While CDFW appreciates the inclusion of MM Bio-3, CDFW is concerned that the measure lacks sufficient detail on the methodology regarding surveys, avoidance, and adequate planning if avoidance is not achievable. Additionally, should Mohave ground squirrel presence be confirmed during surveys, the IS/MND lacks avoidance, minimization, and mitigation measures to avoid 'take' of Mohave ground squirrel. '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."

Evidence impact would be significant: The IS/MND acknowledges that the potential for Mohave ground squirrel to occur within the Project area and its immediate vicinity is high³. CDFW is concerned that despite this high likelihood of occurrence, Mohave ground squirrel specific surveys were not conducted to assess Mohave ground squirrel presence or absence in the Project area and only general biological pre- and during construction monitoring methods have been proposed to reduce potential impacts to less than significant levels.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends the following Mitigation Measures be added to the MND:

MM BIO-10 Mohave ground squirrel:

Prior to ground disturbance or vegetation clearing within the proposed project site a CDFW-approved biologist authorized by a Memorandum of Understanding issued by CDFW shall conduct Mohave ground squirrel surveys prior to ground disturbance activities within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more. Mohave ground squirrel surveys shall follow the *Mohave Ground Squirrel Survey Guidelines* (CDFG, 2010) or most recent version. The Mohave ground squirrel survey protocol is available here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>. The surveys shall cover the Project area and a 50-foot buffer zone. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure Mohave

³ The IS/MND defines 'high' on page 2-11 as: *The project area and immediate vicinity contain suitable habitat for a particular species as well as occurrences of the species. The presence of the species and/or suitable habitat may have also been confirmed during a recent biological survey or surveys. The proposed project may incorporate measures to avoid and/or minimize impacts to the species, but there could still be direct and/or indirect impacts to the species.*

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ground squirrel do not enter the Project area during construction. If a Mohave ground squirrel enters the Project area work shall cease and the animal will be allowed to safely leave the site. A Watershed Resources Specialist supervisor will be notified immediately and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities.

If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a Mohave ground squirrel-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of Mohave ground squirrel. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization such as a CESA ITP is obtained. Any take of Mohave ground squirrel without take authorization would be a violation of Fish and Game Code section 2080.

**COMMENT #3: Rare Plants
 IS/MND Section 2, Page 2-13**

Issue: The IS/MND dismisses the potential occurrence of four rare, threatened, or endangered plant species of either Ranks 1B or 2B⁴, despite suitable habitat and recorded occurrences of such species documented within several miles of the Project area.

Specific impact: Surveying outside of the flowering season for sensitive plant species decreases the likelihood of detection, which would misinform appropriate subsequent avoidance or relocation strategies, as needed.

Why impact would occur: The timing of April and October 2020 and April 2021 surveys noted in the IS/MND phenologically mismatch with the blooming season of 2B-ranked Booth's evening-primrose (*Eremothera boothii* ssp. *Boothii*), which blooms June to August, and 1B-ranked Amargosa beardtongue (*Penstemon fruticiformis* var. *amargosae*), which blooms May to June. The Project area has not been surveyed for these two special-status species during their blooming periods (May-August) and therefore a presence/absence determination cannot be made.

Evidence impact would be significant: The IS/MND presumes absence for four distinct sensitive plant species. A botanical field survey following [CDFW or California Native Plant Society \(CNPS\) botanical survey protocol](#) is needed during each plants specific blooming season to identify plants at a taxonomic level to determine rarity and inform listing status of other sensitive plants that may not have been identified.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends inclusion of the following changes to the MM BIO-2 for rare plants (edits are in strikethrough and additions are in bold):

MM BIO-2 Survey for Special-StatusRare Plants:

Prior to Project construction, surveys for special-status plants will be conducted during times of year when plants are evident and identifiable (i.e., flowering or fruiting), potentially warranting multiple surveys to determine the presence or absence of special-status plants in the Project area.

~~Prior to ground disturbance or vegetation clearing within the proposed project site, a qualified biologist shall conduct preconstruction rare plant clearance surveys (no more than seven (7) days prior to site disturbing activities) where suitable habitat is present and will be directly impacted by construction activities. Any rare special-status plants found will be counted and flagged or fenced for avoidance, as feasible. If it a special-status~~

⁴ [California Rare Plant Ranks | California Native Plant Society \(CNPS\):](#)

1B: Plants rare, threatened, or endangered in California or elsewhere.

2B: Plants rare, threatened, or endangered in California, but more common elsewhere.

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plant cannot be avoided, then an appropriate relocation strategy shall be developed and coordinated with the CDFW and/or USFWS **prior to construction start.**

COMMENT #4: Nesting Birds

Issue: The MND does not discuss nesting birds and does not include mitigation measures to avoid impacts to nesting birds. CDFW is concerned that the Project does not avoid impacts to nesting birds.

Specific Impact: Potential take of nesting birds and loss of bird nesting and/or foraging habitat.

Why impact would occur: Project activities may disturb nesting birds, which can lead to failure of the nest or unauthorized take.

Evidence impact would be significant: Project proponent is responsible for complying with Fish and Game Code sections 3503, 3503.5, and 3513, which state as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs or any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto; 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 the Fish and Game Code or any regulation adopted pursuant thereto; 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.).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends a qualified biologist survey the entire Project area, not only for nesting birds, but also all bird activity to observe behavior that could be related to nest building, incubation, feeding of young and/or possible behavior that could indicate agitation and/or nest abandonment caused by Project activities. CDFW recommend the inclusion of the following mitigation measures to avoid take of nesting birds (edits are in strikethrough and additions are in bold):

MM BIO-11 Nesting Birds:

Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance 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 the survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).

COMMENT #5: Burrowing Owl (*Athene cunicularia*)

Issue: CDFW is concerned that the MND does not discuss burrowing owl, identify Project impacts to burrowing owl, or ensure that impacts are mitigated to a level less than significant. The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl.

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Specific issue: CDFW is concerned regarding the MND's absence of analysis and supporting documentation that the Project site lacks burrowing owl habitat. Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

Why impact would occur: According to CNDDDB, there are several occurrences of burrowing owl in the vicinity of the Project site (CNDDDB 2023). Additionally, when comparing the Project site against habitat characteristics of burrowing owl there are no distinct physical barriers or habitat qualities that would preclude burrowing owl from occurring on site. Finally, the IS/MND indicates that soils in the project area are conducive to burrows and small burrows have been observed. For these reasons, CDFW recommends the lead agency conduct protocol level burrowing owl surveys following the 2012 *Staff Report on Burrowing Owl Mitigation* to ensure adequate evaluation of Project impacts to burrowing owls are included in the IS/MND.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern (SSC). 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.

Burrowing owl surveys provide information needed to determine the potential effects of the proposed Project on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA Project activity.

Recommended potentially feasible mitigation measures to reduce impacts to less than significant: CDFW recommends the inclusion of MM BIO-12 and MM BIO-13 which include breeding season surveys for burrowing owl to be conducted with follow up pre-construction surveys. If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted, thus, CDFW recommends ongoing surveillance of the Project site during Project activities at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW

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recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment. CDFW recommends the following measures to adequately address burrowing owl, MM BIO-12 and MM BIO-13.

MM BIO-12 Burrowing Owl:

Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.

If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary. If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

MM BIO-13 Burrowing Owl:

A qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

COMMENT #6: Desert kit fox (*Vulpes macrotis*)

Issue: The Project occurs within the range of desert kit fox, a species of special concern and protected species pursuant to Title 14 of the California Code of Regulations Section 460, which prohibits the take of the species at any time. CDFW recommends surveys, following CDFW-approved protocols, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine presence/absence.

Specific issue: The MND does not address desert kit fox. The staging of construction equipment, vehicles, foot traffic and construction activities may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert kit fox.

Why impact would occur: Project construction and activities may result in injury or mortality of desert kit fox.

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Evidence impact would be significant: The desert kit fox is a species of special concern (SSC) and is protected from take by CDFW Code 14 CCR section 460. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Desert kit fox is a SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW recommends that surveys following a CDFW approved kit fox protocols be conducted over all areas proposed to be directly or indirectly affected by the Project to determine the presence or absence of this species and the number of desert kit fox that are present. If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the lead agency require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to desert kit fox be incorporated into the MND. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation. CDFW recommends the following Mitigation Measure be added to the MND:

MM BIO-14 Desert Kit Fox:

No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities. If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care. Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Western Joshua Tree (*Yucca brevifolia*)

The Project site is located within the range of Western Joshua Tree. CDFW is concerned that the MND does not address western Joshua tree. Western Joshua tree is a candidate threatened species under CESA. Species classified as a candidate species under CESA are afforded the same protection as CESA listed species. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project Proponent should obtain an ITP from CDFW under §2081 of CESA, or under the [Western Joshua Tree Conservation Act](#) (Fish & G. Code, §§ 1927-1927.12), prior to the relocation, removal, replanting or any activity that may result in take of western Joshua tree onsite. Take of any CESA listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085 and §§ 1927-1927.12).

During candidacy of the western Joshua tree, a 290-foot buffer around each western

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Joshua tree parent, seedling, and sprout shall be established for full avoidance. Should full avoidance be infeasible, CDFW strongly recommends the Project proponent obtain an ITP or appropriate take authorization under the Western Joshua Tree Conservation Act from CDFW prior to initiating any Project activities. To execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof the document has been circulated.

Further, pursuant to CESA, permanent protection and perpetual management of compensatory habitat is necessary and required to fully mitigate the taking of a CESA listed species. CDFW recommends permanent protection through either 1) the purchase of conservation or mitigation bank credits or 2) through the establishment of a conservation easement, the development of a long-term management plan, and securing sufficient funding to implement management plan tasks in perpetuity. These tasks should be completed, or financial security must be provided before Project activities are initiated.

Western Joshua Tree Conservation Act (Act) (Fish & G. Code § 1927 et seq.).

Permittee may submit to CDFW for its approval a Western Joshua Tree Conservation Act ITP Application (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=215337>) and a census pursuant to Fish and Game Code section 1927.3, subdivision (a)(1). The census is to include size information and photographs that categorize WESTERN JOSHUA TREE according to the following height classes: (1) Less than one meter, (2) One meter or greater but less than 5 meters, (3) Five meters or greater. For census instructions, please visit:

[https://wildlife.ca.gov/Conservation/EnvironmentalReview/WESTERN JOSHUA TREE/Permitting/CensusInstructions#intro](https://wildlife.ca.gov/Conservation/EnvironmentalReview/WESTERN_JOSHUA_TREE/Permitting/CensusInstructions#intro).

Lake and Streambed Alteration Program

The IS/MND does not address and evaluate Project impacts to Fish and Game Code section 1600 resources in the form of dry desert washes within the Project area. In reviewing aerial imagery of the Project site, CDFW has identified multiple streambeds that may be impacted by Project activities. The proposed Project may alter several unnamed drainages and requires the applicant to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from, the bed, channel or bank of any river, stream, or lake; or deposit debris, waster other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes and water courses with a subsurface flow.

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 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

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required 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 IS/MND to assist LADWP in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Bryant Luu, Environmental Scientist at (760) 923-8666 or Bryant.Luu@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

Attachment A: Mitigation Monitoring and Reporting Program for CDFW-Proposed Mitigation Measures

cc: Trisha Moyer, Habitat Conservation Program Supervisor
Inland Deserts Region
Patricia.Moyer@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

- CDFW. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Website
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>
- CNPS, Rare Plant Program. Most recent version. Inventory of rare and endangered plants (online edition). California Native Plant Society. Sacramento, CA. Available at:
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https://cnps.org/wp-content/uploads/2018/03/cnps_survey_guidelines.pdf
- LADWP. Desert Tortoise Biological Report for Projects Related to the Los Angeles Aqueduct in Rose Valley, Inyo County, California. 2016.
- Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. CNPS Press, Sacramento, California. <http://vegetation.cnps.org/>
- USFWS. 2018. Mojave Desert Tortoise Pre-project Survey Protocol. 2019.

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ATTACHMENT A: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR CDFW-PROPOSED MITIGATION MEASURES

PURPOSE OF THE MMRP

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

TABLE OF MITIGATION MEASURES

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

Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p><u>MM BIO-9: Desert Tortoise</u></p> <p>Prior to ground disturbance or vegetation clearing within the proposed project site, a CDFW-approved biologist shall conduct a protocol level presence or absence survey within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more, in accordance with U.S. Fish and Wildlife Service (USFWS) 2009 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure desert tortoise do not enter the Project area during construction. If a desert tortoise enters the project area, work shall cease and the animal will be allowed to safely leave the site. A Watershed Resources Specialist supervisor will be notified immediately, and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities. If a federally endangered species is found prior to or during ground disturbance of the site, the USFWS shall also be notified.</p> <p>If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a desert tortoise-specific avoidance plan detailing the protective avoidance measures to be</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>LADWP</p>

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<p>implemented to ensure complete avoidance of take of desert tortoises. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization [i.e., California Endangered Species Act (CESA) Incidental Take Permit under Fish and Game Code section 2081] is obtained. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080.</p>		
<p>MM-BIO 10: Mohave ground squirrel</p> <p>Prior to ground disturbance or vegetation clearing within the proposed project site a CDFW-approved biologist authorized by a Memorandum of Understanding issued by CDFW shall conduct Mohave ground squirrel surveys prior to ground disturbance activities within the Project area and 500-foot buffer of suitable habitat, no more than 48-hours prior to Project activities and after any pause in Project activities lasting 30 days or more. Mohave ground squirrel surveys shall follow the <i>Mohave Ground Squirrel Survey Guidelines</i> (CDFG, 2010) or most recent version. The Mohave ground squirrel survey protocol is available here: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline. The surveys shall cover the Project area and a 50-foot buffer zone. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved fulltime biological monitor shall ensure Mohave ground squirrel do not enter the Project area during construction. If a Mohave ground squirrel enters the Project area work shall cease and the animal will be allowed to safely leave the site. A Watershed Resources Specialist supervisor will be notified immediately and work shall recommence upon approval from CDFW. CDFW shall be notified and consulted regarding the presence of any special-status wildlife species found on site during surveys prior to or during ground-disturbing construction activities.</p> <p>If the survey confirms presence, the Project proponent shall submit to CDFW for review and approval a Mohave ground squirrel-specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take of Mohave ground squirrel. If complete avoidance cannot be achieved, the Project proponent shall not undertake Project activities and Project activities shall be postponed until the appropriate authorization such as a CESA ITP is obtained. Any take of Mohave ground squirrel without take authorization would be a violation of Fish and Game Code section 2080.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>LADWP</p>

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<p><u>MM BIO-2 Survey for Special-Status Plants:</u></p> <p>Prior to Project construction, surveys for special-status plants will be conducted during times of year when plants are evident and identifiable (i.e., flowering or fruiting), potentially warranting multiple surveys to determine the presence or absence of special-status plants in the Project area. Any special-status plants found will be counted and flagged or fenced for avoidance, as feasible. If a special-status plant cannot be avoided, then an appropriate relocation strategy shall be developed and coordinated with the CDFW and/or USFWS prior to construction start.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>LADWP</p>
<p><u>MM BIO-11 Nesting Birds:</u></p> <p>Regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to vegetation clearing or ground disturbance 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 the survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).</p>	<p>Prior to ground- or vegetation-disturbing activities</p>	<p>LADWP</p>
<p><u>MM BIO-12 Burrowing Owl:</u></p> <p>Prior to any ground disturbance, a survey for potential burrows followed by four breeding season surveys of areas found to have potential for burrowing owl occupation must be conducted in accordance with the Staff Report on Burrowing Owl Mitigation, State of California Natural Resource Agency, Department of Fish and Game, May 7, 2012. The surveys shall include 100 percent coverage of the Project site. A report summarizing the breeding season survey including all requirements for survey reports (page 30 of the 2012 Staff Report) shall be submitted to CDFW for review and approval.</p>	<p>Prior to ground- or vegetation-disturbing activities</p>	<p>LADWP</p>

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<p>If no burrowing owl, active burrowing owl burrows, or sign thereof are found, no further action is necessary.</p> <p>If burrowing owl, active burrowing owl burrows, or sign thereof are found the qualified biologist shall prepare and implement a plan for avoidance, minimization, and mitigation measures to be reviewed and approved by CDFW prior to commencing Project activities. The plan shall propose mitigation for permanent loss of occupied burrow(s) and habitat. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. Permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</p>		
<p><u>MM BIO-13 Burrowing Owl:</u></p> <p>A qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.</p>	<p>Prior to ground- or vegetation-disturbing activities</p>	<p>LADWP</p>
<p><u>MM BIO-14 Desert Kit Fox:</u></p> <p>No more than fourteen (14) days and no less than three (3) days prior to the beginning of surface disturbance, the Designated Biologist shall conduct a pre-Project 10-meter transect survey (or reduced based on topography and vegetation), to attain 100% visual coverage within the Project area and a minimum 200-meter buffer to determine the presence or absence of desert kit fox individuals, dens, and sign. Permittee shall provide the results of the survey to CDFW prior to start of Project activities. If potential dens are located, they shall be monitored by the Designated Biologist. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined. Permittee shall provide a determination if active dens can be avoided and buffered from Project activities to prevent take and disturbance with the survey results. Should active</p>	<p>Prior to ground- or vegetation-disturbing activities</p>	<p>LADWP</p>

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<p>dens be present within the Project area that cannot be avoided with an adequate buffer, the Permittee shall reschedule Project activities or submit a monitoring and relocation plan for CDFW's review and approval. No disturbance or relocation of active dens may take place when juveniles may be present and dependent on parental care. Permittee shall block off inactive dens within the buffer zone with rocks and sticks to discourage use during Project activities and remove when construction is complete. The Designated Biologist shall periodically check the inactive burrows remain blocked and are not reoccupied.</p>		
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