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March 04, 2024

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**Subject: Valley Clean Infrastructure Plan (Plan)
Notice of Preparation
State Clearinghouse No. 2024020124**

Dear Jose Gutierrez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) to prepare a Programmatic Environmental Impact Report (PEIR) from Westlands Water District (District) as Lead Agency, for the Valley Clean Infrastructure Plan (Plan) 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, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in 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

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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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, projects tiered from the Plan PEIR 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's tiered from the Plan PEIR may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: Westlands Water District

Objective: The Plan would provide a blueprint for the development of clean energy facilities and supporting infrastructure with an overall generating and delivery capacity of up to 20,000 megawatts (MW) on approximately 130,000 acres of repurposed farmland. The District's main objectives for the Plan are to repurpose drainage-impaired and other agricultural land for clean energy generation in order to promote enhanced agricultural productivity within the District land by: 1) constructively addressing the chronic shortage of surface water deliveries by facilitating redirection of scarce surface water allocations to other productive agricultural land; 2) facilitating Sustainable Groundwater Management Act (SGMA) implementation by contributing to the re-allocation of groundwater for irrigation on other productive agricultural land and mitigating risk of subsidence along the San Luis Canal/California Aqueduct; which in combination will result in increased reliability and resilience of agricultural water supply in the Westside

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Subbasin; and 3) providing for orderly development and decommissioning of clean energy facilities to promote preservation of agricultural land within the District.

Location: The Plan would include District-owned lands and private lands from participating landowners along the westside of the San Joaquin Valley, in Fresno County (Plan Area).

Timeframe: Undetermined

COMMENTS AND RECOMMENDATIONS

District lands have commonly been proposed as a relatively low conflict area with respect to biological resources for utility-scale solar development. In 2013, The Nature Conservancy (TNC) published a document to serve as a “first filter” screening of locations within the San Joaquin Valley to assess the likelihood that those areas will present conservation conflicts (Butterfield et al., 2013). The TNC document is designed to help developers and other stakeholders apply the precautionary principle and proactively avoid areas likely to have a higher risk of conflicts. CDFW recommends the District consider the TNC document with respect to DFA siting within District lands and private lands; the TNC document identified 435,601 acres of Low Biodiversity Conservation Value / Salt-affected lands mapped within the study area, 97,578 acres of which is within District boundaries. Subsequent efforts built on the TNC assessment to further identify least conflict lands in the San Joaquin Valley, which would also likely help inform DFA siting (Pearce et al., 2016).

District Lands

Based on the information provided in the NOP, a portion of Plan Area is located within District lands. CDFW would like to note that a similar plan was prepared for the Westlands Solar Park Master Plan Area (Westlands Plan Area), a 2.7-gigawatt (GW) Solar Park located in Kings County, which was comprised of multiple individual solar projects (including this Project) encompassing approximately 21,000 acres. The Westlands Plan Area was analyzed within a Program Environmental Impact Report (PEIR), which was circulated and finalized in December 2017. During preparation of the PEIR, extensive coordination occurred with environmental protection groups and federal, State, and local agencies, including CDFW. This coordination led to the siting of the Westlands Plan Area within a least conflict area for fish and wildlife (biological) resources, significantly reducing the potential for individual project and cumulative impacts to special-status species. As such, CDFW strongly recommends that the District similarly coordinate with CDFW and other federal, State, and local agencies during preparation of the Plan PEIR.

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As the NOP provides limited information on siting and project description information for the project that will be tiered from the Plan, CDFW recommends the following species be considered within the Plan PEIR for Development Focus Areas (DFAs) within the heavily disturbed agricultural lands owned by the District: The State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern burrowing owl (*Athene cunicularia*).

Lands with Natural Habitat or Bordering Conserved Lands

It also appears based on the information provided in the NOP that certain DFAs may be located on lands that contain more natural habitats such as annual grassland. It also appears that there is the potential that DFAs could potentially be sited on lands bordering conserved natural lands such as CDFW's Mendota Wildlife Area. Depending on the siting of these DFAs, there may be an increased potential for biological resources to be present within a proposed project's footprint and for special-status species impacts. As such, CDFW reiterates the recommendation to coordinate with CDFW on the siting of DFAs, as well as for recommendations on additional species considerations within the Plan PEIR, particularly with respect to potential impacts directly to or adjacent to natural lands. Additionally, CDFW strongly recommends that any potential DFAs proposed directly adjacent to conserved lands such as but not limited to Mendota Wildlife Area, Alkali Sink Ecological Reserve, Kerman Ecological Reserve, or the Alkali Sink Mitigation Bank, fully consider the potential for direct and indirect special-status species impacts, and that early consultation with CDFW occur for any such DFAs prior to their finalization.

In some cases, conversion of agricultural lands to solar may be beneficial for wildlife, particularly when certain measures are included in solar project design like perimeter fences permeable to San Joaquin kit fox and other wildlife and maintaining low profile vegetative cover within the solar project boundaries. Lastly, ground water overdrafting is affecting wildlife habitat in some locations such as Mendota Wildlife Area; approximately 80% of Mendota Wildlife Area has experienced recent and substantial subsidence as a direct result of groundwater overdrafting to the south of the Wildlife Area, which significantly affects Wildlife Area operation and thus the amount and quality of available wetland habitat. If conversion of agricultural lands to solar uses occurs on lands to the south of Mendota Wildlife Area and this causes local groundwater pumping by Tranquility Irrigation District and other private wells to cease or be significantly reduced, there would be habitat benefits.

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California Endangered Species Act

Reasonably foreseeable future projects tiered from the Plan PEIR may be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are detected during project specific surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities.

Nesting birds

CDFW recommends that all projects tiered from the Plan PEIR occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), each future project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project's CEQA document, and then conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from each future project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

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any variance from these buffers and notify CDFW in advance of implementing a variance.

Cumulative Impacts

Given that the Plan is serving primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from the Plan PEIR, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the Plan including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the any future project, even if those impacts are expected to be relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA. As noted above, there are potential wildlife benefits of conversion of certain agricultural lands to solar uses, which would factor into any cumulative impacts analysis.

Lake and Streambed Alteration

Reasonably foreseeable future projects tiered from the Plan PEIR may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or RRR.R4@wildlife.ca.gov.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS to comply with FESA is advised well in advance of any ground disturbing activities.

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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. €). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

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

FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to assist Westlands Water District in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Jeremy Pohlman, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (805) 503-2375 or by electronic mail at Jeremy.Pohlman@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

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Literature Cited

Butterfield, H.S., D. Cameron, E. Brand, M. Webb, E. Forsburg, M. Kramer, E. O'Donoghue, and L. Crane. 2013. Western San Joaquin Valley least conflict solar assessment. Unpublished report. The Nature Conservancy, San Francisco, California. 27 pages.

Pearce, D., J. Strittholt, T. Watt, and E.N. Elkind. 2016. A path Forward; identifying least-conflict solar PV development in California's San Joaquin Valley. Berkeley Law Center for Law, Energy, and the Environment.