



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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May 02, 2024

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Governor's Office of Planning & Research

May 02 2024

STATE CLEARING HOUSE

**Subject: Recharge Basin Phase II (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No.: 2024040116**

Dear Laurence Kimura:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Fresno Irrigation District (Fresno ID), which is the Lead Agency for the Project pursuant 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 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.

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

Other Special-Status Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

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

Water Rights: The capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200 et seq. CDFW, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW, therefore, has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

PROJECT DESCRIPTION SUMMARY

Proponent: Fresno ID is the Lead Agency for the Project.

Proposed Project: Fresno ID is proposing to construct three recharge basins in Fresno County within its boundary. The Project would expand Fresno ID's existing groundwater recharge efforts. The Project benefits include groundwater recharge, new storage of

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floodwater, providing new habitat for waterfowl and to assist Fresno ID in maintaining its commitment to the Kings River fisheries management program by providing place for fish management water to be diverted in dry years.

Each recharge basin would be up to 20 feet below ground surface and include up to two monitoring wells, a metering stand and flow meter, and perimeter fencing for cattle. Each basin would have up to two recovery wells and a discharge pipeline to deliver approximately five cubic feet per second to adjacent existing Fresno ID infrastructure (canal or pipeline). The basins would have a maximum berm height of six feet measured from the lowest point at the downstream toe of the berm to its maximum storage elevation, which is typically the spillway crest. A notch will be cut into the existing adjacent canal wall and a pipeline and one outlet structure will be installed.

- 3,294 acres of farmland will be used for recharge basins.

Specific details for each proposed recharge basin are as follows:

Krum Recharge Basin: includes construction of a new 54-acre recharge basin, including earthwork and structures, that will connect to Houghton No. 78 Canal. The Project would provide approximately 220 acre-feet of flood water surface storage and recharge approximately 1,320 acre-feet annually.

Laub Recharge Basin: includes construction of a new 80-acre recharge basin, including earthwork and structures, that will connect to Central Canal No. 23. The Project would provide approximately 300 acre-feet of flood water surface storage and recharge approximately 1,800 acre-feet annually.

Crossland Recharge Basin: includes construction of a new 20-acre recharge basin, including earthwork and structures, that will connect to Hansen No. 29 Canal. The Project would provide approximately 80 acre-feet of flood water surface storage and recharge approximately 480 acre-feet per year annual average.

Location: The Project is located within Fresno ID's boundary in Fresno County. Specifically, the Krum Recharge Basin is located near the intersection of North Hayes Avenue and West McKenzie Avenue at Assessor's Parcel Number (APN) 326-040-23S; the Laub Recharge Basin is located near the intersection of South Marks Avenue and West American Avenue at APN 035-300-41S; and the Crossland Recharge Basin is located near the intersection of DeWolf Avenue and East Butler Avenue at APNs 313-410-025 and 313-410-026.

Timeframe: Construction of each basin is anticipated to be completed over approximately six months.

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RECOMMENDATIONS

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

Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and a review of aerial photographs of the Project and surrounding habitat, several special-status species could potentially be impacted by Project activities including but not limited to the State threatened Swainson's hawk (*Buteo swainsoni*), the State species of special concern burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*), and the California Rare Plant Rank 1B.2 Sanford's arrowhead (*Sagittaria sanfordii*). Other species of birds, amphibians, reptiles, mammals, fish, and plants also compose the local ecosystem.

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area. CDFW recommends that the following modifications and/or edits be incorporated into the MND, including proposed avoidance, minimization, and compensatory measures, prior to its adoption by Fresno ID.

COMMENT 1: Swainson's Hawk (SWHA)

Swainson's hawk is documented within the Project area and has the potential to nest in trees within the Project area (CDFW 2024). Impacts to nesting Swainson's hawk can occur through disturbance related to the construction of the recharge basins, establishment or operation of pumps, wells, pipelines, or other Project activities. The MND acknowledges that suitable nesting habitat occurs within the Project area and Mitigation Measure BIO-15 requires a single survey for hawks within seven days of the onset of construction during the nesting season. Mitigation Measure BIO-16 requires a qualified biologist to determine an appropriate buffer around a SWHA nest, based on CDFW guidelines, condition of the nest, and the level of Project disturbance. The analysis does not provide a biological basis of how these mitigation measures are determined adequate to avoid significant impacts, including but not limited to take of individuals through nest failure or other means, as a result of Project implementation. Without appropriate avoidance and minimization measures for SWHA, potential

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significant impacts associated with Project activities include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 1: Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) during the nesting season of or prior to Project initiation, within the Project area and a ½-mile buffer around the Project area. In addition, if Project activities will take place during the species nesting season (i.e., March 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

Recommended Mitigation Measure 2: SWHA Buffers

If an active SWHA nest is found during focused surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 3: SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and an Incidental Take Permit for SWHA may be necessary prior to project implementation to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 2: Burrowing Owl (BUOW)

The MND acknowledges that burrowing owls are known to nest and winter within the vicinity of the Project and the Project area contains suitable habitat for burrowing owls. Impacts to nesting and non-nesting burrowing owls can occur as a result of ground-impacting activity, such as grading and flooding within active and fallow agricultural areas and as a result of noise, vibration, and other disturbance caused by equipment and crews. Mitigation Measure BIO-12 states that a qualified biologist will determine appropriate buffer distances based on CDFW and/or USFWS guidelines, burrow conditions, and the level of Project disturbance. The analysis does not provide a biological basis of how this mitigation measure is determined adequate to avoid significant impacts, including but not limited to take of individuals as a result of Project implementation.

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Recommended Mitigation Measure 4: BUOW Surveys

Where suitable habitat is present on or in the vicinity of the Project area, CDFW recommends assessing presence or absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's *Burrowing Owl Survey Protocol and Mitigation Guidelines* (CBOC 1993) and CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFG 2012). These reports suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (i.e., April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot radius around the Project area.

Recommended Mitigation Measure 5: BUOW Avoidance

CDFW recommends that no-disturbance buffers as outlined in the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012) be implemented prior to and during any ground-disturbing activities and specifically that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 6: BUOW Eviction and Mitigation

If BUOW are found within the recommended buffers and avoidance is not possible, it is important to note that evicting birds from burrows is not an avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA (CDFG 2012). If it is necessary for Project implementation, CDFW recommends that burrow eviction 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 then recommends mitigation in the form of replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. Because BUOW may attempt to colonize or re-colonize an area that will be impacted, CDFW recommends ongoing surveillance that is sufficient to detect BUOW if they return.

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COMMENT 3: Special-Status Bat Species

The MND acknowledges that the Project site contains habitat features that have the potential to support roosting western mastiff and pallid bats. Both species are known to occur in the vicinity of the Project area (CDFW 2024). Western mastiff and pallid bats are known to roost in buildings, caves, tunnels, cliffs, crevices, trees (Lewis 1994). Project activities have the potential to affect habitat upon which special-status bat species depend for successful breeding and have the potential to impact individuals and local populations. Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Recommended Mitigation Measure 7: Bat Surveys

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

Recommended Mitigation Measure 8: Bat Roost Disturbance Minimization and Avoidance

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

EDITORIAL COMMENTS AND SUGGESTIONS

Water Rights: The Project description allows for the diversion and storage of flood flow surface water for groundwater recharge. As stated previously, the capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by the SWRCB pursuant to Water Code section 1200 et seq. CDFW recommends that the MND include a detailed description of the water rights and water entitlements that would pertain specifically to the Project and address any applications or change petitions that may be filed. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to special-status species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

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Federally Listed Species: CDFW recommends consulting with the USFWS regarding potential impacts to federally listed species. Take under ESA is more broadly defined than CESA; take under ESA 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 in order to comply with ESA is advised well in advance of any Project activities.

Lake and Streambed Alteration: Any jurisdictional Project activities related to construction and the diversion of flows are subject to the notification requirement of Fish and Game Code section 1602, which requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (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, and may include streams that are modified and/or used as conveyance for irrigation water. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@willife.ca.gov or the Program website: <https://wildlife.ca.gov/Conservation/LSA>.

Nesting birds: CDFW encourages Project implementation to occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (February through mid-September), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of each Project activity to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by 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 that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work

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causing that change cease and CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife 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 parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so. CDFW recommends that a qualified wildlife biologist advises and supports any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

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

FILING FEES

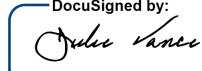
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

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CONCLUSION

CDFW appreciates the opportunity to provide comments as part of the public scoping process to assist Fresno ID in identifying and mitigating Project impacts on biological resources. If you have questions regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Enclosure

ec: Annette Tenneboe
California Department of Fish and Wildlife

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REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842&inline>
- California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>
- California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 12, 2024.
- Lewis, S. E. 1994. Night roosting ecology of pallid bats (*Antrozous pallidus*) in Oregon. The American Midland Naturalist, Vol. 132, pp. 219-226.
- Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

Attachment 1

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

**PROJECT: Recharge Basin Phase II
STATE CLEARINGHOUSE No.: 2024040116**

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Before Project Activity</i>	
Recommended Mitigation Measure 1: Focused SWHA Surveys	
Recommended Mitigation Measure 2: SWHA Buffers	
Recommended Mitigation Measure 3: SWHA Take Authorization	
Recommended Mitigation Measure 4: BUOW Surveys	
Recommended Mitigation Measure 5: BUOW Avoidance	
Recommended Mitigation Measure 6: BUOW Eviction and Mitigation	
Recommended Mitigation Measure 7: Bat Surveys	
Recommended Mitigation Measure 8: Bat Roost Disturbance Minimization Avoidance	
<i>During Project Activity</i>	
Recommended Mitigation Measure 2: SWHA Buffers	
Recommended Mitigation Measure 5: BUOW Avoidance	
Recommended Mitigation Measure 8: Bat Roost Disturbance Minimization and Avoidance	