



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



September 5, 2024

John Wiersma
District Manager
Henry Miller Reclamation District
RE: High Groundwater Mitigation Project
11704 Henry Miller Avenue
Dos Palos, California 93620
JWiersma@hmrld.net

**Subject: High Groundwater Mitigation Project (Project)
NEGATIVE DECLARATION (ND)
State Clearinghouse No. 2024070838**

Dear John Wiersma:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from the Henry Miller Reclamation District (HMRD) for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

The comment period for CDFW was extended by HMRD to September 5, 2024, and we 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

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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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.), related authorization as provided by the Fish and Game Code will be required.

CDFW Lands: CDFW is a water contractor and the landowner and manager of wildlife areas that may be affected by Project implementation including the Los Banos, Volta, North Grasslands, and Mendota Wildlife Areas and other CDFW owned and operated lands and conservation easements, and as such has a vested interest in water quality, in addition to firsthand management experience with the effects of water use in the area affected by the proposed Project. Many of the comments below are made in the context of CDFW operations and the related management for fish and wildlife and their habitats.

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.

Migratory Birds and Raptors: 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 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 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. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of

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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

According to the ND, a large portion of San Luis Canal Company's (SLCC's) boundary overlays shallow groundwater which impacts crop growth and can restrict the planting of permanent crops. To mitigate for the impacts to crops associated with shallow groundwater, HMRD and SLCC propose to implement a two-tiered program consisting primarily of (1) elimination of seepage losses through infrastructure improvement projects including lining and piping of canals and (2) shallow groundwater pumping. For shallow groundwater pumping, the groundwater will be pumped from the upper water table through a series of existing shallow wells and conveyed through HMRD's existing water delivery system for use within the SLCC's service area. A like amount of SLCC's Central Valley Project (CVP) water supply (up to 10,000 acre feet per year [afy]) would be made available to be transferred to San Joaquin Valley Wildlife Refuges, Tulare Lake Basin Wildlife Refuges, and other CVP contractors including but not limited to Friant Division and San Luis Unit CVP contractors, and/or all State Water Project (SWP) contractors including but not limited to Kern County Water Agency, Valley Water (CVP/SWP Water), East Bay Municipal Utility District, Contra Costa Water District and Pajaro Valley Water Management Agency (collectively; Transfer Recipients). All transfers would be consistent with CVP Place of Use requirements.

The ND states that the conveyance improvement projects will consist of improving existing conveyance facilities and are considered Categorical Exempt under CEQA (Cal. Code Regs. §15301(b)).

Proponent: HMRD is the CEQA lead agency. The proposed Project will be implemented jointly by HMRD and SLCC.

Objective: The Project would address the shallow groundwater issues within SLCC and serve as an alternative source of water for south of Delta water users.

Location: The proposed infrastructure improvements and pumping portion of the Project will occur with the SLCC's boundary which encompasses 47,000 acres within Merced and Fresno Counties. Project-related water exchanges and transfers would also involve the Delta Mendota Canal and San Luis Canal.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist HMRD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (i.e. biological resources). Editorial comments or other suggestions may also be included to improve the document. Based on a review of the Project description, aerial imagery of the Project and surrounding habitat, and documented species occurrence records in the California Natural Diversity Database (CNDDDB), CDFW has determined that the Project site and surrounding area are known to support species that are threatened or endangered under CESA and/or the federal Endangered Species Act (ESA), and other special status species.

In particular, CDFW is concerned regarding potential impacts for the following special status plant and wildlife species and habitats known to occupy the Project area and surrounding lands:

Fish and Wildlife: The State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*); the State and federally threatened giant garter snake (*Thamnophis gigas*) and California tiger salamander – central California distinct population segment (DPS) (*Ambystoma californiense* pop.1); the federally proposed threatened and State species of special concern (SSC) northwestern pond turtle (*Actinemys marmorata*) and western spadefoot (*Spea hammondi*); the federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*) and longhorn fairy shrimp (*Branchinecta longiantenna*); the federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*); the State candidate endangered Crotch's bumble bee (*Bombus crotchii*); and SSC American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), northern harrier (*Circus hudsonius*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*), mountain plover (*Charadrius montanus*), black tern (*Childonias niger*), Northern legless lizard (*Anniella pulchra*), and northern leopard frog (*Lithobates pipiens*); the CDFW watch list (WL) cackling (=Aleutian Canada) goose, long-billed curlew (*Numenius americanus*), and merlin (*Falco columarius*).

Plants: The State endangered and California Rare Plant Rank (CRPR) 1B.2 Delta button-celery (*Eryngium racemosum*); the CRPR 1B.1 hispid salty bird's beak (*Choropyron molle* ssp. *hispidum*) and lesser saltscale (*Atriplex minuscula*); the CRPR 1B.2 heartscale (*Atriplex cordulata* var. *cordulata*), subtle orache (*Atriplex subtilis*), prostrate vernal pool navarretia (*Navarretia prostrata*), Sanford's arrowhead (*Sagittaria sanfordii*), spiny-sepaled button-celery (*Eryngium spinosepalum*), and California alkali grass (*Puccinellia simplex*).

Other species of birds, amphibians, reptiles, mammals, fish, and plants also compose the local ecosystem within the Project area. Sensitive habitats located in the Project

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area include wetland, riparian, Coastal and Valley freshwater marsh, Valley Sacaton grassland, Valley sink scrub, cismontane alkali marsh, northern claypan vernal pool, groundwater dependent ecosystems. The Project boundary abuts portions of the San Joaquin River, Los Banos Wildlife Area, San Luis National Wildlife Area, and other public and private areas owned and managed for the benefit of wildlife and habitats. All of these adjacent lands support known populations of State and federally listed species and were permanently conserved for the purpose of their conservation.

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 ND prior to its adoption by HMRD.

Project Description and Location: CDFW strongly recommends that all locations for specific wells or groundwater extraction areas and conveyance infrastructure projects be identified and mapped in the ND, and that the ND identify where groundwater will be conveyed and applied including any lands located outside of the SLCC boundary. CDFW recommends the ND include detailed information on the construction of conveyance and well infrastructure. CDFW also recommends the ND include mapping of the proximity of infrastructure and groundwater pumping to groundwater dependent ecosystems and other sensitive aquatic habitat. Absent that information, Project related impacts to biological resources cannot be adequately assessed.

Hydrological Analysis: CDFW recommends the ND provide a hydrological analysis that includes hydrographs, groundwater contour maps, and other information to assess seasonal groundwater table variability. CDFW also recommends the ND include the proposed pumping program.

Cumulative Impacts and Existing and Foreseeable Projects: The Mandatory Findings of Significance section 1.21 of the ND states that the Project will not have any cumulative impacts to biological or hydrological resources; however, the ND does not list or provide specific details of any existing or foreseeable projects in the area of the Project, including location maps for groundwater pumping and construction of conveyance improvements. Project construction, groundwater pumping, lowered water quality and increased salt loading could potentially impact special status aquatic fish

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and wildlife species such as giant garter snake and affect habitats for special status species, especially in the context of other existing and pending projects affecting water quality of managed wetlands and surrounding areas. CDFW recommends that the cumulative impacts analysis include the effects to special status species and biological resources from this Project and other current and foreseeable projects.

CDFW recommends a detailed analysis of existing and foreseeable projects in the Project area, including construction of all proposed conveyance infrastructure improvements; proposed pumping and conveyance of groundwater; and CVP exchanges and other relevant transfer programs related to the Project that may affect National Wildlife Refuges, CDFW Wildlife Areas and other CDFW owned and operated lands. These projects could have substantial cumulative impacts to sensitive species, water quality, and surface and groundwater dependent ecosystems including wetland and riparian habitat, seriously affecting fish and wildlife habitat.

Water Quality: The ND states the Project will have no impact on water quality standards or waste discharge requirements, or otherwise substantially degrade surface or groundwater quality. However, Section 1.10.2 of the ND states that the shallow groundwater pumped into SLCC's irrigation system would contain elevated levels of salinity compared to its surface irrigation supplies, and SLCC operations will monitor salinity levels through a comprehensive salinity monitoring program and controlled blending to prevent water quality impacts to crops. The ND does not include an analysis of the existing water quality levels of the shallow groundwater in the Project area, nor does it identify the water quality objectives and criteria for constituents of concern, including total dissolved solids, salinity, and selenium for the protection of other fish and wildlife.

Groundwater pumping, lowered water quality and increased salt loading could potentially impact special status aquatic fish and wildlife species, such as giant garter snake and breeding waterfowl, and affect habitats for special status species including wetland and riparian habitat.

CDFW recommends that the ND include a water quality monitoring plan with requirements to track changes in water quality resulting from the Project that could be harmful to fish and wildlife, including special status species and species using wetland or riparian areas for breeding/nursery sites. CDFW recommends that monitoring begin before Project implementation and continue with a frequency that is adequate to identify changes in constituents of concern well before thresholds of significance are reached. CDFW further recommends that the ND include actions to be taken to minimize or mitigate for impacts to fish and wildlife resulting from water quality effects. CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if Project areas or their immediate vicinity contain suitable habitat for the species mentioned above.

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Sustainable Groundwater Management Act (SGMA) - Groundwater Dependent Ecosystems: The Project boundary overlaps with the boundary for the Delta Mendota Subbasin located in the San Joaquin Valley Groundwater Basin (Groundwater Basin Number 5-022.07) and is within the Delta Mendota – San Joaquin River Exchange Contractors Groundwater Sustainability Plan (DM SJREC GSP). CDFW recommends that the ND include an analysis of Project-related activities in relation to the DM SJREC GSP including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems.

CDFW recommends that the ND include requirements to identify, evaluate, and monitor all groundwater dependent ecosystems that would be affected by Project activities, and develop a plan to offset losses of groundwater dependent ecosystems caused by changes in hydrology associated with the Project. The plan should address mitigation for impacted habitat value and function, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources.

CEQA Document Recirculation: CDFW recommends the Lead Agency include biological, hydrological, and water quality analyses in the ND, in order to adequately present the potential impacts to special status species and sensitive habitats listed above, groundwater dependent ecosystems including wetlands and riparian habitats, and water quality impacts to special status species and to federal and CDFW owned and operated lands. CDFW also requests that avoidance, minimization, and compensatory measures be developed for the Project, to ensure that impacts to fish and wildlife resources remain below levels of significance. The inclusion of additional analyses in addition to avoidance, minimization, and compensatory mitigation measures could warrant recirculation of the document as a Mitigated Negative Declaration

Lake and Streambed Alteration: Project activities that substantially change the bed, bank, and channel of streams and associated wetlands are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that will (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. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. Additional information on notification requirements is available through the Central Region LSA Program at

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(559) 243-4593 or R4LSA@wildlife.ca.gov, and the CDFW website:
<https://wildlife.ca.gov/Conservation/LSA>.

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game 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 ground disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends that the work causing that change cease and that CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified 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, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers.

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS prior to Project ground disturbance, due to potential impacts to federal listed species. Take under the ESA is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of Project implementation.

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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>.

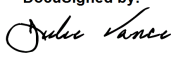
FILING FEES

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).

CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist HMRD in identifying and mitigating Project impacts to 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

ec: Annette Tenneboe, California Department of Fish and Wildlife
Sean Allen, California Department of Fish and Wildlife

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REFERENCES

CDFW. 2024. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed 29 July 2024.