



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



August 26, 2024

Hannah Garcia-Wickstrum  
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**Subject: Mitigated Negative Declaration for Groundwater Recharge Capacity Expansion Project – Ferro Recharge, SCH #2024071176, United Water Conservation District, Ventura County**

Dear Hannah Garcia-Wickstrum:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) for the Groundwater Recharge Capacity Expansion Project – Ferro Recharge (Project) proposed by the United Water Conservation District (United). CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and may be subject to CDFW's regulatory authority under the Fish and Game Code.

### **CDFW's 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State fish and wildlife resources.

CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including 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.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends United obtain appropriate authorization under the Fish and Game Code.

*Conserving California's Wildlife Since 1870*

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## Project Summary

**Project Applicant:** United Water Conservation District.

**Objective:** United proposes to construct an undercrossing beneath Vineyard Avenue and install pipelines to connect the Ferro Basin to the Noble Basin. This will enable the conveyance of water to the Ferro Basin for artificial groundwater recharge. United estimates connecting the basins would, on average, provide capacity for an additional 2,000 to 3,000 acre-feet of groundwater recharge per year. Project construction would occur over approximately six to eight months and would start as early as July 2025. Construction activities would generally occur from 6:30 a.m. to 6:30 p.m., Monday through Friday. Trenchless pipeline installation may require constant (24 hours a day, seven days a week) construction activities. The proposed pipeline would be installed via open cut trench on either side of Vineyard Avenue, and via trenchless methods underneath Vineyard Avenue in accordance with California Department of Transportation requirements. The Project would also involve grading and contouring the embankments along the pipeline alignment and in the Ferro Basin to facilitate recharge.

**Location:** The Project site is in unincorporated Ventura County, approximately one mile north of the Oxnard city limits and three miles northeast of the Camarillo city limits. The Project site traverses State Route 232 (Vineyard Avenue) in an undeveloped area between properties located at 5625 Vineyard Avenue and 5721 Vineyard Avenue. The Project site is generally surrounded by agricultural and agricultural commercial land uses. Agricultural land uses and produce retailers are located to the north and south, the Ferro Basin is located to the west, and the Noble Basin is located to the east. Residences are located approximately 500 feet northeast of where the pipeline would intersect Vineyard Avenue. The Project site is located approximately 0.3 mile east of the Santa Clara River.

**Biological Setting:** Both the Noble and Ferro Basins are regularly disturbed areas that are predominantly vegetated, primarily around the margins, with non-native plants. Several bird species can be observed in the basin, and inactive bird nests were identified in trees adjacent to the Noble Basin during the field assessment. The Ferro Basin is adjacent to the Santa Clara River and, at the time of the field assessment, had been recently disced. Discing involves removing vegetation and disturbing surface soils to a depth of approximately six inches. United discs the Ferro Basin approximately once per year for vegetation control and to maintain a permeable surface. Surface water availability in the Ferro Basin is intermittent and controlled by United.

Species determined to have some potential to occur within the Project vicinity include: Least Bell's vireo (*Vireo bellii pusillus*), Tricolored blackbird (*Agelaius tricolor*), burrowing owl (*Athene cunicularia*), coast horned lizard (*Phrynosoma blainvillii*), two-striped garter snake (*Thamnophis hammondi*), Southern California steelhead (*Oncorhynchus mykiss irideus*), Santa Ana sucker (*Catostomus santaanae*), and partially armored threespine stickleback (*Gasterosteus aculeatus*). Migratory and common bird species have the potential to nest within the Project area. The Project

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would likely require removal of three trees in the Project site, which could result in direct impacts to nesting birds. Additionally, the Project could adversely affect protected nesting birds through construction noise, dust, and other indirect disturbances.

## **Comments and Recommendations**

CDFW offers the comments and recommendations below to assist United in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### **Comment #1: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement (LSAA)**

**Issue:** Project activities may reduce water availability for biological resources in the Santa Clara River, a stream subject to Fish and Game Code, section 1600 et. seq. Impacts to biological resources (including groundwater dependent ecosystems, fishes, and nearby vegetation communities) may result from the proposed Project.

**Specific Impact:** The Project proposes to increase the amount of water diverted from the Santa Clara River (at the Vern-Freeman Diversion Dam). The water would be conveyed to the Ferro Basin for additional groundwater recharge. Reduced flows in the Santa Clara River may result in the loss of streams and associated watershed function and biological diversity downstream of the Vern-Freeman Diversion Dam, which is approximately 3.1 miles upstream of the Project. Increased water diversion may also significantly alter hydrologic and geomorphic processes of the Santa Clara River and may affect groundwater dependent ecosystems.

**Why Impact Would Occur:** The Project may result in impacts to the Santa Clara River, which is expected to result in loss of natural drainage patterns, soils, and associated vegetation. These actions may also result in changes to the streams, altering hydrologic and geomorphic processes that may impact plant and wildlife species. CDFW is concerned that the conveyance of water from the Santa Clara River to the Ferro Basin may potentially reduce flows and impact groundwater elevation, downstream of the Vern-Freeman Diversion Dam, negatively impacting surrounding groundwater dependent ecosystems, groundwater dependent ecosystem vegetation, wildlife, and fish passage.

Regarding groundwater dependent ecosystems, the Department of Water Resource's [Natural Communities Commonly Associated with Groundwater Dataset](#) identifies many potential groundwater dependent ecosystems in the Projects geographic boundary adjacent to the Santa Clara River (DWR 2024). The potential groundwater dependent ecosystems identified likely comprise phreatophytic vegetation, which rely on water supply from the groundwater table. This vegetation is a critical contributor to habitat and forage for a wide range of species and can be sensitive to depth to groundwater threshold impacts (Naumburg et al. 2005, Froend and Sommer 2010). This sensitivity to groundwater level thresholds means that localized pumping and recharge actions

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altering groundwater levels (such as those potentially resulting from the Project) can impact phreatophyte vegetation health. Both decreasing (drying out) or increasing (drowning) groundwater elevation has the potential to stress phreatophytes depending on the plant species and the groundwater elevation and duration (e.g., short term wetness/dryness versus prolonged wetness/dryness).

**Evidence Impact Would Be Significant:** CDFW has a vested interest in the sustainable management of groundwater, as many sensitive ecosystems and resources are dependent on groundwater. The Santa Clara River Valley – Oxnard Groundwater Basin (including subbasins) is considered a high priority basin that is critically overdrafted (as determined by the Department of Water Resources) and is subject to the Sustainable Groundwater Management Act (SGMA). In addition, the Department of Water Resources documented declining groundwater levels due to long-term overdraft. This may lead to potential for adverse impacts to streams and habitat in Santa Clara River Valley Oxnard Groundwater Basin attributable to groundwater pumping according to the SGMA Basin Prioritization (DWR 2020). Absent SGMA requirements for environmental considerations and protections, it is incumbent upon the Santa Clara River Valley Oxnard Watermaster to consider and manage impacts to public trust resources, including groundwater dependent ecosystems and interconnected surface waters in the Project. Per CEQA Guidelines, section 15065(a), a project may have a significant effect on biological resources if the project substantially reduces the habitat of a fish or wildlife species; threatens to eliminate a plant community; or has the potential to restrict the range of an endangered, rare, or threatened species. By impacting sites like groundwater dependent ecosystems without mitigation, the Project may have a significant effect on biological resources by further eliminating plant communities, fish passage, and reducing habitat for wildlife species.

**Recommended potentially feasible mitigation measure(s):**

**Mitigation Measure #1:** The Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW shall determine whether a LSAA is required prior to conducting the proposed activities. Please visit CDFW’s [Lake and Streambed Alteration Program](#) webpage for more information (CDFW 2024a).

CDFW’s issuance of an LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the CEQA document should fully identify the potential impacts to streams or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSAA.

**Mitigation Measure #2:** Any LSAA issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project such as additional erosion and pollution control measures. To compensate for any on-site

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and off-site impacts to riparian resources, additional mitigation conditioned in any LSAA may include the following: avoidance of resources, on-site or off-site creation, enhancement, or restoration, and/or protection and management of mitigation lands in perpetuity.

**Mitigation Measure #3:** If impacts to vegetation within the stream, such as willow thicket, mulefat thicket, and riparian scrub cannot be avoided, CDFW suggests mitigation should be achieved entirely on site if possible. CDFW recommends that impacts be mitigated at no less than 3:1. CDFW recommends that an on-site Habitat Mitigation and Monitoring Plan (HMMP) be developed. An HMMP should provide specific, detailed, and enforceable measures.

**Recommendation #1:** CDFW recommends United provide an in-stream flows analysis and an evaluation of potential impacts on biological resources as part of the final environmental document. Appropriate avoidance, minimization, and/or mitigation measures should be developed as a result of this analysis to mitigate any impacts to biological resources. At a minimum, the analysis should provide the following:

*Changes to Hydrology and Hydraulics*

1. CDFW recommends United determine and define the extent of up and downstream direct and indirect impacts to the Santa Clara River that may result from the proposed Project. Assess potential Project-related impacts on biological resources within this study reach (including any potential groundwater dependent ecosystems).
2. An analysis of potential Project-related changes. This includes water depth (percent change), wetted perimeter (acres gained/lost), and velocity (percent change). Comparing total wetted area may be useful in quantifying the effects on groundwater dependent ecosystems, assuming that infiltration rates are proportional to wetted area.
3. CDFW recommends using a 2-D hydraulic model of proposed versus existing habitat to determine whether habitat changes are expected and, if so, to what degree.
4. A map of potential changes to channel hydraulics overlain on a map of plant communities and habitat for sensitive wildlife species and birds.
5. A discussion of Project-related impacts on biological resources in relation to changes in hydrology throughout the reach.
6. CDFW recommends using Normalized Difference Vegetation Index (NDVI) and Normalized Difference Moisture Index (NDMI) to assess habitat health for the reach on an annual basis.

**Comment #2: Impacts to Species of Special Concern**

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**Issue:** The Project may impact coast horned lizard and two-striped garter snake, both species designated as California Species of Special Concern (SSC).

**Specific impacts:** Project construction and activities, directly or through habitat modification, may result in direct injury or mortality (trampling, crushing), reduced reproductive capacity, population declines, or local extirpation of an SSC. Also, loss of foraging, breeding, or nursery habitat for an SSC may occur.

**Why impacts would occur:** A review of the California Natural Diversity Database ([CNDDB](#)) (CDFW 2024b) as well as [iNaturalist](#) (2018) have occurrences of both species adjacent to the Project site. However, only a vegetation field assessment was conducted, preventing detection of special status wildlife species. In addition, focused surveys for amphibian and reptile species were not conducted for the MND to determine presence/absence on site. Any appropriate avoidance, minimization, or mitigation measures were not included in the MND in the event an SSC is discovered on site. Impacts to an SSC could result from ground-disturbing activities and vegetation removal. Wildlife may be trapped or crushed under structures. Large equipment, equipment and material staging, and vehicle and foot traffic could trample or bury wildlife. SSC could be injured or killed. Impacts on these SSC are more likely to occur because these are cryptic species that are less mobile and seek refuge under structures. As such, there is potential for the Project to impact SSC.

**Evidence impacts would be significant:** An [SSC](#) is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2024c).

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. These SSC's meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Therefore, take of SSC could require a mandatory finding of significance (CEQA Guidelines, § 15065).

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Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The MND does not provide mitigation for potential impacts on SSC's. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1: Biological Monitor** - To avoid direct injury and mortality of any SSC, CDFW recommends United require a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where any SSC was found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, qualified biologists should advise workers to proceed with caution near flagged areas. A qualified biologist should be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist should be on site weekly or bi-weekly (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife of any kind is harmed.

**Mitigation Measure #2: Scientific Collecting Permit** – CDFW recommends United retain a qualified biologist with appropriate handling permits, or should obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits](#) webpage for information (CDFW 2024d). Pursuant to the [California Code of Regulations, title 14, section 650](#), United/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities.

**Mitigation Measure #3: Wildlife Relocation Plan** - Prior to initial ground and habitat disturbing activities and vegetation removal, CDFW recommends United retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan should describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan should include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and

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safe relocation areas. No wildlife nests, eggs, or nestlings may be removed or relocated at any time.

**Mitigation Measure #4: Injured or Dead Wildlife** – If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and United within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

### **Comment #3: Impact on Burrowing Owl**

**Issue:** The Project may impact burrowing owl.

**Specific impacts:** While burrowing owls were not detected during the conducted surveys, there may be suitable habitat on site for this species. Vegetation removal and grading activities may result in permanent loss of suitable overwintering habitat for burrowing owls. Project construction activities (e.g., equipment staging, mobilization, and grading) may also disrupt natural burrowing owl behavior.

**Why impact would occur:** There are multiple records of burrowing owl within five miles of the Project on [CNDDDB](#) (CDFW 2024e) as well as [iNaturalist](#) (2018). The MND states, “United staff conducted a vegetation field assessment of the project site.” Wildlife or species-specific surveys were not conducted for the Project. California ground squirrels (*Otospermophilus beecheyi*) are known to be in the area and routinely provide burrows that are used by burrowing owls. The open areas and low vegetation in and around the Project site may provide suitable habitat for burrowing owls. The MND does not provide any avoidance, minimization, or mitigation measures specific to this SSC. Without any surveys such as a preconstruction survey, burrow owls may go undetected within the Project site. Heavy machinery utilized during construction may result in death or injury of undetected burrowing owl.

**Evidence impacts would be significant:** 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. 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.” Without appropriate take avoidance surveys prior to Project operations including, but not limited to, ground and vegetation disturbing activities, adverse impacts to burrowing owl may occur because species presence/absence has not been verified.

In addition, burrowing owl qualifies for enhanced consideration afforded to species under CEQA, that can be shown to meet the criteria for listing as endangered, rare, or threatened (CEQA Guidelines, § 15380(d)). Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and



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cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW.

### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1: Burrowing Owl Surveys** - To reduce impacts to burrowing owl, the Project proponent shall retain a qualified biologist to conduct protocol-level surveys adhering to CDFW's [Staff Report on Burrowing Owl Mitigation](#) (CDFW 2012). All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owl. Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variations by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15.

If an occupied burrow or burrowing owl is found within the development footprint, the biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation and management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to United and CDFW for review and approval prior to Project activities.

**Mitigation Measure #2: Burrowing Owl Compensatory Mitigation** – If the Project will impact burrowing owl and associated habitat, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.

### **Additional Recommendations**

**Recommendation #1:** The MND provides mitigation for nesting birds; however, language in the Project's mitigation measure for nesting birds may not fully mitigate impacts to nesting birds in and around the Project site. CDFW recommends United revise Mitigation Measure BIO-1 by adding underlined language and removing the language with a ~~strike through~~:

“To avoid impacts to nesting birds, project-related activities shall occur outside of the bird breeding season (~~February 1~~January 15 to September 15) to the extent practicable. If construction must occur within the bird breeding season, then no more than 3 days prior to initiation of ground disturbance and/or vegetation removal in areas with potential to support nesting birds (i.e., near the eucalyptus

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groves or pepper tree groves vegetation communities, or the ornamental landscaping land cover type, as well as areas suitable for ground nesting species), a nesting bird pre-construction survey shall be conducted by a qualified biologist within the disturbance footprint plus a 100-foot buffer (300-feet for raptors if suitable raptor habitat is present), where feasible. As the proposed project is anticipated to occur in several phases, multiple pre-construction nesting bird surveys may be necessary to ensure active nest avoidance. Preconstruction nesting bird surveys shall be conducted during the time of day when birds are active and shall factor in sufficient time to perform this survey adequately and completely. A report or email of the nesting bird survey results, if applicable, shall be submitted to the United project manager for review and approval prior to ground and/or vegetation disturbance activities.

If nests are found, their locations shall be flagged with bright orange construction fencing or other suitable flagging. An appropriate avoidance buffer ranging in size from ~~25 to 50~~ 100 to 300 feet for unlisted passerines, and up to ~~300~~ 500 feet for raptors and listed species, depending upon the species and the proposed work activity, shall be determined and demarcated by a qualified biologist. Active nests shall be monitored at a minimum of once per week until it has been determined by the qualified biologist that the nest is no longer being used by either the young or adults. No ground disturbance shall occur within this buffer until the qualified biologist confirms that the breeding/nesting is completed, and all the young have fledged. If project activities must occur within the buffer, they shall be conducted at the discretion of the qualified biologist. If no nesting birds are observed during pre-construction surveys, no further actions would be necessary.”

**Recommendation #2:** Rodenticides and second-generation anticoagulant rodenticides should be prohibited during the life of the Project.

**Recommendation #3:** CDFW recommends that any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials should include, but are not limited to, spikes, glass, razors, or barbed wire. Use of chain link and steel stake fence should be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes should be capped to prevent wildlife entrapment and mortality. These structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting, and roosting. Raptor's talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site should be plugged with bolts or other plugging materials to avoid this hazard. Fences should not have any slack that may cause wildlife entanglement.

### **Mitigation and Monitoring Reporting Plan**

CDFW recommends United adopt the mitigation measures and recommendations in this letter into the MND. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [Pub. Resources Code, §

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21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist United in developing mitigation measures that are (1) consistent with CEQA Guidelines, section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation, monitoring, and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

United is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code, section 21081.6(a)(1), CDFW has provided United with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

### **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, sub. (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 (CDFW 2024e). 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 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**

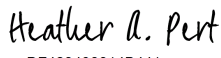
CDFW appreciates the opportunity to comment on the MND to assist United in identifying and mitigating Project impacts on biological resources. To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions in the MND for the Project. CDFW requests an opportunity to review and comment on any

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response that United has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)].

Questions regarding this letter or further coordination should be directed to Felicia Silva, Senior Environmental Scientist (Specialist), at [Felicia.Silva@wildlife.ca.gov](mailto:Felicia.Silva@wildlife.ca.gov) or (562) 292-8105 to schedule a meeting with CDFW.

Sincerely,

DocuSigned by:  
  
DF423498814B441  
Heather A. Pert  
Environmental Program Manager

## Attachments

Attachment A Draft Mitigation and Monitoring Plan

EC: California Department of Fish and Wildlife  
Baron Barrera, Senior Environmental Scientist (Supervisory)  
Felicia Silva, Senior Environmental Scientist (Specialist)  
Cindy Hailey, Staff Services Analyst  
CEQA Program Coordinator – Sacramento

OPR  
State Clearinghouse - [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

## References:

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<https://doi.org/10.1007/s00267-004-0194-7>

### Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into the Project’s environmental document.

<b>Biological Resources (BIO)</b>			
<b>Mitigation Measure (MM) or Recommendation (REC)</b>		<b>Timing</b>	<b>Responsible Party</b>
<b>MM-BIO-1-LSA Notification</b>	<p>The Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 <i>et seq.</i> of the FGC. Based on this notification and other information, CDFW shall determine whether a Lake and Streambed Alteration (LSA) Agreement is required prior to conducting the proposed activities. Please visit CDFW’s <a href="#">Lake and Streambed Alteration Program</a> webpage for more information (CDFW 2024a).</p> <p>CDFW’s issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 <i>et seq.</i> and/or under CEQA, the CEQA document shall fully identify the potential impacts to streams or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement.</p>	Prior to issuance of development permit	United Water Conservation District (United)/Project Applicant
<b>MM-BIO-2-LSAA Mitigation</b>	<p>Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project such as additional erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: avoidance of resources, on-site or off-site creation, enhancement, or restoration, and/or protection and management of mitigation lands in perpetuity.</p>	Prior to issuance of development permit	United/Project Applicant

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<p><b>MM-BIO-3- Impacts to Vegetation</b></p>	<p>If impacts to vegetation within the stream, such as willow thicket, mulefat thicket, and riparian scrub cannot be avoided, mitigation shall be achieved entirely on site if possible. Impacts will be mitigated at no less than 3:1. An on-site Habitat Mitigation and Monitoring Plan (HMMP) will be developed. The HMMP shall provide specific, detailed, and enforceable measures.</p>	<p>Prior to issuance of development permit</p>	<p>United/Project Applicant</p>
<p><b>REC-1- Hydrology Analysis</b></p>	<p>CDFW recommends United provide an in-stream flows analysis and an evaluation of potential impacts on biological resources as part of the final environmental document. Appropriate avoidance, minimization, and/or mitigation measures should be developed as a result of this analysis to mitigate any impacts to biological resources. At a minimum, the analysis should provide the following:  <i>Changes to Hydrology and Hydraulics</i></p> <ol style="list-style-type: none"> <li>2. CDFW recommends United determine and define the extent of up and downstream direct and indirect impacts to the Santa Clara River that may result from the proposed Project. Assess potential Project-related impacts on biological resources within this study reach (including any potential groundwater dependent ecosystems).</li> <li>3. An analysis of potential Project-related changes. This includes water depth (percent change), wetted perimeter (acres gained/lost), and velocity (percent change). Comparing total wetted area may be useful in quantifying the effects on groundwater dependent ecosystems, assuming that infiltration rates are proportional to wetted area.</li> <li>4. CDFW recommends using a 2-D hydraulic model of proposed versus existing habitat to determine whether habitat changes are expected and, if so, to what degree.</li> <li>5. A map of potential changes to channel hydraulics overlain on a map of plant communities and habitat for sensitive wildlife species and birds.</li> <li>6. A discussion of Project-related impacts on biological resources in relation to changes in hydrology throughout the reach.</li> </ol>	<p>Prior to issuance of development permit</p>	<p>United/Project Applicant</p>

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	7. CDFW recommends using Normalized Difference Vegetation Index (NDVI) and Normalized Difference Moisture Index (NDMI) to assess habitat health for the reach on an annual basis.		
<b>MM-BIO-4-Biological Monitor</b>	To avoid direct injury and mortality of any SSC, CDFW recommends United require a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. Wildlife shall be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where any SSC was found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist shall advise workers to proceed with caution near flagged areas. A qualified biologist shall be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist shall be on site weekly or bi-weekly (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife of any kind is harmed.	During Project Activities	United/Project Applicant
<b>MM-BIO-5-Scientific Collecting Permit</b>	United shall retain a qualified biologist with appropriate handling permits, or shall obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's <a href="#">Scientific Collection Permits</a> webpage for information (CDFW 2024d). Pursuant to the <a href="#">California Code of Regulations, title 14, section 650</a> , United/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and	Prior to issuance of development permit	United/Project Applicant



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	relocate wildlife to avoid harm or mortality in connection with Project construction and activities.		
<b>MM-BIO-6- Wildlife Relocation Plan</b>	Prior to initial ground and habitat disturbing activities and vegetation removal, United shall retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan shall describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan shall include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. No wildlife nests, eggs, or nestlings may be removed or relocated at any time.	Prior to issuance of development permit	United/Project Applicant
<b>MM-BIO-7- Injured or Dead Wildlife</b>	If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area shall stop immediately, the qualified biologist shall be notified, and dead or injured wildlife documented immediately. A formal report shall be sent to CDFW and United within three calendar days of the incident or finding. The report shall include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.	During Project Activities	United/Project Applicant
<b>MM-BIO-8- Burrowing Owl Survey</b>	To reduce impacts to burrowing owl, the Project proponent shall retain a qualified biologist to conduct protocol-level surveys adhering to CDFW's <a href="#">Staff Report on Burrowing Owl Mitigation</a> (CDFW 2012). All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owl. Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variations by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least	Prior to issuance of development permit	United/Project Applicant

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	<p>one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15.</p> <p>If an occupied burrow or burrowing owl is found within the development footprint, the biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation/management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to United and CDFW for review and approval prior to Project activities.</p>		
<p><b>MM-BIO-9-Burrowing Owl Compensatory Mitigation</b></p>	<p>If the Project will impact burrowing owl and associated habitat, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which shall include an appropriate endowment to provide for the long-term management of mitigation lands.</p>	<p>Prior to issuance of development permit</p>	<p>United/Project Applicant</p>
<p><b>REC-2-Nesting Birds</b></p>	<p>The MND provides mitigation for nesting birds; however, language in the Project's mitigation measure for nesting birds may not fully mitigate impacts to nesting birds in and around the Project site. CDFW recommends United revise Mitigation Measure BIO-1 by adding underlined language and removing the language with a strikethrough:</p> <p style="padding-left: 40px;">“To avoid impacts to nesting birds, project-related activities shall occur outside of the bird breeding season (February <u>1 January 15</u> to September 15) to the extent practicable. If construction must occur within the bird breeding season, then no more than 3 days prior to initiation of ground disturbance and/or vegetation removal in areas with potential to support nesting birds (i.e., near the eucalyptus groves or pepper tree groves vegetation communities, or the ornamental landscaping land cover type, as well as areas</p>	<p>Prior to ground moving activities</p>	<p>United/Project Applicant</p>

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	<p><u>suitable for ground nesting species</u>), a nesting bird pre-construction survey shall be conducted by a qualified biologist within the disturbance footprint plus a 100-foot buffer (300-feet for raptors if suitable raptor habitat is present), where feasible. As the proposed project is anticipated to occur in several phases, multiple pre-construction nesting bird surveys may be necessary to ensure active nest avoidance. Preconstruction nesting bird surveys shall be conducted during the time of day when birds are active and shall factor in sufficient time to perform this survey adequately and completely. A report or email of the nesting bird survey results, if applicable, shall be submitted to the United project manager for review and approval prior to ground and/or vegetation disturbance activities.</p> <p>If nests are found, their locations shall be flagged with bright orange construction fencing or other suitable flagging. An appropriate avoidance buffer ranging in size from 25 to 50 <u>100 to 300</u> feet for <u>unlisted</u> passerines, and up to 300 <u>500</u> feet for raptors <u>and listed species</u>, depending upon the species and the proposed work activity, shall be determined and demarcated by a qualified biologist. Active nests shall be monitored at a minimum of once per week until it has been determined by the qualified biologist that the nest is no longer being used by either the young or adults. No ground disturbance shall occur within this buffer until the qualified biologist confirms that the breeding/nesting is completed, and all the young have fledged. If project activities must occur within the buffer, they shall be conducted at the discretion of the qualified biologist. If no nesting birds are observed during pre-construction surveys, no further actions would be necessary.”</p>		
<p><b>REC-3-Rodenticides</b></p>	<p>Rodenticides and second-generation anticoagulant rodenticides shall be prohibited during the life of the Project.</p>	<p>Prior to finalizing</p>	<p>United/Project Applicant</p>

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		CEQA document	
<p><b>REC-4-Wildlife fencing</b></p>	<p>CDFW recommends that any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials shall include, but are not limited to, spikes, glass, razor, or barbed wire. Use of chain link and steel stake fence shall be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes shall be capped to prevent wildlife entrapment and mortality. These structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting, and roosting. Raptor's talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site shall be plugged with bolts or other plugging materials to avoid this hazard. Fences shall not have any slack that may cause wildlife entanglement.</p>	<p>Prior to finalizing CEQA document</p>	<p>United/Project Applicant</p>