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GAVIN NEWSOM, Governor
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October 4th, 2024

Matthew H. Hurley
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**Subject: Aquaterra Water Bank
Notice of Preparation for a Draft Environmental Impact Report (NOP)
State Clearinghouse No.: 2024090124**

Dear Matthew Hurley:

The California Department of Fish and Wildlife (CDFW) received an NOP from McMullin Area Groundwater Sustainability Agency (MAGSA), which is the Lead Agency for the Aquaterra Water Bank Project (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,

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 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.

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: MAGSA is the Lead Agency for the Project.

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Objectives: The Project will establish the Aquaterra Water Bank (Bank) for use by local, regional, and statewide entities to improve their use of available surface water supplies. The Project is also intended to help MAGSA in achieving sustainable groundwater management for local water and agricultural sustainability, in compliance with the Sustainable Groundwater Management Act (SGMA).

Proposed Project: The Project will provide additional storage to maximize the capture and use of allocated waters, by allowing contractors to store excess contract water and flood water during wet years and recover this water in normal or dry years. The Project would develop infrastructure to receive water from, and convey water to, the James Bypass and the Mendota Pool. Received waters will be conveyed to recharge basins during wet periods and returned to the Mendota Pool during dry periods as part of operations of the Project. Farmers will voluntarily participate in this program and agricultural fields will also continue to remain active as the banking program is compatible with farming practices (e.g., planting, fallowing, harvesting).

The Project will include the following components:

- Establish 800,000 acre-feet of Bank storage operations underlying the MAGSA area, which is adjacent to and will accept water from the Fresno Slough and Mendota Pool.
- Divert and recharge 208,000 acre-feet per year of contract water into the Bank over a five-month period (November through March) of any given year, and subsequently recover up to 148,000 acre-feet per year of contract water from the Bank over a five-month period for use by State Water Project and Central Valley Project contractors.
- Construction of conveyance infrastructure and temporary construction easements consisting of 63.5 linear miles by 200 feet horizontal width (approximately 1,540 acres total), including main canal levees, lateral levees, pump stations along the main canals with pumps, recovery wells, staging areas, and road crossings.
- Install nearly 90 recovery wells with a design capacity of 2,500 gallons per minute to enable an extraction rate of 148,000 acre-feet per year. The maximum recovery rate per day is 972 acre-feet per day.
- Ten percent of each deposit will be left behind in the water bank to offset operational and evaporative losses.
- 3,480 acres of farmland would be used for recharge basins.
- The Bank will be managed under an Operational Model that will provide a framework for monitoring hydrologic and water quality data and planning, tracking, and projecting water recharge and export.
- Groundwater quality and quantity, groundwater and surface water movement, import and export of drinking water constituents to and from the Mendota Pool, and movement of legacy groundwater constituents will be monitored and managed through a developed program.

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Location: The Project will be located in the Kings Subbasin, Fresno County, all within the 120,000-acre MAGSA management area, from the general vicinity of Caruthers (36.5427°N, 119.8332°W) in the south east portion of the management area to the Mendota Pool (36.7836°N, 120.3711°W) in the north west portion of the management area.

Timeframe: Construction is planned to begin in 2025 and be completed in 2028. Recharge facilities for banking partners are planned to become available in 2025 and recovery planned to become available in 2026.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist MAGSA 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.

Water supply sources for the Project may include the California Aqueduct, Delta Mendota Canal, San Luis Reservoir, San Joaquin and Kings Rivers, and water may be received and diverted at the Mendota Pool and Fresno Slough. The valley floor reach of the San Joaquin River at Mendota Pool, Kings River, Fresno Slough/James Bypass, and surrounding areas are known to support species that are threatened or endangered under the California Endangered Species Act and/or federal Endangered Species Act, in addition to other special-status species. Project-related construction activities within the Project boundary, including but not limited to construction and operation of water banking facilities and introduction of surface water flows for storage, could impact the special-status plant and wildlife species and habitats known to occur in the area.

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 and federal endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), State endangered Fresno kangaroo rat (*Dipodomys nitratoides exilis*), State and federal threatened giant garter snake (*Thamnophis gigas*), federal proposed threatened and State species of concern western pond turtle (*Actinemys marmorata*), and the State species of special concern burrowing owl (*Athene cunicularia*). Other species of birds, amphibians, reptiles, mammals, fish, and plants also compose the local ecosystem. Riparian and wetland habitat associated with the Mendota Wildlife Area and Fresno Slough are located adjacent to the Project.

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

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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 Draft Environmental Impact Report (DEIR), including proposed avoidance, minimization, and compensatory measures, prior to its adoption by MAGSA.

Would the Project have a substantial adverse 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 or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

SJKF has been documented in close proximity to the Project site (CDFW 2024). SJKF den in rights-of-way, vacant lots, and other disturbed areas in addition to undisturbed habitats, and populations can fluctuate over time. Absence in any one year is not necessarily a reliable predictor of future SJKF potential to occur on a site. CDFW concurs with Mitigation Measure KF#1 requiring that the United States Fish and Wildlife Service (USFWS) *Standardized recommendations for protection of the SJKF prior to or during ground disturbance* (2011) be followed for any ground-disturbing or water recharge activities occurring within the Project site. Mitigation Measure KF#3 requires that pre-Project surveys be conducted within 30 days prior to the beginning of any Project activity that could impact SJKF, to identify any SJKF individuals and their sign. However, CDFW recommends that pre-Project surveys and avoidance incorporate a 500-foot buffer. Mitigation Measure KF#4 appropriately requires that SJKF den detection before or during Project activity warrants consultation with CDFW and USFWS to discuss how to implement the Project and avoid take. However, if take avoidance is not feasible, acquisition of an ITP pursuant to Fish and Game Code section 2081, subdivision (b) prior to Project activities may be necessary to comply with CESA. CDFW recommends the following mitigation measures regarding SJKF:

Recommended Mitigation Measure 1: SJKF Surveys and Avoidance

CDFW recommends assessing presence/absence of SJKF dens by having qualified biologists conducting surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign. CDFW also recommends following the USFWS (2011) *Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance* during Project implementation.

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Recommended Mitigation Measure 2: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Swainson's Hawk (SWHA)

Swainson's hawk is documented within the MAGSA boundary and surrounding area and has the potential to nest in trees within the Project area (CDFW 2024). Impacts to nesting Swainson's hawk can occur through the disturbance related to the establishment or operation of pumps, wells, pipelines, or other Project activities. The NOP acknowledges that suitable nesting habitat occurs within the Project area. Mitigation Measure SH#2 requires surveys for hawks within 30 days of the onset of construction. Mitigation Measure SH#3 requires a 1/2-mile radius buffer around a SWHA nest, or as needed to adequately protect the nest in the context of the actions planned at that location. 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 through nest failure or other means, as a result of Project implementation. Without appropriate avoidance and minimization measures for SWHA, potential 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 3: Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA, CDFW recommends that a qualified biologist conduct surveys for nesting birds of prey, including 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 1/2-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 4: SWHA Buffers

If an active SWHA nest is found during preconstruction surveys, CDFW recommends implementing a minimum 1/2-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 or parental care for survival.

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Recommended Mitigation Measure 5: SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted on how to avoid take or, if avoidance is not feasible, to acquire an ITP for SWHA prior to project implementation, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 3: Burrowing Owl (BUOW)

The NOP 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. The NOP recommends surveys for surveys for BUOW only within the Main Canal alignment and recharge basins of the Project. 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. CDFW advises that prior to initiating Project activities, surveys of all suitable habitat areas be completed by a qualified biologist following the California Burrowing Owl Consortium (1993) methodology.

Recommended Mitigation Measure 6: 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 buffer around the Project footprint.

Recommended Mitigation Measure 7: 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. Specifically, CDFW's Staff Report recommends 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.

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| 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 8: BUOW Consultation

If BUOW are found within the recommended buffers and avoidance is not possible, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

COMMENT 4: Tricolored Blackbird (TRBL)

TRBL have been documented within and adjacent to the Project area, and in the vicinity (CDFW 2024). Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with subsequent development include nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 9: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the bird nesting season of February 1 through September 15. If Project activity that could disrupt nesting must take place during that time, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence or absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 10: TRBL Colony Avoidance

If an active TRBL nesting colony is found during surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW’s (2015) *Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*, until the breeding season has ended or until a qualified biologist has determined that nesting has ceased and the young have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 11: TRBL Take Authorization

If the avoidance buffer around a TRBL nesting colony is infeasible, consultation with CDFW is warranted to discuss whether the Project can avoid take and, if take avoidance is not feasible, to acquire an ITP for TRBL pursuant to Fish and Game Code section 2081, subdivision (b), prior to any Project activities.

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COMMENT 5: Western Pond Turtle (WPT)

WPT occur in the Project area (CDFW 2024), and a review of aerial imagery shows habitats that WPT utilize for nesting, overwintering, dispersal, and basking, including streams, ponded areas, irrigation canals, and riparian and upland habitats. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Noise, vegetation removal, movement of workers, construction and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations. Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Recommended Mitigation Measure 12: WPT Surveys

In areas of suitable habitat, CDFW recommends that a qualified biologist conducts focused surveys for WPT within 10 days prior to Project implementation, and that focused surveys for nests occur during the egg-laying season of March through August.

Recommended Mitigation Measure 13: WPT Avoidance and Minimization

CDFW concurs with Measure BIO-9 which requires that any WPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If WPT individuals are discovered at the site during surveys or Project activities, BIO-9 requires that they be allowed to move out of the area of their own volition.

COMMENT 6: Giant Garter Snake (GGS)

GGS have the potential to be present on the Project site. The capture and movement of any species listed under CESA would require an Incidental Take Permit from CDFW, as capture (or attempt to do so) is defined as take under Fish and Game Code Section 86. In addition, excavating potential GGS refugia may result in a violation of CESA if giant garter snake is determined to be present in the excavated habitat feature.

Recommended Mitigation Measure 14: GGS Surveys and Avoidance

CDFW recommends, no more than 30 days prior to ground disturbing activities, a qualified biologist with GGS experience and knowledge of its ecology survey the work area and a minimum 50-foot radius of the work area for burrows and crevices in which giant garter snake could be present. It is advised that all potentially suitable burrows and crevices be flagged and avoided by a minimum 50-foot no disturbance buffer.

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Recommended Mitigation Measure 14: GGS Take Authorization

If a 50-foot radius buffer isn't feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take and, if take avoidance is not feasible, to acquire an ITP for GGS pursuant to Fish and Game Code section 2081, subdivision (b), prior to any Project activities.

II. Editorial Comments and/or Suggestions

Mendota Wildlife Area: CDFW is also a water contractor and the landowner and manager of the Mendota Wildlife Area (MWA) on Fresno Slough, and as such has a vested interest in water quality in the Fresno Slough, in addition to firsthand management experience with the effects of water use in the area affected by the proposed Project. The MWA has been significantly affected by groundwater overdrafting, subsidence, and lowered water quality.

The MWA is located within the Delta-Mendota Subbasin and borders the Westside Subbasin. Both the Westside and Delta-Mendota Subbasins are designated as critically overdrafted by the California Department of Water Resources (DWR), and as such overdrafting is a serious issue within the Mendota Pool area due to ongoing subsidence. Continued subsidence affects the ability of CDFW to operate the MWA according to its management objectives, and other areas where water is no longer delivered by gravity could increasingly lose associated wetland and riparian habitat features. Subsidence is irreversible and damage to surface water conveyance features caused by subsidence can only be mitigated by removal of damaged infrastructure and replacement, or re-engineering and reconstruction of infrastructure to allow surface water to flow at an acceptable level.

Water quality has been another issue affecting the MWA. In prior years, the United States Bureau of Reclamation has approved the transfer of Central Valley Project (CVP) surface flow that may have otherwise entered the Mendota Pool. Groundwater would instead be pumped into the Mendota Pool. Prior water quality monitoring results have demonstrated that groundwater supplied to the Mendota Pool is consistently more saline than surface waters within the Delta Mendota Canal. Consequently, CDFW is concerned with this "salt loading" into the Mendota Pool and the impact it will have on the water supply for the MWA. Lowered water quality and increased salt loading could potentially impact sensitive aquatic species such as the giant garter snake, and affect habitats for sensitive status species, especially in the context of other existing and pending projects affecting water quality and ground subsidence of Mendota Pool, the MWA, and surrounding areas.

As stated above, the Project description includes the installation of new infrastructure at Mendota Pool. The banking of CVP water allocations would be permitted for the Project. CDFW recommends a thorough description and impact analysis to biological resources (including the MWA) regarding the Project-related transfer of CVP water allocations and the installation, operation, and maintenance of new infrastructure at Mendota Pool.

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The Project would develop infrastructure to receive water from, and convey water to the James Bypass, Mendota Pool, Jensen and James Diversions. Project development at these locations may impact the MWA. For instance, the construction of pump facilities at the Jensen Canal, adjacent to the MWA, could impact the ability to draw water and could also result in an increase in the influx of aquatic weeds decreasing MWA's ability to lift water at this location. CDFW recommends the DEIR include environmental analysis of these Project impacts to the MWA.

Water Rights: The Project description allows for the diversion 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 DEIR include a detailed description of the water rights and water entitlements that would pertain 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.

Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems: A Groundwater Sustainability Plan was prepared by MAGSA as part of the Kings Subbasin (Subbasin No. 5-22.08 of the San Joaquin Valley Groundwater Basin) which is designated a high priority Subbasin by DWR. The Groundwater Sustainability Plan for the Kings Subbasin was approved by DWR on August 4, 2023. The SGMA defines sustainable groundwater management as, "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results (Water Code, § 10721, subd. (v))." Significant and undesirable results that may result from Project related activities include chronic lowering of groundwater levels, reduction of groundwater storage, degraded water quality, land subsidence, depletions of interconnected surface water that have an adverse impact on beneficial uses of surface water. Any of these undesirable results may have adverse impacts to groundwater dependent ecosystems. CDFW recommends that the DEIR include an analysis of Project-related activities and groundwater pumping in relation to the Kings Subbasin Groundwater Sustainability Plan, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

Federally Listed Species: CDFW recommends consulting with the USFWS regarding potential impacts to federally listed species including, but not limited to, SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral

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patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

Lake and Streambed Alteration: Project activities that will substantially change the bed, bank, and channel of waterways onsite 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. CDFW is required to comply with CEQA in the issuance of a Lake or 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, of 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 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

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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 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>

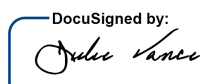
FILING FEES

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).

CONCLUSION

CDFW appreciates the opportunity to provide comments as part of the public scoping process to assist MAGSA 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

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