



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
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October 11, 2024

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**Subject: Sentinel Butte Mutual Water Company Flood Capture Basin (Project)  
Mitigated Negative Declaration (MND)  
SCH Number: 2024090379**

Dear Michael Hagman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study (IS)/MND from East Kaweah Groundwater Sustainability Agency (EKGSA) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide recommendations regarding the activities proposed at the Project site 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 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 and Game 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

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<sup>1</sup> 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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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 & Game Code, § 2050 et seq.), related authorized as provided by the Fish and Game Code will be required.

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

**Cumulative Impacts:** General impacts from Projects include habitat fragmentation, degradation, habitat loss, migration/movement corridor limitations, and potential loss of individuals to the population. CDFW recommends the lead agency consider all approved and future projects when determining impact significance to biological resources.

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project area include the following: increased sediment input from road or structure runoff; toxic runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

**Water Rights:** The capture of unallocated stream flows to artificially recharge groundwater aquifers is subject to appropriation and approval by the State Water

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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.

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

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T as specified in the CEQA Guidelines (Cal. Code Regs, tit. 14, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** East Kaweah Groundwater Sustainability Agency

**Objective:** EKGSA and the Sentinel Butte Mutual Water Company (SBMWC) are proposing to construct a roughly 27-acre multi-cell groundwater detention basin, with a storage capacity of approximately 50-acre feet for the purpose of capturing high flows during flood periods primarily from the Kaweah River through the Wutchurna Ditch. Other aspects of the Project include construction of a new turnout structure located northwest of the site within Wutchurna Ditch to divert water into the proposed basin, and interbasin connection structures to connect the proposed basin cells. The proposed basin may empty and fill multiple times during the year, it is assumed the proposed basin will completely fill and empty approximately three times during wet years.

**Location:** The Project is located in Tulare County on Assessor's Parcel Number(s) 060-160-003 and 060-160-058 which is adjacent to the city of Woodlake, west of Bravo Lake and adjacent to Wutchurna Ditch. The centroid of the Project site is 36°24'15.74"N, 119° 6'20.47"W.

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**Timeframe:** Construction is projected to take approximately four to six months beginning in fall 2024 and concluding by May 2025.

## COMMENTS AND RECOMMENDATIONS

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

Currently, the IS/MND acknowledges that the Project site is within the geographic range of several special-status and review of the California Natural Diversity Database (CNDDDB) reveals records for several special-status species within the vicinity of the Project area including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened tricolor blackbird (*Agelaius tricolor*), the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), the federally endangered vernal pool fairy shrimp (*Branchinecta lynchi*), the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*) and northwestern pond turtle (*Actinemys marmorata*), and the State species of special concern Burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), and Northern California legless lizard (*Anniella pulchra*).

The Project has the potential to impact biological resources, and the IS/MND proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of these measures to reduce impacts to less than significant and avoid unauthorized take for special-status animal species listed above. If significant environmental impacts will occur as a result of Project implementation and cannot be mitigated to less than significant levels, an IS/MND would not be appropriate. When an Environmental Impact Report (EIR) is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation. CDFW recommends that the CEQA document provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels. CDFW recommends that the following modifications and/or edits be incorporated into the IS/MND, including proposed avoidance, minimization, and compensatory measures, prior to its adoption by EKGSA.

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### **California Tiger Salamander (CTS)**

The IS/MND states, in Table 3 of the Appendix B Biological Evaluation, that the Project will have no effect on CTS due to the lack of suitable vernal pool habitat required for the species, and that barriers such as Wutchumma Ditch separates the property from suitable habitat north of the site. However, it is unclear if there is potential vernal pool habitat in undeveloped property near the Project area, and within the CTS dispersal distance. CTS have been determined to be physiologically capable of dispersing up to approximately 1.5-miles from seasonally flooded wetlands (Searcy and Shaffer 2011). Section 2.2.1 of the IS/MND Biological Evaluation states that small mammal burrows were found on the Project site, which is a requisite upland habitat feature for CTS. Without appropriate avoidance and minimization measures for CTS, potential significant impacts associated with any construction or ground disturbing activity include burrow collapse; inadvertent entrapment; reduced reproductive success; reduction in health and vigor of eggs, larvae and/or young; and direct mortality of individuals. The Department recommends protocol level surveys to determine if CTS is present at the Project site.

#### **Recommended Mitigation Measure 1: CTS Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation, to determine if any Project area or its vicinity contains suitable habitat (upland or breeding) for CTS.

#### **Recommended Mitigation Measure 2: CTS Avoidance**

CDFW advises that avoidance for CTS include a minimum 50-foot no disturbance buffer delineated around all small mammal burrows and a minimum 250-foot no disturbance buffer around potential breeding pools within and adjacent to the Project area. CDFW also recommends avoiding any impacts that could alter the hydrology or result in sedimentation of breeding pools.

#### **Recommended Mitigation Measure 3: Focused CTS Surveys**

If avoidance of burrows and/or pools is not feasible, CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS using the United States Fish and Wildlife Service (USFWS) (2003) Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander. CDFW advises that the survey include a 100-foot buffer around the areas in wetland and upland habitats that could support CTS.

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**Recommended Mitigation Measure 4: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to any ground disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

**San Joaquin Kit Fox (SJKF)**

The IS/MND states, in Table 4-10, that the ruderal grassland habitat present at the Project site is disturbed and this disturbance is the reason for the species' unlikely occurrence. CDFW disagrees with this determination due to SJKF being known to den and forage within rights-of-way, vacant lots, and other disturbed areas in addition to undisturbed habitats. SJKF absence in any one year is not necessarily a reliable predictor of future SJKF potential to occur on a site (Cypher et al. 2013). CDFW recommends that pre-Project surveys and avoidance also incorporate a 500-foot buffer around the Project site. SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. Habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013).

**Recommended Mitigation Measure 5: SJKF Habitat Assessment**

For all Project-specific components including construction and land conversion, CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity contains suitable habitat for SJKF.

**Recommended Mitigation Measure 6: SJKF Surveys and Minimization**

CDFW recommends assessing presence or absence of SJKF by having qualified biologists conduct surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign. CDFW also recommends following the U.S. Fish and Wildlife Service (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 7: SJKF Take Authorization**

SJKF activity or 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 any ground disturbing activities, pursuant to Fish and Game Code section 2081, subdivision (b).

**Vernal Pool Fairy Shrimp (VPFS)**

The IS/MND Table 4-10 states that VPFS is unlikely due to the nearest population of VPFS being three miles southwest from the Project site. Review of the CNDDDB also shows that there is a presumed extant population three miles due north of the Project site (CDFW 2024). The IS/MND also states that the potential of VPFS to occur is unlikely due to unsuitable habitat and lack of vernal pool habitat, however review of aerial imagery indicates the presence of several depressional features in the Project's vicinity that have the potential to support VPFS. No mitigation measures for VPFS are provided within the IS/MND. As such, CDFW recommends the following:

**Recommended Mitigation Measure 8: VPFS Surveys and Discussion with CDFW:**

CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the USFWS "Survey Guidelines for the Listed Large Branchiopods" (USFWS 2017) during the survey season prior to construction. These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of fairy shrimp. If through surveys it is determined that fairy shrimp are occupying or have the potential to occupy the Project site, discussion with CDFW is recommended well in advance of any planned vegetation- or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with USFWS may be necessary to minimize the potential for federal "take" and/or mitigate for potential impacts.

**Crotch's Bumble Bee (CBB)**

The IS/MND Table 4-10 indicates that the occurrence of CBB is unlikely due to there not being suitable foraging habitat present on the Project Site and surrounding area, but nesting habitat is not discussed. The IS/MND Appendix B Biological Evaluation Section 2.2.1 states that small mammal burrows were found on the Project site. The Project site is within the range of CBB, and while dispersal and foraging distances can vary, bumble bee species can travel several miles to forage (CDFW 2023). Based on the Project location and presence of small mammal burrows, CDFW disagrees that there isn't suitable habitat for CBB within the Project area. Suitable CBB habitat includes areas of

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grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, underneath brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014, Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010) or leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local CBB populations. As such, CDFW recommends the following:

**Recommended Mitigation Measure 9: CBB Surveys Prior to Construction**

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

**Recommended Mitigation Measure 10: CBB Avoidance Buffer**

If CBB is detected, or surveys cannot be completed, CDFW recommends that **all** small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid unauthorized take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

**Recommended Mitigation Measure 11: CBB Take Authorization**

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

**Tricolor Blackbird (TRBL)**

The IS/MND Table 4-10 states that TRBL nest near freshwater and forage in grassland and farmland. The Table states that the probability of TRBL occurrence on the Project site is unlikely due to lack of suitable foraging and nesting habitat. Photographs of the Project site in Appendix A of the IS/MND depict potentially suitable requisite habitat features for TRBL. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with Project activities include nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and



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reduced health and vigor of eggs and/or young. Depending on Project timing, disturbance to nesting colonies can cause entire colony site abandonment and loss of all unfledged nests, significantly impacting TRBL populations (Meese et al. 2014). As such, CDFW recommends the following:

**Recommended Mitigation Measure 12: 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 wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of Project activity to evaluate presence or absence of TRBL nesting colonies within nesting habitat in the Project area and a 300-foot buffer.

**Recommended Mitigation Measure 13: 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 colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, CDFW recommends that an active colony be reassessed to determine its extent within 10 days prior to Project initiation.

**Recommended Mitigation Measure 14: TRBL Take Authorization**

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss whether the Project can avoid take and, if take avoidance is not feasible, to acquire an ITP pursuant to Fish and Game Code section 2081 subdivision (b), prior to any Project activities.

**Burrowing Owl (BUOW)**

The IS/MND Table 4-10 states BUOW are unlikely to occur within the Project site due to the disturbed land, and the species was not observed during the field survey. According to the IS/MND Appendix B Biological Evaluation, a reconnaissance-level survey was conducted on February 22, 2024, but a focused BUOW habitat evaluation or surveys were not conducted. The IS/MND Biological Evaluation Section 2.2.1 states that small mammal burrows are present at the Project site. BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley

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(Gervais et al. 2008). The Project site is within the known geographic range of BUOW, and as BUOW have the potential to nest and/or forage within the Project site, even after construction activities are completed, CDFW has concerns regarding the potential impacts to BUOW during Project activities and on-going operation and maintenance activities of the detention basin.

**Recommended Mitigation Measure 15: BUOW Surveys**

CDFW recommends that surveys, following the “Burrowing Owl Survey Protocol and Mitigation Guidelines” (CBOC 1993) and CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) be conducted the survey season immediately prior to construction.

**Recommended Mitigation Measure 16: BUOW Avoidance Buffer**

Should a BUOW be detected, 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.

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 17: BUOW Consultation – Construction:**

If BUOW are found within the no-disturbance buffer recommendations outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

**Recommended Mitigation Measure 18: BUOW Consultation – Operation and Maintenance:**

CDFW consultation is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation prior to detention basin operation and maintenance activities.

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### **Northwestern Pond Turtle (NWPT)**

The IS/MND notes that the canal adjacent to the Project provides suitable foraging habitat for NWPT and that Project activities have the potential to significantly impact the species without mitigation. Mitigation Measure BIO-4a through BIO-4c is provided to mitigate for potential impacts to the species. CDFW concurs with Mitigation Measure BIO-4a through BIO-4c and recommends the following in the event NWPT does not become federally listed and a Federal Endangered Species Act (FESA) permit is not obtained.

#### **Recommended Mitigation Measure 19: NWPT Avoidance**

CDFW recommends that any NWPT nests that are discovered remain undisturbed with a 50-foot no disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If NWPT individuals are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

### **Western Spadefoot (WESP)**

The IS/MND acknowledges that the Project site provides suitable breeding and foraging habitat for WESP. Mitigation Measure BIO-5a through BIO-5c is provided to mitigate for potential impacts to the species. CDFW concurs with Mitigation Measure BIO-5a through BIO-5c and recommends the following in the event WESP does not become federally listed and a FESA permit is not obtained.

#### **Recommended Mitigation Measure 20: WESP Avoidance**

CDFW recommends that any WESP clutches that are discovered remain undisturbed with a 50-foot no disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If WESP individuals are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

### **Other State Species of Special Concern**

American badger and Northern California legless lizard, are known to inhabit grassland areas with friable soils (Williams 1986, Thomson et al. 2016). These species have been documented to occur in the vicinity of the Project, which supports requisite habitat elements for these species (CDFW 2024). Habitat loss threatens both species mentioned above (Williams 1986, Thomson et al. 2016). Habitat within and adjacent to

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the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture.

As a result, ground-and vegetation-disturbing activities associated with development of the Project have the potential to significantly impact local populations of these species. Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss, nest/den/burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

**Recommended Mitigation Measure 21: American Badger and Northern California Legless Lizard**

CDFW recommends that a qualified biologist conducts 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.

**Recommended Mitigation Measure 22: American Badger and Northern California Legless Lizard**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

**Recommended Mitigation Measure 23: American Badger and Northern California Legless Lizard**

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals such as the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

**EDITORIAL COMMENTS AND/OR SUGGESTIONS**

**Lake and Streambed Alteration:** Project activities, including the diversion of flows, maybe 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. Future on-going project operations and maintenance may also involve activities that are jurisdictional under Fish and Game Code section 1602. CDFW recommends coordination with CDFW staff prior to ground-breaking activities on-site or

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submit a Lake or Streambed Alteration (LSA) Notification to determine if the activities proposed within the streams are subject to CDFW's jurisdiction. CDFW is required to comply with CEQA in the issuance of a LSA Agreement; therefore, if the CEQA document approved for this Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA 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](mailto:R4LSA@willife.ca.gov), or the Program website: <https://wildlife.ca.gov/Conservation/LSA>.

**Water Rights:** The Project description includes the diversion and storage of 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 IS/MND include a detailed description of the water rights and water entitlements that would pertain specifically to the Project and address any applications or change petitions that may be filed. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to special-status species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

**Endangered Species Act Consultation:** CDFW recommends consultation with the USFWS prior to Project activities, due to potential impacts to federally listed species. Take under the ESA is more stringently defined than under CESA; take under the 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.

**Nesting birds:** CDFW encourages Project implementation to occur during the non-nesting bird season. However, if ground-disturbing 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 ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover

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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, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW 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 and notify CDFW in advance of implementing a variance.

**Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems:** Groundwater Sustainability Plans were prepared for the Kaweah Subbasin. The Kaweah Subbasin (Subbasin No. 5-22.11 of the San Joaquin Valley Groundwater Basin) is designated a high priority Subbasin by the Department of Water Resources. 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 (v)).” CDFW recommends that the IS/MND include an analysis of Project-related activities in relation to the East Kaweah Subbasin Groundwater Sustainability Plan, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

CDFW recommends a hydrologic study or other information that identifies and analyzes the impacts to the aquatic ecosystems and fisheries of the Kaweah River that may result from Project implementation. CDFW recommends that it include specific triggers for evaluating changes to surface and ground water levels and monitoring wetland and riparian habitats that would be affected by these changes.

## **ENVIRONMENTAL DATA**

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

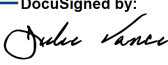
## FILING FEES

The Project, as proposed, would have an impact on biological resources, and an 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to provide comments as part of the public scoping process to assist EKGSA in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jackson Powell, Environmental Scientist, at the (559) 899-9758 by electronic mail at [Jackson.Powell@wildlife.ca.gov](mailto:Jackson.Powell@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

ec: Jackson Powell, Environmental Scientist,  
California Department of Fish and Wildlife

State Clearinghouse  
Governor's office of planning and Research  
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United States Fish and Wildlife Service  
Matthew Nelson,  
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### **Literature Cited**

California Burrowing Owl Consortium (CBOC). 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842&inline>

California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

California Department of Fish and Wildlife (CDFW). 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>

CDFW. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. California Department of Fish and Wildlife. September 25, 2024.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>

CDFW. 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed October 3, 2024.

Cypher, B.L., S.E. Phillips, and P.A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology & Conservation* 16(7): 25-31.

Goulson, D. 2010. *Bumblebees: behaviour, ecology, and conservation*. Oxford University Press, New York. 317pp.

Hatfield, R., S. Jepsen, R. Thorp, L. Richardson. and S. Colla. 2015. *Bombus crotchii*. The IUCN Red List of Threatened Species.

Meese, R. J., E. C. Beedy, and W. J. Hamilton, III. 2014. Tricolored blackbird (*Agelaius tricolor*), *The Birds of North America* (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America.

Searcy, C.A. and H.B. Shaffer. 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? California State University, Chico, California, USA.

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Thomson, R. C., A. N. Wright, and H. B. Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press: 84-92.

United States Fish and Wildlife Service (USFWS). 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.  
<https://www.fws.gov/sites/default/files/documents/guidance-on-site-assessments-and-field-surveys-for-california-tiger-salamander.pdf>

USFWS. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011. <https://www.fws.gov/sites/default/files/documents/survey-protocols-for-the-san-joaquin-kit-fox.pdf>

USFWS. 2017. Survey Guidelines for the Listed Large Branchiopods. November 2017. 24 pp. <https://www.fws.gov/sites/default/files/documents/survey-guidelines-for-large-branchiopods.pdf>

Williams, D. F. 1986. Mammalian species of special concern in California. Calif. Dept. Fish and Game, Sacramento. Admin. Rep. 86-1. 112pp.

Williams, P. H., R. W. Thorp, L. L. Richardson, and S.R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.

**Attachment 1**

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

**PROJECT: Sentinel Butte Mutual Water Company Flood Basin**

**STATE CLEARINGHOUSE No.: 2024090379**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Project Activity</i>	
<b>Recommended Mitigation Measure 1: CTS Habitat Assessment</b>	
<b>Recommended Mitigation Measure 2: CTS Avoidance</b>	
<b>Recommended Mitigation Measure 3: Focused CTS Surveys</b>	
<b>Recommended Mitigation Measure 4: CTS Take Authorization</b>	
<b>Recommended Mitigation Measure 5: SJKF Habitat Assessment</b>	
<b>Recommended Mitigation Measure 6: SJKF Surveys and Minimization</b>	
<b>Recommended Mitigation Measure 7: SJKF Take Authorization</b>	
<b>Recommended Mitigation Measure 8: VPFS Surveys and Discussion with CDFW</b>	
<b>Recommended Mitigation Measure 9: CBB Surveys Prior to Construction</b>	

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**PROJECT: Sentinel Butte Mutual Water Company Flood Basin**

**STATE CLEARINGHOUSE No.: 2024090379**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<b>Recommended Mitigation Measure 10: CBB Avoidance Buffer</b>	
<b>Recommended Mitigation Measure 11: CBB Take Authorization</b>	
<b>Recommended Mitigation Measure 12: TRBL Surveys</b>	
<b>Recommended Mitigation Measure 13: TRBL Colony Avoidance</b>	
<b>Recommended Mitigation Measure 14: TRBL Take Authorization</b>	
<b>Recommended Mitigation Measure 15: BUOW Surveys</b>	
<b>Recommended Mitigation Measure 16: BUOW Avoidance Buffer</b>	
<b>Recommended Mitigation Measure 17: BUOW Consultation – Construction</b>	
<b>Recommended Mitigation Measure 18: BUOW Consultation – Operation and Maintenance</b>	
<b>Recommended Mitigation Measure 21: American Badger and Northern</b>	

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**PROJECT: Sentinel Butte Mutual Water Company Flood Basin**

**STATE CLEARINGHOUSE No.: 2024090379**

<b>RECOMMENDED MITIGATION MEASURES</b>	<b>STATUS/DATE/INITIALS</b>
<b>California Legless Lizard Habitat Assessment</b>	
<b>Recommended Mitigation Measure 22: American Badger and Northern California Legless Lizard Surveys</b>	
<b>Recommended Mitigation Measure ##: American Badger, Northern California Legless Lizard, and Northern Leopard Frog Avoidance</b>	
<i>During Project Activity</i>	
<b>Recommended Mitigation Measure 19: NWPT Avoidance</b>	
<b>Recommended Mitigation Measure 20: WESP Avoidance</b>	
<b>Recommended Mitigation Measure 23: American Badger and Northern California Legless Lizard</b>	