



State of California – The Natural Resources Agency **GAVIN NEWSOM, Governor**
DEPARTMENT OF FISH AND WILDLIFE **CHARLTON H. BONHAM, Director**
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov



November 26, 2024

Laurence Kimura
Chief Engineer
Fresno Irrigation District
2907 South Maple Avenue
Fresno, California 93725-2218
lkimura@fresnoirrigation.com

**Subject: Recharge Basin Phase III (Project)
Mitigated Negative Declaration (MND)
SCH Number: 2024101179**

Dear Laurence Kimura:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study (IS)/MND from Fresno Irrigation District (ID) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 purposes of CEQA, CDFW is charged by law to provide, as available, biological

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.

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 2

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.

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 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.

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 3

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).

PROJECT DESCRIPTION SUMMARY

Proponent: Fresno ID

Objective and Project Description: Fresno ID is proposing to construct three new recharge basins (19-acre Metzler, 53-acre Schmall, and 21-acre Schneider) to capture floodwater for groundwater recharge, provide new habitat for waterfowl, and assisting with the Fresno ID commitment to the Kings River fisheries management program.

Common aspects of all three proposed recharge basins include:

- Connections to the Fresno ID Thompson No. 54 canal, and to a pipeline running north to Barstow Avenue connecting to the Herndon No. 36 canal.
- Turnout construction will consist of cutting an approximate eight by eight foot notch in the canal wall for water to pass through. A gate will be installed outside the existing Fresno ID canal to measure and control flow.
- Basin depth will be up to 20-feet below ground level, with a maximum berm height of six feet.
- Perimeter cattle fencing.
- Installing up to two monitoring wells.
- Installing up to two recovery wells and discharge pipeline to deliver approximately five cubic feet per second (cfs) to adjacent Fresno ID canal infrastructure.

The Metzler recharge basin would provide approximately 220-acre feet (AF) of flood water storage and recharge approximately 1,320 AF per year, as the annual average. Two outlet structures would be constructed to connect to Thomson No. 54 canal and the proposed Schmall recharge basin.

The Schmall recharge basin would provide approximately 300 AF of flood water storage and recharge approximately 1,800 AF per year, as the annual average. Two outlet structures would be constructed, and a pipeline running north to Barstow Avenue connecting to Herndon No. 39 canal may be constructed. If the Herndon No. 39 connection is constructed a pipeline connecting to the Metzler recharge basin may also be constructed.

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 4

The Schneider recharge basin would provide approximately 80 AF of flood water storage and recharge approximately 480 AF per year, as the annual average. A basin outlet structure would be constructed.

Location: The Project is located in western Fresno County, adjacent to North Jameson Avenue between West Barstow Avenue to the north and West Shields Avenue to the south. The centroid for all three basin sites is 36.802°N, 119.988°W. Individual proposed recharge basin locations are the following: Metzler is located near the intersection West Shaw Avenue and North Jameson Avenue, on Assessor's Parcel Number (APN) 016-450-71S; Schmall is located near the intersection West Shaw Avenue and North Jameson Avenue, on APNs 016-460-51T, 016-460-84T, and 016-460-86T; Schneider is located south the intersection of West Gettysburg Avenue and north Jameson Avenue, on APN 016-091-58.

Timeframe: Approximately beginning the fall of 2025 through 2027.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following recommendations to assist Fresno ID 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 animal species and proposes specific mitigation measures to reduce impacts to less than significant; however, CDFW has concerns about the ability of some proposed mitigation measures to reduce impacts to less than significant and to avoid unauthorized take for special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo Swainsoni*) and the State candidate western burrowing owl (*Athene cunicularia hypugaea*). CDFW recommends that the following modifications and/or edits be incorporated into the IS/MND, including proposed avoidance and minimization measures, prior to its adoption by Fresno ID.

Swainson's Hawk (SWHA)

SWHA are documented within the Project area and have the potential to nest in trees within the Project area (CDFW 2024). The IS/MND acknowledges that suitable nesting habitat occurs within the Area of Potential Effect and the Project site contains potential foraging habitat. Mitigation Measure BIO-7 requires a single survey for hawks within seven days prior to the onset of construction during the nesting season. Mitigation Measure BIO-8 requires a qualified biologist to determine an appropriate buffer around nests, based on CDFW guidelines, biology of the species, condition of the nest, and the level of Project disturbance. The analysis does not provide a biological basis of how these mitigation measures are determined adequate to avoid significant impacts,

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 5

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. To evaluate potential impacts to SWHA, CDFW recommends conducting the following evaluation and including the following mitigation measures in the IS/MND. CDFW also recommends the following mitigation measures be incorporated:

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

Recommended Mitigation Measure 2: SWHA Buffers: If an active SWHA nest is found during focused surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 3: SWHA Take Authorization: If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of a State Incidental Take Permit pursuant Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities, would be necessary to comply with the California Endangered Species Act (CESA).

Burrowing Owl (BUOW)

The California Fish and Game Commission approved burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The IS/MND includes Mitigation Measures BIO-3 through BIO-5 to mitigate for potential impacts to BUOW, as the Project site is within the known geographic range of BUOW and the Project area contains suitable habitat for BUOW nesting and foraging. As

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 6

BUOW is now a candidate under CESA, CDFW recommends that the Project's mitigation measures be updated to reflect the species updated status and recommends the following measures be incorporated into the Project to avoid unauthorized take.

Recommended Mitigation Measure 4: BUOW Surveys Prior to Construction: 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 within areas of suitable habitat the survey season immediately prior to construction.

Recommended Mitigation Measure 5: BUOW Buffers If BUOW burrows known to be currently or previously occupied by BUOW are found, either during surveys or Project activities, CDFW recommends implementing a 50-meter no-disturbance buffer around each burrow.

Recommended Mitigation Measure 6: BUOW Take Authorization: If BUOW or burrows known to be currently or previously occupied by BUOW are found, either during surveys or Project activities, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of a State Incidental Take Permit pursuant Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities, would be necessary in order to comply with the California Endangered Species Act CESA.

EDITORIAL COMMENTS AND/OR SUGGESTIONS

Project Location: Table 2-1, Basin Location Information, in the IS/MND includes inconsistent location information. For example, it lists the location of the proposed Metzler recharge basin as "*Near the intersection of N. Hayes Avenue and W. McKenzie Avenue,*" which is not consistent with the Project maps and other information in the IS/MND. CDFW recommends Table 2-1 be reviewed and corrected to include accurate location information for the individual proposed recharge basins.

Nesting birds: CDFW recommends that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also advises that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 7

potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified 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 the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration: Project activities, including the diversion of surface water, 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.

Future on-going project operations and maintenance may 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 submission of 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@wildlife.ca.gov, or the Program website: <https://wildlife.ca.gov/Conservation/LSA>.

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 8

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.

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.

Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems: Groundwater Sustainability Plans were prepared for the Kings Subbasin. The Kings Subbasin (Subbasin No. 5-22.08 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 North Kings Subbasin Groundwater Sustainability Plan, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

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, 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. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

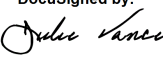
Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 9

FILING FEES

The Project, as proposed, could have an impact on biological resources, and an assessment of filing fees will be 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).

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.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's office of planning and Research
State.Clearinghouse@opr.ca.gov

Laurence Kimura
Fresno Irrigation District
November 26, 2024
Page 10

REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 *in* Lincer, J. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.
- California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed November 21, 2024.
- Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's hawk technical advisory committee.

Attachment 1

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

**PROJECT: Recharge Basin Phase III (Project)
STATE CLEARINGHOUSE No.: 2024101179**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA Surveys	
Recommended Mitigation Measure 3: SWHA Take Authorization	
BUOW	
Recommended Mitigation Measure 4: BUOW Surveys Prior to Construction	
Recommended Mitigation Measure 6: BUOW Take Authorization	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA Buffers	
BUOW	
Recommended Mitigation Measure 5: BUOW Buffers	