



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



March 27, 2025

Dana Jacobson, General Manager
San Benito County Water District
30 Mansfield Road
Hollister, California 95023
djacobson@sbcwd.com

**Subject: Accelerated Drought Response Project
Initial Study / Mitigated Negative Declaration (IS/MND)
SCH Number: 2025021019**

Dear Dana Jacobson:

The California Department of Fish and Wildlife (CDFW) received an IS/MND from San Benito County Water District for the above referenced 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 on 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 expertise during public agency environmental review efforts, focusing specifically on

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.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 2

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.

Nesting Birds: 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 sections 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 for 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 (California Code of Regulations, Title 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

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 construction 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

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 3

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.

PROJECT DESCRIPTION SUMMARY

Proponent: San Benito County Water District (SBCWD)

Objective and Project Description: The proposed Project would capture excess Central Valley Project surface water in wet years and store the water in the aquifer for later use during drought years, which would help address water supply and water quality issues during dry years. The proposed Project would expand the West Hills Water Treatment Plant (WHWTP) near the City of Hollister (City), by constructing five Aquifer Storage and Recovery (ASR) wells, and installation of new pipelines (approximately a total of 26,003 feet) for recharge water transmission from the City to the proposed ASR wells and recovery water from the ASR wells to the City's distribution system. The five ASR wells would have a capacity to inject, store, and recover up to 2,700 acre feet of water per year. Each well consists of a vertical turbine, line shaft pump, hollow shaft motor, piping, and appurtenances on a concrete pad. Each well would be installed one foot above the 100-year Federal Emergency Management Agency floodplain elevation, impacting 0.30 acres, and be surrounded by 8-foot high fencing. In addition, the WHWTP capacity will be increased from 4.5 million gallons per day (MGD) to 6.75 MGD, and all expansion activities will occur within the current developed footprint of the WHWTP. The Project would result in approximately 21.55 acres of temporary disturbance and 1.76 acres of permanent disturbance.

Location: The Project will take place at multiple locations near the City of Hollister and at the WHWTP, in San Benito County. Portions of the Project will occur within the right-of-way of various roads, including San Felipe, Fallon, Scagliotti, and several unnamed roads. Portions of the Project will occur within the following Assessor's Parcel Numbers: 021-060-006-000, 021-060-007-000, 021-070-001-000, 021-070-012-000, 021-070-013-000, 014-120-004-000, 017-060-011-000, and 051-120-033-000.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 4

Timeframe: Construction would occur over approximately 23 months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following recommendations to assist SBCWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA 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 for several species. CDFW has concerns about the ability of these measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including, but not limited to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored black bird (*Agelaius tricolor*); the State candidate for listing western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*); and the State species of special concern and federally propose threatened northwestern pond turtle (*Actinemys marmorata*). CDFW is also concerned regarding potential impacts for the following special-status plant species with potential to occupy the Project area, the California rare plant rank (CRPR) 1A hairless popcornflower (*Plagiobothrys glaber*), the CRPR 1B.1 Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), the CRPR 1B.2 alkalai milk-vetch (*Astragalus tener* var. *tener*), Indian Valley bushmallow (*Malacothamnus aboriginum*), saline clover (*Trifolium hydrophilum*) and San Joaquin spearscale (*Extriplex joaquinana*). Based on a review of the Project description, a review of CNDDDB records (CDFW 2025), and the surrounding habitat, special-status species could potentially be impacted by Project activities.

To evaluate impacts of the Project on these species, CDFW recommends that a qualified biologist conduct species-specific focused habitat assessments and, if suitable habitat is present, protocol-level surveys or assumption of presence. CDFW further recommends that the results of these surveys be summarized and used to evaluate Project impacts, impact avoidance and mitigation, and potential permitting needs in the IS/MND. The IS/MND must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels.

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat with features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean that a species is not

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 5

present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist 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 is present.

San Joaquin Kit Fox (SJKF)

The IS/MND states in Impact BIO-1g that SJKF habitat is present around the WHWTP facility, but the well and pipeline areas are not suitable habitat due to being adjacent to disturbed agricultural land, 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. Further, SJKF are also known to specifically forage in areas of irrigated agriculture (Warrick et al. 2007) and may use streams as dispersal corridors. In addition, the IS/MND does not indicate if there are potential SJKF burrows within 500-feet of the WHWTP, and it is unclear if construction activities within the WHWTP footprint could disturb denning SJKF if they are present. 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). 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. To evaluate potential impacts to SJKF, CDFW recommends conducting the following evaluation and that the following mitigation measures be included in the IS/MND.

Recommended Mitigation Measure 1: SJKF Habitat Assessment

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 2: SJKF Surveys and Minimization

If suitable habitat is present, 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*.

Recommended Mitigation Measure 3: SJKF Avoidance and/or Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is required to comply with CESA.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 6

California Tiger Salamander (CTS)

The IS/MND states the presence of CTS as possible and that impacts to CTS can occur through disturbance related to Project activities. The IS/MND acknowledges that the Project area is hydrologically connected to designated critical habitat for the species by Santa Ana Creek, contains potential upland habitat, that Project activities could cause injury or death to CTS, and that one CTS was found within the WHWTP footprint during a previous project. CDFW recognizes that the SBCWD has applied for an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), for CTS for activities related to the WHWTP, and are actively working with CDFW CESA staff on the ITP. In the event an ITP is not issued, CDFW would like the SBCWD to be aware that the IS/MND CTS Mitigation Measures (MM) BIO-1a through BIO-1e are not sufficient to avoid take, and CDFW recommends the following mitigation measure be included in the IS/MND.

Recommended Mitigation Measure 4: CTS Avoidance and/or Take Authorization

CDFW recommends that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. If take avoidance is not feasible, acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), would be required prior to any ground disturbing activity to comply with CESA.

Swainson's Hawk (SWHA)

The IS/MND acknowledges that suitable SWHA nesting habitat occurs within the Project area and MM BIO-1f requires a survey for nesting birds, including SWHA, within seven days prior to construction during the nesting season. MM BIO-1f further requires that should any active nests be detected during surveys that a no disturbance buffer would be established around the nest, and that a qualified biologist would determine the size of the no disturbance buffer. However, specific avoidance buffer distances are not included and the IS/MND analysis does not provide a biological basis of how a no-disturbance buffer will be determined as 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. To evaluate potential impacts to SWHA, CDFW recommends conducting the following evaluation and that the following mitigation measures be included in the IS/MND.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 7

Recommended Mitigation Measure 5: Focused SWHA Surveys

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), CDFW recommends that a qualified biologist conduct surveys for 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 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 6: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 7: SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and an ITP for SWHA may be necessary prior to Project implementation, pursuant to Fish and Game Code section 2081, subdivision (b), to comply with CESA.

Tricolored blackbird (TRBL)

TRBL have been documented within five miles from the Project site, and the Project is within the range of TRBL, however, the IS/MND does not discuss TRBL and it is unclear if the species was considered during the development of the IS/MND. TRBL breed within the vicinity of fresh water, primarily in marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnel and Miller 1944). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type (Beedy et al. 2023). TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests and disturbance to nesting colonies can cause entire nest colony site abandonment and loss of all unfledged nests (Meese et al. 2016). To evaluate potential impacts to TRBL, CDFW recommends conducting the following evaluation of the Project area and that the following mitigation measures be included in the IS/MND.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 8

Recommended Mitigation Measure 8: TRBL Habitat Assessment and Surveys

CDFW recommends that Project activities be timed to avoid the bird nesting season of February 1 through September 15. If Project activities that could disrupt nesting must take place during that time, CDFW recommends that a qualified biologist conduct a habitat assessment to determine if there is potential TRBL nesting habitat in the Project area, and if potential habitat is found, conduct protocol level nesting TRBL surveys no more than 10 days prior to the start of Project activities.

Recommended Mitigation Measure 9: 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 10: 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, acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), would be required to comply with CESA.

Western Burrowing Owl (BUOW)

The California Fish and Game Commission approved western 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 a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW and the IS/MND notes that the species has the potential to occur within the Project site. Impact BIO-1d indicates BUOW could be impacted by aspects of the Project, but that construction at the WHWTP is unlikely to impact BUOW since construction will take place within the development footprint of the existing facility. However, the IS/MND does not indicate if there are potential BUOW dens within 500-meters of the WHWTP, and it is unclear if construction activities within the WHWTP footprint could disturb nesting BUOW if they are present. The IS/MND MM BIO-1g includes performing one BUOW survey within 30 days of ground disturbance, establishing 200 meter no-work buffers around occupied burrows during the breeding season and 100 meter no-work buffers during the non-breeding season, and includes passive relocation outside the breeding season. CDFW does not agree with this measure, it is unclear what level of disturbance could

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 9

potentially occur and the buffers in MM BIO-1g may not be sufficient to avoid take. CDFW recommends the following mitigation measures be included in the IS/MND.

Recommended Mitigation Measure 11: BUOW Surveys

CDFW recommends that a qualified biologist conduct protocol surveys for BUOW, following the *2012 Staff Report on Burrowing Owl Mitigation* (CDFG 2012), the survey season immediately prior to construction.

Recommended Mitigation Measure 12: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the *2012 Staff Report on Burrowing Owl Mitigation* (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 13: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the *2012 Staff Report on Burrowing Owl Mitigation* are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch Bumble Bee (CBB)

The Project is within the range of CBB and the IS/MND indicates there are burrows in the Project area that could be impacted by Project activities, but the IS/MND does not discuss CBB and it is unclear if the species was considered during the development of the IS/MND. CBB primarily nest in late February through late October and are known to inhabit a variety of habitats, including grasslands, scrublands, openings in woodlands, areas with bare ground including vacant lots, dirt roads, and levees (Xerces Society et al. 2018). Based on information provided in the IS/MND, these habitat elements are present within and adjacent to the Project site. 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 impact local CBB populations. To evaluate potential impacts to CBB, CDFW recommends conducting the following evaluation of the Project area and that the following mitigation measures be included in the IS/MND.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 10

Recommended Mitigation Measure 14: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 15: CBB Surveys

If potentially suitable habitat is identified, 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). If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement the 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 16: CBB Avoidance Buffer

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts.

Recommended Mitigation Measure 17: CBB Take Authorization

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. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California Red-legged Frog (CRLF)

The IS/MND Impact BIO-1b states that CRLF will not be affected because jack and bore trenchless pipe installation will be used to install the pipeline beneath Santa Ana Creek, and by implementing MM BIO-1a (preconstruction surveys) and MM BIO-1b (exclusionary fencing) impacts to CRLF would be less than significant. CDFW disagrees with this determination since MM BIO-1a is specific to CTS pre-construction surveys and does not include conducting surveys for CRLF or other amphibian species, and avoidance buffers for CRLF are not included in the IS/MND. The Project site of the proposed pipeline beneath Santa Ana Creek has potential habitat that may support CRLF. CDFW recommends the following mitigation measures be included in the IS/MND.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 11

Recommended Mitigation Measure 18: CRLF Surveys

CDFW recommends that a qualified biologist conduct surveys for CRLF in accordance with the *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS 2005) to determine if RLF will be impacted by Project construction or modified Reservoir pool inundation or operation. These surveys should be conducted within, upstream, and adjacent to the Project area.

Recommended Mitigation Measure 19: CRLF Avoidance Buffer

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends avoidance whenever possible via delineation and observance of a minimum 50-foot no-disturbance buffer around CRLF and any known burrows or other observed refugia. If CRLF are observed on the Project site, CDFW also recommends that Project activities in the immediate vicinity cease, allowing individuals to leave the Project site on their own accord. Finally, CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for CRLF.

Special-Status Plants

The Project site is within the range of several special-status plant species. CDFW has concerns related to the level of survey effort conducted to inform the IS/MND as reconnaissance level surveys were conducted in June 2024, and it is unclear if protocol level botanical surveys were conducted. Additionally, no mitigation measures are proposed to mitigate for potential Project-related impacts to CRPR plants. As special-status plants have been documented in the Project area and have the potential to be present within the Project site, CDFW recommends the following mitigation measures be included in the IS/MND.

Recommended Mitigation Measure 20: Special-status plant Habitat Assessment and Surveys

CDFW recommends that a qualified botanist conduct a habitat assessment of the Project area well in advance of Project implementation to determine if the Project area or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the *Protocols for surveying and evaluating impacts to special-status native plant populations and sensitive natural communities* (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 12

Recommended Mitigation Measure 21: Special-status plants Avoidance Buffers

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Editorial Comments and/or Suggestions

Northwestern Pond Turtle (NWPT): The IS/MND acknowledges that a known occurrence of NWPT is documented upstream of the Project area, and states in Impacts BIO-1f that implementation of MM BIO-1f will minimize impacts to less than significance levels. MM BIO-1f includes preconstruction surveys for nesting birds, while MM BIO-1i includes NWPT nest avoidance. CDFW recommends the language in Impacts BIO-1f be corrected to include the correct mitigation measure of MM BIO-1i instead of MM BIO-1f.

Notification of Lake and Streambed Alteration: The IS/MND states that jack and bore drilling will be utilized to install a water transmission pipeline beneath Santa Ana Creek, and within Section 3.7 Biological Resources (page 33) proposes MM BIO-2 (sensitive community fencing) and GENMM-1 related to reducing impacts to the Santa Anna Creek corridor. However, there is no GENMM-1 mitigation measure within the IS/MND and it is unclear what impacts to the bed, bank, and channel of the stream and associated riparian corridor could occur. CDFW recommends the IS/MND be updated to include the GENMM-1 mitigation measure. Further, CDFW has concerns that the jack and bore drilling could impact the bed, bank, or channel of Santa Anna Creek. The IS/MND does not include an alignment depth beneath the stream, and it is unclear what the potential channel scour depth is in relation to the bore path. CDFW recommends this information be included in the IS/MND.

The jack and bore drilling beneath Santa Anna Creek may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that 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 and may include those that are highly modified such as canals and retention basins.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 13

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

Nesting birds: 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 sections 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).

Habitat within the Project area likely provides nesting habitat for birds. For this reason, CDFW encourages that Project implementation occur during the non-nesting bird season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted 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, 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

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 14

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.

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS prior to Project activity, due to potential impacts to federally listed and candidate species. Take under the Endangered Species Act (ESA) is differently defined than take 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.

Water Rights: The Project description includes the diversion and storage of surface water for groundwater storage. 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.

Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems: Groundwater Sustainability Plans were prepared for the Gilroy-Hollister Valley North San Benito Subbasin. The Gilroy-Hollister Valley North San Benito Subbasin (Subbasin No. 3-003.05 of the Gilroy-Hollister Valley Groundwater Basin) is designated a medium 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 San Benito 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 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.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 15

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>.


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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the SBCWD in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jackson Powell Environmental Scientist, at (559) 899-9758, or the address provided on this letterhead by electronic mail at Jackson.Powell@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 16

Justin Sloan
Senior Wildlife Biologist, San Joaquin Valley Division
United States Fish and Wildlife Service
Justin_Sloan@fws.gov

Stephanie Manzo,
California Department of Fish and Wildlife

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 17

REFERENCES

- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, W. S. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. Birds of the World. P. G. Rodewald and B. K. Keeney, editors. Cornell Lab of Ornithology, Ithaca, NY, USA.
<<https://birdsoftheworld.org/bow/species/tribla/cur/demography>>. Accessed 24 March 2025.
- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- California Department of Fish and Wildlife (CDFW). 2015. Staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. Sacramento, California, USA.
- CDFW. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. State of California, California Natural Resources Agency, Department of Fish and Wildlife. March 20, 2018.
- CDFW. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.
- CDFW. 2025. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 18, 2025.
- Cypher, B. L., S. E. Phillips, P. A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.
- Goulson, D. 2010. *Bumblebees: behaviour, ecology, and conservation*. Oxford University Press, New York. 317pp.
- Grinnell, J. and A. H. Miller. 1944 *The Birds of California*. Cooper Ornithological Club, Berkeley, California. 608 pp.
- Meese, R. J. 2017. Results of the 2017 tricolored blackbird statewide survey. California Department of Fish and Wildlife, Wildlife Branch, Nongame Wildlife Program, Sacramento, California, USA.

Dana Jacobson, General Manager
San Benito Water District
March 27, 2025
Page 18

Swainson's Hawk Technical Advisory Council (SWHA TAC) 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

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. Oakland, California, USA.

U.S. Fish and Wildlife Services (USFWS). 2005. Revised guidance on site assessment and field surveys for the California red-legged frog. Sacramento, California, USA.

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.

Warrick, G.D., H.O. Clark, P.A. Kelly, D.F. Williams and B.L. Cypher. 2007. Use of Agricultural Lands by San Joaquin Kit Foxes. Western North American Naturalist 2007 Vol. 67 Issue 2 Pages 270-277.

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

Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch's bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

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

**PROJECT: Accelerated Drought Response Project
STATE CLEARINGHOUSE No.: 2025021019**

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Before Project Activity</i>	
Recommended Mitigation Measure 1: SJKF Habitat Assessment	
Recommended Mitigation Measure 2: SJKF Surveys and Minimization	
Recommended Mitigation Measure 3: SJKF Avoidance and/or Take Authorization	
Recommended Mitigation Measure 4: CTS Avoidance and/or Take Authorization	
Recommended Mitigation Measure 5: SWHA Focused Surveys	
Recommended Mitigation Measure 7: SWHA Take Authorization	
Recommended Mitigation Measure 8: TRBL Habitat Assessment and Surveys	
Recommended Mitigation Measure 10: TRBL Take Authorization	
Recommended Mitigation Measure 11: BUOW Surveys	
Recommended Mitigation Measure 13: BUOW Take Authorization	

Attachment 1

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

**PROJECT: Accelerated Drought Response Project
STATE CLEARINGHOUSE No.: 2025021019**

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Recommended Mitigation Measure 14: CBB Habitat Assessment	
Recommended Mitigation Measure 15: CBB Surveys	
Recommended Mitigation Measure 17: CBB Take Authorization	
Recommended Mitigation Measure 18: CRLF Surveys	
Recommended Mitigation Measure 20: Special-status plant Habitat Assessment and Surveys	
<i>During Construction</i>	
Recommended Mitigation Measure 6: SWHA Avoidance Buffer	
Recommended Mitigation Measure 9: TRBL Colony Avoidance	
Recommended Mitigation Measure 12: BUOW Avoidance Buffer	
Recommended Mitigation Measure 16: CBB Avoidance Buffer	
Recommended Mitigation Measure 19: CRLF Avoidance Buffer	
Recommended Mitigation Measure 21: Special-status plants Avoidance Buffers	

