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Subject: **McKay Point Reservoir Project (Project)**
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
State Clearinghouse No.: 2014011078

Dear Graham Stephens:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Tulare Irrigation District (Tulare ID), which is the Lead Agency for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, 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

[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.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species was previously prohibited and CDFW was not able authorize their incidental take. Senate Bill No. 147, which became effective on July 10, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515, and added section 2081.15 to authorize CDFW to issue a permit under CESA that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects, which include maintenance, repair, or improvement projects to critical regional or local water agency infrastructure, if certain conditions are satisfied. Bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*) are fully protected species known to occur in the Project area (CNDDB 2024) and suitable nesting and foraging habitat for the fully protected white-tailed kite (*Elanus leucurus*) is located within and adjacent to the Project boundary.

Other Special Status Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

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

Water Rights: The capture of unallocated stream flows 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 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. Certain fish and wildlife are reliant upon aquatic 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: The Project proponents are Tulare ID, the Consolidated People's Ditch Company (CPDC), and the Visalia and Kaweah Water Company (VKWC).

Proposed Project: The Project would develop approximately 200 acres within the 500-acre McKay Point property into a surface water storage and re-regulation reservoir. The reservoir would be located on the north side of the divergence of the Lower Kaweah River and St. Johns River and would consist of excavation of the site for the reservoir, construction of the reservoir, and operation of the reservoir.

The Project would divert and receive water immediately upstream of the divergence of the Lower Kaweah River and St. Johns River, commonly referred to as McKay Point. The reservoir would provide a water storage capacity of approximately 4,600 acre-feet and deliver water back to either the Lower Kaweah River or the St. Johns River, as needed. The Project would provide additional storage capacity for storm water layoff and flood prevention. The reservoir would also be used to optimize groundwater recharge within the service areas for Tulare ID, CPCD, and VKWC.

Objectives: The Project objectives include capturing and re-regulating water made available to the Project proponents during flood releases from Lake Kaweah; capturing and re-regulating water entitlements belonging to the Project proponents released from Lake Kaweah; capturing and re-regulating water released for the Project proponents during peak power enhancement flows from the Terminus Hydropower Plant (Lake Kaweah); capturing and re-regulating any other water sources on the Kaweah River that may be made available to the Project proponents; allowing other entities with water rights on the Kaweah River to capture and/or re-regulate flows when designated by the Project proponents; allowing other entities to capture and/or re-regulate flows of the Lower Kaweah River and St. Johns River for purposes of storm water runoff and flood prevention with permission of the Project proponents and Kaweah/St. Johns water rights interests; constructing the reservoir in such a way that revenue can be obtained to offset the construction and development costs; and locating the reservoir adjacent to the active channel of the Kaweah River to allow for off-stream access to surface water storage, thus minimizing the need for pipelines.

Location: The Project is located in Tulare County, California, between and to the south of both Lake Kaweah (2.5 miles northeast of the site) and Bravo Lake (1.5 miles northwest of the site); 1.0 miles northwest of the community of Lemon Cove; and 2.5 miles southeast of the community of Woodlake. The Project site is located

approximately 1.0 mile west-southwest of the intersection of State Highways 216 and 198, in Sections 3 and 4, Township 18 South, Range 27 East, Mount Diablo Base and Meridian. The Project site includes portions of Assessor's Parcel Numbers 113-070-016-000, 113-080-005-000, 113-080-008-000, 113-090-001-000, and 113-100-002-000.

Timeframe: No timeframe given.

RECOMMENDATIONS

CDFW offers the recommendations below to assist Tulare ID in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on a review of aerial imagery, the Project description, and a review of California Natural Diversity Database (CNDDB) records, several special status species and habitat types could potentially be impacted by Project activities. Project-related construction activities could impact the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*); the State threatened and fully protected bald eagle; the State fully protected golden eagle and white-tailed kite; the State and federally endangered foothill yellow-legged frog – south Sierra DPS (*Rana boylii pop. 5*); the State candidate for listing Crotch's bumble bee (*Bombus crotchii*); the California rare plant rank 1B.2 recurved larkspur (*Delphinium recurvatum*), spiny-sepaled button-celery (*Eryngium spinosepalum*), and calico monkeyflower (*Diplacus pictus*); the federally proposed threatened and State species of special concern western pond turtle (*Emys marmorata*) and western spadefoot (*Spea hammondii*); and the State species of special concern American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), western red bat (*Lasiurus blossevillii*), burrowing owl (*Athene cunicularia*), and Northern California legless lizard (*Anniella pulchra*).

Vegetation communities and habitats in the Project vicinity include Valley sacaton grassland, Great Valley oak riparian forest, sycamore alluvial woodland, irrigated row crops, vineyards, orchards and field crops, non-native annual grassland, ruderal disturbed areas, and barren unvegetated areas including levee roads. Aquatic features in and near the Project area include the Kaweah and St. Johns Rivers and associated riparian and fresh emergent wetlands, recharge basins, detention basins, agricultural ditches and canals, and agricultural ponds.

CDFW recommends that the following modifications and/or edits be incorporated into the DEIR, including proposed avoidance, minimization, and compensatory measures, prior to its certification by Tulare ID.

COMMENT 1: San Joaquin Kit Fox (SJKF)

SJKF are known to occur within the Project area and a review of recent aerial imagery shows suitable habitat for SJKF in the Project area (CDFW 2024a). Without appropriate avoidance and minimization measures for SJKF, potentially significant Project impacts include habitat loss, den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals. The DEIR acknowledges the potential for SJKF to occur in the Project vicinity but did not include mitigation measures for preconstruction surveys. Mitigation Measure BIO-5 (page 3.4-38) requires signage for wildlife crossings and requires trucks and equipment to be limited to 5 miles-per-hour to a maximum of 10 miles per hour. No additional avoidance or minimization measures for SJKF are required in the DEIR.

Recommended Mitigation Measure 1: SJKF Surveys and Avoidance
CDFW recommends assessing presence/absence of SJKF dens by having qualified biologists conducting surveys of Project areas and a 500-foot buffer of Project areas to detect SJKF and their sign. CDFW also recommends following the 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 2: SJKF Take Authorization
SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 2: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Review of aerial imagery indicates that trees capable of supporting nesting SWHA occur along the streams and canals within the Project boundary (CDFW 2024a). Suitable foraging habitat for this species exists within the vicinity of the Project site, including annual grassland. Project construction and habitat conversion may result in degradation or loss of riparian habitat and subsequent loss of nesting habitat, nest abandonment, and reduced reproductive success, including mortality of young and reduced health and vigor of eggs and/or young. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA productivity. The loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA.

The DEIR acknowledges that suitable nesting habitat occurs within the Project site but did not offer specific mitigation measures for SWHA or WTKI. If construction occurs during the nesting season, Mitigation Measure BIO-2 requires preconstruction raptor

surveys and monitoring of active nests within 300 feet of construction activities. Mitigation Measure BIO-2 states that if adverse effects are observed, all Project-related activities will be halted until fledging occurs. The DEIR analysis does not provide a biological basis of how this mitigation measure is determined adequate to avoid significant impacts, including but not limited to take of individuals through nest failure or other means, as a result of Project implementation. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts associated with Project activities include loss of forging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 3: SWHA and WTKI Nest Tree Avoidance and Mitigation
In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year, or that mitigation occurs for these impacts. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends that they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity to offset the loss of nesting habitat.

Recommended Mitigation Measure 4: Focused SWHA and WTKI Surveys
To identify potential Project-related impacts to nesting SWHA and WTKI, CDFW recommends that a qualified biologist conduct surveys following the methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) during the nesting season of or prior to Project activity, 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 August 31), 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 5: SWHA and WTKI Buffers
If an active SWHA or WTKI nest is found during preconstruction 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 or parental care for survival.

Recommended Mitigation Measure 6: 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 to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision (b).

Recommended Mitigation Measure 7: WTKI Take Authorization
If nesting WTKI are detected and the ½-mile no-disturbance buffer is infeasible, or if the Project proponent chooses to assume presence during Project implementation, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP for WTKI prior to Project activities, pursuant Fish and Game Code section 2081, subdivision (b).

COMMENT 3: Least Bell's Vireo (LBV)

LBV has been documented in the vicinity of the Project site (CDFW 2024a). Review of aerial imagery indicates the presence of riparian woodland vegetation suitable to support LBV within the Project site and its vicinity. The DEIR acknowledges that LBV was once considered extirpated from the Central Valley but has recently been found again sporadically. The DEIR concludes that LBV has no potential to occur and does not offer specific mitigation measures. Without appropriate avoidance and minimization measures for LBV, potential significant impacts associated with Project development include nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 8: LBV Habitat Assessment
CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to identify areas of suitable habitat for LBV within Project site and its immediate vicinity.

Recommended Mitigation Measure 9: LBV Avoidance
CDFW recommends that Project activities be timed to avoid the species' nesting season of March 1 through September 15.

Recommended Mitigation Measure 10: LBV Surveys
If Project activities must take place during the nesting season, CDFW recommends assessing presence/absence of LBV by conducting surveys following the USFWS (2001) *Least Bell's Vireo Survey Guidelines* in advance of the start of Project implementation, to evaluate presence/absence of LBV nesting in proximity to Project activities, and to evaluate potential Project-related impacts and permitting needs.

Recommended Mitigation Measure 11: LBV Take Authorization
LBV detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to Project activities, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 4: Tricolored Blackbird (TRBL)

TRBL breeding colonies have been documented in the Project area and are presumed extant (CDFW 2024a). Review of aerial imagery indicates that the Project area includes wetland features and flood-irrigated agricultural lands, which are increasingly important nesting habitat types for TRBL, particularly in the San Joaquin Valley (Meese *et al*. 2017). The DEIR acknowledges that a breeding colony was documented in the Project area but does not include mitigation measures to avoid, minimize, or mitigate impacts to TRBL. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated subsequent development include nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 12: TRBL Surveys
CDFW recommends that Project activities be timed to avoid the avian 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/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

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 nest site for survival.

Recommended Mitigation Measure 14: TRBL Take Authorization
If the avoidance buffer around a TRBL nesting colony is infeasible, consultation with CDFW is warranted to discuss whether the Project can avoid take and, if take avoidance is not feasible, to acquire an ITP for TRBL pursuant to Fish and Game Code section 2081, subdivision (b), prior to any Project activities.

COMMENT 5: Nesting Bald Eagle (BAEA) and Golden Eagle (GOEA)

BAEA and GOEA occurrences have been documented within the vicinity of the Project boundary (CDFW 2024a). The DEIR did not offer specific mitigation measures for BAEA or GOEA. Overwintering and/or nesting BAEA and GOEA have the potential to occur in the Project area and its vicinity, including the riparian corridor and surrounding grasslands. Without appropriate survey methods, nesting eagles could remain undetected, resulting in avoidance and minimization measures not being effectively implemented. In addition, human activity near nest sites can cause reduced provisioning

rates of GOEA chicks by adults (Steidl et al. 1993). Without appropriate avoidance and minimization measures, potentially significant impacts associated with the Project's construction include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 15: Focused Surveys for Nesting Eagles
CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the *Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment* (Driscoll 2010), and the *Protocol for Evaluating Bald Eagle Habitat and Populations in California* (Jackman and Jenkins 2004). If Project activities take place during the avian nesting season of February 1 through September 15, CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

Recommended Mitigation Measure 16: Nesting Eagle Avoidance
If an active eagle nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 17: Eagle Take Authorization
If nesting eagles are detected and the ½-mile no-disturbance buffer is infeasible or if the Project proponent chooses to assume presence during Project implementation, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP for BAEA and GOEA prior to Project activities, pursuant Fish and Game Code section 2081, subdivision (b).

COMMENT 6: Burrowing Owl (BUOW)

BUOW has been documented in the vicinity of the Project area (CDFW 2024a). Table 1 of Appendix D-2 of the DEIR acknowledges that the Project site supports open grassland, which provides suitable foraging habitat for BUOW, and that scattered California ground squirrel burrows occur in the area. BUOW inhabits open grassland containing small mammal burrows, a requisite habitat feature used for nesting and cover. Potentially significant direct impacts associated with Project development include habitat loss, burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Recommended Mitigation Measure 18: BUOW Surveys
Where suitable habitat is present on or in the vicinity of the Project area, CDFW recommends assessing presence or absence of BUOW by having a qualified

biologist conduct surveys following the California Burrowing Owl Consortium (1993) *Burrowing Owl Survey Protocol and Mitigation Guidelines* and CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFG 2012). These reports suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season of April 15 to July 15, when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot buffer around the Project area.

Recommended Mitigation Measure 19: BUOW Avoidance
CDFW recommends that no-disturbance buffers as outlined in the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012) be implemented prior to and during any ground-disturbing activities and 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 20: BUOW Eviction and Mitigation
If BUOW are found within the recommended buffers and avoidance is not possible, it is important to note that evicting birds from burrows is not an avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA (CDFG 2012). If it is necessary for Project implementation, CDFW recommends that burrow eviction be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as camera surveillance. CDFW then recommends mitigation in the form of replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1). Because BUOW may attempt to colonize or re-colonize an area that will be impacted, CDFW recommends ongoing surveillance that is sufficient to detect BUOW if they return.

COMMENT 7: Foothill Yellow-Legged Frog (FYLF)

FYLF have been documented southeast of the Project site (CDFW 2024a). FYLF are primarily stream dwelling and require shallow, flowing water in streams and rivers with at least some cobble-sized substrate (Thomson et al. 2016) and the Project site contains requisite habitat features. Without appropriate avoidance and minimization

measures for FYLF, potentially significant impacts associated with Project construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality.

Recommended Mitigation Measure 21: FYLF Surveys
CDFW recommends that a qualified wildlife biologist conduct surveys for FYLF in accordance with the USFWS (2005) *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* to determine if FYLF will be impacted by Project construction. While this survey is designed for California red-legged frog (*Rana draytonii*), the survey may be used for FYLF with a focus on stream/river habitat.

Recommended Mitigation Measure 22: FYLF Avoidance
If any FYLF are found during preconstruction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period of November 1 to March 31, when FYLF are most likely to be moving through upland areas. When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily for FYLF and have the authority to stop all activity if an individual is detected, until it leaves the Project area of its own volition.

Recommended Mitigation Measure 23: FYLF Take Authorization
If take avoidance of FYLF is infeasible, take authorization would be required via an ITP for FYLF pursuant to Fish and Game Code section 2081, subdivision (b), prior to beginning or resuming Project activities.

COMMENT 8: Crotch's Bumble Bee (CBB)

CBB have been documented in the Project area (CDFW 2024a), which is within the species range and supports suitable habitat for the species such as grasslands and upland scrub (CDFW 2023a). 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 for CBB mated queens include soft, disturbed soil (Goulson 2010) or leaf litter or other debris (Williams et al. 2014). Without appropriate avoidance and minimization measures for CBB, potentially significant impacts from ground- and vegetation-disturbing Project activities include direct mortality, loss of forage plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, and reduced health and vigor of eggs, young and/or queens.

Recommended Mitigation Measure 24: CBB Surveys and Avoidance
CDFW recommends that a qualified biologist conduct a habitat assessment for CBB that documents foraging resources and potential nesting sites, including small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs. In areas of suitable habitat, CDFW recommends that qualified biologist conduct a bumble bee survey using a protocol developed according to the CDFW (2023b) *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* to identify bumble bees and potential nesting sites during the vegetation blooming period prior to activities at Project sites. If any CBB or a nest are detected, CDFW advises consultation with CDFW to develop adequate take avoidance measures. If a nest is observed at any time, avoidance would include protection for underground overwintering queens.

Recommended Mitigation Measure 25: CBB Take Authorization
If avoidance of take of any CBB is not feasible, take authorization would be required via an ITP, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 9: Special-Status Bat Species

Western mastiff bat is known to occur in the vicinity of the Project area (CDFW 2024a). In addition, habitat features that have the potential to support western mastiff bat, western red bat, pallid bat, and other bat species are present within the Project area (CDFW 2024b, CDFW 2024c, CDFW 2024d). Western mastiff bat and pallid bat are known to roost in buildings, caves, tunnels, cliffs, crevices, trees. (Lewis 1994) and western red bat is highly associated with riparian habitat (Peirson et al. 2006). Project activities have the potential to affect habitat upon which special-status bat species depend for successful breeding and have the potential to impact individuals and local populations. Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Recommended Mitigation Measure 26: Bat Roost Habitat Assessment
CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of Project implementation to determine if the Project area or its immediate vicinity contains suitable roosting habitat for special-status bat species.

Recommended Mitigation Measure 27: Bat Surveys
If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bat roosts by conducting surveys during the appropriate seasonal period of bat activity. CDFW recommends methods such as through emergence surveys or bat detectors to determine whether bats are present.

Recommended Mitigation Measure 28: Bat Roost Disturbance Minimization and Avoidance
If bats are present, CDFW recommends that a 100-foot no-disturbance buffer be placed around the roost and that a qualified biologist who is experienced with bats monitor them for signs of disturbance to bats from Project activity. If a bat roost is identified and work is planned to occur during the breeding season, CDFW recommends that no disturbance to maternity roosts occurs and that CDFW be consulted to determine measures to prevent breeding disruption or failure.

COMMENT 10: Western Pond Turtle (WPT)

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

Recommended Mitigation Measure 29: WPT Surveys
CDFW recommends that a qualified biologist conduct focused surveys for WPT within 10 days prior to Project activity, and that focused surveys for nests occur during the egg-laying season of March through August.

Recommended Mitigation Measure 30: WPT Avoidance and Minimization
CDFW recommends that any WPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If WPT individuals are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

COMMENT 11: Special-Status Plants

Special-status plants meeting the definition of rare or endangered under CEQA section 15380 are known to occur in the vicinity of the Project, including recurved larkspur, spiny-sepaled button-celery, and calico monkeyflower. Many species are threatened by grazing and agricultural, urban, and energy development, and many historical occurrences of these species are presumed extirpated (CNPS 2024). Though new populations have recently been discovered, impacts to existing populations have the potential to significantly impact populations of plant species. Without appropriate

avoidance and minimization measures for special-status plants, potential significant impacts associated with subsequent Project-specific activities include loss of habitat, loss or reduction of productivity, and direct mortality.

Recommended Mitigation Measure 31: Special-Status Plant Surveys
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 Natural Communities* (CDFW 2018) during the flowering season prior the start of Project activity. This protocol is intended to maximize detectability and includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Recommended Mitigation Measure 32: Special-Status Plant Avoidance
CDFW recommends that 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 may be warranted to determine appropriate minimization and mitigation measures for impacts to each special-status plant species.

Recommended Mitigation Measure 33: Special-Status Plant Take Authorization
If a State-listed plant species is identified, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization of CESA-listed plants would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 12: Western Spadefoot

Spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Suitable habitat and refugia occurs within the Project site and western spadefoot is known to occur in the Project area. The proposed ponding basins may also be used by western spadefoot for breeding once constructed.

Recommended Mitigation Measure 34: Western Spadefoot Avoidance
CDFW recommends that a qualified biologist conduct focused surveys for Western spadefoot and their requisite habitat features. If any individuals are detected, CDFW recommends that a 50-foot no-disturbance buffer is implemented around the entrances of any occupied burrows or other habitat.

COMMENT 13: Other State Species of Special Concern

American badger and Northern California legless lizard are known to occur in the vicinity of the Project (CDFW 2024a), which supports habitats used by these species, including grassland and upland areas with friable soils (Williams 1986, Thomson et al. 2016). The DEIR acknowledges suitable habitat presence for legless lizards. Habitat within and adjacent to the Project represents some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. Ground- and vegetation-disturbing activities associated with 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 35: Special-Status Species Surveys
CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features prior to the start of Project activity to detect individuals that could be impacted from ground- and vegetation-disturbance.

Recommended Mitigation Measure 36: Special-Status Species Avoidance or Minimization
Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals like the American badger, as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians.

COMMENT 14: Wetland and Riparian Habitats

DEIR Section 3.4.6.3 states that the Project would remove riparian vegetation and that while the level of significance is considered significant, mitigation measures are not required. The Project area contains numerous waterways and riparian and wetland areas within an agricultural landscape that also currently supports undeveloped habitats. Development within the Project has the potential to involve temporary and permanent impacts to these features. Project activities have the potential to result in the loss of riparian and wetland vegetation, in addition to the degradation of wetland and riparian areas through grading, fill, and related development.

Riparian and associated floodplain and wetland areas are valuable for their ecosystem processes such as protecting water quality by filtering pollutants and transforming nutrients; stabilizing stream banks to prevent erosion and sedimentation/siltation; and dissipating flow energy during flood conditions, thereby spreading the volume of surface water, reducing peak flows downstream, and increasing the duration of low flows by slowly releasing stored water into the channel through subsurface flow. Within the San Joaquin Valley, modifications of streams to accommodate human uses has resulted in

damming, canalizing, and channelizing of most streams, though some natural stream channels and small wetland or wetted areas remain (Edminster 2002). The Fish and Game Commission policy regarding wetland resources discourages development or conversion of wetlands that results in any net loss of wetland acreage or habitat value. Construction activities within these features also have the potential to impact downstream waters as a result of Project site impacts leading to erosion, scour, and changes in flow and stream morphology.

Recommended Mitigation Measure 37: Stream and Wetland Mapping
CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist or hydrologist (as warranted), to determine the baseline location, extent, and condition of streams (including any floodplain) and wetlands within and adjacent to the Project area. Please note that while there is overlap, State and federal definitions of wetlands differ, and complete stream mapping commonly differs from delineations used by the U.S. Army Corps of Engineers specifically to identify the extent of Waters of the U.S. Therefore, it is advised that the wetland delineation identify both State and federal wetlands in the Project area as well as the extent of all streams including floodplains, if present, within the Project area. CDFW advises that site map(s) depicting the extent of any activities that may affect wetlands, lakes, or streams be included with any Project site evaluations, to clearly identify areas where stream/riparian and wetland habitats could be impacted from Project activities.

Recommended Mitigation Measure 38: Stream and Wetland Habitat Mitigation
CDFW recommends that the potential direct and indirect impacts to stream/riparian and wetland habitat be analyzed according to each Project activity. Based on those potential impacts, CDFW recommends that the EIR include measures to avoid, minimize, and/or mitigate those impacts. CDFW recommends that impacts to riparian habitat (i.e., biotic and abiotic/nonvegetative features) take into account the effects to stream function and hydrology from riparian habitat loss or damage, as well as potential effects from the loss of riparian habitat to special-status species already identified herein. CDFW recommends that losses to stream and wetland habitats be offset with corresponding riparian and wetland habitat restoration incorporating native vegetation to replace the value to fish and wildlife provided by the habitats lost from Project implementation. If on-site restoration to replace habitats is not feasible, CDFW recommends off-site mitigation by restoring or enhancing in-kind riparian or wetland habitat and providing for the long-term management and protection of the mitigation area, to ensure its persistence.

COMMENTS AND/OR SUGGESTIONS

Federally Listed Species: CDFW recommends consulting with the USFWS regarding potential impacts to federally listed species, including but not limited to SJKF, LBV, and FYLF. Take under ESA is more broadly defined than CESA; take under ESA also

includes 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 any Project activities.

Water Rights: The Project will divert surface flow from the Kaweah and St. Johns Rivers. CDFW recommends that the DEIR include a detailed description of the water rights and water entitlements for the points of diversion and places of use that pertain to the Project. CDFW recommends including information on the historic and current water rights and water use agreements/contracts including pre-1914 and appropriative rights, riparian rights, prescriptive rights, and adjudications.

CDFW also recommends that the DEIR address whether the Project proponents will be filing a change petition or a new application for additional surface water. As stated previously, 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 significant impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

Lake and Streambed Alteration: CDFW recommends mapping all stream and associated wetland resources within the Project area as described above, and consulting with CDFW regarding the extent of the Project that is subject to notification to CDFW pursuant to Fish and Game Code section 1602. In DEIR Figure 2-2, the McKay Point Reservoir Project area appears to include areas that may overlap with portions of the Kaweah and St. Johns Rivers and/or their floodplain areas; mapping by a qualified professional (i.e., hydrologist or engineering geologist) with review from CDFW will help define the extent of excavation/mining and other Project activity that is proposed in the streams. Project activities that will substantially change the bed, bank, and channel of streams onsite, use stream materials through the excavation and mining of sand and gravel stream materials for the reservoir, and substantially divert stream flows into the new reservoir will all be subject to the notification requirement. 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.

CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For additional information on

notification requirements, please contact staff in the Central Region LSA Program at (559) 243-4593 or R4LSA@willife.ca.gov, or visit the Lake and Streambed Alteration Program website at https://wildlife.ca.gov/Conservation/LSA.

Nesting birds: CDFW encourages Project implementation to occur during the avian non-nesting season; however, if Project activities must occur during the nesting season of February through mid-September, the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of each Project activity to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work causing that change cease and CDFW be consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the young 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. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Indirect and Cumulative Riparian Impacts from Surface Water Diversions: Project-related diversions may impact riparian, wetland, fisheries, and terrestrial (i.e., upland) wildlife species and habitats downstream of the Project location by reducing the amount of surface flow in the active stream channel at the discharge location and downstream, as well as reducing the amount of subsurface flow from percolation. Watershed and habitat protection are vital to CDFW's management of California's diverse fish, wildlife, and plant resources. The Kaweah and St. Johns Rivers support mature riparian woodland habitat and may potentially support several listed and other special status

species, including those listed above. The Project could result in direct and cumulative adverse impacts to these fish and wildlife and other public trust resources.

The Sequoia Riverlands Trust manages the Kaweah Oaks Preserve located downstream of the proposed Project. The Kaweah Oaks Preserve is 344 acres and contains some of the last remaining Valley oak riparian forests in the San Joaquin Valley. Project-related activities resulting in surface water diversion may potentially impact these properties and sensitive habitats and special-status plant and wildlife species including Valley sacaton grassland, Great Valley oak riparian forest, least Bell's vireo, Swainson's hawk, tricolored blackbird, and numerous other special-status species (CDFW 2020). Surface flow diversion may impact the riparian woodland habitat located downstream by reducing the amount of water available in the active channel to native plant species within the riparian woodland. This may subsequently lead to a reduction in the native plant species composition of the riparian woodland, which would allow adjacent nonnative plant species to invade and colonize the habitat, reducing the quality of habitat for and presence of other species.

CDFW recommends that the DEIR include: 1) an analysis of the proposed acquisition of surface water and any potential direct, indirect, and cumulative biological impacts to fish and wildlife species and their habitats, as well as to properties permanently conserved to protect those resources; and 2) a hydrologic study to determine if the production of the watershed is sufficient to reduce the discharge flows, as proposed, without having significant adverse impacts to riparian and aquatic resources of watershed downstream, including the establishment of invasive nonnative plant species and change in habitats.

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 the CNDDB. The CNDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be emailed to CNDDB at CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project as proposed would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be

operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the Tulare ID in identifying and mitigating Project impacts on biological resources. If you have questions regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...
Julie A. Vance
Regional Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Annette Tenneboe
California Department of Fish and Wildlife

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Attachment 1

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

PROJECT: McKay Point Reservoir Project
STATE CLEARINGHOUSE No.: 2014011078

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
Before Project Implementation	
Recommended Mitigation Measure 1: SJKF Surveys and Avoidance	
Recommended Mitigation Measure 2: SJKF Take Authorization	
Recommended Mitigation Measure 3: SWHA and WTKI Nest Tree Avoidance and Mitigation	
Recommended Mitigation Measure 4: Focused SWHA and WTKI Surveys	
Recommended Mitigation Measure 5: SWHA and WTKI Buffers	
Recommended Mitigation Measure 6: SWHA Take Authorization	
Recommended Mitigation Measure 7: WTKI Take Authorization	
Recommended Mitigation Measure 8: LBV Habitat Assessment	
Recommended Mitigation Measure 9: LBV Avoidance	
Recommended Mitigation Measure 10: LBV Surveys	
Recommended Mitigation Measure 11: LBV Take Authorization	
Recommended Mitigation Measure 12: TRBL Surveys	
Recommended Mitigation Measure 13: TRBL Colony Avoidance	
Recommended Mitigation Measure 14: TRBL Take Authorization	
Recommended Mitigation Measure 15: Focused Surveys for Nesting Eagles	
Recommended Mitigation Measure 16: Nesting Eagle Avoidance	
Recommended Mitigation Measure 17: Eagle Take Authorization	

RECOMMENDED MITIGATION MEASURES	**STATUS/DATE/INITIALS**
Recommended Mitigation Measure 18: BUOW Surveys	
Recommended Mitigation Measure 19: BUOW Avoidance	
Recommended Mitigation Measure 20: BUOW Eviction and Mitigation	
Recommended Mitigation Measure 21: FYLF Surveys	
Recommended Mitigation Measure 22: FYLF Avoidance	
Recommended Mitigation Measure 23: FYLF Take Authorization	
Recommended Mitigation Measure 24: CBB Surveys and Avoidance	
Recommended Mitigation Measure 25: CBB Take Authorization	
Recommended Mitigation Measure 26: Bat Roost Habitat Assessment	
Recommended Mitigation Measure 27: Bat Surveys	
Recommended Mitigation Measure 28: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 29: WPT Surveys	
Recommended Mitigation Measure 30: WPT Avoidance and Minimization	
Recommended Mitigation Measure 31: Special-Status Plant Surveys	
Recommended Mitigation Measure 32: Special-Status Plant Avoidance	
Recommended Mitigation Measure 33: Special-Status Plant Take Authorization	
Recommended Mitigation Measure 34: Western Spadefoot Avoidance	
Recommended Mitigation Measure 35: Special-Status Species Surveys	
Recommended Mitigation Measure 36: Special-Status Species Avoidance or Minimization	
Recommended Mitigation Measure 37: Stream and Wetland Mapping	
Recommended Mitigation Measure 38: Stream and Wetland Habitat Mitigation	
During Project Implementation	

RECOMMENDED MITIGATION MEASURES	**STATUS/DATE/INITIALS**
Recommended Mitigation Measure 1: SJKF Surveys and Avoidance	
Recommended Mitigation Measure 3: SWHA and WTKI Nest Tree Avoidance and Mitigation	
Recommended Mitigation Measure 5: SWHA and WTKI Buffers	
Recommended Mitigation Measure 9: LBV Avoidance	
Recommended Mitigation Measure 16: Nesting Eagle Avoidance	
Recommended Mitigation Measure 19: BUOW Avoidance	
Recommended Mitigation Measure 22: FYLF Avoidance	
Recommended Mitigation Measure 24: CBB Surveys and Avoidance	
Recommended Mitigation Measure 28: Bat Roost Disturbance Minimization and Avoidance	
Recommended Mitigation Measure 30: WPT Avoidance and Minimization	
Recommended Mitigation Measure 32: Special-Status Plant Avoidance	
Recommended Mitigation Measure 34: Western Spadefoot Avoidance	
Recommended Mitigation Measure 36: Special-Status Species Avoidance or Minimization	