State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

CDFW-1

January 2, 2018

Karen Dulik
California Department of Water Resources (DWR)
South Central Region Office
3374 East Shields Avenue
Fresno, California 93726

Subject: Request for Time Extension to Review Eastside Bypass Improvements Project Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (SCH # 2017121026)

Dear Ms. Dulik:

The Department of Fish and Wildlife (Department) respectfully requests two additional weeks to review and provide comments to the Eastside Bypass Improvements Project Initial Study/Draft Environmental Assessment and Proposed Mitigated Negative Declaration (SCH # 2017121026). Preliminary staff review of the initial study and proposed mitigated negative declaration indicates that the Department of Water Resources (DWR) has made significant changes to the document since the previous administrative draft. We request additional time to allow for thorough review of the unusually detailed contents of the initial study, and proposed mitigation measures, as required by section 15071 of the CEQA Guidelines. In addition to its responsible and trustee agency authority, the Department is a San Joaquin River Restoration Program implementing agency along with DWR, and wishes to ensure that comments and recommendations are adequate and sufficient to assist DWR with its lead agency role. The Department requests until January 23, 2018 to review and provide comments on the initial study and proposed mitigated negative declaration.

R-intro

Thank you for your understanding and prompt response. If you have any questions, please contact Gerald Hatler, Environmental Program Manager, at the address provided on the letterhead or by telephone at (559) 243-4005, extension 127.

Sincerely,

Julie Vance
Regional Manager

cc: Office of Planning and Research
1400 10th St
Sacramento, CA 95814

Paul Romero, DWR
3374 E Shields Ave
Fresno, CA 93726

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CDFW-2

January 19, 2018

Karen Dulik
California Department of Water Resources
South Central Region
3374 East Shields Avenue
Fresno, California 93726

Subject: Eastside Bypass Improvements Project (Project)
Mitigated Negative Declaration (MND)
State Clearinghouse No.: 2017121026

Dear Ms. Dulik:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Department of Water Resources for the above-referenced 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, we appreciate 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.

R-3

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 & 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 projects and related activities that have the potential to adversely affect fish and wildlife resources.

R-3

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 & Game 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 authorization as provided by the Fish and Game Code will be required. R-3

In addition to serving as a Trustee Agency and Responsible Agency under CEQA, CDFW acts as one of the Implementing Agencies for the San Joaquin River Restoration Program (SJRRP). CDFW recognizes that there has yet to be a determination of how to implement modifications to San Joaquin River channel capacity through Reach 4B, as required by the Settlement Agreement. R-3

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 is prohibited and CDFW cannot authorize their incidental take.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Water Resources (DWR) and United States Department of Interior, Bureau of Reclamation (Reclamation)

Objective: The proposed Project is part of the SJRRP. DWR proposes to design, permit, and implement the following three project elements to facilitate fish migration and increase Restoration Flow capacity in the Eastside Bypass by 2020: (1) Reinforce approximately 2 miles of levee along the Eastside Bypass to improve levee stability and reduce seepage (Reach O levee improvements); (2) Modify the existing Eastside Bypass Control Structure to improve fish passage; and (3) Replace the existing culvert at the Dan McNamara Road crossing at the Eastside Bypass to improve fish passage. In addition, Reclamation proposes to design, permit, and implement the following project element to facilitate fish migration in the Eastside Bypass by 2020: Improve fish passage by removing two weirs located in the Eastside Bypass that the United States Fish and Wildlife Service (USFWS) operates to provide water to the Merced National Wildlife Refuge, and replace an existing abandoned well with a new well to provide replacement water supply for the Merced National Wildlife Refuge. R-3

Location: The Project site is located between the Cities of Merced and Los Banos in Merced County within the Eastside Bypass just east of the San Joaquin River. The site is approximately 15 to 20 miles southwest of Merced in Merced County.

Timeframe: Construction is anticipated to begin in 2019 and finish in 2020.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist DWR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. R-3

The Mitigated Negative Declaration (MND) prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the MND outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened and federally threatened California tiger salamander (*Ambystoma californiense*); State threatened Swainson's hawk (*Buteo swainsoni*); State threatened and federally threatened giant garter snake (*Thamnophis gigas*); the State endangered and federally endangered Fresno kangaroo rat (*Dipodomys nitradoides exilis*); the State fully protected white-tailed kite (*Elanus leucurus*); and the western mastiff bat (*Eumops perotis californicus*), recognized as State species of special concern. R-3

CDFW recommends that the following modifications and/or edits be incorporated into the MND.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: California Tiger Salamander (CTS) R-3

Section 3.5 – Biological Resources (Vegetation and Wildlife), Pages 3-90 through 3-92

Issue: The MND indicates that presence of CTS is assumed, and impacts to upland or aquatic habitat within the Project footprint would be potentially significant. CTS occupy grassland upland habitat and seek refugia in underground in burrows of California ground squirrels (*Otospermophilus beecheyi*) or valley pocket gophers (*Thomomys bottae*); and migrate to seasonal wetlands, stock ponds, or other seasonal or perennial ponds for breeding (CDFW 2015). The Project area contains suitable aquatic and upland habitat. The MND proposes establishing a 250-foot

buffer around burrows within 1.3 miles of known or potential breeding habitat and having a biological monitor present during construction activities, if feasible. The MND further states that CDFW and the USFWS will be consulted prior to work within the proposed buffer. It is not stated what would constitute consultation, what alternatives would be proposed, whether consultation would be intended to avoid significant impacts and specifically to avoid take of CTS, and whether CDFW recommendations would be implemented. CDFW recommends the MND be revised to include the CTS mitigation measures below. In addition, Mitigation Measure BIO-9 suggests that the Project site has not yet been evaluated for the presence of CTS habitat, and that a biologist will make that determination at a later time. Mitigation Measure BIO-10 proposes the use of exclusion fencing; excavation/trenching and other fence installation methods could result in take (as defined pursuant to § 86 of Fish and Game Code) and other impacts to CTS, and it is not clear if the MND has evaluated these effects, nor whether fence installation would be subject to the other Mitigation Measures of the MND. It is also not clear what effects to CTS or its habitat would warrant development of a compensatory mitigation plan as mentioned in Mitigation Measure BIO-11.

R-3

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Specific impact: Without appropriate avoidance and minimization measures for CTS, potentially significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals.

R-3

Evidence impact is potentially significant: Up to 75 percent of historical CTS habitat has been lost to urban and agricultural development (Shaffer *et al.* 2013). Loss, degradation, and fragmentation of habitat is the primary threat to CTS in both the Central and San Joaquin Valleys (CDFW 2015, USFWS 2017). The Project area is within the range of CTS and is bordered by suitable upland habitat (i.e., grasslands interspersed with burrows) and potentially also suitable aquatic breeding habitat. As a result, there is potential for CTS to occupy or colonize the Project area and for the Project to impact CTS.

R-3

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to CTS, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

R-3

Focused CTS Surveys

CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS prior to ground-disturbing activities using the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a

Negative Finding of the California Tiger Salamander" (2003). CDFW recommends that the Site Assessment be competed to describe the conditions of the Project site and to inform the MND analysis of CTS, including whether the site is within 1.3 miles of aquatic breeding habitat, to provide clarification for the proposed Mitigation Measures of the MND. CDFW also advises that the surveys include a minimum 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. R-3 R-3

CTS Avoidance

CDFW advises that avoidance for CTS include a minimum 50-foot no-disturbance buffer delineated around all small mammal burrow entrances within and/or adjacent to the Project construction footprint. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. R-3

CTS Take Authorization

If through surveys it is determined that CTS are occupying the Project area and take cannot be avoided, incidental take authorization may be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code § 2081(b). Alternatively, in the absence of protocol surveys and if avoidance of burrows is not feasible, the applicant can assume presence of CTS within the Project area and obtain an ITP from CDFW. CDFW cannot issue an ITP until a CEQA document has been completed that discloses the impacts to CTS through the implementation of the Project and includes specific feasible, measureable, and enforceable avoidance, minimization and mitigation measures to reduce these impacts to less than significant. In addition, CDFW recommends that the final CEQA document quantify and describe the direct and indirect potential impacts to CTS habitat and outline specific proposed mitigation measures for impacts. R-3 R-3

COMMENT 2: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI) R-3

Section 3.5– Biological Resources (Vegetation and Wildlife), Pages 3-94 through 3-95

Issue: The MND states that a 0.5-mile no-disturbance buffer will be maintained around active SWHA nests, if feasible. The threshold of feasibility to avoid and minimize is not described within the MND. The MND also states that if encroachment into the buffer area is required, DWR will consult with CDFW to determine appropriate measures for this species. As with other species discussions where the MND takes a similar approach, this statement appears to defer the analysis of a potential impact and the determination of appropriate mitigation to a R-3

later date, after Project approval and potentially during Project implementation. There are no specific measures for avoidance of WTKI, which are necessary to ensure that take of this fully protected species does not occur as a result of Project implementation. R-3

The CEQA Guidelines (§ 15370) require mitigation measures to "avoid, minimize, rectify, reduce or eliminate" those project impacts that are potentially significant. Deferring mitigation actions in measures does not comply with the CEQA Guidelines; it is the responsibility of the Lead Agency to ensure that mitigation measures listed in the MND are feasible, measureable, and implemented and enforced. Absent the measures in the MND meeting the CEQA Guidelines requirements, CDFW is unable to concur that potentially significant impacts to both species would be reduced to less than significant. R-3

The MND also describes the presence of mature trees within the Project area that have the potential to support nesting SWHA and WTKI. As described in the MND, the contractor hired to complete the Project would determine if any mature trees in the construction footprint could be preserved and marked to be saved. The MND does not account for the potential loss of a nest tree in the mitigation measures. R-3

Specific impact: SWHA and WTKI are known to occur in the vicinity of the Project and potentially suitable nest trees adjacent to the levees and high terraces are present within the Project area. In addition, as described in the MND, foraging habitat for SWHA and WTKI exists within the vicinity of the Project site: the Project area is surrounded by annual and perennial grasslands and croplands that may be used for foraging. The presence of these two requisite habitat features increases the likelihood of occurrence of SWHA and WTKI within the Project area. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts associated with the Project's construction include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young. R-3

Evidence impact is potentially significant: The mature trees and agricultural field provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, 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, and, in the case of SWHA, it could also result in take under CESA. In addition, depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA and WTKI. R-3

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document. R-3

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends 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. This mitigation will offset potential impacts of the loss of potential nesting habitat. R-3

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation. R-3 In addition, if Project activities will take place during the typical breeding season (February 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. R-3

SWHA 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. R-3

SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of 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). R-3

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified WTKI nest(s) 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. R-3

COMMENT 3: Fresno Kangaroo Rat:

Section 3.5– Biological Resources (Vegetation and Wildlife), Page 3-98.

Issue: Although MND Mitigation Measure BIO-21 describes preconstruction trapping surveys for Fresno kangaroo rat, enforceable avoidance measures for potential impacts are not specified in the MND, which indicates that if Fresno kangaroo rat is detected, additional measures may be developed, and CDFW will be consulted. R-3

Specific impact: Without appropriate avoidance and minimization measures for Fresno kangaroo rat, potentially significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals. R-3

Evidence impact is potentially significant: Historic Fresno kangaroo rat habitat has been lost to urban and agricultural development (US Fish and Wildlife Service 1998). Loss, degradation, and fragmentation of habitat is the primary threat to Fresno kangaroo rat in the San Joaquin Valley. In addition, if an extant population of Fresno kangaroo rats is in the area, breaks in levees pose a risk of mortality through flooding. The Project area is within the range of Fresno kangaroo rat and contains and is bordered by suitable habitat (i.e., grasslands, alkali sink, and chenopod scrub). As a result, there is potential for Fresno kangaroo rat to occupy or colonize the Project area and for the Project to impact Fresno kangaroo rat. R-3

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to Fresno kangaroo rat, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

Surveys R-3

If burrow avoidance is not feasible, CDFW recommends that focused protocol-level trapping surveys be conducted by a qualified wildlife biologist that is permitted to do so by both CDFW and USFWS to determine if Fresno kangaroo rat occurs at the Project site. CDFW advises that these surveys be conducted in accordance with USFWS's (2012) "Survey Protocol for Determining Presence of San Joaquin

Kangaroo Rats." CDFW recommends that these surveys be conducted well in advance of ground-disturbing activities in order to determine if impacts to the species could occur. R-3

Avoidance

If suitable habitat is present and surveys or trapping are not feasible, CDFW advises maintenance of a 50-foot minimum no-disturbance buffer around all small mammal burrow entrances of suitable size for Fresno kangaroo rat. R-3

Take Authorization

If Fresno kangaroo rat is found within the Project area either during preconstruction surveys or during construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take or if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities. R-3

COMMENT 4: Giant Garter Snake

Section 3.5– Biological Resources (Vegetation and Wildlife), Pages 3-92 through 3-93.

Issue: The MND states that giant garter snake and its upland and aquatic habitats could be impacted by the Project, but does not indicate where suitable habitats occur within the Project sites. Some avoidance and minimization is proposed in Mitigation Measure BIO-12, but it is not clear where or under what circumstances the measure would be applied. In addition, the proposed actions in the measure are described as being implemented if feasible, and that if the actions are not feasible CDFW will be consulted. The MND does not define what constitutes infeasibility, what would constitute consultation, what alternatives would be proposed, whether consultation would be intended to avoid significant impacts and specifically to avoid take of giant garter snake, and whether CDFW recommendations would be implemented. It is also not clear what effects to giant garter snake or its habitat would warrant development of a compensatory mitigation plan as mentioned in Mitigation Measure BIO-13. The CEQA Guidelines (§ 15370) require mitigation measures to "avoid, minimize, rectify, reduce or eliminate" those project impacts that are potentially significant. Deferring mitigation actions in measures does not comply with the CEQA Guidelines; it is the responsibility of the Lead Agency to ensure that mitigation measures listed in the MND are feasible, measureable, and implemented and enforced. Absent the measures in the MND meeting the CEQA Guidelines requirements, CDFW is unable to concur that potentially significant impacts to giant garter snake would be reduced to less than significant. R-3 R-3 R-3

Specific impact: Without appropriate avoidance and minimization measures for giant garter snake, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, increased predation, and direct mortality of individuals. R-3

Evidence impact is potentially significant: Habitat loss due to diversion of water and the conversion of habitat to agriculture; habitat fragmentation; threats related to flooding and associated flood control activities; pest control and predation from invasive aquatic species; introduced competitors; introduced plant species; and diseases have contributed to the species' listing status and remain threats to the species (USGS 2015). The Project area is within the range of the giant garter snake and contains the aquatic and upland habitat. As a result, there is potential for giant garter snake to occupy the Project area and for the Project to impact giant garter snake. R-3

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to giant garter snake, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the CEQA document.

Avoidance

CDFW recommends that Project areas be dewatered for a minimum of 15 consecutive days immediately preceding the start of Project activity. In addition, CDFW recommends surveys within habitat areas immediately prior to ground disturbance, and hand removal of vegetation within those areas prior to ground disturbance. CDFW recommends avoidance of suitable refugia (e.g., burrows, cracked soils) by a minimum of 50 feet. R-3

Take Authorization

If surveys detect giant garter snakes or if Project sites within habitat for the species provide suitable refugia for the species, consultation with CDFW is advised to discuss how to implement the Project and avoid take or, if avoidance is not feasible, to acquire an ITP prior to any ground-disturbing activities. R-3

II. Editorial Comments and/or Suggestions

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 R-3

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).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting 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 Code sections as referenced above. R-3

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction 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. R-3

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 are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance. R-3

Comments Intended to Assist with Successfully Meeting the Restoration Goal: As an Implementing Agency of the SJRRP, CDFW is providing the below comments to assist in meeting the SJRRP Restoration Goal which is: "to restore and maintain fish populations in 'good condition' in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-reproducing and self-sustaining populations of salmon and other fish." R-3

Eastside Bypass Outflow Structure: Depending on design and flow, the gated culvert outflow structure downstream of the Eastside Bypass Control Structure may present an entrainment risk to migrating spring- and fall-run Chinook salmon or other native fishes. However, not enough information is provided to assess the level of risk. CDFW recommends the final design incorporate elements to prevent adult salmonids from accessing this outfall. R-3

Fish Stranding Risk Caused by Wetland Depressions: The Merced National Wildlife Refuge weirs are currently used to flood the Mariposa Wetlands located within the bypass levees on the left overbank. The Proposed Project would remove the weirs and install a groundwater well to provide water to flood this area; however, the wetlands would still be connected to the main channel during higher flows. Under higher flow conditions, migrating juvenile salmon and other native fish could enter into these wetland depressions and become stranded as high flows recede and there is no longer connectivity between the wetlands depressions and the main channel. CDFW recommends monitoring to determine whether additional measures are necessary to prevent stranding that could limit the ability to meet the Restoration Goal. R-3

Grazing and Livestock in Channel: The Project includes removing and replacing fencing that traverses the flood bypass channel on either side of Dan McNamara Road. If the flood bypass channel is intended to serve as the primary migration corridor for sensitive and special-status aquatic species, CDFW is concerned about impacts due to the continued presence of livestock in and adjacent to the channel, channel stability as a result of fences crossing the channel, riparian recruitment, water quality, and physical risks to fish and humans occupying the water column where submerged fences are present. While not a change from baseline conditions, continued grazing in the bypass may limit the ability of the SJRRP to its Restoration Goal. R-3

Culvert Design at Dan McNamara Road: CDFW believes that vacation and removal of Dan McNamara Road is a preferable fish passage option to the proposed box culvert and low flow crossing. Vacation has considerable benefits to the passage of native fish species, which is of particular importance given the potential for long-term use of the Eastside Bypass to route flows and fish. R-3

Public Trust: Unless or until further actions are taken under the Reach 4b project, the bypass will essentially serve as the main channel for flows, fish and habitat development. As reintroduction has begun, there are public trust resources in the flood bypass for which CDFW is a Trustee Agency. CDFW recommends close coordination with the SJRRP Implementing Agencies and the California State Lands Commission, which has jurisdiction and authority for the public land trusts. R-3

Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite, R-3

which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore notification is warranted. 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 or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. R-3

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 California Natural Diversity Database (CNDDB). The CNNDB 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 mailed electronically to CNDDB at the following email address: 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. R-3

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089.) R-3

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist DWR in identifying and mitigating Project impacts on biological resources. R-3

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). Questions regarding this letter or further coordination should be directed to Primavera Parker, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 309, or by electronic email at Primavera.Parker@wildlife.ca.gov. R-3

Sincerely,

Julie A. Vance
Regional Manager

cc: Rebecca Victorine
Bureau of Reclamation
San Joaquin River Restoration Program
2800 Cottage Way
Sacramento, California 95825

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