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July 24, 2019

Governor's Office of Planning & Research

JULY 24 2019

STATE CLEARINGHOUSE

Jeremy Shaw
Department of Public Works and Planning
Development Services and Capital Project Division
2200 Tulare Street, Sixth Floor
Fresno, California 93721

Subject: Initial Study Application No. 7608; Unclassified Conditional Use Permit (CUP) Applications Nos. 3642, 3644, 3645, 3646, 3647 and Classified CUP Application No. 3643 (Amending CUP No. 3590) (Project) MITIGATED NEGATIVE DECLARATION (MND) SCH No: 2019069101

Dear Mr. Shaw:

The California Department of Fish and Wildlife (CDFW) received an MND from Fresno County for the Project pursuant to 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.

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.

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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, construction activities resulting from the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) 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.

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, eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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

PROJECT DESCRIPTION SUMMARY

Proponent: Five Points Pipeline, LLC; L&J Vanderham Dairy; Van Der Hoek Dairy Biogas LLC; Van Der Kooi Dairy Power LLC; Wilson Dairy Biogas, LLC.

Objective: The Project proponents seek to install four new covered lagoons, anaerobic dairy digesters with related biogas conditioning equipment and biogas generators to produce electricity on four existing dairies; install biogas conditioning equipment at a fifth dairy with an existing digester and generator; construct an approximately 10.5-mile underground pipeline to connect the participating dairies and allow produced biomethane to be transported to a centralized hub, where a biogas upgrading facility will be constructed to clean and condense the biogas before it is injected into the Pacific Gas and Electric Company's natural gas transmission line.

Location: The Project is bounded by the unincorporated communities of Five Points to the southwest; Helm to the north; Burrell to the northeast; and Lanare to the east and

southeast; State Route 145 (Madera Avenue) on the west; Mount Whitney Avenue on the south; Jameson Avenue on the east; and Kamm Avenue on the north, within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) and AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone Districts. Dairies' Assessor Parcel Numbers (APNs): 040-130-51S, 050-160-16S, 050-270-56S, 050-170-41S, 050-260-12S, 040-130-35S. Pipeline APNs: 040-130-35S, -49, -48S, 51S; 041-100-17; -45S; 050-160-13S, -16S; 050-170-41S; 050-200-38S; 050-230-20S, -23S; 050-260-10S, -11S, -12S; 050-270-56S.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Fresno County 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.

I. Environmental Setting and Related Impact

Review of the California Natural Diversity Database (CNDDDB) reveals records for several special-status species both on and within the broader pipeline Project area, including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State and federally threatened giant garter snake (*Thamnophis gigias*), the State candidate for listing as endangered tricolored blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene cunicularia*) (CDFW 2019). The Project's MND also recognizes the potential for these species to occur in the Project area. Review of aerial imagery indicates that much of the Project area is comprised of or surrounded by active agriculture, including dairy silage fields which is suitable nesting substrate for certain bird species, for example the tricolored blackbird. In addition, portions of the pipeline will intersect or run along irrigation canals which could be used for dispersal or support refugia such as dens or burrows suitable for San Joaquin kit fox and burrowing owl. Additionally, large trees within and in the vicinity of the Project area have the potential to support nesting birds, including Swainson's hawk. An analysis of potential impacts and recommended mitigation measures summarized by species follows below.

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 United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

Issue: As stated in the Project's MND, SJKF have the potential to occur on the Project

site. SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. Presence or absence in any one year is not necessarily a reliable indicator of SJKF potential to occur on a site. SJKF may be attracted to project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to occupy or colonize the Project area. However, the Project's MND currently only requires a pre-activity survey for special-status species conducted within 14-days of ground disturbance within 250-feet of the Project area. This survey methodology is not species-specific, differs from recommended protocols, and as such, may not be suitable in detecting the species.

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

Evidence impact is potentially significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF. Very little suitable habitat remains in Fresno County (Cypher et al. 2013). As a result, ground-disturbing or development activities at the Project area have the potential to significantly impact local populations of SJKF.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to SJKF, CDFW recommends conducting the following evaluation of the Project area prior to construction and editing the Project's CEQA document to include the following measures.

Recommended Mitigation Measure 1: SJKF Surveys

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS (2011) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance." Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14-days and no more than 30-days prior to beginning of ground disturbing activities.

Recommended Mitigation Measure 2: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP), pursuant to Fish and Game Code Section 2081(b).

COMMENT 2: Swainson's Hawk (SWHA)

Issue: SWHA are known to occur throughout the Project area and the Project's MND

acknowledges the presence of suitable foraging habitat for the species surrounding the Project site as well as observation of a SWHA within 0.2-miles of the Project area during Project-specific reconnaissance surveys. However, the Project's MND currently only requires a pre-activity survey for special-status species conducted within 14-days of ground disturbance within 250-feet of the Project area. This survey methodology is not species-specific and, as such, may not be suitable in detecting the species.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts associated with the Project's construction include: nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: Trees within ½-mile of the Project area represent some of the only remaining suitable nesting habitat in the vicinity, which is otherwise intensively managed for agriculture. In addition, the Project area includes low growing crops, which may provide foraging habitat for SWHA. The presence of these two requisite habitat features increases the likelihood of occurrence of SWHA. The primary threat to SWHA in California is loss of foraging and nesting habitat resulting from urban development and incompatible agriculture (CDFW 2016). Depending on timing, ground-disturbing activities that have the potential to result from the Project including noise, vibration, and movement of workers or equipment, could affect SWHA nests and have the potential to result in nest abandonment, potentially significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to SWHA, CDFW recommends conducting the following evaluation of the Project site prior to construction and editing the Project's CEQA document to include the following measures.

Recommended Mitigation Measure 3: Focused SWHA Surveys

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to project initiation. In addition, CDFW recommends that a qualified biologist conduct additional pre-construction surveys for active nests no more than 10-days prior to the start of construction.

Recommended Mitigation Measure 4: SWHA Avoidance

If an active SWHA nest is found during pre-construction surveys, 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 birds have fledged and are no longer reliant upon the nest or parental care for survival.

Recommended Mitigation Measure 5: SWHA Take Authorization

If the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of an ITP for SWHA is necessary prior to project implementation, pursuant to Fish and Game Code Section 2081(b) to comply with CESA.

COMMENT 3: Giant Garter Snake (GGS)

Issue: The Project's MND does not acknowledge that GGS has the potential to be present in or near Project sites. As documented in CNDDDB, GGS are known to occur in the Fresno Slough (CDFW 2019) and the species is known to occupy managed waterways, including those managed for agricultural irrigation (USFWS 2017). The MND states that the Project's gathering lines will cross several existing irrigation drainages or canals. Despite this, the MND, as currently drafted, does not include any measures to minimize impact to this species.

Specific Impacts: Potential significant impacts associated with Project construction include burrow excavation and collapse, inadvertent entrapment, and direct mortality of individuals.

Evidence impact would be significant: Currently, GGS are isolated to only nine disjunct populations. At the time of the species' listed under the federal Endangered Species Act (ESA) in 1993, USFWS recognized 13 populations. Since then, two of these populations have been determined to be extirpated (USFWS 2017). Habitat loss and fragmentation are the primary threats to GGS. Only 5% of the species' historic wetland habitat acreage remains. In addition, Central Valley populations of GGS are also susceptible to impacts from roads, vehicular traffic, and non-native species (USFWS 2017). The species has specific seasonal habitat requirements. During the summer months, GGS require aquatic habitat for foraging and adjacent upland areas with emergent vegetation for basking sites (USFWS 2017). During periods of inactivity, GGS require burrows in upland habitat as refugia for summer shelter and burrows in higher elevation uplands for winter hibernation (Hansen et al. 2015). The Project includes ground-disturbing activities that have the potential to result in excavation and collapse of GGS refugia which could result in a violation of CESA if GGS is determined to be present.

Recommended Potentially Feasible Mitigation Measure(s)

Because the IS/MND identifies the potential for GGS to occur on Project sites, CDFW recommends conducting the following evaluation of individual Project sites, editing the MND to include the following measures, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 6: GGS 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 vicinity contains suitable habitat for GGS.

Recommended Mitigation Measure 7: GGS Surveys and Avoidance

CDFW recommends, no more than 30-days prior to ground-disturbing activities, a qualified biologist with GGS experience and knowledge of its ecology survey the work area and a minimum 50-foot radius of the work area for burrows and crevices in which GGS could be present. It is advised that all potentially suitable burrows and crevices be flagged and avoided by a minimum 50-foot no disturbance buffer. If a 50-foot radius buffer isn't feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take.

Recommended Mitigation Measure 8: GGS Take Authorization

If take cannot be avoided, acquisition of an ITP would be required prior to Project implementation to comply with CESA. Capture and relocation of any species listed under CESA would require an ITP from CDFW, as capture (or attempt to do so) is defined as take under Fish and Game Code Section 86.

COMMENT 4: Tricolored Blackbird (TRBL)

Issue: TRBL are known to occur in the Project area. The MND acknowledges the presence of suitable foraging habitat but states that no suitable nesting substrate is present. However, review of aerial imagery indicates that the majority of the Project area is adjacent to flood-irrigated silage fields in association with dairies. Flood-irrigated agricultural land, including silage fields, is an increasingly important nesting habitat type for TRBL, particularly in the San Joaquin Valley (Meese et al. 2014). Despite this, the MND does not include any species-specific measures for TRBL.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with the Project's construction include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: As mentioned above, flood-irrigated agricultural land, including silage fields associated with dairies, is an increasingly important nesting habitat type for TRBL, particularly in the San Joaquin Valley (Meese et al. 2014). This potential nesting substrate is distributed throughout the Project area. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population of the species is found in the

San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project site prior to construction and editing the Project's CEQA document to include the following measures.

Recommended Mitigation Measure 9: TRBL Surveys

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL, within a minimum 500-foot buffer from the Project site, no more than 10-days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 10: TRBL Avoidance

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason the colony should be reassessed to determine the extent of the breeding colony before conducting construction activities.

Recommended Mitigation Measure 11: TRBL Take Avoidance

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

COMMENT 5: Burrowing Owl (BUOW)

Issue: BUOW have been documented within the vicinity of the Project area. BUOW occupy treeless open areas that contain small mammal burrows (Zeiner et al. 1990). BUOW can also occupy burrows within the banks of earthen canals (Coulombe 1971). Review of aerial imagery indicates that the Project area contains both of these land cover types. The Project area likely also provides suitable foraging habitat for BUOW. The presence of these land cover types increases the likelihood of BUOW occurrence both on and within the vicinity of the Project area. While the Project's MND acknowledges the potential for BUOW to occur on the Project site and includes general pre-activity surveys for special-status species and migratory birds, it does not include a species-specific survey protocol or seasonal avoidance buffers. Therefore, the measures within the MND may not be sufficient in reducing impacts to BUOW to a level that is less than significant.

Specific impact: Potentially significant direct impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. The Project area is within the range of BUOW and suitable burrow habitat is present on or in the vicinity of the Project area. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). Therefore, the Project has the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), excluding BUOW is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site prior to construction and editing the Project's CEQA document to include the following measures.

Recommended Mitigation Measure 12: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993) and CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012). In addition, CDFW advises that surveys include a 500-foot buffer around the Project area.

Recommended Mitigation Measure 13: BUOW Avoidance

Since BUOW occupy burrow habitat year-round, CDFW recommends seasonal 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 associated with Project implementation. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 14: BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion 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 surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 6: Lake and Streambed Alteration

Issue: Portions of the Project area will cross several irrigation drainages and canals, including the Stinson Canal. In addition, the MND states that the National Wetlands Inventory documents five waters or wetlands on or near the Project site. As currently

drafted, the MND states that if Stinson Canal cannot be avoided, an LSA Agreement, pursuant to CDFW's LSA regulatory authority in accordance with Fish & Game Code Section 1602, will be obtained. However, the MND does not include guidance on how to evaluate the need to submit a Notification of lake or streambed alteration on either the Stinson Canal or the other drainages and canals in the Project area. It also doesn't require Notification pursuant to Fish & Game Code Section 1602 for drainages and canals other than Stinson Canal, should an evaluation find that activities within these features would be subject to CDFW's LSA regulatory authority.

Specific impact: Work within water features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

Evidence impact is potentially significant:

Lake and Streambed Alteration

Activities within streams and other water conveyance structures may be subject to CDFW's LSA regulatory authority. Construction activities within these features have the potential to impact downstream waters. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of features such as these can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely affecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

Water Diversion

Water diversions can impact flow regimes. Prolonged low flows can cause water features to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic wildlife species. In addition, alterations to flows can affect the health of riparian vegetation, reducing habitat quality for wildlife species.

Recommended Potentially Feasible Mitigation Measure(s)

Recommended Mitigation Measure 15: Stream and Wetland Mapping, and LSA

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent 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 as well as what activities require Notification pursuant to Fish and Game Code Section 1602 differ.

Therefore, it is advised that the wetland delineation identify both State and Federal wetlands in the Project area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code Section 2785 (g) defines wetlands; further, Section 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from USACE and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with any Project site evaluations.

Recommended Mitigation Measure 16: Notification of Lake or Streambed Alteration

Fish and Game Code Section 1600 et seq. 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 an LSA Agreement. For additional information on Notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

II. Editorial Comments and/or Suggestions

Nesting birds: 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 Codes as referenced above.

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

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continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250-feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF. 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 ground-disturbing activities.

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

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

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist Fresno County in identifying and mitigating Project impacts on biological resources.

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 Renée Robison, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 274, or by email at Renee.Robison@wildlife.ca.gov.

Sincerely,



 Julie A. Vance
Regional Manager

cc: Timothy Ludwick
United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

ec: Office of Planning and Research, State Clearinghouse, Sacramento
State.Clearinghouse@opr.ca.gov

REFERENCES

- California Burrowing Owl Consortium (CBOC), 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game (CDFG), 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- California Department of Fish and Wildlife (CDFW), 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- CDFW, 2016. Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.
- CDFW, 2019. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 17, 2019.
- Cypher, B. L., S. E. Phillips, P. A. Kelly. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.
- Coulombe, H. N., 1971. Behavior and population ecology of the burrowing owl, *Speotyto cunicularia*, in the Imperial Valley of California. *The Condor* 73:162–176.
- Gervais, J. A., D. K. Rosenberg, and L. A. Comrack, 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California (W. D. Shuford and T. Gardali, editors). *Studies of Western Birds* 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Hansen, E. C., R. D. Scherer, G. C. White, B. G. Dickson, and E. Fleishman. 2015. Estimates of survival probability from two populations of giant gartersnakes in California's Great Central Valley. *Copeia* 103: 1026-1036.
- Kelsey, R., 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.
- Meese, R. J., E. C. Beedy, and W. J. Hamilton, III, 2014. Tricolored blackbird (*Agelaius tricolor*), *The Birds of North America* (P. G. Rodewald, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America: <https://birdsna->

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org.bnaproxy.birds.cornell.edu/Species-Account/bna/species/tribla. Accessed December 15, 2017.

Orians, G. H., 1961. The ecology of blackbird (*Agelaius*) social systems. *Ecological Monographs* 31(3): 285–312.

Poff, N. L., J. D. Allan, M. B. Bain, J. R. Karr, K. L. Prestegarrd, B. D. Richter, R. E. Sparks, and J. C. Stromberg. 1997. The natural flow regime: a paradigm for river conservation and restoration. *BioScience* 47:769–784.

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

U.S. Fish and Wildlife Service (USFWS), 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.

USFWS, 2017. Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*). U. S. Fish and Wildlife Service, Region 8, Sacramento, California. September 2017.

Weintraub, K., T. L. George, and S. J. Dinsmore, 2016. Nest survival of tricolored blackbirds in California's Central Valley. *The Condor* 118(4): 850–861.

Zeiner, D. C., W. F. Laudenslayer, Jr., K. E. Mayer, and M. White, eds, 1988–1990. Burrowing owl *In* Life history accounts for species in the California Wildlife Habitat Relationships (CWHR) System. California's Wildlife. Vol I-III. California Department of Fish and Game, Sacramento, California.