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July 23, 2025

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**Subject: Use Permit Application No. PLN2024-0119 – West Stanislaus Irrigation District (Project)  
Early Consultation (CON)  
State Clearinghouse No.: 2025040184**

Dear Marcus Ruddicks:

On April 3, 2025, The California Department of Fish and Wildlife (CDFW) received a CON from Stanislaus County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW responded in a letter dated April 22, 2025 (April CON Letter), providing recommendations to mitigate for potentially significant impacts to biological resources in the vicinity of the Project. On June 23, 2025, CDFW received a Biological Resources Evaluation (BRE) for the Project, which included a response to CDFW's comments as well as a reconnaissance survey of the Project site and surrounding area, including a portion of the San Joaquin National Wildlife Refuge (Refuge) located directly adjacent to the Project site.

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 Fish and Game Code.

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<sup>1</sup> 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.

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

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Solar Moving Water, LLC on behalf of West Stanislaus Irrigation District (WSID)

**Objective:** The Project proposes to construct, operate, and maintain a 4.9-megawatt (MW) photovoltaic solar power generation facility, which would generate power exclusively for the use of existing WSID facilities.

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**Location:** The Project would be located on a 57.97-acre parcel in western Stanislaus County (Assessor Parcel Number 016-025-043) approximately 10 miles southwest of the City of Modesto. The Project site is bounded by West Stanislaus Road to the northwest, River Road to the southwest, agricultural land to the southeast, and the Refuge to the northeast.

## **COMMENTS AND RECOMMENDATIONS**

CDFW appreciates the additional information provided in the BRE. After reviewing the BRE, including the results of the May 7, 2025, reconnaissance survey and habitat assessment, and proposed mitigation measures, CDFW has still concerns about potentially significant impacts to biological resources and the ability of some the proposed mitigation measures to reduce impacts to less than significant. These concerns are addressed in more detail below. CDFW also continues to recommend that an appropriate CEQA document be prepared to evaluate potential Project-related impacts to biological resources.

CDFW offers the following comments and recommendations to assist Stanislaus County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on biological resources. Editorial comments or other suggestions may also be included.

### **Proximity of San Joaquin River National Wildlife Refuge**

The Project site is directly adjacent to the Refuge. The Refuge is managed with a focus on endangered species, migratory birds, and riparian and wetland habitat restoration, and is known to support a population of the State and federally endangered riparian brush rabbit (*Sylvilagus bachmani riparius*) (USFWS 2025). The Refuge also supports a number of other special-status species. The Project's proximity to the Refuge increases the likelihood that these species may utilize the habitats within the Project site and may continue to do so to some extent after Project construction.

As discussed in the April CON Letter, disturbing, injuring, or damaging plants or animals within the Refuge is prohibited (50 CFR § 27.51). Suitable breeding, nesting, upland and/or foraging habitat for a number of special-status species is present within the Refuge directly adjacent to the Project site. CDFW appreciates the information provided in the BRE; however, it does not appear that CDFW's comments pertaining to Project siting were addressed. CDFW recommended that the Project facilities be sited and designed to avoid direct and indirect impacts to the Refuge, including but not limited to impacts associated with noise, lighting, and water quality degradation. The BRE did not provide a discussion of how the Project design would avoid these aforementioned impacts. As such, CDFW reiterates the recommendation that a CEQA document be

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prepared to evaluate potential Project-related impacts to biological resources, including the indirect Project impacts from activities such as noise and lighting.

### **Special-status species**

According to the CON, the Project site contains an orchard, two single-family dwellings and accessory structures, and shares the parcel with existing WSID facilities, including a building, corporation yard, and storm drainage basin. Based on aerial imagery, the site is surrounded by more orchards, other agricultural habitats, a canal, and the Refuge.

Based on a review of the Project description and BRE, aerial imagery, the surrounding habitat, California Natural Diversity Database (CNDDDB) records, the Project site is within the geographic range of several special-status animal and plant species. The BRE evaluated the potential for species impacts within the Project site and within a 500-foot buffer of the Refuge. The BRE also proposed specific mitigation measures to reduce impacts to less than significant for several special-status species. CDFW appreciates the additional information provided in the BRE but still has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including: the State and federally endangered riparian brush rabbit; the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*); the State species of special concern (SSC) and federally endangered riparian woodrat (*Neotoma fuscipes riparia*); the State SSC loggerhead shrike (*Lanius ludovicianus*) and Modesto population of song sparrow (*Melospiza melodia pop. 1*); and the State SSC and federally proposed threatened northwestern pond turtle (*Actinemys marmorata*).

### **Riparian brush rabbit and riparian woodrat**

The riparian brush rabbit (RBR), one of the rarest mammals in California (USFWS 2025), is known to occur within the Refuge and has been documented immediately adjacent to the Project site (CDFW 2025). The riparian woodrat (RWR) is also known to occur within the Refuge and has also been documented adjacent to the Project site. RBR and RWR require brushy cover for foraging and nesting. RBR typically build shallow ground nests under dense foliage, such as large clumps of blackberry (*Rubus spp.*) vines; however, these species may also use constructed or found burrows for nesting (CDFW 2020). RWR typically build conical "houses" made of sticks and twigs at the base of an oak (*Quercus spp.*) or willow (*Salix spp.*) and can be found high up in trees (USFWS 2000). Though RBR are not known to travel far from dense cover (CDFW 2020), both species may forage in open fields in close proximity to cover and may forage and/or move into the Project site during construction.

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Although the BRE noted limited suitable habitat for RBR and RWR in the Project site and directly adjacent areas, in situations of distress, which could result indirectly from Project construction activities, both species may flee or disperse to cover and may seek refuge within construction or staging materials, such as shipping containers, portable buildings, and stacks of materials (e.g., I-beams, wooden boards). Therefore, during construction CDFW recommends thoroughly inspecting all construction materials or structures with sufficient spaces for RBR and RWR, in addition to pipes and culvert-like structures, before these materials are used or moved in any way. Additionally, CDFW recommends elevating materials one foot or more off the ground using k-rails or similar structures. CDFW also recommends vegetation or other debris from Project activities not be stockpiled near the Refuge and be disposed of off-site in a manner that does not create potential cover for RBR or RWR within the Project site. If RBR or RWR are discovered during construction, CDFW recommends the individual be avoided by a minimum 50-foot no disturbance buffer until it has left the Project site of its own volition. If the individual cannot be avoided, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

### **Swainson's hawk**

The Project is within the known geographic range of Swainson's hawk (SWHA), and numerous occurrences are documented within 10 miles of the Project site (CDFW 2025). SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, suitable habitat for SWHA foraging occurs in the vicinity of the Project site. In addition, SWHA may perch or nest on power poles or tall trees located nearby.

The BRE confirmed presence of potential nesting and foraging habitat within the Project Site and ½-mile survey buffer, and proposed Mitigation Measure BIO4 to mitigate for potentially significant impacts. Mitigation Measure BIO4 states the following:

- “1. To the extent practicable, construction shall be scheduled to avoid the Swainson's hawk nesting season, which extends from March through August (Table 3).
2. If it is not possible to schedule construction between September and February, a qualified biologist shall conduct surveys for active Swainson's hawk nests no more than 14 days prior to the initiation of construction activities. Surveys shall be conducted within a minimum 0.5-mile radius around the Project site.
3. If an active Swainson's hawk nest is found within 0.5 miles of the Project site, and the qualified biologist determines that Project activities would disrupt the nesting birds, a

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construction-free buffer or limited operating period shall be implemented in consultation with the CDFW.”

CDFW does not concur that Mitigation Measures BIO4 is sufficient to mitigate for potential significant impacts to SWHA and would like to note that the measure does not follow CDFW’s recommendations in the April CON Letter. As detailed in the April CON Letter, CDFW recommends that a qualified biologist conduct SWHA surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior initiating activities associated with the Project. Among other recommendations, this methodology includes multiple surveys over a minimum of at least two different seasonal periods. CDFW also does not concur with the portion of Mitigation Measure BIO4 that allows the ½-mile avoidance buffer to be adjusted at the discretion of the qualified biologist as this has the potential to result in the unauthorized take of the species. Therefore, CDFW recommends the following prior to the initiation of ground disturbance activities associated with the Project:

#### **Recommended Mitigation Measure 1: SWHA Avoidance Buffer**

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

#### **Recommended Mitigation Measure 2: SWHA Take Authorization**

In the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

#### **Tricolored blackbird**

The Project site is within the known geographic range of tricolored blackbird (TRBL), and, based on aerial imagery, there are various natural and manmade ponds/bodies of water near the Project site that could contain habitat suitable for TRBL nesting and foraging. Several recent TRBL occurrences are documented within five miles of the Project site (CDFW 2025). TRBL breed within the vicinity of fresh water, primarily in

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marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnell and Miller 1944). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type, particularly in the San Joaquin Valley (Beedy et al. 2023).

The BRE identified suitable TRBL nesting habitat within the portion of the Refuge directly adjacent to the Project site, and proposed Mitigation Measure BIO5 to mitigate for potential impacts to TRBL. Mitigation Measure BIO5 states the following:

- “1. To the extent practicable, construction shall be scheduled to avoid the tricolored blackbird nesting season, which extends from April through June (Table 3).
2. If it is not possible to schedule construction between July and March, a qualified biologist shall conduct surveys for active tricolored blackbird nesting colonies no more than 14 days prior to the initiation of construction activities. Surveys shall be conducted within a minimum 0.25-mile radius of the Project site.
3. If an active tricolored blackbird nesting colony is found within 0.25 miles of the Project site, and the qualified biologist determined that Project activities would disrupt the nesting birds, a construction-free buffer or limited operating period shall be implemented in consultation with the CDFW.”

Due to the proximity of the Refuge, and the confirmed presence of potential TRBL nesting habitat directly adjacent to the Project site, CDFW concurs with Mitigation Measure BIO5 and recommends the measure be adjusted to incorporate the following:

### **Recommended Mitigation Measure 3: 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 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 4: TRBL Avoidance Buffer**

If an active TRBL nesting colony is found during the pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW’s “Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015” (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has

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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. For this reason, CDFW also recommends conducting pre-construction surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's real extent.

#### **Recommended Mitigation Measure 5: TRBL Take Authorization**

If 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 subdivision (b), prior to any ground-disturbing activities.

#### **California tiger salamander**

The Project site is within the known geographic range of California tiger salamander (CTS), and multiple occurrences are documented within five miles of the Project site (CDFW 2025). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types and have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011). CDFW is also aware of recent CTS observations within upland habitats such as orchards within the Central Valley. The BRE assessed the Project site and as well as an area extending 500 feet into the Refuge. The BRE determined there was no potential breeding CTS habitat within the survey area, but acknowledged the Refuge occasionally flooded. CDFW appreciates the analysis provided in the BRE but does not concur that suitable habitat is lacking from Project site, particularly suitable upland habitat for the species. As detailed above, CTS have been detected dispersing up to 1.5 miles from breeding habitat and potential breeding habitat is located within the Refuge and suitable upland habitat is present within the Project site. As CTS are documented in the Project vicinity, suitable breeding habitat is present nearby, and CTS have the potential to utilize the habitat within the Project site, CDFW recommends the following prior to the initiation of ground disturbance activities associated with the Project:

#### **Recommended Mitigation Measure 6: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the U.S. Fish and Wildlife Service (USFWS) "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation

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with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project site in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

**Recommended Mitigation Measure 7: CTS Avoidance Buffer**

If CTS protocol-level surveys as described in Recommended Mitigation Measure 6 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

**Recommended Mitigation Measure 8: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. In the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

**Western burrowing owl**

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

The Project site is within the known geographic range of BUOW, and there are several occurrences documented within 10 miles of the Project site (CDFW 2025). BUOW typically inhabit open grasslands and desert scrublands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. BUOW are also known to occupy agricultural habitats and may also use “man-made burrows” such as pipes or culverts. While no potential burrows were detected within the boundaries of the Project site, the BRE identified several suitably sized burrows within 50 feet of the Project site as well as the surveyed portion of the Refuge.

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The BRE identified suitable BUOW breeding habitat within the Project site and Refuge and proposed Mitigation Measure BIO1 to mitigate for potential impacts to BUOW. Mitigation Measure BIO1 states the following:

- “1. A pre-construction clearance survey shall be conducted by a qualified biologist to ensure that no burrowing owl will be disturbed during the implementation of the Project. A pre-construction clearance survey shall be conducted no more than 14 days prior to the initiation of construction activities. During this survey, the qualified biologist shall inspect all potential burrowing owl habitat in and immediately adjacent to the impact areas.
2. If a burrowing owl or sign of burrowing owl use (e.g., feathers, guano, pellets) is detected on or within 500 feet of the Project site, and the qualified biologist determines that Project activities would disrupt the owl(s), a construction-free buffer, limited operating period, or passive relocation shall be implemented in consultation with the CDFW.”

CDFW does not concur that Mitigation Measures BIO1 is sufficient to mitigate for potential significant impacts to BUOW and would like to note that the measure does not follow CDFW’s recommendations in the April CON Letter (see BUOW survey recommendations in particular). CDFW would also like to specifically note that passive relocation of BUOW, as proposed in Mitigation Measure BIO1, without appropriate take authorization, is likely to directly result in unauthorized take of the species, and implementation of the mitigation measure could itself result in a potentially significant impact under CEQA.

CDFW recommends the following measures be incorporated prior to the initiation of ground disturbance activities associated with the Project:

#### **Recommended Mitigation Measure 9: BUOW Surveys Prior to Construction**

CDFW recommends that presence/absence surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be conducted the survey season immediately prior to construction.

#### **Recommended Mitigation Measure 10: BUOW Avoidance Buffer**

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

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### **Recommended Mitigation Measure 11: BUOW Take Authorization**

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

### **Species of special concern**

Several State species of special concern (SSC), including but not limited to loggerhead shrike (LOSH), Modesto song sparrow (SOSP), and northwestern pond turtle (NWPT), have the potential to occur in the Project vicinity. These species have been documented in the vicinity of the Project site (CDFW 2025) and the BRE identified potential nesting habitat for LOSH and SOSP. LOSH was also positively identified within the Project vicinity during the May 2025 reconnaissance survey. For NWPT, CDFW recommends that a qualified biologist conduct focused surveys within 10 days prior to Project activity, and that focused surveys for nests occur during the egg-laying season of March through August. CDFW also recommends that any NWPT 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 NWPT 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. For LOSH and SOSP, CDFW recommends the Project implement the nesting bird measures outlined below.

### **Editorial Comments and/or Suggestions**

**Federally listed species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to, RBR, RWR, CTS, and NWPT. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under the 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 the ESA is advised well in advance of any Project activities.

**Nesting birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does

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not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

If the nesting season cannot be avoided, CDFW recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

**CNDDDB:** Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

## **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.

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(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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to the CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment to assist Stanislaus County in identifying and mitigating Project impacts on biological resources. Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter (Attachment 1). If you have any questions, please contact Ren Cotter, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 767-0956, or by electronic mail at [Ren.Cotter@wildlife.ca.gov](mailto:Ren.Cotter@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
E9964E60293D40A...

For Julie A. Vance  
Regional Manager

## ATTACHMENT

ec: Department of Planning and Community Development  
Stanislaus County  
[planning@stancounty.com](mailto:planning@stancounty.com)

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## REFERENCES

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**Attachment 1**

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

**PROJECT: Use Permit Application No. PLN2024-0119 – West Stanislaus  
Irrigation District by Solar Moving Water, LLC**

**SCH No.: 2025040184**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA Take Authorization	
TRBL	
Recommended Mitigation Measure 3 TRBL Surveys Prior to Construction	
Recommended Mitigation Measure 5: TRBL Take Authorization	
CTS	
Recommended Mitigation Measure 6: CTS Surveys	
Recommended Mitigation Measure 8: CTS Take Authorization	
BUOW	
Recommended Mitigation Measure 9: BUOW Surveys Prior to Construction	
Recommended Mitigation Measure 11: BUOW Take Authorization	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA Avoidance Buffer	
Recommended Mitigation Measure 4: TRBL Avoidance Buffer	
CTS	
Recommended Mitigation Measure 7: CTS Avoidance Buffer	
BUOW	
Recommended Mitigation Measure 10: BUOW Avoidance Buffer	