



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 19, 2025

Scott Hamilton, President  
South Valley Water Resources Authority  
7718 Davin Park Drive  
Bakersfield, CA 93308  
[Scott@resourceeconomics.net](mailto:Scott@resourceeconomics.net)

Subject: Infiltration Gallery Demonstration Project, Initial Study/Mitigated Negative Declaration, SCH No. 2025040994, Contra Costa County

Dear Mr. Hamilton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Initial Study/Mitigated Negative Declaration (IS/MND) from the South Valley Water Resources Authority (SVWRA) for the Infiltration Gallery Demonstration Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

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

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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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proposed, for example, 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** South Valley Water Resources Authority

**Objective:** The Infiltration Gallery Demonstration Project will evaluate the biological and engineering performance of an alternative method to divert water into an estuarine system such as the Delta that is less harmful to fishery resources. This will involve a 2.5-acre impact area to accommodate the Project features. The Project will include two inlet/outlet control structures with box culverts connected to Italian Slough and the inlet and outlet to the infiltration basin, the infiltration basin with channels, a variable speed submersible pump, a meter structure, bore and monitoring wells, a gravel parking area, and access roads. Water diverted through the infiltration gallery will flow by gravity into a vault (a tank or sump). Water will be pumped from the collection facility through a pipe and discharged re-routed into either a nearby wetland or directly back into Italian Slough directly or through the adjacent wetland. No water consumption would occur as a result of the Project. At completion of the pilot testing, after approximately 36 months all equipment and infrastructure will be removed from the Project Site and the site revegetated and returned to agricultural grazing land.

**Location:** City of Byron, Contra Costa County, Byron Highway and Clifton Court Road, and 37.839809°, -121.603963°, APN:002-230-002-4.

**Timeframe:** Project implementations start date is anticipated for mid-2025 and will take approximately 2 months to complete construction. Once completed, the Project will operate for up to 36 months.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the SVWRA 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that a MND is appropriate for the Project.

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## I. Mitigation Measure or Alternative and Related Impact Shortcoming

### COMMENT 1: Impacts to Special-Status and Listed Species

**Initial Study/Mitigated Negative Declaration Mitigation Measures BIO-2: Pre-Construction Survey for Special-Status Plants, BIO-3: Pre-Construction Survey for Special-Status Amphibians and Reptiles, and BIO-7: Fish Salvage and Relocation Plan Pg. 33-40.**

**Issue:** Activities described in BIO-2, BIO-3, and BIO-7 could constitute take of CESA-listed species [e.g., San Joaquin spearscale (*Extriplex joaquinana*), Mason's lilaepsis (*Lilaeopsis masonii*), California tiger salamander (*Ambystoma californiense*), western spadefoot toad (*Spea hammondi*), northwestern pond turtle (*Emys marmorata*), California Central Valley steelhead (*Oncorhynchus mykiss irideus*), green sturgeon (*Acipenser medirostris*), white sturgeon (*Acipenser transmontanus*)]. The IS/MND does not adequately avoid, minimize or mitigate for potential impacts to special-status and/or listed species without take coverage from CDFW.

**Specific impact:** BIO-2,3,7 require handling and the potential for take of special-status and/or listed species if they are encountered within the Project area during implementation or operation. The novelty of the infiltration gallery method in this area within the Delta includes a high level of uncertainty about the potential for take of listed fish species (e.g., through increased predation, stranding, or poor water quality). It is unknown how often and to what extent maintenance will be required to operate the infiltration gallery.

**Why impact would occur:** Listed species have been detected or are likely to occur within the Project area and Mitigation Measures BIO-2,3,7 are not adequate to reduce potential direct or indirect impacts to special-status species to less-than-significant without take coverage to cover the implementation of avoidance, minimization or mitigation measures.

**Evidence impact would be significant:** Mitigation Measures BIO-2 and BIO-3 consist of surveys for special-status species and if they are encountered that avoidance and/or minimization measures shall be explored to protect the populations. If avoidance is not possible, consultation with CDFW shall be required prior to project initiation to identify suitable compensatory mitigation. Listed species are likely to occur within the Project area and other than avoidance no mitigation measures can be implemented (e.g., relocation, salvage, and/or restoration) without consultation and/or an Incidental Take Permit obtained from CDFW. MM BIO-3 states that the Qualified Biologist will have all "necessary permits" for the handling of potentially occurring special-status species. Implementation of the Project as

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proposed may result in “take” as defined by State law of any species protected under CESA (Fish & G. Code, § 2050 et seq.).

**To minimize significant impacts:** The Project proponent may seek take authorization as provided by Fish and Game Code.

## **COMMENT 2: Impacts to Nesting Birds**

### **Initial Study/Mitigated Negative Declaration Mitigation Measure BIO-5: Protection of Nesting Birds Page 35**

**Issue:** Without the following changes, Mitigation Measure BIO-5 does not adequately avoid, minimize or mitigate for potential impacts to special-status and nesting bird species.

**Specific impact:** Nesting birds are particularly sensitive to human disturbance. If nests within the area of disturbance are either undetected during surveys or unassessed for signs of distress, impacts to nesting birds as a result of Project activities may still be *potentially significant*.

**Why impact would occur:** Project activities include ground disturbance, operation of heavy machinery, and the movement of workers that may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. If nesting birds occur within the Project site and are undetected during surveys, Project activities including pruning, tree removal, and vegetation removal may inadvertently crush, destroy, or remove active nests.

**Evidence impact would be significant:** Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA) is a violation of Fish and Game Code §§§ 3503, 3503.5, 3513.

**To Reduce Impacts to Nesting Birds to a Less-Than-Significant Level:** CDFW recommends the following modifications to MM BIO-5 and that the Project proponent consider seeking take authorization as provided by the Fish and Game Code.

**BIO-5 - Nesting Bird Season.** Nesting bird season should be defined as February 1 through September 15.

**BIO-5 – Survey Methods and Radii.** CDFW recommends the following minimum survey radii: (1) 250 feet for passerines, (2) 1,000 feet for raptors, and (3) 0.5 miles for golden eagle (*Aquila chrysaetos*). Protocol-level surveys for golden eagle should be conducted prior to Project commencement according to the Interim Golden Eagle

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Inventory and Monitoring Protocols and Other Recommendations document, located at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83940>.

**BIO-5 – Active Nest Buffers.** CDFW recommends the following typical minimum protective buffers for nesting birds: 1) 1,000 feet for raptors and 2) 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

**BIO-5 – Biological Monitoring.** A Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist daily to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased.

## **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 (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See 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 IS/MND to assist SVWRA in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Elijah Portugal, Senior Environmental Scientist, at (707) 428-2088 or

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[Elijah.Portugal@wildlife.ca.gov](mailto:Elijah.Portugal@wildlife.ca.gov); or Sara Kern, Senior Environmental Scientist (Supervisory), at [Sara.Kern@wildlife.ca.gov](mailto:Sara.Kern@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

B77E9A6211EF486.

Erin Chappell  
Regional Manager  
Bay Delta Region

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