



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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GAVIN NEWSOM, Governor
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October 3, 2025

Melody Bailey, Water Resources Manager
 Mojave Water Agency
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EAST AMES-RECHE RECHARGE FACILITY PROJECT (Project)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2025090734

Dear Melody Bailey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Mojave Water Agency 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.

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

PROJECT DESCRIPTION SUMMARY

Proponent: Mojave Water Agency

Objective: The Project consists of the construction of two (2) new recharge basins surrounded by 12-foot-tall berms on 10 acres of land. In addition to the construction of the recharge basins, the Project proposes to install 6-foot perimeter fencing with barbed wire; a new tee connection within the Winters Road right-of-way; approximately 500 linear feet of pipeline with a diameter of 12 inches for non-potable water located from Winters Road to the eastern perimeter of each basin (north and south); two (2) headwalls located along the eastern perimeter of each basin connecting to the new 12-inch non-potable water pipeline; an outlet with energy dissipator to the proposed recharge basins; and a

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.

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nested or multi-completion monitoring well to monitor infiltration rates, groundwater levels, and water quality

Location: The Project is located north of Winters Road on Assessor's Parcel Numbers 0629-211-13 and 0629-211-14, within the unincorporated community of Landers, San Bernardino County, State of California (Project site/Project area).

Timeframe: Project construction is anticipated to last for approximately 11 months, beginning in or before January 2026 and concluding around November 2026.

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that Mojave Water Agency included a mitigation measure, BIO-05, to obtain an incidental take permit for western Joshua tree (*Yucca brevifolia*) pursuant to the Western Joshua Tree Conservation Act. CDFW offers the comments and recommendations below to assist the Mojave Water Agency 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.

COMMENT #1: Nesting Birds

Issue: The Project may have impacts on nesting birds, including CESA-listed birds, Species of Special Concern (SSC), and birds that are subject to Fish and Game Code Sections 3503, 3503.5, and 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project could result in direct take associated with grading, vegetation removal, and vehicle and equipment strike and indirect take associated with Project operations such as attracting predators and displacement. Further, the Project may lead to the reduction of habitat and habitat quality. For example, the Project is likely to permanently remove foraging and nesting habitat for avian species, such as but not limited to loggerhead shrike (*Lanius ludovicianus*) (SSC) and LeConte's thrasher (*Toxostoma lecontei*) (SSC).

Why impact would occur: BIO-01 of the MND proposes to conduct pre-construction surveys for nesting birds; however, BIO-1 limits pre-construction surveys for nesting birds to the typical bird nesting season (i.e., February to August). CDFW recommends that disturbance to occupied nests of non-migratory passerine birds, migratory birds, and raptors within the Project site and surrounding area be avoided *any time* birds are nesting onsite. This is in consideration that studies have shown that migratory bird species arrive earlier in the season partially in response to higher temperatures influenced by climate change (Usui et. al. 2016)². In addition, in response to warming, birds have been reported to breed earlier and CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates.

Evidence impact would be significant: It is the Project Proponent's responsibility to avoid take of all nesting birds. Fish & G. Code § 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish & G. Code § 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish & G. Code § 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the draft MND provided a mitigation

² Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: A Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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measure, BIO-01, to minimize the Project's impacts to nesting birds. CDFW offers the following revisions to BIO-01 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to avoid and minimize impacts to nesting birds.

Mitigation Measure: BIO-01 Pre-construction Nesting Bird Clearance survey.

~~If construction occurs between February 1st and August 31st, MWA shall ensure a pre-construction clearance survey for nesting birds be conducted~~ **by a qualified biologist** within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. **Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures.** The **qualified** biologist conducting the clearance survey ~~will should~~ document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. **If a nest is suspected, but not confirmed, the qualified biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The qualified biologist shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed).** If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the ~~qualified wildlife~~ **qualified** biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. **The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall adjust the buffer accordingly.** Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.

COMMENT #2: Burrowing Owl (*Athene cunicularia*)

Issue: The Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. The Project may result in the take of burrowing owl, a candidate species under the CESA, during construction of the Project and the life of the Project. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

Specific impact: Project related activities may result in direct or indirect take of burrowing owl by reducing/eliminating suitable habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: BIO-02 proposes to conduct a pre-construction survey for burrowing owl concurrently with the nesting bird surveys in BIO-01. However, as addressed in Comment #1, BIO-01 states that surveys for nesting birds will only occur if Project activities commence between February 1st and August 31st. This is concerning to CDFW, as surveys for burrowing owl may not occur or surveys may not follow proper protocol if combined with nesting bird surveys. Additionally, BIO-02 considers translocation of burrowing owl, which should only occur through a CESA incidental take permit (ITP). The Biological Resources Assessment states that suitable foraging habitat is present for burrowing owl and that burrowing owl has the potential to

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occur on the Project site, but only one single field investigation was conducted on April 18, 2024. Breeding season surveys for burrowing owl were not conducted consistent with Appendix D of the CDFW 2012 Staff Report on Burrowing Owl Mitigation³ to properly assess whether burrowing owl may be present within the Project site or surrounding areas. Impacts to burrowing owl may be significant if burrowing owl is not properly identified on-site; for example, through species specific take surveys prior to construction and if translocation occurs absent a CESA ITP. If surveys detect burrowing owl, instead of following a Burrowing Owl Plan, as proposed in BIO-02, CDFW recommends Mojave Water Agency contact CDFW and fully avoid impacts to burrowing owl or if impacts are unavoidable, Mojave Water Agency should obtain a CESA ITP.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that burrowing owl warrants protection as a candidate species under CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). If Project activities could result in take, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure, BIO-02, to avoid and minimize the Project's impacts to burrowing owl. In consideration of the above-mentioned, CDFW offers the following revisions to BIO-02 (edits are in ~~strikethrough~~ and **bold**) for inclusions in the final MND.

Mitigation Measure: BIO-02: Pre-construction Burrowing Owl Clearance Survey

Due to the potential of occurrence **and habitat**, MWA shall ensure a pre-construction burrowing owl **take avoidance clearance surveys are shall be** conducted by a qualified biologist **consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation** ~~concurrently with the pre-construction nesting bird clearance survey~~ to ensure that burrowing owl remains absent from the Project Site. **Take avoidance surveys shall be conducted by a qualified biologist no less than 14 days prior to initiation ground disturbing activities, and again within 24 hours prior to ground disturbance.** Depending on the results from the pre-construction Burrowing Owl Survey, the District shall perform the following:

- Not Detected: If burrowing owl are not detected during the pre-construction survey, no further mitigation is required. If burrowing owl are detected, CDFW shall be sent written notification within 3 days of detection of burrowing owls **and impacts to burrowing owl shall be fully avoided or if impacts are unavoidable, the District shall obtain an ITP.**
- Discovery of Burrowing Owl: If active burrowing owl burrows **or sign** are detected **at anytime during pre-construction surveys or during Project activities**, the District shall not commence activities **and fully avoid impacts to burrowing owl** until no sign is present that the burrows are being used by adult or juvenile owls ~~or following CDFW approval of a Burrowing Owl Plan as described below.~~ If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. ~~The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl~~

³ California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

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Plan. If impacts to burrowing owl are unavoidable, the District shall obtain an incidental take permit for burrowing owl from CDFW.

~~Burrowing Owl Plan: The Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012). The qualified biologist and MWA shall coordinate with the Agency and CDFW to develop a Burrowing Owl Plan to be approved by the District and CDFW prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The District shall implement the Burrowing Owl Plan following CDFW review and approval.~~

COMMENT #3: Desert tortoise (*Gopherus agassizii*)

Issue: The Project has the potential to result in permanent and temporary loss and degradation of desert tortoise habitat. Additionally, the Project may result in the take of desert tortoise, a CESA listed endangered species, during construction of the Project and the life of the Project. California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

Specific Impact: Project related activities may result in direct or indirect take of desert tortoise by reducing/eliminating habitat for the species, restricting species movement, or causing injury or mortality.

Why impact would occur: The MND proposes to conduct pre-construction surveys for desert tortoise 30 days prior to construction activities. However, because desert tortoise is known to utilize multiple burrows that may be used over a span of a number of days and vary temporally and spatially (Grover and DeFalco 1995)⁴, desert tortoise may move into the Project area following pre-construction surveys conducted too far out from the start of construction. Therefore, desert tortoise may not be detected prior to the start of Project activities if pre-construction surveys occur 30 days prior to construction. For this reason, CDFW recommends that pre-construction surveys for desert tortoise be conducted within 48 hours of construction.

Furthermore, BIO-3 as written does not provide the methodology for the pre-construction desert tortoise surveys. The USFWS 2019 Desert Tortoise Protocol⁵ provides clear guidance on how to effectively survey and determine whether desert tortoise may be in the Project area. If desert tortoise are not properly surveyed for, they may not be detected during the pre-construction surveys and impacts to desert tortoise may occur.

Evidence impact would be significant: Desert tortoise was recently uplisted from a threatened to endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. Desert tortoise populations have declined significantly in recent decades as a result of human activities in desert tortoise habitat including land development, off-road vehicle use, overgrazing, agricultural development, and military activities (USFWS 2011)⁶. In addition, predation from ravens and the spread of invasive plant species also pose a threat to desert tortoises. The desert tortoise population in the western Mojave

⁴ Grover M.C., and DeFalco L.A., (1995). Desert Tortoise (*Gopherus agassizii*): Status-of-Knowledge Outline with References. U.S. Department of Agriculture, Forest Service, Intermountain Research Station.

⁵ U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*).

⁶ U.S. Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

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Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW appreciates that the MND provided a mitigation measure to avoid and minimize the Project's impacts to desert tortoise. CDFW offers the following revisions to BIO-3 (edits are in ~~strike through~~ and **bold**) for inclusions in the final MND to clarify when surveys should occur.

Mitigation Measure: BIO-03 Pre-Construction Desert Tortoise Clearance Survey

~~Thirty (30) days prior to ground disturbing areas, MWA shall ensure~~ **A** a preconstruction Desert Tortoise Clearance survey shall be conducted **by a qualified biologist no more than forty-eight (48) hours prior to ground disturbing activities consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Protocol on the entire Project area** ~~in undeveloped areas~~ to confirm the absence of desert tortoise within the **Project boundaries of the survey area**. **The survey shall utilize perpendicular survey routes and ensure 100% visual coverage for desert tortoise and their sign (e.g., scat, tracks, burrows)**. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey **or at any time during Project activities, the District shall fully avoid impacts to desert tortoise**, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if **incidental take** ~~"Take"~~ permits will need to be obtained, prepared, and approved by the USFWS and CDFW.

COMMENT #4: Fish and Game Code Section 1602 Resources

Issue: The Project as described may result in substantial impacts to unnamed ephemeral desert washes located across the Project site.

Specific Impact: The Project may result in significant impacts to and the loss of Fish and Game Code section 1602 resources.

Why impact would occur: The MND does not propose a mitigation measure for potential impacts to Fish and Game Code section 1602 resources that traverse the Project site. The Biological Resources Assessment stated that blue-line features were reviewed from the USFWS NWI and the USGS National Hydrography Dataset and concluded that Pipes Wash is located west of the Project site and no impacts to Pipes Wash are expected. However, Fish and Game Code section 1602 resources are not limited to only blue-line features and therefore potential Fish and Game Code section 1602 resources may not have been properly assessed. In fact, based on aerial imagery several ephemeral streams traverse the Project site that are tributary to the Pipes Wash. CDFW strongly recommends the Project Proponent notify pursuant to Fish and Game Code section 1602 and obtain a Lake or Streambed Alteration Agreement, if CDFW determines that Project activities may substantially adversely affect fish and wildlife resources.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

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Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW recommends the inclusion of BIO-6 in the final MND.

Mitigation Measure: BIO-06 Fish and Game Code Section 1602 Resources (NEW)

Prior to any ground disturbing Project activities, the Project Proponent shall notify CDFW pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Lake or Streambed Alternation Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

Editorial Comments and/or Suggestions

Invasive and Special Status Species Awareness Education Program

Through the implementation of the Project, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. Therefore, CDFW suggests the incorporation of a worker awareness education program to educate everyone, prior to working on the Project site, regarding invasive species as well as special status species that occur or may occur on site, and any measures required to address these species if found.

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 of 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. (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 MND to assist the Mojave Water Agency in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Emily Leon, Environmental Scientist, at Emily.Leon@wildlife.ca.gov or at (760) 644-5976.

Sincerely,

DocuSigned by:

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Alisa Ellsworth
Environmental Program Manager

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ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@lci.ca.gov

Charles Smith, Senior Environmental Project Manager
Ardurra Group, Inc
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ATTACHMENTS

Attachment A: Mitigation Monitoring Reporting Plan

REFERENCES

California Department of Fish and Wildlife (CDFW). 2012. Staff Report on Burrowing Owl Mitigation.

Grover M.C., and DeFalco L.A., (1995). Desert Tortoise (*Gopherus agassizii*): Status-of-Knowledge Outline with References. U.S. Department of Agriculture, Forest Service, Intermountain Research Station.

U.S. Fish and Wildlife Service (USFWS). 2019. Preparing for Any Action that May Occur Within the Range of the Mojave Desert Tortoise (*Gopherus agassizii*).

U.S. Fish and Wildlife Service (USFWS). 2011. Revised Recovery Plan for Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

Usui, T., Butchart, S.H.M., and Philmore A.B., (2016). Temporal Shifts and Temperature Sensitivity of Avian Spring Migratory Phenology: A Phylogenetic Meta-analysis. *Journal of Animal Ecology* 86(2): 250-261.

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Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-01 Pre-construction Nesting Bird Clearance Survey</p> <p>MWA shall ensure a pre-construction clearance survey for nesting birds be conducted by a qualified biologist within three (3) days of the start of any vegetation removal or ground disturbing activities to ensure that no nesting birds will be disturbed during construction. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. The qualified biologist conducting the clearance survey will document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. If a nest is suspected, but not confirmed, the qualified biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The qualified biologist shall not risk failure of the nest to determine the exact location or status and shall make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If an active avian nest is discovered during the pre-construction clearance survey, construction activities should stay outside of a no-disturbance buffer. The size of the no-disturbance buffer will be determined by the qualified biologist and will depend on the level of noise and/or surrounding anthropogenic disturbances, line of sight between the nest and the construction activity, type and duration of construction activity, ambient noise, species habituation, and topographical barriers. These factors will be evaluated on a case-by-case basis when developing buffer distances. Limits of construction to avoid an active nest will be established in the field with flagging, fencing, or other appropriate barriers; and construction personnel will be instructed on the sensitivity of nest areas. A biological monitor should be present to delineate the boundaries of the buffer area and to monitor the active nest to ensure that nesting behavior is not adversely affected by the construction activity. The buffer shall be delineated</p>	<p>Within three (3) days of the start of any vegetation removal or ground disturbing activities</p>	<p>Qualified Biologist</p>

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<p>to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall adjust the buffer accordingly. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, construction activities within the buffer area can occur.</p>		
<p>BIO-02: Pre-construction Burrowing Owl Clearance Survey</p> <p>Due to the potential of occurrence and habitat, MWA shall ensure pre-construction burrowing owl take avoidance surveys are conducted by a qualified biologist consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation to ensure that burrowing owl remains absent from the Project Site. Take avoidance surveys shall be conducted by a qualified biologist no less than 14 days prior to initiation ground disturbing activities, and again within 24 hours prior to ground disturbance. Depending on the results from the pre-construction Burrowing Owl Survey, the District shall perform the following:</p> <ul style="list-style-type: none"> - Not Detected: If burrowing owl are not detected during the pre-construction survey, no further mitigation is required. If burrowing owl are detected, CDFW shall be sent written notification within 3 days of detection of burrowing owls and impacts to burrowing owl shall be fully avoided or if impacts are unavoidable, the District should obtain an ITP. - Discovery of Burrowing Owl: If active burrowing owl burrows or sign are detected at anytime during pre-construction surveys or during Project activities, the District shall not commence activities and fully avoid impacts to burrowing owl until no sign is present that the burrows are being used by adult or juvenile owls. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. If impacts to burrowing owl are unavoidable, the District shall obtain an incidental take permit for burrowing owl from CDFW. 	<p>No less than 14 days prior to initiation ground disturbing activities, and again within 24 hours prior to ground disturbance</p>	<p>Qualified Biologist</p>
<p>BIO-03 Pre-Construction Desert Tortoise Clearance Survey</p>	<p>No more than forty-eight (48) hours prior to ground</p>	<p>Qualified Biologist</p>

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<p>A preconstruction Desert Tortoise Clearance survey shall be conducted by a qualified biologist no more than forty-eight (48) hours prior to ground disturbing activities consistent with the U.S. Fish and Wildlife Service 2019 Desert Tortoise Protocol on the entire Project area to confirm the absence of desert tortoise within the Project area. The survey shall utilize perpendicular survey routes and ensure 100% visual coverage for desert tortoise and their sign (e.g., scat, tracks, burrows). All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Although not anticipated, if desert tortoise are found onsite during the pre-construction clearance survey or at any time during Project activities, the District fully avoid impacts to desert tortoise, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if incidental take permits will need to be obtained, prepared, and approved by the USFWS and CDFW.</p>	<p>disturbing activities on the Project area</p>	
<p>BIO-06 Fish and Game Code Section 1602 Resources</p> <p>Prior to any ground disturbing Project activities, the Project Proponent shall notify CDFW pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Lake or Streambed Alteration Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.</p>	<p>Prior to any ground disturbing Project activities</p>	<p>Project Proponent</p>