

DECEMBER 11, 2025



EAST AMES-RECHE
RECHARGE FACILITY PROJECT
FINAL INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

PREPARED BY:



State Clearinghouse No. 2025090734

FINAL INITIAL STUDY /
MITIGATED NEGATIVE DECLARATION
FOR
EAST AMES-RECHE RECHARGE FACILITY PROJECT
LANDERS, CALIFORNIA
State Clearinghouse No. 2025090734

Prepared for:

Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307

DECEMBER 11, 2025

Prepared by:

Ardurra Group
3737 Birch Street, Suite 250
Newport Beach, CA 92660

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1.0 INTRODUCTION

Mojave Water Agency (MWA) proposes to construct the East Ames-Reche Recharge Facility Project, consisting of the development of two (2) new recharge basins (north and south) on 10 acres surrounded by 12-ft tall berms, in Landers, unincorporated San Bernardino County, California. Improvements include: an access road surrounding the perimeter of each basin; 6-foot perimeter fencing with barbed wire; a new tee connection within the Winters Road right-of-way; approximately 500 linear feet of 12-inch nonpotable water pipeline from Winters Road to the eastern perimeter of each basin; two (2) headwalls located along the eastern perimeter of each basin connecting to the new nonpotable water pipeline; outlet with energy dissipator; and a nested or multi-completion monitoring well located within the proposed site to monitor infiltration rates, groundwater levels, and water quality. The proposed improvements will allow MWA to increase its groundwater recharge capacity of annual State Water Project Table A allocations. The development of the recharge basins will result in a maximum flow rate of 5 cubic feet per second (cfs) with an anticipated annual recharge capacity of 1,500 AFY.

The major goals of the Project are to:

- Address population increases over time which can lead to decreases in potential groundwater recharge;
- Increase resilience to drought;
- Provide reliable groundwater recharge; and
- Ensure safe yield is achieved and maintained.

The Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project (State Clearinghouse No. 2025090734) was made available for public review and comment pursuant to CEQA Guidelines Section 15073. The public review period commenced on September 15, 2025 and concluded on October 16, 2025. The State review period commenced on September 17, 2025 and concluded on October 16, 2025.

The ISMND was made available for public review on the Agency's website at <https://www.mojavewater.org> and at the Mojave Water Agency at the following address: 13846 Conference Center Drive, Apple Valley, CA 92307. Agencies and the public were directed to call or email MWA's staff to arrange a viewing of the IS/MND and/or supporting materials during the public review period.

2.0 RESPONSE TO COMMENTS

The public review period commenced on September 15, 2025 and concluded on October 16, 2025. The State review period commenced on September 17, 2025 and concluded on October 16, 2025. Public comments on the Draft IS/MND were also accommodated at MWA's Board meeting on November 13, 2025. One letter was received during the review period, as identified in **Table 1: Comment Letters**.

TABLE 1: COMMENT LETTERS

Comment Letter No.	Person, Firm, or Agency	Letter Dated
1	California Department of Fish and Wildlife	October 3, 2025

MWA numbered each discrete topic in the comment letter, evaluated the comments, and provided a written response to the commenting agency. Revisions to the Draft IS/MND, as deemed applicable by MWA, have been incorporated into this Final IS/MND for a comprehensive and meaningful review of the proposed Project (See **Table 2: Response to Comments Matrix**).

Revisions to the Draft IS/MND are noted as follows: additions to the text are indicated in double-underline; deletions from the text are indicated in ~~striketrough~~.

TABLE 2: RESPONSE TO COMMENTS MATRIX

Comment Number	Comment	Response	Revision(s) to ISMND
1	California Department of Fish and Wildlife		
1-1	The commenter states that 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. The commenter offers revisions to Mitigation Measure BIO-01 for inclusion in the final MND to further avoid and minimize potential impacts to nesting birds.	The Draft IS/MND discusses potential impacts to nesting birds and includes Mitigation Measure BIO-1 to reduce those impacts below significance. MWA concurs with the revisions to Mitigation Measure BIO-1 as suggested by the commenter.	Revisions to Mitigation Measure BIO-1 as suggested by the commenter have been incorporated into the Final IS/MND. See Final IS/MND Section 3.0 - Errata, and Section 4.0 - Table 3, Mitigation Monitoring and Reporting Program Checklist.
1-2	The commenter states that the Project has the potential to result in permanent and temporary loss, degradation, and impacts to burrowing owl habitat. The commenter suggests that 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. The commenter offers revisions to Mitigation Measure BIO-02 for inclusion in the final MND to further avoid and minimize potential impacts to burrowing owl.	The Draft IS/MND discusses potential impacts to burrowing owl and includes Mitigation Measure BIO-2 to reduce those impacts below significance. MWA concurs with the revisions to Mitigation Measure BIO-2 as suggested by the commenter.	Revisions to Mitigation Measure BIO-2 as suggested by the commenter have been incorporated into the Final IS/MND. See Final IS/MND Section 3.0 - Errata, and Section 4.0 - Table 3, Mitigation Monitoring and Reporting Program Checklist.
1-3	The commenter states that the Project has the potential to result in permanent and temporary loss and degradation of desert tortoise habitat. The commenter suggests that 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. The commenter offers revisions to Mitigation Measure BIO-03 for inclusion in the final MND to further avoid and minimize potential impacts to desert tortoise.	The Draft IS/MND discusses potential impacts to desert tortoise and includes Mitigation Measure BIO-3 to reduce those impacts below significance. MWA concurs with the revisions to Mitigation Measure BIO-3 as suggested by the commenter.	Revisions to Mitigation Measure BIO-3 as suggested by the commenter have been incorporated into the Final IS/MND. See Final IS/MND Section 3.0 - Errata, and Section 4.0 - Table 3, Mitigation Monitoring and Reporting Program Checklist.

Comment Number	Comment	Response	Revision(s) to ISMND
1-4	The commenter suggests that the Project as described may result in substantial impacts to unnamed ephemeral desert washes located across the Project site. The commenter recommends the Project Proponent notify CDFW 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.	MWA concurs with the commenter's summation of Section 1602 requirements but notes that conditions potentially impacting such resources are not present on site. MWA's conclusion is based on results from the Biological Resources Assessment (ELMT Consulting, 2024) prepared for the project. During the field survey, ELMT carefully assessed the site for depressions, inundation, presence of hydrophytic vegetation, staining, cracked soil, ponding, and indicators of active surface flow and corresponding physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris. Suspected jurisdictional areas were checked for the presence of definable channels, soils, and hydrology. No evidence (i.e., water staining, wrack lines, sediment deposits) of regular flows along the length of the historic drainage features were observed. Further, no ponding/standing water was observed onsite. The small swale-like features visible in recent 2023 aerial imagery were found to convey only localized overland sheet flow and do not qualify as jurisdictional resources. These isolated swales or rivulets originate onsite and lack any hydrologic connection to Pipes Wash, which is located west of, and outside of the project footprint. The features generally extend in a southwest-to-northeast direction, parallel to and away from Pipes Wash.	Additional details supporting the No Impact conclusion of IS/MND checklist item 4.4(c) have been provided in the Final IS/MND.

Comment Number	Comment	Response	Revision(s) to ISMND
		Furthermore, the swales do not support riparian vegetation, do not provide suitable habitat for special-status wildlife species, and do not function as a wildlife movement corridor or linkage. Based on these findings, the site does not support resources subject to CDFW jurisdiction under Section 1602 of the Fish and Game Code. Therefore, the project would not result in a substantial adverse impact on existing fish or wildlife resources, and a CDFW Section 1602 Notification of Lake or Streambed Alteration Agreement would not be required.	
1-5	The commenter suggests that through implementation of the Project, invasive species may be introduced to the surrounding undeveloped areas and may encroach on native plant species. The commenter suggests the incorporation of a worker awareness education program to educate construction workers, 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.	MWA acknowledges the importance of construction worker education, and will incorporate a worker awareness education program into the construction bid documents as a Best Management Practice.	A construction worker awareness education program as suggested by the commenter has been incorporated into the Final IS/MND as a Best Management Practice. See Final IS/MND Section 3.0 – Errata.
1-6	The commenter notes that information developed in environmental impact reports and negative declarations should be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. The commenter requests that the Project Proponent report any special status species and natural communities	MWA acknowledges the comment and will report surveys results to the CNDDDB as noted.	No revisions needed to the IS/MND.

Comment Number	Comment	Response	Revision(s) to ISMND
	detected during Project surveys to the California Natural Diversity Database (CNDDDB).		
1-7	The commenter notes environmental document filing fees to CDFW are necessary and payable upon filing of the CEQA Notice of Determination (NOD) by the Lead Agency.	MWA acknowledges the applicability of environmental document filing fees to CDFW and will make payment upon filing of the CEQA NOD.	No revisions needed to the IS/MND.



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 3, 2025

Melody Bailey, Water Resources Manager
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307
Mbailey@mojavewater.org

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.

1-1

~~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.

1-2

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.

1-2

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 ~~strike through~~ 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.

1-2

~~— 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.

1-3

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

1-3

~~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.

1-4

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 blueline 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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1-4

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 Alteration 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

1-5

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.

1-6

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>.

1-7

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:

Alisa Ellsworth

84FBB8273E4C480

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
Chsmith@ardurra.com

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
BIO-01 Pre-construction Nesting Bird Clearance Survey 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	Within three (3) days of the start of any vegetation removal or ground disturbing activities	Qualified Biologist

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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.		
BIO-02: Pre-construction Burrowing Owl Clearence Survey 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: - 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.	No less than 14 days prior to initiation ground disturbing activities, and again within 24 hours prior to ground disturbance	Qualified Biologist
BIO-03 Pre-Construction Desert Tortoise Clearence Survey	No more than forty-eight (48) hours prior to ground	Qualified Biologist

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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.	disturbing activities on the Project area	
BIO-06 Fish and Game Code Section 1602 Resources 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.	Prior to any ground disturbing Project activities	Project Proponent

3.0 ERRATA

As discussed above in Section 2.0 Response to Comments, revisions to the Draft IS/MND are noted as follows: additions to the text are indicated in double-underline; deletions from the text are indicated in ~~strikethrough~~.

These errata address revisions to the Draft IS/MND associated with the comments summarized in Table 2: Response to Comments Matrix. The revisions do not influence the overall conclusions of the environmental impacts outlined within the Draft IS/MND, and do not result in any new or substantially greater significant impacts as compared to those identified in the Draft IS/MND.

1. SECTION 4.4 Biological Resources

p. 45

A total of sixty-eight (68) western Joshua trees were observed during the field investigation, including ten (10) individuals measuring less than one meter in height, forty-four (44) individuals measuring between one and five meters in height, and fourteen (14) individuals measuring over five meters in height. Using *Table 8: Joshua Tree Mitigation Fees*, impacts to all of the western Joshua trees onsite will require a mitigation fee of \$60,400 to be paid into the Western Joshua Tree Mitigation Fund for approved off-site conservation.

Beyond the potential impacts to the Western Joshua Tree as described above, project construction activities may introduce invasive species to the surrounding undeveloped areas and may encroach on native plant species. Accordingly, A construction worker awareness education program will be incorporated into the construction bid documents as a Best Management Practice to educate construction workers, 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.

p. 45-46

While no active bird nests or birds were observed during the field survey; courtship and nesting behaviors were observed. The Mojavean desert scrub plant community provides suitable foraging and nesting habitat for year-round and seasonal avian residents, as well as migrating songbirds that have adapted to conditions in the Mojave Desert. Based on the biological resources field investigation, as well as likelihood of occurrence for nesting birds and burrowing owls identified during research, the Project could result in impacts on migratory birds. Accordingly, Mitigation Measures **MM BIO-01: Preconstruction Nesting Bird Clearance Survey** and **MM BIO-02: Pre-construction Burrowing Owl Clearance Surveys** are required prior to the start of vegetation removal or ground disturbing activities; ~~if Project construction is expected to occur between February 1 and August 31.~~ Implementation of these Mitigation Measures will ensure that no nesting birds or burrowing owls will be disturbed throughout construction activities pursuant to the MBTA and Fish and Game Code.

p. 46

The Project Site provides suitable foraging and nesting habitat for a variety of reptilian species adapted to conditions within the Mojave Desert. No reptilian species were observed during the field

investigation. Common reptilian species that could be expected to occur at the Project Site include common side-blotched lizard (*Uta stansburiana elegans*), great basin whiptail (*Aspidoscelis tigris tigris*), and Great Basin gopher snake (*Pituophis catenifer deserticola*). No desert tortoise or signs were observed during the field investigation. However, due to the potential for occurrence for the Desert Tortoise and presence of habitat, Mitigation Measure **MM BIO-03: Pre-construction Desert Tortoise Clearance Survey** shall be conducted ~~thirty (30) days prior to ground disturbing activities throughout undeveloped areas of the Project Site~~ by a qualified biologist no more than 48 hours prior to ground disturbing activities. This Mitigation Measure will reduce potential impacts to the Desert Tortoise, a Federally Endangered Species, to a less than significant level, through thorough inspections for presence/absence prior to earthworks and other ground disturbances; in addition, a preconstruction Desert Tortoise Clearance Survey would identify the need for an Incidental Take Permit (ITP) for this species prior to Project implementation.

p. 47

- c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

RESPONSE:

No Impact. ~~Based on the site visit and review of USFWS National Wetland Inventory (NWI) and EPA Water Program "My Waters" data layers, it was determined by the Project Biologist that no wetlands are near or adjacent to the Project Alignment. Therefore, no impacts to wetlands are anticipated; therefore, no additional Mitigation Measures are needed.~~ Based on results from the Biological Resources Assessment (ELMT Consulting, 2024) prepared for the project, conditions potentially impacting state or federally protected wetlands are not present on site. A field survey was conducted to carefully assess the site for depressions, inundation, presence of hydrophytic vegetation, staining, cracked soil, ponding, and indicators of active surface flow and corresponding physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris. Suspected jurisdictional areas were checked for the presence of definable channels, soils, and hydrology. No evidence (i.e., water staining, wrack lines, sediment deposits) of regular flows along the length of the historic drainage features were observed. Further, no ponding/standing water was observed onsite.

The small swale-like features visible in recent 2023 aerial imagery were found to convey only localized overland sheet flow and do not qualify as jurisdictional resources. These isolated swales or rivulets originate onsite and lack any hydrologic connection to Pipes Wash, which is located west of, and outside of the project footprint. The features generally extend in a southwest-to-northeast direction, parallel to and away from Pipes Wash. Furthermore, the swales do not support riparian vegetation, do not provide suitable habitat for special-status wildlife species, and do not function as a wildlife movement corridor or linkage.

Based on these findings, the site would not impact federally protected wetlands nor support resources subject to CDFW jurisdiction under Section 1602 of the Fish and Game Code. Therefore, the project would not result in a substantial adverse impact on existing fish or wildlife resources, and a CDFW Section 1602 Notification of Lake or Streambed Alteration Agreement would not be required.

p. 48-49

See revisions to **Mitigation Measures MM BIO-01, MM BIO-02, and MM BIO-03** as shown in Section 4.0, Mitigation Monitoring and Reporting Program, of this Final IS/MND.

p. 61

See revisions to **Mitigation Measure MM GEO-01** as shown in Section 4.0, Mitigation Monitoring and Reporting Program, of this Final IS/MND.

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

A Mitigation Monitoring and Reporting Program (MMRP) is required for the East Ames-Reche Recharge Facility Project, to comply with the California Environmental Quality Act (CEQA), Public Resources Code Section 21081.6. Since the environmental analysis in the IS/MND for the Project indicates less than significant impacts on the environment with the incorporation of mitigation measures, CEQA requires preparation of an MMRP to establish a plan and reporting framework for implementation of each mitigation measure in the IS/MND. CEQA stipulates that “the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval with the intent to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation.”

Table 3 below lists final mitigation measures for the Project. Similar to the text presented above in Section 3.0 Errata, revisions to the Draft IS/MND MMRP are noted as follows: additions to the text are indicated in double-underline; deletions from the text are indicated in ~~striketrough~~. The table identifies impacts, mitigation measures, monitoring/timing frequency, the responsible agency for implementing the measure, action indicating compliance, and provides a log for documenting mitigation measure implementation. The numbering of mitigation measures follows the numbering sequence found in the IS/MND for the Project.

MWA is the lead agency for the project under CEQA and shall administer and implement the MMRP. MWA is responsible for reviewing all monitoring reports, enforcement actions, and document disposition. MWA shall rely on information provided by the project site observers/monitors (e.g., construction manager, project manager, biologist, archaeologist) as accurate and up-to-date and shall provide inspection personnel to field check mitigation measure status, as required.

TABLE 3: MITIGATION MONITORING AND REPORTING PROGRAM CHECKLIST

CEQA Guidelines Section 21081.6 requires that a mitigation monitoring and reporting program (MMRP) be adopted upon certification of a Mitigated Negative Declaration to ensure that the mitigation measures are implemented. The mitigation monitoring and reporting program identifies the mitigation and when in the process it should be implemented. The Mojave Water Agency (MWA) is the implementing responsible party for all measures. A record of the MMRP will be maintained at the Mojave Water Agency, 13846 Conference Center Drive, Apple Valley, CA 92307.

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
AESTHETICS						
Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	MM BIO-05: Tree & Plant Removal Permit (see below).	See below	See below			
AGRICULTURE & FORESTRY						
Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	MM BIO-04: Cover Species Inventory and MM BIO-05: Incidental Take Permit (see below).	See below	See below			
AIR QUALITY						
Conflict with or obstruct implementation of the applicable air quality plan?	MM-AQ-1, MDAQMD Compliance. The project applicant shall ensure that all applicable MDAQMD Rules and Regulations are complied with during construction.	Prior to issuance Notice to Proceed with Construction Contractor, then weekly thereafter	Confirmation of compliance with MDAQMD Rules and Regulations.			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
BIOLOGICAL RESOURCES						
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 the California Department of Fish and Game or U.S. Fish and Wildlife Service?	MM 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 <u>by a qualified biologist</u> 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. <u>Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures.</u> The <u>qualified biologist</u> conducting the clearance survey ~~will~~ <u>should</u> document a negative survey with a brief letter report indicating that no impacts to active avian nests will occur. <u>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).</u> 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~~ <u>qualified biologist</u> 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. <u>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</u>	Within 3 days of the start of vegetation removal or ground disturbing activities	Brief letter report from biologist submitted to MWA			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	<u>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.</u> 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.					
	MM BIO-02: Pre-construction Burrowing Owl Clearance Survey. Due to the potential of occurrence <u>and habitat</u>, MWA shall ensure a pre-construction burrowing owl <u>take avoidance clearance surveys are</u> shall be conducted by a qualified biologist <u>consistent with the CDFW 2012 Staff Report on Burrowing Owl Mitigation concurrently with the pre-construction nesting bird clearance survey</u> to ensure that burrowing owl remains absent from the Project Site. <u>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.</u> 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 <u>and impacts to burrowing owl shall be fully avoided or if impacts are unavoidable, the District shall obtain an ITP.</u> - Discovery of Burrowing Owl: If active burrowing owl burrows <u>or sign</u> are detected <u>at anytime during pre-construction surveys or during Project activities</u>, the District shall not commence activities <u>and fully avoid impacts to burrowing owl</u> until no sign is present that the burrows are being used by adult or juvenile owls <u>or following CDFW approval of a Burrowing Owl Plan as described below.</u> 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. <u>The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan. If impacts to burrowing owl are unavoidable, the District shall obtain an incidental take permit for burrowing owl from CDFW.</u>	Prior to start of construction	Survey memo or Burrowing Owl Plan from biologist submitted to MWA and CDFW, as applicable			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	- <u>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.</u>					
	MM BIO-03: Pre-construction Desert Tortoise Clearance Survey: <u>Thirty (30) days prior to ground disturbing areas, MWA shall ensure 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).</u> 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 <u>or at any time during Project activities, the District shall fully avoid impacts to desert tortoise</u>, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization	<u>Within 30 days</u> <u>No more than 48 hours</u> prior to ground disturbing activities	Survey memo from biologist submitted to MWA Avoidance and minimization measures documented with USFWS and CDFW, as applicable Incidental Task Permit application(s) from MWA submitted and issued by USFWS and CDFW, as applicable			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	measures can be implemented to avoid any direct or indirect impacts to desert tortoise, or if <u>incidental take</u> "Take" permits will need to be obtained, prepared, and approved by the USFWS and CDFW.		Copy of permit provided to construction contractor			
Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	MM BIO-05: Incidental Take Permit: Prior to the start of construction, the permittee shall obtain a western Joshua tree incidental take permit and pay in-lieu fees for the removal of 68 western Joshua trees within the Project Site. The permittee must adhere to the conditions of the WJTCA Incidental Take Permit.	Prior to start of construction	Incidental Take Permit application(s) submitted and issued by USFWS and CDFW Memo documenting delegated authority Copy of permit provided to construction contractor			
Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	MM BIO-04: Cover Species Inventory: MWA shall obtain a qualified biologist to conduct a comprehensive inventory of all covered species within the Project Site and Project Footprint, no more than 30-days and 3-days prior to Project construction. The inventory shall include identification and documentation of all special status species present on-site; mapping of species location using GPS coordinates; and photographic documentation of species and their habitats. Any changes in species presence shall be recorded and provided to MWA and the Project contractor.	Between 3 and 30 days prior to project construction	Survey memo from biologist submitted to MWA and construction contractor			
	MM BIO-05: Incidental Take Permit (see above).	See above	See above			
CULTURAL RESOURCES						
Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5?	MM-CUL-01: Cultural Resources Monitoring. In the event that cultural resources are discovered during project activities, all work in the immediate vicinity of the find (within a 60-foot buffer) shall cease and a qualified archaeologist meeting Secretary of Interior standards shall be hired to assess the find. Work on the other portions of the project outside of the buffered	During ground disturbing activities	Report by qualified archaeologist Documented contact with YSMN			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	area may continue during this assessment period. Additionally, the Yuhaaviatam of San Manuel Nation Cultural Resources Department (YSMN) shall be contacted, as detailed within TCR-1, regarding any pre-contact finds and be provided information after the archaeologist makes his/her initial assessment of the nature of the find, so as to provide Tribal input with regards to significance and treatment.					
	MM-CUL-02: Cultural Resources Monitoring and Treatment Plan. If significant pre-contact cultural resources, as defined by CEQA (as amended, 2015), are discovered and avoidance cannot be ensured, the archaeologist shall develop a Monitoring and Treatment Plan, the drafts of which shall be provided to YSMN for review and comment, as detailed within TCR-1. The archaeologist shall monitor the remainder of the project and implement the Plan accordingly.	During ground disturbing activities	Monitoring and Treatment Plan from archaeologist submitted to YSMN			
Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	MM-CUL-01: Cultural Resources Monitoring (see above).	See above	See above			
	MM-CUL-02: Cultural Resources Monitoring and Treatment plan (see above).	See above	See above			
Disturb any human remains, including those interred outside of dedicated cemeteries?	MM-CUL-03: Discovery of Human Remains. If human remains or funerary objects are encountered during any activities associated with the project, work in the immediate vicinity (within a 100-foot buffer of the find) shall cease and the County Coroner shall be contacted pursuant to State Health and Safety Code §7050.5 and that code enforced for the duration of the project.	During ground disturbing activities	Confirmation of coroner contact and submittal of Report of Findings, if applicable			
GEOLOGY AND SOILS						
Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	MM-GEO-1: Paleontological Resources Monitoring. A paleontological resources mitigation program shall be put in place to monitor, salvage, and curate recovered fossils associated within the Project Area. A qualified paleontological resources specialist will spot check construction excavations that would impact Pleistocene alluvial units. The frequency will be determined with the paleontological resources specialist and the construction contractor based on the work schedule and	Prior to start of construction	Paleontological Resources Mitigation Program from paleontologist submitted to MWA Memo documenting contact with County			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	anticipated depth of soil excavation. If evidence of subsurface paleontological resources is found during construction, excavation and other construction activity in that area shall cease and the construction contractor <u>MWA</u> shall contact the County of San Bernardino Planning Department. With direction from the County, a paleontologist certified by the County of San Bernardino shall evaluate the find prior to resuming ground disturbing activities in the immediate vicinity. If warranted, the paleontologist shall prepare and complete a standard Paleontological Resources Mitigation Program for the salvage and curation of identified resources.		of San Bernardino Planning Department, as applicable			
HYDROLOGY AND WATER QUALITY						
Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	BMP HYDRO-01: Construction BMPs. In accordance with the Construction General Permit and San Bernardino County General Plan EIR, the Project Contractor shall implement a Project-specific SWPPP, which will deploy construction BMPs from the California Stormwater Quality Association (CASQA). The following construction BMPs shall be implemented throughout construction activities: 1. Erosion Controls: will consist of using project scheduling and planning to reduce soil or vegetation disturbance (particularly during the rainy season), preventing or reducing erosion potential by diverting or controlling drainage, as well as preparing and stabilizing disturbed soil areas. a. Examples of erosion controls include scheduling, preservation of existing vegetation, hydraulic mulch, hydroseeding, soil binders, straw mulch, geotextile and mats, wood mulching, earth dikes and drainage swales, velocity dissipation devices, slope drains, streambank stabilization, compost blankets, soil preparation/roughening, and nonvegetative stabilization. 2. Sediment Controls will filter out soil particles that have been detached and transported in water. a. Examples of sediment controls include silt fence, sediment basin, sediment riprap, check dam, fiber rolls, gravel bag berm, street sweeping and vacuuming, sandbag barrier, straw bale barrier,	SWPPP prepared <u>by contractor</u> prior to project construction BMPs in place during project construction	List of required BMPs provided to construction contractor BMPs visibly in place throughout project construction, as applicable.			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	storm drain inlet protection, manufactured linear sediment controls, compost socks and berms, and biofilter bags. 3. Wind Erosion Controls will consist of applying water or other dust palliatives to prevent or minimize dust nuisance. a. Examples of wind erosion controls include dust control soil binders, chemical dust suppressants, covering stockpiles, permanent vegetation, mulching, watering, temporary gravel construction, synthetic covers, and minimization of disturbed area. 4. Tracking Dust Controls will minimize the tracking of soil offsite by vehicles a. Examples of tracking dust controls includes stabilized construction roadways and construction entrances/exits, and entrance/outlet tire wash. 5. Non-storm water management controls will prohibit discharge of materials other than stormwater, such as discharges from the cleaning, maintenance, and fueling of vehicles and equipment. Conduct various construction operations, including paving, grinding, and concrete curing and finishing, in ways that minimize non-stormwater discharges and contamination of any such discharges. a. Examples of non-stormwater management controls include water conservation practices, temporary stream crossings, clear water diversions, illicit connection/discharge, potable and irrigation water management, and the proper management of the following operations: paving and grinding, dewatering, vehicle and equipment cleaning, fueling and maintenance, pile driving, concrete curing, concrete finishing, demolition adjacent to water, material over water, and temporary batch plants. 6. Waste Management and Controls (i.e. good Housekeeping practices) will manage materials and wastes to avoid contamination of stormwater. a. Examples include stockpile management, spill prevention and control, solid waste management, hazardous waste management, contaminated soil					

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
	management, concrete waste management, sanitary/septic waste management, liquid waste management, and management of material delivery storage and use.					
TRIBAL CULTURAL RESOURCES						
Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:						
Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	MM-TCR-01: Tribal Cultural Resources Monitoring and Treatment Plan. The Yuhaaviatam of San Manuel Nation Cultural Resources Management Department (YSMN) shall be contacted, as detailed in CUL-1, of any pre-contact cultural resources discovered during project implementation, and be provided information regarding the nature of the find, so as to provide Tribal input with regards to significance and treatment. Should the find be deemed significant, as defined by CEQA (as amended, 2015), a Cultural Resources Monitoring and Treatment Plan shall be created by the archaeologist, in coordination with YSMN, and all subsequent finds shall be subject to this Plan. This Plan shall allow for a monitor to be present that represents YSMN for the remainder of the project, should YSMN elect to place a monitor on-site.	During ground disturbing activities	Monitoring and Treatment Plan from archaeologist submitted to YSMN			
A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code § 5024.1. In applying the criteria set forth in	MM-TCR-01: Tribal Cultural Resources Monitoring and Treatment Plan (see above).	See above	See above			

Impact	Mitigation Measure	Monitoring/ Timing Frequency	Action Indicating Compliance	Verification		
				Initials	Date	Remarks
subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.						
	MM-TCR-02: Tribal Consultation. Any and all archaeological/cultural documents created as a part of the project (isolate records, site records, survey reports, testing reports, etc.) shall be supplied to the applicant and Lead Agency for dissemination to YSMN. The Lead Agency and/or applicant shall, in good faith, consult with YSMN throughout the life of the project.	During ground disturbing activities	Documents from archaeologist submitted to MWA and YSMN			

5.0 DRAFT IS/MND

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