



DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov



February 9, 2026

Justin Vinson
Public Works Director
City of Atwater
1350 Broadway
Atwater, California 95301
jvinson@atwater.org

**Subject: Bert Crane Wastewater Treatment Plant Discharge Improvements
Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No. 2026010223**

Dear Justin Vinson:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from the City of Atwater (City) as Lead 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, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

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

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.

Justin Vinson
City of Atwater
February 9, 2026
Page 2

sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, and nests include section 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

Other Special-Status Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

Water Rights: Prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater, the City as owner of the wastewater treatment plant shall obtain approval of the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1211. The City as petitioner must provide a copy of the complete petition and request consultation with CDFW regarding the potential effects of the proposed change(s) on water quality, fish, wildlife, and other instream beneficial uses (Cal. Code Regs., tit. 23, § 794).

As Trustee Agency, CDFW is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to special-status species and their habitats, it is advised that details be disclosed during the CEQA process and that required consultation with CDFW occur well in advance of any SWRCB water right application process.

Justin Vinson
City of Atwater
February 9, 2026
Page 3

PROJECT DESCRIPTION SUMMARY

Proponent: City of Atwater

Description and Objective: In order to meet Sustainable Groundwater Management Act (SGMA) groundwater recharge requirements, the City intends to construct improvements to discharge its treated effluent to the Merced Irrigation District (MeID) via Black Rascal Creek or Bear Creek. The improvements would allow the City to redirect effluent flows to the Gallo Ranch, the creeks, or both.

Alternative 1 would include construction of 4,400 linear feet of 18-inch pipeline and flow diversion and dewatering. A new outfall structure into Bear Creek would be constructed.

Alternative 2 would include construction of 4,300 linear feet of 18-inch pipeline and flow diversion and dewatering. A new outfall structure into Black Rascal Creek would be constructed.

Alternative 3 would include connection to the existing Deckert Lateral culvert, construction of 5,400 linear feet of 18-inch pipeline, increases to MeID's Deckert Lateral capacity, replacing the existing MeID outfall structure to Black Rascal Creek.

Timeframe: Unspecified

Location: The Project site is generally located north of Bear Creek, south of Applegate Road, and east of South Bert Crane Road in the City of Atwater. The Project site includes portions of six parcels, totaling approximately 7.67 acres, and identified by the Merced County Assessor as Assessor's Parcel Numbers (APNs) 056-200-026, 056-200-011, 056-200-021, 056-200-024, 065-020-012, and 056-200-002. The site also includes approximately 3,390 feet of South Bert Crane Road right-of-way (ROW).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant or potentially significant direct and indirect impacts on fish and wildlife (biological) resources. Based on a review of aerial imagery, the Project description, and a review of California Natural Diversity Database (CNDDDB) records, several special-status species and habitat types could potentially be impacted by Project activities. Project-related construction, diversion, and re-diversion for related groundwater recharge projects could impact the following special-status plant and wildlife species and habitats known to occur: the State and federally threatened California tiger salamander – central California Distinct Population Segment (DPS) (*Ambystoma californiense* pop. 1); the State threatened tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*); the State

Justin Vinson
City of Atwater
February 9, 2026
Page 4

candidate for listing western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern (SSC) and federally threatened steelhead – Central Valley DPS (*Oncorhynchus mykiss irideus* pop. 11); the SSC and federally proposed threatened western spadefoot (*Spea hammondi*) and northwestern pond turtle (*Actinemys marmorata*); the SSC chinook salmon – Central Valley fall / late-fall run Evolutionary Significant Unit (ESU) (*Oncorhynchus tshawytscha* pop 13), American badger (*Taxidea taxus*), western red bat (*Lasiurus frantzii*), Northern California legless lizard (*Anniella pulchra*), and hardhead (*Mylopharodon conocephalus*).

Vegetation communities and habitats in the Project vicinity include irrigated row and field crops, ruderal disturbed areas, and barren unvegetated areas including levee roads. Aquatic features in and near the Project site include the South Slough, Bear and Black Rascal Creeks, other ephemeral streams and channels, and associated riparian and fresh emergent wetlands, agricultural ditches and canals, and ponding basins.

Comment 1: California Tiger Salamander (CTS)

CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types. They require upland refuges (i.e., small mammal burrows) when not breeding. CDFW recommends that a qualified wildlife biologist assess the Project site and vicinity (i.e., up to 1.3 miles, observed CTS dispersal distance) that contains potentially suitable habitat, to evaluate potential for CTS in support of the EIR. CDFW recommends site assessments follow the United States Fish and Wildlife Service's (USFWS) *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (2003). CDFW recommends the qualified biologist determine the impacts of Project-related activities to all CTS upland and breeding habitat within and/or adjacent to the construction footprint. Because both upland burrow refugia and breeding wetland habitat features suitable for use by CTS are likely present within and/or adjacent to the Project construction footprint, CDFW advises avoidance for CTS include a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. In addition, CDFW recommends that the CEQA document quantify and describe the direct and indirect potential impacts to CTS habitat and outline specific proposed mitigation measures to reduce impacts to less than significant.

Comment 2: Tricolored Blackbird (TRBL)

The Project site is within the known geographic range of TRBL, and occurrence was documented within 1.0 mile from the Project site (CDFW 2026). TRBL breed within the vicinity of fresh water, primarily in marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, and tall herbs

Justin Vinson
City of Atwater
February 9, 2026
Page 5

(Grinnell and Miller 1944). TRBL are also known to breed and forage in low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type (Beedy et al. 2023). Based on aerial imagery, the Project site may provide suitable habitat for TRBL nesting and foraging, particularly if the agricultural irrigation ponds, canals, sloughs, creeks, or other aquatic features provide sufficient emergent vegetation.

As TRBL have the potential to use the Project site and have been documented within close proximity to the Project, CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the EIR. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on focused survey methods and mitigation measures such as avoidance, take authorization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Comment 3: Swainson's Hawk (SWHA)

The Project site is within the known geographic range of Swainson's hawk (SWHA) and occurrences are documented within three and five miles of the Project site (CDFW 2026). SWHA are known to breed within the Central Valley of California and prefer to nest near and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, the Project appears to have suitable perching and nesting trees along Bear and Black Rascal Creeks and nearby roadways, and the Project site is near suitable habitat for SWHA foraging. Therefore, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of SWHA within ½ mile of the Project site and SWHA cannot be avoided during the nesting season, or SWHA presence is assumed, consultation with the CDFW is recommended for guidance on the development of mitigation measures for the DEIR, such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization is necessary to comply with CESA through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Comment 4: Western Burrowing Owl (BUOW)

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

Justin Vinson
City of Atwater
February 9, 2026
Page 6

Due to the change in the status of the species, CDFW recommends the EIR incorporate mitigation measures to reflect the candidacy. BUOW have been documented to occur near the Project site (CDFW 2026). BUOW inhabit open grassland or adjacent canal banks, rights-of-way, vacant lots, and other landscape features containing small mammal burrows, a requisite habitat feature for nesting and cover. BUOW rely on burrow habitat year-round for their survival and reproduction. Based on aerial photography, potential habitat occurs both within and bordering the Project site.

CDFW recommends that a qualified biologist conduct a habitat assessment for BUOW, for a biological study report to be included with the EIR. In areas of suitable habitat, CDFW recommends that the EIR require surveys for BUOW by a qualified biologist following the *Burrowing Owl Survey Protocol and Mitigation Guidelines* and CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFG 2012). If BUOW are detected, or if the Project-proponent chooses to assume presence during Project implementation, consultation with CDFW is recommended for guidance on the development of mitigation measures such as avoidance, take authorization, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081, subdivision (b) is necessary to comply with CESA.

Comment 5: Crotch's Bumble Bee (CBB)

CBB has been documented within the vicinity of the Project site (CDFW 2026). The species is known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch or thatched grasses. Based on aerial imagery, the Project appears to contain habitat suitable to support CBB.

CDFW recommends that a qualified biologist conduct a habitat assessment for CBB for a biological study report to be included with the EIR. Foraging resources and potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs are advised to be documented as part of the assessment. In areas of suitable habitat, CDFW recommends that the EIR require a qualified biologist to conduct a bumble bee survey according to the CDFW (2023) *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species*, to identify bumble bees and potential nesting sites during the vegetation blooming period prior to activities at Project sites. If any CBB or a nest are detected, it is recommended that the EIR require consultation with CDFW occur to develop adequate take avoidance measures, including protection for underground overwintering queens if a nest is observed at any time. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA.

Comment 6: Northwestern Pond Turtle (NWPT)

NWPT occurs within the vicinity of the Project site (CDFW 2026) and a review of aerial imagery of the area shows habitats that NWPT can utilize for nesting, overwintering,

Justin Vinson
City of Atwater
February 9, 2026
Page 7

dispersal, and basking, including streams, ponded areas, irrigation canals, and riparian and upland habitats. NWPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Noise, vegetation removal, movement of workers, construction and ground disturbance as a result of Project activities have the potential to significantly impact NWPT populations. Without appropriate avoidance and minimization measures for NWPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

CDFW recommends that a qualified biologist conduct a habitat assessment for NWPT for a biological report to be included in the EIR. CDFW also recommends that the EIR require a qualified biologist to conduct focused surveys in suitable habitat for NWPT within 10 days prior to Project activity, and that focused surveys for nests occur during the egg-laying season of March through August.

CDFW recommends that the EIR require that any NWPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project site. If western pond turtle individuals, including neonates at the nest, are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

Comment 7: Western Spadefoot (WESP)

WESP is known to occur within the vicinity of the Project site (CDFW 2026), using ephemerally ponded water associated with seasonal flooding and rainfall to breed, as well as the associated upland habitats outside of the breeding season. WESP inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Any depressional features in the Project site footprint may support breeding WESP and the adjacent areas may provide upland refugia. CDFW recommends that a qualified biologist conduct a habitat assessment for spadefoot for a biological study report to be included with the EIR. In areas of suitable habitat, CDFW recommends that the EIR require a qualified biologist to conduct focused surveys for WESP and their requisite habitat features prior to Project construction.

If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, CDFW recommends avoidance whenever possible via delineation and observance of a 50-foot no-disturbance buffer around these resources, including all potential breeding habitat, which can include agricultural sumps and irrigation ditches in addition to any areas that pool water for only a few weeks. CDFW also recommends avoidance of potential breeding habitat even when dry, since post-metamorphic WESP juveniles have a unique adaptation to the drying of their temporary breeding pools; they utilize the dried pond bottom as a refuge, burying themselves in

Justin Vinson
City of Atwater
February 9, 2026
Page 8

the desiccation cracks and damp soil beneath the surface crust (Baumberger et al., 2020). If any lifestage of WESP are observed on the Project site, Project activities in their immediate vicinity should cease, allowing individuals to leave the Project site on their own accord.

On September 24, 2025, the Commission received a petition to list the northern population of WESP as threatened species and the southern population of WESP as an endangered species under CESA. If the Commission takes action and WESP becomes listed as a Candidate for listing pursuant to CESA (possible in 2026), or ultimately becomes listed as threatened or endangered pursuant to CESA, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA if full avoidance of WESP could not be achieved. Please note that implementation of the above recommended measures would help minimize impacts to WESP as required by CEQA, but would not fully avoid impacts and thus take; additional measures would need to be implemented to avoid take of WESP. In the event that WESP becomes protected under CESA, CDFW recommends early consultation to help identify if avoidance is feasible or if not, to initiate discussions regarding the need for ITP acquisition.

Comment 8: Status Bat Species

Special status bat species including, but not limited to, the pallid bat, western mastiff, and western red bat are known to occur in the vicinity of the Project site. Known roosting habitats include mines, caves, rocky outcrops, bridges, trees, and buildings that provide the required localized climatic conditions and surrounding foraging opportunities needed. In some cases, multiple bat species can co-occur in roosts, and they may have similar life histories, although it is important to note that in many instances bat species do not have the same habitat requirements and life histories. For instance, migratory patterns and winter roosts can vary significantly from species to species.

To minimize potential Project-related impacts to special status bat species, CDFW recommends that if any of the above listed roosting habitat elements are located within the Project site that a reconnaissance survey be conducted by a qualified wildlife biologist to determine if bats are currently or could utilize the potential roosting habitat onsite. If a potential roosting site is confirmed to support bat species within 100 feet of ground disturbing activities, CDFW recommends the project proponent conduct focused surveys to establish species usage and seasonal usage. Focused survey methodology is advised to include visual surveys of bats (observation of presence of bats during foraging period), inspection for suitable habitat or bat sign (guano), and use of ultrasonic detectors (Anabat, Sonobat, etc.) during all dusk emergence and pre-dawn re-entry. To maximize detectability, each survey needs to be conducted within one 24-hour period.

If bats are found to occupy the Project site, CDFW recommends the Project proponent implement general bat avoidance, minimization and mitigation measures, including but are not limited to, establishing a 100-foot no-disturbance buffer around roost sites and

Justin Vinson
City of Atwater
February 9, 2026
Page 9

installing new roost sites to be in place prior to the initiation of Project related activities to allow enough time for bats to relocate.

Comment 9: American Badger and Northern Legless Lizard

The Project site is within the known geographic range of American badger and Northern legless lizard and suitable habitat may be present (CDFW 2026). CDFW recommends that a qualified biologist conduct a habitat assessment for these species, for a biological study report to include with the EIR. If potential habitat is present, CDFW recommends that the EIR direct a qualified biologist to conduct focused surveys for the species and its requisite habitat features to evaluate potential Project impacts, and describe avoidance, minimization, and mitigation as warranted to address potentially significant impacts.

Comment 10: Wetland and Riparian Habitats

Riparian and wetland natural communities along Bear Creek, Black-Rascal Creek, and other aquatic features on the Project site provide many essential benefits to terrestrial, avian and aquatic species, including, but not limited to thermal protection, cool water refugia, cover, large woody debris, foraging areas, breeding and rearing sites, habitat and connectivity corridors, as well as buffers to sedimentation and runoff from adjacent land uses. Direct and indirect impacts into these habitat types can adversely impact sensitive species including but not limited to steelhead and chinook salmon, WESP, NWPT, TRBL, and CTS. CDFW recommends delineating and implementing an adequate avoidance buffer to protect wetlands, riparian vegetation, and associated wildlife, including State- and federally listed species. In addition, CDFW recommends identifying and analyzing impacts to all aquatic features, including those that have no riparian vegetation, in order to avoid impacts where feasible and to identify impacts to be mitigated.

CDFW recommends that the potential direct and indirect impacts to riparian and wetland habitat be analyzed according to each Project activity. Based on those potential impacts, CDFW recommends that the EIR include measures to avoid, minimize, and/or mitigate those impacts. CDFW recommends that impacts to riparian habitat (i.e., biotic and abiotic/nonvegetative features) take into account the effects to stream function and hydrology from riparian habitat loss or damage, as well as potential effects from the loss of riparian habitat to special-status species already identified herein.

EDITORIAL COMMENTS AND/OR SUGGESTIONS

Water Rights: The Project proposes discharges to MeID via Bear Creek or Black Rascal Creek for the purpose of meeting groundwater recharge requirements. CDFW recommends that the EIR discuss whether the Project will result in diversion of treated wastewater from creeks or streams for the purpose of groundwater recharge or other projects and include a detailed description of the water rights and water entitlements for points of diversion and re-diversion and places of use that pertain to the Project,

Justin Vinson
City of Atwater
February 9, 2026
Page 10

including any applications or change petitions that may be filed to transfer or re-divert treated wastewater.

If new water allocation would occur, including transfer or re-diversion to groundwater recharge, CDFW recommends the EIR include analysis of the impacts of diverting currently unallocated flows, including such details for the point(s) of diversion as a hydrologic study, water availability analysis, and other information that identifies and analyzes the impacts to aquatic ecosystems and fish and wildlife resources.

Regarding the diversion of treated wastewater into Bear or Black Rascal Creeks, CDFW recommends that the EIR address whether the City will be filing a change petition or a new application for these diversions. As stated previously, CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

Fisheries Impacts: CDFW staff have documented evidence of salmon migration and spawning activity in Bear Creek upstream of the Project site (Kollmar 2024). Given that the Project will result in year-round discharge that changes the downstream flow and considering the proximity to the confluence of Bear Creek with the San Joaquin River, the Project may produce a false-attraction cue for salmon resulting in straying into potentially unsuitable habitat, depending on how far downstream flows will be impacted. CDFW recommends the EIR include a detailed analysis of impact to downstream flows and resulting impact to fisheries, including salmonids.

Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems: A Groundwater Sustainability Plan was prepared by the Merced Subbasin Groundwater Sustainability Agency (GSA), Merced Irrigation-Urban GSA, and Turner Island Water District GSA for the Merced Subbasin (Subbasin No. 5-022.04 of the San Joaquin Valley Groundwater Basin) which is designated a high priority Subbasin by the Department of Water Resources (DWR). The Groundwater Sustainability Plan for the Merced Subbasin was approved by DWR on August 4, 2023. The SGMA defines sustainable groundwater management as, "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results (Water Code, § 10721 (v))." Significant and undesirable results that may result from Project related activities include chronic lowering of groundwater levels, reduction of groundwater storage, degraded water quality, land subsidence, depletions of interconnected surface water that have an adverse impact on beneficial uses of surface water. Any of these undesirable results may have adverse impacts to groundwater dependent ecosystems. CDFW recommends that the EIR include an analysis of Project-related activities in relation to

Justin Vinson
City of Atwater
February 9, 2026
Page 11

the Merced Subbasin Groundwater Sustainability Plan, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

Cumulative Impacts: Although the NOP noted that construction would result in localized disturbance to the streambed, banks, and associated riparian habitat, the NOP does not consider cumulative impacts from future diversions for groundwater recharge. Project-related diversions may impact riparian, wetland, fisheries, and terrestrial (i.e., upland) wildlife species and habitats downstream by reducing the amount of surface flow in the active stream channel at the discharge location and downstream, as well as reducing the amount of subsurface flow from percolation. Watershed and habitat protection are vital to CDFW's management of California's diverse fish, wildlife, and plant resources.

The Project could result in indirect, direct, and cumulative adverse impacts to these fish and wildlife and other public trust resources. CDFW recommends that the EIR include: 1) an analysis of the proposed acquisition of surface water and any potential direct, indirect, and cumulative biological impacts to fish and wildlife species and their habitats; and 2) a hydrologic study to determine if the production of the watershed is sufficient to reduce the discharge flows, as proposed, without having significant adverse impacts to riparian and aquatic resources of watershed downstream, including the establishment of invasive nonnative plant species and change in habitats.

In addition to cumulative impacts analysis for surface water diversion, CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those which impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining condition and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends that cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects specifically on biological resources. Development of an appropriate resource study area identified and utilized for this analysis is advised.

Lake and Streambed Alteration: CDFW recommends that the EIR include mapping of all stream and associated wetland resources within the Project site and surrounding area with a description of the methodology used in determining the extent of all streams within this area. Activities that are subject to CDFW's authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the

Justin Vinson
City of Atwater
February 9, 2026
Page 12

removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral, intermittent, or episodic, as well as those that are perennial, regardless of the duration, frequency, or volume of flow.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for a Lake or Streambed Alteration Agreement issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@wildlife.ca.gov.

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

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed or proposed listed species, including but not limited to WESP and NWPT. Take under the Endangered Species Act (ESA) is more broadly defined than CESA; take under the ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with the ESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages that Project implementation occur outside the bird nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season of February through mid-September, the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced in this letter.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that

Justin Vinson
City of Atwater
February 9, 2026
Page 13

surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

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. 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>.

FILING FEES

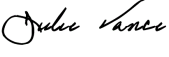
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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).

Justin Vinson
City of Atwater
February 9, 2026
Page 14

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts to biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
Land Use and Climate Innovation
State.Clearinghouse@lci.ca.gov

Annette Tenneboe
California Department of Fish and Wildlife

Chris Hoem, City Manager
City of Atwater
choem@atwater.org

Justin Vinson
City of Atwater
February 9, 2026
Page 15

REFERENCES

- Baumberger, Katherine A., Adam R. Backlin, Elizabeth A. Gallegos, Cynthia J. Hitchcock, and Robert N. Fisher. 2020. Mitigation Ponds Offer Drought Resiliency for Western Spadefoot (*Spea hammondi*) Populations. *Bulletin, Southern California Academy of Sciences*, 119(1) 6-17. <https://doi.org/10.3160/0038-3872-119.1.6>
- Beedy, E. C., W. J. Hamilton III, R. J. Meese, D. A. Airola, W. S. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. *Birds of the World*. P. G. Rodewald and B. K. Keeney, editors. Cornell Lab of Ornithology, Ithaca, NY, USA.
- California Department of Fish and Game (CDFG). 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>
- California Department of Fish and Wildlife (CDFW). 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. California Department of Fish and Wildlife. June 6, 2023. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>
- CDFW. 2026. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed January 30, 2026.
- Grinnell, J. and A. H. Miller. *The Birds of California*. Cooper Ornithological Club, Berkeley, California. 1944, 608 pp.
- Kollmar, Vanessa. 2024. Chinook salmon sightings in Bear Creek and the Lower Eastside Bypass upstream of the Merced Confluence [Memo]. California Department of Fish and Wildlife. December 19, 2024.
- Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.
- Thomson, R. C., A. N. Wright, and H. B. Shaffer. 2016. *California Amphibian and Reptile Species of Special Concern*. California Department of Fish and Wildlife and University of California Press.

Justin Vinson
City of Atwater
February 9, 2026
Page 16

U. S. Fish and Wildlife Service 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.