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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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October 26, 2026

Justin Vinson
Public Works Director
City of Atwater
1350 Broadway
Atwater, California 95301
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Subject: Bert Crane Wastewater Treatment Plant Discharge Improvements Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2026010223

Dear Justin Vinson:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (EIR) from the City of Atwater (City) as Lead Agency for the Project pursuant 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.

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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.

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PROJECT DESCRIPTION SUMMARY

Proponent: City of Atwater

Description and Objective: 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.

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 (CNDDB) 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

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candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); the State candidate and federally proposed threatened western spadefoot (*Spea hammondii*); the State species of special concern (SSC) and federally threatened steelhead – Central Valley DPS (*Oncorhynchus mykiss irideus* pop. 11); the SSC chinook salmon – Central Valley fall / late-fall run Evolutionary Significant Unit (ESU) (*Oncorhynchus tshawytscha* pop 13), 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.

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. 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 agrees with the DEIR Mitigation Measure (MM) BIO-6 which states that avoidance of CTS include a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows. CDFW also agrees with MM BIO-6 which states that If burrow avoidance is not feasible, the Project proponent will consult with CDFW to determine if the Project can avoid take, and necessary obtain and take authorization. The DEIR does not include conducting CTS protocol level surveys, so it is presumed that the Project proponent is assuming presence of CTS if upland refugia cannot be avoided. CDFW recommends modifying MM BIO-6 to reflect the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

Recommended Mitigation Measure 1: CTS Avoidance Buffer

CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals.

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Recommended Mitigation Measure 2: CTS Take Authorization

If the avoidance buffer 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.

Tricolored Blackbird (TRBL)

The Project site is within the known geographic range of TRBL, and an occurrence was documented within 1.0 mile from the Project site (CDFW 2026). The DEIR MM BIO-4 includes conducting pre-construction surveys for TRBL within 500 feet of any outfall structure, CDFW agrees with conducting pre-construction surveys within 500 feet of potential nesting habitat, but it is unclear if there is other potential nesting habitat could be impacted by Project activities. 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 (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. The DEIR MM BIO-4 also states that if a TRBL nesting colony is found the biologist shall establish an appropriate no-disturbance buffer around the colony until the biologist confirms nesting is completed; but specific buffers or nesting season period is not included. CDFW recommends modifying MM BIO-4 to reflect the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

Recommended Mitigation Measure 3: TRBL Avoidance Buffer

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during the breeding season, then CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL and then repeat those surveys no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during the pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has

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determined that nesting has ceased, the birds have fledged and are no longer reliant upon the colony or parental care for survival.

It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-construction surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's real extent.

Recommended Mitigation Measure 4: TRBL Take Authorization

If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if take avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

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. CDFW agrees with Items one and two in the DEIR MM BIO-1, regarding removing vegetation outside of the nesting season where feasible and conducting per-construction SWHA surveys following the survey methodology in SWHA Technical Advisory Committee (SWHA TAC 2000). Item three of MM BIO-1 indicates that if a nesting SWHA is found within 0.5 miles of active construction, a qualified biologist will conduct an assessment and determine if construction can proceed, level of nest monitoring, and would have the authority to stop work if construction is disturbing the nest. Further, MM BIO-1 Item three states that no construction shall occur within 500 feet of an active nest but based on site specific conditions the distance may be reduced. CDFW does not concur with a majority of MM BIO-1 Item 3, since this measure would allow for construction activities to occur within 0.5 miles to within 500 feet of an active SWHA nest, which could result in significant impacts to the species including the potential for take. CDFW recommends modifying MM BIO-4 to reflect the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

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Recommended Mitigation Measure 5: SWHA No-Disturbance Buffer

If any active SWHA nest is detected during pre-construction surveys or Project activities, CDFW recommends delineating and maintaining a minimum ½-mile no-disturbance buffer around each nest prior to and during any development or ground-disturbing activities. To prevent nest abandonment and other take of SWHA as a result of Project activities, CDFW advises that these no-disturbance buffers remain in place until the breeding season (March 1 through September 15) has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Recommended Mitigation Measure 6: SWHA Take Authorization

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

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 (Notice of 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).

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. The DEIR includes MM BIO-2, which includes conducting pre-construction surveys to identify potential habitat, and if found following the avoidance buffers recommended in CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012); if burrows cannot be avoided to conduct surveys following CDFG 2012; and if occupied burrows cannot be avoided to consultation with CDFW is warranted to determine if the Project can avoid take and; if take cannot be avoided that a State ITP may be required. MM BIO-2 also states that a biologist may approve a reduction in the CDFG 2012 buffers if monitoring occurs. CDFW does not concur that buffers can be reduced, absent prior consultation with CDFW to determine if take can be avoided in

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each instance. Further, CDFW recommends buffers be established around known active and inactive BUOW nests. CDFW recommends modifying MM BIO-2 to reflect the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

Recommended Mitigation Measure 7: BUOW No-Disturbance Buffer

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

Recommended Mitigation Measure 8: BUOW Take Authorization

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

Western Spadefoot (WESP)

The Commission approved WESP as a candidate for potential listing as a protected species under CESA on August 13, 2026, and published these findings in the Notice Register on September 25, 2026. As such, WESP is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The DEIR does not include mitigation measures for WESP, due to the lack of wetlands or intermittent stream breeding habitat within or near the Project site. While natural WESP habitat is comprised of grasslands, oak woodlands, and scrub habitats with seasonal wetlands, and vernal features, WESP is also known to commonly utilize manmade structures and heavily modified lands such as agricultural ponds, ditches, canals, flooded areas of orchards, flooded areas on construction sites, inlet and outlet of culverts with standing water, and sumps for breeding. The Project is within the range of the WESP, and based on aerial imagery, potential habitat occurs both within and bordering the Project area (CDFW 2026). As a result, there is potential for WESP to occupy all suitable habitat within the Project boundary and surrounding area. CDFW recommends the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

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Recommended Mitigation Measure 9: WESP Habitat Assessment

CDFW recommends that a qualified biologist conduct a WESP habitat assessment during the rainy season when pooled/ponded water is visible to evaluate potentially occupied breeding habitat, as well as to evaluate any manmade structures that pond water. CDFW recommends conducting several site visits while conducting these assessments to further assess whether there are areas inundated for the minimum hydroperiod required for WESP to complete their breeding cycle (Morey and Reznick 2004), which can be as little as two weeks (Stebbins 1951). In areas of suitable habitat, CDFW recommends a qualified biologist survey for WESP by following appropriate survey methodologies prior to initiating Project activities.

Recommended Mitigation Measure 10: WESP Take Authorization

If burrows, cracks, loose soil, soft soil areas immediately adjacent to water features, or other refugia are found to be used by WESP during focused surveys or at anytime during Project activities, CDFW recommends implementation of a 1,000-foot no-disturbance buffer around the outer edge of these habitats. If any life stage of WESP is detected, and the no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, and if take cannot be avoided, to obtain an ITP pursuant to Fish and Game Code section 2081, subdivision, (b) to comply with CESA.

Crotch's Bumble Bee (CBB)

The DEIR includes MM BIO-7, which includes conducting CBB pre-construction surveys within "limited areas of potentially suitable habitat," and if a nest/colony is detected for a qualified biologist to establish and appropriate no-disturbance buffer around the occupied habitat in consultation with CDFW. CDFW agrees with conducting pre-construction surveys, but it is unclear what protocol will be used and how the "limited areas of potentially suitable habitat" is defined. CBB has been documented within the vicinity of the Project site (CDFW 2026). The species is known to inhabit areas of grasslands, scrub, and areas with bare ground such as vacant lots, dirt roads, and levees that contain requisite habitat elements for nesting, such as small mammal burrows and bunch or thatched grasses (Xerces Society et al. 2018). Based on aerial imagery, the Project appears to contain habitat suitable to support CBB. CDFW recommends modifying MM BIO-7 to reflect the following recommendations and that these measures be incorporated prior to the initiation of any Project activities:

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Recommended Mitigation Measure 11: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment in accordance with the methodology outlined in the Survey Considerations for California Endangered Species Act Bumble Bee Species (CDFW 2023) to determine if portions of the Project site and surrounding landscape contain suitable habitat for CBB. 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 would need to be documented as part of the assessment.

Recommended Mitigation Measure 12: CBB Pre-Activity Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 13: CBB Avoidance and Take Authorization

If CBB is detected, CDFW recommends that all small mammal burrows, thatched/bunch grasses, and any other potential nesting sites be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

EDITORIAL COMMENTS AND/OR SUGGESTIONS

Wetland and Riparian Habitats: Riparian and wetland natural communities in the Project area 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. The Project would allow the City to redirect tertiary-treated effluent to Black Rascal Creek or Bear Creek, tributaries to the San Joaquin River, for groundwater recharge, but the DEIR does not include how much water would be used for recharge purposes versus the amount of water that will be directed to the Atwater/Peck Drain (current discharge location). Per

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the DEIR, the Atwater/Peck Drain flows through Joseph Gallo Farms where a significant portion is diverted for agricultural and wetland use. It is CDFW's understanding that any water not diverted for agricultural use continues through the Atwater Drain which terminates at the Merced National Wildlife Refuge (MNWR), which is hydrologically connected to the San Joaquin River via the Eastside Bypass. It is unclear how the Project's potential decrease in effluent discharge via the Atwater/Peck Drain could impact fish and wildlife resources, including riparian and wetland natural communities, within the MNWR, Eastside Bypass, and San Joaquin River upstream of the Black Rascal Creek and Bear Creek confluence.

Direct and indirect impacts into these habitat types can adversely impact sensitive species including but not limited to steelhead and spring and fall run chinook salmon, WESP, TRBL, and CTS. CDFW recommends identifying and analyzing impacts to all aquatic features that could be impacted by the Project, 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, including the redirection of effluent. Based on those potential impacts, CDFW recommends including 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.

Fisheries Impacts: CDFW staff have documented evidence of salmon migration and spawning activity in Bear Creek upstream of the Project area (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 Final EIR include a detailed analysis of impacts to downstream flows and resulting impact to fisheries, including salmonids.

Water Rights: The Project proposes tertiary-treated wastewater discharges to MeID via Bear Creek or Black Rascal Creek for the purpose of meeting groundwater recharge requirements. CDFW recommends that the Final 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, including any applications or change petitions that may be filed to transfer or re-divert treated wastewater.

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If any new water allocation(s) would occur, including transfer or re-diversion to groundwater recharge, CDFW recommends the Final 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 Final 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.

Cumulative Impacts: 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. Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. As such, the conclusions reached in the cumulative impacts analysis are not supported by substantial evidence, and the analysis lacks sufficient rigor and transparency to adequately develop reasonable and feasible measures to reduce harm. To address this, CDFW recommends that the Final EIR conduct a cumulative impact analysis for all specific biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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Lake and Streambed Alteration: Project activities include the construction of outlet structures within and along Black Rascal and Bear Creeks; these activities are be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Specifically, 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 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 (CNDDB): Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB, but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB 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 United States Fish and Wildlife Service (USFWS) on potential impacts to federally listed or proposed listed species, including but not limited to CTS and WESP. 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

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

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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 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 Jackson Powell, Environmental Scientist, at (559) 899-9758 or Jackson.Powell@wildlife.ca.gov.

Sincerely,

DocuSigned by:
FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1: Mitigation Monitoring and Reporting Program

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

Jackson Powell
California Department of Fish and Wildlife

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

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Attachment 1
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PROJECT: Bert Crane Wastewater Treatment Plant Discharge Improvements Project

SCH No.: 2026010223

RECOMMENDED MITIGATION MEASURE	**STATUS/DATE/INITIALS**
Before Disturbing Soil or Vegetation	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 1: CTS No-Disturbance Buffer	
Recommended Mitigation Measure 2: CTS Take Authorization	
Tricolored Blackbird (TRBL)	
Recommended Mitigation Measure 3: TRBL Avoidance Buffer	
Recommended Mitigation Measure 4: TRBL Take Authorization	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 5: SWHA No-Disturbance Buffer	
Recommended Mitigation Measure 6: SWHA Take Authorization	
Western burrowing owl (BUOW)	
Recommended Mitigation Measure 7: BUOW No-Disturbance Buffer	
Recommended Mitigation Measure 8: BUOW Take Authorization	
Western spadefoot (WESP)	
Recommended Mitigation Measure 9: WESP Habitat Assessment	
Recommended Mitigation Measure 10: WESP Avoidance and Take Authorization	
Crotch's bumble bee (CBB)	
Recommended Mitigation Measure 11: CBB Habitat Assessment	
Recommended Mitigation Measure 12: CBB Pre-Activity Surveys	
Recommended Mitigation Measure 13: CBB Avoidance and Take Authorization	
During Activities	

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California Tiger Salamander (CTS)	
Recommended Mitigation Measure 1: CTS No-Disturbance Buffer	
Recommended Mitigation Measure 2: CTS Take Authorization	
Tricolored Blackbird (TRBL)	
Recommended Mitigation Measure 3: TRBL Avoidance Buffer	
Recommended Mitigation Measure 4: TRBL Take Authorization	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 5: SWHA No-Disturbance Buffer	
Recommended Mitigation Measure 6: SWHA Take Authorization	
Western burrowing owl (BUOW)	
Recommended Mitigation Measure 7: BUOW No-Disturbance Buffer	
Recommended Mitigation Measure 8: BUOW Take Authorization	
Western spadefoot (WESP)	
Recommended Mitigation Measure 9: WESP Habitat Assessment	
Recommended Mitigation Measure 10: WESP Avoidance and Take Authorization	
Crotch's bumble bee (CBB)	
Recommended Mitigation Measure 11: CBB Habitat Assessment	
Recommended Mitigation Measure 12: CBB Pre-Activity Surveys	
Recommended Mitigation Measure 13: CBB Avoidance and Take Authorization	