



STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND WILDLIFE

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April 15, 2026

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## **Subject: Atmospheric River Capture Project, Notice of Preparation of a Draft Environmental Impact Report, SCH 2026030496, Marin County**

Dear Lucy Croy:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Atmospheric River Capture Project (project).

CDFW is providing the Marin Municipal Water District (District), as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

### **CDFW ROLE**

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the project.

### **PROJECT DESCRIPTION SUMMARY**

The project is located in the City of Novato and unincorporated Marin County, California. The project would deliver winter water consisting of naturally occurring flows from precipitation events in the Russian River that exceed minimum instream flow requirements.

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This water would be delivered under the existing agreement with the District and Sonoma County Water Agency (Sonoma Water) to Nicasio Reservoir for use during dry conditions.

The project includes the following components:

- Tie-in to the North Marin Aqueduct in the City of Novato;
- Wood Hollow Pump Station near the North Marin Aqueduct tie-in in the City of Novato;
- Stafford Lake Pump Station and dechlorination facility;
- Point of delivery near Stafford Lake in unincorporated Marin County;
- Point of delivery at Nicasio Reservoir in unincorporated Marin County; and
- 13.2-mile-long, up to 36-inch diameter water transmission pipeline between the North Marin Aqueduct and Nicasio Reservoir, referred to as the Nicasio Aqueduct, located within City of Novato and unincorporated Marin County road rights-of-way.

Over the past 30 years, the District has purchased an average of approximately 6,800 acre-feet annually from Sonoma Water. Purchases have typically increased during dry conditions and decreased during wetter periods. The District currently does not have the ability to store for extended periods the water obtained from Sonoma Water. The project would provide the ability to store contract water in a local reservoir.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the project, that contains sufficient information to evaluate and review the project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following project components in the project description:

- Land use changes resulting from, for example, rezoning certain areas;
- Footprints of permanent project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems;
- Operational features of the project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features; and
- Construction schedule, activities, equipment, and crew sizes.

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## REGULATORY REQUIREMENTS

### California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the project has the potential to result in "take" of plants or animals listed under CESA or candidates for CESA listing, either during construction or over the life of the project. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed or candidate species, such as: **northern spotted owl (*Strix occidentalis caurina*)**, **Marin western flax (*Hesperolinon congestum*)**, and **burrowing owl (*Athene cunicularia*)**, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA ITP. **If a CESA ITP is warranted, CDFW recommends that the EIR include a mitigation measure requiring the project to obtain an ITP from CDFW, as further described below.**

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065.). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

### Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **It appears that the project may impact Novato Creek and other streams, Stafford Lake, and Nicasio Reservoir. Impacts to any stream or lake would likely require an LSA Notification. If an LSA Notification is required, CDFW recommends that the EIR include a mitigation measure requiring the project to submit an LSA Notification and compliance with the LSA Agreement, if issued.** CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds,

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their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## California Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code § 2081.15). Project proponents should consult with CDFW early in the project planning process. **The project has the potential to impact California black rail (*Rallus jamaicensis*), California Ridgway's rail (*Rallus obsoletus obsoletus*), and white-tailed kite (*Elanus leucurus*), which are California fully protected species.**

## ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting ("baseline") to understand the project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the project area and surrounding lands, including, but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the project site (for sensitive natural communities see:

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City of Novato or County of Marin may require. Fully protected, threatened or endangered, candidate, and other special-status species and sensitive natural communities that are known to occur, or have the

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potential to occur in or near the project site, include but are not limited to those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System, California Aquatic Resources Inventory, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the project site, and whether they could be impacted by the project.

## **IMPACT ANALYSIS AND MITIGATION MEASURES**

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

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Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the project, the CEQA Guidelines direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable project conditions to reduce potential impacts to biological resources to less-than-significant levels.

CDFW offers the specific comments and recommendations below to assist the District in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. **Please be advised that the EIR should include a comprehensive evaluation of potentially significant impacts to fish and wildlife resources as described in this letter, and CDFW may provide additional comments once the EIR is circulated for public review.** Note that the City of Sausalito recently incorporated CDFW's comments into their Amended Housing Element EIR (SCH No. 2024070676).

***MANDATORY FINDINGS OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?***

**AND**

***Would the Project 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 CDFW or USFWS?***

**Specific Comment 1:** Northern spotted owl

**Issue:** Northern spotted owl (Northern spotted owl Occurrence ID MRN0122) have been documented directly adjacent to the project area.

**Specific impacts, why they may occur and be potentially significant:** The project could result in northern spotted owl permanent or temporary nesting and roosting habitat loss, direct loss of active northern spotted owl nests, or auditory or visual disturbances to nesting northern spotted owl resulting in nest abandonment, loss of eggs, or reduced health and vigor and loss of young. Northern spotted owl is CESA listed as a threatened species and is also listed under the federal Endangered Species Act (ESA) and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if northern spotted owl habitat is removed or an active northern spotted owl nest is disturbed by the project, the project may result in a substantial restriction of the range of or reduction in the

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number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

**Recommended Mitigation Measures:** Where suitable northern spotted owl nesting or roosting habitat is present on or within 0.7 miles of the project as determined by a qualified biologist, CDFW recommends that the EIR include the below mitigation measures to reduce impacts to northern spotted owl to less-than-significant and comply with CESA and Fish and Game Code 3500 et seq.

**MM-BIO-1:** A qualified biologist shall provide an assessment of potential northern spotted owl nesting and roosting habitat within the project area and an appropriate area around the project area and obtain CDFW's written acceptance of the assessment. Alternatively, the project may assume that northern spotted owl nesting and roosting habitat occurs in these areas. The project shall consult with CDFW to determine the appropriate habitat assessment and survey areas, which may include **up to 0.7 miles** around the project site.

If the assessment concludes that northern spotted owl nesting habitat is present or habitat presence is assumed, then the following measures shall be implemented:

- If the project will remove northern spotted owl nesting habitat, a qualified biologist shall conduct 2 years of surveys on the project site and within the appropriate radius around the project site with 6 complete visits per year following the USFWS *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012 and the associated *Attachment A: Take Avoidance Analysis - Coast Redwood Region*, dated November 1, 2019, to determine the presence or absence of northern spotted owl.

Following the 2 years of surveys described above, a qualified biologist shall conduct Spot Check Surveys for northern spotted owl on the project site and within a 0.25 mile radius around the project site during northern spotted owl nesting season (March 15 to July 31) each year until project construction is completed, pursuant to the above survey protocol, unless otherwise approved in writing by CDFW.

- If the project will not remove northern spotted owl nesting habitat, a qualified biologist shall conduct surveys on the project site and within a 0.25 mile radius around the project site during northern spotted owl nesting season each year until project construction is completed in accordance with Section 9 of the above survey protocol, *Surveys for Disturbance-Only Projects*, unless otherwise approved in writing by CDFW.

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The project shall obtain CDFW's written acceptance of the qualified biologist and survey report(s) prior to project construction occurring during northern spotted owl nesting season.

If nesting northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of northern spotted owl cannot be avoided, the project shall consult with:  
1) CDFW pursuant to CESA and obtain an ITP, and 2) USFWS pursuant to the federal ESA.

**MM-BIO-2:** If the project will result in the removal of northern spotted owl nesting or roosting habitat, the project shall prepare an northern spotted owl mitigation plan including mitigating northern spotted owl nesting or roosting habitat removal at a minimum 3:1 mitigation to impact ratio. Habitat mitigation shall include permanent preservation of high-quality nesting/roosting habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before project construction, unless otherwise approved in writing by CDFW. The northern spotted owl mitigation plan shall be submitted to CDFW for approval before project construction and include a review of suitability of mitigation lands for northern spotted owl as confirmed by a qualified biologist. The project shall obtain CDFW's written approval of the northern spotted owl mitigation plan.

**Specific Comment 2:** Marin western flax, and other special-status plants

**Issue:** Marin western flax has been documented within 800 feet of the project area (CNDDDB Occurrence Number 25) and suitable grassland habitat may be present within or adjacent to the project area. Other special-status plants listed in Attachment 1 may also occur on or adjacent to the project area.

**Specific impacts, why they may occur and be potentially significant:** If Marin western flax individuals that may be impacted by the project go undetected, the project may result in mortality of individuals from direct impacts or indirect impacts such as degradation of habitat adjacent to ground disturbance. Marin western flax is considered threatened under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if Marin western flax is present on or adjacent to the project site where they may be directly or indirectly impacted, the project may substantially reduce the number or restrict the range of this species, which

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would be a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1). Any impact to other special-status plants may also result in a potentially significant impact.

**Recommended Mitigation Measure:** Where suitable grassland habitat is present for Marin western flax on or adjacent to the project area as determined by a qualified biologist, CDFW recommends that the EIR include the below mitigation measure to reduce impacts to Marin western flax and other special-status plants to less-than-significant and comply with CESA.

**MM-BIO-3:** Prior to ground disturbance, the project shall submit a habitat assessment prepared by a Qualified Biologist for Marin western flax and other special-status plants and an evaluation of potential direct and indirect impacts to any on-site or adjacent off-site habitat, such as modification of hydrological conditions or construction related sedimentation into occupied habitat, to CDFW for review and obtain CDFW's written acceptance of the assessment and evaluation.

If suitable habitat for Marin western flax or other special-status habitat is observed and may be impacted, a Qualified Biologist shall conduct protocol level plant surveys prior to project activities. No later than 30 days prior to initiating project activities, the project shall provide survey reports for protocol surveys for CESA-listed and other special-status plants to CDFW and obtain CDFW's written approval of the reports, unless otherwise approved in writing by CDFW. Surveys shall be conducted according to CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>), during appropriate conditions, and include visiting reference populations, unless otherwise approved in writing by CDFW. Surveys should include the entire extent of any directly or indirectly impacted suitable wetland habitat for special-status wetland plants, including portions of the wetland on adjacent parcels or not directly impacted, as impacts to part of a wetland often affects the entire wetland. Evaluation of indirect impacts to special-status wetland plants may necessitate a thorough hydrological assessment that fully analyzes existing and post-project conditions to seasonal wetland habitat. If CESA-listed plants are documented on-site or off-site where they may be directly or indirectly impacted, or the surveys are not approved in writing by CDFW, the project shall immediately notify CDFW, and no project work may commence until the project obtains a CESA ITP.

If any non-CESA listed special-status plant species are observed, such as California Rare Plant Rank (CRPR) plants, the project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to project activities. If full avoidance is not possible, project activities may not commence until the project has consulted with CDFW and obtained CDFW's written

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approval, which may include seed salvage, transplant, or other protective measures appropriate for the species.

**Specific Comment 3:** Burrowing owl

**Issue:** Burrowing owl (CNDDDB Occurrence Number 718) have been documented within 1.5 miles of the project, and the project is within the wintering range of the species.

**Specific impacts, why they may occur and be potentially significant:** The project may impact wintering burrowing owl utilizing burrows or burrow surrogates on or within up to 1,640 feet of the project site. The project could result in injury or mortality of adults and permanent wintering (i.e., non-nesting) habitat loss. Burrowing owl is a candidate species under CESA because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Information indicates a decline in burrowing owl range over time, burrowing owl has experienced population declines in regions of California and threats to burrowing owl, coupled with long-term population declines, suggest a high degree and immediacy of threat to burrowing owl in California (CDFW 2024). Based on the foregoing, if burrowing owls are wintering on or within up to 1,640 feet of the project site, project impacts to burrowing owl would be potentially significant.

**Recommended Mitigation Measures:** Where suitable wintering burrowing owl habitat is present on or within 1,640 feet of the project area as determined by a qualified biologist, CDFW recommends that the EIR include the mitigation measures to reduce impacts to burrowing owl to less-than-significant and comply with CESA and Fish and Game Code 3500 et seq.

**MM-BIO-4:** If the project commences during the burrowing owl wintering season from September 1 to October 15 (or any extended work period), prior to project activities a Qualified Biologist shall conduct a burrowing owl habitat assessment within 1,640 feet (500 meters) of the project area pursuant to the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report, available here: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>, unless otherwise approved in writing by CDFW. The Qualified Biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology. The habitat assessment shall focus on searching the CNDDDB and potentially other sources for any burrowing owl records on or within one mile of the project area, vegetation type and height, suitable burrows

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(with an opening greater than 11 centimeters [cm] in diameter and a depth greater than 150 cm), burrow surrogates (culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures), and presence of burrowing owl sign (tracks, molted feathers, cast pellets, prey remains, egg shell fragments, owl white wash, and nest burrow decoration material), and the presence of burrowing owl individuals or pairs. If the habitat assessment does not identify suitable habitat and surveys are not conducted as described below, an additional habitat assessment shall be conducted within 14 days prior to construction and if new potentially suitable burrowing owl refugia are present surveys shall be conducted as described below, unless otherwise approved in writing by CDFW. The results of the habitat assessment shall be emailed to the CDFW contact below, or if unavailable another CDFW representative, and the project shall obtain CDFW's written approval of the habitat assessment prior to starting project activities.

If suitable burrowing owl habitat is observed, four surveys shall be conducted to detect the presence of burrowing owl pursuant to the CDFW 2012 Staff Report and shall begin on August 1. The site visits shall be spread evenly throughout the non-breeding season, unless otherwise approved in writing by CDFW. The survey results shall be emailed to the CDFW contact below, or if unavailable another CDFW representative, and the project shall obtain CDFW's written approval of the survey results prior to starting project activities. In addition, a survey shall be completed within 14 days prior to the start of construction, as described in the CDFW 2012 Staff Report.

If burrowing owl is detected, the project shall immediately notify CDFW. The project shall avoid impacts to the burrowing owl and implement a 1,640-foot buffer area around the owl site in which no project activities shall occur, unless otherwise approved in writing by CDFW. A Qualified Biologist or Biological Monitor shall monitor any detected owl to ensure it is not disturbed.

If the project cannot ensure burrowing owl and their burrows are fully avoided, the project shall consult with CDFW and obtain a take authorization or otherwise demonstrate compliance with CESA.

Habitat compensation for impacts to occupied wintering burrowing owl habitat (habitat known to have been occupied by wintering burrowing owl within the last 3 years) shall also be provided at a minimum 3:1 mitigation to impact ratio prior to project construction, unless otherwise approved by CDFW. Habitat mitigation shall include permanent preservation of high-quality burrowing owl wintering habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before project construction, unless otherwise approved in writing by CDFW. The burrowing owl mitigation plan shall be submitted to CDFW for approval before project construction and include a review of

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suitability of mitigation lands for burrowing owl as confirmed by a qualified biologist. The project shall obtain CDFW's written approval of the burrowing owl mitigation plan.

**Specific Comment 4:** California black rail and California Ridgway's rail

**Issue:** California black rail (CNDDDB Occurrence Number 90) has been documented within 1.4 miles of the project and California Ridgway's rail (CNDDDB Occurrence Number 104) has been documented within 2.4 miles of the project, and suitable nesting habitat for California black rail and California Ridgway's rail occurs within 300 feet of the project site.

**Specific impacts, why they may occur and be potentially significant:** The project has the potential to impact nesting California black rail and California Ridgway's rail through auditory or visual disturbances above ambient levels. Disturbances from project activities within 700 feet of suitable nesting habitat may result in California black rail and/or California Ridgway's rail nest abandonment and loss of eggs or reduced health and vigor and loss of young. Although the presence of disturbed vegetation areas exist between the project site and potentially suitable nesting habitat, audio and visual disturbances may still occur. California black rail is CESA listed as threatened and California Ridgway's rail is CESA listed as endangered and therefore are considered to be a threatened or endangered species pursuant to CEQA Guidelines section 15380. Therefore, if an active California black rail or California Ridgway's rail nest is disturbed by the project, the project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

**Recommended Mitigation Measure:** To reduce potential impacts to California black rail and California Ridgway's rail to less-than-significant and comply with Fish and Game Code section 3511 (fully protected avian species), CDFW recommends including the mitigation measure below.

**MM-BIO-5:** The project shall map the location of potentially suitable California black rail and California Ridgway's rail nesting habitat within 700 feet of the project site and obtain CDFW's written approval of the mapping prior to project construction. Any project activities within 700 feet of potentially suitable California black rail and California Ridgway's rail nesting habitat shall be avoided during the breeding season (January 15 – August 31 for California Ridgway's rail, February 1 – August 31 for California black rail) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted in writing by CDFW, or the project implements noise and visual avoidance measures below. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that California black rail and California Ridgway's rail are not nesting in these locations.

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If breeding California black rail or California Ridgway's rail are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where California black rail or California Ridgway's rail have been detected during the breeding season.

If work must be done during the breeding season within 700 feet of California black rail and California Ridgway's rail nesting habitat, and annual surveys have not documented California black rail and California Ridgway's rail absence, noise levels shall not exceed 10 dBA over existing ambient noise levels and a noise attenuating fence and/or visual barrier shall be installed to reduce visual and/or acoustic impacts, unless otherwise approved in writing by CDFW. In this case, the project shall prepare a noise and visual avoidance plan and obtain CDFW's written approval of the plan, and implement the CDFW-approved plan, prior to conducting project activities.

## **WATER RIGHTS & OPERATION OF DIVERSION**

CDFW advises that the project operate in accordance with the terms and conditions of applicable water rights and coordinate with CDFW regarding any water rights change petition, if applicable.

CDFW recommends that the EIR evaluate the full range of operational impacts associated with diverting surface flows from the Russian River for storage in Nicasio Reservoir for use during dry conditions. The EIR should demonstrate how the project intends to capture atmospheric river flows and clearly define the specific diversion criteria, timing, and magnitude that would be used to divert water during high flow events. The project should not rely on exceedance of the minimum instream flow requirements established under State Water Resources Control Board Decision 1610 as the primary trigger for diversion, since exceedance of these minimum flow requirements does not necessarily constitute a high flow event.

CDFW recommends that the EIR evaluate how the proposed project may interact with and influence existing water diversion operations in the Russian River, including diversion facilities operated by Sonoma Water at the Mirabel Dam complex, where an inflatable dam is used seasonally to facilitate diversions when surface flows decline and groundwater supplies are insufficient to meet water demand. CDFW has documented increased mortality of juvenile coho salmon at Mirabel Dam, likely associated with increased residence time in the forebay that results in higher risk of predation. CDFW is concerned that implementation of the proposed project could incentivize operation of the inflatable dam for longer durations or during periods that overlap with smolt outmigration (typically March through June), beyond existing operations.

Additionally, CDFW recommends that the EIR evaluate whether the project may alter flow patterns in the Russian River and modify estuary conditions, including changes in timing and

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frequency of estuary breaching events and associated impacts to sensitive fish species, such as anadromous salmonids and longfin smelt (*Spirinchus thaleichthys*).

## ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

## FILING FEES

CDFW anticipates that the project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

Questions regarding this letter or further coordination should be directed to Nick Wagner, Senior Environmental Scientist (Specialist), at [Nicholas.Wagner@wildlife.ca.gov](mailto:Nicholas.Wagner@wildlife.ca.gov) or (707) 428-2075; or Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov) or (707) 210-4415.

Sincerely,

DocuSigned by:  
  
B77E9A6211EF486...  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Land Use and Climate Innovation SCH No. 2026030496  
Sara Azat, National Oceanic and Atmospheric Administration - [Sara.Azat@noaa.gov](mailto:Sara.Azat@noaa.gov)  
Kelsey Kruger, Regional Water Quality Boards - [Kelsey.Kruger@waterboards.ca.gov](mailto:Kelsey.Kruger@waterboards.ca.gov)  
Craig Weightman, CDFW Bay Delta Region - [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)

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### ATTACHMENT 1: Special-Status Species

Scientific Name	Common Name	Status
Amphibians & Reptiles		
<i>Rana boylei</i> pop. 1	foothill yellow-legged frog - north coast DPS	SSC
<i>Actinemys marmorata</i>	northwestern pond turtle	FPT, SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
Birds		
<i>Athene cunicularia</i>	burrowing owl	SC, SSC
<i>Strix occidentalis caurina</i>	northern spotted owl	FT, ST
<i>Laterallus jamaicensis coturniculus</i>	California black rail	ST, FP
<i>Rallus obsoletus obsoletus</i>	California Ridgway's rail	FE, SE, FP
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Melospiza melodia samuelis</i>	San Pablo song sparrow	SSC
<i>Elanus leucurus</i>	white-tailed kite	FP
Plants		
<i>Hemizonia congesta</i> ssp. <i>congesta</i>	congested-headed hayfield tarplant	CRPR 1B.2
<i>Fritillaria liliacea</i>	fragrant fritillary	CRPR 1B.2
<i>Fritillaria lanceolata</i> var. <i>tristulis</i>	Marin checker lily	CRPR 1B.1
<i>Hesperolinon congestum</i>	Marin western flax	FT, ST, 1B.1
<i>Streptanthus anomalus</i>	Mount Burdell jewelflower	1B.1
<i>Streptanthus glandulosus</i> ssp. <i>pulchellus</i>	Mt. Tamalpais bristly jewelflower	CRPR 1B.2
<i>Amorpha californica</i> var. <i>napensis</i>	Napa false indigo	CRPR 1B.2
<i>Ceanothus decornutus</i>	Nicasio ceanothus	CRPR 1B.2

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<i>Sagittaria sanfordii</i>	Sanford's arrowhead	CRPR 1B.2
<i>Dirca occidentalis</i>	western leatherwood	CRPR 1B.2
<i>Gilia capitata ssp. tomentosa</i>	woolly-headed gilia	CRPR 1B.1
<i>Eriogonum luteolum var. caninum</i>	Tiburon buckwheat	CRPR 1B.2
Fishes		
<i>Oncorhynchus mykiss</i>	Central California Coast winter steelhead	FT, SSC
<i>Hesperoleucus venustus subditus</i>	southern coastal roach	SSC
Mammals		
<i>Lasiurus cinereus</i>	hoary bat	SSC
<i>Antrozous pallidus</i>	pallid bat	SSC
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC

FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; FPT = proposed as threatened ESA; SE= state listed as endangered under CESA; ST = state listed as threatened under CESA; SC = state candidate species under CESA; SSC = state Species of Special Concern; FP = California Fully Protected species; CRPR = California Rare Plant

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## ATTACHMENT 2

### Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
<b>MM-BIO-1</b>	<p>A qualified biologist shall provide an assessment of potential northern spotted owl nesting and roosting habitat within the project area and an appropriate area around the project area and obtain CDFW's written acceptance of the assessment. Alternatively, the project may assume that northern spotted owl nesting and roosting habitat occurs in these areas. The project shall consult with CDFW to determine the appropriate habitat assessment and survey areas, which may include up to 0.7 miles around the project site.</p> <p>If the assessment concludes that northern spotted owl nesting habitat is present or habitat presence is assumed, then the following measures shall be implemented:</p> <ul style="list-style-type: none"> <li>• <u>If the project will remove northern spotted owl nesting habitat</u>, a qualified biologist shall conduct 2 years of surveys on the project site and within the appropriate radius around the project site with 6 complete visits per year following the USFWS Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012 and the associated Attachment A: Take Avoidance Analysis - Coast Redwood Region, dated November 1, 2019, to determine the presence or absence of northern spotted owl.</li> </ul> <p>Following the 2 years of surveys described above, a qualified biologist shall conduct Spot Check Surveys for northern spotted owl on the project site and within a 0.25 mile radius around the project site during northern spotted owl nesting season (March 15 to July 31) each year until project construction is completed, pursuant to the above survey protocol, unless otherwise approved in writing by CDFW.</p> <ul style="list-style-type: none"> <li>• <u>If the project will not remove northern spotted owl nesting habitat</u>, a qualified biologist shall conduct surveys on the project site and within a 0.25 mile radius around the project site during northern spotted owl nesting season each year until project</li> </ul>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	<p>construction is completed in accordance with Section 9 of the above survey protocol, Surveys for Disturbance-Only Projects, unless otherwise approved in writing by CDFW.</p> <p>The project shall obtain CDFW's written acceptance of the qualified biologist and survey report(s) prior to project construction occurring during northern spotted owl nesting season.</p> <p>If nesting northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of northern spotted owl cannot be avoided, the project shall consult with: 1) CDFW pursuant to CESA and obtain an ITP, and 2) USFWS pursuant to the federal ESA.</p>		
<p><b>MM-BIO-2</b></p>	<p>If the project will result in the removal of northern spotted owl nesting or roosting habitat, the project shall prepare an northern spotted owl mitigation plan including mitigating northern spotted owl nesting or roosting habitat removal at a minimum 3:1 mitigation to impact ratio. Habitat mitigation shall include permanent preservation of high-quality nesting/roosting habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before project construction, unless otherwise approved in writing by CDFW. The northern spotted owl mitigation plan shall be submitted to CDFW for approval before project construction and include a review of suitability of mitigation lands for northern spotted owl as confirmed by a qualified biologist. The project shall obtain CDFW's written approval of the northern spotted owl mitigation plan.</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>
<p><b>MM-BIO-3</b></p>	<p>Prior to ground disturbance, the project shall submit a habitat assessment prepared by a Qualified Biologist for Marin western flax and other special-status plants and an evaluation of potential direct and indirect impacts to any on-site or adjacent off-site habitat, such as</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	<p>modification of hydrological conditions or construction related sedimentation into occupied habitat, to CDFW for review and obtain CDFW's written acceptance of the assessment and evaluation.</p> <p>If suitable habitat for Marin western flax or other special-status habitat is observed and may be impacted, a Qualified Biologist shall conduct protocol level plant surveys prior to project activities. No later than 30 days prior to initiating project activities covered by this Agreement, the project shall provide survey reports for protocol surveys for CESA-listed and other special-status plants to CDFW and obtain CDFW's written approval of the reports, unless otherwise approved in writing by CDFW. Surveys shall be conducted according to CDFW's 2018 Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (<a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants</a>), during appropriate conditions, and include visiting reference populations, unless otherwise approved in writing by CDFW. Surveys should include the entire extent of any directly or indirectly impacted suitable wetland habitat for special-status wetland plants, including portions of the wetland on adjacent parcels or not directly impacted, as impacts to part of a wetland often affects the entire wetland. Evaluation of indirect impacts to special-status wetland plants may necessitate a thorough hydrological assessment that fully analyzes existing and post-project conditions to seasonal wetland habitat. If CESA-listed plants are documented on-site or off-site where they may be directly or indirectly impacted, or the surveys are not approved in writing by CDFW, the project shall immediately notify CDFW, and no project work may commence until the project obtains a CESA ITP, and an amendment to this Agreement may be required, unless otherwise approved in writing CDFW.</p> <p>If any non-CESA listed special-status plant species are observed, such as CRPR plants, the project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to project activities. If full avoidance is not possible, project activities may not commence until the project has consulted with CDFW and obtained CDFW's written approval, which may include seed salvage, transplant, or other protective measures appropriate for the species.</p>		
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<p><b>MM-BIO-4</b></p>	<p>If the project commences during the burrowing owl wintering season from September 1 to October 15 (or any extended work period), prior to project activities a Qualified Biologist shall conduct a burrowing owl habitat assessment within 1,640 feet (500 meters) of the project area pursuant to the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report, available here: <a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds</a>, unless otherwise approved in writing by CDFW. The Qualified Biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology. The habitat assessment shall focus on searching the CNDDDB and potentially other sources for any burrowing owl records on or within one mile of the project area, vegetation type and height, suitable burrows (with an opening of &gt;11 cm in diameter and a depth of &gt;150 cm), burrow surrogates (culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures), and presence of burrowing owl sign (tracks, molted feathers, cast pellets, prey remains, egg shell fragments, owl white wash, and nest burrow decoration material), and the presence of burrowing owl individuals or pairs. If the habitat assessment does not identify suitable habitat and surveys are not conducted as described below, an additional habitat assessment shall be conducted within 14 days prior to construction and if new potentially suitable burrowing owl refugia are present surveys shall be conducted as described below, unless otherwise approved in writing by CDFW. The results of the habitat assessment shall be emailed to the CDFW contact below, or if unavailable another CDFW representative, and the project shall obtain CDFW's written approval of the habitat assessment prior to starting project activities.</p> <p>If suitable burrowing owl habitat is observed, four surveys shall be conducted to detect the presence of burrowing owl pursuant to the CDFW 2012 Staff Report and shall begin on August 1. The site visits shall be spread evenly throughout the non-breeding season, unless otherwise approved in writing by CDFW. The survey results shall be emailed to the CDFW contact below, or if unavailable another CDFW representative, and the project shall obtain CDFW's written approval of the survey results prior to starting project activities. In addition, a survey shall be completed within 14 days prior to the start of construction, as described in the CDFW 2012 Staff Report.</p> <p>If burrowing owl is detected, the project shall</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>
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	<p>immediately notify CDFW. The project shall avoid impacts to the burrowing owl and implement a 1,640-foot buffer area around the owl site in which no project activities shall occur, unless otherwise approved in writing by CDFW. A Qualified Biologist or Biological Monitor shall monitor any detected owl to ensure it is not disturbed.</p> <p>If the project cannot ensure burrowing owl and their burrows are fully avoided, the project shall consult with CDFW and obtain a take authorization or otherwise demonstrate compliance with CESA.</p> <p>Habitat compensation for impacts to occupied wintering burrowing owl habitat (habitat known to have been occupied by wintering burrowing owl within the last 3 years) shall also be provided at a minimum 3:1 mitigation to impact ratio prior to project construction, unless otherwise approved by CDFW. Habitat mitigation shall include permanent preservation of high-quality burrowing owl wintering habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, to be finalized before project construction, unless otherwise approved in writing by CDFW. The burrowing owl mitigation plan shall be submitted to CDFW for approval before project construction and include a review of suitability of mitigation lands for burrowing owl as confirmed by a qualified biologist. The project shall obtain CDFW's written approval of the burrowing owl mitigation plan.</p>		
<p><b>MM-BIO-5</b></p>	<p>The project shall map the location of potentially suitable California black rail and California Ridgway's rail nesting habitat within 700 feet of the project site and obtain CDFW's written approval of the mapping prior to project construction. Any project activities within 700 feet of potentially suitable California black rail and California Ridgway's rail nesting habitat shall be avoided during the breeding season (February 1 to August 31) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted in writing by CDFW, or the project implements noise and visual avoidance measures below. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that California black rail and California Ridgway's rail are not nesting in these locations.</p> <p>If breeding California black rail or California Ridgway's rail are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	<p>areas where California black rail or California Ridgway's rail have been detected during the breeding season.</p> <p>If work must be done during the breeding season within 700 feet of California black rail and California Ridgway's rail nesting habitat, and annual surveys have not documented California black rail and California Ridgway's rail absence, noise levels shall not exceed 10 dBA over existing ambient noise levels and a noise attenuating fence and/or visual barrier shall be installed to reduce visual and/or acoustic impacts, unless otherwise approved in writing by CDFW. In this case, the project shall prepare a noise and visual avoidance plan and obtain CDFW's written approval of the plan, and implement the CDFW-approved plan, prior to conducting project activities.</p>		
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