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DEPARTMENT OF FISH AND WILDLIFE

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September 29, 2026

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Subject: Seaborn Reservoir Project (Project)
Notice of Scoping (NOS)
State Clearinghouse No.: 2026080988

Dear Gary Mills:

The California Department of Fish and Wildlife (CDFW) received an NOS from Tulare Irrigation District (TID) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹ and the National Environmental Policy Act (NEPA).

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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that TID still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA,

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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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 would 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 may be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. 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).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (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 if an ITP may be pursued for a project.

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 nests, and eggs include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

Unlisted 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 to be considered endangered, rare, or threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA

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Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

Water Rights: The capture of unallocated stream flows are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200 et seq. 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. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides biological expertise to review and comment on environmental documents and impacts arising from Project activities.

PROJECT DESCRIPTION SUMMARY

Proponent: Tulare Irrigation District

Objective: The proposed Project includes three project alternatives. Alternatives A and B both include developing a surface water storage reservoir in an abandoned aggregate mining operation, water diversion structure and pipeline to divert water from the McKays point diversion on the Kaweah River to the proposed reservoir, and conveyance features to deliver stored water to and from the St. Johns River and Kaweah River for use by TID and the Consolidated Peoples Ditch Company. Alternative A includes returning water back to the Kaweah River via the McKays point diversion, while Alternative B includes installing pipeline to return water back to the Kaweah River downstream of the McKays point diversion directly south of the proposed reservoir. Alternative C includes land fallowing. The Project area is approximately 290 acres.

TID received a Watershed Planning grant by the U.S. Department of Agriculture/Natural Resources Conservation Service (USDA/NRCS) for this Project. The grant requires TID to complete an Environmental Assessment (EA), pursuant to the NEPA. USDA/NRCS will be the NEPA and lead for this Project.

Location: The Project is located in unincorporated Tulare County, California, approximately 3.5 miles southwest of Lake Kaweah, directly south of the community of Naranjo; between Avenue 337 to the north and the Kaweah River to the south, and between the McKays point diversion to the east and Road 222 to the west; in Sections 4 and 5, Township 18 South, Range 27 East, Mount Diablo Base and Meridian; centroid of the proposed reservoir is approximately latitude 36.39556 and longitude -119.06675.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist TID in adequately identifying and/or mitigating the Project's significant or potentially significant direct and indirect impacts on fish and wildlife (biological) resources. Based on a review of aerial imagery, the Project description, and a review of California Natural Diversity Database (CNDDDB) records, several special-status species and habitat types could potentially be impacted by Project activities. Project-related construction and water diversion activities could impact the following special-status plant and wildlife species and habitats known to occur in the surrounding area: the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State threatened and fully protected bald eagle (*Haliaeetus leucocephalus*); the State fully protected golden eagle (*Aquila chrysaetos*); the State candidate for listing western burrowing owl (*Athene cunicularia*) and Crotch's bumble bee (*Bombus crotchii*); the State candidate and federally proposed threatened western spadefoot (*Spea hammondi*); the State species of special concern and federally proposed threatened northwestern pond turtle (*Actinemys marmorata*); the State endangered and federally threatened San Joaquin adobe sunburst (*Pseudobahia peirsonii*); the State species of special concern American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), western red bat (*Lasiurus blossevillei*), and Northern California legless lizard (*Anniella pulchra*); the California rare plant rank 1B.2 recurved larkspur (*Delphinium recurvatum*), spiny-sepaled button-celery (*Eryngium spinosepalum*), and calico monkeyflower (*Diplacus pictus*); and stream and riparian resources.

Vegetation communities and habitats in the Project vicinity includes Valley sacaton grassland, Great Valley oak riparian forest, sycamore alluvial woodland, irrigated row crops, vineyards, orchards and field crops, non-native annual grassland, ruderal disturbed areas, and barren unvegetated areas including levee roads. Aquatic features in and near the Project area include the Kaweah and St. Johns Rivers and associated riparian and fresh emergent wetlands, recharge basins, detention basins, agricultural ditches and canals, and agricultural ponds.

CDFW requests that the EA and CEQA document prepared for this Project fully identify potential impacts to biological resources, including the above-mentioned species. As to whether or not a Mitigated Negative Declaration or Environmental Impact Report would be appropriate for this Project, it is premature to conduct any CEQA analysis absent any biological survey information and information regarding significant and cumulative impacts. In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are

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essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

The following comments do not represent all of our concerns; more specific comments can be provided once CDFW has had the opportunity to review the Initial Study and/or EA/CEQA document that will be prepared for this Project. CDFW recommends that the following recommendations be incorporated into the EA/CEQA document prepared for this Project as enforceable mitigation measures.

San Joaquin Kit Fox

The Project is within the range of the San Joaquin kit fox (SJKF), and a review of recent aerial imagery shows suitable habitat for San Joaquin kit fox in the Project area (CDFW 2026). In addition to natural habitats, SJKF den in rights-of-way, agricultural and fallow/ruderal habitat, dry stream channels, and canal levees, etc., and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in fallow and agricultural fields and utilize streams and canals as dispersal corridors. Absence in any one year is not necessarily a reliable predictor of future SJKF potential to occur on a site. As a result, there is potential for SJKF to occupy all suitable habitat within the Project boundary and surrounding area.

CDFW recommends a qualified biologist conduct a habitat assessment for SJKF within Project area and a 500-foot buffer, for a biological study report to be included in the EA/CEQA document prepared for this Project. In areas of suitable habitat and a 500-foot buffer, CDFW recommends that the EA/CEQA document prescribe focused field surveys for SJKF and any sign, such as potential dens, prior to the start of Project activity. CDFW also recommends following the U.S. Fish and Wildlife Service (USFWS) *Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance* (USFWS 2011) during Project implementation. If SJKF is detected, CDFW recommends that the CEQA document require consultation with CDFW to discuss how to avoid take, and if take cannot be avoided, to acquire an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081, subdivision, (b) to comply with CESA.

Least Bell's Vireo

The Project is within the range of the Least Bell's Vireo (LBVI), and review of aerial imagery indicates the presence of riparian woodland vegetation suitable to support LBVI, within the Project site and its vicinity. While LBVI are known to breed within mature riparian woodland, second-growth forest, and coastal chaparral in coastal southern California, there are both recent and historical occurrences within Tulare

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County to suggest the species occurs at least sporadically within the riparian habitats located within the San Joaquin Valley (CDFW 2026). Therefore, the Project has the potential to impact LBVI.

CDFW recommends that a qualified biologist conduct a habitat assessment for LBVI as part of the biological technical studies conducted in support of the EA/CEQA document. If potentially suitable habitat is identified, CDFW recommends that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that the EA/CEQA document require protocol-level surveys to be conducted for LBVI following the USFWS Least Bell's Vireo Survey Guidelines (USFWS 2001) within the nesting season immediately prior to Project activity in areas of suitable nesting habitat. If an active LBVI nest are detected during surveys or at any time during Project activities, CDFW recommends that the CEQA document require consultation with CDFW 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.

Swainson's Hawk

Swainson's hawk (SWHA) are known to occur within the Project area and have the potential to nest in riparian habitat and other mature trees within the Project area. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Suitable foraging habitat for SWHA also exists within the vicinity of the Project, including annual grassland, alfalfa or grain fields, and livestock pasture. As a result, there is potential for SWHA to occupy all suitable habitat within the Project boundary and surrounding area.

CDFW recommends that a qualified biologist conduct a habitat assessment for potential SWHA nest sites within the Project area and a ½-mile buffer, and for a biological study report to be included with the EA/CEQA document. CDFW recommends that the EA/CEQA document require protocol-level surveys to be conducted for SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (2000) within the nesting season immediately prior to Project activity in areas of suitable nesting habitat within the Project area and a ½-mile buffer. CDFW recommends maintaining a minimum no-disturbance buffer of ½ mile around active nests 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 site for survival. If an active SWHA nest are detected during surveys or at any time during Project activities and a ½-mile buffer is not feasible, CDFW recommends that the CEQA document require consultation with CDFW 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.

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Tricolored Blackbird

The Project is within the range of the tricolored blackbird (TRBL), and the species is known to occur within the Project area vicinity. In the San Joaquin Valley, TRBL historically bred within the vicinity of fresh water, primarily in marshy areas and important sites for nesting colonies included heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar. Foraging typically occurred within flooded lands, grassy fields, and margins of ponds (Grinnel and Miller 1994). However, a large proportion of the San Joaquin Valley TRBL population now nests in agricultural grain fields (Weintraub et al., 2016). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type, particularly in the San Joaquin Valley (Beedy et al. 2023). Based on aerial imagery, portions of the Project sites could provide potential foraging and nesting habitat to TRBL. As a result, there is potential for TRBL to occupy all suitable habitat within the Project boundary and surrounding area.

CDFW recommends that a qualified biologist conduct a habitat assessment for TRBL as part of the biological technical studies conducted in support of the EA/CEQA document. If potentially suitable habitat is identified, CDFW recommends that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that the EA/CEQA document require a qualified biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of Project activities to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends that the EA/CEQA document requires conducting pre-activity surveys of an identified nesting colony within 10 days prior to the start of vegetation- or ground-disturbing activities to reassess the colony's real extent.

If any active TRBL nesting colony is found during pre-activity surveys or Project activities, CDFW recommends implementation of a minimum 500-foot no-disturbance buffer around the colony. CDFW recommends that this buffer remains in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged and are no longer reliant upon the colony or parental care for survival. If any TRBL nesting colony is detected during pre-activity surveys or Project activities, and the 500-foot buffer is not feasible CDFW recommends the CEQA document require consultation with CDFW 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.

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Nesting Bald Eagle and Golden Eagle

Bald eagle (BAEA) and golden eagle (GOEA) occurrences have been documented within the vicinity of the Project area, including the Kaweah River area (CDFW 2026). Without appropriate survey methods, nesting eagles could remain undetected, resulting in avoidance and minimization measures not being effectively implemented. In addition, human activity near nest sites can cause reduced provisioning rates of golden eagle chicks by adults (Steidl et al. 1993). As a result, there is potential for BAEA and GOEA to occupy all suitable habitat within the Project boundary and surrounding area.

CDFW recommends that a qualified wildlife biologist conduct a habitat assessment for nesting eagles following the *Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment* (Driscoll 2010), and the *Protocol for Evaluating Bald Eagle Habitat and Populations in California* (Jackman and Jenkins 2004). If Project activities take place during the avian nesting season of February 1 through September 15, CDFW recommends that the EA/CEQA document require additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

If an active eagle nest is found, CDFW recommends the EA/CEQA document require implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest site for survival. If nesting eagles are detected and the ½-mile no-disturbance buffer is infeasible or if the Project proponent chooses to assume presence during Project implementation, CDFW recommends the CEQA document require consultation with CDFW to discuss on how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP pursuant to Fish and Game Code section 2081.15.

Western Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (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 Register) on October 25, 2024. As such, BUOW 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 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. BUOW have been documented within the vicinity of the Project area and based on aerial imagery, potential habitat occurs both within and bordering the Project area (CDFW 2026). As a result, there is potential for BUOW to occupy all suitable habitat within the Project boundary and surrounding area.

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CDFW recommends that a qualified biologist conduct a habitat assessment for BUOW, for a biological study report to be included with the EA/CEQA document. In areas of suitable habitat, CDFW recommends that the EA/CEQA document requires surveying for BUOW by a qualified biologist following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report; CDFG 2012). If any BUOW or known BUOW den (active or inactive) is detected during pre-activity surveys or Project activities, CDFW recommends delineating and maintaining no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), prior to and during any Project activities. CDFW advises that these no-disturbance buffers be implemented for both wintering and breeding BUOW. If any BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers are not feasible, CDFW recommends the CEQA document require consultation with CDFW to discuss how to implement the Project and avoid take, or to obtain an ITP pursuant to Fish and Game Code section 2081, subdivision, (b) to comply with CESA.

Western Spadefoot

The FGC approved western spadefoot (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 Notice Register on September 18, 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).. WESP occurs primarily in grasslands, seasonal wetlands, and vernal features, WESP is also known to utilize 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 western spadefoot (WESP), the species has been documented in the vicinity of the Project, 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 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 for a biological study report to be included with the EA/CEQA document. 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 that the EA/CEQA document requires a qualified biologist survey for WESP by following appropriate survey methodologies prior to initiating Project activities.

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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, CDFW recommend the CEQA document require consultation with CDFW 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

The Project is within the range of the Crotch's bumble bee (CBB), and the species has been documented in the vicinity of the Project (CDFW 2026). CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, underneath brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014, Hatfield et al. 2015). Overwintering sites for CBB mated queens include soft, disturbed soil (Goulson 2010) or leaf litter or other debris (Williams et al. 2014). Based on aerial imagery, the Project appears to contain habitat suitable to support Crotch's bumble bee. As a result, there is potential for CBB to occupy all suitable habitat within the Project boundary and surrounding area.

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

Special-Status Bats

The Project is within the range of the western mastiff bat, western red bat, and pallid bat, and western mastiff bat have been documented to occur in the vicinity of the Project area (CDFW 2026). In addition, habitat features that have the potential to support these and other bat species are present within the Project area.

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CDFW recommends that a qualified biologist conduct a habitat assessment for special-status bats for a biological report to be included in the EA/CEQA document. If suitable habitat is present, CDFW also recommends that the EA/CEQA document requires a qualified biologist to conduct focused surveys in suitable habitat and during the appropriate seasonal period of bat activity well in advance of Project implementation. CDFW recommends methods such as through emergence surveys or bat detectors to determine whether bats are present. If bats are present, CDFW recommends that a 100-foot no-disturbance buffer be placed around the roost and that a qualified biologist who is experienced with bats monitor the for signs of disturbance to bats from Project activity. If a bat roost is identified and work is planned to occur during the breeding season, CDFW recommends that no disturbance to maternity roosts occur and that the CEQA document require CDFW be consulted to determine measures to prevent breeding disruption or failure.

Northwestern Pond Turtle

The northwestern pond turtle (NPT) occurs in the Project area (CDFW 2026) and a review of aerial imagery of the area shows habitats that NPT utilize for nesting, overwintering, dispersal, and basking, including streams, ponded areas, irrigation canals, and riparian and upland habitats. NPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). As a result, there is potential for NPT to occupy all suitable habitat within the Project boundary and surrounding area.

CDFW recommends that a qualified biologist conduct a habitat assessment for NPT for a biological report to be included in the EA/CEQA document. CDFW also recommends that the EA/CEQA document requires a qualified biologist to conduct focused surveys in suitable habitat for NPT within 10 days prior to Project activity, and that focused surveys for nests occur during the egg-laying season of March through August. CDFW recommends that the CEQA document requires that any NPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If NPT individuals, including neonates at the nest, are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

Northern California legless lizard

The Project is within the range of the Northern California legless lizard (NCLL), the Project area may have habitat features that have the potential to support this species. NCLL are found primarily in areas with sandy or loose organic soils or where there is plenty of leaf litter (Zeiner et al. 1990). As a result, there is potential for NCLL to occupy all suitable habitat within the Project boundary and surrounding area.

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CDFW recommends that a qualified biologist conduct a habitat assessment for NCLL, for a biological study report to be included with the EA/CEQA document. In areas of suitable habitat, CDFW recommends that the EA/CEQA document requires focused species-specific surveys be conducted during the appropriate season for the species their requisite habitat features to evaluate potential impacts resulting from ground-disturbance. CDFW recommends NCLL to be avoided by delineating a 50-foot no disturbance buffer, however, if avoidance is not feasible a qualified biologist with the appropriate permit can relocate NCLL out of the Project area into a nearby area with suitable habitat.

Special-Status Plants and Sensitive Natural Communities

The Project area is within the range of multiple special-status plant species, and the Project area may have habitat features that have the potential to support special-status plants. CDFW recommends that a qualified botanist conduct a habitat assessment for special-status plant species, for a biological study report to be included with the EA/CEQA document. In areas of suitable habitat, CDFW recommends that the EA/CEQA document requires a qualified botanist to conduct focused botanical surveys following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). Please note that multiple annual surveys may be necessary to fully capture baseline conditions for habitats that have annual and short-lived perennial plants. Additionally, please note that adverse conditions from yearly weather patterns may prevent botanical field surveyors from determining the presence of, or accurately identifying, some special-status plants in the surveyed area. Disease, drought, predation, fire, herbivory, or other disturbance may also preclude presence or identification of special-status plants in any given year. Special-status plants may also be present as dormant seeds within the seed bank. Therefore, CDFW recommends visiting the survey sites in more than one year to increase the likelihood of detection of special-status plants.

If special-status plants are detected CDFW recommends special-status plant species and sensitive natural communities be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s), specific habitat type(s) required by special-status plants species, and sensitive natural communities. If buffers cannot be maintained, CDFW recommends that the CEQA document require consultation with CDFW to determine appropriate minimization and mitigation measures for impacts to special-status plants and sensitive natural communities and how to implement the Project to avoid take of State-listed plants. CDFW recommends that if State-listed plants cannot be avoided, that the CEQA document require obtaining an ITP, pursuant to Fish and Game Code section 2081, subdivision, (b) and/or California Code of Regulations, Title 14, section 786.9, subdivision (b), to comply with CESA and the Native Plant Protection Act.

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Wetland and Riparian Habitats

Based on aerial imagery riparian, the Project area contains numerous waterways, riparian, and wetland areas within an agricultural landscape that also currently supports undeveloped habitats. Construction activities within these features have the potential to impact downstream waters as a result of Project site impacts leading to erosion, scour, and changes in flow and stream morphology. CDFW recommends that the EA/CEQA document include formal stream mapping and wetland delineation be conducted by a qualified biologist or hydrologist, as warranted, to determine the baseline location, extent, and condition of streams (including any floodplain) and wetlands within and adjacent to the Project area. Please note that while there is overlap, State and Federal jurisdictions differ, and complete stream mapping is likely to differ from delineations used by the U.S. Army Corps of Engineers specifically to identify the extent of Waters of the U.S. Therefore, it is advised that the aquatic resource delineation identify both Federal wetlands in the Project area as well as the extent of all streams including floodplains, if present, within the Project area. CDFW advises that site map(s) depicting the extent of any activities that may affect wetlands, lakes, or streams be included with any Project site evaluations, to clearly identify areas where stream/riparian and wetland habitats could be impacted from Project activities.

CDFW recommends that the potential direct and indirect impacts to stream/riparian and wetland habitat be analyzed. Based on those potential impacts, CDFW recommends that the EA/CEQA document include measures to avoid, minimize, and/or mitigate those impacts. CDFW recommends that impacts to stream/riparian habitat (i.e., biotic and abiotic/nonvegetative features) take into account the effects to stream function and hydrology from stream/riparian habitat loss or damage, as well as potential effects from the loss of stream/riparian habitat to special-status species already identified herein. CDFW recommends that losses to stream and wetland habitats be offset with corresponding stream/riparian and wetland habitat restoration incorporating native vegetation to replace the value to fish and wildlife provided by the habitats lost from Project implementation. If on-site restoration to replace habitats is not feasible, CDFW recommends off-site mitigation by restoring or enhancing in-kind stream/riparian and/or wetland habitat and providing for the long-term management and protection of the mitigation area, to ensure its persistence.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS regarding potential impacts to federally listed species including, but not limited to, SJKF, LBV, and San Joaquin adobe sunburst. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under 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.

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Consultation with the USFWS in order to comply with ESA is advised well in advance of any Project activities.

Nesting Birds: CDFW encourages that any proposed vegetation- or ground-disturbing activities occur during the bird non-nesting season; however, if vegetation- or ground-disturbing activities must occur during the nesting season (February 1 through September 15), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above in this letter.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, 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 parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers.

Lake and Streambed Alteration: Project activities include the construction of water diversion and return structures within and along the Kaweah River, and the diversion of stream flows, 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 project proponents 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; or (c) deposit debris, waste or other materials that could pass into any

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river, stream, or lake. “Any river, stream, or lake” includes those that are ephemeral or intermittent as well as those that are perennial in nature.

Please be advised that CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration (LSA) Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts on lakes or streams, a subsequent CEQA analysis may be necessary for issuance of a Final LSA Agreement. Furthermore, please note that CDFW has an obligation to ensure LSA Agreements have protections for all fish and wildlife (including State species of special concern and or State special animals) and that Project activities fully avoid impacts to State-listed species, except in instances where an ITP has been acquired for the specific species in question.

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.

Indirect and Cumulative Riparian Impacts from Surface Water Diversions: The NOS does not specify the annual volume (acre-feet) of surface flow that will be diverted to the storage reservoir. Without the appropriate information to discern potential impacts, CDFW is concerned that the Project may result in direct and cumulative adverse impacts to the fish and wildlife and other public trust resources supported by the Kaweah River and associated riparian habitats, and that any proposed reduction in surface flow will affect the sustainability of the riparian woodland and aquatic habitats within the stream. Project-related diversions may impact aquatic and terrestrial (i.e., upland) wildlife species and habitats downstream of the Project location by reducing the amount of surface flow in the active stream channel at the discharge location and downstream, as well as reducing the amount of subsurface flow from percolation

Watershed and habitat protection are vital to CDFW’s management of California’s diverse fish, wildlife, and plant resources. The Kaweah and St. Johns Rivers in the vicinity of the Project supports mature riparian woodland habitat and may potentially support several sensitive species listed as threatened or endangered under CESA and ESA, as well as several State Species of Special Concern, including those species listed above. The proposed Project could result in direct and cumulative adverse impacts to these fish and wildlife and other public trust resources.

The Sequoia Riverlands Trust manages the Kaweah Oaks Preserve is located downstream of the proposed Project. The Kaweah Oaks Preserve is 344 acres and contains some of the last remaining Valley oak riparian forests in the San Joaquin Valley. Project-related activities resulting in surface water diversion may potentially impact these properties and sensitive habitats and special-status plant and wildlife species including Valley sacaton grassland, Great Valley oak riparian forest, least Bell’s vireo, Swainson’s hawk, tricolored blackbird, and numerous other special-status species (CDFW 2026).

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Surface flow diversion may impact the riparian woodland habitat located downstream by reducing the amount of water available in the active channel to native plant species within the riparian woodland. This may subsequently lead to a reduction in the native plant species composition of the riparian woodland, which would allow adjacent nonnative plant species to invade and colonize the habitat, reducing the quality of habitat for and presence of sensitive species.

CDFW recommends that the EA/CEQA document include 1) an analysis of the proposed acquisition of surface water and any potential direct, indirect, and cumulative biological impacts to fish and wildlife species and their habitats, as well as to properties permanently conserved to protect those resources; and 2) a hydrologic study to determine if the production of the watershed is sufficient to reduce the discharge flows, as proposed, without having significant adverse impacts to riparian and aquatic resources of watershed downstream, including the invasion and establishment of nonnative plant species and change in habitat type.

Water Rights: The Project will divert surface flow from the Kaweah River. CDFW recommends that the EA/CEQA document includes a detailed description of the water rights and water entitlements for the points of diversion and places of use that pertain to the proposed Project. CDFW recommends including information on the historic and current water rights and water use agreements/contracts including pre-1914 and appropriative rights, riparian rights, prescriptive rights, and adjudications.

CDFW recommends that the EA/CEQA document address whether the Project proponents will be filing a change petition or a new application for additional surface water. 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 significant 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: CDFW recommend that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those 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 identified and utilized for this analysis is advised. CDFW staff is

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available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

California Natural Diversity Database (CNDDDB): Please note that the CNDDDB is populated by voluntary submission records of species detections. As a result, species may be present in locations not depicted in the CNDDDB, but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist/botanist 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 at or near the Project area.

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

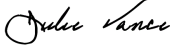
CONCLUSION

CDFW appreciates the opportunity to comment on the NOS to assist TID in identifying and mitigating Project impacts on 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

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regarding this letter or further coordination, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
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