

STAFF REPORT

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06/28/19

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D. Simpkin

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:

Madera County/CSA-16

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the San Joaquin River, 4 miles south of Friant Dam, San Joaquin River, Madera County

AUTHORIZED USE:

Bank restoration, cove fill, and a temporary construction easement.

LEASE TERM:

5 years, beginning June 28, 2019.

CONSIDERATION:

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6327, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

Madera County/CSA-16 (Applicant) is proposing the Common Diversion Facility Project (Project). Two existing water diversion facilities located approximately 4 miles downstream of the Friant Dam on the San Joaquin River include a total of 7 water intake pipelines. The pipelines are located in an artificial cove, built around 1980. Five of the existing intake pipes divert water for agricultural use by TV Trees, LLC. The Applicant operates the remaining two intakes that provide drinking water to the Sumner Hill residential subdivision located less than one-half mile from the existing

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intake pipelines. The intake pipes are nearing the end of their useful service life and need to be replaced. As part of the proposed Project, the Applicant will replace all seven pipes with one 36-inch-diameter steel water intake pipeline.

The Applicant has applied for a General Lease – Public Agency Use for bank restoration, cove fill, and a temporary construction easement.

The removal of the seven existing water intakes and the installation of a new 36-inch-diameter steel water intake pipeline are not included in the proposed lease because they are for the procurement of fresh-water from a navigable river and have already been permitted by the Central Valley Flood Protection Board, formerly known as the Reclamation Board. Pursuant to Public Resources Code section 6327¹, these activities do not require a lease from the Commission.

The proposed restoration activities will restore a portion of the west bank of the San Joaquin River to pre-cove conditions. After removal of the intake structures, the cove will be filled, and the shoreline restored to grades similar to the nearby north shoreline using 12 to 18-inch-diameter rock riprap and native willow plantings and other native vegetation. In addition, the lease will include a temporary construction easement that will allow the Applicant access for dewatering activities located on upland property.

The new 36-inch diameter intake will be buried 3-feet below the river bottom. The portion of the pipeline located above the river bottom will be fitted with a cone fish screen that meets California Fish and Wildlife and National Marine Fisheries Service fish screening criteria for anadromous salmonids. The top of the proposed fish screen will be located approximately 7-feet below the current ordinary high-water mark. The perimeter of the intake will be permanently marked with white buoys. The cone fish screen will eliminate wildlife impingement and entrainment and will not substantially interfere with recreational activities in the San Joaquin River. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease requires the Applicant to conduct all work safely and indemnify the Commission in the

¹ The commission may, upon written application, grant a permit for the use and occupancy of state lands under the jurisdiction of the commission for the installation of facilities for procurement of fresh-water from and construction of drainage facilities into navigable rivers, streams, lakes and bays, except that if such applicant obtain the required permit for such use from the local reclamation district, the Reclamation Board, the Department of Water Resources, the California Debris Commission or the Corps of Engineers of the United States Army, then such application shall not be required by the State Lands Commission.

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event of any liability resulting from lessee's activities within the lease premises. The lease does not grant the lessee exclusive rights to the lease premises and is limited to a 5-year term. In addition, once all restoration and construction activities are complete, the lease will terminate upon staff acceptance of an executed quitclaim deed.

Climate Change:

This section of the San Joaquin River is not tidally influenced and would not be subject to sea-level rise. As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. In rivers, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow. Runoff will likely increase scour, decreasing bank stability at a faster rate.

The proposed Project includes removing and replacing the existing seven intake pipes with a single intake pipe fitted with a state-of-the-art fish screen, making all necessary appurtenant pipeline connections, replacing the two existing County/CSA-16 pumps, installing a back-up inertie connection between the County/CSA-16 water pipeline with the TV Trees, LLC, water pipeline, and restoring a segment of the San Joaquin River shoreline, including filling the existing artificial cove that contains the existing water intake pipes. The proposed Project is designed to withstand scour pressures, liquefaction, and seismic events. The Commission's leasing interest includes only the cove fill, bank restoration, and a temporary construction easement, which will terminate upon staff acceptance of an executed lease quitclaim deed.

Conclusion:

For the reasons stated above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of

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sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Following staff's receipt of written notification of successful Project completion, the Lease shall terminate upon the execution of a quitclaim deed by Lessee, and the execution and written acceptance of said quitclaim by the Commission's Executive Officer or designee.
4. In February 2018, during release of the Notice of Preparation, the Applicant received eight written requests from representatives of the Dumna Wo Wah Tribal Government, two separate requests from representatives of the Chowchilla Yokuts Tribe, two separate requests from representatives of the Table Mountain Rancheria, and one request from Picayune Rancheria of the Chukchansi Indians representative. As lead agency and pursuant to AB 52, the Applicant mailed notifications for formal consultation to the representatives above but received no responses. Tribal consultation under AB 52 is used to develop avoidance, impact minimization, and mitigation measures of Tribal Cultural Resources. The impact determination for Tribal Cultural Resources in the Final Environmental Impact Report (EIR) was concluded to be less than significant.
5. An EIR, State Clearinghouse No. 2018031001, was prepared for this project by Madera County and certified on March 5, 2019. Staff has reviewed this document and the Mitigation Monitoring Program prepared pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

A Mitigation Monitoring Program and Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in the attached Exhibits C and D.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through

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the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

National Marine Fisheries
Madera County
Central Valley Flood Protection Board

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
State Historic Preservation Office
Central Valley Regional Water Quality Control Board
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Findings

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2018031001, was prepared for this project by Madera County and certified on March 5, 2019, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), as contained in the attached Exhibit D.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

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PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning June 28, 2019, for a term of 5 years, for bank restoration, cove fill, and a temporary construction easement; as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the Executive Officer or designee to accept a lease quitclaim deed and terminate the lease upon Project completion.

LEGAL DESCRIPTION

PARCEL 1 – TEMPORARY ACCESS ROAD AREA NO.1

That portion of the Lands of the State of California lying within the San Joaquin River located within the South half of the Southwest quarter of Section 24, Township 11 South, Range 20 East, Mount Diablo Base and Meridian, in the State of California, more particularly described as follows:

Being a fifteen-foot wide strip of land lying equally on either side of the following described centerline.

COMMENCING at the intersection of the United States Government Meander Line on the West side of the San Joaquin River as shown per the Record of Survey recorded in Book 28 of Maps, at page 123, Madera County Records and the North Line of said South half, said intersection bears North 89°50'26" East for a distance of 1366.04 feet from the Northwest corner of said South half, said Meander Line being also the property limit of Lot 10 of Tract 266, Large Lot Final Map of Tesoro Viejo, according to the final map thereof, recorded October 1, 2015, as Document No. 2015023250, in Book 62 of Maps, at Pages 71 through 89, inclusive, Madera County Records;

Thence leaving said point of commencement South 16°06'05" West, 105.71 feet to the **POINT OF BEGINNING**, said point lying on the Westerly line of the Ordinary Low Water of the San Joaquin River as shown per the Administrative Map created by the State Lands Commission of the State of California dated April. 1992;

Thence along said centerline the following four (4) courses:

South 04°38'20" East, 34.73 feet;

South 04°26'01" West, 30.78 feet;

South 12°24'50" West, 33.94 feet and

South 06°12'27" West, 42.43 feet to a point on the Ordinary Low Water of the San Joaquin River.

Said sidelines to be lengthened or shortened to terminate on the low water mark of the right bank of the San Joaquin River.

Containing an area of 2,130 square feet, more or less.

LEGAL DESCRIPTION**PARCEL 2 – TEMPORARY ACCESS ROAD AREA NO.2**

That portion of the Lands of the State of California lying within the San Joaquin River located within the South half of the Southwest quarter of Section 24, Township 11 South, Range 20 East, Mount Diablo Base and Meridian, in the State of California, more particularly described as follows:

Being a fifteen foot wide strip of land lying equally on either side of the following described centerline.

COMMENCING at the intersection of the United States Government Meander Line on the West side of the San Joaquin River as shown per the Record of Survey recorded in Book 28 of Maps, at page 123, Madera County Records and the North Line of said South half, said intersection bears North 89°50'26" East for a distance of 1366.04 feet from the Northwest corner of said South half, said Meander Line being also the property limit of Lot 10 of Tract 266, Large Lot Final Map of Tesoro Viejo, according to the final map thereof, recorded October 1, 2015, as Document No. 2015023250, in Book 62 of Maps, at Pages 71 through 89, inclusive, Madera County Records;

Thence leaving said point of commencement South 34°14'15" West, 224.23 feet to the **POINT OF BEGINNING**, said point lying on the Westerly line of the Ordinary Low Water of the San Joaquin River as shown per the Administrative Map created by the State Lands Commission of the State of California dated April. 1992;

Thence along said centerline South 18°19'23" East, 99.91 feet to a point on the Ordinary Low Water of the San Joaquin River.

Said sidelines to be lengthened or shortened to terminate on the low water mark of the right bank of the San Joaquin River.

Containing an area of 1,500 square feet, more or less.

LEGAL DESCRIPTION**PARCEL 3 - TEMPORARY ACCESS ROAD AREA NO.3**

That portion of the Lands of the State of California lying within the San Joaquin River located within the South half of the Southwest quarter of Section 24, Township 11 South, Range 20 East, Mount Diablo Base and Meridian, in the State of California, more particularly described as follows:

Being a fifteen foot wide strip of land lying equally on either side of the following described centerline.

COMMENCING at the intersection of the United States Government Meander Line on the West side of the San Joaquin River as shown per the Record of Survey recorded in Book 28 of Maps, at page 123, Madera County Records and the North Line of said South half, said intersection bears North 89°50'26" East for a distance of 1366.04 feet from the Northwest corner of said South half, said Meander Line being also the property limit of Lot 10 of Tract 266, Large Lot Final Map of Tesoro Viejo, according to the final map thereof, recorded October 1, 2015, as Document No. 2015023250, in Book 62 of Maps, at Pages 71 through 89, inclusive, Madera County Records;

Thence leaving said point of commencement South 31°20'35" West, 473.51 feet to the **POINT OF BEGINNING**, said point lying on the Westerly line of the Ordinary Low Water of the San Joaquin River as shown per the Administrative Map created by the State Lands Commission of the State of California dated April. 1992;

Thence along said centerline and the arc of a non-tangent concave to the southeast, having a radius of 95.00 feet, through a central angle of 63°28'39" for a distance of 105.25 feet and subtended by a chord which bears, South 52°40'29" West, 99.95 feet;

Thence South 20°56'09" East, 30.82 feet to a point on the Ordinary Low Water of the San Joaquin River.

Said sidelines to be lengthened or shortened to terminate on the low water mark of the right bank of the San Joaquin River.

Containing an area of 2,106 square feet, more or less.

LEGAL DESCRIPTION**PARCEL 4 - TEMPORARY ACCESS ROAD AREA NO.4**

That portion of the Lands of the State of California lying within the San Joaquin River located within the South half of the Southwest quarter of Section 24, Township 11 South, Range 20 East, Mount Diablo Base and Meridian, in the State of California, more particularly described as follows:

Being a fifteen foot wide strip of land lying equally on either side of the following described centerline.

COMMENCING at the intersection of the United States Government Meander Line on the West side of the San Joaquin River as shown per the Record of Survey recorded in Book 28 of Maps, at page 123, Madera County Records and the North Line of said South half, said intersection bears North 89°50'26" East for a distance of 1366.04 feet from the Northwest corner of said South half, said Meander Line being also the property limit of Lot 10 of Tract 266, Large Lot Final Map of Tesoro Viejo, according to the final map thereof, recorded October 1, 2015, as Document No. 2015023250, in Book 62 of Maps, at Pages 71 through 89, inclusive, Madera County Records;

Thence leaving said point of commencement South 05°48'34" West, 460.63 feet to the **POINT OF BEGINNING**, said point lying on the Westerly line of the Ordinary Low Water of the San Joaquin River as shown per the Administrative Map created by the State Lands Commission of the State of California dated April. 1992;

Thence along said centerline South 11°09'53" East, 346.62 feet;

Thence South 17°31'23" East, 193.75 feet to a point on the Ordinary Low Water of the San Joaquin River.

Said sidelines to be lengthened or shortened to terminate on the low water mark of the right bank of the San Joaquin River.

Containing an area of 8,100 square feet, more or less.

LEGAL DESCRIPTION**PARCEL 5 – COVE RESTORATION AREA**

That portion of the Lands of the State of California lying within the San Joaquin River located within the South half of the Southwest quarter of Section 24, Township 11 South, Range 20 East, Mount Diablo Base and Meridian, in the State of California, more particularly described as follows:

COMMENCING at the intersection of the United States Government Meander Line on the West side of the San Joaquin River as shown per the Record of Survey recorded in Book 28 of Maps, at page 123, Madera County Records and the North Line of said South half, said intersection bears North 89°50'26" East for a distance of 1366.04 feet from the Northwest corner of said South half, said Meander Line being also the property limit of Lot 10 of Tract 266, Large Lot Final Map of Tesoro Viejo, according to the final map thereof, recorded October 1, 2015, as Document No. 2015023250, in Book 62 of Maps, at Pages 71 through 89, inclusive, Madera County Records;

Thence leaving said point of commencement South 13°29'52" East, 59.98 feet to the **POINT OF BEGINNING**, said point lying on the Westerly line of the Ordinary Low Water of the San Joaquin River as shown per the Administrative Map created by the State Lands Commission of the State of California dated April, 1992;

Thence leaving said Ordinary Low Water line along the following thirty-three (33) courses:

1. South 77°30'38" East, 5.19 feet;
2. South 69°32'40" East, 4.93 feet;
3. South 50°45'47" East, 10.02 feet;
4. South 56°43'31" East, 14.82 feet;
5. South 51°00'32" East, 8.03 feet;
6. South 40°45'12" East, 10.98 feet;
7. South 45°40'18" East, 11.14 feet'
8. South 22°51'45" West, 36.45 feet;
9. South 40°29'02" West, 10.45 feet;
10. South 78°03'43" West, 2.89 feet;
11. South 83°38'33" West, 3.83 feet;
12. South 45°49'52" West, 11.14 feet;
13. South 39°15'10" West, 6.76 feet;
14. South 28°11'01" West, 4.20 feet;
15. South 17°33'46" West, 4.46 feet;
16. South 13°37'23" West, 11.42 feet;
17. South 7°56'43" West, 9.81 feet;
18. South 12°20'30" West, 11.77 feet;
19. South 62°33'11" West, 8.91 feet
20. South 86°59'38" West, 8.74 feet;
21. North 55°36'14" West, 12.60 feet;


- 22. North 33°42'23" West, 2.52 feet
- 23. North 13°00'13" West, 5.82 feet;
- 24. North 6°23'33" West, 11.36 feet;
- 25. North 0°54'36" West, 6.99 feet;
- 26. North 2°44'47" East, 11.92 feet;
- 27. North 4°54'30" East, 7.38 feet;
- 28. North 11°20'43" East, 12.31 feet;
- 29. North 26°36'19" East, 9.32 feet;
- 30. North 75°58'31" West, 2.20 feet;
- 31. North 56°58'27" West, 5.84 feet;
- 32. North 29°37'23" West, 4.81 feet and
- 33. North 8°56'35" East 31.50 feet to a point on the Ordinary Low Water of the San Joaquin River;

Thence along said line North 46°32'12" East, 33.33 feet;
Thence North 27°45'09" East, 4.62 feet to the Point of Beginning.

Containing an area of 6,796 square feet, more or less.

EXCEPTING THEREFROM any portion lying landward of the low water mark of the right bank of the San Joaquin River.

Prepared by me or under my direction.



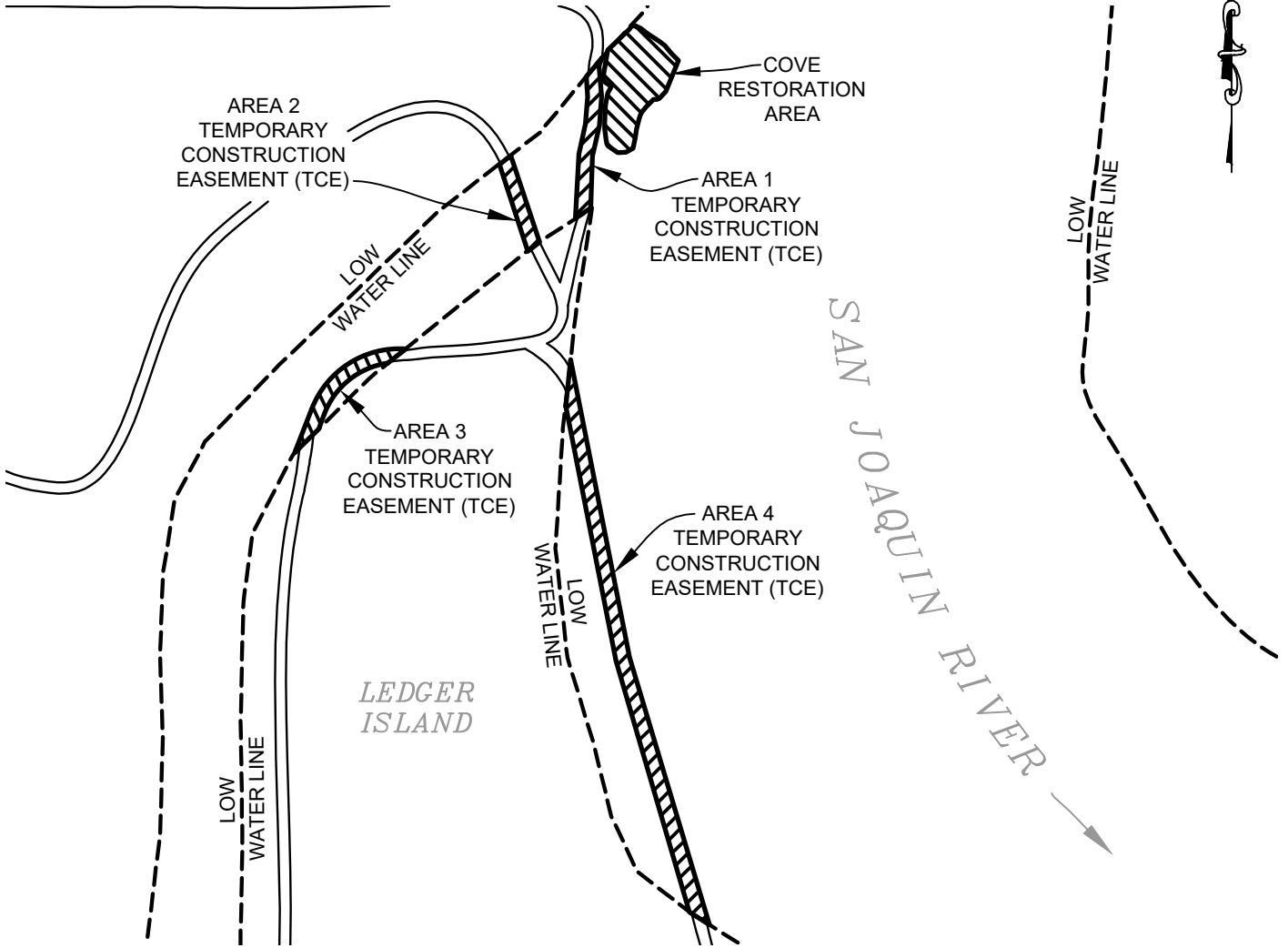
JEROME R. JONES, LS 4922
My Registration Expires: 12/31/2020

Date: 6/5/19



NO SCALE

SITE



4 MILES SOUTH OF FRIANT DAM, NEAR LEDGER ISLAND

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

W 27208
 MADERA COUNTY /
 CSA-16
 GENERAL LEASE -
 PUBLIC AGENCY USE
 MADERA COUNTY



RGB 4/14/18

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM
MADERA COUNTY COMMON DIVERSION FACILITY PROJECT
(W27208, State Clearinghouse No. 2018031001)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Madera County Common Diversion Facility Project.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of an MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency certified an EIR, State Clearinghouse No. 2018031001, adopted an MMP for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The segments of the Project area within the Commission's jurisdiction include levee segments one through four as depicted in Figure 1 of the Draft EIR. The full text of each mitigation measure, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMP
Biological Resources 4.5-1. Effects to Special Status Fish Species	C1, C2, C9, C10, and C11	None
Biological Resources 4.5-2 Direct or indirect Effects to Special-Status Wildlife Species and their Habitats	4.5-1, C9, C10, and C13 to C24	None
Biological Resources 4.5-3 Affect Riparian Habitat or Sensitive Natural Communities.	Habitat Mitigation and Monitoring Plan (HMMP) and C12	None
Biological Resources 4.5-4 Affect Construction and Fill within Waters of the U.S. and Waters of the State.	HMMP	None
Biological Resources 4.5-5 Affect Wildlife and/or Fish Movement and/or Migration.	4.5-1, Fish Rescue and Relocation Plan (FRRP), C2, and C10	None
Cultural Resources 4.6-1 Potential adverse change to the significance of a Historical Resource.	4.6-1 and 4.6-2	See MM 4.6-1 and 4.6-2 below
Cultural Resources 4.6-2 Potential Adverse Change to the Significance of unknown Archaeological Resources within the Project Site.	4.6-2	See MM 4.6-2 below
Cultural Resources 4.6-3 Potential Disturbance of Human Remains.	4.6-3	See MM 4.6-3 below
Hazards and Hazardous Materials 4.9-1 Transport, Storage, and Use of Hazardous Materials Which Could Result in an Inadvertent Release to the Environment.	C3, C4, C5, C6, C7, C8, HH1, HWQ1, HWQ2, HWQ3, HWQ4, HWQ5, HWQ6, HWQ7, HWQ8, HWQ9, and HWQ10	None
Hydrology and Water Quality 4.10-2 Project Effects Could Adversely Impact Water Quality During Construction and Operational Stages by Increasing the Concentration of	C3, C4, C5, C6, C7, HH1, HWQ1, HWQ2, HWQ3, HWQ4, HWQ5, HWQ6, HWQ7, HWQ8, HWQ9, HWQ10, and HMMP	None

² See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

Potential Impact	Mitigation Measure (MM) ²	Difference Between CSLC MMP and Lead Agency MMP
Pollutants in Surface Runoff from the Project Site.		
Hydrology and Water Quality 4.10-3 Project Effects Which Would Modify Drainage Patterns on the Project Site and Alter the San Joaquin River Channel Configuration Potentially Impacting Erosion	HMMP	None
Hydrology and Water Quality 4.10-4 Project Effects Which Would Alter the San Joaquin River Channel on the Project Site which could Impact Surface Runoff	HMMP	None
Paleontological Resources 4.13-1 Potential Direct Impacts to Unique Paleontological Resource During Excavation Activities.	4.13-1	See MM 4.13-1 below

Mitigation Measure 4.6-1: Prior to the start of ground-disturbing activities associated with the proposed project, a qualified archaeologist shall be retained to complete a Treatment Plan for CA-MAD-295/827. The Treatment Plan shall: identify any portions of eligible resource CA-MAD-295/827 that can be preserved in place, including surface features; prescribe appropriate data recovery excavations and disposition of archaeological materials encountered during data recovery and/or construction; identify protective measures, including guidance on setbacks for construction activities and the placement of high-visibility exclusionary fencing prior to the initiation of ground-disturbing activities under the direction of a qualified archaeologist; provide methods to minimize the potential for looting or vandalism of exposed or subsurface resources; provide standards for documentation by a qualified archaeologist with reports filed with the County and other agencies, such as the California Historic Resources Information System (CHRIS); and provide a schedule of milestones by which project construction can proceed. The Treatment Plan shall be reviewed and approved by the County prior to implementation.

California State Lands Commission (Commission) staff shall be notified of any California Register of Historic Resources or National Register of Historic Resources-eligible resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of any artifacts or specimens including, but not limited to, those of an archaeological, cultural, historical, or paleontological nature from such lands must be approved by the Commission.

Mitigation Measure 4.6-2: Any excavation or grading activities associated with proposed project-related facilities shall be subject to monitoring by a qualified archaeological monitor, which would allow oversight during the recovery of artifacts, if discovered. The archaeological monitor shall conduct a tailgate meeting with all new construction personnel who will be operating ground-disturbing equipment to explain the sensitivity for cultural resources, the procedures for pausing work in the event of an unanticipated discovery, and the penalties associated with unauthorized disturbance or collection of artifacts or cultural resources. All trained personnel shall be required to sign a form indicating their understanding of the procedures and display a hard hat sticker for inspector verification. A copy of the signed forms shall be provided to the County as proof of compliance.

If discovery of an artifact or unknown item having the potential to be a cultural resources of any kind occurs during project construction, all work within 100 feet of the discovery shall cease, the County notified, and a qualified archaeologist retained to assess the significance of the find, make recommendations to the County on its disposition, coordinate with federal permitting agencies, and prepare appropriate documentation, including any required mitigation that satisfies the requirements of Public Resources Code Section 21083.2. California State Lands Commission (Commission) staff shall be notified of any California Register of Historic Resources or National Register of Historic Resources-eligible resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of archaeological and historical resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.” The archaeologist shall complete a report of the excavations and findings, and the report shall be submitted to the regional office of the California Historic Resources Information System (CHRIS) and Madera County.

Mitigation Measure 4.6-3: If human remains are discovered during project construction activities, all ground-disturbing activity within 100 feet of the resources shall cease and the County Coroner shall be notified immediately, in accordance with Section 5097.98 of the California PRC and Section 7050.5 of California’s Health and Safety Code. If the remains are determined by the County Coroner to be Native American, the Coroner shall notify NAHC and procedures under state law shall be followed. If necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains before resuming ground-disturbing activities within 100 feet of where the remains were discovered.

California State Lands Commission (Commission) staff shall be notified of any human remains discovered on lands under the jurisdiction of the Commission so that the Commission may fulfill its responsibilities as the landowner.

Mitigation Measure 4.13-1: Any project-related ground disturbance that extends more than 10m (30 feet) below the surface of the disturbed area and which brings material to the surface to allow observation of subsurface material shall be monitored by a qualified paleontologist to determine if the older Quaternary deposits are encountered. If older Quaternary deposits are encountered, excavations and other disturbance in this

formation shall be monitored by a qualified paleontological monitor. In the event that the paleontological monitor identifies fossils of potential significance, further construction-related excavations and ground disturbance within the vicinity of the fossil find shall cease until the fossil is fully recovered. Any such fossil finds shall be recovered, identified, and cataloged by a qualified paleontologist, and subsequently donated to an accredited repository designated by the County. California State Lands Commission (Commission) staff shall be notified of any California Register of Historic Resources or National Register of Historic Resources-eligible resources or paleontological specimens discovered on lands under the jurisdiction of the Commission. The final disposition of paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission. Once the fossil is deemed to be full recovered, construction excavations shall be allowed to resume. Following the completion of construction, a report shall be prepared that includes a list of any and all fossils recovered, documents each fossil locality, and interprets the resources recovered.

ATTACHMENT C-1

Mitigation Monitoring Program Adopted by

Madera County

APPENDIX A

Mitigation Monitoring and Reporting Program Common Diversion Facility

The California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq) and CEQA Guidelines require a CEQA lead agency to adopt a program for monitoring or reporting on the measures it has imposed to mitigate or avoid significant environmental effects. As stated in the Public Resources Code: "...the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." Section 21081.6 provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined prior to final certification of the EIR. The lead agency may delegate reporting or monitoring responsibilities to another public agency or a private entity, which accept delegations. The lead agency, however, remains responsible for ensuring that implementation of the mitigation measures occur in accordance with the program.

In compliance with these requirements, the County of Madera (County) has prepared this Mitigation Monitoring and Reporting Program (MMRP) for the Common Diversion Facility Project, and includes all of the mitigation measures, including avoidance and minimization measures (discussed further below), identified in the Final Environmental Impact Report (FEIR).

As part of the proposed project design process, the project engineer prepared Avoidance and Minimization Measures (AMMs) to be implemented during project construction to avoid or minimize potential environmental impacts during construction and operation of the proposed project. Analysis in the FEIR determined that these AMMs, in addition to other specified mitigation measures identified in the FEIR, were necessary to reduce or avoid potentially significant or significant impacts. The FEIR concludes that with implementation of the mitigation measures identified in the FEIR, which include the project's AMMs, the project would not result in any significant environmental effects. This MMRP contains all FEIR mitigation measures, including the AMMs and the additional mitigation measures.

AMMs are presented in the MMRP matrix below with a prefix corresponding to the resource subject or the project activity with which they are associated. For example, "AQ1" signifies the first AMM for the mitigation of potential project impacts on *air quality*, and "C2. Riparian Vegetation" signifies an AMM related to the protection of riparian vegetation. All other mitigation measures (i.e., those measures in the FEIR that are in addition to the AMMs) are identified with the prefix "MM" and a number corresponding to the EIR resource section in which that mitigation measure is presented. For example, mitigation measures beginning with "MM 4.5-" pertain to biological resources, as Section 4.5 is the Biological Resources section of the EIR.

The MMRP matrix below provides the full text of each mitigation measure, ~~including AMMs~~, and identifies the party that will directly implement the measure, implementation timing, the monitoring agency with ultimate responsibility and authority to ensure each measure is implemented, and the action or documentation verifying implementation of each measure. The County, as the lead agency adopting the mitigation measures, will have the ultimate responsibility for overseeing and ensuring implementation of all mitigation measures. The County, may however, delegate the responsibility for implementation, funding, and reporting to another entity through legally binding agreement. Specifically, this MMRP anticipates delegation of the implementation, funding, and reporting requirements to the WWTP-LLC in its capacity as a partner in implementing and funding implementation of the proposed project as described in the FEIR. Regardless of such delegation, the County would remain responsible for ensuring implementation of the mitigation measures in accordance with this MMRP.

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES		RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
AIR QUALITY					
AQ1.	All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.	WWTP-LLC and its Construction Contractors	Ongoing during construction.	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
AQ2.	All haul trucks transporting soil, sand, or other loose material off-site will be covered.				
AQ3.	All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet power vacuum streetsweepers at least once per day. The use of dry power sweeping is prohibited.				
AQ4.	All vehicle speeds on unpaved roads will be limited to 15mph.				
AQ5.	Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes to the extent feasible (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.				
AQ7.	All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.				
AQ8.	A publicly visible sign will be posted with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.				
AQ10.	Equipment Emissions. Highway diesel fuel will be used in all construction equipment to the extent feasible.				

BIOLOGICAL RESOURCES

MM 4.5-1:	California Tiger Salamander and Western Spadefoot Habitat Avoidance.	WWTP-LLC and its Qualified Biologists and Construction Contractors	Prior to and during construction.	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
(a)	Prior to the start of project-related activities, the project proponent shall retain a qualified CTS and western spadefoot biologist (Biologist).				
(b)	Before starting project-related activities, the Biologist shall conduct an education program for all persons involved with the proposed project. The program shall consist of a presentation from the Biologist that includes a discussion of the biology and general behavior of CTS and western spadefoot, information about the distribution and habitat needs of these animals, sensitivity of these animals to human activities, and their status of				

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>legal protection.</p> <p>(c) Prior to the start of project-related activities the Biologist shall identify all potential burrows that could support CTS and western spadefoot within the project area and a 50-foot radius around the project area. If potential burrows are found, the burrows shall be given a 50-foot no disturbance (i.e., ground disturbance) buffer. If ground disturbance is proposed to encroach on the 50-foot buffer, CDFW and USFWS shall be consulted prior to such encroachment.</p> <p>(d) Prior to the start of project-related activities the qualified Biologist shall walk the entire project site to identify any CTS or western spadefoot within the project site. These site walks shall occur every morning November 1st through July 1st on days when construction activity is scheduled to occur and before construction related activities start. Daily construction activities shall not start until the qualified Biologist has completed the site walk and verified that no CTS or western spadefoot are present. After July 1st and prior to November 1st when CTS and western spadefoot are not as active, the Biologist shall walk the project site a minimum of once weekly.</p> <p>(e) Each day during construction from November 1st through July 1st, prior to the start of daily construction activities, all staged construction equipment and construction materials shall be inspected daily by the Biologist for the presence of CTS and western spadefoot. After July 1st and prior to November 1st, and if the Biologist is not onsite, a trained construction foreman shall inspect equipment daily for the presence of CTS and western spadefoot. If either animal is found, all work shall stop until the Biologist arrives and clears the project site.</p> <p>(f) The Biologist and construction foreman shall monitor the National Weather Service 72-hour forecast for the project site July 1st through November 1st. If a 70 percent or greater chance of rainfall is predicted, daily site walks by the Biologist shall be conducted the day before the rain event, on each day during which construction activities are scheduled to occur during the rain event, and for three days following the rain event.</p> <p>(g) If a CTS is found at any time, the CTS shall be left alone and let to leave the site on its own volition. The Biologist shall monitor the CTS until the Biologist determines the CTS is safely offsite.</p> <p>(h) If a western spadefoot is found onsite, the Biologist may relocate the animal to a safe location offsite. Before handling the animal, the Biologist shall put on a new pair of disposable plastic gloves moistened with bottled water. Each western spadefoot shall be handled with a new pair of gloves, and each pair of disposable gloves shall be discarded after one use.</p> <p>(i) The Biologist shall submit all observations of western spadefoot and CTS to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation.</p>				

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>C1. General Construction Activities. The current seven intake pipes would be consolidated into a single intake and fish screen designed to meet or exceed current fish screen design standards for juvenile salmonids (salmonid fry rear in the area of the river where the intake would be located).</p> <p>A temporary cofferdam and/or other structures will be installed to isolate and dewater the work area within the San Joaquin River to facilitate intake construction. The cofferdam may be constructed using one of several standard methods, but in no case, will the structure extend across the entire river allowing bypass flows around the construction site. Installation of the temporary cofferdam has the potential to isolate juvenile salmon and other fish from the river, and the potential for those fish to be stranded and lost as a result of dewatering. To minimize and avoid the potential adverse impacts to juvenile Chinook salmon and other fish during dewatering, a fish rescue and relocation effort will occur as part of installation of the cofferdam and initial dewatering of the work area. The fish rescue and relocation will be conducted in accordance with the methods to reduce harm, harassment, and mortality of fish from cofferdam construction and dewatering associated with in-water construction activities.</p> <p>Intake construction, operations, and maintenance will comply with standard minimization and avoidance measures (best management practices).</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>Prior to and During Construction</p>	<p>Madera County</p>	<p>County review and approval of final construction and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C2. Riparian vegetation. The San Joaquin River channel will be accessed via areas where nominal riparian vegetation will be affected. To guide restoration of the man-made cove and riparian vegetation restoration, implement the Habitat Mitigation and Monitoring Plan (HMMP) (Appendix D of EIR Attachment II).</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C9. Monitoring. A CDFW-approved Designated Biologist will (a) be retained to monitor construction, and (b) will conduct mandatory contractor/worker awareness training for construction personnel if special-status species are found.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C10. Site survey. Prior to construction, the Designated Biologist will survey the site to determine whether special-status species are present. If federal or state listed species are found USFWS and/or CDFW will be notified.</p>	<p>WWTP-LLC and its Qualified Biologists</p>	<p>Prior to Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>C11. Fish rescue. Following installation of barriers to isolate the construction site from the active river channel, a qualified fisheries biologist and team will conduct a fish rescue program for the stranded fish prior to initiation of construction activities. Fish removed from the site will be immediately returned to the active channel. A fish rescue and relocation plan will be provided to NMFS and CDFW for review and approval prior to initiating the fish rescue;</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>Obtain CDFW approval of the Fish Rescue Plan. County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C12. Special-Status Plants. Project area, in advance of Project activities. Preconstruction floristic surveys shall be conducted by a qualified botanist during the appropriate blooming period prior to the start of Project activity. Surveys must follow the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Sacramento, California, the CNPS 2001 Botanical Survey Guidelines. California Native Plant Society. Available online: http://www.cnps.org/cnps/rareplants/pdf/cnps_survey_guidelines.pdf, and the USFWS 1996 Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. If surveys identify any special-status plants, Permittee shall submit survey results to CDFW at least one (1) week in advance of starting Project activities. If listed or other special status plant species are detected, a qualified biologist will identify them with flagging and avoid them with a 25-foot no disturbance buffer during Project activities. If this avoidance is not feasible, the County will consult with CDFW to determine whether alternative avoidance measures that are equally protective are possible. No activities will occur within 25 feet unless and until written guidance and approval is provided to the County by the CDFW.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>Obtain CDFW approval of the pre-construction survey reports County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C13. Burrowing owls. A qualified wildlife biologist will conduct a burrowing owl habitat assessment and survey for burrowing owls within the Project work area and a 500-foot radius of the Project work area following the methods described in the "Burrowing Owl Survey Protocol And Mitigation Guidelines" (California Burrowing Owl Consortium, April 1993). If any active burrowing owl burrows are observed within 500-feet of the project area, an appropriate no disturbance buffer will be established in consultation with CDFW. These burrows shall be designated as a sensitive area, protected, and monitored by a qualified biologist during Project construction activities. If avoidance of an occupied burrow is not feasible and the County proposes to evict burrowing owls from burrows, the County shall submit to CDFW for written approval a Burrowing Owl Eviction Plan (Eviction Plan) at least 30 days prior to any activity requiring eviction of owls. The Eviction Plan will include details regarding the eviction via one-way doors, including but not limited to the materials used and at least twice daily monitoring of subject burrows to ensure that owls are not trapped; timing of eviction only outside the nesting season; and details about any</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>proposed use of artificial burrows, including but not limited to design, installation, and maintenance. The County will not begin any eviction activity prior to receiving written approval from CDFW.</p>				
<p>C14. Golden Eagle. No Project construction activities will be completed from December 1 through March 31, unless a qualified wildlife biologist surveys for wintering activity of golden eagle within a ¼-mile radius of each Project work area no more than two (2) weeks prior to Project activities. If any wintering golden eagles are observed, a minimum ¼-mile avoidance buffer shall be established and maintained around the roost site. A qualified biologist will have the authority to stop Project activities that could affect the foraging or feeding behavior of eagles.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C15. Tricolored Blackbird. If Project construction activity will occur during the breeding season of the species (February 15 through September 15), no more than two weeks in advance of Project construction activity at each location, a qualified biologist who is experienced surveying for nesting tricolored blackbirds will survey all areas of suitable breeding habitat for tricolored blackbird within the Project work area and a 500-foot buffer. If a nesting colony is found, no activity will occur within a 500-foot buffer of the colony until a qualified biologist determines and CDFW confirms in writing that all chicks have fledged and are no longer reliant on the nest site.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C16. Swainson's hawk. No Project construction activity will be conducted between March 1 and August 30 unless a qualified wildlife biologist conducts Swainson's hawk nesting surveys within the Project work area and an appropriate buffer as recommended in the May 31, 2000 Swainson's Hawk Technical Advisory Committee "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys In California's Central Valley" (SWHA TAC 2000), beginning prior to commencing Project activity and continuing until the entire survey protocol is completed. If Project construction activity will begin before all surveys are completed, the County will submit to CDFW interim survey results within one (1) week prior to the start of Project activity. A no disturbance buffer, per the recommendations of SWHA TAC 2000, will be delineated around active nests until the breeding season has ended or until a qualified wildlife biologist has determined and CDFW has confirmed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C17. Western Pond Turtle. A preconstruction survey for western pond turtle will be conducted by a qualified biologist prior to construction activities. Any western pond turtles discovered in the Project work area immediately prior to or during Project activities will be allowed to move out of the work area of their own volition. If this is not feasible, they shall be captured by a qualified wildlife biologist and relocated out of harm's way to the nearest suitable habitat at least 100 feet from the Project work area where they were found.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>C18. California tiger salamander. USFWS and CDFW will be consulted with regard to the potential need to obtain take coverage, prior to construction activities, for the California tiger salamander under Section 7 or Section 10 of FESA and under Section 2081 of the California Fish and Game Code.</p>	<p>WWTP-LLC and its Qualified Biologists, and the County</p>	<p>Prior to Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C19. American badger. A pre-construction survey for American badger will be conducted by a qualified biologist prior to construction activities. Any American badger detected within the Project work area during Project activities will be allowed to move out of the work area of its own volition. If American badger is denning on or immediately adjacent to a Project work area, the County will consult with CDFW to determine whether the animal(s) may be evicted from the den. Eviction of badgers will not be approved by CDFW unless it is confirmed that no dependent young are present.</p>	<p>WWTP-LLC and its Qualified Biologists and Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C20. San Joaquin kit fox. Within 30 days prior to the start of Project activity, a qualified wildlife biologist shall perform transect surveys of the Project work area and a 250-foot buffer, to identify potential dens and other kit fox sign. Permittee shall submit survey results to CDFW. If sign of kit fox is detected, a qualified wildlife biologist will be available on-site during all Project-related activities that could impact the species. If kit fox are found on or within 250 feet of the Project work area, all activity will cease until a qualified wildlife biologist confirms that the individual(s) has left of its own volition. If San Joaquin kit fox dens are found, they will be avoided by appropriate distances (potential or atypical den = 50 feet; known den = 100 feet; pupping den = 500 feet). During reconnaissance-level surveys the den shall be treated as a known den unless sign associated with natal/pupping activity is observed. If any occupied San Joaquin kit fox pupping dens are subsequently discovered, the County will stop work and contact CDFW for further guidance. Absolutely no disturbance to known San Joaquin kit fox dens shall occur and no work will occur within the above buffers without contacting CDFW and obtaining written authorization to do so. The County recognizes that an Incidental Take Permit for San Joaquin kit fox may first be required for such activities.</p>	<p>WWTP-LLC and its Qualified Biologists and Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C21. Ringtail. Prior to ground disturbance the Project work area shall be surveyed for the presence of ringtail by a qualified biologist. If present, occupied dens will be marked and mapped and a 200-foot avoidance buffer will be mapped around the site. To passively relocate this species from impact areas, occupied dens would be monitored on a regular basis by a qualified biologist and destroyed after they are confirmed to be abandoned by ringtails.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>C22. Pallid bat. Pre-construction roosting bat surveys for all suitable roosting habitat (e.g., manmade structures, trees) will be conducted by a qualified biologist prior to construction activities. If suitable roosting habitat is identified, a qualified biologist will conduct an evening bat emergence survey that may include acoustic monitoring to determine whether or not bats are present. If pallid bats are found, the County will consult with CDFW prior to initiation of construction activities. If bats are not found during the preconstruction surveys, no further measures are necessary.</p>	<p>WWTP-LLC and its Qualified Biologists</p>	<p>Prior to and during Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C23. Disturbance of nesting birds. To protect nesting birds, no Project activity will begin from February 1 through August 31 unless the following Avian Nesting Surveys are completed by a qualified wildlife biologist. Surveys will occur within 10 days of ground disturbing activity. Separate avian survey and avoidance requirements are listed above for burrowing owl, golden eagle, tricolored blackbird, and Swainson's hawk (see Avoidance and Minimization Measure C (13, 14, 15, and 16)) respectively as revised. Birds of Prey: Surveys for nesting activity of birds of prey will be conducted by a qualified biologist for areas within a 500-foot radius of the construction area. If any active nests are observed, these nests will be designated a sensitive area and protected by a minimum 500-foot avoidance buffer and monitored continuously 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 or parental care for survival. Other Avian Species: Survey for nesting activity will be conducted by a qualified biologist for areas within a 250-foot radius of the construction area. If any nesting activity is found, the nests and nest substrate (trees, shrubs, ground, structures, or burrows) will be designated as a sensitive area and protected with a minimum 250-foot buffer and monitored continuously until young have fledged and are no longer reliant on the nest site or parental care. The County recognizes that CDFW may consider variances from these buffers when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography, and the County would obtain CDFW written approval of any such variance if a variance is deemed necessary.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C24. Blainsville's horned lizard. A pre-construction survey for Blainsville's horned lizard will be conducted by a qualified biologist prior to construction activities. Any Blainsville's horned lizard individuals discovered in the Project work area immediately prior to or during Project activities shall be allowed to move out of the work area of their own volition. If this is not feasible, they will be captured by a qualified wildlife biologist and relocated out of harm's way to the nearest suitable habitat at least 100 feet from the Project work area of where they were found.</p>	<p>WWTP-LLC and its Qualified Biologists and Construction Contractors</p>	<p>Prior to Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

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MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>O&M1. Operations and Maintenance Manual. The NMFS/CDFW-approved Operations and Maintenance Manual for the consolidated intake and fish screen project will include protocols for performance monitoring and impact avoidance & minimization during O&M.</p>	<p>WWTP-LLC</p>	<p>Prior to operation of the CDF</p>	<p>Madera County</p>	<p>County review and approval of O&M Manual to be prepared by WWTP-LLC. County review and approval of O&M Compliance Log to be submitted by WWTP-LLC</p>
<p>O&M2. Avoidance and Minimization Measures. For on-going maintenance, appropriate construction measures will be implemented as detailed in the Operations and Maintenance Manual.</p>	<p>WWTP-LLC</p>	<p>Ongoing after the start of CDF operation</p>	<p>Madera County</p>	<p>County review and approval of 1) annual O&M Manual review and any proposed changes to O&M Manual proposed by WWTP-LLC.</p>
<p>O&M3. Monitoring. The pumping plant, intake, and fish screening facility will be regularly monitored during operations.</p>	<p>WWTP-LLC</p>	<p>Ongoing after the start of CDF operation</p>	<p>Madera County</p>	<p>County review and approval of O&M Compliance Log to be submitted by WWTP-LLC</p>
<p>O&M4. Minimizing Fish Migration Effects. Evaluate the condition of fish screens immediately before the projected migration periods and take any remedial actions necessary.</p>	<p>WWTP-LLC</p>	<p>Every year after the start of CDF operation</p>	<p>Madera County</p>	<p>County review and approval of O&M Compliance Log to be submitted by WWTP-LLC</p>

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MITIGATION MEASURES		RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
CULTURAL RESOURCES					
MM 4.6-1.	<p>Treatment of CA-MAD-295/827. Prior to the start of ground-disturbing activities associated with the proposed project, a qualified archaeologist shall be retained to complete a Treatment Plan for CA-MAD-295/827. The Treatment Plan shall: identify any portions of eligible resource CA-MAD-295/827 that can be preserved in place, including surface features; prescribe appropriate data recovery excavations and disposition of archaeological materials encountered during data recovery and/or construction; identify protective measures, including guidance on setbacks for construction activities and the placement of high-visibility exclusionary fencing prior to the initiation of ground-disturbing activities under the direction of a qualified archaeologist; provide methods to minimize the potential for looting or vandalism of exposed or subsurface resources; provide standards for documentation by a qualified archaeologist with reports filed with the County and other agencies, such as the California Historic Resources Information System (CHRIS); and provide a schedule of milestones by which project construction can proceed. The Treatment Plan shall be reviewed and approved by the County prior to implementation.</p>	Qualified Archaeologist	Prior to the start of ground disturbing activities	Madera County	County review and approval of 1) Treatment Plan for CA-MAD-295/827 to be submitted by WWTP-LLC. County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
MM 4.6-2.	<p>Monitoring and Unanticipated Discovery Procedures. Any excavation or grading activities associated with proposed project-related facilities shall be subject to monitoring by a qualified archaeological monitor, which would allow oversight during the recovery of artifacts, if discovered. The archaeological monitor shall conduct a tailgate meeting with all new construction personnel who will be operating ground-disturbing equipment to explain the sensitivity for cultural resources, the procedures for pausing work in the event of an unanticipated discovery, and the penalties associated with unauthorized disturbance or collection of artifacts or cultural resources. All trained personnel shall be required to sign a form indicating their understanding of the procedures and display a hard hat sticker for inspector verification. A copy of the signed forms shall be provided to the County as proof of compliance.</p> <p>If discovery of an artifact or unknown item having the potential to be a cultural resources of any kind occurs during project construction, all work within 100 feet of the discovery shall cease, the County notified, and a qualified archaeologist retained to assess the significance of the find, make recommendations to the County on its disposition, coordinate with federal permitting agencies, and prepare appropriate documentation, including any required mitigation that satisfies the requirements of Public Resources Code Section 21083.2. The final disposition of archaeological and historical resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission." The archaeologist shall complete a report of the excavations and findings, and the report shall be submitted to the regional office of the California Historic Resources Information System (CHRIS) and Madera County.</p>	WWTP-LLC and its Qualified Archaeologist	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES		RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
MM 4.6-3.	Human remains analysis and treatment. If human remains are discovered during project construction activities, all ground-disturbing activity within 100 feet of the resources shall cease and the County Coroner shall be notified immediately, in accordance with Section 5097.98 of the California PRC and Section 7050.5 of California's Health and Safety Code. If the remains are determined by the County Coroner to be Native American, the Coroner shall notify NAHC and procedures under state law shall be followed. If necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains before resuming ground-disturbing activities within 100 feet of where the remains were discovered.	Construction Contractor	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
HAZARDS AND HAZARDOUS MATERIALS					
HH1.	Fuel Management. BMPs will be implemented to ensure that fluid leaks during construction do not contaminate groundwater. Refueling will be 100 feet from ordinary high water mark of the San Joaquin River to reduce potential introduction of fuels. If this is not feasible, containment materials will be used.	WWTP-LLC and its Construction Contractor	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
HYDROLOGY AND WATER QUALITY					
C3.	Runoff. Potential downstream runoff from the site will be controlled with sand bags, fiber mats, or other methods.	WWTP-LLC and its Construction Contractors	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
C4.	Fuel containment. All fueling and maintenance of construction equipment will occur at least 100 feet from the San Joaquin River ordinary high water mark. If this is not feasible, containment materials will be used.	WWTP-LLC and its Construction Contractors	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
C5.	Concrete and equipment wash containment. Washout area for vehicles will be located at least 100 feet removed from the San Joaquin River ordinary high water mark, and located within the eastern half of the identified staging and area where concrete materials cannot runoff into the river channel.	WWTP-LLC and its Construction Contractor	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>C6. Equipment leaks. When working in the channel or where there may be runoff to the channel, construction equipment will be fitted with absorbent materials at potential fuel, oil, and other fluid leak spots.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C7. Spill containment and isolation. During construction and post-construction maintenance involving use of equipment in or adjacent to the San Joaquin River channel, sand bags will be stockpiled on site so that they may be immediately filled and placed around any spill. In addition, any spills not contained within the maintenance area will immediately be isolated from the active river channel.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>C8. Re-grading. All upland disturbed areas will be regraded to pre-project contours except where the existing river cul-de-sac will be backfilled and restored as a river bank.</p>	<p>WWTP-LLC and its Construction Contractors and Restoration Specialist</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ1. Water Quality. A construction storm water pollution prevention plan (SWPPP) will be prepared identifying BMP's that will be implemented for all work to ensure that project construction does not adversely affect water quality.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ2. Channel protection. The construction zone will be isolated from the active San Joaquin River channel during in-water construction activity using a cofferdam.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ3. Concrete management. Concrete will not be poured within the river channel or below the San Joaquin River ordinary high water mark. All concrete work upland of the river and San Joaquin River ordinary high water mark will be washed and cured prior barrier removal to reduce potential for leaching to affect aquatic resources.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ4. Leak containment. All construction equipment will be inspected prior to each work day to ensure that oil and/or gas/diesel fuel are not leaking from equipment.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>HWQ5. Storage. Secondary containment for fueling and areas will be provided during construction.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ6. Wash water containment. Secondary containment for equipment wash water will be provided to ensure that wash water is not allowed to discharge from confined washout areas. Hardened material from the washout area will be removed and hauled off-site for proper disposal, in accordance with regulatory standards. Water and slurry (non-hardened material), will be removed by vacuum method and hauled off-site for proper disposal, in accordance with regulatory standards.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ7. Silt containment. Silt traps, ponds, sediment management methods, and/or other means will be provided to prevent runoff from upland construction areas to the river channel or to offsite upland areas. Turbidity curtains will be provided to control silt and sediment for work within the river.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ8. Stockpile runoff. Material stockpiles will be located outside of the ordinary high water mark, will have straw waddles or silt fences installed around their perimeter to minimize sediment discharges, and will be covered to prevent runoff.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>7HWQ9. Soil erosion. Loose soils will be protected from potentially erosive runoff.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
<p>HWQ10. Leaks. When construction equipment is used within the river channel, all such equipment will be fitted with secondary containment materials at potential oil/fuel leakage sites.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

Common Diversion Facility Project: Mitigation Monitoring And Reporting Program

MITIGATION MEASURES		RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
NOISE					
N2.	Noise monitoring. Construction contractors will be required to utilize mufflers and shields on intake and exhaust ports on power construction equipment and shrouds on impact tools.	WWTP-LLC and its Construction Contractors	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
PALEONTOLOGICAL RESOURCES					
MM 4.13-1.	Discovery of Unknown Paleontological Resources. Any project-related ground disturbance that extends more than 10m (30 feet) below the surface of the disturbed area and which brings material to the surface to allow observation of subsurface material shall be monitored by a qualified paleontologist to determine if the older Quaternary deposits are encountered. If older Quaternary deposits are encountered, excavations and other disturbance in this formation shall be monitored by a qualified paleontological monitor. In the event that the paleontological monitor identifies fossils of potential significance, further construction-related excavations and ground disturbance within the vicinity of the fossil find shall cease until the fossil is fully recovered. Any such fossil finds shall be recovered, identified, and cataloged by a qualified paleontologist, and subsequently donated to an accredited repository designated by the County. The final disposition of paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission. Once the fossil is deemed to be full recovered, construction excavations shall be allowed to resume. Following the completion of construction, a report shall be prepared that includes a list of any and all fossils recovered, documents each fossil locality, and interprets the resources recovered.	WWTP-LLC and its Qualified Paleontologist	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
PUBLIC SAFETY AND TRANSPORTATION					
PS1.	Materials delivery. Contractors will be required to schedule equipment and materials transport to be done outside of peak traffic periods, to the extent feasible.	WWTP-LLC and its Construction Contractors	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.
PS2.	Materials delivery. County of Madera will require that all construction materials and equipment be transported in accordance with Caltrans rules and regulations.	WWTP-LLC and its Construction Contractors	During Construction	Madera County	County review and approval of weekly compliance logs to be submitted by WWTP-LLC.

Common Diversion Facility Project: Mitigation Monitoring and Reporting Program

MITIGATION MEASURES	RESPONSIBLE FOR IMPLEMENTATION	TIMING OF IMPLEMENTATION	MONITORING AGENCY	ACTION INDICATING COMPLIANCE
<p>Trans1. Materials delivery. All construction materials and equipment will be transported in accordance with applicable federal, state, and local Caltrans rules and regulations.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>
ENERGY CONSUMPTION AND EFFICIENCY				
<p>E1. Energy efficiency. County of Madera will seek to minimize operational energy use by specifying, to the extent practical, a high efficiency electric motor will be utilized in the fish screening and CSA 16 replacement pumps.</p>	<p>WWTP-LLC and its Design Engineers and its Construction Contractors</p>	<p>Prior to Construction</p>	<p>Madera County</p>	<p>County review and approval of final design plans to be submitted by WWTP-LLC prior to construction validating compliance with AMM E1.</p>
<p>E2. Fuel consumption management. All construction contracts will include a specification that all equipment shall be turned off when not in use, with idling of construction equipment limited to not more than 2 minutes to the maximum extent practical.</p>	<p>WWTP-LLC and its Construction Contractors</p>	<p>During Construction</p>	<p>Madera County</p>	<p>County review and approval of weekly compliance logs to be submitted by WWTP-LLC.</p>

EXHIBIT D – MADERA COUNTY COMMON DIVERSION FACILITY PROJECT

CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS

1.0 INTRODUCTION

The California State Lands Commission (Commission), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Public Agency Use, to Madera County (County), for use of sovereign land associated with the proposed Madera County Common Diversion Facility Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)¹ The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6301, 6306, 6009, subd. (c).) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

The Commission is a responsible agency under CEQA for the Project because the Commission must approve a lease for the Project to go forward and because the County, as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The County analyzed the environmental impacts associated with the Project in a Final Environmental Impact Report (EIR) (State Clearinghouse No. 2018031001) and, on March 5, 2019, certified the EIR and adopted a Mitigation Monitoring Program (MMP) and Findings.

The Project involves replacement of two, separate but adjoining, existing water diversion facilities on the San Joaquin River with a single common diversion facility. The proposed project would remove the existing seven intake pipes and replace them with a single intake pipe fitted with a state-of-the art fish screen, make all necessary appurtenant pipeline connections, replace the two existing County/CSA-16 pumps, install a back-up intertie connection between the County/CSA-16 water pipeline with the TV Trees water pipeline, and restore a segment of the San Joaquin River shoreline, including filling the existing man-made cove that contains the existing water intake pipes.

The County determined that the Project could have significant environmental effects on the following environmental resources:

- Biological Resources

¹ CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

- Cultural Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Paleontological Resources

Of the 5 resources areas noted above, there are no Project components within the Commission’s jurisdiction which could have significant environmental effect on resource areas within the footprint of the Project.

In certifying the Final EIR and approving the Project, the County imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures such that the impacts would be less than significant within the Project areas. As a result, the County did not adopt a Statement of Overriding Considerations to support its approval of the Project. The County determined that, after mitigation, the Project will not have significant impacts. Because there were no identified significant impacts on lands under the jurisdiction of the Commission, the Commission also will not adopt a Statement of Overriding Considerations as part of its approval.

As a responsible agency, the Commission complies with CEQA by considering the EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or Project revisions are implemented, the Commission adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit C as part of its Project approval.

2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD

These Findings are supported by substantial evidence contained in the EIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the California State Lands Commission Division of Environmental Planning and Management.

3.0 FINDINGS

The Commission’s role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each “public agency” that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by the County for the Project identifies potentially significant impacts that fall

within the scope of the Commission’s approval, the Commission makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR, the Commission’s obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission’s exercise of discretion involves only issuing a General Lease – Public Agency Use for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission’s jurisdiction. The segments of the Project area within the Commission’s jurisdiction include; bank restoration, cove fill, and a temporary construction easement as depicted in Figure 2 of the Draft EIR. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the Commission’s approval of a General Lease – Public Agency Use, which would allow the proposed bank restoration, cove fill, and a temporary construction easement, are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA’s mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.²

A discussion of supporting facts follows each Finding.

² See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.
- Wherever Finding (3) is made, the Commission has determined that, even after implementation of all feasible mitigation measures and consideration of feasible alternatives, the identified impact will exceed the significance criteria set forth in the EIR. Furthermore, to the extent that potentially feasible measures have been alleged or proposed, the Findings explain why certain economic, legal, social, technological or other considerations render such possibilities infeasible. There are no significant and unavoidable impacts requiring Finding (3) identified in the Final EIR, discussed in the Responses to Comments.

The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the Final EIR.

A. SUMMARY OF FINDINGS

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Population and Housing

The EIR subsequently identified the following impacts as Less Than Significant:

- Aesthetics
- Agricultural Resources
- Air Quality
- Geology and Soils
- Greenhouse Gas Emissions
- Land Use and Planning
- Noises
- Recreation
- Traffic and Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

For the remaining potentially significant effects, the Findings are organized by significant impacts within the EIR issue areas as presented below.

B. POTENTIALLY SIGNIFICANT IMPACTS

The impacts identified in Table 1 were determined in the Final EIR to be potentially significant absent mitigation. After application of mitigation, however, all impacts were

determined to be less than significant (LTSM). For the full text of each mitigation measure (MM), please refer to Exhibit C, Attachment C-1.

Table 1 – Potentially Significant Impacts by Issue Area (LTSM)

Environmental Issue Area	Impact Nos.
Biological Resources	4.5-1, 4.5-2, 4.5-3, 4.5-4, 4.5-5
Cultural Resources	4.6-1, 4.6-2, 4.6-3
Hazards and Hazardous Materials	4.9-1
Hydrology and Water Quality	4.10-2, 4.10-3, 4.10-4
Paleontological Resources	4.13-1

C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION (LTSM)

The impacts identified below were determined in the Final EIR to be potentially significant absent mitigation; after application of mitigation, however, the impacts were determined to be less than significant.

1. BIOLOGICAL RESOURCES

CEQA FINDING NO. 4.5-1

Impact: **Impact 4.5-1. Affect to Special Status Fish Species**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to directly or indirectly affect special-status fish species, BMIs and aquatic habitats.

Implementation of MMs C1, C2, C9, C10, and C11 have been incorporated into the Project to reduce this impact to a less than significant level.

MM C1: General Construction Activities

MM C2: Riparian Vegetation

MM C9: Monitoring

MM C10: Site Survey

MM C11: Fish Rescue

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5-2

Impact: **Impact 4.5-2. Direct or indirect Affect to Special-Status Wildlife Species and their Habitats.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project have the potential to directly or indirectly affect special-status wildlife species and their habitats.

Implementation of MMs 4.5-1, C9, C10, and C13 to C24 have been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.5-1 California Tiger Salamander and Western Spadefoot Habitat Avoidance

MM C9 Monitoring

MM C10 Site survey

MM C13 Burrowing owls

MM C14 Golden Eagle

MM C15 Tricolored Blackbird

MM C16 Swainson's hawk

MM C17 Western Spadefoot and Western Pond Turtle

MM C18 California Tiger Salamander

MM C19 American badger

MM C20 San Joaquin kit fox

MM C21 Ringtail

MM C22 Pallid bat

MM C23 Disturbance of nesting birds

MM C24 Blainsville's horned lizard

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5-3

Impact: **Impact 4.5-3. Affect Riparian Habitat or Sensitive Natural Communities.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the proposed Project could affect riparian habitat or sensitive natural communities.

Implementation of Habitat Mitigation and Monitoring Plan (HMMP) and MM C12 have been incorporated into the Project to reduce this impact to a less than significant level.

MM HMMP**MM C12 Special-Status Plants**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5-4

Impact: **Impact 4.5-4. Affect Construction and Fill within Waters of the U.S. and Waters of the State.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could affect Construction and Fill within Waters of the U.S. and Waters of the State.

Implementation of **MM HMMP** have been incorporated into the Project to reduce this impact to a less than significant level.

MM HMMP

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.5-5

Impact: **Impact 4.5-5. Affect Wildlife and/or Fish Movement and/or Migration.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could affect Wildlife and/or Fish Movement and/or Migration.

Implementation of MMs 4.5-1, Fish Rescue and Relocation Plan (FRRP), C2, and C10 have been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.5-1 California Tiger Salamander and Western Spadefoot Habitat Avoidance

MM FRRP

MM C2 Riparian vegetation

MM C10 Site survey

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

2. CULTURAL RESOURCES**CEQA FINDING NO. 4.6-1**

Impact: **Impact 4.6-1. Affects could result in an adverse change to the significance of a historical resource.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could result in an adverse change to the significance of a historical resource.

Implementation of MMs 4.6-1 and 4.6-2 have been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.6-1 Treatment of CA-MAD-295/827

MM 4.6-2 Monitoring and Unanticipated Discovery Procedures

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.6-2

Impact: **Impact 4.6-2. Affects Could Result in an Adverse Change to the Significance of unknown archaeological resources within the Project Site.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could result in an adverse change to the significance of currently unknown archaeological resources that could be present within the Project Site.

Implementation of MM 4.6-2 has been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.6-2 Monitoring and Unanticipated Discovery Procedures

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.6-3

Impact: **Impact 4.6-3. Affects Could Disturb Human Remains.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could disturb human remains that could be present within the Project Site.

Implementation of MM 4.6-3 has been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.6-3 Human remains analysis and treatment

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

3. HAZARDS AND HAZARDOUS MATERIALS

CEQA FINDING NO. 4.9-1

Impact: Impact 4.9-1. Affects from the Transport, Storage, and Use of Hazardous Materials Which Could Result in an Inadvertent Release to the Environment.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could be affected from the transport, storage, and use of hazardous materials common for such activities and could result in their inadvertent release to the environment.

Implementation of MMs C3, C4, C5, C6, C7, C8, HH1, HWQ1, HWQ2, HWQ3, HWQ4, HWQ5, HWQ6, HWQ7, HWQ8, HWQ9, and HWQ10 have been incorporated into the Project to reduce this impact to a less than significant level.

MM C3 Monitoring

MM C4 Site Survey

MM C5 Concrete and equipment wash containment

MM C6 Equipment leaks

MM C7 Spill containment and isolation

MM C8 Re-grading

MM HH1 Fuel Management

MM HWQ1 Water Quality

MM HWQ2 Channel Protection

MM HWQ3 Concrete Management

MM HWQ4 Leak Containment

MM HWQ5 Storage

MM HWQ6 Wash Water Containment

MM HWQ7 Silt Containment

MM HWQ8 Stockpile Runoff

MM HWQ9 Soil Erosion

MM HWQ10 Leaks

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

4. HYDROLOGY AND WATER QUALITY

CEQA FINDING NO. 4.10-2

Impact: **Impact 4.10-2. Project Affects Could Adversely Impact Water Quality During Construction and Operational Stages by Increasing the Concentration of Pollutants in Surface Runoff from the Project Site.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could adversely affect water quality during construction and operational stages by increasing the concentration of pollutants in surface runoff from the Project Site.

Implementation of MMs C3, C4, C5, C6, C7, HH1, HWQ1, HWQ2, HWQ3, HWQ4, HWQ5, HWQ6, HWQ7, HWQ8, HWQ9, HWQ10, and HMMP have been incorporated into the Project to reduce this impact to a less than significant level.

MM C3 Runoff

MM C4 Fuel Containment

MM C5 Concrete and Equipment Wash Containment

MM C6 Equipment Leaks

MM C7 Spill Containment and Isolation

MM HH1 Fuel Management

MM HWQ1 Water Quality

MM HWQ2 Channel Protection

MM HWQ3 Concrete Management

MM HWQ4 Leak Containment

MM HWQ5 Storage

MM HWQ6 Wash Water Containment

MM HWQ7 Silt Containment

MM HWQ8 Stockpile Runoff

MM HWQ9 Soil Erosion

MM HWQ10 Leaks

MM HMMP

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.10-3

Impact: **Impact 4.10-3. Project Affects Which Would Modify Drainage Patterns on the Project Site and Alter the San Joaquin River Channel Configuration Potentially Impacting Erosion.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could adversely affect water quality during construction and operational stages by increasing the concentration of pollutants in surface runoff from the Project Site.

Implementation of MM HMMP has been incorporated into the Project to reduce this impact to a less than significant level.

MM HMMP

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. 4.10-4

Impact: **Impact 4.10-4. Project Affects Which Would Alter the San Joaquin River channel on the Project Site Which Could Impact Surface Runoff.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project would alter the San Joaquin River channel on the Project Site which could affect surface runoff.

Implementation of MM HMMP has been incorporated into the Project to reduce this impact to a less than significant level.

MM HMMP

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

5. PALEONTOLOGICAL RESOURCES

CEQA FINDING NO. 4.13-1

Impact: **Impact 4.13-1. Project Affects Which Could Directly Impact Unique Paleontological Resource During Excavation Activities.**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the Project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Activities proposed as part of the Project could directly impact unique paleontological resource during excavation activities.

Implementation of MM 4.13-1 has been incorporated into the Project to reduce this impact to a less than significant level.

MM 4.13-1 Discovery of Unknown Paleontological Resources

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

D. FINDINGS ON ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether '[s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].

The three alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) No Project/No Build Alternative
- 2) In-Kind Facilities Replacement Alternative

3) Alternate Onsite Intake Location Alternative

As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project.

Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, the In-Kind Facilities Replacement Alternative, is considered the environmentally superior alternative because the environmental impacts associated with its implementation would be the lowest of all the scenarios examined (including the proposed Project scenarios) and this alternative would meet all Project objectives.

The County independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the County's independent judgment as to alternatives. The County found that the Project provides the best balance between the Project goals and objectives and the Project's benefits. The two CEQA alternatives proposed and evaluated in the EIR were rejected as being infeasible for reasons provided in the County's Findings Regarding Alternatives (Attachment D-1).

Based upon the objectives identified in the Final EIR and the detailed mitigation measures imposed upon the Project, the Commission has determined that the Project should be approved, subject to such mitigation measures (Exhibit C, Mitigation Monitoring Program).

ATTACHMENT D-1

Findings Adopted by

Madera County

ATTACHEMNT D-1

**MADERA COUNTY
CEQA FINDINGS OF FACT
FOR THE
COMMON DIVERSION FACILITY PROJECT**

SCH No. 2018031001

March 5, 2019

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**CEQA FINDINGS OF FACT
FOR THE COMMON DIVERSION FACILITY PROJECT**

The findings and determinations contained herein are based on competent and substantial evidence, both oral and written, contained in the record relating to the Common Diversion Facility Project (the “Project” or “propose project”) and the environmental impact report (“EIR”) prepared for the Project in compliance with the California Environmental Quality Act (“CEQA”) (State Clearinghouse [“SCH”] No. 2018031001). These findings and determinations constitute the independent findings and determinations by the County of Madera (“County”) in all respects and are fully and completely supported by substantial evidence in the record as a whole.

Although the findings below identify specific pages within 2018 Draft EIR and the 2019 Final EIR in support of various conclusions reached below, the County incorporates by reference and adopts as its own the reasoning set forth in the Final EIR and thus relies on that reasoning, even where not specifically mentioned or cited below, in reaching the conclusions set forth below, except where additional evidence is specifically mentioned. (The Draft EIR and Final EIR may be referred to collectively hereafter as the “EIR”.) The County further intends that if these findings fail to cross-reference or incorporate by reference any other part of these findings, any finding required or permitted to be made by the County with respect to any particular subject matter of the Project must be deemed made if it appears in any portion of these findings or any other findings elsewhere in the record.

A. INTRODUCTION

The County proposes to approve construction of the Common Diversion Facility for the diversion of San Joaquin River water and to authorize the Common Diversion Facility Agreement between the County and WWTP, LLC (“WWTP-LLC”), which provides for the construction, operation and maintenance of the Project. In accordance with CEQA (Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the County published the Draft EIR for the Project in November 2018, which assessed the potential environmental impacts of implementing the Project. The Draft EIR was circulated for public review and comment for a period of 47 days that began on November 9, 2018, and ended on December 26, 2018.

Section 15132 of the CEQA Guidelines requires that a Final EIR consist of:

- The Draft EIR or a revision of the draft;
- Comments and recommendations received on the Draft EIR either verbatim or in summary;
- A list of persons, organizations, and public agencies commenting on the Draft EIR;

- The responses of the lead agency to significant environmental points raised in the review and consultation process; and
- Any other information added by the lead agency.

The County has reviewed the Final EIR and has determined that it contains each of the items required by CEQA Guidelines Section 15132. The County certifies that the Final EIR has been completed in compliance with CEQA. Following certification of the Final EIR, the County will evaluate the action it will take regarding the Project, which could include approving the Project as described in the EIR, approving the Project with modifications, or approving an alternative to reflect changes or concerns identified as a result of this CEQA review.

On March 5, 2019, the Madera County Board of Supervisors (“Board”), considered and heard testimony on the Project from County staff, agency representatives and the general public.

The documents and other materials that constitute the record of the proceedings on which the County’s decision is based are located at the County of Madera, Planning Department, Government Center, 200 West Fourth Street, Madera, California. The custodian for these documents and materials is Matthew Treber, Director of Community and Economic Development. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and CEQA Guidelines Section 15091(e).

B. PROJECT DESCRIPTION

1. PROJECT LOCATION

The Project would modify existing river diversion facilities located in unincorporated Madera County approximately 3.9 miles downstream of the Friant Dam on the San Joaquin River. The site is located within portions of assessor’s parcel number (APN) 051-820-001 and 051-220-006 (FEIR p. 2-1).

2. PROJECT OBJECTIVES

The Project has the following objectives, broadly described herein and set forth in detail in the EIR (FEIR, p. 2-9). The purpose of the Project is to replace failing diversion facilities on the San Joaquin River to ensure continued reliable water service to existing users and approved new development currently under construction. Primary project objectives include:

1. Bring the site's historical water diversion operations into compliance with current permitting requirements.
2. Replace aging San Joaquin River diversion facilities employing seven separate water diversion intake pipes with a common diversion facility with a single screened intake pipe to ensure future water service reliability for the Tesoro Viejo and Sumner Hill communities.

3. Replace non-screened intake pipes and intake pipes employing outdated fish screen technology with a single consolidated intake with a state-of-the-art positive barrier cone screen for fish exclusion.
4. Fill in the existing manmade cove to more closely resemble conditions prior to installation of the existing intake structures.
5. Minimize construction cost and environmental impact by using an already-developed diversion site and existing delivery pipelines as opposed to an undeveloped site and new delivery pipelines.

3. PROJECT DESCRIPTION

The Project as proposed and evaluated in the FEIR consists of the following primary components and is described and depicted in detail in Chapter 3 of the FEIR (pp. 3-1 – 3-42):

- removal of existing river intakes and replacement with a single intake structure;
- installation of a state-of-the-art fish screen designed using fish screening criteria for anadromous salmonids relied upon by the California Department of Fish and Wildlife (“CDFW”) and the National Marine Fisheries Service (“NMFS”), Southwest Region;
- installation of new CSA-16 pumps and installation of an intertie between the existing County/CSA-16 water pipeline and the existing WWTP-LLC 30-inch raw water pipeline where they intersect on Killkelly Road; and
- fill of the manmade cove where the existing intakes are located and restoration and revegetation of the river bank to more closely reflect natural riparian areas upstream and downstream of the project site with implementation of the Habitat Management and Monitoring Plan (“HMMP”).

County Approvals required for the Project include (FEIR p. 3-42):

- certification of the EIR;
- adoption of required CEQA findings;
- adoption of a Mitigation Monitoring and Reporting Program (“MMRP”) incorporating the mitigation measures, which includes the Avoidance and Minimization Measures, specified in the FEIR;
- acting on behalf of CSA-16, acquisition of all state and federal regulatory approvals needed for construction, operation and maintenance of the proposed project facilities.
- acting on behalf of CSA-16, approval of an agreement with WWTP-LLC authorizing WWTP-LLC to construct, operate and provide for maintenance as described in the agreement of the proposed project on behalf of both County/CSA-16 and WWTP-LLC in a manner that is fully consistent with the project description in the certified EIR, the

MMRP and all applicable state and federal regulatory approvals and all other applicable legal requirements.

- Acting on behalf of CSA-16, County approval of easement(s) as necessary for implementation of the proposed project.

State approvals and permits required for the Project include (FEIR, p. 3-41 – 3-42):

- CDFW approval of a Lake and Streambed Alteration Agreement (“LSAA”) for the proposed project.
- Central Valley Regional Water Quality Control Board (“RWQCB”) issuance of a 401 Water Quality Certification and Order;
- RWQCB notification/approval for project dewatering under Order No. R5-2018-0085.
- State Lands Commission (“SLC”) approval of a temporary lease for construction access, and restoration of the man-made cove, which is located on lands within the San Joaquin River channel below the historic ordinary low water mark (“OLWM”), and a permit for project-related geotechnical evaluations requiring excavations below the OLWM.
- Central Valley Flood Protection Board (“CVFPB”) granting of an encroachment permit for project-related construction and facilities.

Federal approvals and permits required for the Project include (FEIR, p. 3-40 – 3-41):

- U.S. Army Corps of Engineers (“USACE”), Sacramento District issuance of a Section 404 permit authorization. In doing so, the USACE must ensure the project is in compliance with the federal Endangered Species Act (“FESA”) through consultation with the NMFS and the U.S. Fish and Wildlife Service (“USFWS”), and in compliance with the requirements of the National Historic Preservation Act (“NHPA”).

C. RECORD OF PROCEEDINGS

In addition to this Statement of Findings, in accordance with Public Resources Code Section 21167.6(e), the record of proceedings for the Project includes, but is not limited to, the following elements:

- All staff reports and related documents prepared by the County regarding its compliance with CEQA and regarding the action on the Project;
- All staff reports and related documents prepared by the County and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the County pursuant to Public Resources Code § 21000 et seq. (a statement of overriding considerations is not required for the Project as no significant and unavoidable impacts are identified);

- Any transcript or minutes of the proceedings at which the decisionmaking body of the County heard testimony on, or considered any environmental document on, the Project, and any transcript or minutes of proceedings before any advisory body to the County that were presented to the decisionmaking body prior to action on the environmental documents or on the Project;
- All notices issued by the County to comply with CEQA or with any other law governing the processing and approval of the Project;
- All written comments received in response to, or in connection with, environmental documents prepared for the Project, including responses to the notice of preparation;
- All written evidence or correspondence submitted to, or transferred from, the County regarding compliance with CEQA or regarding the Project;
- Any proposed decisions or findings submitted to the decisionmaking body of the County by its staff, or the Project proponent, Project opponents, or other persons;
- The documentation of the final County decision, including the Final EIR, and all documents cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA (a statement of overriding considerations is not required for the Project as no significant and unavoidable impacts are identified);
- Any other written materials relevant to the County's compliance with CEQA or to its decision on the merits of the Project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the Project and either made available to the public during the public review period or included in the County's files on the Project, and all internal agency communications, including staff notes and memoranda related to the Project or to compliance with CEQA;
- The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation;
- March 2018 Notice of Preparation for the Draft Environmental Impact Report, and all other public notices issued by the County in conjunction with the Project;
- All correspondence with Native American Tribal representatives pertaining to the Project, including notifications sent by the County in accordance with Public Resources Code Section 21080.3.1;
- Draft Environmental Impact Report for the Common Diversion Facility, November 2018 (State Clearinghouse No. 2018031001);

- Final Environmental Impact Report for the for the Common Diversion Facility, February 2019 (State Clearinghouse No. 2018031001);
- Mitigation Monitoring and Reporting Program for the Project;
- All reports, studies, memoranda, staff reports, or other documents related to the Project prepared by the County, or consultants to the County, regarding the County’s compliance with the requirements of CEQA and regarding the County’s action on the Project;
- All documents submitted to the County by TV Trees, LLC, Tesoro Viejo Master Mutual Water Company, or WWTP-LLC or their consultants; public agencies; or members of the public in connection with the Project, up through the close of the public hearing;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the County in connection with the Project; and
- Any other materials required for the record of proceedings by Public Resources Code Section 21167.6(e).

D. FINDINGS REQUIRED UNDER CEQA

These findings have been prepared in accordance with CEQA and the CEQA Guidelines. Public Resources Code Section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” Section 21002 further provides that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The principles in Public Resources Code Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects which require EIRs. For each significant environmental effect identified in an EIR for a project, the approving agency must issue a written finding reaching one or more of three permissible conclusions, pursuant to CEQA Guidelines, Section 15091, that:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment.
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained

workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

The County's findings with respect to the Project's significant effects and mitigation measures are set forth below. The discussion below does not attempt to describe the full analysis of each environmental impact contained in the EIR. Instead, the discussion provides a summary description of each potentially significant impact, describes the applicable mitigation measures identified in the FEIR and adopted by the County, and states the County's findings on the significance of each impact after imposition of the adopted mitigation measures. In making these findings, the County ratifies, adopts, and incorporates into these findings the analysis and explanation in the EIR and the determinations and conclusions of the FEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

CEQA does not require a lead agency to make individual findings for impacts that are determined to be less than significant without mitigation. (CEQA Guidelines, § 15091(a).) Impacts deemed to be less than significant prior to mitigation are discussed in detail in the EIR. (FEIR, Section 4.1.4, Sections 4.2 through 4.17; Table 2-1.)

The County has reviewed the DEIR and the FEIR. The FEIR contains any text changes to the DEIR and additional information, and is a full reproduction of the EIR document with revisions. The County has also considered the public record on the Project.

1. LESS THAN SIGNIFICANT IMPACTS

The following impacts were determined to be less than significant prior to mitigation, and thus do not require individual findings under CEQA (CEQA Guidelines, § 15091(a)):

- Impact 4.2-1: Implementation of the proposed project would alter the existing visual characteristics of the project site.
- Impact 4.2-2: Project construction could adversely affect scenic resources.
- Impact 4.2-3: Implementation of the proposed project would not create a new source of substantial light or glare which would adversely affect day or nighttime views of the area.
- Impact 4.3-1: The proposed project would not convert lands designated for agricultural use to non-agricultural use.
- Impact 4.3-2: The proposed project would not conflict with current zoning for agricultural use and is not under a Williamson Act contract.
- Impact 4.3-3: The proposed project would serve urban uses in areas that have historically supported agricultural use.

- Impact 4.4-1: Air pollutant emissions associated with the proposed project could conflict with applicable air quality plans.
- Impact 4.4-2: Construction and operation of the proposed project would result in the emission of criteria pollutants.
- Impact 4.4-3: Construction and operation of the proposed project could result in exposure of sensitive receptors to project emissions.
- Impact 4.4.4: The proposed project could create odor emissions.
- Impact 4.5-6: The proposed project could conflict with local policies and ordinances associated with protection of biological resources.
- Impact 4.5.7: The proposed project would not conflict with HCPs, NCCPs, or other conservation plans.
- Impact 4.7-1: The proposed project could result in soil erosion or the loss of top soil.
- Impact 4.7-2: The project could be located on a geologic unit, expansive soils, or soil that is unstable or would become unstable.
- Impact 4.8-1: The proposed project would generate GHG emissions.
- Impact 4.8-2: Compliance with GHG plan, policy, or regulation.
- Impact 4.10-1: Operation of dewatering wells during project construction could affect local groundwater conditions.
- Impact 4.10-3: The proposed project would modify drainage patterns on the project site and alter the San Joaquin River channel configuration on the project site potentially affecting erosion potential.
- Impact 4.10-4: The proposed project would alter the San Joaquin River channel on the project site which could affect surface runoff.
- Impact 4.10-5: The proposed diversion intake structure and proposed cove fill and river bank restoration would occur within the 100-year flood hazard area.
- Impact 4.11-1: The proposed project could conflict with applicable land use plans and policies adopted to avoid or mitigate an environmental effect.
- Impact 4.11-2: The proposed project could conflict with the San Joaquin River Parkway Master Plan.
- Impact 4.12-1: The proposed project could generate noise in excess of standards or result in a substantial increase in ambient noise levels.
- Impact 4.12-2: The proposed project would generate groundborne vibrations and groundborne noise during construction.

- Impact 4.14-1: The project could adversely affect recreational use on the San Joaquin River.
- Impact 4.15-1: The proposed project could increase vehicle trips and contribute to level of service deficiencies.
- Impact 4.15.2: The proposed project would not result in a conflict with an applicable congestion management program.
- Impact 4.15.3: The proposed project could increase roadway hazards due to a design feature or incompatible uses.
- Impact 4.15.4: The proposed project could result in inadequate emergency access.
- Impact 4.16-1: The proposed project could result in an adverse change to a Tribal Cultural Resource.
- Impact 4.17-1: The proposed project would serve the continued diversion of surface water supplies from the San Joaquin River under existing water supply contracts.
- Impact 4.17-2: The proposed project would generate solid waste from the demolition and disposal of existing facilities and the construction of the CDF.
- Impact 6.3-1: The proposed project would result in the consumption of energy.

2. POTENTIALLY SIGNIFICANT AND SIGNIFICANT IMPACTS

After reviewing the public record, as composed of the aforementioned elements, the County hereby makes the following findings regarding the significant or potentially significant effects of the Project, pursuant to Public Resources Code Section 21081 and Section 15091 of the CEQA Guidelines. As discussed in these findings, specified Avoidance and Minimization Measures (“AMMs”) have been required in and incorporated into the Project to reduce or avoid significant impacts and the FEIR includes additional Mitigation Measures when necessary to reduce or avoid an identified significant or potentially significant impact.

a. BIOLOGICAL RESOURCES

Impact 4.5-1: The proposed project could directly or indirectly affect special-status fish species, BMIs, and aquatic habitats.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Implementation of the Project will have short-term construction-related impacts and long-term operation and maintenance-related impacts on aquatic biological resources.

As discussed in the EIR, the potential for construction-related impacts to cause adverse effects on fish, including special-status fish potentially occurring in the area during construction, and BMI communities will be minimized by restricting the construction window to a period when sensitive species and life stages will not be present, or present in low abundance, constructing the proposed project as designed and implementing specified avoidance and minimization measures. These measures will reduce the potential for project construction to result in direct injury or lethality to special-status and other fish species occurring in the vicinity of the project, water quality impacts on fish and BMI communities, and impacts to aquatic habitats, including EFH for Pacific salmon. Therefore, project construction-related impacts on special-status fish species or aquatic habitats is less than significant with implementation of construction procedures and avoidance and minimization measures that are incorporated into the project.

As discussed in the EIR, the long-term operation and maintenance of the proposed project will result in a net benefit to aquatic biological resources of the San Joaquin River. Although the new diversion intake will create a small area of potential predator holding habitat immediately downstream of the intake, the project will result in an overall net reduction of predator holding habitat by eliminating the more optimal predator holding habitat in the existing manmade cove, resulting in a net beneficial impact for special-status fishes as compared to existing conditions. Furthermore, the existing partially screened intake pipes will be eliminated and replaced by a state-of-the-art cone screen that meets all CDFW and NMFS fish screen criteria, which will benefit special-status fishes of the San Joaquin River as compared to existing conditions. Water quality effects associated with long-term maintenance of the new screen will be minimized by the self-cleaning operation and design of the cone screen, and would not result in significant impacts to aquatic habitat or special-status fish species. For these reasons, long-term operation and maintenance of the proposed project would have a less-than-significant impact on fish, including special-status fish species, BMIs, and aquatic habitats of the San Joaquin River.

Mitigation Measures, Including AMMs and/or Project Design Features:

In-Water Construction Period. All in-water work will occur between June 1 and September 15 for both Phase 1 (first year) and Phase 2 (second year).

Floatable Turbidity Curtains. Floatable turbidity curtains shall be installed prior to the start of in-water work for Phases 1 and 2 of project construction and remain in place for all active in-water work.

Fish Rescue and Relocation Plan. The Fish Rescue and Relocation Plan contained in Appendix C of Attachment II of the EIR shall be implemented during Phase 1 and 2 of project construction.

Habitat Mitigation and Monitoring Plan (HMMP). The HMMP included in Appendix D of Attachment II to the EIR shall be implemented.

AMM C2: Riparian Vegetation. The San Joaquin River channel will be accessed via areas where nominal riparian vegetation will be affected. To guide restoration of the man-

made cove and riparian vegetation restoration, implement the HMMP (Appendix D of EIR Attachment II).

AMM C11: Fish Rescue. Following installation of barriers to isolate the construction site from the active river channel, a qualified fisheries biologist and team will conduct a fish rescue program for the stranded fish prior to initiation of construction activities. Fish removed from the site will be immediately returned to the active channel. A fish rescue and relocation plan (Appendix C of Attachment II in FEIR Volume 2) will be provided to NMFS and CDFW for review and approval prior to initiating the fish rescue.

Impact 4.5-2: The proposed project could directly or indirectly affect special-status wildlife species and their habitats.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Project construction activities and the long-term operation and maintenance of the proposed new diversion could result in adverse effects to special-status wildlife species (including birds, reptiles, amphibians, and mammals) and their habitats. The complete analysis is contained in the Section 4.5 of the EIR and summarized below. The analysis considers construction-related impacts associated with the potential for adverse effects on special-status wildlife species and habitats.

Construction of the project has the potential to cause direct or indirect impacts to special-status wildlife species including birds, reptiles, amphibians, and mammals, and their habitat in and adjacent to the project site. Special-status species are protected under the FESA, CESA, California Fish and Game Code, CEQA, and other regulations. Vehicle and equipment operation, vegetation clearing, ground disturbance and other upland activities during construction could result in a substantial adverse impact on special-status species potentially occurring within or adjacent to the site during construction. Such impacts could include nest abandonment, reduced reproductive success, and reduced overall health. Swainson's hawk and other raptors utilize tall/mature trees for nesting and grassland for foraging. No tall trees are proposed for removal; however, there are tall trees in the vicinity of the project site. If raptors such as Swainson's hawk are nesting in the vicinity, project-related activities could have an indirect effect on nesting. In addition, disturbance of grassland could result in reduced overall health due to reduced nutritional intake; however, project-related impacts to grassland will be minimal. The ruderal/disturbed vegetation community is dominated by existing dirt roads and a disturbed leveled area that is utilized frequently for maintenance of the adjacent pumping facility and does not contain a substantial amount of grassland, only on the edge of the roads. The fallowed agriculture field contains the most annual grasses; however project-related activities will not result in ground disturbance in this field, as it will be used as a spray site for dewatered water. Spraying this field could benefit foraging for species such as tricolored blackbird, burrowing owl, and Swainson's hawk. The temporary impacts to riparian vegetation could result in a temporary loss of nesting habitat for bird species such as Nuttall's woodpecker and oak titmouse.

Other special-status species may be impacted directly by construction activities if they come in contact with equipment or personnel onsite.

However, implementation of specified Avoidance and Minimization Measures would effectively reduce this potential impact. Specifically, measures requiring pre-construction surveys for burrowing owls, golden eagles, tricolored blackbird, Swainson's hawk, western spadefoot and western pond turtle, California tiger salamander, American badger, San Joaquin kit fox, ringtail, pallid bat, nesting birds, Blainsville's horned lizard, and general special-status species (Avoidance/Minimization Measures C10 and C13-C24), would allow for early detection of these species. If species are found, measures have been proposed to establish no-disturbance buffers around such species or consult with CDFW or USFWS prior to work within the vicinity of a special-status species. Additionally, these Avoidance and Minimization Measures restrict certain activities to specific seasons to avoid sensitive periods for such species. Finally, Avoidance/Minimization Measure C9 ("Monitoring") would require a CDFW-approved Designated Biologist to be retained to monitor construction and conduct mandatory contractor/worker awareness training for construction personnel.

Specific to Swainson's hawk, construction activities associated with the project during Phase 1 or Phase 2 construction could adversely affect active nests should they occur in close proximity of the project potentially resulting in reduced nesting success or nest abandonment. To avoid potential impacts, preconstruction surveys will be conducted and buffer areas established consistent with the "*Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*" (SWHA TAC 2000) consistent with AMM C16 included in the MMRP.

Project construction would result in the temporary removal of approximately 0.079 acre of riparian vegetation, which provides potentially suitable habitat for special-status bird species such as, Nuttall's woodpecker and oak titmouse. In addition, ringtail could utilize the riparian vegetation onsite. These habitat modifications would be temporary or would be compensated by onsite creation of other suitable habitat in accordance with the project's revegetation and restoration elements as described in the Habitat Mitigation and Monitoring Plan (Appendix D of Attachment II in FEIR Volume 2). All pipelines would be buried beneath the ground and trenches would be backfilled to preconstruction contours would be restored in these areas, and any impacted riparian vegetation would be restored through re-vegetation described in the Habitat Mitigation and Monitoring Plan (Appendix D of Attachment II in FEIR Volume 2).

The above referenced mitigation measures would result in less than significant impacts on all potentially occurring special-status species, as these measures would allow for detection of sensitive species prior to ground disturbing activities and implementation of avoidance measures. Early detection allows for either establishment of avoidance buffers, or safe exclusion of such species from the construction area, significantly reducing any risk of wildlife conflict with equipment and personnel, which poses the greatest threat of mortality. California tiger salamander ("CTS") and western spadefoot are unique in that they occupy burrows underground, however since the CTS habitat assessment found no burrows onsite, the habitats onsite could only function as dispersal habitat (Attachment V in FEIR Volume 2).

For these reasons, the potential impact of project construction on all special-status species, except for CTS and western spadefoot (discussed further below), is considered less than

significant with mitigation incorporated and with implementation of Avoidance and Minimization Measures.

CTS and western spadefoot have the potential to occur within the project site and could be adversely affected by project construction activities. Potential direct impacts during construction include mortality or injury of individuals through contact with construction vehicles or equipment and through removal of habitat that may be used by the species. Potential indirect impacts could occur to western spadefoot and CTS during construction including project noise and vibration offsite. These potential indirect impacts would occur during daylight hours when both species are underground. Because these species will likely be underground when construction activity is occurring, impacts related to noise generated by those activities will be attenuated by the soil surrounding the burrow and are considered less than significant.

The potential impact of project-related construction on CTS and western spadefoot is considered significant, but this impact would be reduced to less than significant with mitigation incorporated. Mitigation measure MM 4.5-1, below, is required for CTS and western spadefoot because these species are known to occur in the vicinity of the project site and have potential to occur onsite, even though no burrows have been found onsite. MM 4.5-1 is required because there is a potential for these species to occur onsite when utilizing dispersal habitat. MM 4.5-1 requires pre-construction surveys, daily monitoring, avoidance and relocation provisions, and other specific measures to minimize potential impacts to these species. With implementation of MM 4.5-1 and the avoidance and minimization measures discussed above, the potential impact of project construction on CTS and western spadefoot would be reduced to less than significant with mitigation incorporated.

Mitigation Measures, Including AMMs and/or Project Design Features

Implement Mitigation Measure MM 4.5-1

AMM C9 Monitoring. A CDFW-approved Designated Biologist will (a) be retained to monitor construction, and (b) will conduct mandatory contractor/worker awareness training for construction personnel if special-status species are found.

AMM C10 Site survey. Prior to construction, the Designated Biologist will survey the site to determine whether special-status species are present. If federal or state listed species are found USFWS and/or CDFW will be notified.

AMM C13 Burrowing owls. A qualified wildlife biologist will conduct a burrowing owl habitat assessment and survey for burrowing owls within the Project work area and a 500-foot radius of the Project work area following the methods described in the “*Burrowing Owl Survey Protocol and Mitigation Guidelines*” (California Burrowing Owl Consortium, April 1993). If any active burrowing owl burrows are observed within 500-feet of the project area, an appropriate no disturbance buffer will be established in consultation with CDFW. These burrows shall be designated as a sensitive area, protected, and monitored by a qualified biologist during Project construction activities. If avoidance of an occupied burrow is not feasible and the County proposes to evict burrowing owls from burrows, the County shall submit to CDFW for written approval a Burrowing Owl Eviction Plan (Eviction Plan) at least 30 days prior to any activity requiring eviction of owls. The Eviction Plan will include details regarding the eviction via one-way doors, including but not limited to the materials used and at least twice daily

monitoring of subject burrows to ensure that owls are not trapped; timing of eviction only outside the nesting season; and details about any proposed use of artificial burrows, including but not limited to design, installation, and maintenance. The County will not begin any eviction activity prior to receiving written approval from CDFW.

AMM C14 Golden Eagle. No Project construction activities will be completed from December 1 through March 31 unless a qualified wildlife biologist surveys for wintering activity of golden eagle within a ¼-mile radius of each Project work area no more than two (2) weeks prior to Project activities. If any wintering golden eagles are observed, a minimum ¼-mile avoidance buffer shall be established and maintained around the roost site. A qualified biologist will have the authority to stop Project activities that could affect the foraging or feeding behavior of eagles.

AMM C15 Tricolored Blackbird. If Project construction activity will occur during the breeding season of the species (February 15 through September 15), no more than two weeks in advance of Project construction activity at each location, a qualified biologist who is experienced surveying for nesting tricolored blackbirds will survey all areas of suitable breeding habitat for tricolored blackbird within the Project work area and a 500-foot buffer. If a nesting colony is found, no activity will occur within a 500-foot buffer of the colony until a qualified biologist determines and CDFW confirms in writing that all chicks have fledged and are no longer reliant on the nest site.

AMM C16 Swainson's hawk. No Project construction activity will be conducted between March 1 and August 30 unless a qualified wildlife biologist conducts Swainson's hawk nesting surveys within the Project work area and an appropriate buffer as recommended in the May 31, 2000 Swainson's Hawk Technical Advisory Committee "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys In California's Central Valley" (SWHA TAC 2000), beginning prior to commencing Project activity and continuing until the entire survey protocol is completed. If Project construction activity will begin before all surveys are completed, the County will submit to CDFW interim survey results within one (1) week prior to the start of Project activity. A no disturbance buffer, per the recommendations of SWHA TAC 2000, will be delineated around active nests until the breeding season has ended or until a qualified wildlife biologist has determined and CDFW has confirmed in writing that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

AMM C17 Western Pond Turtle. A preconstruction survey for western pond turtle will be conducted by a qualified biologist prior to construction activities. Any western pond turtles discovered in the Project work area immediately prior to or during Project activities will be allowed to move out of the work area of their own volition. If this is not feasible, they shall be captured by a qualified wildlife biologist and relocated out of harm's way to the nearest suitable habitat at least 100 feet from the Project work area where they were found.

AMM C18 California tiger salamander. USFWS and CDFW will be consulted with regard to the potential need to obtain take coverage, prior to construction activities, for the California tiger salamander under Section 7 or Section 10 of FESA and under Section 2081 of the California Fish and Game Code.

AMM C19 American badger. A pre-construction survey for American badger will be conducted by a qualified biologist prior to construction activities. Any American badger detected within the Project work area during Project activities will be allowed to move out of the work area of its own volition. If American badger is denning on or immediately adjacent to a Project work area, the County will consult with CDFW to determine whether the animal(s) may be evicted from the den. Eviction of badgers will not be approved by CDFW unless it is confirmed that no dependent young are present.

AMM C20 San Joaquin kit fox. Within 30 days prior to the start of Project activity, a qualified wildlife biologist shall perform transect surveys of the Project work area and a 250-foot buffer, to identify potential dens and other kit fox sign. Permittee shall submit survey results to CDFW. If sign of kit fox is detected, a qualified wildlife biologist will be available on-site during all Project-related activities that could impact the species. If kit fox are found on or within 250 feet of the Project work area, all activity will cease until a qualified wildlife biologist confirms that the individual(s) has left of its own volition. If San Joaquin kit fox dens are found, they will be avoided by appropriate distances (potential or atypical den = 50 feet; known den = 100 feet; pupping den = 500 feet). During reconnaissance-level surveys the den shall be treated as a known den unless sign associated with natal/pupping activity is observed. If any occupied San Joaquin kit fox pupping dens are subsequently discovered, the County will stop work and contact CDFW for further guidance. Absolutely no disturbance to known San Joaquin kit fox dens shall occur and no work will occur within the above buffers without contacting CDFW and obtaining written authorization to do so. The County recognizes that an Incidental Take Permit for San Joaquin kit fox may first be required for such activities.

AMM C21 Ringtail. Prior to ground disturbance the Project work area shall be surveyed for the presence of ringtail by a qualified biologist. If present, occupied dens will be marked and mapped and a 200-foot avoidance buffer will be mapped around the site. To passively relocate this species from impact areas, occupied dens would be monitored on a regular basis by a qualified biologist and destroyed after they are confirmed to be abandoned by ringtails.

AMM C22 Pallid bat. Pre-construction roosting bat surveys for all suitable roosting habitat (e.g., manmade structures, trees) will be conducted by a qualified biologist prior to construction activities. If suitable roosting habitat is identified, a qualified biologist will conduct an evening bat emergence survey that may include acoustic monitoring to determine whether or not bats are present. If pallid bats are found, the County will consult with CDFW prior to initiation of construction activities. If bats are not found during the preconstruction surveys, no further measures are necessary.

AMM C23 Disturbance of nesting birds. To protect nesting birds, no Project activity will begin from February 1 through August 31 unless the following Avian Nesting Surveys are completed by a qualified wildlife biologist. Surveys will occur within 10 days of ground disturbing activity. Separate avian survey and avoidance requirements are listed above for burrowing owl, golden eagle, tricolored blackbird, and Swainson's hawk (see Avoidance and Minimization Measure C [13, 14, 15, and 16]) respectively as revised. Birds of Prey: Surveys for nesting activity of birds of prey will be conducted by a qualified biologist for areas within a 500-foot radius of the construction area. If any active nests are observed, these nests will be designated a sensitive area and protected by

a minimum 500-foot avoidance buffer and monitored continuously 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 or parental care for survival. Other Avian Species: Survey for nesting activity will be conducted by a qualified biologist for areas within a 250-foot radius of the construction area. If any nesting activity is found, the nests and nest substrate (trees, shrubs, ground, structures, or burrows) will be designated as a sensitive area and protected with a minimum 250-foot buffer and monitored continuously until young have fledged and are no longer reliant on the nest site or parental care. The County recognizes that CDFW may consider variances from these buffers when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography, and the County would obtain CDFW written approval of any such variance if a variance is deemed necessary.

AMM C24 Blainsville's horned lizard. A pre-construction survey for Blainsville's horned lizard will be conducted by a qualified biologist prior to construction activities. Any Blainsville's horned lizard individuals discovered in the Project work area immediately prior to or during Project activities shall be allowed to move out of the work area of their own volition. If this is not feasible, they will be captured by a qualified wildlife biologist and relocated out of harm's way to the nearest suitable habitat at least 100 feet from the Project work area of where they were found.

MM 4.5-1: California Tiger Salamander and Western Spadefoot Habitat Avoidance

- (a) Prior to the start of project-related activities, the project proponent shall retain a qualified CTS and western spadefoot biologist (Biologist).
- (b) Before starting project-related activities, the Biologist shall conduct an education program for all persons involved with the proposed project. The program shall consist of a presentation from the Biologist that includes a discussion of the biology and general behavior of CTS and western spadefoot, information about the distribution and habitat needs of these animals, sensitivity of these animals to human activities, and their status of legal protection.
- (c) Prior to the start of project-related activities the Biologist shall identify all potential burrows that could support CTS and western spadefoot within the project site and within a 50-foot radius around the project site. If potential burrows are found, the burrows shall be given a 50-foot no disturbance (i.e., ground disturbance) buffer. If ground disturbance is proposed to encroach within the 50-foot buffer, CDFW and USFWS shall be consulted prior to such encroachment.
- (c) Prior to the start of project-related activities the qualified Biologist shall walk the entire project site to identify any CTS or western spadefoot within the project site. These site walks shall occur every morning November 1st through July 1st on days when construction activity is scheduled to occur and before construction-related activities start. Daily construction activities shall not start until the qualified Biologist has completed the site walk and verified that no CTS or western spadefoot are present. After July 1st and prior to November 1st when

CTS and western spadefoot are not as active, the Biologist shall walk the project site a minimum of once weekly.

(d) Each day during construction from November 1st through July 1st, prior to the start of daily construction activities, all staged construction equipment and construction materials shall be inspected daily by the Biologist for the presence of CTS and western spadefoot. After July 1st and prior to November 1st, and if the Biologist is not onsite, a trained construction foreman shall inspect equipment daily for the presence of CTS and western spadefoot. If either animal is found, all work shall stop until the Biologist arrives and clears the project site.

(e) The Biologist and construction foreman shall monitor the National Weather Service 72-hour forecast for the project site July 1st through November 1st. If a 70 percent or greater chance of rainfall is predicted, daily site walks by the Biologist shall be conducted the day before the rain event, on each day during which construction activities are scheduled to occur during the rain event, and for three days following the rain event.

(f) If a CTS is found at any time, the CTS shall be left alone and let to leave the site on its own volition. The Biologist shall monitor the CTS until the Biologist determines the CTS is safely offsite.

(g) If a western spadefoot is found onsite, the Biologist may relocate the animal to a safe location offsite. Before handling the animal, the Biologist shall put on a new pair of disposable plastic gloves moistened with bottled water. Each western spadefoot shall be handled with a new pair of gloves, and each pair of disposable gloves shall be discarded after one use.

(h) The Biologist shall submit all observations of western spadefoot and CTS to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation.

Impact 4.5-3: The proposed project could affect riparian habitat or sensitive natural communities.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Construction of the proposed project would have a direct impact on riparian vegetation. No other sensitive natural communities exist on the project site. Implementation of AMM C12 ("Special-Status Plants" requiring preconstruction floristic surveys), construction of the shoreline restoration and revegetation component of the proposed project (described in Chapter 3 of the FEIR) and implementation of the Habitat Mitigation and Monitoring Plan (HMMP), Appendix D of Attachment II of the FEIR, would reduce the loss potential impact to only temporary effects. Any impacted riparian vegetation would be restored upon project completion through re-vegetation at a 2:1 ratio, resulting in no net loss. In fact, an increase of riparian vegetation within

the project site would occur as a result of HMMP implementation. Revegetation of a larger area of the restored cove and the restored area south of the restored cove would result in a net increase in riparian vegetation.

For these reasons, the project's short-term loss of riparian habitat would be more than compensated by the project's long-term shoreline restoration and revegetation components and is considered less than significant with implementation of the HMMP and AMMs.

Mitigation Measures, Including AMMs and/or Project Design Features

Implement the Habitat Mitigation Monitoring Program (HMMP) (Appendix D of Attachment II in FEIR Volume 2).

AMM C12 Special-Status Plants. Project area, in advance of Project activities. Preconstruction floristic surveys shall be conducted by a qualified botanist during the appropriate blooming period prior to the start of Project activity. Surveys must follow the CDFW 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Sacramento, California, the CNPS 2001 Botanical Survey Guidelines. California Native Plant Society. Available online: http://www.cnps.org/cnps/rareplants/pdf/cnps_survey_guidelines.pdf, and the USFWS 1996 Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants. If surveys identify any special-status plants, Permittee shall submit survey results to CDFW at least one (1) week in advance of starting Project activities. If listed or other special status plant species are detected, a qualified biologist will identify them with flagging and avoid them with a 25-foot no disturbance buffer during Project activities. If this avoidance is not feasible, the County will consult with CDFW to determine whether alternative avoidance measures that are equally protective are possible. No activities will occur within 25 feet unless and until written guidance and approval is provided to the County by the CDFW.

Impact 4.5-4: The proposed project would require construction and fill within waters of the U.S. and waters of the State.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Any alterations of, or discharges into, waters of the United States, including wetlands as defined pursuant to Section 404 of the federal CWA, must be in conformance with the CWA. Compliance is achieved through conformance with Sections 404 and 401 permitting and certification requirements, respectively, prior to any grading or construction that may impact jurisdictional area(s), as applicable. Additionally, a LSAA per Section 1600 of the California Fish and Game Code would be required for work occurring in State jurisdictional waters and related habitat. Runoff produced during and after construction is subject to National Pollution

Discharge Elimination System Regulations (“NPDES”) and local water quality and runoff standards. The proposed project would not conflict with the County’s General Plan policies to protect wetlands as no jurisdictional wetlands occur on the project site. The proposed project will require a Section 404 permit issued by the USACE for fill activities associated with project construction. It is anticipated that USACE approvals will be accomplished through the Nationwide Permit (“NWP”) No. 12 and No. 27, as applicable to project construction activities.

Project activities to be authorized under NWP 12 include both fill and excavation in waters of the U.S. (i.e., the San Joaquin River). Specifically, these impacts include fill of 0.003 acre of waters of the U.S. for placement of the new intake structure on the riverbed, and temporary impacts to 0.669 acre of waters of the U.S. for temporary construction access and to trench and install pipeline beneath the riverbed. The excavated area where the pipe will be placed will be backfilled and recontoured to pre-construction conditions.

Project activities to be authorized under NWP 27 include fill and excavation of 0.142 acre of waters of the U.S. (i.e., the San Joaquin River) in a manmade cove that was created during installation of the existing intake facilities in approximately 1980 and which is not a natural feature of the San Joaquin River. As part of the proposed project, the existing intake structures will be removed, and the cove will be filled with approximately 275 cubic yards of locally sourced native fill materials and 250 cubic yards of rip rap. The restored river bank will more closely resemble the alignment prior to the cove construction and the bank and shoreline will be revegetated with native riparian vegetation to naturally stabilize the soils and reduce erosion. The restoration plan is described in Chapter 3 and additional detail, including revegetation monitoring and maintenance, is provided in Appendix D of Attachment II in FEIR Volume 2.

Securing a LSAA from the CDFW and 404 and 401 permits under the CWA, compliance with the conditions of such permits, and implementation of project minimization and avoidance measures, would result in the project’s compliance with the federal and state “no net loss of wetlands” policy and the County’s wetland and water protection policies and would protect the hydrology and ecology of the San Joaquin River. Further, the majority of impacts to waters of the U.S. and waters of the State in the project site would be temporary or are part of a restoration effort. The minimal permanent impacts, 0.004 acre of the San Joaquin River, for installation of the intake not associated with restoration of the cove would be offset by the enhancements made to the cove restoration area and the adjoining bank area on the south side, including plantings of riparian vegetation. In addition, implementation of the Habitat Mitigation and Monitoring Plan (HMMP) included in the proposed project and compliance with conditions for required permits listed above would reduce this potential impact on waters of the U.S. For these reasons, the impact of the project on federally protected wetlands and waters of the U.S. and waters of the State is considered *less than significant* with implementation of the HMMP and compliance with applicable state and federal permitting requirements described above.

Mitigation Measures, Including AMMs and/or Project Design Features

Implement the HMMP

Impact 4.5-5: The proposed project could affect wildlife and/or fish movement and/or migration.**Finding:**

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Impacts on wildlife movement and migration. The upland areas of the project site consist primarily of ruderal habitats or developed facilities that are of low to modest ecological value to most wildlife species. These areas are not predictably or regularly used by wildlife species, and there are no known wildlife nursery sites within or adjacent to the project site.

Seasonally flooded stock ponds and wetlands within 1.3 miles of the project site may provide potential breeding habitat for CTS and western spadefoot, and surrounding grasslands may provide upland refugia for both species (Attachment V, CTS Habitat Assessment, FEIR Volume 2). Migration of CTS and western spadefoot between upland refugia and breeding habitat may occur within the proposed project site. As discussed under Impact 4.5-2 above, implementation of avoidance and minimization measures proposed as part of the proposed project would reduce the potential impact of construction related activities on CTS and western spadefoot that could disperse onto the project site. Specifically, AMM C-10 requiring pre-construction surveys for special-status species would allow for early detection of these species and adequate avoidance. In addition, MM 4.5-1 described above would allow CTS and western spadefoot to disperse across the proposed project site in the night hours when these species are most active. The potential impact of the proposed project on the dispersal of CTS and western spadefoot is considered less than significant with mitigation incorporated.

The San Joaquin River and its riparian corridor provides habitat of significant value to many native animal species. This corridor facilitates home range, dispersal, and migratory movements of numerous species. Though project construction would result in approximately 0.079 acre of riparian vegetation removal from the riparian corridor, the permanent loss of this relatively small amount of riparian vegetation would be offset through restoration of the shoreline and revegetation of the banks of the San Joaquin River. Movement of wildlife species (including ringtail, black-tailed deer [*Odocoileus hemionus*], and coyote [*Canis latrans*]) within the portion of the San Joaquin River riparian corridor in the site could be temporarily impeded during construction. However, movement would not be completely prevented because construction would not completely block the corridor, especially in the night hours when most of these wildlife species are most active. Potential construction-related impedance would occur between June 1 and September 15, but as stated above, would allow wildlife to transverse across the relatively narrow construction site in the night hours.

Following construction, the re-establishment of riparian vegetation pursuant to the implementation of the HMMP and the minimal frequency and duration of operation and maintenance activities would allow for essentially unimpeded movement within the riparian corridor.

For the reasons discussed above, the impact of the proposed project on the movement of wildlife is less than significant with mitigation incorporated.

Construction-related Impacts on Fish Migration. Potential impacts on special-status fish species are discussed in detail at Impact 4.5-1, above. As discussed there, the potential for construction-related impacts to cause adverse effects on fish, including special-status fish potentially occurring in the area during construction, will be mitigated by restricting the construction window to a period when sensitive species and life stages will not be present, or present in low abundance, using a floatable turbidity curtain for in-water work, and implementing the Fish Rescue and Relocation Plan (Appendix C of Attachment II in FEIR Volume 2), the Habitat Mitigation and Monitoring Plan (Appendix D of Attachment II in FEIR Volume 2), and AMM C2, "Riparian vegetation." These measures will reduce the potential for project construction to result in direct injury or lethality to special-status and other fish species occurring in the vicinity of the project, water quality impacts on fish and BMI communities, and impacts to aquatic habitats, including EFH for Pacific salmon. Construction in portions of the San Joaquin River would be limited to the existing manmade cove and a small additional area north of the cove near the west bank of the San Joaquin River. With the Phase 1 coffer dam and turbidity curtain in place and with average summer flows in the river, approximately 55 feet of the 105-foot wide river channel would be obstructed, providing an approximately 50-foot wide passage for fish movement through this segment of the river. With the Phase 2 coffer dam and turbidity curtain in place and with average summer flows in the river, approximately 60 feet of the river channel would be obstructed, providing an approximately 45-foot wide passage for fish movement. This portion of the river channel may provide a corridor for fish, including any juvenile or adult salmonids, occurring in the vicinity of the proposed project to move upstream or downstream past the construction area during their summer holding and rearing period and fall spawning period. Due to the relatively small area of impact and the adequate zone of passage past the construction area, movement of fish past the construction area is not anticipated to be adversely affected. Therefore, the impact of construction activities and the temporary placement of coffer dams within the river on fish movement past the project site is less than significant.

Long-term Impacts on Fish Migration. Future diversions of San Joaquin River water to fulfill the contracted needs will not reduce downstream flows, compared to existing conditions, and, thus, will not have a substantial adverse impact on fish migrations in the San Joaquin River.

Under existing conditions, juvenile or larval fish migrating downstream past the existing intake pipes may be killed or injured as a result of entrainment in unscreened intake pipes or impingement on inadequate screens, or by predators holding in the existing manmade cove. Under the proposed project, the existing intakes would be replaced with the new intake pipe outfitted with a state-of-the-art cone screen designed to meet all NMFS and CDFW fish screen criteria. By achieving these criteria, the potential for juvenile or larval fish migrating past the project site to become impinged on the cone screen or entrained in the intake pipe would be substantially reduced, compared to existing conditions. Furthermore, filling of the cove under the proposed project would reduce the amount of predator holding habitat at the project site, thereby reducing the potential for predation on juvenile or larval fish migrating past the project site, compared to existing conditions. For these reasons, the proposed project would substantially reduce the potential for adverse effects on larval and juvenile fish migrating past the CDF intake under future conditions.

With the of the following mitigation measures, the impact of project construction and operation on wildlife movement and migration is considered less than significant.

Mitigation Measures, Including AMMs and/or Project Design Features

Implement MM 4.5-1 California Tiger Salamander and Western Spadefoot Habitat Avoidance

Implement the following project design features:

- Restrict the in-water construction window to June 1 to September 15; and
- Use of a floatable turbidity curtain for in-water work.

Implement the Fish Rescue and Relocation Plan (Appendix C of Attachment II in FEIR Volume 2).

Implement the HMMP (Appendix D of Attachment II in FEIR Volume 2).

AMM C2 Riparian vegetation. The San Joaquin River channel will be accessed via areas where nominal riparian vegetation will be affected. To guide restoration of the man-made cove and riparian vegetation restoration, implement the Habitat Mitigation and Monitoring Plan (HMMP) (Appendix D of EIR Attachment II).

AMM C10 Site Survey. Prior to construction, the Designated Biologist will survey the site to determine whether special-status species are present. If federal or state listed species are found USFWS and/or CDFW will be notified.

b. CULTURAL RESOURCES

Impact 4.6-1: The proposed project could result in an adverse change to the significance of an historical resource.

Finding:

Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Of the two cultural resources located within the project area, one is an historical resource, identified as CA-MAD-295/827, is partially within the project area. Ground disturbance and other physical activities associated with construction of the proposed project are not proposed in areas where known surface features of CA-MAD-295/827 and CA-MAD-826 are located; however, total avoidance (preservation in place) of CA-MAD-295/827 is not feasible because the proposed project involves improvements and the continued use of existing facilities. Total avoidance of CA-MAD-295/827 would require abandoning the existing pumping and intake facilities and development of a new diversion intake at another location. However, methods to minimize adverse effects on CA-MAD-295/827, including the use of crushed aggregate for surfacing of staging areas and access roads to avoid or minimize disturbance of potential

underlying features that may be associated with CA-MAD-295/827 have been incorporated into the proposed project.

CA-MAD-826 has been evaluated and is not considered a historical resource or a Historic Property under CRHR criteria. (ECORP 2019) To date, there has not been a determination of eligibility for the NRHP by a federal agency; however, a comparable finding of not eligible under NRHP criteria would be expected based on the archaeological record. The majority of CA-MAD-826 is located outside of the project site; although, a small portion is within the area of the project site proposed for use as the dewatering spray area. Project activities having the potential to affect CA-MAD-826 would be limited to the spray of dewatering discharge water within the dewatering discharge area of the site and associated Best Management Practices to control surface water runoff from this area. No ground disturbing activities beyond that which is necessary to anchor straw wattles or silt fences is planned for the area within which CA-MAD-826 is located and the resource would not be adversely affected by these activities.

Project activities would have the potential to adversely affect the significance of CA-MAD-295/827 if resource protection and preservation measures are not implemented. In addition, project construction activities could unearth cultural materials that are not visible on the surface. This would create the potential for substantial adverse changes in the significance of those resources, which could be significant historical resources. The potential for adverse changes to the significance of a known historical resource and the potential for adverse changes to the significant of other significant cultural resources that could be present within project disturbance areas is a potentially significant impact.

Mitigation measures MM 4.6-1 and MM 4.6-2 provide for data recovery, monitoring, avoidance, and treatment for known and potential unknown historical/cultural resources that could be encountered during construction. These mitigation measures would avoid or minimize the potential for adverse changes to the significance of a known historical resource and the potential for adverse changes to the significant of other significant cultural resources that could be present within project disturbance areas, and would reduce this impact to less than significant with mitigation incorporated.

Mitigation Measures, Including AMMs and/or Project Design Features

MM 4.6-1: Treatment of CA-MAD-295/827. Prior to the start of ground-disturbing activities associated with the proposed project, a qualified archaeologist shall be retained to complete a Treatment Plan for CA-MAD-295/827. The Treatment Plan shall: identify any portions of eligible resource CA-MAD-295/827 that can be preserved in place, including surface features; prescribe appropriate data recovery excavations and disposition of archaeological materials encountered during data recovery and/or construction; identify protective measures, including guidance on setbacks for construction activities and the placement of high-visibility exclusionary fencing prior to the initiation of ground-disturbing activities under the direction of a qualified archaeologist; provide methods to minimize the potential for looting or vandalism of exposed or subsurface resources; provide standards for documentation by a qualified archaeologist with reports filed with the County and other agencies, such as the California Historic Resources Information System (CHRIS); and provide a schedule of milestones by which project construction can proceed. The Treatment Plan shall be reviewed and approved by the County prior to implementation.

MM 4.6-2: Monitoring and Unanticipated Discovery Procedures. Any excavation or grading activities associated with proposed project-related facilities shall be subject to monitoring by a qualified archaeological monitor, which would allow oversight during the recovery of artifacts, if discovered. The archaeological monitor shall conduct an onsite meeting with all new construction personnel who will be operating ground-disturbing equipment to explain the sensitivity for cultural resources, the procedures for pausing work in the event of an unanticipated discovery, and the penalties associated with unauthorized disturbance or collection of artifacts or cultural resources. All trained personnel shall be required to sign a form indicating their understanding of the procedures and display a hard hat sticker for inspector verification. A copy of the signed forms shall be provided to the County as proof of compliance.

If discovery of an artifact or unknown item having the potential to be a cultural resources of any kind occurs during project construction, all work within 100 feet of the discovery shall cease, the County notified, and a qualified archaeologist retained to assess the significance of the find, make recommendations to the County on its disposition, coordinate with federal permitting agencies, and prepare appropriate documentation, including any required mitigation that satisfies the requirements of Public Resources Code Section 21083.2. The final disposition of archaeological and historical resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission. The archaeologist shall complete a report of the excavations and findings, and the report shall be submitted to the regional office of the California Historic Resources Information System (CHRIS) and Madera County.

Impact 4.6-3: The proposed project could disturb human remains.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Ground disturbance and other activities associated with construction of the proposed project could disturb human remains if present within the project area. The presence of human remains within the project area could not be determined by surface investigation alone, although fragmented remains have been discovered in the vicinity in the past. The potential for human remains to be present within the project area and encountered during project activities is considered a potentially significant impact. Implementation of the procedures for addressing human remains as specified in MM 4.6-3 would ensure proper treatment of any human remains encountered during project construction and would reduce the impact to less than significant. This impact is, therefore, less than significant with mitigation incorporated.

Mitigation Measures, Including AMMs and/or Project Design Features

MM 4.6-3: Human remains analysis and treatment. If human remains are discovered during project construction activities, all ground-disturbing activity within 100 feet of the resources shall cease and the County Coroner shall be notified immediately, in accordance with Section 5097.98 of the California PRC and Section 7050.5 of

California's Health and Safety Code. If the remains are determined by the County Coroner to be Native American, the Coroner shall notify NAHC and procedures under state law shall be followed. If necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains before resuming ground-disturbing activities within 100 feet of where the remains were discovered.

c. HAZARDS AND HAZARDOUS MATERIALS

Impact 4.9-1: The project would require the transport, storage and use of hazardous materials common for such activities and could result in their inadvertent release to the environment.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Construction of the proposed project would involve the transport, storage, and use of hazardous materials such as gasoline, diesel fuel, and various other construction materials. Protections are required to mitigate the potential for the accidental release of chemicals, fuels, lubricants, and other potentially hazardous materials during project construction. Implementation of AMMs listed below will be adequate to prevent, contain, or mitigate spills and releases of substances that could occur during construction. Implementation of the project will also require a Section 1602 LSAA, Section 401 Water Quality Certification, and Section 404 permit. With implementation of project AMMs and compliance with all appropriate project permit conditions, measures to be implemented during project construction to prevent, contain or mitigate spills and releases of substances will render this potential impact less than significant.

Long-term operation of the proposed CDF will require no significant modification in onsite storage or use of chemicals, fuels, and lubricants relative to past and ongoing operation of the WWTP-LLC and County/CSA 16 pumping facilities and intake structures. The long-term impact, therefore, relative to the storage and use of hazardous materials is considered less than significant.

Mitigation Measures, Including AMMs and/or Project Design Features

HH1 Fuel Management. BMPs will be implemented to ensure that fluid leaks during construction do not contaminate groundwater. Refueling will be 100 feet from ordinary high water mark of the San Joaquin River to reduce potential introduction of fuels. If this is not feasible, containment materials will be used.

AMM C3 Runoff control. Potential downstream runoff from the site will be controlled with sand bags, fiber mats, or other methods.

AMM C4 Fuel containment. All fueling and maintenance of construction equipment will occur at least 100 feet from the San Joaquin River ordinary high water mark. If this is not feasible, containment materials will be used.

AMM C5 Concrete and equipment wash containment. Washout area for vehicles will be located at least 100 feet removed from the San Joaquin River ordinary high water mark, and located within the eastern half of the identified staging and area where concrete materials cannot runoff into the river channel.

AMM C6 Equipment leaks. When working in the channel or where there may be runoff to the channel, construction equipment will be fitted with absorbent materials at potential fuel, oil, and other fluid leak spots.

AMM C7 Spill containment and isolation. During construction and post-construction maintenance involving use of equipment in or adjacent to the San Joaquin River channel, sand bags will be stockpiled on site so that they may be immediately filled and placed around any spill. In addition, any spills not contained within the maintenance area will immediately be isolated from the active river channel.

AMM C8 Re-grading. All upland disturbed areas will be regraded to pre-project contours except where the existing river cul-de-sac will be backfilled and restored as a river bank.

AMM HWQ1 Water Quality. A construction storm water pollution prevention plan (SWPPP) will be prepared identifying BMP's that will be implemented for all work to ensure that project construction does not adversely affect water quality.

AMM HWQ2 Channel protection. The construction zone will be isolated from the active San Joaquin River channel during in-water construction activity using a cofferdam.

AMM HWQ3 Concrete management. Concrete will not be poured within the river channel or below the San Joaquin River ordinary high water mark. All concrete work upland of the river and San Joaquin River ordinary high water mark will be washed and cured prior barrier removal to reduce potential for leaching to affect aquatic resources.

AMM HWQ4 Leak containment. All construction equipment will be inspected prior to each work day to ensure that oil and/or gas/diesel fuel are not leaking from equipment.

AMM HWQ5 Storage. Secondary containment for fueling and areas will be provided during construction.

AMM HWQ6 Wash water containment. Secondary containment for equipment wash water will be provided to ensure that wash water is not allowed to discharge from confined washout areas. Hardened material from the washout area will be removed and hauled off-site for proper disposal, in accordance with regulatory standards. Water and slurry (non-hardened material), will be removed by vacuum method and hauled off-site for proper disposal, in accordance with regulatory standards.

AMM HWQ7 Silt containment. Silt traps, ponds, sediment management methods, and/or other means will be provided to prevent runoff from upland construction areas to the river channel or to offsite upland areas. Turbidity curtains will be provided to control silt and sediment for work within the river.

AMM HWQ8 Stockpile runoff. Material stockpiles will be located outside of the ordinary high water mark, will have straw wattles or silt fences installed around their perimeter to minimize sediment discharges, and will be covered to prevent runoff.

AMM HWQ9 Soil erosion. Loose soils will be protected from potentially erosive runoff.

AMM HWQ10 Leaks. When construction equipment is used within the river channel, all such equipment will be fitted with secondary containment materials at potential oil/fuel leakage sites.

d. HYDROLOGY AND WATER QUALITY

Impact 4.10-2: The proposed project could adversely affect water quality during construction and operational stages by increasing the concentration of pollutants in surface runoff from the project site.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

In-channel and upland construction activities associated with the proposed project have the potential to adversely affect water quality during construction. Long-term operation and maintenance of the proposed CDF also has the potential to adversely affect water quality but to a lesser degree relative to project construction. Potential impacts associated with construction and long-term operation and maintenance are addressed in Section 4.10 of the EIR.

Various construction activities associated with the proposed project could adversely affect water quality in the San Joaquin River. These activities include but are not limited to: geotechnical boring; staging area and access road preparation; turbidity curtain placement; cofferdam installation and removal; site grading; trenching for intake pipe installation, turnout vault construction, and County/CSA-16 pump facility installation; intake pipe and footing installation; dewatering well construction and operation; spray disposal from construction dewatering; onsite vegetation removal; and implementation of the proposed Habitat Mitigation and Monitoring Plan. Each activity has the potential to disturb soil and increase susceptibility to higher rates of erosion from rain, streamflow, or wind which, in turn, could result in sediment transport from the site. Construction is planned to occur in two consecutive construction seasons during the seasonally dry period of the year typical of the Central Valley (i.e., June through September 15) when risk of rainfall and related stormwater runoff at the site would be minimal.

CDF construction activities could temporarily affect water quality in the San Joaquin River through release of the following physical or chemical constituents: total suspended solids, turbidity, oil and grease, petroleum hydrocarbons, and solid waste. Construction-related eroded soil and runoff also may contain organic matter, plant nutrients (nitrogen and phosphorus), and other contaminants such as trace metals, pesticides, or animal-related pathogens. All concrete elements of the proposed project will be precast and cured offsite with the following exception. A concrete pad for the two County/CSA-16 pumps will be poured below grade. With implementation of AMM HWQ3 ("Concrete management"), concrete would not be poured within the river channel or below the San Joaquin River ordinary high-water mark. All concrete work upland of the river and San Joaquin River ordinary high-water mark will be washed and cured prior to coffer dam or other barrier removal to reduce potential for leaching.

During construction, the applicable waste discharge requirements (WDRs) would include the Construction General Permit for Storm Water Discharges for construction of the CDF and

related facilities. A Low Threat Discharges General Permit would be required for proposed dewatering activities during construction of the CDF. A number of AMMs to be implemented as part of the proposed project will serve to minimize and mitigate for potential project impacts on water quality during construction. These include: C3 (Runoff); C4 (Fuel Containment); C5 (Concrete and Equipment Wash Containment); C6 (Equipment Leaks); C7 (Spill Containment and Isolation); HH1 (Fuels Management); HWQ1 (Water Quality); HWQ2 (Channel Protection); HWQ3 (Concrete Management); HWQ4 (Leak Containment); HWQ5 (Storage); HWQ6 (Wash Water Containment); HWQ7 (Silt Containment); HWQ8 (Stockpile Runoff); HWQ9 (Soil Erosion); and HWQ10 (Leaks). These measures are listed below and described above in the Hazards and Hazardous Materials section of these findings.

Discharges of soil and suspended sediment to the San Joaquin River resulting in increases in total suspended sediment (“TSS”) and turbidity levels would be the primary concern during the project construction period, as much of CDF construction will require trenching, grading, and soil and vegetation removal. Placement of the turbidity curtain at the start of construction phases 1 and 2 and the installation of sheet piling and/or the cofferdam would result in the temporary disturbance of river sediments, potentially elevating TSS and turbidity levels within the river. Excavation activities associated with intake pipe placement, fish screen installation, removal of the seven existing intake pipes, and, ultimately, infill of the manmade cove and bank restoration would occur in upland or dewatered areas for the entire construction period; therefore, the potential for direct discharges of sediments to the San Joaquin River would be low. Also, because construction activities would occur over two seasons during the dry months, the potential for exposure of construction activities and disturbed soil areas to direct rainfall and stormwater runoff events, and related risk of increased erosion and offsite runoff of other contaminants would be low.

Installation and removal of the cofferdams would temporarily disturb river sediments at the project site, potentially resulting in temporary elevated TSS and turbidity levels in the river. These activities, however, will occur within areas bounded by the turbidity curtain. Installation of the turbidity curtain is expected to take three (3) days. Cofferdam installation will require one to two weeks, and its removal will take two to three days. Thus, while TSS and turbidity levels could be higher than background levels as a result of cofferdam installation and removal, the increase would be of a very short duration into a river with substantial flow to flush and dilute the elevated TSS and turbidity without reaching in-river levels that would adversely affect beneficial uses. Turbidity will be routinely monitored up- and downstream of the project site during construction.

Discharges of suspended sediment to the San Joaquin River could occur on a temporary basis following completion of construction activities when the cofferdams and turbidity curtains are removed, and the restored riverbank is exposed to actively flowing river water. In addition, soil erosion and storm-related runoff of eroded soil may occur at disturbed upland areas on an infrequent basis in the first season of fall/winter rainfall events until these areas become stabilized with vegetation. The initial runoff following construction, or return of seasonal rains to previously disturbed sites, can result in “first flush” runoff events with elevated levels of TSS and turbidity.

Following the completion of Phase 1 construction, the project site would be subject to initial stormwater runoff with the return of seasonal rains to disturbed areas and inundation by the river. This can result in “first flush” runoff events with elevated levels of TSS and turbidity resulting

from water flow across disturbed areas. To avoid substantial sedimentation from disturbed areas, upon completion of Phase 1, the construction site would be completely demobilized. Disturbed soils within the Phase 1 work areas would be stabilized and the area north of the intake maintenance and access area would be planted in accordance with the Habitat Mitigation and Monitoring Plan (Appendix D of Attachment II to the EIR). The staging and laydown area, including any rip rap stored for use in Phase 2, would remain and all erosion and sedimentation controls for the laydown area in place during Phase 1 construction would continue to be maintained throughout the non-construction period between Phases 1 and 2. These practices would be implemented as a component of the proposed project. Thus, the potential for two seasons of construction would not contribute to substantial increases in TSS and turbidity levels in the San Joaquin River.

The use of motorized equipment, and storage and handling of fuels and equipment lubricants and fluids, could result in petroleum product discharges that could be harmful to water quality if they directly enter the river or are spilled on the ground where they may enter the groundwater, or be mobilized and transported in stormwater runoff following construction. This is addressed above in the Hazards and Hazardous Materials section of these Findings.

Construction activities with the greatest potential for releasing contaminants would include crane operation, dewatering pump installation and operation, geotechnical boring operations, grading, excavation, and soil hauling. The material for the fish screen base has been selected to be epoxy coated steel to allow for use of steel piles and thus would avoid the need for a new concrete base and new concrete footings. As discussed below, the potential for pollutant discharges during construction would be substantially reduced through compliance with state and federal permitting requirements and regulations in addition to the mitigation measures specified above that are taken from the

The above activities would be conducted in conformance with applicable federal and state regulations pertaining to grading and erosion control, and contaminant spill control and response measures described below. In particular, the construction work would be subject to authorization under the SWRCB NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ/NPDES Permit No. CAS000002). Therefore, the project's construction contractor would be required to develop a stormwater pollution prevention plan ("SWPPP") and implement appropriate construction BMPs for all activities that may result in the discharge of construction-related contaminants from disturbed construction areas. Implementation of appropriate erosion control and pollution prevention BMPs would avoid and minimize construction-related erosion and contaminant discharges. In addition to the BMPs, the SWPPP will include BMP inspection and monitoring activities, and identify responsibilities of all parties, contingency measures, agency contacts, and training requirements and documentation for those personnel responsible for installation, inspection, maintenance, and repair BMPs.

All construction activities associated with the proposed project would be subject to existing regulatory requirements. The SWPPP requirements and BMPs noted above would also be required in addition to a 1602 LSAA from the California Department of Fish and Wildlife and Section 404 permit from the USACE and RWQCB 401 water quality certification (refer to Section 4.5: Biological Resources of the EIR. In addition, under Municipal Code Chapter 14.50 (Grading and Erosion Control), the proposed project would be required to obtain a grading permit and would, therefore, have to demonstrate compliance with federal, state, and local

grading and erosion control requirements, including the Construction General Permit. Typical construction BMPs for compliance with the Construction General Permit include, but are not necessarily limited to: scheduling or limiting activities to certain times of year; prohibiting certain construction practices; implementing equipment maintenance schedules and procedures; implementing a monitoring program; implementing other management practices to prevent or reduce pollution, such as using temporary mulching, seeding, or other suitable stabilization measures to protect uncovered soils; storing materials and equipment to ensure that spills or leaks do not enter surface waters; developing and implementing a spill prevention and cleanup plan; installing traps, filters, or other devices at drop inlets to prevent contaminants from entering surface waters; and using barriers, such as straw bales or plastic, to minimize the amount of uncontrolled runoff that could enter surface water.

As described in Chapter 3 of this EIR, dewatering of the CDF construction site will be required during construction Phases 1 and 2. As such, the project would require compliance with the Low Threat Discharges General Permit issued by the RWQCB and is considered protective of water quality from construction dewatering because this type of discharge is not considered to have a reasonable potential to cause or contribute to an in-stream excursion above a water quality objective.

As required by applicable federal, state, or local laws or regulations, the following would be implemented as part of the proposed project:

Adherence to Adopted Water Quality Policy - The project would comply with pertinent requirements of all applicable water quality policies, such as the CWA, the Porter Cologne Water Quality Control Act, California Water Code, the Madera County General Plan, and the Madera County Code (Chapter 14.50 [Grading and Erosion Control]). A key element of compliance with the above would be the implementation of construction BMPs as a component of the project. These measures are discussed below.

Construction BMPs - The County would ensure that a SWPPP is prepared and implemented during construction. Implementation of best management practices (BMPs) for controlling stormwater runoff is described in detail in the EIR. A listing of BMPs to be considered for project construction is included in Appendix E of the EIR. The implementation of specific BMPs will be circumstance dependent.

The SWRCB has identified the development of a construction SWPPP as an appropriate protective mechanism for water quality during construction activities. Incorporation of required BMPs under a SWPPP reduces the potential discharge of stormwater pollutants from these activities. Madera County Code requires a grading permit prior to construction that meets all federal, state, and local laws, regulations, and directives for grading activities, which would ensure preparation of a SWPPP and implementation of effective BMPs. In addition, the proposed project would implement the following AMMs for water quality protection associated with project site runoff: C3 (Runoff); C4 (Fuel Containment); C5 (Concrete Containment); C6 (Equipment Leaks); HWQ1 (Channel Protection); HWQ3 (Concrete Management); HWQ4 (Leak Containment); HWQ5 (Storage); HWQ6 (Wash Water Containment); HWQ7 (Silt Containment); HWQ8 (Stockpile Runoff); HWQ9 (Soil Erosion); and HWQ10 (Soil Erosion).

Adherence to applicable water quality laws, preparation of a SWPPP, compliance with the Madera County Municipal Code, compliance with the Low Threat Discharges General Permit, and implementation of the measures specified above from the proposed project's AMMs would

ensure that water quality standards are not violated during construction. Consequently, potential impacts associated with violation of waste discharge requirements or water quality standards during construction would be less than significant with mitigation incorporated.

Mitigation Measures, Including AMMs and/or Project Design Features

Implement the Habitat Mitigation and Monitoring Plan (Appendix D of Attachment II in FEIR Volume 2).

Comply with all applicable state and federal permits and regulations.

AMM C3 Runoff control. This AMM and each of the AMMs listed below are described above in Section 2(c) Hazards and Hazardous Materials.

AMM C4 Fuel containment.

AMM C5 Concrete and equipment wash containment.

AMM C6 Equipment leaks.

AMM C7 Spill containment and isolation.

AMM HH1 Fuel Management.

AMM HWQ1 Water Quality requiring compliance with SWPPP requirements, including all applicable and appropriate best management practices (BMPs).

AMM HWQ2 Channel protection.

AMM HWQ3 Concrete management.

AMM HWQ4 Leak containment.

AMM HWQ5 Storage.

AMM HWQ6 Wash water containment.

AMM HWQ7 Silt management.

AMM HWQ8 Stockpile runoff.

AMM HWQ9 Soil erosion.

HWQ10 Leaks.

e. PALEONTOLOGICAL RESOURCES

Impact 4.13-1: The project could directly impact a unique paleontological resource during excavation activities.

Finding:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant effects on the environment. (14 Cal. Code Regs. § 15091, subd. (a)(1); Pub. Resources Code, § 21081, subd. (a)(1).)

Facts in Support of Finding:

Shallow excavations in the younger Quaternary Alluvium exposed in the project area is unlikely to uncover significant vertebrate fossils. The records search conducted for the EIR did not find vertebrate fossil localities specifically designated as coming from the Riverbank Formation within the project area. However, deeper excavation that extend down into older sedimentary deposits, as well as an excavation in the Riverbank Formation that might be present in the western portion of the proposed project area have the potential of encountering significant vertebrate fossil remains. Excavation below the top 10m (30 feet) may potentially affect the upper unit of the older Quaternary Riverbank formation. The project impact on paleontological resources during construction, therefore, is considered potentially significant. Mitigation measure MM 4.13-1 requires that a qualified paleontologist be present if excavations exceed 30 feet, and that excavations temporarily cease in the event of fossil discovery until the fossil can be fully recovered and recorded. Mitigation measure MM 4.13-1, below, would ensure that significant impacts to paleontological resources are avoided; thus, the impact of the project on paleontological resources is less than significant with mitigation incorporated.

Mitigation Measures, Including AMMs and/or Project Design Features

MM 4.13-1: Discovery of Unknown Paleontological Resources. Any project-related ground disturbance that extends more than 10m (30 feet) below the surface of the disturbed area and which brings material to the surface to allow observation of subsurface material shall be monitored by a qualified paleontologist to determine if the older Quaternary deposits are encountered. If older Quaternary deposits are encountered, excavations and other disturbance in this formation shall be monitored by a qualified paleontological monitor. In the event that the paleontological monitor identifies fossils of potential significance, further construction-related excavations and ground disturbance within the vicinity of the fossil find shall cease until the fossil is fully recovered. Any such fossil finds shall be recovered, identified, and cataloged by a qualified paleontologist, and subsequently donated to an accredited repository designated by the County. The final disposition of paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission. Once the fossil is deemed to be full recovered, construction excavations shall be allowed to resume. Following the completion of construction, a report shall be prepared that includes a list of any and all fossils recovered, documents each fossil locality, and interprets the resources recovered.

3. CUMULATIVE IMPACTS

The EIR evaluated the potential for cumulative impacts within each of the Project-specific environmental impacts identified in the EIR, in consideration of past, present and reasonably foreseeable future projects. As analyzed in the EIR, no Project impacts were found to have the potential for cumulatively considerable impacts when combined with the effects of past, present, and reasonably foreseeable other projects. With implementation of mitigation measures, including the AMMs and project design features, identified in the EIR, all potentially significant project impacts are mitigated to a to a level of less than significant. In no instance would a

potentially significant impact result in a considerable contribution to a cumulative impact with the implementation of proposed mitigation measures, including the AMMs and project design features.

4. GROWTH INDUCING IMPACTS

CEQA Guidelines Section 15126.2(d) requires an evaluation of growth inducing impacts that may result from a proposed project. There are two types of growth inducing impacts that a project may have: direct and indirect. Direct growth inducing impacts occur when the development of a project imposes new burdens on a community by directly inducing population growth, or by leading to the construction of additional developments in the same area. Projects that physically remove obstacles to growth, or projects that indirectly induce growth are those, which may provide a catalyst for future unrelated development in an area such as a new residential community that requires additional commercial uses to support residents.

The analysis in the EIR concludes that the Project's replacement of existing water intake facilities on the San Joaquin River would not result in an increase in diversion capacity, an increase in the amount of water diverted, or a change in the previously assessed use of the diverted water. The Project would substantially improve the future reliability of diversion facilities at the site given that future failure of the existing intake pipes is likely. Construction of the Project and implementation of the Habitat Restoration and Monitoring Plan component of the Project would improve conditions for San Joaquin River anadromous fishes by replacing unscreened diversion intakes with a single common diversion intake employing state-of-the-art fish screen technology and reducing predatory fish habitat within the existing manmade cove.

The contractual sources of water to be diverted through the CDF are described in the FEIR (Section 3.1.2, Section 4.17.1). Water diverted through the CDF would serve existing uses and development that has already been approved within the Sumner Hill community and the Tesoro Viejo Master Planned Community. Because the proposed project would replace existing facilities without expanding the capacity of those facilities, and because the project would not remove any impediment to future growth in the region, the proposed project does not meet any of the criteria cited above to foster spatial, economic, or population growth in the region. For these reasons, the County finds that the Project would not induce growth.

5. SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES

Public Resources Code §21100(b)(2)(B) and CEQA Guidelines §15126.2(c) require that the EIR discuss significant irreversible environmental changes that would be caused by the Project. According to Guidelines §15126.2(c):

Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also, irreversible damage can result from environmental accidents associated with

the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

The project would result in the irreversible and irretrievable commitment of energy and material resources during construction and operation, including: construction materials such as soil, cobble, riprap, rocks, concrete, and steel/pipe; land area committed to new project facilities; and energy expended in the form of gasoline, diesel fuel, and oil for equipment and transportation vehicles that would be needed for project construction and operation. (FEIR Section 6.2) The EIR concludes that the Project’s use of these nonrenewable resources represents a minimal portion of the region’s resources and would not affect the availability of these resources for other needs within the region. Development of the proposed project would continue the use of the existing point of diversion and much of the existing infrastructure associated with that existing use. The proposed project would effectively commit WWTP-LLC and the County/CSA-16 to the long-term use of the CDF for water diversion operation, however, this commitment would continue the existing diversion and, as compared to other water supply options, the County finds that the Project’s construction and long-term operation is not considered to be an inefficient consumption of resources. (Id.)

E. MITIGATION MONITORING AND REPORTING PROGRAM

Public Resources Code Section 21081.6(a)(1) states:

When making the findings required by paragraph (1) of subdivision (a) of Section 21081 [that changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment] . . . [a] public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.

The County will use the Mitigation Monitoring and Reporting Program to track implementation and compliance with Project mitigation measures and Avoidance and Minimization Measures. The final Mitigation Monitoring and Reporting Program is attached to and incorporated into the approval resolution and is hereby approved in conjunction with certification of the EIR and adoption of these CEQA findings.

F. NO RECIRCULATION OF DRAFT EIR IS REQUIRED

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR but before certification of the Final EIR. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental

effect of the project or a feasible way to mitigate or avoid such an effect that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (CEQA Guidelines § 150885(a).)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications to an adequate EIR. The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.) “Recirculation was intended to be an exception, rather than the general rule.” (Id.)

The FEIR incorporates information which amplifies or clarifies the Project description, analyses, and mitigation measures included 2018 DEIR. The changes and clarifications in the FEIR are clearly identified through the use of underlined and strikethrough text, are summarized in the FEIR (Section 1.6.4). The County finds that none of the changes between the DEIR and FEIR involve “significant new information” requiring recirculation. The additional information did not result in any new significant environmental effects, nor any substantial increase in the severity of any previously identified significant effects, and would not otherwise trigger recirculation. The minor changes and revisions included in the FEIR represent the kinds of positive changes that CEQA envisions and which commonly occur as the environmental review process works towards its conclusion and the lead agency properly responds to public and responsible agency comments. In fact, many of the changes in the FEIR were made in direct response to commenter input as envisioned by CEQA. For all of the above reasons, the County finds that none of the circumstances exist requiring recirculation of the DEIR. (See CEQA Guidelines, § 15088.5.)

G. FINDINGS REGARDING PROJECT ALTERNATIVES

Where a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as

mitigated, must first determine whether, regarding such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. (See, e.g., *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445.)

Public Resources Code Section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would *substantially lessen* the significant environmental effects of such projects[.]” (Italics added.) Section 21002 further states that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects.”

CEQA defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal and technological factors.” (Pub. Resources Code, § 21061.1; CEQA Guidelines, § 15364.) Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site. (CEQA Guidelines, § 15126.6(f)(1).) The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1165-1166.) Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.)

Where a significant impact can be substantially lessened (i.e., mitigated to an “acceptable level”) solely by the adoption of mitigation measures, the lead agency, in drafting its findings, has no obligation to consider the feasibility of alternatives with respect to that impact, even if the alternative would mitigate the impact to a greater degree than the project. (Pub. Resources Code, § 21002; *Laurel Heights Improvement Ass’n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.) Thus CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project alternatives are not required, however, where such changes are infeasible. (Pub. Resources Code, § 21002.)

As noted in the preceding discussion regarding Project impacts, the County finds all of the potentially significant and significant effects identified in the EIR have been fully avoided or reduced to less than significant with adoption of feasible mitigation measures, and that all of the mitigation measures are feasible.

CEQA does not require an evaluation of all possible alternatives, only an evaluation of “a reasonable range of potentially feasible alternatives” so as to encourage both meaningful public participation and informed decision making. (CEQA Guidelines, § 15126.6(a).) “The discussion

of alternatives need not be exhaustive, and the requirement as to the discussion of alternatives is subject to a construction of reasonableness.” (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286.)

The County has considered the Project alternatives presented and analyzed in the EIR and presented during the comment period and public hearing process. In considering the Project alternatives, the County considered not only the relative environmental impacts and the feasibility of the alternatives, but also the ability of the alternatives to achieve the stated objectives and purposes of the Project.

The Project has five distinct, but related, objectives, which are listed in both Chapters 3 and 5 of the FEIR. Chapter 5 of the FEIR contains an evaluation of the alternatives. The project alternatives evaluated in detail in the FEIR are:

- Alternative 1 - No Project Alternative
- Alternative 2 - In-Kind Facilities Replacement
- Alternative 3 - Alternate Onsite Intake Location

1. ALTERNATIVES CONSIDERED AND REJECTED FROM DETAILED EVALUATION

CEQA requires that the lead agency identify any alternatives that were considered but rejected as infeasible during the scoping process, and briefly explain the reasons underlying the infeasibility determination. (CEQA Guidelines, § 15126.6(c).) Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are failure to meet most of the basic project objectives, infeasibility, or inability to avoid significant environmental impacts. The RDEIR included the following alternatives that were considered, but dismissed from detailed consideration.

Three alternatives to the Project were considered and rejected during the scoping process: (1) Alternative Location; (2) Alternative Design; (3) Alternative Water Supply (FEIR, pp. 5-5 – 5-8.) Reasons for eliminating these alternatives include failure to meet basic Project objectives, infeasibility, or the fact a particular alternative would not avoid significant environmental impacts. (Id.)

a. Alternative San Joaquin River Diversion Intake Locations for the CDF

CEQA Guidelines §15126.6(f)(2)(a) states that “only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.” An alternative location would require the identification and design of a quarry and aggregate processing facilities at another location within the Project region.

An alternative location for the CDF would require the identification and design of a new diversion intake structure, pumping facilities, water conveyance facilities and other supporting

infrastructure, and access roads at another location along the San Joaquin River either upstream or downstream of the existing diversion facility. (FEIR, pp. 5-5 – 5-6.)

This alternative would not meet CEQA criteria for a viable project alternative and is rejected from further evaluation in the FEIR for the following reasons. Development of new diversion and intake facilities at an alternative location would not meet the basic project objectives of the proposed project which is to minimize or reduce construction cost and environmental impact by using an already-developed diversion site. Furthermore, the proposed project includes objectives and elements that are site-specific, including the removal of existing intake facilities and infill of the existing manmade cove. Because these project elements are site-specific, there is no alternative site location that could achieve these objectives. Development of a new diversion and intake facilities at an alternate location would require disturbance of upland areas and disturbance within the San Joaquin River channel. Disturbance associated with developing a new diversion intake and related facilities on previously undeveloped would result in adverse impacts to riparian and instream biological resources and potentially significant cultural resources that may be located in such areas. (FEIR, pp. 5-5 – 5-6.) For these reasons, as explained in more detail in the FEIR, the County finds that “Alternative San Joaquin River Diversion Intake Locations for the CDF” alternative is rejected from further consideration.

b. Alternative Design of the Proposed Fish Screen

The proposed project would replace non-screened diversion intake pipes and diversion intake pipes employing outdated fish screen technology with a single consolidated diversion intake designed with a state-of-the-art cone screen for fish exclusion. Criteria used in the design of the proposed fish screen included fish screening criteria and guidelines for “Anadromous Salmonids (Fry)” (sensitive fish species that may be present at the project site) provided by the California Department of Fish and Wildlife and National Marine Fisheries Service. A cylindrical-type screen was considered for the proposed project but was found to be impractical given the river geometry and historical low flow depth at the project site. A cylindrical screen would need

to be a minimum of 30-inches in diameter; however, the available water depth, considering historical low water depths, may be as low as 2.5 feet (30 inches) and would not be sufficient. Furthermore, the proposed cone screen diversion intake would not result in significant adverse effects, and no environmental, operational, or cost benefits would be achieved from employing an alternative design. For these reasons, the County finds that the “Alternative Design of the Proposed Fish Screen” alternative does not meet CEQA criteria for a viable project alternative and rejected this alternative from further consideration. (FEIR, pp. 5-6.)

c. Alternate Water Supply or Surface Water Delivery System

The proposed project would replace outdated and aging existing water diversion facilities. For the Tesoro Viejo Master Planned Community (TVMPC), diversion of water through these existing facilities was part of the infrastructure assumed in the water supply assessment used to support the certification of the 2012 Tesoro Viejo Specific Plan (TVSP) Revised Environment Impact Report (REIR) (SCH No. 2006111123) (TVSP REIR 2012). The 2012 TVSP REIR

concluded that the TVMPC would be adequately supplied with surface water diverted from the San Joaquin River, and that such reliance would not have a significant adverse effect on special-status fish species (TVSP REIR, Impact 4.4-6). Not considered at the time of the TVSP REIR certification in 2012 was the possibility that the existing diversion facility might fail. However, a portion of 2012 TVSP REIR did analyze a water supply scenario that assumed the unavailability of San Joaquin River water and considered several alternatives for providing a reliable water supply to the TVMPC involving the development and use of groundwater supplies within the TVMPC and/or importation of offsite groundwater supplies. (TVSP REIR, Section 4.14). The County finds that the analysis in the TVSP REIR, is still relevant to the consideration of the proposed CDF project. (FEIR, pp. 5-6 – 5-7.)

In developing the proposed CDF project, various alternate water supply alternatives were considered that would eliminate diversions at the existing intake pipes and, thus, the need for the proposed CDF. (FEIR, p. 5-7.) Building on the analysis from the 2012 TVSP REIR, those alternatives included a combination of expanded future reliance on onsite and offsite groundwater sources and/or use of surface water delivered via Lateral 6.2 (an existing surface canal lateral that connects to the Bureau of Reclamation's Madera Canal near the middle of the TVMPC). However, for the reasons set forth in detail in the FEIR (FEIR, p. 5-7), the County has eliminated those water supply alternatives from further consideration.

2. ALTERNATIVES CONSIDERED FOR DETAILED EVALUATION

a. Alternative 1: No Project Alternative

Evaluation of the No Project Alternative is required under CEQA Guidelines §15126.6(e). The No Project Alternative must include consideration for what could be expected to occur in the reasonably foreseeable future, given the existing zoning and General Plan land use designations for the site. Under the No Project Alternative, the proposed CDF would not be constructed, the existing intake pipes would remain in place and in operation, the existing manmade cove would not be filled, and the shoreline restoration proposed for the project would not be implemented. Diversions through the existing, deteriorated seven intake pipes would continue in keeping with the County/CSA-16 and TV Trees (WWTP-LLC's predecessor) long-standing practice. Under the No Project Alternative, facilities improvements would be limited to ongoing maintenance and repair activities and no substantial changes to the intake structures would be undertaken. The ability of the No Project Alternative to meet water delivery objectives is uncertain given the high probability of facilities failure. Another uncertainty associated with the No Project Alternative is its ability to continue operation of the diversion facilities in their existing configuration given current permitting requirements. The No Project Alternative would also not result in replacement of the County/CSA-16 pumps, or infill of the manmade cove, restoration of the San Joaquin River shoreline, and the No Project Alternative would not provide a backup intertie connection between the County/CSA-16 water supply pipeline and the WWTP-LLC water conveyance pipeline.

Finding:

Under the No Project Alternative, long-term operation of the existing intake facilities would continue to occur within the manmade cove including the operation of two intakes that are currently unscreened. The benefits of substantially reduced potential for fish impingement and entrapment with the proposed state-of-the-art intake facility under the proposed project would not be realized under the No Project Alternative. Under the No Project Alternative, the cove would continue to support habitat for warmwater predatory fish species which prey on San Joaquin River anadromous fish species. Also, under the No Project Alternative, the shoreline restoration of the Habitat Restoration and Monitoring Program to be implemented as part of the proposed project and Alternate Alignment Alternative would not be implemented. As such, the No Project Alternative would maintain conditions within the manmade cove and river shoreline that are incongruous with areas of native riparian habitat immediately upstream, downstream and across the river from the project site. For the above reasons, the County finds that the No Project Alternative is not considered environmentally superior to the proposed project and that the No Project Alternative would not avoid or reduce potentially significant or significant impacts of the proposed project as no such impacts would result from the proposed project with implementation of the identified mitigation measures. (FEIR, pp. 5-21, 5-22)

b. Alternative 2: In-Kind Facilities Replacement

Under the In-Kind Facilities Replacement alternative, the existing intake facilities would be rehabilitated to provide more reliable operation than is presently provided by the existing facilities. This alternative would install or replace fish screens on the existing intakes with an effort at achieving current CDFW and NMFS screening criteria and guidelines; however, the FEIR concludes that it cannot be confirmed that feasible modifications to the pipe intakes could achieve the criteria. Also under this alternative, the County/CSA-16 pumps would not be replaced, the existing manmade cove would continue to be used as the location of the intake pipes, there would be no infill of the cove area or shoreline restoration, and the intertie to the County/CSA 16 water line would not be constructed. (FEIR, p. 5-3.)

Finding:

The In-Kind Facilities Replacement Alternative would require similar construction activities as the proposed project, including isolation of the construction site from the San Joaquin River through the use of a coffer dam and turbidity curtain. This alternative would also require the removal of the existing intakes, trenching activities for the placement of new intakes, and geotechnical investigations. Under this alternative, installation of new County/CSA-16 pumps and intertie connection with the WWTP-LLC pipeline would not occur. Additionally, the infill of the manmade cove and riverbank restoration that would occur under the proposed project would not occur under the In-Kind Replacement Alternative. While many of the construction activities associated with

this alternative would be similar to those of the proposed project, the duration and intensity of construction would likely be less under this alternative because activities associated with cove infill and shoreline restoration would not occur. Under this alternative, long-term operation of intake facilities would continue to occur within the manmade cove and the cove would not be filled. Therefore, under the alternative, the cove would continue to support habitat for warmwater predatory fish species that prey on San Joaquin River anadromous fish species. This alternative would also maintain conditions on the shoreline adjacent to the manmade cove that are incongruous with areas of native riparian habitat immediately upstream, downstream and across the river, whereas the proposed project would provide for restoration of riparian habitat within these areas. While temporary, construction-related activities associated with this alternative would require a lesser degree of mitigation to avoid potentially significant impacts as compared to the proposed project, the long-term environmental benefits associated with operating a single common diversion facility with a state-of-the-art fish screen, cove infill, and shoreline restoration would not occur under this alternative.

For the above reasons, the County finds that the In-Kind Facilities Replacement Alternative is not environmentally superior to the proposed project and that the In-Kind Facilities Replacement Alternative would not avoid or reduce potentially significant or significant impacts of the proposed project as no such impacts would result from the proposed project with implementation of the identified mitigation measures. (FEIR, p. 5-22.)

c. Alternative 3: Alternate Onsite Intake Location

Under the Alternate Onsite Intake Location Alternative, a common diversion facility similar to that of the proposed project would be constructed; however, the location of the intake and the alignment of the intake pipeline would be slightly different than under the proposed project. Under this alternative, the existing intake facilities would be removed from the manmade cove and the new common diversion intake and intake pipeline would be constructed in the cove. Basic elements of the proposed project would be similar to the proposed project. (FEIR, pp. 5-4 – 5-5.) Construction methods that would be employed under this alternative would be similar to methods used for the proposed project. Because this alternative would place the intake and intake pipeline within the existing cove, disturbance to the upland area north of the cove would be reduced relative to the proposed project. However, this alternative would require a larger footprint in the river channel for installation of the diversion intake and fish screen than would be needed for the proposed project and would require a more extensive use of sheet piling in order to isolate the construction area from the river. (FEIR, p. 5-5.)

Finding:

The County finds that the Alternative Onsite Intake Location Alternative would not achieve the same benefits of the proposed project, and would have an increased overall

construction footprint of the project construction work in the river; decreased ability to manage dewatered water from the construction site and thus decreased ability to avoid a sediment threat to the river; and would require an increased amount of sheet piling for the construction area. During project construction, this alternative would require less disturbance to the area supporting riparian vegetation immediately north of the manmade cove as compared to the proposed project, but would require more construction within the river channel. As with the proposed project, this alternative would avoid any significant environmental impacts with implementation of mitigation measures identified for the project. The long-term effects of operation of this alternative would be nearly identical to the proposed project. (FEIR, pp. 5-22 – 5-23.)

3. THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE IS THE REDUCED ANNUAL PRODUCTION ALTERNATIVE

CEQA Guidelines Section §15126.6(e)(2) requires that an EIR identify the environmentally superior alternative. Additionally, if the environmentally superior alternative is the No Project Alternative, the EIR must also identify an environmentally superior alternative from the remaining alternatives. The County finds that the No Project Alternative is not considered the environmentally superior alternative. Although the No Project Alternative would not result in construction-related impacts that would occur under the proposed project and other alternatives (all of which would be less than significant with mitigation), the No Project Alternative would not achieve the environmental benefits of the proposed project (e.g., improved visual conditions of the site, reduced potential effects on special-status fish species, restored shoreline riparian conditions). (FEIR, p. 5-23.)

The County finds that the Alternate Onsite Intake Location Alternative is environmentally superior to the No Project Alternative and the In-Kind Facilities Replacement Alternative, but that the Alternate Onsite Intake Location Alternative is not clearly superior to the proposed project because it does not achieve the project objectives to the same degree as the proposed project and would require more extensive sheet pile work in the river waterway for coffer dam purposes. (FEIR, p. 5-23.)