

State of California
DEPARTMENT OF FISH AND GAME

Central Region
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CHARLTON H. BONHAM, Director



October 18, 2011

Holly Smyth, Planning Director
City of Lemoore
711 Cinnamon Drive
Lemoore, California 93245

Subject: Negative Declaration/Initial Study
Water Reclamation Facilities -- Capacity Increase
SCH No. 2011091054

Dear Ms. Smyth:

The California Department of Fish and Game (Department) has reviewed the Initial Study for a Negative Declaration for the above Project. Approval of the Project will allow the modification of the City of Lemoore's existing 30-inch outfall line. It has been determined that by operating the line as a siphon, eliminating vacuum relief valves at the high points, and by replacing a short section of undersize line serving an abandoned flow meter, the outfall line will carry, by gravity, approximately 6 million gallons per day (mgd) of wastewater -- an increase from the previous 4.5 mgd. The outfall line is approximately six miles in length from the Lemoore Water Reclamation Facility (WRF) along 19th Avenue south, crosses State Highway 41, and parallels Jackson Avenue west to the outfall at the Westlake Canal. The line spans the Kings River attached to two bridges over the River. Approximately 40 feet of 16-inch pipeline will be replaced with 30-inch pipeline downstream from the treatment ponds at the WRF and an unknown number of air relief/vacuum relief valves will be exchanged for air relief valves only to facilitate siphon flow in the line. The Project is located in Lemoore.

The Department has concerns regarding the potential of the Project to impact the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State Species of Special Concern burrowing owl (*Athene cunicularia*). The Department recommends that protocol-level surveys be conducted by a qualified wildlife biologist at the correct timing in all areas where ground disturbance will occur in potential habitat to evaluate the Project site for presence of the above mentioned special status species. A pre-construction survey should also be conducted no more than 30 days before beginning Project-related activities. Appropriate avoidance, minimization, and mitigation measures and any permitting needs should be identified and included in the Negative

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Declaration as contingencies if special status species, their burrows, nests, or sign are found to be present on or near the Project site. Our specific comments follow.

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with responsibility under the California Endangered Species Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code).

Responsible Agency Authority: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), the Department may need to issue an Incidental Take Permit (ITP) for the Project.

"Take" under the Federal Endangered Species Act (FESA) is more stringently defined than CESA; "take" under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or denning. The Department recommends early consultation with the United States Fish and Wildlife Service (USFWS) regarding federally listed species.

Bird Protection: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

Water Pollution: Figure 3 from the Initial Study shows that the Project will cross the Kings River. Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any

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substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible this Project could result in pollution of a "Waters of the State" from increased sediment in storm water runoff or construction-related erosion. This could impact the fish and wildlife resources by causing increased sediment input into the Kings River as well as the potential to discharge treated wastewater into the river in the event the pipeline fails. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State" including storm water runoff into surface waters.

Stream Alteration Agreement (SAA): The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Sections 1600 et seq. Because the Project may involve work within the streambed, bank, and/or channel of the Kings River, an SAA may be necessary. The Project proponent should submit a Stream Alteration Notification to the Department. The Department is required to comply with CEQA in the issuance or the renewal of an SAA. For additional information on notification requirements, please contact our staff in the Stream Alteration Program at (559) 243-4593.

Potential Project Impacts and Recommendations

Riparian Habitat and Wetlands: Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat and wetlands from aerial photographs appear to exist within and adjacent to the proposed Project site. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Department has a no-net-loss policy regarding impacts to wetlands. Potential impacts to special status resources posed by wetland creation should also be considered. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer should be implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and federally listed species. The Department recommends delineating wetlands and vernal pools, with a 250-foot no-disturbance buffer. However, depending upon what Project-related activities are proposed in these areas, larger buffers may be warranted to avoid impacts. Further, if any work will occur in the Kings River or the flood plain along the Jackson Avenue alignment, a wetland delineation should be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.

Tipton Kangaroo Rat (TKR): Lands adjacent to the Highway 41 and Jackson Avenue Intersection are some of the last known occupied habitat for TKR in Kings County. From the Project description, it is unclear if valve replacement will occur in known

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habitat in this area and if this will require ground-disturbing activities that could impact burrows used by TKR or other State- and federally listed species. Therefore, in order to prevent the "take" of individuals that may be present in below-ground burrows, full avoidance should occur. In the event suitable burrows are detected during pre-construction surveys the Department recommends the entrances of any small mammal burrows that could be used by the species should be avoided by a minimum 50 foot no disturbance buffer. In addition to the no disturbance buffer, the Department recommends biological monitors should be present during all ground-disturbing and other construction-related activities to ensure that "take" of above-ground and below-ground TKR does not occur and to ensure that individuals are not impacted by construction equipment or materials. If TKR are detected, and the potential for "take" cannot be avoided through the implementation of the avoidance and minimization measures recommended above, acquisition of an ITP, pursuant to Fish and Game Code Section 2081(b), may be warranted prior to Project implementation. In addition, avoidance and minimization measures for TKR should be fully discussed in the finalized CEQA document.

San Joaquin Kit Fox (SJKF): Multiple locations along the pipeline have the potential to support SJKF. In addition, the area along Highway 41 and Jackson Avenue is an important foraging, denning, and movement corridor for this species. SJKF populations are known to den in right-of-ways, vacant lots, parks, landscaped areas, golf courses, etc., and population numbers fluctuate over years. Presence/absence in any one year does not necessarily depict the potential for kit fox to occur on a site. This is true for many other listed species in the San Joaquin Valley. It is important to note that SJKF may be attracted to the Project site due to the type and level of activity (grading, excavation, etc. associated with the outfall line modification) and the loose, friable soils that are created as a result of intensive ground disturbance. The Department recommends that the USFWS's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) be followed. A pre-construction survey is recommended and a biological monitor should be present at the excavation and disposal sites to observe if SJKF has moved into the Project site (i.e., burrow presence). In the event that this species is detected during surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State ITP prior to any ground-disturbing activities. In addition, mitigation measures for SJKF should be fully addressed in the finalized CEQA document.

Swainson's Hawk (SWHA): The State threatened SWHA has the potential to nest near the Project site. If Project activities are to take place during the normal bird breeding season (February 1 through September 15), the Department recommends that a qualified biologist conduct surveys for nesting raptors following the survey

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methodology developed by the Swainson's hawk Technical Advisory Committee (SWHA TAC, 2000) prior to commencing Project-related activities. Additional pre-construction surveys for active nests should be conducted by a qualified biologist no more than 10 days prior to the start of construction and during the appropriate timing to maximize detectability. A minimum no-disturbance buffer of ½ mile should be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If such a buffer cannot be implemented, and work will occur during the avian nesting season, consultation with the Department should occur well in advance of ground-disturbing activities. The Department may determine that acquisition of a State Incidental Take Permit may be warranted. These recommendations should be included as required mitigation measures in the adopted Negative Declaration prepared for this Project.

Burrowing Owl: The Project has the potential to impact burrowing owl. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is needed. In the event that burrowing owls are found, the Department's Staff Report on Burrowing Owl Mitigation (CDFG 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

More information on survey and monitoring protocols for sensitive species can be found at the Department's website (www.dfg.ca.gov/wildlife/nongame/survey_monitor.html). If you have any questions on these issues, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 254.

Sincerely,



Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Six

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Literature Cited

CDFG, 1995. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

SWHA TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nestling Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

USFWS, 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service.