Stantec

Memo

To:	Brandon Rodriguez, Senior Civil Engineer City of Dixon	From:	Kate Gray, Senior Environmental Planner Stantec
Project/File:	184032271	Date:	December 4, 2023

Reference: City of Dixon Wastewater Treatment Facility Expansion Project Response to CEQA ISMND Comments

This document has been prepared to respond to comments received on the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the City of Dixon Wastewater Treatment Facility Expansion Project (Project). The IS/MND describes the environmental consequences associated with the implementation of the Project and recommends mitigation measures to reduce potentially significant impacts.

The CEQA-mandated 30-day public comment period ended on December 4, 2023. The City received a total of two (2) comment letters, one from the California Department of Fish and Wildlife (CDFW) and one from the Central Valley Regional Water Board. A copy of each comment letter is included in Appendix A of this document.

Neither comment letter identified new impacts or avoidable significant impacts, therefore, the IS/MND will not be recirculated. Regarding comments received from CDFW, impacts to Swainson's Hawk, tricolored blackbird and burrowing owl were adequately analyzed in the IS/MND given the scope of the Project impacts to the species and the surrounding potential habitat. As discussed in the IS/MND, reconnaissance level biological surveys were conducted on September 12, 2023, and included a survey of listed species or species of concern and their habitat. As identified during the survey, there is no tricolored blackbird habitat within the project area, nor are there known occurrences within three miles of the project. However, per the CDFW comment letter, specific reference to tricolored blackbird has been included in Mitigation Measure Bio-4. Potential impacts to Swainson's hawk and burrowing owl were also analyzed in the IS/MND. Based on the analysis and reconnaissance level survey, it was found that both Swainson's Hawk and burrowing owl have a low potential to occur within the project area. Mitigation Measure Bio-4 was included in the IS/MND to mitigate potentially significant impacts. Based on the CDFW comment letter, Mitigation Measure Bio-4 has been updated to include specific stipulations related to Swainson's hawk and burrowing owl survey timing and proposed buffers if found during pre-construction surveys or during construction. Changes to Mitigation Measure Bio-4 are shown in track changes in excerpt below.

Mitigation Measure BIO-4: Avoid and Minimize Disturbance and Impacts to Nesting Raptors and Other Migratory Birds

City of Dixon will implement ~~one of~~ the following measures, depending on the specific construction timeframe, to avoid disturbing ground nesting special and non-special-status nesting raptors and migratory birds, ~~including~~ . ~~Swainson's hawk, burrowing owl, and white-tailed kites.~~

~~If construction activities are scheduled to occur during the breeding season for these species (generally) between March 1 and August 30), a qualified biologist will be retained to conduct the following focused nesting survey within the appropriate habitat:~~

~~Nesting surveys will be conducted within the project area and all potential nesting habitat within 250 feet of this area.~~
~~The surveys should be conducted within one week before initiation of construction activities at any time between March 1 and August 30. If no active nests are detected, then no additional mitigation is required.~~
~~If surveys indicate that migratory bird nests are found in any areas that would be directly affected by construction activities, a no-disturbance buffer will be established around the site to avoid disturbance or destruction of the nest site until after the breeding season or after a biologist determines that the young have fledged (usually late June to mid-July). The extent of these buffers will be determined by a biologist and will depend on the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors should be analyzed to make an appropriate decision on buffer distances.~~
If Project construction activities, including, but not limited to, vegetation clearing, occur during the nesting season for birds protected under the California Fish and Game Code and MBTA (approximately February 15-August 31) the Project shall retain a qualified biologist to perform preconstruction surveys for nesting birds, including, but not limited to, nesting raptors, on the Project site (including off-site improvement corridors) and in the immediate vicinity including a minimum 500-foot radius around the Project site. The survey shall be conducted no more than seven (7) days prior to the initiation of construction activities, including, but not limited to, vegetation clearing. If there is a lapse of seven (7) days or more in construction activities, another nesting bird survey shall be conducted. In the event that nesting birds are found on the Project site or within 500 feet of the Project site, the Project shall:

- Locate and map the location of the nest site and immediately notify CDFW if a special-status nesting bird or evidence of their presence is found;

- Establish a clearly marked no-disturbance buffer around the nest site. Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a qualified biologist (and not less than 500 feet for tricolored blackbird nests unless otherwise approved in writing by CDFW). The buffer distances shall be specified to protect the bird's normal behavior, thereby preventing nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established. Species-specific no-disturbance buffers for Swainson's hawk and burrowing owl -shall be implemented, unless otherwise approved in writing by CDFW;

Reference: City of Dixon Wastewater Treatment

- Within two working days of the nesting bird surveys prepare a survey report and submit it to the City and CDFW; and

- Monitor any active nest daily and ensure that the no-disturbance buffer is maintained, unless otherwise approved in writing by CDFW.

Construction may resume when a qualified biologist has confirmed that the birds have fledged and are no longer dependent on parental care around the nest site. ~~If construction activities begin before the breeding season (i.e., begin between August 30 and February 28) (pre-existing construction), then construction can proceed until it is determined that an active migratory bird nest would be subject to abandonment as a result of construction activities. Pre-existing construction activities are assumed to be "full force," as are site grading and infrastructure development. Activities that technically initiate construction but are minor would not be considered full force. Optimally, all necessary vegetation removal should be conducted before the breeding season (approximately March 1 through August 30) so that nesting birds would not be present in the construction area during construction activities. If any birds nest in the project area under pre-existing construction conditions, then it is assumed that they are habituated (or will habituate) to the construction activities. Under this scenario, the preconstruction survey described previously should still be conducted on or after March 1 to identify any active nests in the vicinity. Active sites should be monitored by a biologist periodically until after the breeding season or after the young have fledged (usually late June through mid-July). If active nests are identified on or immediately adjacent to the project site, then all nonessential construction activities (e.g., equipment storage and meetings) should be avoided in the immediate vicinity of the nest site, but the remainder of construction activities may proceed.~~
If impacts to any special-status nesting bird species cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

Swainson's Hawk

If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted:

1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and

2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project.

The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

Burrowing Owl

A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012) methodology (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds) and prepare a report documenting the survey results. Surveys for nesting burrowing owl shall be conducted if Project construction starts during nesting season (February 1 to August 31), and surveys for wintering burrowing owl shall be conducted if the construction starts during the wintering season (September 1 to January 31). The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. Impacts to nesting burrowing owl shall be fully avoided.

If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.

Impacts to each burrowing owl nesting site shall be mitigated by permanent preservation of two burrowing owl occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites except two burrowing owl occupied non-nesting (i.e., wintering) sites shall be preserved.

Reference: City of Dixon Wastewater Treatment

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid "take." Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW's written acceptance of the eviction plan.

Additionally, to prevent burrowing owls from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each workday and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

Mitigation Measure BIO-4 Implementation:

- **Responsible Party:** City of Dixon will ensure that a qualified biologist conducts preconstruction nesting bird, Swainson's Hark, and Burrowing Owl surveys, respectively.
- **Timing:** Swainson's Hawk ~~One nesting s~~Survey will be conducted in accordance with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. Nesting bird surveys will be within one week of initiating the Project if the project construction begins between ~~March 1~~February 15 and August 3~~0~~1. A qualified biologist shall conduct a habitat assessment and surveys for burrowing owl within any time of the year prior to Project construction.
- **Monitoring and Reporting Program:** The surveys will be conducted by ~~a~~ qualified biologist(s) and a ~~brief~~ survey report will be documented and ~~kept on file with~~ submitted to the City of Dixon and CDFW.
- **Standards for Success:** Special-status species and migratory bird nests will not be disturbed during the project construction activities.

Respectfully,

STANTEC CONSULTING SERVICES INC.

Kate Gray
Senior Environmental Planner
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Attachment: Appendix A: Comment Letters

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

December 1, 2023

Brandon Rodriguez, Senior Civil Engineer
City of Dixon
600 East A Street
Dixon, CA 95620
BRodriguez@cityofdixon.us

Subject: City of Dixon Wastewater Treatment Facility Expansion Project, Mitigated Negative Declaration, SCH No. 2023110138, City of Dixon, Solano County

Dear Mr. Rodriguez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Dixon (City) for the City of Dixon Wastewater Treatment Facility Expansion Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Dixon

Objective: Expand capacity of the City of Dixon Wastewater Treatment Facility (WWTP) to meet the City's buildout projections based on City of Dixon 2040 General Plan. Upgrades would consist of upsizing the influent pump station and headworks, adding one oxidation ditch, one secondary clarifier, three modulating valves, and one return activated sludge pump, replacing one existing blower with two larger blowers,

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

building a new maintenance building, upgrading effluent pumping, and piping systems, replacing wash systems to use non-potable water, and installing two new solids stabilization basins. All upgrades would be built within the existing WWTP footprint.

Location: City of Dixon, County of Solano, approximately 2,400 feet north-northwest of the intersection of Pedrick Road and Casey Road, approximate centroid of 38.397245°N, -121.808402°W (NAD 83), Assessor's Parcel Numbers 0143-010-040 and 0143-010-050.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), which are both CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

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

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in

adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

I. Environmental Setting and Mitigation Measure Related Impact Shortcomings

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

COMMENT 1: Swainson's Hawk, MND pages 3.41 and 3.45

Issue: The MND does not adequately mitigate potential impacts to Swainson's hawk. The California Natural Diversity Database (CNDDB) documents 83 occurrences of nesting Swainson's hawk within five miles of the Project site (CNDDB 2023). The occurrence of nesting Swainson's hawk closest to the Project is approximately 0.5 miles north-northeast of the Project (CNDDB 2023). Additionally, the MND identifies that potential Swainson's hawk nesting habitat occurs "within the Project area" (page 3.41).

Specific impacts, why they may occur and be potentially significant: The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young. A general nesting bird survey as proposed by Mitigation Measure BIO-4 (page 3.45) may not detect nesting Swainson's hawk and therefore may not prevent impacts to the species. Additionally, the assumption that birds that initiate nesting during intensive construction are or will be habituated to construction activity (page 3.45) is not necessarily accurate; changes in the type of equipment used, exact location relative to the nest, and intensity of construction including weekend and weather-related pauses in construction, may allow birds to initiate nesting during a period of less intensive construction and then abandon the nest when construction intensifies or changes. Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measures: To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure.

Mitigation Measure BIO-6 (Swainson's Hawk Surveys and Avoidance Buffer): If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

COMMENT 2: Tricolored blackbird and other nesting birds, page 3.45

Issue: The MND does not adequately evaluate potential impacts to tricolored blackbird and other nesting birds. The Project is within the range and potential habitat of tricolored blackbird (CDFW 2018).

Specific impacts, why they may occur and be potentially significant: The Project has the potential to impact nesting tricolored blackbird and other nesting birds through auditory or visual disturbances above ambient levels, or by mowing tall vegetation containing tricolored blackbird nesting colonies and other nesting birds. Project activities that occur between February 15 and August 31 could disturb nesting tricolored blackbirds and other nesting birds leading to reduced nest and colony success, nest abandonment, and potential mortality of young. As indicated above, birds may initiate nesting during intensive construction and then abandon the nest when construction intensifies.

The statewide tricolored blackbird population has declined between 75 percent and 90 percent over the last 25 years and remains at or near its smallest recorded size (CDFW 2018). Tricolored blackbird is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measures: To reduce potential impacts to tricolored blackbird and other nesting birds to less-than-significant and comply with CESA, CDFW recommends replacing Mitigation Measure 4 with the below mitigation measure.

Mitigation Measure BIO-4 (Nesting Bird Avoidance): If Project construction activities, including, but not limited to, vegetation clearing, occur during the nesting season for birds protected under the California Fish and Game Code and MBTA (approximately February 15-August 31) the Project shall retain a qualified biologist to perform preconstruction surveys for nesting birds, including, but not limited to, nesting raptors, on the Project site (including off-site improvement corridors) and in the immediate vicinity including a minimum 500-foot radius around the Project site. The survey shall be conducted no more than seven (7) days prior to the initiation of construction activities, including, but not limited to, vegetation clearing. If there is a lapse of seven (7) days or more in construction activities, another nesting bird survey shall be conducted. In the event that nesting birds are found on the Project site or within 500 feet of the Project site, the Project shall:

- Locate and map the location of the nest site and immediately notify CDFW if nesting tricolored blackbird or evidence of their presence is found;

- Establish a clearly marked no-disturbance buffer around the nest site. Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a qualified biologist, *and not less than 500 feet for tricolored blackbird nests* unless otherwise approved in writing by CDFW. The buffer distances shall be specified to protect the bird's normal behavior, thereby preventing nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an

appropriate buffer is established. Species-specific no-disturbance buffers for Swainson's hawk and burrowing owl (*Athene cunicularia*) described in MM-BIO-6 and BIO-7 in this letter shall be implemented, unless otherwise approved in writing by CDFW;

- Within two working days of the nesting bird surveys prepare a survey report and submit it to the City and CDFW; and

- Monitor any active nest daily and ensure that the no-disturbance buffer is maintained, unless otherwise approved in writing by CDFW.

If impacts to nesting tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

Construction may resume when a qualified biologist has confirmed that the birds have fledged and are no longer dependent on parental care around the nest site.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the U.S. Fish and Wildlife Service?

COMMENT 3: Burrowing owl (*Athene cunicularia*), Pages 3.41 and 3.45

Issue: The MND does not adequately evaluate potential impacts to burrowing owl. CNDDB documents 39 occurrences of burrowing owl within 5 miles of the Project, with the nearest occurrence approximately 0.8 miles east of the Project (CNDDB 2023). Additionally, the MND identifies that potential burrowing owl nesting habitat occurs "within the Project area" (page 3.41).

Specific impacts, why they may occur and be potentially significant: The Project may impact nesting or wintering burrowing owl utilizing burrows or burrow surrogates on or within up to 500 meters (1,640 feet) of the Project site. The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent wintering (i.e., non-nesting) or nesting habitat loss. Burrowing owl is a California Species of Special Concern because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrel (Otospermophilus beecheyi) resulting in a loss of suitable burrows required by burrowing owl for nesting, protection from predators, and shelter (Shuford and Gardali 2008; *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, CDFW Statewide Burrowing

Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owl have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (*Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, Esther Burkett, May 13, 2022). Based on the foregoing, if burrowing owls are wintering or nesting on or within 500 meters of the Project site, Project impacts to burrowing owl would be potentially significant.

Recommended Mitigation Measures: To reduce potential impacts to burrowing owl to less-than-significant and comply with Fish and Game Code section 3503.5, CDFW recommends including the below mitigation measures.

Mitigation Measure BIO-7 (Burrowing Owl Surveys): A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) methodology (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds) and prepare a report documenting the survey results. Surveys for nesting burrowing owl shall be conducted if Project construction starts during nesting season (February 1 to August 31), and surveys for wintering burrowing owl shall be conducted if the construction starts during the wintering season (September 1 to January 31). The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. Impacts to nesting burrowing owl shall be fully avoided.

Mitigation Measure BIO-8 (Burrowing Owl Burrow Mitigation): If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow

(where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.

Impacts to each burrowing owl nesting site shall be mitigated by permanent preservation of two burrowing owl occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites except two burrowing owl occupied non-nesting (i.e., wintering) sites shall be preserved.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Please be advised that CDFW does not consider exclusion of burrowing owl (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure for the reasons outlined below. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owl are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or "take" which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid "take." Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW's written acceptance of the eviction plan.

Mitigation Measure BIO-9 (Cap Pipe and Hose): To prevent burrowing owl from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDB. The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-

Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov or.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486...

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023110138)

REFERENCES

CDFW. 2023. California Natural Diversity Database (CNDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website https://wildlife.ca.gov/Data/BIOS [accessed 14 November 2023].

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Resources Agency, Sacramento, CA. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=154287&inline

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline

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Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation	**Description**	**Timing**	**Responsible**
BIO-4	*Nesting Bird Avoidance*: If Project construction activities, including, but not limited to, vegetation clearing, occur during the nesting season for birds protected under the California Fish and Game Code and MBTA (approximately February 15-August 31) the Project shall retain a qualified biologist to perform preconstruction surveys for nesting birds, including, but not limited to, nesting raptors, on the Project site (including off-site improvement corridors) and in the immediate vicinity including a minimum 500-foot radius around the Project site. The survey shall be conducted no more than seven (7) days prior to the initiation of construction activities, including, but not limited to, vegetation clearing. If there is a lapse of seven (7) days or more in construction activities, another nesting bird survey shall be conducted. In the event that nesting birds are found on the Project site or within 500 feet of the Project site, the Project shall: • Locate and map the location of the nest site and immediately notify CDFW if nesting tricolored blackbird or evidence of their presence is found; • Establish a clearly marked no-disturbance buffer around the nest site. Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a qualified biologist, *and not less than 500 feet for tricolored blackbird nests* unless otherwise approved in writing by CDFW. The buffer distances shall be specified to protect the bird's normal behavior thereby preventing nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

	nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established. Species-specific no-disturbance buffers for Swainson's hawk and burrowing owl described in MM-BIO-6 and BIO-7 in this letter shall be implemented, unless otherwise approved in writing by CDFW; • Within two working days of the nesting bird surveys prepare a survey report and submit it to the City and CDFW; and • Monitor any active nest daily and ensure that the no-disturbance buffer is maintained, unless otherwise approved in writing by CDFW.		
BIO-6	*Swainson's Hawk Surveys and Avoidance Buffer: If* Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

	determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.		
BIO-7	*Burrowing Owl Surveys*: A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012) methodology (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds) and prepare a report documenting the survey results. Surveys for nesting burrowing owls shall be conducted if Project construction starts during nesting season (February 1 to August 31), and surveys for wintering burrowing owl shall be conducted if the construction starts during the wintering season (September 1 to January 31). The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Time lapses between surveys or Project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. Impacts to nesting burrowing owls shall be fully avoided.	Prior to Ground Disturbance and for Duration of Construction	Project Applicant
BIO-8	*Burrowing Owl Burrow Mitigation.* If the Project would impact an unoccupied nesting burrowing owl burrow or		

	burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.		
BIO-9	*Cap Pipe and Hose.* To prevent burrowing owl from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.	For Duration of Construction	Project Applicant

4 December 2023

Brandon Rodriguez
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COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, CITY OF DIXON WASTEWATER TREATMENT FACILITY EXPANSION PROJECT, SCH#2023110138, SOLANO COUNTY

Pursuant to the State Clearinghouse's 3 November 2023 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the City of Dixon Wastewater Treatment Facility Expansion Project, located in Solano County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by

the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/help/permit/

If you have questions regarding these comments, please contact me at (916) 464-4684 or Peter.Minkel2@waterboards.ca.gov.

Peter Minkel

Peter Minkel
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento