

Chapter 13 Comments

Comments submitted on the Partially Recirculated Draft EIR are included in this chapter.



Amphibian Refuge

Website: amphibianrefuge.org

11225 Morocco Road NE
Albuquerque, NM 87111

December 30, 2025

Del Puerto Water District
Attn: Anthea Hansen
PO Box 1596
Patterson, CA 95363

RE: Comment on Del Puerto Canyon Reservoir

Dear Ms. Hansen:

Amphibian populations are declining worldwide, and amphibians are experiencing high extinction rates due to habitat loss, chytrid fungus, pollutants, pesticides, invasive species, and climate change. Amphibians are the most threatened class of vertebrates.

The following sensitive amphibian species could occur in or near the project area: California red-legged frog, California tiger salamander, foothill yellow-legged frog, and western spadefoot. Amphibian field surveys should be conducted periodically to determine if amphibians are present in the project area. If amphibians are located, protected areas for amphibians should be established. Invasive bullfrogs should be removed if they are threatening the survival of other amphibian species.

R1-1

Thank you for this opportunity to comment.

Eric R. Johnson
Executive Director

References:

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McCallum, M.L. 2007. Amphibian Decline or Extinction? Current Declines Dwarf Background Extinction Rate. *Journal of Herpetology*, Volume 41, Number 3, pp. 483-491.



CALIFORNIA
NATIVE PLANT SOCIETY

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Protecting
California's native
flora since 1965

January 30, 2026

Del Puerto Water District
Attn: Anthea Hansen, General Manager
17840 Ward Avenue/P.O. Box 1596
Patterson, CA 95363

Submitted via email to: dpwr-environment@woodardcurran.com

Re: California Native Plant Society Comments on Del Puerto Canyon Reservoir PRDEIR

Dear Ms. Hansen:

Thank you for the opportunity to comment on the Del Puerto Canyon Reservoir PRDEIR. The following comments are submitted on behalf of the California Native Plant Society (CNPS), a non-profit environmental organization with over 13,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plants and their natural habitats, today and into the future, through science, education, stewardship, gardening, and advocacy. We work closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices. The CNPS North San Joaquin Valley Chapter is covers Merced, Stanislaus, and San Joaquin Counties.

The PRDEIR is intended to satisfy compliance with the Court of Appeal's opinion requiring analysis of the downstream impacts of the proposed Del Puerto Canyon Reservoir. It is important that DPWD complies with this ruling; we are very concerned with the severely flawed and deficient analysis of botanical resources in the area downstream of the proposed project and the blatant disregard for the intent of the court order.

Justification of Study Area

The PRDEIR includes little discussion of its justification for the limited study area included for analysis in the document, even claiming that this study area was more extensive than required. The study area was limited to areas immediately adjacent to Del Puerto Creek, while the area that would be permanently impacted by the project would likely include the entire Del Puerto Creek flood plain. While the majority of the area of the floodplain has been developed and special status botanical resources are not likely to be present, further discussion of why the study area was selected should be incorporated into a supplemental PRDEIR.

R2-1

Survey Timing and Use of Reference Sites

The surveys were conducted outside of the bloom periods for Lemmon’s jewelflower (*Caulanthus lemmonii*), San Benito poppy (*Eschscholzia hyoecoides*), and diamond-petaled California poppy (*Eschscholzia rhombipetala*), making detection and proper identification of these species extremely unlikely. Additional surveys during the time of year when special-status species with the potential to occur would be present and identifiable must be conducted prior to the issuance of an updated FEIR. There is no indication that reference sites were used to ensure that special-status species with the potential to occur would be present and identifiable during the survey efforts. For example, diamond-petaled California poppy is an extremely diminutive plant that is very easily overlooked even when the surveyor has a reference to base identification on. Additionally, the flowers of this species may only be visible for a few hours on any given day before shedding their petals, making detection of this species especially difficult.

R2-2

Lack of Analysis

The PRDEIR states that the 21 special-status plant species with suitable habitat within the study area were not addressed further due to there being no records of their presence in the study area. This lack of analysis is unacceptable as positive occurrence databases, such as the California Natural Diversity Database (CNDDB), only indicate where a species has been documented, and the lack of a data point within an area does not indicate that a species is not present in the location. The CNDDB license agreement explicitly states that “a lack of species occurrences or records in no way indicates or implies that the species do not occur there,” further clarifying that “Much of the state has never been surveyed for plant and animal species.” Claiming that the lack of data indicates that potential impacts to these 21 species do not need to be addressed is in direct violation of the use agreement. A complete analysis of the 21 species with suitable habitat within the study area that were not “addressed further” in the PRDEIR needs to be included in a Supplemental PRDEIR.

R2-3

Protocol Level Surveys

The reconnaissance level surveys used for the analysis of downstream impacts of the project are not sufficient to establish the baseline conditions of Del Puerto Creek below the proposed reservoir, or to ensure that the project impacts would be less than significant. While the PRDEIR references that the FEIR states that protocol-level surveys would be conducted prior to the start of construction, the FEIR does not include information on the impacts to Del Puerto Creek below the proposed reservoir. Neither the PRDEIR nor the FEIR indicate that preconstruction protocol level surveys would be conducted within the area analyzed in the PRDEIR. The lack of this level of analysis is contrary to the basic purpose of CEQA to “Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.” as stated in CEQA Guidelines §15002, to “demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)” as stated in §15003 (b), and to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)” as stated in §15003 (b). Given that the project could be approved assuming that there would be no impacts, and therefore no associated mitigation measures, to areas downstream of the proposed reservoir these areas should receive protocol level surveys, and include associated impact analysis and mitigation and monitoring measures in a Supplemental PRDEIR to be

R2-4

Field Survey Results

The Field Survey Results included in the PRDEIR lack a significant amount of information needed to show that the surveys conducted on July 14, 2025, and September 9, 2025, were adequate to establish the baseline conditions of the study area or to conclude that the downstream impacts of the project would be less than significant. Surveys should follow the 2021 update to the 2018 California Department of Fish and Wildlife (CDFW) Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (Protocols); the survey results should include:

- The names and qualifications of the surveyors;
- The dates and locations of surveys, names surveyors on each date, and person hours spent on each date;
- Description of the reference sites used and phenology of target plants at reference sites;
- Description and map of the area surveyed relative to the project area;
- A complete list of all species and vegetation types encountered during survey efforts;
- A discussion of how climatic conditions may have affected survey results;
- A discussion of how timing of surveys may have affected survey results;
- A discussion of the potential for a false negative survey;

R2-5

If any special status species are encountered during subsequent surveys needed to meet CEQA compliance, the subsequent survey report should include:

- A discussion of the significance of special status plant populations in the project area; considering nearby populations and total range and distribution;
- A discussion of the significance of sensitive natural communities in the project area considering nearby occurrences and natural community distribution;
- A discussion of project related direct, indirect, and cumulative impacts to special status plants and sensitive natural communities;
- A discussion of the degree and immediacy of all threats to special status plants and sensitive natural communities, including those from invasive species; and
- A discussion of the degree of impact, if any, of the project on unoccupied, potential habitat for special status plants.

In conclusion, we strongly recommend that a Supplemental PRDEIR including the additional survey data and analysis of the entire area needed to accurately establish the potential downstream impacts of this proposed project be circulated for public review. Thank you for the opportunity to comment on this project and please contact me if you have any questions.

Sincerely,

Brendan Wilce
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California Native Plant Society
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Mount Diablo
Bird Alliance

Anthea Hansen
General Manager
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Submittal via email to dpcr-environment@woodardcurran.com

**RE: Comments of Friends of the River et al. on the Del Puerto Canyon Reservoir
Partially Recirculated Draft Environmental Impact Report (SCH #2019060254)**

I. INTRODUCTION

Friends of the River (“FOR”) is California's statewide river conservation organization dedicated to preserving and restoring California's rivers, streams, and their watersheds. FOR submits these comments on Del Puerto Water District’s Del Puerto Canyon Reservoir *Partially Recirculated Draft Environmental Impact Report*, SCH# 2019060254 (“PRDEIR”), on behalf itself, Sierra Club Mother Lode Chapter, Center for Biological Diversity, Save Del Puerto Canyon, Save Mount Diablo, and Mount Diablo Bird Alliance.

This PRDEIR was prepared as the result of a decision by the Court of Appeal of the State of California Fifth Appellate District requiring Del Puerto Water District (“DPWD”) to study downstream terrestrial impacts, a case to which FOR and some other signatories were parties. The court found:

“The “FEIR’s section on terrestrial biological resources does not reference downstream Del Puerto Creek, the flows of which will be impacted to some extent by the project (at least in terms of annual volume). Thus, this portion of the FEIR does consider impacts to terrestrial biological resources, but only those in the study area and not those downstream. In contrast, the FEIR’s section on impacts to fish does consider whether

there will be downstream impacts... What is missing is analysis of whether there will be impacts to species that are both downstream and terrestrial.”¹

The resulting PRDEIR carefully states that it is focusing on these potential downstream terrestrial impacts of the project, and that all comments should focus on these potential impacts. FOR submits these comments accordingly, while upholding the continuing merits of our earlier comments and prior litigation positions.

R3-1

II. THE DPWD HAS FAILED TO CONSIDER THE ENVIRONMENTAL IMPACTS OF THE WHOLE OF THE ACTION.

Neither the DEIR nor the PRDEIR have analyzed the whole of the action, as required by CEQA. Cal. Code Regs., tit. 14, § 15378. Critical parts of the proposed Del Puerto Canyon Reservoir are 1) inundation of the area behind the dam by stored water and 2) the subsequent reservoir operations downstream that will impact watershed and local hydrology. Because neither the DEIR nor the PRDEIR have analyzed the whole of the action, the DPWD has again violated CEQA. The DPWD must recirculate for public review a revised DEIR that adequately and accurately assesses the likely environmental impacts of the entire proposed project and alternatives.

R3-2

III. DPWD'S ANALYSIS OF CUMULATIVE IMPACTS IS INCORRECT AND UNLAWFUL, AND THE DPWD HAS FAILED TO REDUCE CUMULATIVE IMPACTS TO A LESS THAN SIGNIFICANT LEVEL

The current PRDEIR suffers from a lack of understanding or discussion of cumulative impacts on the downstream ecosystem, which point to specific pre-existing conditions on the ground today.² Instead, it uses the existing state of development as a key argument to continue to degrade the downstream ecosystem.

In addition to this line of argument creating bad precedent and a race to the bottom to degrade our environment and already-impacted neighborhoods, the PRDEIR clearly indicates that there are considerable lands in their natural or near-natural state. According to “Table 3.4-1: Land Cover Types in the Study area Study Area and Approximate Acreages” [*sic*] on page 3.4-3, there are potentially more acres in a natural state than in a changed or developed state:

R3-3

¹ Court of Appeal of the State of California Fifth Appellate District, SIERRA CLUB et al., Plaintiffs and Appellants, v. DEL PUERTO WATER DISTRICT, Defendant and Respondent; SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, Real Party in Interest and Appellant, F085896/F086218, page 14-15.

² Impacts of the project as described in the FEIR and the DRPEIR on the current nature of the ecosystem of the study area on the ground today differentiates them from the concerns that the Court found to be “speculative.”

Table 1: Another Viewpoint on Table 3.4-1: Better Some Than None

Natural Acres	Changed / Developed Acres
Coastal Scrub 1.16	Grassland ^a 17.91
Intermittent Stream 10.41	Ornamental Trees 0.31
Riparian Woodland 16.47	Orchard 2.49
Riparian Wetland 15.77	Vineyard 0.75
Seasonal Wetland 0.02	Unvegetated Areas 0.08
	Developed/Disturbed 39.56
	Canal 0.67
Total Natural Acres: 43.83 (out of 105.59 total study acres ^b)	Total Changed / Developed Acres: 61.77 (out of 105.59 total study acres ^b)
= 41.5% of total study acres	= 58.5% of total study acres

^a As stated by Table 3.4-1 in the PRDEIR, "The Grasslands land cover type in the study area includes primarily ruderal habitats that support non-native grasses and forbs."

^b As stated in Table 3.4-1 of the PRDEIR, the total acres in the study area is approximately 105.59.

R3-3
cont'd

In sum, the natural acres in the study area may make up over 40% of the study area, while the potentially changed / developed areas make up just less than 60%. According to the PDEIR,

"Notably, lower Del Puerto Creek (downstream of the proposed dam and inundation area) has been highly altered from historical conditions by road infrastructure (e.g., highway and canal crossings), losses of riparian and wetland vegetation, agricultural return flows, and water quality degradation... Although agricultural return flows during the summer irrigation season generally provide more stable flow conditions than historically existed within lower Del Puerto Creek, these conditions likely do not support native fish species because of their sensitivity to water quality degradation ..."³

³ PRDEIR page 1.4.

Because the study area is already disturbed, further disturbances are less important than if the land were pristine – an idea echoed throughout the PRDEIR.

What makes the precedent dangerous is threefold: 1) many environmental justice communities and other communities suffering from cumulative pollution impacts already live in areas that have been disturbed, 2) some land in California has been disturbed but may be better than nothing, and 3) this argument leads to the ability of lead agencies and project proponents (in this case, the same entity), to circumvent environmental protection in already disturbed areas where some environmental protection is better than none. Of course, increased environmental protection amongst development would be better.

CEQA specifically requires that the CEQA guidelines

“shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a “significant effect on the environment.” The criteria shall require a finding that a project may have a “significant effect on the environment” if...:

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”⁴

Indeed, this is the opposite of the approach followed by DPWD, which uses the same type of information to justify further degrading the area. In addition to our logical explanation and the letter of the law, the courts have determined DPWD’s approach is wrong. In *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, the Court indicated “smaller and smaller individual contributions may be cumulatively considerable as the cumulative impact becomes *more* acute. In other words the worse the background cumulative condition is, the less of a project’s incremental contribution is needed to find that the project’s contribution is cumulatively considerable.”

IV. INCORRECT APPROACH TO CUMULATIVE IMPACTS AND CONNECTIVITY

The danger of this precedent shows in the PRDEIR, especially in the treatment of wildlife corridors. According to the PRDEIR:

⁴ Public Resources Code Section 21083(b)(2).

“The 2020 Final EIR describes habitat connectivity and wildlife movement corridors along Del Puerto Creek, including areas downstream of I-5, which overlap the study area in this PRDEIR. ... Wildlife corridors are landscape features that facilitate the connectivity and movement of wildlife between two or more habitat areas (Soule and Gilpin 1991; Beier and Loe 1992). The connectivity of wildlife populations and habitats is critical for the conservation of plant and animal species; wildlife and habitat connectivity are important elements of a landscape’s ecological value and function.”

This description of connectivity is quite well-put. The further discussion describes:

“Regional-scale and local-scale corridors and habitat areas that facilitate wildlife movement and connectivity exist within the Project footprint and Project vicinity. The area surrounding and within the study area provides an opportunity for local movement and landscape-scale connectivity for a wide variety of species, including invertebrates, reptiles, amphibians, birds, and small and medium-size mammals. The landscape features and habitats in the region provide the structure and function needed to facilitate the movement of a wide variety of species. These include riparian corridors, wetlands, grasslands, and agriculture areas.

The study area is near several regionally recognized wildlife corridors, as depicted in **Figure 3.4-5**. A corridor along the San Joaquin River overlaps both the eastern and western portions of the study area and supports riparian and upland species movement. The University of California, Davis Core Reserves and Corridors study identified approximately 57.6 acres of corridor along the downstream end of the study area as part of a regional linkage that connects conservation lands to the north and south (Huber et al. 2010; DPWD 2020).”⁵

R3-4

However, upon further discussion of this impact, “Impact BIO-TERR-DS-4”, the PRDEIR exhibits the perverse thinking that because it is cumulative, it makes it okay by buttressing their finding of “less than significant” with, “the existing landscape in the study area is fragmented and agriculturally dominated, which inherently limits habitat connectivity.”⁶ Much like cumulative impacts, saving the remaining connectivity is the very intent behind connectivity analysis.

a. Failure to Consider and Analyze How Presence of Dam will Influence Connectivity, Migration, and Dispersion

The PRDEIR fails to consider how the presence of Del Puerto dam and reservoir will act as a species migration or dispersion barrier on terrestrial species downstream. This project

⁵ PRDEIR p. 3.4-18.

⁶ *Id.* p. 3.4-36.

introduces permanent physical obstacles (the dam structure, reservoir area, road changes, etc.) that would impede or completely prevent movement of species with limited dispersal capability, such as amphibians, small mammals, and other small terrestrial wildlife.⁷ Such species rely on continuous habitat and short range movement along riparian corridors to access breeding areas, refugia, and seasonal resources, and many cannot traverse developed dam infrastructure, steep slopes to pass around the dam, or large open water bodies. The small terrestrial species that can somehow make it around the dam and reservoir are likely to be more heavily impacted by predation and other sources of mortality. This must be analyzed in the PRDEIR. As it stands, the PRDEIR fails to consider an important factor related to survival and persistence of populations of terrestrial species downstream of Del Puerto dam.

R3-5

The dam will likely cause isolation of populations, reduce recolonization potential, or reduce species' access to habitats that historically supported metapopulation dynamics. Overall, this could reduce the value of the limited remaining habitat in lower Del Puerto Creek. This omission is particularly concerning given the PRDEIR's reliance on assumed stability of downstream conditions. Connectivity loss due to physical barriers is an unaddressed impact pathway affecting terrestrial downstream resources.

V. ACTUAL PROJECT IMPACTS ON DOWNSTREAM TERRESTRIAL RESOURCES

In addition to the incorrect application of the cumulative impacts standard and overlapping issues with connectivity, there are at least two sets of project impacts to the study area that were not considered and are likely to have impacts on downstream wildlife corridors and territorial species as follows:

1. *The inundation of the area upstream behind the dam dislocating species and disrupting the ecosystem in that area.* As planned by the original FEIR,⁸ most impacts on species in the reservoir area are to be mitigated through habitat replacement, possibly elsewhere. This both disrupts the entire local stream ecosystem, including downstream, and causes species migration that could easily impact downstream species, including procreation and habitat availability.
2. *Changes to the watershed and local hydrology due to filling the reservoir.* The creation of a reservoir is likely to cause subsequent disruptions to: i) groundwater recharge patterns

R3-6

⁷ Species mentioned in PRDEIR that could experience negative impacts to migration/dispersion from the presence of the dam include, but are not limited to: riparian woodrat, riparian brush rabbit, California tiger salamander, and Western spadefoot toad.

⁸ As quoted in Court of Appeal of the State of California Fifth Appellate District, SIERRA CLUB et al., Plaintiffs and Appellants, v. DEL PUERTO WATER DISTRICT, Defendant and Respondent; SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, Real Party in Interest and Appellant, F085896/F086218, page 19-26.

and subsequent filtration, ii) contamination and sedimentation rates, iii) erosion; and iv) concentration of downstream pollutants caused by changes in water source length of holding and discharge.

However, the PRDEIR Impact Analysis of the “Construction and Operation Impacts” has substantially the same “Significance Before Mitigation” for most of the terrestrial downstream impacts, ignoring and overlooking these two direct significant impacts:

“Construction of the proposed Project would not affect special-status plant species downstream because construction would not occur in the study area and the existing land cover would remain unchanged. Standard construction BMPs and pollution prevention measures would be implemented to minimize indirect impacts to downstream protected species in the study area during upstream construction activities. Construction impacts would be less than significant.

R3-6
cont'd

In addition, the proposed Project would include environmental commitments to mimic natural flow patterns in lower Del Puerto Creek and irrigation return flows and operational spills would be unchanged and would continue to support special-status plant species. Therefore, impacts on special-status plant species that occur downstream of the proposed Project are not anticipated. Impacts would be less than significant.”⁹

This calls into question nearly the entire downstream terrestrial significance analysis, and we recommend that DPWD revise and recirculate the entire DEIR to determine the appropriate “Significance Before Mitigation” for this majority of issues.¹⁰

VI. CONCLUSORY “NO IMPACT” DETERMINATIONS ARE NOT SUPPORTED BY A CLEAR ANALYTICAL PATH OR SUBSTANTIAL EVIDENCE

The DPWD has failed to adequately and accurately assess potential environmental impacts from the Proposed Project to listed species/wildlife. The PRDEIR repeatedly concludes that impacts to

⁹ PRDEIR, *Impact BIO-TERR-DS-1a: Impacts on Special-Status Plants and Their Habitats* page 3.4-28

¹⁰ PRDEIR, *Impact BIO-TERR-DS-1a: Impacts on Special-Status Plants and Their Habitats*, *Impact BIO-TERR-DS-1b: Impacts on Valley Elderberry Longhorn Beetle*, *Impact BIO-TERR-DS-1c: Impacts on Monarch Butterfly*, *Impact BIO-TERR-DS-1d: Impacts on Least Bell’s Vireo*, *Impact BIO-TERR-DS-1e: Impacts on Northwestern Pond Turtle*, *Impact BIO-TERR-DS-1f: Impacts on Special-Status Birds and Nesting Migratory Birds*, *Impact BIO-TERR-DS-1g: Impacts on San Joaquin Kit Fox*, *Impact BIO-TERR-DS-2: Substantial Adverse Effect on Riparian Habitat or Other Sensitive Natural Community along Del Puerto Creek Downstream of DMC*, *Impact BIO-TERR-DS-3: Substantial Adverse Effect on State or Federally Protected Wetlands on Del Puerto Creek Downstream of DMC*, and *Impact BIO-TERR-DS-4: Interference with the Movement of Native Resident or Migratory Wildlife Species, or Established Native Resident or Migratory Wildlife Corridors, or Use of Native Wildlife Nursery Sites on Del Puerto Creek Downstream of DMC*, pages 3.4-28 to 37.

downstream terrestrial resources would be less than significant and that no mitigation is required. However, the Court of Appeal indicated that the prior EIR failed to expressly reach a conclusion regarding downstream terrestrial impacts. The remedy is not to simply state a conclusion, but to support it with a reasoned and thoughtful analysis. The PRDEIR instead relies heavily on generalized assurances that downstream conditions will remain similar to baseline conditions, without clearly tracing the causal pathway from project operations to hydrologic change, to habitat response, to species-level effects.¹¹

For example, in the analysis of downstream riparian habitat impacts, the PRDEIR states that although project operations would change the volume and timing of flows, “preserving the existing flow dynamics,” the Project would maintain the physical and ecological processes that currently support riparian habitat, resulting in less-than-significant impacts and no mitigation.¹²

CEQA requires a “good-faith effort at full disclosure” and an analytical explanation of why a project will not result in a significant impact, not merely an assertion that it will not. (CEQA Guidelines § 15151). The PRDEIR failed at articulating how altered storage and release patterns affect soil moisture, hydroperiod, riparian recruitment, and habitat persistence under a range of reasonably foreseeable conditions, and why those effects do not rise to significance.

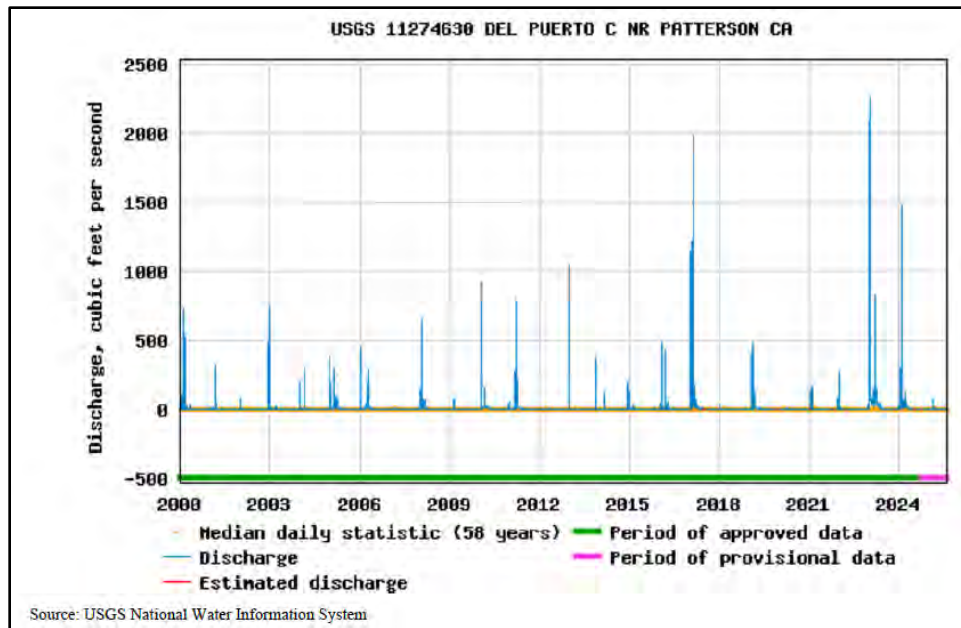
R3-7

A central premise of the PRDEIR is that downstream terrestrial habitats are already sustained primarily by agricultural return flows and operational spills, and that these inputs will continue to maintain downstream conditions with the Project in place (see footnote 11). However, the PRDEIR does not adequately analyze the variability or reliability of those inputs over time, particularly during drought conditions, changing cropping patterns, or operational adjustments that are reasonably foreseeable over the life of the Project.

Treating return flows and spills as effectively constant background conditions, the PRDEIR understates the risk that reductions or timing shifts in those flows could exacerbate drying, reduce riparian soil moisture, or impair downstream habitat during critical life history periods for terrestrial species. Even further, the PRDEIR itself demonstrates that the Del Puerto Creek system is pulse flow-driven (figure pasted below from p. 3.4-25).

¹¹ See e.g. PRDEIR p. 3.4-33 [“Downstream flows during Project operation, combined with continued irrigation runoff and operational spills during the dry season (generally April 1 – October 14), are expected to continue supporting existing nesting habitat in the study area.”], pp. 3.5-35 through 36 [PRDEIR claims that “...the Project’s environmental flow commitments and continued irrigation runoff and operational spills are expected to maintain the structure and function of...” riparian habitats, sensitive natural communities (p. 35), state [and] federal protected wetlands (p. 36), wildlife corridors and native wildlife nursery sites (p. 37), and habitat for special status species and sensitive communities (p. 38)]

¹² *Id.* p 3.4-34.



R3-7
cont'd

Figure 1. Figure 3.4-6 from the PRDEIR: Del Puerto Creek Flows 2000-2025 (cfs)

The global issue of relying on generalized assertions rather than reasoned analysis and substantial evidence is true for all species analyzed in the PRDEIR. Below, we focus on three species as examples of this issue.

a. Foothill Yellow-Legged Frog

The PRDEIR wrongfully excludes foothill yellow-legged frog from its analysis despite acknowledging its proximity to the Study Area and potential habitat. The document states that as recently as 2025 a foothill yellow-legged frog was located only one mile west of the Study Area.¹³ Yet later it concludes that there is lack of suitable habitat and nearby occurrences.¹⁴ This internal inconsistency underscores the broader problem identified above: the PRDEIR states a conclusion without providing a reasoned analytical pathway or substantial evidence to support it. Foothill yellow-legged frogs have specific life history needs related to flow timing, magnitude, and recession, and the PRDEIR's reliance on generalized assurances about maintained "flow dynamics" does not substitute for an analysis of how altered storage release patterns and an altered hydrograph would or could affect breeding habitat, migration, egg mass scour, or drying during critical life stages.

R3-8

¹³ *Id.* p. 3.4-15.

¹⁴ *Id.* p. 3.4-21.

Further, the PRDEIR fails to consider the impact of the presence of the dam on migration and dispersion of this species.

b. San Joaquin Kit Fox

The PRDEIR dismisses potential impacts to San Joaquin kit fox without analyzing movement, foraging, or connectivity. The document concludes that the kit fox are unlikely to occur within the study area, despite documenting a recent occurrence approximately 1.5 miles away—well within the species’ typical home range size of more than two square miles. It also fails to analyze impacts to important prey species for the kit fox. Rather than analyzing whether the downstream riparian corridor functions as movement or foraging habitat, or important prey habitat, the PRDEIR relies again on generalized assumptions about habitat suitability to dismiss potential impacts. This is not reasoned analysis and does not meet the substantial evidence standard.

R3-9

c. Golden Eagle

The PRDEIR’s treatment of golden eagles relies on proximity assumptions rather than impact analysis. The document acknowledges the presence of golden eagles in the region and their large home ranges,¹⁵ yet concludes that Project impacts would be less than significant without analyzing how downstream habitat conditions support prey species or contribute to foraging opportunities. In fact, loss of foraging habitat and decrease in prey availability associated with human land uses is considered to be a threat to the species.¹⁶

The Diablo Range has one of the highest concentrations of golden eagles on the planet.¹⁷ This further underscores both (1) the importance of this area for conservation and protection of this migratory bird species, and (2) the need for adequate analysis to understand the potential impacts of the Project on downstream habitat essential to golden eagles and their prey. Large home ranges do not eliminate the need for analysis, they heighten the importance of understanding how localized changes to this riparian habitat may cumulatively affect species that rely on broad landscapes for survival. This is true for all migratory bird species both considered and not considered by this PRDEIR.¹⁸

R3-10

¹⁵ *Id.* p. 3.4-16.

¹⁶ Kochert, M. N., K. Steenhof, C. L. McIntyre, and E. H. Craig (2002). Golden Eagle (*Aquila chrysaetos*), version 2.0. In *The Birds of North America* (A. F. Poole and F. B. Gill, Editors). Cornell Lab of Ornithology, Ithaca, NY, USA. <https://doi.org/10.2173/bna.684>

¹⁷ Wiens, J.D., Kolar, P.S., Fuller, M.R., Hunt, W.G., Hunt, T., 2015, Estimation of occupancy, breeding success, and predicted abundance of golden eagles (*Aquila chrysaetos*) in the Diablo Range, California, 2014: U.S. Geological Survey Open-File Report 2015-1039, iv, 23 p., <https://doi.org/10.3133/ofr20151039>.

¹⁸ The PRDEIR analysis and conclusions about Swainson’s hawk suffers from the same fatal flaws as the analysis and conclusions regarding golden eagles.

VII. IMPROPER EXCLUSION OF CALIFORNIA CONDORS FROM BIOLOGICAL RESOURCES ANALYSIS; SIGNIFICANT NEW INFORMATION

The PRDEIR excludes the California condor (*Gymnogyps californianus*), a special-status wildlife species, from analysis because it is “not expected to occur within the study area due to the absence of recorded occurrences and lack of suitable habitat.” However, recent evidence indicates that condors use the northern Diablo Range, including areas near Del Puerto Canyon. Reports in late 2023 documented multiple California condors soaring over northern Contra Costa and Stanislaus counties, with individuals tracked over and near Mount Oso just north of Del Puerto Canyon.¹⁹ Further, data from the National Park Service demonstrates that condors originating in Pinnacles National Park use the Diablo Range extensively (see Figure 2 below).²⁰

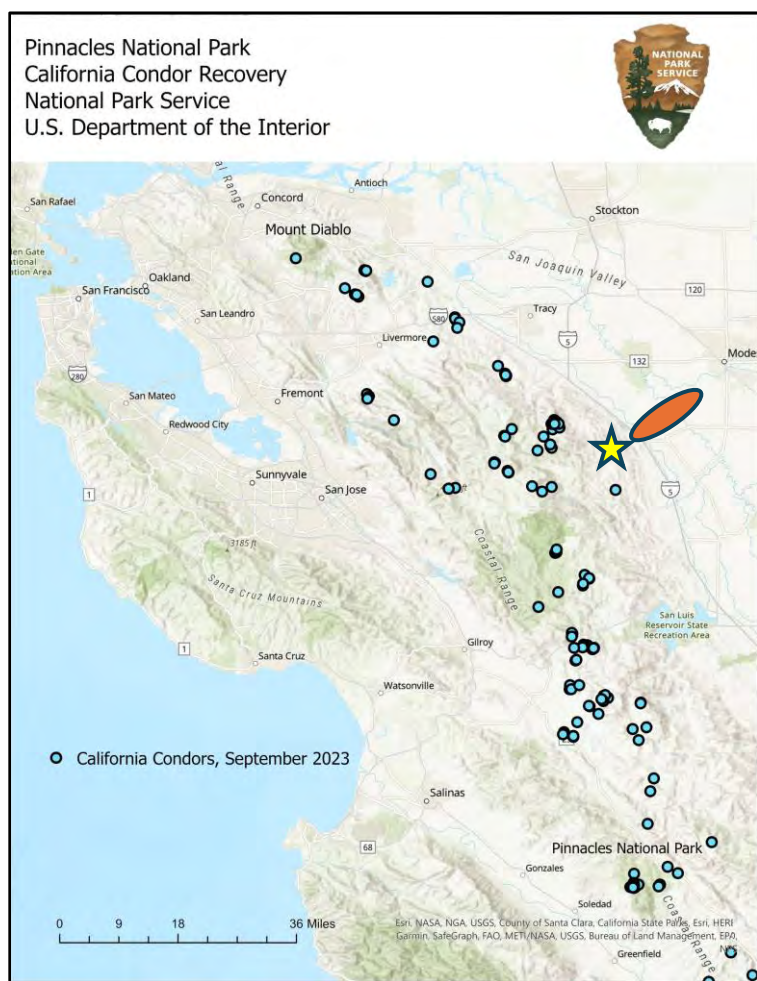


Figure 2. National Park Service GPS data showing locations of Condors in September 2023. Star indicates approximate location of Del Puerto Canyon, oval indicates approximate location of PRDEIR Study Area.

¹⁹ Hicks, Tony. “California Condor Flock Soars Over Contra Costa County for First Time in 100 Years.” KQED News, 25 September 2023, <https://www.kqed.org/news/11962399/california-condor-flock-soars-over-contra-costa-county-for-first-time-in-100-years>.

²⁰ *Id.*

Further, California condors are known to fly more than 124 miles in a single day,²¹ and their home range size varies from 200-400 square miles throughout the year.²² Therefore, the Study Area of the PRDEIR is well within the home range of the condors inhabiting Diablo Mountain Range and Pinnacles National Park. In fact, the United States Fish and Wildlife Service (USFWS)—the agency responsible for protecting listed species including the condor—has included the Study Area within the species’ geographic range (Figure 3).²³



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Figure 3. Portion of USFWS map of the California condor’s geographic range (green)

The PRDEIR’s claims that the Study Area does not contain suitable habitat for condors is not supported by evidence or adequate analysis. In fact, grassland, which constitutes 17% of the Study Area, is listed as important foraging habitat in the 1996 USFWS Recovery Plan for the

²¹ Vicky J. Meretsky, Noel F. R. Snyder, Range Use and Movements of California Condors, *The Condor: Ornithological Applications*, Volume 94, Issue 2, 1 May 1992, Pages 313–335, <https://doi.org/10.2307/1369205>

²² Rivers JW, Johnson JM, Haig SM, et al. An analysis of monthly home range size in the critically endangered California Condor *Gymnogyps californianus*. *Bird Conservation International*. 2014;24(4):492-504. doi:10.1017/S0959270913000592

²³ *Gymnogyps californianus (California Condor)*. U.S. Fish and Wildlife Service, U.S. Department of the Interior, <https://www.fws.gov/species/california-condor-gymnogyps-californianus>. Accessed 28 Jan 2026. Screenshot of condor home range map taken 28 Jan 2026.

California condor.²⁴ The USFWS website on condors also lists rural areas “influenced by humans in a less substantial way than cities” as important for condors. The Study Area and surrounding region would reasonably be described as rural.

California condors are among the rarest birds in North America and are still critically endangered, with recovery efforts ongoing and fewer than 120 free-flying individuals in Central California as of early 2026.²⁵ Given their capacity to fly long distances every day, tendency to make exploratory flights into new habitat, enormous home range, and documented home range in the vicinity of the Project and Study Area, condors could reasonably be expected to occasionally use habitats in the Study Area for foraging, roosting, or transient passage.

CEQA requires evaluation of impacts on endangered, rare, or threatened species and their habitats. CEQA’s overarching purpose is to prevent the elimination of fish or wildlife species due to human activities and to ensure that populations do not drop below self-sustaining levels.²⁶ California condors are federally and state listed as endangered and are thus within the scope of CEQA’s required biological impact analysis. (CEQA Guidelines §15380(b)(c)). The PRDEIR’s omission of condors from its analysis is unjustified, particularly in light of recent sightings in the vicinity of the Project. At a minimum, the PRDEIR should include a reasoned analysis of the potential for condor presence and the Project’s effects on condors and their habitat, and provide substantial evidence supporting the conclusion that the project would not affect this critically endangered species. (Pub. Res. Code § 21082.2(a)).

Expansion of condor range closer to the Project and Study Area constitutes a "new significant environmental impact" requiring recirculation of the DEIR (Cal. Pub. Res. Code § 21092.1; CEQA Guidelines §15088.5).

R3-11
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VIII. ADDITIONAL MATTERS THAT MAY RESULT IN SUBSEQUENT ENVIRONMENTAL REVIEW

a. Road Relocation

The PRDEIR requests that comments be confined to the subjects and text of the PRDEIR. We try to respect that. Nevertheless, it cannot be unhelpful to highlight additional matters that may

²⁴ *California Condor (Gymnogyps californianus) Recovery Plan, Second Revision*. U.S. Fish and Wildlife Service, U.S. Department of the Interior, Apr. 1996, https://ecos.fws.gov/docs/recovery_plan/960425.pdf. Accessed 30 Jan. 2026.

²⁵ FitzRandolph, John. “116 Condors are Now Flying Free in Central California Skies – Most Since 1979.” *The San Luis Obispo Tribune*, 10 Jan 2026, <https://www.sanluisobispo.com/news/local/environment/article314238136.html>. Accessed 28 Jan 2026.

²⁶ Pub. Res. Code § 21001(c).

require subsequent environmental review. According to the PRDEIR, “[t]he Project also includes relocating ... a section of Del Puerto Canyon Road.”²⁷

The trial court held that the FEIR failed “...to adequately address the relocation of Del Puerto Canyon Road.”²⁸ Although we did not agree with the reasoning of the appeals court, it conceded the requirement that the relocation was necessary for the Project:

“The proposed reservoir will inundate a portion of Del Canyon Road, requiring that portion be relocated. While the FEIR described the proposed alignment of the relocated road, it noted that ‘[t]he roadway alignment has been developed at a conceptual level and is subject to refinement during design. Any alignment revision would be evaluated to determine if supplemental environmental documentation is required.’ The proposed new alignment would essentially follow the shoreline of the new reservoir, including a large number of horizontal curves with relatively small radii.”²⁹

Even at the time of the FEIR, there was considerable question on whether the road alignment described above and in the FEIR would be selected. According to the appeals court, “[t]he FEIR identified Stanislaus County as the agency responsible for approving the

R3-12

proposed relocation of Del Puerto Canyon Road.”³⁰ The Stanislaus County Board of Supervisors subsequently did, indeed, recommend another road alignment. During the February 4, 2025, County Board of Supervisor’s meeting received a verbal report and presentation from the Del Puerto Water District on the Del Puerto Canyon Reservoir Project.³¹ The Board accepted the staff recommendation to recommend the relocation of Del Puerto Canyon Road by the Del Puerto Water District to Route Alternative 9; and, directed Public Works staff to continue coordination of route relocation development and refinement with the Del Puerto Water District³² The FEIR conceded this possibility:

“The Project Partners will continue working with County staff to develop an acceptable alignment and understand that further environmental review would be needed for a revised roadway alignment.”³³

So did the appeals court:

²⁷ PRDEIR p. 1-3.

²⁸ Fifth Appellate District decision describing the Trial Court decision as reproduced in the PRDEIR Appendix 1, p. 6.

²⁹ PRDEIR Appendix 1, pp. 34–35.

³⁰ *Id.* p. 34.

³¹ <https://www.stancounty.com/bos/agenda/2025/20250204/DIS01.pdf>.

³² <https://www.stancounty.com/bos/minutes/2025/min02-04-25.pdf>, p. 4.

<https://www.stancounty.com/bos/agenda/2025/20250204/DIS01.pdf>, p. 1.

³³ PRDEIR Appendix 1, p. 35. Appeals court ruling quoting from the FEIR.

"If, due to rejection by the board of supervisors or for some other reason, the Project Partners ultimately seek approval for a different alignment than the one analyzed in the FEIR, they may very well be required to do a subsequent or supplemental EIR to study the new alignment. (See Pub. Resources Code, § 21166.) The FEIR acknowledges as much."³⁴

R3-12
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The relationship among the Board of Supervisor's necessity for "approval," the Board's subsequent "recommendation," and the Del Puerto Water District's role in the road relocation part of the Project remains unclear. We look forward understanding this issue better through viewing whatever subsequent environmental review follows and commenting on it then.

b. Potential Project Delay

The U.S. Bureau of Reclamation recently issued and received comments on its federal Draft Environmental Impact Statement (DEIS). A group of commenters (Friends of the River (FOR), Save Del Puerto Canyon, Save Mount Diablo, Center for Biological Diversity, and the Mother Lode Chapter of the Sierra Club) took the opportunity to discuss the feasibility and timely implementability of the Project.³⁵

One obstacle to implementability is the necessity for the Bureau of Reclamation to obtain a new point of redirection of CVP waters to storage in the proposed Del Puerto Canyon reservoir. This step is out of the control of the District and Exchange Contractors. Successful action is also out of the control of Reclamation since approval is required from the State Water Resources Control Board.³⁶

As described by the commenters, undescribed impediments expected by Reclamation for a similar change in Reclamation's water rights was one of the nearby Santa Clara Valley Water District's reasons to drop its proposed 140,000-acre-foot Pacheco Dam project.³⁷ Santa Clara is a state and federal water service/repayment contractor, although, unlike the Del Puerto Water District is a municipal and industrial (M&I) contractor. In that case, Reclamation's shortage policy provides even greater reliability for such redirections to storage than the largely federal agricultural contracts enjoyed by the Del Puerto Water District.³⁸

R3-13

³⁴ *Id.* p. 36, footnote 12.

³⁵ Comments of Friends of the River et al. on the Del Puerto Canyon Reservoir Project Draft Environmental Impact Statement. Friends of the River, 12 January 2026. Available online at: <https://www.friendsoftheriver.org/wp-content/uploads/2026/01/2025-1-12-FOR-et-al.-comments-on-DPCD-DEIS.pdf>.

³⁶ *Id.* pp. 2, p. 19 footnote 54.

³⁷ *Id.* pp. 7–8.

³⁸ *Id.* pp. 4–5.

Costs, of course, could escalate as they have done here and for other recently proposed dams.³⁹ The Project documents describe the project as largely for irrigation purposes. Irrigation customers are more price sensitive than M&I users, again raising feasibility concerns.⁴⁰

Water rights changes can take a while. Operational issues affecting feasibility can delay and kill projects. Escalating costs and affordability can do the same. In that environment, earlier environmental reviews can grow stale.

IX. SUMMARY

In summary, FOR requests and recommends that DPWD revise and recirculate its EIR to correct deficiencies in its analysis and mitigation, including:

- A. Correct its reasoning of a partially disrupted environment as a justification to go forward with the project with less concern (i.e. its cumulative impacts analysis),
- B. Evaluate the effect of the project on connectivity,
- C. Examine the multi-layered impacts of the aspects of the project and operations,
- D. Correct issues with biological resources analysis, including:
 - a. Provide a reasoned analysis of the potential for California condor presence in the Project area and Study Area, and analyze the Project's potential effects on this critically endangered species,
 - b. Fully disclose impacts to species, and support any conclusions with reasoned analysis and substantial evidence (including, but not limited to, foothill yellow-legged frog, San Joaquin kit fox, golden eagle, Swainson's hawk, California tiger salamander, etc.)
- E. Provide additional environmental analysis of the relocation of Del Puerto Canyon Road as the location becomes more clear, as indicated by the appeals court, and
- F. Carefully consider costs and feasibility in the analysis before the project goes forward.

R3-14

Thank you for your consideration of these comments. We look forward to further discussion.

With gratitude,

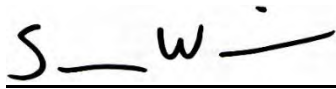
(Signatures begin on next page)

³⁹ *Id.* pp. 6–8.

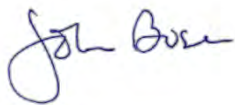
⁴⁰ *Id.* pp. 8–9.



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January 30, 2026

Via E-mail

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dpcr-environment@woodardcurran.com
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Re: Comments on the Partially Recirculated Draft Environmental Impact Report for Del Puerto Canyon Reservoir

Dear Ms. Hansen:

I am writing on behalf of Save Mount Diablo and its members and more than 11,000 supporters regarding the Partially Recirculated Draft Environmental Impact Report ("PRDEIR") for the Del Puerto Canyon Reservoir ("Project"). Approval of the Project was set aside pursuant to court order and the EIR was decertified by the Del Puerto Water District ("Water District"). The PRDEIR revises a portion of the biological resources analysis pertaining to downstream impacts on terrestrial species. Even with these revisions, the EIR's analysis of biological resources is not adequate and the remaining sections must be updated to account for significant new information. The Water District must revise the PRDEIR and recirculate it to address these comments and those of other public comments to ensure the Project's impacts are fully analyzed and mitigated. Failing to do so would violate the California Environmental Quality Act ("CEQA").

R4-1

Save Mount Diablo is a non-profit organization dedicated to preserving Mount Diablo's peaks, surrounding foothills and watersheds, and its sustaining 205-mile Diablo Range through land acquisition and preservation strategies designed to protect the mountain's natural beauty, biological diversity and historic and agricultural heritage. To advance this goal, Save Mount Diablo regularly participates in land use planning processes for projects that could impact Mount Diablo and the Diablo Range, such as the Del Puerto Canyon Project.

Save Mount Diablo strongly opposes the Project and has serious concerns about the PRDEIR. The Water District's failure to seriously survey, analyze, disclose, and mitigate the Project's impacts to biological resources will cause lasting harm to the environment and violates CEQA.

Del Puerto Canyon is home to diverse wildlife, beautiful scenery, and Native American cultural sites. It is one of the most biodiverse, least protected landscapes in California, and its increased protection is essential in California reaching its 30 X 30 goals. It should be protected for generations to come, not flooded and destroyed.

As discussed below, Save Mount Diablo is concerned that the PRDEIR fails to adequately analyze, disclose, and mitigate the impacts of this massive Project in violation of CEQA because: (1) the PRDEIR still fails to account for the impacts of the Del Puerto Canyon Road realignment; (2) the PRDEIR's updated analysis of impacts to downstream terrestrial species is inadequate; (3) new information and changed circumstances for biological resources require the revision and recirculation of the 2020 EIR; (4) the PRDEIR fails to conserve Upper Del Puerto Canyon as mitigation; and (5) the PRDEIR ignores the significant impacts that the Project will have on the robust recreational opportunities in Del Puerto Canyon. Furthermore, Save Mount Diablo is concerned that the Water District has not considered that the projected costs of this Project are enormous and will continue to rise.

R4-1
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CEQA BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Res. Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env't. v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. § 15002(a)(1).) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 (*Berkeley Jets*); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

R4-2

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (14 Cal. Code Regs. § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (14 Cal. Code Regs. § 15002(a)(2).) If the project will have a significant effect on the environment, the agency may

approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub. Res. Code, § 21081; 14 Cal. Code Regs. § 15092(b)(2)(A) and (B).)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets, supra*, 91 Cal.App.4th at 1355 [quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391, 409, n. 12.]) “A prejudicial abuse of discretion occurs ‘if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.’” (*Berkeley Jets, supra*, 91 Cal.App.4th at 1355.)

An EIR must “include[] sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises.” (*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510.) “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Id.* at 516.) “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (*Id.*) As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Id.* at 514.)

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (14 Cal. Code Regs. § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (14 Cal. Code Regs. § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

R4-2
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DISCUSSION

I. The Water District Cannot Improperly Limit the Scope of the Revised EIR or Public Comment on the Revised EIR.

As a preliminary matter, the Water District cannot limit public comment to just the recirculated portions of the Draft EIR. Where an agency's actions violate CEQA, it must do the environmental review process over if it wants to approve the project. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690.) Because the entire EIR was decertified, the Water District will need to again certify the completion of the revised EIR as a whole, not only the PRDEIR's revised sections. If the Water District plans to recertify the entire EIR, it must follow the legal procedures to do so. Accordingly, before approving the Project, the Water District must prepare and circulate for public review a revised EIR that complies with CEQA. (See, e.g., *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 901 [where EIR inadequate, agency must revise EIR, circulate it for public review and comment, and prepare responses to the comments before reapproving same or modified project].). Any revised draft EIR must comply with CEQA's mandatory requirements for public review, including completing and filing with the State Clearinghouse, providing a 45-day comment period, and consulting with public agencies. (Guidelines §§ 15082-88, 15105.) The Water District must also consider and respond in detail to the public's comments. (See § 21091(d) [requiring agency responses to comments on draft EIRs]; Guidelines § 15088(c) [requiring "good faith, reasoned analysis" in responses]); (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266-67 ["recirculation and consideration of public comments" necessary before revised project approval].)

R4-3

Moreover, as a matter of policy, nothing limits the Water District to correcting only the flaws the court identified. The Water District should take this opportunity to hear from the public on all project aspects and ensure that the Project complies with its policies and intentions now, in 2026. And the Water District should ensure that environmental review contains the analysis needed to allow the public and decisionmakers to understand environmental consequences of the Project and fully comply with CEQA. Restricting the public's ability to comment on the 2020 EIR circumvents CEQA's core purposes to allow for public input on projects. (Pub. Res. Code § 21061.) Accordingly, Save Mount Diablo incorporates here via reference its comment submitted on the previously circulated EIR, dated January 27, 2020 and attached hereto as **Exhibit B**.

II. The PRDEIR Fails to Analyze the Impacts of the Del Puerto Canyon Road Realignment.

CEQA also "forbids 'piecemeal' review of the significant environmental impacts of a project." (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal. App. 4th 1209, 1222.) Piecemealing is "[t]he process of attempting to avoid a full environmental review by splitting a project into several smaller projects which appear more innocuous than the total planned project." (*E. Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 293.) "The prohibition against piecemeal review is the flip side of the

R4-4

requirement that the whole of a project be reviewed under CEQA.” (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1208.)

Agencies “must consider the whole of an action, not simply its constituent parts, when determining whether [the action] will have a significant environmental effect (*Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151).” (14 Cal. Code Regs. § 15003(h). This ensures “that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.)

The Water District is violating these requirements by segmenting the Project in an attempt to avoid disclosing the full scope of its environmental impacts. The road alignment analyzed in the 2020 EIR was rejected by Stanislaus County (2020 FEIR Chapter 10, Comment 8-1; FEIR at 9-61.) The design and alignment of the new roadway will have clear environmental consequences. For example, the slope of the roadway and whether it relies on culverts or bridges will impact special status species and the ability of wildlife to reach movement corridors. The design of the road will also impact fuel usage, public safety, aesthetic views, and recreational opportunities, among others.

R4-4
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Rather than analyze and disclose the impacts of the road relocation, the Water District is improperly piecemealing the Project, claiming impacts of the new road required by the Project will be analyzed at some point in the future. CEQA requires the new road to be analyzed now, as part of this EIR, because it is an essential part of the Project that cannot be segmented and evaluated separately at some future time after the Project has gained irreversible momentum.

III. The PRDEIR’S New Analysis of Impacts to Downstream Terrestrial Species Is Inadequate.

Del Puerto Canyon is one of the most biodiverse hotspots within the Diablo Range. In addition to being a beautiful landscape, it is also home to many rare species of wildlife and plants including American badger, California red-legged frog, mountain lions, California condor, and tule elk. Endangered California condors have recently been seen flying over Del Puerto and have roosted in locations nearby the canyon. The world’s largest population of nesting golden eagles forages in the grassland and woodland of the canyon and there are historic records of the endangered San Joaquin kit fox. The PRDEIR, like the original EIR, fails to fully disclose, analyze, and mitigate the impacts this massive Project will have on this unique canyon and the Del Puerto Creek.

R4-5

Expert wildlife ecologist Shawn Smallwood, Ph.D, reviewed the PRDEIR and conducted a survey of Del Puerto Creek, downstream from the proposed reservoir. Dr. Smallwood’s comments and CV are attached hereto as Exhibit A. Based on his review and survey, Dr. Smallwood found several deficiencies in the PRDEIR’s analysis of the Project’s impacts on wildlife including: (1) the PRDEIR underestimates the diversity of species potentially impacted

by the Project, (2) the PRDER fails to disclose and analyze impacts to riparian habitat and terrestrial species resulting from the Project's altered flow regime, and (3) the cumulative impact analysis is unsupported.

A. The PRDEIR lacks substantial evidence of the Project's impacts on terrestrial species because it underestimates the diversity of species downstream of the Project.

Dr. Smallwood visited the eastern end of the Study Area on January 25 and January 26, 2026 to survey wildlife during daylight, evening, and nighttime conditions. (Ex. A, p. 2.) During daylight, Dr. Smallwood scanned for wildlife with binoculars. (*Id.*) At night, he attached a Pettersson M500 acoustic bat detector to a 25-foot pole, and cabled the detector to his computer, which ran Sonobat Live. (*Id.*)

Dr. Smallwood detected sixty (60) different vertebrate species, thirteen (13) of which Dr. Smallwood has determined are "special status" species. (Ex. A, p. 4.) These special status species include: (1) White-tailed kite (California Fully Protected); (2) Modesto song sparrow (California Species of Special Concern); (3) Northern harrier (California Species of Special Concern, USFWS Bird of Conservation Concern) (4) Double-crested cormorant (CDFW Watch List); (5) Cooper's hawk (CDFW Watch List); (6) Nuttall's woodpecker (USFWS Bird of Conservation Concern); and (7) Oak titmouse (USFWS Bird of Conservation Concern). (*Id.*, pp. 7-8.)

The PRDEIR claims that "[a] comprehensive reconnaissance-level survey of the study area was conducted by ICF biologists on July 14, 2025" and that "the entire study area was surveyed on foot." (PRDEIR, p. 3.4-10.) However, the PRDEIR fails to provide any clear details about the survey itself, how it was conducted, or which species were observed. As Dr. Smallwood explains:

[T]he PRDEIR fails to report how wildlife habitat value was assessed, or who exactly did the survey. There is no report of what time the survey started or how long it lasted, nor is there a report of how many biologists participated or to what degree they were qualified. For the survey to have been "comprehensive" in covering 105.59 acres along 12.2 km of complex vegetation, a very large number of biologists would have been necessary. The very small portion of the Study Area I surveyed could not have been adequately surveyed in a day, no matter how many biologists were involved. . . . Overall, the PRDEIR fails to adequately report on the reconnaissance survey, and its claim that a complex Study Area was comprehensively surveyed on one day is impossible for me to believe.

(Ex. A, p. 16.) The PRDEIR makes passing references to American beaver, American bullfrog, Botta's pocket gopher, and California ground squirrel but does not mention whether any other species were observed. In contrast to those four species noted in the PRDEIR, Dr. Smallwood

R4-5
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detected 15 times as many species in just a small portion of the Study area in less than 4.5 hours. (*Id.*)

The fact that the PRDEIR's survey, which was purportedly conducted over the entire Study Area, detected a mere fraction of the species detected by Dr. Smallwood in a small portion of the Study Area underscores the inadequacy of the PRDEIR's analysis and the need for further surveys in a revised EIR. (See Ex. A, pp. 15-17.) Indeed, Dr. Smallwood calculated that more thorough site visits would reveal an even greater diversity of wildlife. (*Id.*, pp. 9-13.) Given more time to survey the Study Area, Dr. Smallwood's predicts that upwards of 213 species of wildlife, including 46 special-status wildlife species, would be observed in the Study Area. (*Id.*, p. 12.) Based on his review of the PRDEIR and his surveys, Dr. Smallwood concluded that the Study Area is "relatively species-rich wildlife community that warrants a serious survey effort" and that the PRDEIR is "far from adequate for accurately characterizing the wildlife community as part of the existing environmental setting. (*Id.*, pp. 12, 17.)

Furthermore, the EIR's review of available wildlife databases to identify which species are known to have occurred at or near the Study Area was inadequate. (Ex. A, pp. 17-22.) The PRDEIR relied on the California Natural Diversity Data Base ("CNDDDB"), iBird, and iNaturalist to determine which species have potential to occur in the Study Area. (*Id.*, p. 17.) However, although these databases can be used to confirm a species' presence, the databases are not a proper means to conclude that a species is absent from the Study Area. (*Id.*) As Dr. Smallwood explains:

[T]he CNDDDB is interested only in the findings of special-status species, which means that species more recently assigned special status will have been reported many fewer times to the CNDDDB than were species assigned special status since the inception of the CNDDDB. Therefore, occurrence records in the CNDDDB are most abundant for species assigned special status decades ago, but fewest for species only recently assigned special status. And because negative findings are not reported to the CNDDDB, the CNDDDB is also inappropriate as a basis for weighting occurrence likelihoods such as absent, not expected, unlikely, low, moderate or high. Whereas the CNDDDB can be confirmatory of species presence, it cannot support absence determinations or assignments of low likelihood of occurrence.

R4-5
cont'd

(*Id.*)

Based on CNDDDB, iNaturalist, and eBird and his surveys, Dr. Smallwood found that "132 special-status species of wildlife are known to occur near enough to the site to warrant analysis of occurrence potential." (Ex. A, p. 18.) The PRDEIR only analyzed the occurrence potential for 22 special-status species, which amounts to only 17% of the special-status species identified by Dr. Smallwood. (*Id.*) Therefore, the PRDEIR screened out 110 of the special-status species known to occur at or near the Survey Area from further review. (*Id.*) Half of the 110 special-status species the PRDEIR screens out of further analysis have been documented within 1.5 miles of the Study Area. (*Id.*, p. 19.)

For the 22 special-status species that were analyzed in the PRDEIR, the PRDEIR claims that 18 of those species have low to moderate likelihood of occurrence. (Ex. A, p. 19.) Notably, although the PRDEIR claims the White-tailed kite only has a moderate likelihood of occurrence, Dr. Smallwood observed a copulating pair of White-tailed kite in the Study area during his survey. (*Id.*, pp. 4, 19.) This underscores how the PRDEIR’s failure to conduct adequate surveys and its improper use of databases has resulted in an incomplete biological picture of the Study Area, which, in turn, corrupts the PRDEIR’s ability to determine what the impacts of the Project will be.

R4-5
cont'd

Every EIR must start from a “baseline” assumption. The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. (*Communities for a Better Env’t. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321; see 14 CCR § 15125(a).) Due to its inadequate analysis, the PRDEIR underestimates the biological baseline in the Study Area and, as a result, cannot provide substantial evidence about the severity of the Project’s impacts on downstream terrestrial resources. As a result, the PRDEIR must be revised to properly assess and disclose the biological baseline in the Study Area prior to determining whether the Project’s impacts will be significant.

B. The Project’s alterations to the flow regime in Del Puerto Creek will impact the riparian environment, which in turn will significantly impact terrestrial species.

The PRDEIR fails to analyze, disclose, and mitigate the Project’s significant impact on downstream terrestrial wildlife resulting from dramatic alterations to Del Puerto Creek’s flow regime. As documented by Dr. Smallwood, the PRDEIR acknowledges that the Project will substantially alter flow attributes—including volume, timing, duration, temperature, sediment loads, dissolved oxygen, and organic material transport—yet fails to analyze or predict how these alterations will affect terrestrial wildlife dependent on the riparian corridor. This analytical gap violates CEQA’s core mandate that direct and indirect environmental impacts be fully disclosed and analyzed before project approval.

1. The PRDEIR acknowledges flow alterations but fails to analyze resultant terrestrial wildlife impacts.

R4-6

The PRDEIR acknowledges that the Project will alter Del Puerto Creek’s flow regime in ways that affect water quality and stream flow attributes. However, as Dr. Smallwood notes, the PRDEIR fails to describe or predict how these alterations will affect terrestrial wildlife. (Smallwood, p. 32.) The flow regime alterations will directly affect vegetation along Del Puerto Creek, and the food base that supports a variety of species—from arthropods to bats, small mammals, mammalian carnivores, and raptors. (*Id.* at pp. 31-32.) Yet the PRDEIR provides no analysis of these cascading ecological effects. Failure to connect the altered stream regime to effects on terrestrial species violates CEQA’s requirement to analyze direct and indirect impacts and renders the PRDEIR inadequate as an informational document.

2. The PRDEIR downplays the severity of flow reductions.

The PRDEIR attempts to minimize the Project's impacts by claiming it is "designed to replicate, in relative terms, the key existing conditions that support terrestrial habitats and species in the downstream reaches of Del Puerto Creek." (PRDEIR, p. 3.4-39.) This is not true. As Dr. Smallwood notes, the 2020 FEIR reveals the Project will result in an 81% reduction in annual flow through lower Del Puerto Creek—from 2,100 acre-feet to 400 acre-feet. (*Id.* at 32, [citing 2020 FEIR, p. 9-46, Response to Comment 4-5].) The monthly flow reductions are similarly severe: 70% reduction in January, 86% reduction in February, 85% in March, and 67% in April. (*Id.*) These dramatic reductions cannot reasonably be characterized as "replicating" or maintaining consistency with "current conditions." The PRDEIR's assertion that flow patterns will remain "consistent" with existing conditions is contradicted by the Project's own data. These massive flow reductions will reduce the number of riparian trees and biomass in wetland vegetation, which in turn would reduce the productive capacity of wildlife in the Study Area. Yet the PRDEIR provides no analysis of these foreseeable impacts.

R4-7

3. The PRDEIR misrepresents a report to justify its inadequate analysis.

In an attempt to justify its failure to analyze the impacts of the Project's reduced flow, the PRDEIR cites a 2008 EPA report as its source to claim that "scientific research indicates that wetland health is more strongly influenced by the frequency and duration of inundation, such as seasonal or periodic flooding, than by the total annual volume of water flow." (PRDEIR, p. 3.4-35, citing EPA 2008.) As Dr. Smallwood explains, this claim fundamentally misrepresents the cited source. Nowhere in the EPA report does the agency report that frequency and duration of inundation (hydropattern) influences wetland health more than overall flow volumes. (Smallwood, p. 32.) Nowhere does the EPA report state that scientific research supports this notion. (*Id.*) The only remotely relevant passage in report actually suggests the opposite—that altered hydropattern resulting from the Project would pose a threat to wetland species in lower Del Puerto Creek. (Smallwood, p. 32.) "The greater threat to the ecological integrity of lower Del Puerto Creek is the combined reduction of overall flow and the drastic changes in hydropattern," a cumulative threat that the PRDEIR fails to analyze. (*Id.*)

R4-8

This misrepresentation of the EPA report renders the PRDEIR's less-than-significant impact conclusion unsupported by substantial evidence.

4. The Project will significantly impact the riparian environment and terrestrial species that rely on it.

Dr. Smallwood's analysis reveals the importance of the Del Puerto Creek riparian corridor and the severe impacts the Project will cause to the species that depend on it for foraging, refuge, nesting substrate, and other habitat values.

R4-9

Riparian corridors are among the few widely recognized wildlife corridors in natural settings. (Smallwood, p. 32.) They serve as a stabilizing force on wildlife movement and

persistence across larger landscapes. (*Id.* at 32-33.) Scientific literature documents that wildlife concentrates within riparian environments, especially when upland areas are disturbed. (*Id.* at 33.) Within California's riparian environments, bird and mammalian species richness is highest in riparian areas. (*Id.*) In the case of lower Del Puerto Creek, where most of the surrounding landscape is intensively farmed, the Creek's riparian vegetation is of heightened importance to wildlife survival. (*Id.* at 33.)

Riparian environments in California are already critically depleted. Estimates show between 80% and 98% of riparian environments in the western US have already been lost. (*Id.* at 33.) What remains supports disproportionately high wildlife value, including many special-status species that are reliant on riparian environments. (*Id.* at 33.) Despite existing degradation, the riparian environment of lower Del Puerto Creek provides immeasurable value to wildlife. (*Id.*) As Dr. Smallwood emphasizes, "What remains of the riparian environment of lower Del Puerto Creek is irreplaceable." (*Id.*)

The 81% reduction in annual flow will directly threaten riparian vegetation through a variety of mechanisms. For example, Cottonwoods, which are common in the Study Area and important to species like Swainson's hawk, are sensitive to reduced water tables. (*Id.* at 33.) Cottonwoods will fall over when their shallow rooting systems cannot reach water. (*Id.*) In addition, reduced flows can reduce the vertical profile of cottonwood riparian forests by two-thirds, changing how wildlife can use these forest habitats. (*Id.*) Further, dammed rivers alter downstream geomorphology, shrink riparian environments, shift riparian plant species composition toward non-native species, and lower diversity of bird species. (*Id.* at pp. 33-34.) The PRDEIR does not address these impacts on riparian vegetation or the resulting impact on terrestrial species.

As Dr. Smallwood notes, because so many of California's riparian environments have already been affected by reduced annual flows and altered hydropatterns from dam and other water diversion projects, the Water District should conduct a comparative analysis to predict the Project's impacts on Del Puerto Creek's riparian environment and wildlife community. (*Id.* at 34.) The effects of these projects on riparian environments are well documented and consistent. Del Puerto Creek will experience the same mechanisms of impact as other waterways downstream of dams.

The PRDEIR's failure to provide any analysis of the altered flow regime's riparian impacts and resulting impacts on terrestrial species renders the PRDEIR inadequate as an informational document. The Water District must prepare an adequate environmental analysis that assesses the Project's impacts on Del Puerto Creek's riparian environment and the terrestrial wildlife that depend on it.

C. The PRDEIR fails to meaningfully discuss the Project's cumulative effects on terrestrial wildlife downstream of the Project.

CEQA mandates that agencies evaluate the cumulative impacts of a project in conjunction with other projects in the area, recognizing that multiple projects may together produce considerable environmental effects. (Pub. Res. Code § 21083(b); 14 Cal. Code Regs. § 15355(b).) “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (14 Cal. Code Regs. § 15355(a).) These impacts represent “the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (*Communities for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 117; 14 Cal. Code Regs. § 15355(b).) A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. (14 Cal. Code Regs. § 15355(b).)

The PRDEIR's treatment of cumulative impacts on downstream terrestrial species falls short of these legal requirements, lacking the basic information necessary to conduct meaningful environmental review. (See PRDEIR, p. 3.4-39; Smallwood, pp. 35-36.)

R4-10

First, the PRDEIR relies on outdated information. The PRDEIR relies exclusively on the cumulative projects list from the 2020 EIR (Table 3.0-1) without any discussion of projects approved in the intervening years that could impact biological resources effected by the Project. Without disclosing whether additional cumulative projects exist that will result in overlapping impacts, the Water District lacks evidence to conclude cumulative impacts will not occur.

Second, the analysis employs an improper geographic limit. The 2020 EIR dismisses many of the listed projects based on the distance of the development from the Reservoir Project. For example, the 2020 EIR acknowledges numerous residential, commercial, retail, and development projects approved by the City of Patterson, yet dismisses them as “sufficiently distant from areas where [Project] facilities would be constructed that they are not expected to result in an impact nexus with the [Project].” (2020 DEIR, p. 3-4.) CEQA is not concerned with geographic proximity. It is concerned with environmental impacts. The legally relevant question is whether any listed project will generate impacts that could compound or increase the types of impacts associated with the Reservoir Project. The PRDEIR must specifically analyze whether any of the cumulative projects may affect the same terrestrial species that will be impacted by the Project, including those species documented by Dr. Smallwood.

Finally, the PRDEIR's logic is flawed. The PRDEIR's “analysis” rests on circular reasoning that defeats the purpose of a cumulative impact analysis. The PRDEIR concludes there will be no cumulative impacts in part because “[a]dditional development in the cumulative study area would also be required to comply with applicable federal and state regulatory programs for

the protection of terrestrial biological resources” and because “mitigation measures in the 2020 Final EIR would either avoid impacts, compensate for impacts, or replace habitat for the Project as a whole.” (PRDEIR, p. 3.4-39.)

This rationale – that cumulative impacts will not occur if each individual project implements mitigation – relies on the exact argument CEQA’s cumulative impact analysis is meant to protect against. The entire purpose of the cumulative impact analysis is to prevent the situation where mitigation occurs to address project-specific impacts, without looking at the bigger picture. This argument, applied over and over again, has resulted in major environmental damage, and is a major reason why CEQA was enacted. As the court stated in *CBE v. CRA*, 103 Cal. App. 4th at 114:

R4-10
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Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

The Water District must prepare a legally adequate cumulative impacts analysis that actually examines the Project’s environmental effects together with the impacts of other past, current, and reasonably foreseeable future projects.

IV. Significant New Information and Changed Circumstances Require the Water District to Revise and Recirculate Other Portions of the 2020 EIR’s Biological Resources Section.

New information and changed circumstances since the 2020 EIR was approved requires preparation of a supplemental EIR beyond the narrow analysis of downstream terrestrial impacts analyzed in the PRDEIR.

Since certification of the 2020 EIR, 23 species documents within the footprint of the Reservoir have either been assigned special-status or elevated in special status. (Smallwood, p. 22 and Table 3.) One species is now listed as threatened (foothill yellow-legged frog) and one is a candidate for listing under the California Endangered Species Act (burrowing owl), while two have become candidate for listing under the Federal Endangered Species Act (Western spadefoot and Northwestern pond turtle). (*Id.*) In addition, numerous other species have now been named to the U.S. Fish and Wildlife Service’s list of Birds of Conservation Concern. (*Id.*)

R4-11

In addition, since certification of the 2020 EIR, three special-status species have been documented on the reservoir site that were not previously documented there: Monarch butterfly, ferruginous hawk, and Bell’s sparrow. (*Id.*) The Monarch is now a candidate for listing under the Federal Endangered Species Act and the ferruginous hawk and Bell’s sparrow are on the CDFW

Taxa to Watch list. The 2020 EIR did not analyze potential impacts to these species. (*Id.*) The 2020 EIR did not analyze potential impacts on these species. (*Id.*)

The newly protected status of species and the newly detected presence of species qualifies as (1) a substantial change with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report and (2) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available. (Pub. Res. Code § 21166.). CEQA requires a supplemental EIR that adequately assesses and mitigates the Project's impacts to these protected species.

R4-11
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V. The Water District Should Commit to Protecting Upper Del Puerto Canyon as Mitigation.

As mitigation for the direct and indirect impacts caused by the Project, the Water District should protect upper Del Puerto Canyon.

Grassland, oak woodland, coastal scrub and riparian habitat would all be destroyed by the proposed Project. The upper reaches of the Project Study Area contain most of these habitat types, as reflected in the 2020 DEIR Figure 3.4-1. The DEIR also shows that the proposed Project would cut off part of a wildlife corridor in the Mount Diablo – Diablo Range Linkage identified in Penrod et al. 2013 (i.e., Bay Area Critical Linkages Report) that is important for the movement and population connectivity of American badger (a state Species of Special Concern), and also meant to serve populations of San Joaquin kit fox, northern harrier, white-tailed kite, burrowing owl, loggerhead shrike, San Joaquin coachwhip, coast horned lizard, and California red-legged frog.

R4-12

Oak woodland, coastal scrub and riparian habitats are present above and around the area that would be flooded by the proposed reservoir. In order to protect part of the remaining wildlife corridor and the remaining diverse habitats in Del Puerto Canyon, on-site habitat preservation and restoration should be included as a component of the Project's mitigation requirements, as well as the mitigation via easements and mitigation banks already described in the DEIR—although as other commenters have noted, mitigation banks do not include species habitat or available acres suitable for much of the necessary mitigation. Though flooding of the Project area would undoubtedly destroy the value of much of the designated wildlife corridor for the above-mentioned species, protecting the rest of it around the Project site would help to protect the value of the remaining corridor and its potential use by wildlife.

VI. The Project Will Significantly Impact Recreational Opportunities.

The Del Puerto Canyon offers unique recreational opportunities enjoyed by members of Save Mount Diablo and other hikers, bird watchers, and bicyclists. For hikers, the rugged terrain offers a glimpse into the past. Ancient Yokuts pathways are carved into the canyon walls along with caves that once served as tombs for their tribal ancestors. Prehistoric rocks make up the

canyon's geology, from old oceanic sediment at the lower elevations to mantle-derived rock, metamorphosed into serpentine -- California's state rock -- at the higher elevations. For plant enthusiasts, areas of the canyon with serpentine provide incredible opportunities to see rare California native wildflowers. With temperatures in Del Puerto often reaching triple digits in the summer months, Del Puerto Creek doubles as an oasis for dozens of mammals, reptiles, and about 200 documented bird species – a paradise for birders.

R4-13

The Project will flood the canyon, move the road, and significantly impact the riparian environment that runs along Del Puerto Creek, destroying these recreational opportunities. These recreational and aesthetic impacts must be acknowledged and mitigated by the Water District. Public comments on the 2020 EIR raised these concerns, which still have not been addressed. If the Project is approved, what recreational access and opportunities would be provided to compensate for the Project's aesthetic and recreational impacts?

VII. Project Costs Are Enormous and Will Continue to Rise.

Cost estimates for megaprojects such as this one follow a predictable pattern of increasing over time. Here, the project cost has already skyrocketed, increasing nearly 300% since 2019, from \$400-500 million to \$1.2 billion. While the newest estimate of \$1.2 billion is staggering, the cost is expected to increase even more.

To understand how much higher these rapidly escalating costs will rise, the Water District must disclose additional information. How did the Water District arrive at its newest cost estimate of \$1.2 billion? What led to the dramatic increase in cost from \$400-500 million to \$1.2 billion in just a few years?

We know the cost increase is driven not only by the reservoir itself but also by the need to relocate and build new portions of Del Puerto Canyon Road that threads through the canyon – State Highway 130 to San Jose. The steep and rugged terrain of the landscape will make the road relocation especially costly and challenging, costing hundreds of millions of dollars. What geotechnical and road engineering studies have been completed to understand the feasibility and costs associated with road relocation and construction?

R4-14

The Water District and the public must be made aware of the magnitude of likely costs of this megaproject, and the costs associated with less environmentally harmful alternatives such as water conservation and groundwater storage. Save Mount Diablo intends to provide additional analysis of the true Project costs in future comments.

CONCLUSION

Thank you for the opportunity to comment on the PRDEIR. As detailed above, the PRDEIR remains deficient and requires revisions and recirculation. Failing to do so violates CEQA. Save Mount Diablo respectfully requests the Water District revise and recirculate the PRDEIR to address these concerns.

R4-15

Sincerely,

LOZEAU DRURY LLP

A handwritten signature in blue ink, appearing to be 'R. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
On behalf of Save Mount Diablo

EXHIBIT A

Shawn Smallwood, PhD
3108 Finch Street
Davis, CA 95616

Rebecca L. Davis
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612

29 January 2026

RE: Del Puerto Canyon Reservoir PRDEIR

Dear Ms. Davis,

I write to comment on my review of the Partially Recirculated Draft Environmental Impact Report (PRDEIR) that was prepared for the Del Puerto Canyon Reservoir's potential impacts to downstream terrestrial species. I understand that Del Puerto Water District (District) Board of Directors resolved on 21 October 2020 to certify the Final Environmental Impact Report (FEIR) for the Del Puerto Canyon Reservoir Project, but the Fifth District Court of Appeal ruled "the FEIR ... does not analyze impacts to downstream terrestrial species." My comments go to those species that potentially compose the terrestrial wildlife community within what the PRDEIR defines as a Study Area around Del Puerto Creek between the Reservoir's dam and where the Creek meets the San Joaquin River. I am concerned that by mischaracterizing the wildlife community, the PRDEIR mischaracterizes the existing environmental setting of the Study Area, and that it fails to adequately analyze potential project impacts on wildlife, and furthermore that it fails to adequately mitigate impacts.

My qualifications for preparing expert comments are the following. I hold a Ph.D. degree in Ecology from University of California at Davis, where I also worked as a post-graduate researcher in the Department of Agronomy and Range Sciences. My research has been on animal density and distribution, habitat selection, wildlife interactions with the anthrosphere, and conservation of rare and endangered species. I authored many papers on these and other topics. I served as Chair of the Conservation Affairs Committee for The Wildlife Society – Western Section. I am a member of The Wildlife Society and Raptor Research Foundation, and I've lectured part-time at California State University, Sacramento. I was Associate Editor of wildlife biology's premier scientific journal, The Journal of Wildlife Management, as well as of Biological Conservation, and I was on the Editorial Board of Environmental Management. I have performed wildlife surveys in California for thirty-seven years. My CV is attached.

R4-16

THE WILDLIFE COMMUNITY AS A BIOLOGICAL RESOURCE

Most environmental reviews pursuant to the California Environmental Quality Act (CEQA) focus on special-status species because CEQA's Checklist Evaluation of Environmental Impacts directs such evaluation to special-status species. However, an important policy of CEQA is "to prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-

perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” Pub. Res. Code § 21001(c). This policy is not restricted to special-status species as it applies to wildlife populations and plant and animal communities. In fact, the CEQA Guidelines Section 21155.1 defines wildlife habitat as “the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.” This definition is consistent with the scientific definition of habitat, which is that portion of the environment that is used by members of a species for survival and reproduction (Hall et al. 1997). An essential portion of a special-status species’ habitat includes a collection of other species of plants and wildlife on which the special-status species depends. These other species provide forage, refugia, nest substrates, and ecological mutualisms; no special-status species can exist in a vacuum of other wildlife. The CEQA Checklist Evaluation assigns priority to special-status species to balance information and cost of a review, but it does not exclude the need to evaluate environmental impacts on other species, which, after all, are members of the very communities within which special-status species inter-depend for survival and reproduction.

R4-16
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All wildlife species should be of concern in a CEQA review, but the CEQA prioritizes special-status species. The species I consider to be special-status species are those listed in California’s Special Animals List inclusive of threatened and endangered species under the California and federal Endangered Species Acts, candidates for listing under CESA and FESA, California’s Fully Protected Species, California species of special concern, and California’s Taxa to Watch List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>), continental and region-specific US Fish and Wildlife Service Birds of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>), and naturally rare species such as raptors protected by California’s Birds of Prey laws, Fish and Game Code Sections 3503, 3503.5, 3505 and 3513 (see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

What follows is a summary of my site visit to detect as many of the species of wildlife as possible within the short time available. The survey was also intended to detect as many of the special-status species as possible, but with the understanding that most special-status species are less readily detectable due to rarity and crypticity. Nonetheless, the species detected can indicate the ecological integrity of the site and thus the likelihood of occurrence of special-status species not yet detected.

SITE VISIT

On 25 January 2026, I visited the eastern end of the Study Area for 55 minutes of diurnal survey starting at 17:01 hours, before initiating a nocturnal survey for bats. I visited the same area again for 3 hours and 10 minutes on 26 January 2026 starting at 06:48 hours. During daylight surveys, I used binoculars to scan for wildlife, and I listened for calls. At night, I attached a Pettersson M500 acoustic bat detector atop a 25-

R4-17

including those whose members flew over the site or were seen just off the site. Animals of uncertain species identity were either recorded to the Genus or higher taxonomic level. Conditions were windless and clear on the 25th, but foggy on the 26th. Temperatures ranged 37 to 49° F, which turned out to be too cold for bats. The Study Area is centered on riparian vegetation (Photos 1 and 2), and includes willow savannah, annual grasslands, and agriculture.



R4-17
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Photos 1, 2. Views of riparian forest along the lower reach of Del Puerto Creek (top) and along the San Joaquin River within the Study Area (bottom), 26 January 2026.

I saw red-tailed hawk and red-winged blackbird (Photos 3 and 12), Cooper's hawk (Photo 4), white-tailed kite and northern harrier (Photos 5 and 6), Say's phoebe and hermit thrush (Photos 7 and 8), house wren and Bewick's wren (Photos 9 and 10), cackling goose (Photo 11), among the other species listed in Table 1. I detected 60 species of vertebrate wildlife at or adjacent to the Study Area, including 13 species with special status (Table 1). Two white-tailed kites – members of a California Fully Protected species – copulated on the Study Area, and I saw male and female northern harriers. I also saw more cackling goose than I have seen anywhere.

I might have also detected two more special-status species, but my observations of them were too brief for determining their identities with certainty. These other species were riparian brush rabbit (*Sylvilagus bachmani riparius*) and San Joaquin Valley woodrat (*Neotoma fuscipes riparia*). For lack of certainty, I identified by rabbit detections as those of desert cottontail. As for the woodrat, I thought I saw woodrat stick dens, but if they were woodrat dens, then it is also possible they were constructed by dusky-footed woodrat (*Neotoma fuscipes*), and not the federally Endangered San Joaquin Valley woodrat. Regardless, the Study Area needs to be more thoroughly surveyed for these two Endangered Species.



R4-17
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Photo 3. Red-tailed hawk and red-winged blackbirds on a savannah within the Study Area as the fog cleared, 26 January 2026.



Photo 4. *Cooper's hawk hunting birds on the study area, 26 January 2026.*

R4-17
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Photos 5 and 6. *One of a pair of white-tailed kites (left), and one of two northern harriers (right) on the study area, 26 January 2026.*



Photos 7 and 8. Say's phoebe just off the study area (left), and a hermit thrush (right) on the study area, 26 January 2026.

R4-17
cont'd



Photos 9 and 10. House wren (left), and Bewick's wren (right) on the study area, 26 January 2026.



Photos 11 and 12. A few of the numerous Cackling goose (left), and one of hundreds of red-winged blackbirds (right) on the study area, 26 January 2026.

R4-17
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Table 1. Species of wildlife I observed in 4.42 hours of daytime survey at the east end of the Study Area on 25-26 January 2026.

Common name	Species name	Status ¹	Notes
Snow goose	<i>Anser caerulescens</i>		Many flew over
Greater white-fronted goose	<i>Anser albifrons</i>		Many flew over
Cackling goose (Aleutian)	<i>Branta hutchinsii leucopareia</i>	WL	Many flew over
Canada goose	<i>Branta canadensis</i>		Many flew over
Mallard	<i>Anas platyrhynchos</i>		On River
Common merganser	<i>Mergus merganser</i>		On River
California quail	<i>Callipepla californica</i>		Many
Mourning dove	<i>Zenaida macroura</i>		Many
Anna's hummingbird	<i>Calypte anna</i>		Edge
Killdeer	<i>Charadrius vociferus</i>		On open areas
Double-crested cormorant	<i>Nannopterum auritum</i>	WL	Flew along River
Great blue heron	<i>Ardea herodias</i>		Flew along River
White-tailed kite	<i>Elanus leucurus</i>	CFP, BOP	Pair copulating
Northern harrier	<i>Circus cyaneus</i>	BCC, SSC3, BOP	Male and female
Cooper's hawk	<i>Accipiter cooperii</i>	WL, BOP	Hunted birds
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP	Several
American barn owl	<i>Tyto furcata</i>	BOP	Riparian
Great horned owl	<i>Bubo virginianus</i>	BOP	Riparian
Belted kingfisher	<i>Ceryle alcyon</i>		Riparian
Acorn woodpecker	<i>Melanerpes formicivorus</i>		Colony
Downy woodpecker	<i>Dryobates pubescens</i>		Riparian
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC	Riparian

Common name	Species name	Status ¹	Notes
Northern flicker	<i>Colaptes auratus</i>		Riparian
American kestrel	<i>Falco sparverius</i>	BOP	Just off site
Black phoebe	<i>Sayornis nigricans</i>		Edge
Say's phoebe	<i>Sayornis saya</i>		Just off site
California scrub-jay	<i>Aphelocoma californica</i>		Riparian
Yellow-billed magpie	<i>Pica nuttalli</i>	BCC	Riparian
American crow	<i>Corvus brachyrhynchos</i>		
Common raven	<i>Corvus corax</i>		
Oak titmouse	<i>Baeolophus inornatus</i>	BCC	Riparian
Tree swallow	<i>Tachycineta bicolor</i>		Riparian
Ruby-crowned kinglet	<i>Regulus calendula</i>		Riparian
Bewick's wren	<i>Thryomanes bewickii</i>		Riparian
House wren	<i>Troglodytes aedon</i>		
Marsh wren	<i>Cistothorus palustris</i>		Riparian
Northern mockingbird	<i>Mimus polyglottos</i>		
European starling	<i>Sturnus vulgaris</i>	Non-native	Riparian
Western bluebird	<i>Sialia mexicana</i>		Willow savannah
Hermit thrush	<i>Catharus guttatus</i>		Willow savannah
American pipit	<i>Anthus rubescens</i>		Willow savannah
House finch	<i>Haemorphous mexicanus</i>		
Fox sparrow	<i>Passerella iliaca</i>		Riparian edge
Dark-eyed junco	<i>Junco hyemalis</i>		Edge
White-crowned sparrow	<i>Zonotrichia leucophrys</i>		Edge
Modesto song sparrow	<i>Melospiza melodia mailliardi</i>	SSC3	Edge
Lincoln's sparrow	<i>Melospiza lincolni</i>		Edge
California towhee	<i>Melospiza crissalis</i>		Riparian
Spotted towhee	<i>Pipilo maculatus</i>		Riparian
Western meadowlark	<i>Sturnella neglecta</i>		Willow savannah
Red-winged blackbird	<i>Agelaius phoeniceus</i>		Hundreds
Orange-crowned warbler	<i>Oreothlypis celata</i>		Riparian
Common yellowthroat	<i>Geothlypis trichas</i>		Riparian
Yellow-rumped warbler	<i>Setophaga coronata</i>		Riparian
Desert cottontail	<i>Sylvilagus audubonii</i>		Maybe <i>S. bachmani</i>
California ground squirrel	<i>Otospermophilus beecheyi</i>		Just off site
Coyote	<i>Canis latrans</i>		Multiple
Striped skunk	<i>Mephitis mephitis</i>		Willow savannah
California vole	<i>Microtus californicus</i>		Burrows, trails
Botta's pocket gopher	<i>Thomomys bottae</i>		Many

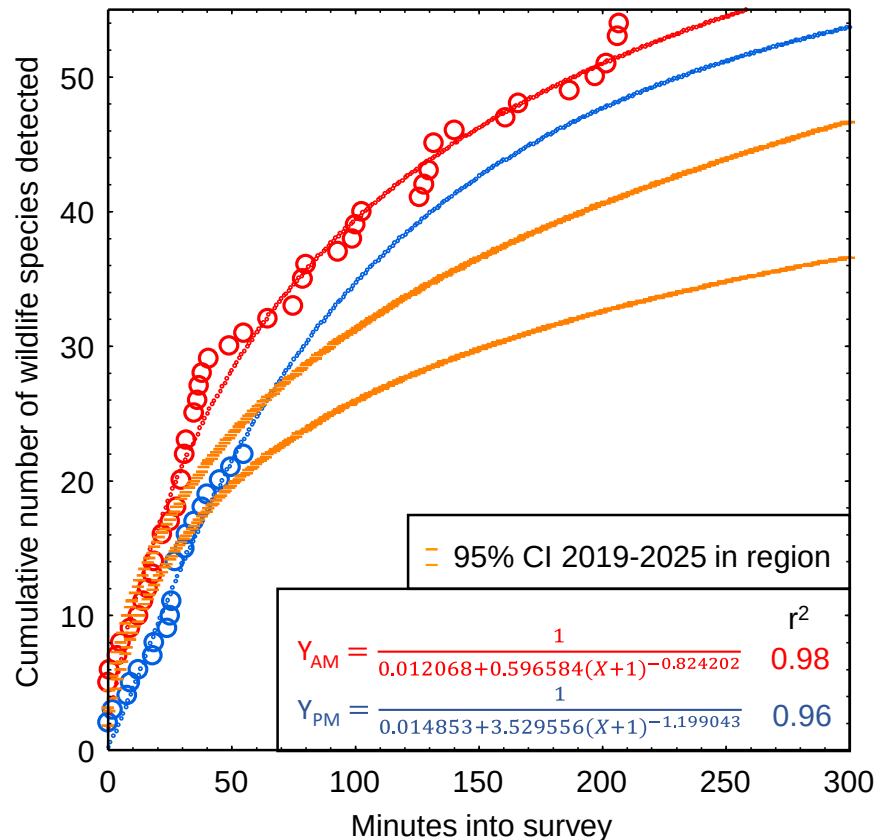
¹ Listed on CDFW's Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as BCC = U.S. Fish and Wildlife Service's Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); SSC_i = California Species of Special Concern with *i* = priorities 1, 2 and 3; WL = CDFW's Taxa to Watch List; BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

ANALYSIS OF RECONNAISSANCE SURVEY DATA

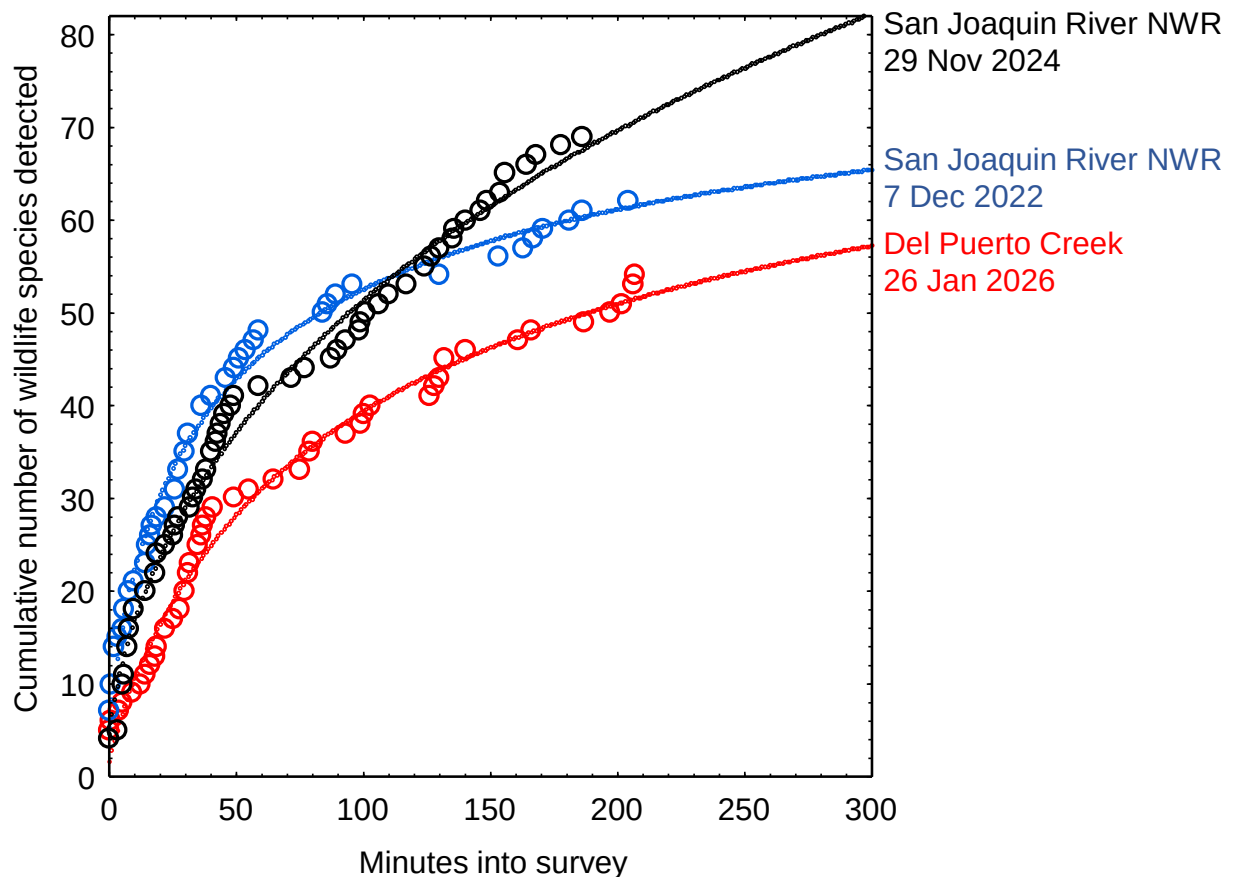
I detected 60 species of vertebrate wildlife, which was a large number for the brevity of my survey effort. All the species in Table 1 would face habitat degradation caused by the project's replacement of the natural with an artificial flow regime in downstream Del Puerto Creek. However, the species of wildlife I detected on the Study Area were not the only species present during my surveys, as there are always species that are not detected. To demonstrate this, I fit a nonlinear regression model to my cumulative number of vertebrate species detected with time into my surveys to predict the number of species that I would have detected with longer surveys or perhaps with additional biologists available to assist. The type of model is a logistic growth model, which reaches an asymptote that corresponds with the theoretical maximum number of vertebrate wildlife species likely to have been detectable during the survey. The model fit to my survey data from the evening of 25 January predicts 67 species of vertebrate wildlife were available for detection, or 45 more than I detected that evening (Figure 1). (This many misses is unsurprising considering my evening survey was only brief in growing darkness.) The model fit to my survey data from the morning of 26 January predicts 83 species of vertebrate wildlife were available for detection, or 33 more than I detected that morning (Figure 1). My rate of species detections was within the 95% confidence interval estimated from many other morning surveys I completed in the Sacramento-San Joaquin Valley, but by 30 minutes it exceeded the upper bound of the 95% CI.

R4-18

Figure 1. Actual and predicted relationships between the numbers of vertebrate wildlife species detected and the elapsed survey time based on my visual-scan surveys on the evening of 25 January 2026 (blue) and the morning of 26 January 2026 (red). Note that the 95% confidence interval (CI; orange) applies only to the morning survey.

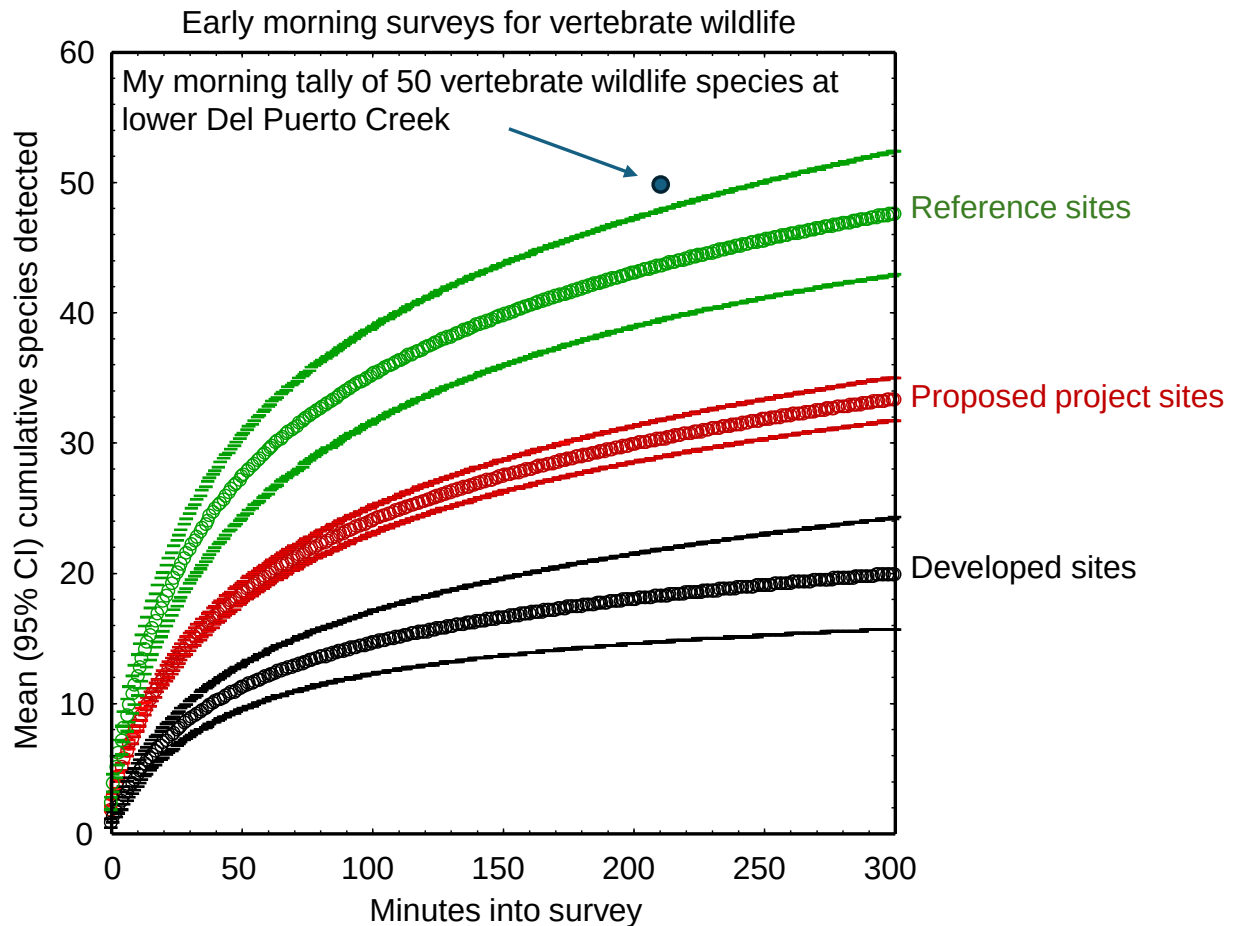


My rate of vertebrate wildlife species detections on the east end of the Study area was nearly equal to my species detection rates on the San Joaquin River National Wildlife Refuge (Figure 2). And compared to hundreds of other reconnaissance surveys, my rate of vertebrate wildlife species detections exceeded the upper bound of the 95% confidence interval estimated from surveys on “reference sites,” which are near-pristine sites with high degrees of ecological integrity (Figure 3). In fact, the European starling was the only non-native species of wildlife I detected of 60 (1.7%) on the Study Area, again indicative of a site with a high degree of ecological integrity. Based on comparative analysis with hundreds of other reconnaissance surveys, my survey data indicate that the wildlife community of the Study Area is inherently very rich in species, and it is ecologically intact.



R4-18
cont'd

Figure 2. My rate of species detection with time into the survey was nearly as high on the Study Area (red circles) as it was during two earlier surveys I completed on the San Joaquin River National Wildlife Refuge (blue and black circles).



R4-18
cont'd

Figure 3. Compared to hundreds of other reconnaissance surveys completed by me and my employee, Noriko Smallwood, my survey rate of wildlife species detections exceeded the upper bound of the 95% confidence interval estimates at what we refer to as “reference sites,” these being near-pristine sites with high degrees of ecological integrity.

Unknown are the identities of the species I missed, but the species that I did and did not detect on 25-26 January composed only a fraction of the species that would occur on the Study Area over the period of a year or longer. This is because many species are seasonal in their occurrence, some require more survey effort because they are highly cryptic, and the members of other species would visit the site only periodically while patrolling large home ranges. Surveys on only two days cannot possibly detect all the species of the local wildlife community.

At least a year’s worth of surveys would be needed to more accurately report the number of vertebrate species that occur at the project site, but I only have my one survey other than what is reported of survey results in the PRDEIR. However, by use of an analytical bridge, a modeling effort applied to a large, robust data set from a research site can predict the number of vertebrate wildlife species that likely make use of the site over the longer term. This analytical bridge draws inference from the pattern of species

detections more than it does from the research site, and I note that the pattern in the rate of species detections is consistent from site to site.

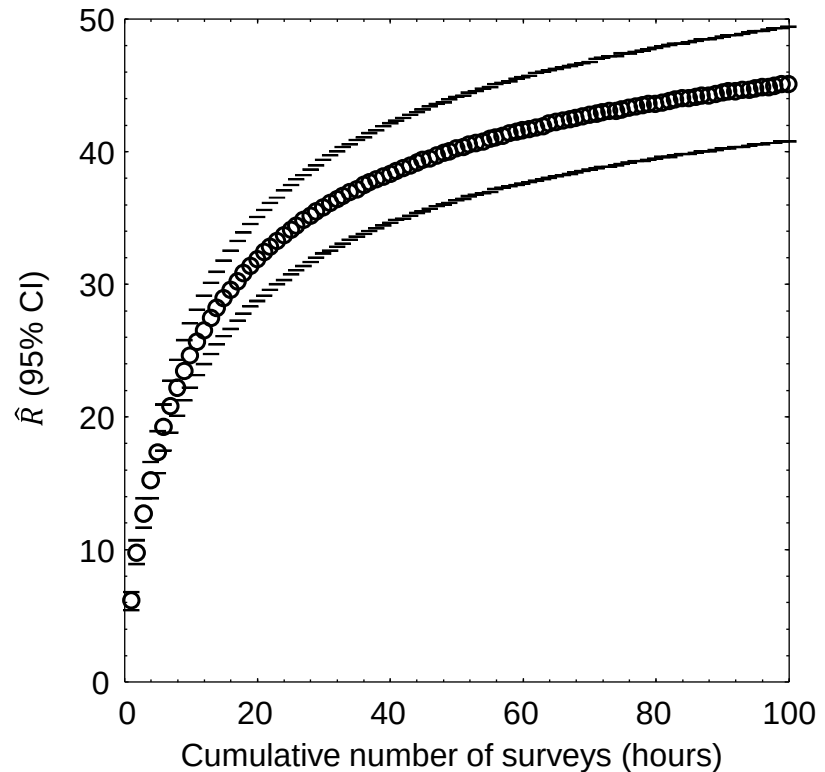
As part of my research, I completed a much larger survey effort across 167 km² of annual grasslands of the Altamont Pass Wind Resource Area, where from 2015 through 2019 I performed 721 1-hour visual-scan surveys, or 721 hours of surveys, at 46 stations. I used binoculars and otherwise the methods were the same as the methods I and other consulting biologists use for surveys at proposed project sites. At each of the 46 survey stations, I tallied new species detected with each sequential survey at that station, and then related the cumulative species detected to the hours (number of surveys, as each survey lasted 1 hour) used to accumulate my counts of species detected. I used combined quadratic and simplex methods of estimation in Statistica to estimate least-squares, best-fit nonlinear models of the number of cumulative species detected regressed on hours of survey (number of surveys) at the station: $\hat{R} = \frac{1}{1/a+b \times (Hours)^c}$, where $\hat{R}$ represented cumulative species richness detected. The coefficients of determination, r^2 , of the models ranged 0.88 to 1.00, with a mean of 0.97 (95% CI: 0.96, 0.98); or in other words, the models were excellent fits to the data.

I projected the predictions of each model to thousands of hours to find predicted asymptotes of wildlife species richness. The mean model-predicted asymptote of species richness was 57 after 11,857 hours of visual-scan surveys among the 46 stations of my research site. I also averaged model predictions of species richness at each incremental increase of number of surveys, i.e., number of hours (Figure 4). On average I would have detected 16.1 species over my first 4.42 hours of diurnal surveys at my research site in the Altamont Pass (4.42 hours to match the 4.42 hours I surveyed during daylight hours at the project site), which composed 28.2% of the predicted total number of species I would detect with a much larger survey effort at the research site. Given the example illustrated in Figure 4, the 60 species I detected after 4.42 hours of daylight survey at the project site likely represented 28.2% of the species to be detected after many more visual-scan surveys over another year or longer. With many more repeat surveys through the year, I would likely detect $60/0.282 = 213$ species of vertebrate wildlife detectable during daylight surveys at the site. Assuming my ratio of special-status to non-special-status species was to hold through the detections of all 213 predicted species, then continued daytime surveys would eventually detect 46 special-status species of vertebrate wildlife.

R4-18
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Because my prediction of 213 species of vertebrate wildlife, including 46 special-status species, is derived from daytime visual-scan surveys, and would detect few nocturnal mammals such as bats, the true number of species composing the wildlife community of the site must be larger. My reconnaissance surveys should serve only as a starting point toward characterization of the site's wildlife community, but they certainly cannot alone inform of the inventory of species that use the site. Nevertheless, the large number of species I predict at the project site is indicative of a relatively species-rich wildlife community that warrants a serious survey effort.

Figure 4. Mean (95% CI) predicted wildlife species richness, $\hat{R}$, as a nonlinear function of hour-long survey increments across 46 visual-scan survey stations across the Altamont Pass Wind Resource Area, Alameda and Contra Costa Counties, 2015–2019. Note that the location of the study is largely irrelevant to the utility of the graph to the interpretation of survey outcomes at the project site. It is the pattern in the data that is relevant, because the pattern is typical of the pattern seen elsewhere.



EXISTING ENVIRONMENTAL SETTING

The first step in analysis of potential project impacts to biological resources is to accurately characterize the existing environmental setting, including the wildlife community and any key ecological relationships and known and ongoing threats to special-status species. A reasonably accurate characterization of the environmental setting can provide the baseline against which to analyze potential project impacts. For these reasons, characterization of the environmental setting, including the project site's regional setting, is one of the CEQA's essential analytical steps. Methods to achieve this first step typically include (1) surveys of the site for biological resources, and (2) reviews of literature, databases and local experts for documented occurrences of special-status species. In the case of the proposed project, these steps were taken, though not with sufficient rigor, and not interpreted in furtherance of an accurate characterization of the wildlife community.

R4-19

To the CEQA's primary objective to disclose potential environmental impacts of a proposed project, the analysis should be informed of which biological species are known to occur at the proposed project site, which special-status species are likely to occur, as well as the limitations of the survey effort directed to the site. Analysts need this information to characterize the environmental setting as a basis for opining on, or predicting, potential project impacts to biological resources. In the case of this project, however, more surveys were needed, as were more appropriate interpretations of the survey findings.

Before I comment on the specifics of the survey effort, I need to clarify a mischaracterization of field surveys that appears as a footnote in the PRDEIR. According to footnote 2 on p. 3.4-10, in response to criticism of the FEIR's overall biological resource analysis, the Court of Appeal "found that the District had provided an ample justification for relying on data base searches and "reconnaissance level field studies" in lieu of protocol-level surveys. As the FEIR explained, "[p]rotocol level surveys would be conducted during the appropriate season and in accordance with accepted methods prior to the start of construction, and preconstruction surveys would be conducted during the appropriate time frame as described in the mitigation measures presented in the Draft EIR prior to initial ground disturbing activities associated with project construction." The mischaracterization here is a conflation of all protocol-level surveys as serving the same purpose. In fact, some protocol-level surveys are referred to as detection surveys, and some are referred to as preconstruction, take-avoidance surveys, and they serve very different purposes. Preconstruction surveys are intended as a mitigation strategy to avoid direct take by salvaging plants or animals that would be crushed by heavy equipment or drowned by inundation. These surveys are intended to be implemented just prior to the initiation of construction activities. An example would be the Swainson's hawk survey protocol (CDFW 2000).

Detection surveys, however, are designed to give survey personnel a reasonable chance of detecting the subject species if the species is indeed present, and to otherwise provide evidence of absence based on negative findings despite having followed the protocol. Detection surveys are intended to precede the public circulation of the environmental review document, because they are intended to add to the accuracy of the characterization of the environmental setting and to disclose potential project impacts. To implement detection surveys after EIR certification and just prior to construction activities would be to violate the protocols, because the timing would be inconsistent with the intended purpose of the surveys. An example would be the CDFW (2012) survey guidelines for burrowing owls, which specifies that habitat assessment and breeding-season detection surveys are to be completed first for the purpose of public disclosure, and for preconstruction surveys to be completed last, just prior to construction. Another would be CDFW's (2018) rare plant survey protocol, which states "These protocols are meant to help people meet California Environmental Quality Act (CEQA) requirements for adequate disclosure of potential impacts to plants and sensitive natural communities."

R4-19
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When it is appropriate to implement a protocol-level survey depends on the intended purpose of the protocol. The intended purpose of the protocol should be guided by what information is needed to achieve CEQA's primary objectives. Detection surveys are needed to accurately characterize the existing environment and to disclose potential impacts on plants and wildlife, whereas preconstruction surveys are needed to minimize the project's impacts on the environment. The PRDEIR misrepresents these two types of protocol-level surveys as the same, but they are very different in their intended purpose.

Reconnaissance surveys differ from both detection surveys and preconstruction surveys in three important ways. First, there are no protocols for reconnaissance surveys in the case of wildlife, and not really in the case of plants either. The CDFW's (2018) rare plant

survey protocol is titled as a guidelines document for reconnaissance surveys, but essentially it is more of a detection survey protocol. Second, reconnaissance surveys are more exploratory than are detection surveys or preconstruction surveys, both of which are more directed to particular species. Third, reconnaissance surveys often serve as habitat assessments, but without clear methods or standards of assessment. Habitat assessments performed as reconnaissance surveys are sound when the subject species are detected on site, but otherwise they are largely speculative for species that were not detected. And again, the failure to detect a species during a reconnaissance survey cannot serve as evidence of absence of the species; only the negative findings of detection surveys that met or exceeded the minimum standards of their protocols can serve as evidence of absence.

R4-19
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A common shortcoming of reconnaissance surveys as they have been recently practiced is that their results lack adequate contextualization to survey methods and survey effort. Another shortcoming has been the lack of comparative analysis such as comparing the findings at a project site to the findings of reconnaissance surveys completed elsewhere. As a hypothetical example, the report of a reconnaissance survey that detected nine species of wildlife is nearly meaningless¹ without relating these nine species to the survey effort or to what has been found elsewhere based on similar survey efforts. Also meaningless would be the report of having not detected a given species without having reported the likelihood of detection of the species after considering the survey effort and the probability of detecting the species if it was truly present. Lacking protocols, reconnaissance surveys must be reported carefully and in context of the survey effort and what should be expected of the results.

For the above reasons, reconnaissance surveys must be guided by CEQA's objectives and best scientific practice. The survey needs to be well described, including its objective(s), and reporting of who did what and when. Survey start times need to be reported because time of day strongly influences the number of species detected and which species are detected. Survey duration needs to be reported, because duration strongly affects the number of species detected. Survey findings need to be compared to the findings from other surveys of similar methods and effort so that results can be appropriately interpreted.

Environmental Setting informed by Field Surveys

I could find no biological resources technical report in support of the PRDEIR, but this unusual omission can be remedied by inclusion in the EIR all the information that would normally be reported in the technical report. At §15147, the CEQA Guidelines require "The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public." In the case of this project, it is my opinion that the PRDEIR insufficiently reports on the reconnaissance survey that was implemented on the Study Area.

R4-20

¹ The only meaning of any value of these 9 species detections would be that the site provides habitat for these 9 species.

According to the PRDEIR (p. 3.4-10), “A comprehensive reconnaissance-level survey of the study area was conducted by ICF biologists on July 14, 2025. ... entire study area was surveyed on foot” to assess Del Puerto Creek’s overall wildlife habitat value. However, the PRDEIR fails to report how wildlife habitat value was assessed, or who exactly did the survey. There is no report of what time the survey started or how long it lasted, nor is there a report of how many biologists participated or to what degree they were qualified. For the survey to have been “comprehensive” in covering 105.59 acres along 12.2 km of complex vegetation, a very large number of biologists would have been necessary. The very small portion of the Study Area I surveyed could not have been adequately surveyed in a day, no matter how many biologists were involved. In fact, wildlife detections tend to decline in the presence of more than one or two biologists, as wildlife become less conspicuous in the presence of more people. Overall, the PRDEIR fails to adequately report on the reconnaissance survey, and its claim that a complex Study Area was comprehensively surveyed on one day is impossible for me to believe.

Another shortfall of the PRDEIR’s reporting is its failure to report a list of species of wildlife that were detected during the survey. The PRDEIR notes the detections of American beaver, American bullfrog, Botta’s pocket gopher, and California ground squirrel, but only in passing. Were no other species detected? Such an outcome would be impossible; I detected 15 times this number of species on a small portion of the Study Area over only 4.42 hours. Not only does the PRDEIR fail to report what the biologists saw of wildlife on the Study Area, but it inadequately reports to the survey’s stated objective. Instead of reporting determinations of wildlife habitat value, the PRDEIR generally asserts that the Study Area is contaminated by acutely toxic accumulations of pesticides, and lower Del Puerto Creek has undergone multiple types of human disturbance. These assertions speculatively imply that wildlife habitat value must be low, but the PRDEIR provides no evidence that these general conditions have had any effect on the species of wildlife that potentially rely on the Study Area for reproduction and survival. These assertions cannot replace the need for reporting what was seen of wildlife during the reconnaissance survey. The PRDEIR fails to report on what are supposed to be the most meaningful findings of a reconnaissance survey, and that is what was found of wildlife species as a result of the survey.

R4-20
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For example, instead of reporting the species of wildlife detected during the survey, the PRDEIR (p. 3.4-2) reports, “In general, the upland areas beyond the narrow riparian strip of Del Puerto Creek are so altered by current and historic agriculture activities (dry row crops, orchards, vineyards) that they do not provide potential habitat for special status terrestrial wildlife.” This finding, however, is factually inaccurate, as I and other biologists have many times documented special-status species of wildlife making use of agriculture. Additionally, most of the Study Area consists of natural vegetation complexes and only small portions of it are in agriculture. The purpose of a reconnaissance survey is not to speculate on why wildlife should not occur on the Study Area, but rather to detect and report the species that are present and readily detectable, and otherwise to estimate the number of species that were not detected.

The reconnaissance survey of 14 July 2025 was inadequate for detecting many special-status species of plants, as it did not achieve the minimum standards of the CDFW (2018) survey guidelines for rare plants. Multiple surveys would have been needed by qualified botanists through the blooming periods of potentially occurring rare plants, and visits would have been needed to reference populations. The reconnaissance survey cannot support determinations of absence of rare plants.

The PRDEIR is unclear about how the field surveys contributed to the map of vegetation that appears in Figures 3.4-1 to 3.4-3. The PRDEIR explains that the map was made from interpretation of aerial imagery, available datasets, and “field-level surveys,” but it does not identify which of the two field surveys contributed to the map or how the contribution was made. If the field survey(s) was used to create boundaries between vegetation types, then the effort would probably have taken days due to the complexity of the vegetation and the difficulty of negotiating it. If the field survey(s) was used to ground-truth the accuracy of vegetation classifications or their boundaries, then the PRDEIR should have reported on observed error rates or levels of accuracy. The PRDEIR should have assigned or at least discussed the expected levels of spatial and temporal uncertainty in vegetation classifications and their boundaries, as the hard boundaries depicted in the Figures are unrealistic. This is all important because according to the PRDEIR, the analysis of special-status species occurrence likelihoods partly relied on habitat associations in which each species is linked to classes of vegetation in which the analyst believes each species typically occurs, and then the analyst determines whether the associated vegetation is present on the Study Area. If the vegetation is inaccurately mapped, then the habitat association begins from an unsound vegetation baseline.

R4-20
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According to the PRDEIR (p. 3.4-21), “Given the limited scope of potential impacts and the dominance of generalist species in the study area, the reconnaissance-level survey adequately characterizes biological resources and informs the impact analysis provided herein.” However, the PRDEIR reports only four of the species of wildlife detected by ICF, so the quoted conclusion lacks support in evidence. Moreover, my own survey findings lead to an opposite conclusion, which is that the Study Area supports many special-status species of wildlife, and that only one or two reconnaissance surveys are far from adequate for accurately characterizing the wildlife community as part of the existing environmental setting.

Environmental Setting informed by Desktop Review

The purpose of literature and database reviews and of consulting with local experts is to inform the field survey, and to augment interpretation of its outcome. Analysts need this information to identify which species are known to have occurred at or near the project site, and to identify which other special-status species could conceivably occur at the site due to geographic range overlap and migration flight paths. In the case of this project, the desktop review was incomplete, and the review that was completed minimized the occurrence likelihood determinations of special-status species.

R4-21

The PRDEIR reports having queried the California Natural Diversity Data Base (CNDDDB), eBird and iNaturalist “to develop lists of special-status species and other sensitive biological resources that could be present within a 15-mile radius of the study area. Species were considered potentially present within the study area if they were known to occur within a 5-mile radius of the study area, or if potentially suitable habitat for the species were known to be present in the study area.” However, these source are positive-sighting databases that rely on volunteer reporting by biologists who gained access to whatever properties they are reporting from. These types of databases are useful for confirming a species’ presence, but not for confirming a species’ absence. As noted by the CNDDDB, *“The CNDDDB is a positive sighting database. It does not predict where something may be found. We map occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present.”* The PRDEIR misuses the CNDDDB, eBird and iNaturalist.

The CNDDDB relies entirely on volunteer reporting from biologists who were allowed access to whatever properties they report from. Many properties have never been surveyed by biologists. Many properties have been surveyed, but the survey outcomes never reported to the CNDDDB. Many properties have been surveyed multiple times, but not all survey outcomes reported to the CNDDDB. Furthermore, the CNDDDB is interested only in the findings of special-status species, which means that species more recently assigned special status will have been reported many fewer times to the CNDDDB than were species assigned special status since the inception of the CNDDDB. Therefore, occurrence records in the CNDDDB are most abundant for species assigned special status decades ago, but fewest for species only recently assigned special status. And because negative findings are not reported to the CNDDDB, the CNDDDB is also inappropriate as a basis for weighing occurrence likelihoods such as absent, not expected, unlikely, low, moderate or high. Whereas the CNDDDB can be confirmatory of species presence, it cannot support absence determinations or assignments of low likelihood of occurrence. And again, the screening out of a species due to lack of occurrence records in the CNDDDB is the same as an absence determination, and this step is being taken without adequate support of appropriate field surveys.

R4-21
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The PRDEIR also cites lack of habitat as a basis for screening out species from the initial list to be analyzed for occurrence likelihoods. However, as noted earlier, whether a site provides habitat is most certainly determined by detection of the species on the site. A site can still provide habitat to species not detected by a survey, but habitat assessments directed to such species are uncertain unless a compelling case can be made for lack of habitat. When screening species for inclusion on the initial list of species to be assessed for occurrence likelihoods, the precautionary principle in risk analysis involving rare or precious resources such as special-status species would be to err on the side of caution (see National Research Council 1986). Unfortunately, the PRDEIR does not adopt a cautious approach.

In my assessment based on a database review and my site visit, 132 special-status species of wildlife are known to occur near enough to the Study Area to warrant analysis

of occurrence potential (Table 2). Not all these species should be expected to occur on the Study Area, but each of them should be given a closer look to determine occurrence likelihoods and whether additional surveys are needed, or implementation of detection surveys, or whether it would be reasonable to assume presence. Of these 132 species, 14 were recorded on the Study Area, and another 58 (44%) species have been documented within 1.5 miles of the Study Area (Very close), another 6 (5%) between 1.5 and 4 miles (Nearby), and another 46 (35%) between 4 to 30 miles (In region). Most (59%) of the species in Table 2 have been reportedly seen within 4 miles of the Study Area. The Study Area therefore supports at least 14 special-status species of wildlife, and it carries the potential for supporting many more special-status species of wildlife based on the proximities of recorded occurrences. Evidence certainly suggests that habitat assessments are needed for these species.

The PRDEIR considers the occurrence likelihoods of only 22 (17%) of the special-status species listed in Table 2, which means that 110 (83%) of the special-status species in Table 2 were screened out of the analysis in the first step of the desktop review. Of the 22 species assessed, the PEDEIR determines three of them to have no possibility of occurrence. Considering the scarcity of large mammals as forage for condors, I would tend to agree that the potential for condor occurrence is low. However, I cannot agree with the PRDEIR's determinations that riparian brush rabbit and San Joaquin Valley woodrat carry no potential for occurrence, and in fact I believe there is a very good chance for a serious survey effort to detect these species on the Study Area.

R4-21
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The PRDEIR determines that nine of the special-status species in Table 2 have only a low likelihood of occurrence, but I cannot agree with these determinations. Occurrences of burrowing owl and tricolored blackbird have been documented very close to the Study Area, and the PRDEIR reports that California ground squirrels were detected on the Study Area. The presence of California ground squirrels greatly increases the likelihood of occurrence of burrowing owls, and it is one of the factors in the CDFW (2012) survey guidelines that would warrant the implementation of breeding-season detection surveys. As for the other species assigned low occurrence likelihoods, occurrence records are near enough to warrant focused surveys.

The PRDEIR determines that another nine of the special-status species in Table 2 have a moderate likelihood of occurrence. I detected one of these species – white-tailed kite – a pair of which were copulating on the Study Area and are therefore likely to breed on the Study Area later this spring. Another of these species assigned a moderate likelihood of occurrence was potentially detected on the Study Area. The PRDEIR reports that five exit holes were found on elderberry shrubs. Such exit holes would be indicative of Valley elderberry longhorn beetle. What species might have made these exit holes if not Valley elderberry longhorn beetle? It would seem that focused surveys are warranted.

Of the 110 special-status species the PRDEIR screens out of its analysis of occurrence likelihoods, I detected 12 on a small portion of the Study Area, and someone else documented another one. Whether any of these species or any other special-status species were detected by ICF's reconnaissance survey remains unknown because the PRDEIR fails to report more than four species of vertebrate wildlife that were detected.

But of these species neglected by the PRDEIR, I detected northern harrier, Cooper's hawk, cackling goose, oak titmouse, Nuttall's woodpecker, and yellow-billed magpie, among others. Half (54) the special-status species the PRDEIR screens out of further analysis have been documented within 1.5 miles of the Study Area, such as bald eagle, northern yellow warbler, grasshopper sparrow, yellow-headed blackbird, loggerhead shrike, short-eared owl, olive-sided flycatcher, purple martin, yellow-breasted chat, willow flycatcher, bank swallow, and American badger. The PRDEIR is negligent for not considering the occurrence likelihoods of any of these species.

Even beyond the initial screening step to develop a list of special-status species occurrence likelihoods, the PRDEIR's analysis is flawed in its use and interpretation of CNNDDB records. At p. 3.4-17, the PRDEIR reports for white-tailed kite, "There are no CNDDDB occurrences within 5 miles of the study area. The closest CNDDDB occurrence is approximately 23 miles from the study area (CDFW 2025)." Unreported here is the fact that eBird includes occurrence records as close as 900 m from the Study Area. The PRDEIR reports that eBird was used in the analysis, but apparently it was not used for analysis of white-tailed kite occurrence likelihood.

Knowing that occurrence records exist of white-tailed kites within 1.5 miles of the project site, my survey effort afforded me a 12% likelihood of detection of white-tailed kite (Figure 5). I detected white-tailed kite, but had I surveyed on another four days the odds are that I would have missed the species on every one of those surveys. My survey of 26 January beat the odds. Unfortunately, I cannot predict ICF's likelihood of detection of white-tailed kite because the PRDEIR does not disclose its survey duration, but it is likely that ICF would have failed to detect white-tailed kite despite knowing that white-tailed kites are confirmed present. Presumably, ICF did not detect white-tailed kite, because the PRDEIR (p. 3.4-21) reports, "No special-status species were detected." But again, this finding considered in light of my findings goes to show that a single reconnaissance survey is insufficient for determining a species' absence.

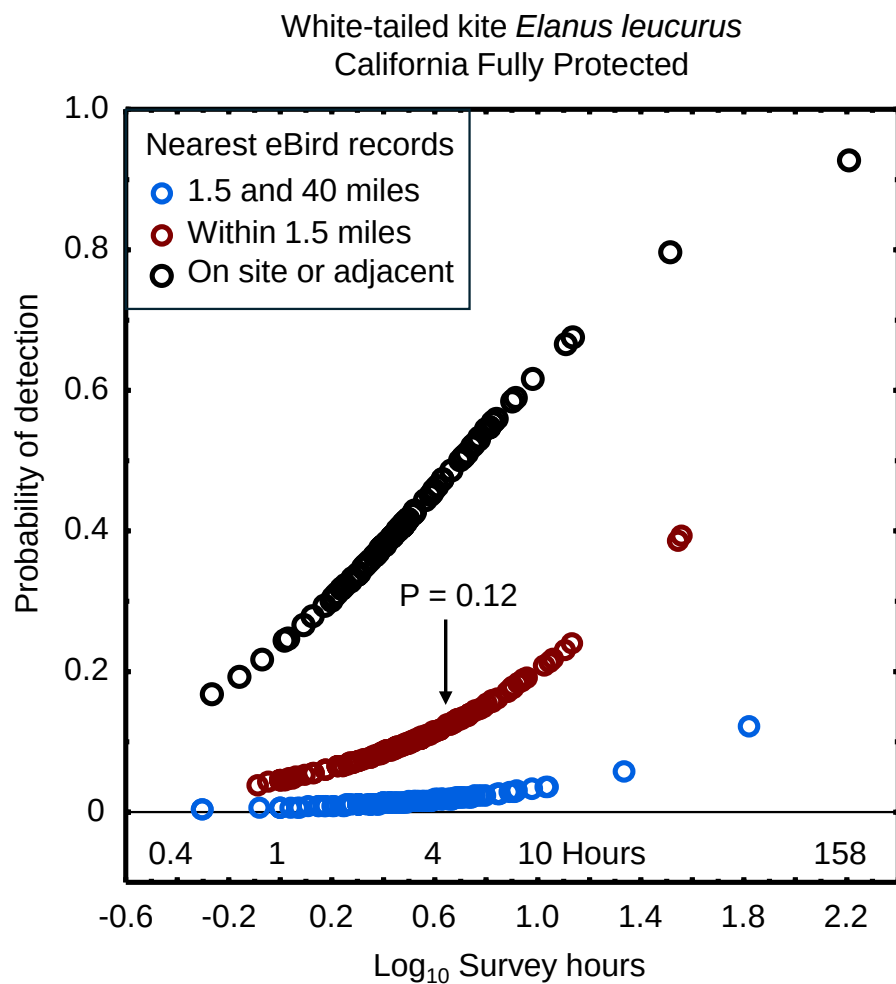
R4-21
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An important point to be taken from Figure 5 is that in addition to confirming the presence of a species when presence has indeed been reported into the databases, an appropriate use of occurrence records is to estimate detection probabilities of reconnaissance surveys for the purpose of either to (1) establish the survey effort needed to detect the species if it is indeed present, or (2) predict the likelihood of detection of a survey of known duration. An important outcome of the models I fit to the data in Figure 5 is that the absence of white-tailed kites is not predicted by any of the proximity domains of reported occurrences, not even by the records from up to 40 miles away. Many species with distant occurrence records inevitably occur on the Study Area, but it would take more than a day of reconnaissance survey to detect their presence.

Regarding San Joaquin kit fox, the PRDEIR reports that one or more ICF biologists observed a small canid on the Study Area before dismissing the observation because its identification to species was uncertain, it was acting as though it was injured, and habitat on the Study Area is limited, whatever that means. These explanations for dismissing the significance of the observation are inadequate, and they are inconsistent with the precautionary principle (see my earlier comment on this principle). The

observation warrants the presumption of presence of San Joaquin kit fox or the implementation of focused surveys to definitively detect the species.

Figure 5. Probability of detection of white-tailed kite as a function of survey effort and proximity of occurrence records to a project site. The arrow points to my survey effort applied to the class of occurrence records within 1.5 miles of the Study Area.



Regarding monarch, the PRDEIR (p. 3.4-14) explains, “Given the absence of known milkweed in the study area, it is unlikely that the area supports monarch breeding. While the study area may offer marginal value as a migratory corridor, the limited floral resources and the fragmented condition of riparian and grassland habitats in the study area suggest that its role in supporting monarchs is likely minimal and transient in nature.” However, monarchs do not require milkweed for subsistence (<https://www.fws.gov/story/spreading-milkweed-not-myths>), nor does the PRDEIR provide any evidence that monarchs on the Study Area would be transients. And anyway, what is a transient if not a migrant? Successful migration is just as important to monarchs as successful breeding, as the latter cannot happen without the former. According to the conservation strategy of the Western Monarch Butterfly Conservation Plan 2016-2069, the strategy is to “Protect and restore overwintering groves, including development of site-specific grove management plans; and conserve monarch breeding and migratory habitats in natural lands, urban and industrial, rights-of-way, and agricultural habitat sectors.” If monarchs migrate along Del Puerto Creek, then Del Puerto Creek is important to the current Western Monarch Butterfly Conservation Plan.

R4-21
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Mischaracterization of the Wildlife Community

The PRDEIR reports on field surveys and desktop review having been performed, but the reconnaissance survey of 14 July 2025 could not have comprehensively covered the Study Area as the PRDEIR claims, because the Study Area is composed of too many acres of complex vegetation covers along a 12.2-km reach of stream. Field survey results are scarcely reported and otherwise not interpreted with any context to survey effort or to survey results from elsewhere, and the desktop review starts with an inappropriately small pool of special-status species after misusing the CNDDDB. The PRDEIR often resorts to speculation in its analyses of occurrence likelihoods, having not completed surveys appropriate to bats and fossorial small mammals or even to species more detectable in daytime reconnaissance surveys, and having committed too little survey effort overall. Speculated habitat assessments are highly uncertain, which is inappropriate for precious or rare resources such as special-status species (National Research Council 1986). The true wildlife community remains to be described with reasonable accuracy. Without a more accurate characterization of the wildlife community, the basis is inadequate for predicting impacts and formulating appropriate mitigation strategies.

R4-22

CHANGED CIRCUMSTANCES ON THE RESERVOIR PROJECT FOOTPRINT

Since the certification of the Del Puerto Canyon Reservoir EIR, 23 species have been either assigned special-status or elevated in special status (Table 3). These species include northwestern pond turtle, burrowing owl, northern harrier, wrentit, California thrasher, Bullock's oriole and others. Seven of these species have been documented on the project site since EIR certification. One has become a California Threatened species, another has become a Candidate for listing under the federal Endangered Species Act, two have become Candidates for listing under the California Endangered Species Act, and the others have been named to the U.S. Fish and Wildlife Service's list of Birds of Conservation Concern.

R4-23

Since the certification of the Del Puerto Canyon Reservoir EIR, three special-status species have been documented on the Reservoir site that were not previously documented there (Table 3). Nor were these species analyzed for occurrence likelihoods or potential impacts in the DEIR. These species include Monarch, ferruginous hawk, and Bell's sparrow. The Monarch is a Candidate for listing under the federal Endangered Species Act, and the two other species are on CDFW's Taxa to Watch List.

Considering that circumstances have changed for 26 special-status species since the 2020 EIR, a revised draft EIR is warranted for the footprint of the Del Puerto Canyon Reservoir Project.

Table 2. Comparison of PRDEIR determinations of occurrence likelihoods of special-status species of vertebrate wildlife on the Study Area to proximity levels of eBird/iNaturalist occurrence records (<https://eBird.org>, <https://www.inaturalist.org>) and to my (KSS) on-site survey findings. Database occurrence records are categorized as Very close = within 1.5 miles of the Study Area, Nearby = between 1.5 and 4 miles, and In region = between 4 and 30 miles, and In range = the Study Area is within the species' geographic range. The year is reported for recent records. Entries in **bold** indicate my own detections.

Common name	Species name	Status ¹	Occurrence potentials	
			PRDEIR	Database records / KSS site visit
Midvalley fairy shrimp	<i>Branchinecta mesovallensis</i>			In range
Conservancy fairy shrimp	<i>Branchinecta conservatio</i>	FE	Low	In range
Longhorn fairy shrimp	<i>Branchinecta longiantenna</i>	FE		In region
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	FT	Low	In region
Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	FE	Low	In region
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	FT	Moderate	In region
Monarch	<i>Danaus plexippus</i>	FC	Moderate	In region
Crotch's bumble bee	<i>Bombus crotchii</i>	CCE	Low	In region
California tiger salamander	<i>Ambystoma californiense</i>	FT, CT, WL	Low	In region
Western spadefoot	<i>Spea hammondi</i>	FC, SSC	Low	In region
Foothill yellow-legged frog	<i>Rana boylei</i>	CT, SSC	Moderate	In region
California red-legged frog	<i>Rana draytonii</i>	FT, SSC	Moderate	In region
Northwestern pond turtle	<i>Actinemys marmorata</i>	FC, SSC	Moderate	Nearby
Coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC		In region
Northern California legless lizard	<i>Anniella pulchra</i>	SSC		In region
California glossy snake	<i>Arizona elegans occidentalis</i>	SSC		In region
San Joaquin coachwhip	<i>Masticophis flagellum ruddocki</i>	SSC		In region
Alameda whipsnake	<i>Coluber lateralis euryxanthus</i>	FT, CT		In region
Giant gartersnake	<i>Thamnophis gigas</i>	FT, CT		In region
Brant	<i>Branta bernicla</i>	SSC2		Very close
Cackling goose (Aleutian)	<i>Branta hutchinsii leucopareia</i>	WL		Very close 2026/ On site
Redhead	<i>Aythya americana</i>	SSC2		Very close 2025
Barrow's goldeneye	<i>Bucephala islandica</i>	SSC		Very close 2025

R4-23
cont'd

Common name	Species name	Status ¹	Occurrence potentials	
			PRDEIR	Database records / KSS site visit
Western grebe	<i>Aechmophorus occidentalis</i>	BCC		Very close 2025
Clark's grebe	<i>Aechmophorus clarkii</i>	BCC		Very close 2025
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	FT, CE	Low	In region
Black swift	<i>Cypseloides niger</i>	SSC3, BCC		In region
Vaux's swift	<i>Chaetura vauxi</i>	SSC2		Nearby
Calliope hummingbird	<i>Selasphorus calliope</i>	BCC		In region
Rufous hummingbird	<i>Selasphorus rufus</i>	BCC		Very close 2022
Allen's hummingbird	<i>Selasphorus sasin</i>	BCC		In region
Lesser sandhill crane	<i>Antigone c. canadensis</i>	SSC3		In region
Greater sandhill crane	<i>Antigone canadensis tabida</i>	CT, CFP		In region
Mountain plover	<i>Charadrius montanus</i>	SSC2, BCC		In region
Snowy plover	<i>Charadrius nivosus</i>	BCC		Very close 2022
Long-billed curlew	<i>Numenius americanus</i>	WL		Very close 2026
Marbled godwit	<i>Limosa fedoa</i>	BCC		Very close 2022
Black turnstone	<i>Arenaria melanocephala</i>	BCC		Very close 2022
Red knot	<i>Calidris canutus</i>	BCC		Very close 2025
Pectoral sandpiper	<i>Calidris melanotos</i>	BCC		Very close 2022
Short-billed dowitcher	<i>Limnodromus griseus</i>	BCC		Very close 2025
Lesser yellowlegs	<i>Tringa flavipes</i>	BCC		Very close 2025
Willet	<i>Tringa semipalmata</i>	BCC		Very close 2022
Franklin's gull	<i>Leucophaeus pipixcan</i>	BCC		Very close 2025
Western gull	<i>Larus occidentalis</i>	BCC		Very close
California gull	<i>Larus californicus</i>	BCC, WL		Very close 2026
California least tern	<i>Sternula antillarum browni</i>	FE, CE, CFP		Very close
Black tern	<i>Chlidonias niger</i>	SSC2, BCC		Very close 2022
Common loon	<i>Gavia immer</i>	SSC		Very close
Double-crested cormorant	<i>Phalacrocorax auritus</i>	WL		Very close 2026/ On site
American white pelican	<i>Pelicanus erythrorhynchos</i>	SSC1		Very close 2026
Least bittern	<i>Ixobrychus exilis</i>	SSC2		Nearby

R4-23
cont'd

Common name	Species name	Status ¹	Occurrence potentials	
			PRDEIR	Database records / KSS site visit
White-faced ibis	<i>Plegadis chihi</i>	WL		Very close 2025
Snowy egret	<i>Egretta thula</i>			Very close 2026
Black-crowned night heron	<i>Nycticorax nycticorax</i>			Very close
Great egret	<i>Ardea alba</i>			Very close 2026
Great blue heron	<i>Ardea herodias</i>			Very close 2026
California condor	<i>Gymnogyps californianus</i>	FE, CE, CFP	None	In region
Turkey vulture	<i>Cathartes aura</i>	BOP		Very close 2025
Osprey	<i>Pandion haliaetus</i>	WL, BOP		Very close 2022
White-tailed kite	<i>Elanus luecurus</i>	CFP, BOP	Moderate	Very close 2026/ On site
Golden eagle	<i>Aquila chrysaetos</i>	BGEPA, CFP, BOP, WL	Moderate	Very close 2025
Northern harrier	<i>Circus cyaneus</i>	BCC, SSC3, BOP		Very close 2025/ On site
Sharp-shinned hawk	<i>Accipiter striatus</i>	WL, BOP		Very close 2025
Cooper's hawk	<i>Accipiter cooperii</i>	WL, BOP		Very close 2023/ On site
Bald eagle	<i>Haliaeetus leucocephalus</i>	CE, BGEPA, BOP		Very close 2025
Red-shouldered hawk	<i>Buteo lineatus</i>	BOP		Very close 2026
Swainson's hawk	<i>Buteo swainsoni</i>	CT, BOP	High	Very close 2025
Red-tailed hawk	<i>Buteo jamaicensis</i>	BOP		On site 2026/ On site
Ferruginous hawk	<i>Buteo regalis</i>	WL, BOP		Very close
Rough-legged hawk	<i>Buteo lagopus</i>	BOP		Very close
American barn owl	<i>Tyto furcata</i>	BOP		Very close 2024/ On site
Western screech-owl	<i>Megascops kennicotti</i>	BOP		Very close
Great horned owl	<i>Bubo virginianus</i>	BOP		Very close 2025/ On site
Burrowing owl	<i>Athene cunicularia</i>	BCC, SSC2, BOP, CCE	Low	Very close
Long-eared owl	<i>Asio otus</i>	BCC, SSC3, BOP		In region
Short-eared owl	<i>Asio flammeus</i>	BCC, SSC3, BOP		Very close
Northern saw-whet owl	<i>Aegolius acadicus</i>	BOP		Nearby
Northern pygmy-owl	<i>Glaucidium gnoma</i>	BOP		Nearby
Lewis's woodpecker	<i>Melanerpes lewis</i>	BCC		Very close
Nuttall's woodpecker	<i>Picoides nuttallii</i>	BCC		Very close 2025/ On site

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cont'd

Common name	Species name	Status ¹	Occurrence potentials	
			PRDEIR	Database records / KSS site visit
American kestrel	<i>Falco sparverius</i>	BOP		Very close 2026/ On site
Merlin	<i>Falco columbarius</i>	WL, BOP		Very close 2025
Peregrine falcon	<i>Falco peregrinus</i>	BOP		Very close 2026
Prairie falcon	<i>Falco mexicanus</i>	WL, BOP		Very close 2025
Olive-sided flycatcher	<i>Contopus cooperi</i>	BCC, SSC2		Very close
Willow flycatcher	<i>Empidonax trailii</i>	CE		Very close
Vermilion flycatcher	<i>Pyrocephalus rubinus</i>	SSC2		In region
Least Bell's vireo	<i>Vireo bellii pusillus</i>	FE, CE	Moderate	In region
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC2		Very close 2026
Yellow-billed magpie	<i>Pica nuttalli</i>	BCC		Very close 2026/ On site
Oak titmouse	<i>Baeolophus inornatus</i>	BCC		Very close 2026/ On site
California horned lark	<i>Eremophila alpestris actia</i>	WL		On site, Very close 2025
Bank swallow	<i>Riparia riparia</i>	CT		Very close 2022
Purple martin	<i>Progne subis</i>	SSC2		Very close
Wrentit	<i>Chamaea fasciata</i>	BCC		Very close
California thrasher	<i>Toxostoma redivivum</i>	BCC		Very close 2023
Cassin's finch	<i>Haemorhous cassinii</i>	BCC		In region
Lawrence's goldfinch	<i>Spinus lawrencei</i>	BCC		Very close 2022
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC2		Very close 2025
Alameda song sparrow	<i>Melospiza melodia pusillula</i>	BCC, SSC2		In region
Modesto song sparrow	<i>Melospiza melodia mailliardi</i>	SSC3		In range/ On site
Black-chinned sparrow	<i>Spizella atrogularis</i>	BCC		In region
Bell's sparrow	<i>Amphispiza b. belli</i>	WL		Nearby
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>	SSC2		In range
Yellow-breasted chat	<i>Icteria virens</i>	SSC3		Very close
Yellow-headed blackbird	<i>X. xanthocephalus</i>	SSC3		Very close 2025
Bullock's oriole	<i>Icterus bullockii</i>	BCC		Very close 2025
Tricolored blackbird	<i>Agelaius tricolor</i>	CT, BCC, SSC1	Low	Very close 2025
Virginia's warbler	<i>Leiothlypis virginiae</i>	WL, BCC		In region

R4-23
cont'd

Common name	Species name	Status ¹	Occurrence potentials	
			PRDEIR	Database records / KSS site visit
Northern yellow warbler	<i>Setophaga aestiva</i>	SSC2		Very close 2025
Summer tanager	<i>Piranga rubra</i>	SSC1		In region
Little brown bat	<i>Myotis lucifugus</i>	WBWG: M		In range
Yuma myotis	<i>Myotis yumanensis</i>	WBWG: LM		In region
Long-eared myotis	<i>Myotis evotis</i>	WBWG: M		In region
Fringed myotis	<i>Myotis thysanodes</i>	WBWG: H		In range
Long-legged myotis	<i>Myotis volans</i>	WBWG: H		In range
California myotis	<i>Myotis californicus</i>	WBWG:L		In region
Small-footed myotis	<i>Myotis ciliolabrum</i>	WBWG: M		In range
Canyon bat	<i>Parastrellus hesperus</i>	WBWG: M		In region
Big brown bat	<i>Episticus fuscus</i>	WBWG: L		In region
Silver-haired bat	<i>Lasionycteris noctivagans</i>	WBWG: M		In region
Hoary bat	<i>Lasiurus cinereus</i>	WBWG: M		In region
Western red bat	<i>Lasiurus blossevillii</i>	SSC, WBWG: H		In region
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC, WBWG: H		In region
Pallid bat	<i>Antrozous pallidus</i>	SSC, WBWG: H		In region
Mexican free-tailed bat	<i>Tadarida brasiliensis</i>	WBWG: L		In region
Western mastiff bat	<i>Eumops perotis</i>	SSC, WBWG: H		In range
Riparian brush rabbit	<i>Sylvilagus bachmani riparius</i>	FE, CE	None	In region
San Joaquin Valley woodrat	<i>Neotoma fuscipes riparia</i>	FE, SSC	None	In region
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	FE, ST	Moderate	In region
American badger	<i>Taxidea taxus</i>	SSC		Very close 2024

R4-23
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¹ Listed on CDFW's Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as FT or FE = federal threatened or endangered; FC = federal candidate for listing; BGEPA = Bald and Golden Eagle Protection Act; CT or CE = California threatened or endangered; CCT or CCE = Candidate California threatened or endangered; CFP = California Fully Protected (California Fish and Game Code 3511); SSC_i = California Species of Special Concern with *i* = priorities 1, 2 and 3; WL = CDFW's Taxa to Watch List; WBWG = Western Bat Working Group with priority rankings, of low (L), moderate (M), and high (H); BCC = U.S. Fish and Wildlife Service's Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); and BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

Table 3. Comparison of 2020 FEIR determinations of occurrence likelihoods of special-status species of vertebrate wildlife on the footprint of the proposed Reservoir, and eBird/iNaturalist occurrence records (<https://eBird.org>, <https://www.inaturalist.org>) on the Reservoir footprint since the FEIR was certified in 2020.

Common name	Species name	Status ¹	Status change since 2020	Occurrence potential	
				FEIR 2020	Database records
Monarch	<i>Danaus plexippus</i>	FC			On site 2023
Western spadefoot	<i>Spea hammondi</i>	FC, SSC	FC 2023		In region
Foothill yellow-legged frog	<i>Rana boylei</i>	CT, SSC	CT 2020		In region
Northwestern pond turtle	<i>Actinemys marmorata</i>	FC, SSC	FC 2023	Moderate	On site 2025
Western grebe	<i>Aechmophorus occidentalis</i>	BCC	BCC 2021		In region
Clark's grebe	<i>Aechmophorus clarkii</i>	BCC	BCC 2021		On site 2023
Calliope hummingbird	<i>Selasphorus calliope</i>	BCC	BCC 2021		In region
Rufous hummingbird	<i>Selasphorus rufus</i>	BCC	BCC 2021		On site 2018
Pectoral sandpiper	<i>Calidris melanotos</i>	BCC	BCC 2021		In region
Willet	<i>Tringa semipalmata</i>	BCC	BCC 2021		In region
Franklin's gull	<i>Leucophaeus pipixcan</i>	BCC	BCC 2021		In region
Western gull	<i>Larus occidentalis</i>	BCC	BCC 2021		On site 2013
California gull	<i>Larus californicus</i>	BCC, WL	BCC 2021		On site 2023
Black tern	<i>Chlidonias niger</i>	SSC2, BCC	BCC 2021		In region
American white pelican	<i>Pelicanus erythrorhynchos</i>	SSC1	BCC 2021		Nearby
Northern harrier	<i>Circus cyaneus</i>	BCC, SSC3, BOP	BCC 2021		On site 2025
Ferruginous hawk	<i>Buteo regalis</i>	WL, BOP			On site 2020
Burrowing owl	<i>Athene cunicularia</i>	BCC, CCE, SSC2, BOP	CCE 2024		On site 2018
Long-eared owl	<i>Asio otus</i>	BCC, SSC3, BOP	BCC 2021		In region
Short-eared owl	<i>Asia flammeus</i>	BCC, SSC3, BOP	BCC 2021		In region
Wrentit	<i>Chamaea fasciata</i>	BCC	BCC 2021		On site 2025
California thrasher	<i>Toxostoma redivivum</i>	BCC	BCC 2021		On site 2023
Cassin's finch	<i>Haemorhous cassinii</i>	BCC	BCC 2021		In region
Bell's sparrow	<i>Amphispiza b. belli</i>	WL			On site 2021
Virginia's warbler	<i>Leiothlypis virginiae</i>	BCC, WL	BCC 2021		In region
Bullock's oriole	<i>Icterus bullockii</i>	BCC	BCC 2021		On site 2025

R4-23
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¹ Listed on CDFW's Special Animals List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>) as FC = federal candidate for listing; CT = California Threatened; CCE = Candidate for listing as California Endangered; SSC_i = California Species of Special Concern with *i* = priorities 1, 2 and 3; WL = CDFW's Taxa to Watch List; BCC = U.S. Fish and Wildlife Service's Bird of Conservation Concern (<https://www.fws.gov/sites/default/files/documents/birds-of-conservation-concern-2021.pdf>); and BOP = protected by Birds of Prey (California Fish and Game Code 3503.5, see <https://wildlife.ca.gov/Conservation/Birds/Raptors>).

BIOLOGICAL IMPACTS ASSESSMENT

The impacts analysis in CEQA review involves prediction. Predictions are necessary because measuring a project's impacts directly could not happen until after the impacts occur, and the timing of this type of measurement would come too late for the formulation of a mitigation strategy. Impact predictions are necessary as part of the environmental review. The accuracy of the predictions of impacts and their significance ultimately relies on the degree of accuracy in the characterization of the existing environmental setting (Figure 6).

Assess species occurrence likelihoods

1. Desktop review
 - a. Species geographic range overlap or database occurrence records
 - b. Crosswalk habitat associations with mapped ground cover
2. Reconnaissance survey/Habitat assessment
3. Detection surveys for special-status species



Characterize wildlife community

4. Lists of species detected and of those expected but not yet detected, and any known trends



Outcomes

5. Predict impacts
6. Formulate mitigation strategy
7. Determine significance of impacts

Note: Impact predictions and significance determinations have been of unknown accuracy in the absence of experimental measurement

R4-24

Figure 6. General flow of information from the gathering stage through the characterization of the existing environment to predictions of impacts and their significance.

Impact predictions can derive from speculation or from experience (Figure 7). Speculation is repeatedly discouraged in the CEQA Guidelines, because speculation is an inconclusive guess or ponderance on a phenomenon without the benefit of data. Prediction accuracy improves with experience, though the experience that can be brought to bear on impact predictions can range from anecdotes to careful use of scientific inference. Inference is a conclusion derived logically from data that are available about a phenomenon. Any type of experience is usually better than relying on speculation, but careful scientific inference, especially inference drawn from experiments, has proven most effective. An analogy would be predicting the boiling temperature of water at a certain place with a known atmospheric pressure after having measured it hundreds of times at other places under various atmospheric pressures. The experience of measuring the boiling temperature at all these other places would certainly result in a more accurate prediction of the boiling point as compared to a speculative prediction. We know that use of inference in this example is *certainly* more

predictive, and not *potentially* more predictive, because we have a long successful history with the application of this type of experimentation to draw predictive inference.

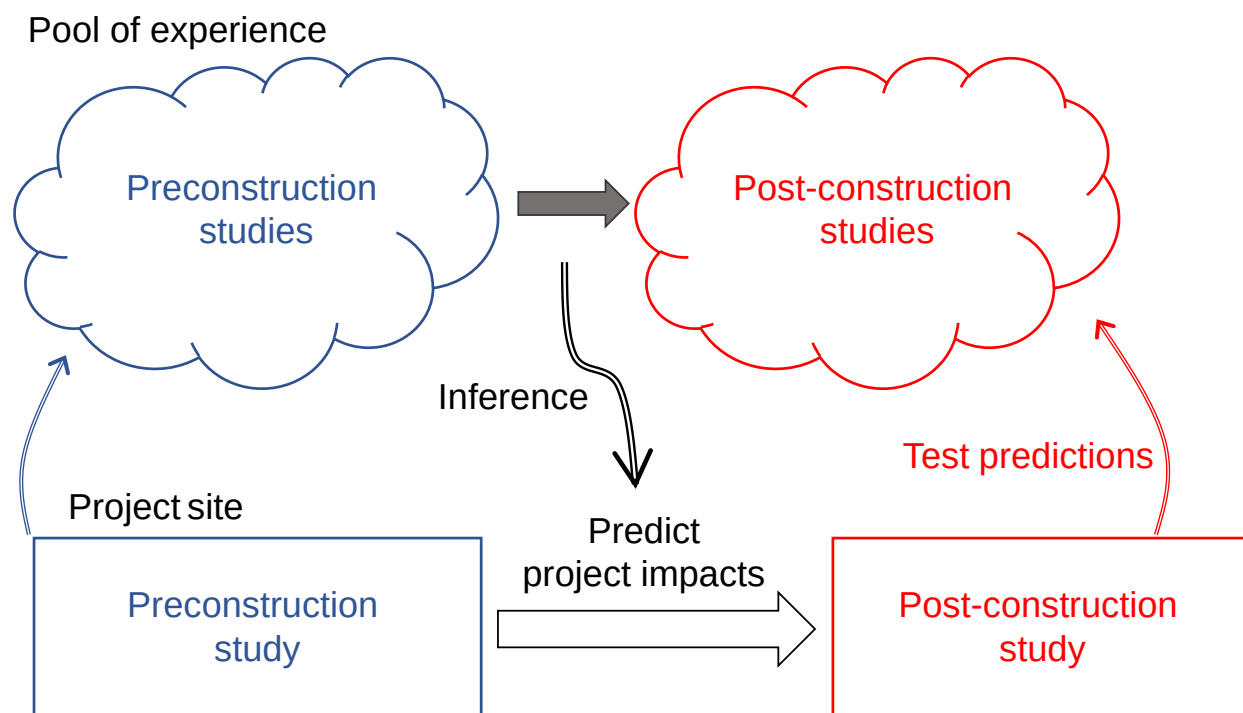


Figure 7. A framework for arriving at predicted project impacts based on experience with other project sites. Ideally, there is a pool of similar projects in similar circumstances where predicted impacts were compared to realized impacts, and into which the proposed project can also contribute to experience.

R4-24
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The many projects that have undergone CEQA review provide a comparative basis for drawing inferences needed to predict the impacts of the next proposed project (Figure 7). Reconnaissance survey results that are not compared to survey results from other project sites miss the opportunity to interpret the results for the purpose of predicting impacts. The same is true of CDNNB occurrence records. For example, it would be helpful to know how often a species lacking CNDDDB occurrence records on a site is nevertheless detected onsite by reconnaissance survey(s), e.g., Figure 5. It would be helpful to know how often the impact predictions of other projects are proven accurate, and how often the required mitigation measures are proven effective. The comparative method enables the use of scientific inference over speculation and the blind confidence of simply repeating impact conclusions of unknown accuracy and mitigation strategies of unknown efficacy.

At issue with the downstream portion of Del Puerto Creek are the effects of an altered flow regime on volume, timing, duration, temperature, sediment loads, dissolved oxygen and the transport of organic material. These flow attributes can in turn affect vegetation along Del Puerto Creek, and ultimately the food base that supports many species of wildlife from arthropods to bats and small mammals to mammalian carnivores and

raptors. The PRDEIR mentions how an altered flow regime can affect water quality and other stream flow attributes, but it does not describe or predict how these alterations would affect wildlife. Worse, the PRDEIR only speculates on how the altered flow regime would benefit aquatic wildlife. For example, the PEDEIR discusses how Kiernan et al. (2012) found that mimicking a more natural flow regime allowed native fishes to take over dominance of downstream reaches of Putah Creek. But Kiernan et al.'s (2012) findings have no bearing on terrestrial wildlife which are at issue in the PRDEIR, and they have no bearing on Del Puerto Creek, whose flow regime out of the Diablo Range is already natural except for tailwater return flows from row crop agriculture.

The PSDEIR attempts to downplay the potential impacts of an altered flow regime in Del Puerto Creek. On p. 3.4-39, it claims "With implementation of the Project's environmental commitments, the Project is designed to replicate, in relative terms, the key existing conditions that support terrestrial habitats and species in the downstream reaches of Del Puerto Creek east of the Project site. These commitments ensure that flow regimes and habitat characteristics remain consistent, in terms of flow patterns, with current conditions, which are critical to sustaining biological resources both upstream and downstream of the proposed Project." In fact, in Response to Comment 4-5 on FEIR p. 9-46, the FEIR predicts an 81% reduction in annual flow through lower Del Puerto Creek from 2,100 AF to 400 AF. Nor would the reductions simulate natural monthly flows, as monthly reductions would be 70% in January, 86% in February, 85% in March, and 67% in April, and no reductions in other months. The magnitude of the annual reduction in flow and the schedule of reductions would likely reduce the number of riparian trees and the biomass in wetland vegetation, and these impacts would reduce the productive capacity of wildlife on the Study Area.

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Faced with this fundamental problem of reduced flow through lower Del Puerto Creek, the PRDEIR (p. 3.4-35) cites EPA (2008) as its source to the following statement: "While the proposed Project would reduce overall flow volumes in the study area, scientific research indicates that wetland health is more strongly influenced by the frequency and duration of inundation, such as seasonal or periodic flooding, than by the total annual volume of water flow." This frequency and duration of inundation is also referred to as the hydropattern. However, nowhere in EPA (2008) could I find a passage that would support the PRDEIR's claim. Nowhere did I see EPA (2008) report that the hydropattern influence wetland health more than does overall flow volumes. Nowhere in EPA (2008) is it stated that scientific research supports this notion. The closest I found to the PRDEIR's claim was the passage, "The reproductive success of these wetland species [of aquatic flora and fauna] can be adversely affected when fluctuations are not correctly synchronized with their developmental stages" (EPA 2008:7). But this passage does not compare the effects of hydropattern versus overall flow on wetland health. What it does suggest is that the altered hydropattern resulting from the Reservoir project would pose a threat to wetland species in lower Del Puerto Creek. The greater threat to the ecological integrity of lower Del Puerto Creek is the combined reduction of overall flow and the drastic changes in hydropattern.

The riparian corridor is one of the few widely recognized corridors in natural settings (Smallwood 2015, Andy 2020). The existence of riparian corridors serves as a stabilizing

force on wildlife movement and persistence on larger landscapes (Andy 2020). In the case of lower Del Puerto Creek, most of the larger landscape is intensively farmed, thereby heightening the importance of Creek vegetation – riparian vegetation – to wildlife.

The riparian environment is largely defined by the vegetation that overgrows the alluvial floodplain on either side of a stream channel (Ohmart (1994); it is also thought of as the transition zone between aquatic and terrestrial environments (Ramey and Richardson 2017). Wildlife concentrate within riparian environments (Ohmart 1994, Ballard et al. 2004), even more so where the upland portion of the landscape is severely disturbed. Lee and Rotenberry (2015) found that whereas the occurrences of some bird species in riparian forests correlated with local variables defined by percent tree cover versus percent shrub cover, the occurrences of twice as many bird species correlated with landscape variables such as adjacency and extent of upland land uses such as agriculture, shrubland or forest. However, Lee and Rotenberry (2015) also identified a guild of bird species that correlate most strongly with local variables, and it is composed of species that are obligates of riparian environments. This guild is composed largely of special-status species because riparian environments have been decimated in the western USA. Estimates of the loss of riparian environments in the west range from 80% to 95% (Ohmart1994) and even to 98% (Jones et al. 2010). Therefore, despite the existing degradation of the riparian environment of lower Del Puerto Creek, its value to wildlife is immeasurable. What remains of the riparian environment of lower Del Puerto Creek is irreplaceable.

R4-24
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Although riparian corridors are incredibly valuable to wildlife movement in the region, they also contribute much more value to wildlife by providing nest substrate, refuge, and forage. Within California's riparian environments, bird species richness is highest (Ballard et al. 2004), and so is mammalian species richness (Hamilton et al. 2015). Reptile and amphibian species diversity increases with habitat complexity of the riparian environment, and especially with more composition by cottonwoods (Bateman and Merritt 2020). (Cottonwoods are common within the riparian environments of the Study Area.) Considering the findings of Bateman and Merritt (2020), it is of heightened concern that annual flows would be reduced by 81% in lower Del Puerto Creek, because cottonwoods, which are known to be important to wildlife such as Swainson's hawks, are sensitive to reduced water table, and will fall over when their shallow rooting system cannot reach water (Rood et al. 2003). Ohmart (1994) also reports that reduced flows can reduce the vertical profile of a cottonwood riparian forest by two-thirds, profoundly changing the way wildlife can use it.

Many of California's riparian environments already have been altered by changes to stream flows and land use. Most of the riparian environments that have been lost or degraded in the western USA owe their fates to "dams, reservoirs, instream flow reductions, flood control and dewatering of rivers" (Ohmart 1994). Compared to undammed rivers, dammed rivers tend to alter downstream geomorphology and shrink riparian environments (Graf 2006), and shift plant species composition to non-natives (Stromberg et al. 2007). What remains in many locations in California are riparian environments that are narrower than they were, composed of a mix of native and non-

native species or in some places nearly entirely non-native species, altered ratios of shrub to tree canopy cover, and altered or reduced expanses of upland vegetation surrounding the alluvial floodplain, along with lower bird diversity (Merritt and Bateman 2012). Because so many of California's riparian environments have already been affected by reduced annual flows and altered hydropatterns, surely the basis exists for comparative analysis to predict project impacts on the riparian environment and wildlife community of Del Puerto Creek (see Figure 7 for the conceptual framework of comparative analysis).

Some species such as yellow-billed cuckoo require expansive riparian environments and are therefore nearly extirpated from California. Of the riparian environments that remain, those that have been altered the least, and those that are still surrounded by natural upland vegetative cover, are most likely to support riparian-obligate species of wildlife, as well as wildlife that are less dependent on the riparian environment for travel. The riparian environment of lower Del Puerto Creek where it approaches the San Joaquin River is the part of the Study Area that most closely typifies what Cameron et al. (2022) characterize as settings where relative flexibility to maintain connectivity is least channelized and most diffuse. In other words, the easternmost riparian environment of the Study Area ought to be prioritized for preservation because it requires the least expense to preserve the highest value of wildlife habitat. But as a starting point, it is important to maintain natural annual flows with natural sediment loads, as well as a hydropattern that is as natural as it can be in the face of tailwater return flows from row crop agriculture.

R4-24
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In another attempt to downplay the adverse effects of the project's change to annual flows and the hydropattern, the FEIR (p. 9-26), explains "The project would potentially eliminate the FEMA Special Flood Hazard Area associated with Del Puerto Creek because the reservoir would capture flood flows from the creek and would release them slowly so that the capacity of the creek would not be exceeded. ... there would be no flooding outside the banks of the Creek." Put another way in the FEIR (p. 9-26), "by regulating flows, the project would reduce the floodplain." Whereas this outcome might benefit some landowners whose assets are vulnerable to flooding, it would potentially harm wildlife species that benefit from occasional inundation of areas outside permanent wetlands and that benefit from the existing floodplain.

CUMULATIVE IMPACTS

One of CEQA's principal concerns regarding potential project impacts is whether a proposed project would contribute significantly to cumulative impacts of past, present and future projects, or to multiple types of impacts that are cumulatively considerable. Unfortunately, the PRDEIR's cumulative impacts analysis is flawed. The PRDEIR (p. 3.4-39) explains that "Additional development in the cumulative study area would also be required to comply with applicable federal and state regulatory programs for the protection of terrestrial biological resources. These requirements commonly result in the avoidance of significant and unavoidable adverse effects to terrestrial biological resources." And "In addition, the proposed mitigation measures in the 2020 Final EIR would either avoid impacts, compensate for impacts, or replace habitat for the Project as

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a whole. This would ensure that habitat conditions are maintained and that the overall Project does not contribute incrementally to any cumulatively considerable impact when combined with other projects in the region.” However, mitigation of project-specific impacts does not necessarily avoid or minimize a project’s contribution to cumulative impacts. The PRDEIR’s treatment of cumulative impacts is inconsistent with CEQA’s definition of cumulative impacts.

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FLAWED MITIGATION STRATEGY

The mitigation strategy needs to be based on a sound understanding of the wildlife community as part of the existing environmental setting. It needs to be known which species occur or are likely to occur on the project site as well as the nature of their occurrences, such as whether they are typically of residents or migrants. Detection surveys should have been for special-status species to either detect the species or to obtain evidence of absence. Surveys should have been completed to understand how wildlife use the site in their movement patterns. And what was found of wildlife species needs to be carefully interpreted by comparing the findings to the findings from other survey efforts at other sites. Failures to detect species should be interpreted relative to the probabilities of their detections given the survey effort. The mitigation strategy needs to follow the steps under Assess species occurrence likelihoods and Characterize wildlife community, followed by Step 7: Predict impacts (Figure 6). However, the PRDEIR’s mitigation strategy, which relies on the 2020 DEIR’s mitigation strategy, does not follow these steps. This pointed out, there really is no mitigation strategy tailored to plants and wildlife along lower Del Puerto Creek.

R4-26

For multiple types of impact on plants and wildlife, the PRDEIR repeats “...during Project operation, the Project’s environmental commitments would be implemented, which are designed to replicate the timing, relative magnitude, duration, and variability of the existing unregulated rainy season flows (generally October 15 – March 31) in Del Puerto Creek.” However, the hydropattern of flow into lower Del Puerto Creek would not match the natural hydropattern, and the average annual flow would be reduced by 81%.

Also repeated is the claim that impacts would be avoided due to the continuation of agricultural tailwater return flows into lower Del Puerto Creek. However, this continuation would also continue the accumulation of pesticides in sediments, which means that an even higher proportion of flows into lower Del Puerto Creek would be acutely toxic. This problem would be further exacerbated by reduced flows available from upper Del Puerto Creek to flush accumulating pesticides, and by reduced loads of suspended sediments available to replace or dilute contaminated sediments. In other words, the continuation of tailwater return flows while also reducing annual flows from upper Del Puerto Creek would potentially result in cumulative impacts caused by pesticide exposure to plants and wildlife along lower Del Puerto Creek.

Thank you for your consideration,



Shawn Smallwood, Ph.D.

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Curriculum Vitae

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Born May 3, 1963 in
Sacramento, California.
Married, father of two.

Ecologist

Business

Smallwood Ecology

- Employs Noriko Smallwood, M.S., Environmental Science with focus on wildlife

Expertise

- Finding solutions to controversial problems related to wildlife interactions with anthropogenic infrastructure and activities;
- Design of field study to detect, enumerate, or monitor wildlife and behavior patterns by visual search, GPS, thermal imaging, and acoustic bat survey;
- Using systems analysis and experimental design principles to identify meaningful ecological patterns from that can inform conservation and management of terrestrial wildlife.

Education

Ph.D. Ecology, University of California, Davis. September 1990.
M.S. Ecology, University of California, Davis. June 1987.
B.S. Anthropology, University of California, Davis. June 1985.
Corcoran High School, Corcoran, California. June 1981.

Experience

- 1,068 professional reports, including:
 - 96 peer reviewed publications
 - 24 in non-reviewed proceedings
 - 946 reports, declarations, posters and book reviews
 - 8 in mass media outlets
 - 98 public presentations of research results

Expert testimony regarding potential impacts from development projects: To check on the accuracy of the characterization of wildlife communities at sites of proposed residential, commercial and industrial projects, I perform visual-scan surveys for wildlife, thermal-imaging at night, and acoustic detection of bats using a Petterson M500 detector and Sonobat Live to identify bats by

sonograms of their calls. I predict project impacts and I compare my findings to those in the environmental review documents. I also testify on potential outcomes of water transfers and water transfer delivery systems, endangered species recovery plans, Habitat Conservation Plans, Natural Communities Conservation Programs, proposed Federal Rules and State and Federal policies and regulations affecting wildlife. I deliver oral testimony to government agencies, Tribunals, Boards of Supervisors and City Councils, and participated with press conferences and depositions. I prepare expert witness reports and court declarations, and I participate with depositions.

Editing for scientific journals: Guest Editor, *Wildlife Society Bulletin*, 2012-2013, of invited papers representing international views on the impacts of wind energy on wildlife and how to mitigate the impacts. Associate Editor, *Journal of Wildlife Management*, March 2004 to 30 June 2007. Editorial Board Member, *Environmental Management*, 10/1999 to 8/2004. Associate Editor, *Biological Conservation*, 9/1994 to 9/1995.

Member, Alameda County Scientific Review Committee (SRC), August 2006 to April 2011. The five-member committee investigated causes of bird and bat collisions in the Altamont Pass Wind Resource Area, and recommended mitigation and monitoring measures. The SRC reviewed the science underlying the Alameda County Avian Protection Program, and it advised the County on how to reduce wildlife collision mortality.

Consulting Ecologist, 2004-2007, California Energy Commission (CEC). Provided consulting services as needed to the CEC on renewable energy impacts, monitoring and research, and produced several reports. Also collaborated with Lawrence-Livermore National Lab on research to understand and reduce wind turbine impacts on wildlife.

Consulting Ecologist, 1999-2013, U.S. Navy. Performed endangered species surveys, hazardous waste site monitoring, and habitat restoration for the endangered San Joaquin kangaroo rat, California tiger salamander, California red-legged frog, California clapper rail, western burrowing owl, salt marsh harvest mouse, and other species at Naval Air Station Lemoore; Naval Weapons Station, Seal Beach, Detachment Concord; Naval Security Group Activity, Skaggs Island; National Radio Transmitter Facility, Dixon; and, Naval Outlying Landing Field Imperial Beach.

Part-time Lecturer, 1998-2005, California State University, Sacramento. Instructed Mammalogy, Behavioral Ecology, and Ornithology Lab, Contemporary Environmental Issues, Natural Resources Conservation.

Senior Ecologist, 1999-2005, BioResource Consultants. Designed and implemented research and monitoring studies related to avian fatalities at wind turbines, avian electrocutions on electric distribution poles across California, and avian fatalities at transmission lines.

Chairman, Conservation Affairs Committee, The Wildlife Society--Western Section, 1999-2001. Prepared position statements and led efforts directed toward conservation issues, including travel to Washington, D.C. to lobby Congress for more wildlife conservation funding.

Systems Ecologist, 1995-2000, Institute for Sustainable Development. Headed ISD's program on integrated resources management. Developed indicators of ecological integrity for large areas, using remotely sensed data, local community involvement and GIS.

Associate, 1997-1998, Department of Agronomy and Range Science, University of California, Davis. Worked with Professor Shu Geng and Dr. Mingua Zhang on several studies related to wildlife interactions with agriculture and patterns of fertilizer and pesticide residues in groundwater across a large landscape.

Lead Scientist, 1996-1999, National Endangered Species Network. Informed academic scientists and environmental activists about emerging issues regarding the Endangered Species Act and other environmental laws. Testified at public hearings on endangered species issues.

Ecologist, 1997-1998, Western Foundation of Vertebrate Zoology. Conducted field research to determine the impact of past mercury mining on the status of California red-legged frogs in Santa Clara County, California.

Senior Systems Ecologist, 1994-1995, EIP Associates, Sacramento, California. Provided consulting services in environmental planning, and quantitative assessment of land units for their conservation and restoration opportunities based on ecological resource requirements of 29 special-status species. Developed ecological indicators for prioritizing areas within Yolo County to receive mitigation funds for habitat easements and restoration.

Post-Graduate Researcher, 1990-1994, Department of Agronomy and Range Science, *U.C. Davis*. Under Dr. Shu Geng's mentorship, studied landscape and management effects on temporal and spatial patterns of abundance among pocket gophers and species of Falconiformes and Carnivora in the Sacramento Valley. Managed and analyzed a database of energy use in California agriculture. Assisted with landscape (GIS) study of groundwater contamination across Tulare County, California.

Work experience in graduate school: Co-taught Conservation Biology with Dr. Christine Schoneveld, 1991 & 1993, UC Davis Graduate Group in Ecology; Reader for Dr. Richard Coss's course on Psychobiology in 1990, UC Davis Department of Psychology; Research Assistant to Dr. Walter E. Howard, 1988-1990, UC Davis Department of Wildlife and Fisheries Biology, testing durable baits for pocket gopher management in forest clearcuts; Research Assistant to Dr. Terrell P. Salmon, 1987-1988, UC Wildlife Extension, Department of Wildlife and Fisheries Biology, developing empirical models of mammal and bird invasions in North America, and a rating system for priority research and control of exotic species based on economic, environmental and human health hazards in California. Student Assistant to Dr. E. Lee Fitzhugh, 1985-1987, UC Cooperative Extension, Department of Wildlife and Fisheries Biology, developing and implementing statewide mountain lion track count for long-term monitoring.

Fulbright Research Fellow, Indonesia, 1988. Tested use of new sampling method for numerical monitoring of Sumatran tiger and six other species of endemic felids, and evaluated methods used by other researchers.

Projects and Studies

Repowering wind energy projects through careful siting of new wind turbines using map-based collision hazard models to minimize impacts to volant wildlife. Funded by wind companies (principally NextEra Renewable Energy, Inc.), California Energy Commission and East Bay Regional Park District, I collaborated with a GIS analyst and managed a crew of five field biologists

performing golden eagle behavior surveys and nocturnal surveys on bats and owls. I also collaborated, and continue to collaborate with, Dr. Douglas Bell in a GPS telemetry study of 44 golden eagles originating from the northern Diablo Range. The goal was to quantify flight patterns for development of predictive models to more carefully site new wind turbines in repowering projects. I performed focused behavior surveys from May 2012 through 2019, and golden eagle telemetry monitoring from 2013 through the present. Collision hazard models were prepared for eight wind projects, three of which were built.

Test avian safety of new mixer-ejector wind turbine (MEWT). Designed and implemented a before-after, control-impact experimental design to test the avian safety of a new, shrouded wind turbine developed by Ogin Inc. (formerly known as FloDesign Wind Turbine Corporation). Supported by a \$718,000 grant from the California Energy Commission's Public Interest Energy Research program and a 20% match share contribution from Ogin, I managed a crew of seven field biologists who performed periodic fatality searches and behavior surveys, carcass detection trials, nocturnal behavior surveys using a thermal camera, and spatial analyses with the collaboration of a GIS analyst. Field work began 1 April 2012 and ended 30 March 2015 without Ogin installing its MEWTs, but we still achieved multiple important scientific advances.

Reduce avian mortality due to wind turbines at Altamont Pass. Studied wildlife impacts caused by 5,400 wind turbines at the world's most notorious wind resource area. Studied how impacts are perceived by monitoring and how they are affected by terrain, wind patterns, food resources, range management practices, wind turbine operations, seasonal patterns, population cycles, infrastructure management such as electric distribution, animal behavior and social interactions.

Reduce avian mortality on electric distribution poles. Directed research toward reducing bird electrocutions on electric distribution poles, 2000-2007. Oversaw 5 founts of fatality searches at 10,000 poles from Orange County to Glenn County, California, and produced two large reports.

Cook et al. v. Rockwell International et al., No. 90-K-181 (D. Colorado). Provided expert testimony on the role of burrowing animals in affecting the fate of buried and surface-deposited radioactive and hazardous chemical wastes at the Rocky Flats Plant, Colorado. Provided expert reports based on four site visits and an extensive document review of burrowing animals. Conducted transect surveys for evidence of burrowing animals and other wildlife on and around waste facilities. Discovered substantial intrusion of waste structures by burrowing animals. I testified in federal court in November 2005, and my clients were subsequently awarded a \$553,000,000 judgment by a jury. After appeals the award was increased to two billion dollars.

Hanford Nuclear Reservation Litigation. Provided expert testimony on the role of burrowing animals in affecting the fate of buried radioactive wastes at the Hanford Nuclear Reservation, Washington. Provided three expert reports based on three site visits and extensive document review. Predicted and verified a certain population density of pocket gophers on buried waste structures, as well as incidence of radionuclide contamination in body tissue. Conducted transect surveys for evidence of burrowing animals and other wildlife on and around waste facilities. Discovered substantial intrusion of waste structures by burrowing animals.

Protocol-level surveys for special-status species. Used California Department of Fish and Wildlife and US Fish and Wildlife Service protocols to search for California red-legged frog, California tiger salamander, arroyo southwestern toad, blunt-nosed leopard lizard, western pond turtle, giant

kangaroo rat, San Joaquin kangaroo rat, San Joaquin kit fox, western burrowing owl, Swainson's hawk, Valley elderberry longhorn beetle and other special-status species.

Conservation of San Joaquin kangaroo rat. Performed research to identify factors responsible for the decline of this endangered species at Lemoore Naval Air Station, 2000-2013, and implemented habitat enhancements designed to reverse the trend and expand the population.

Impact of West Nile Virus on yellow-billed magpies. Funded by Sacramento-Yolo Mosquito and Vector Control District, 2005-2008, compared survey results pre- and post-West Nile Virus epidemic for multiple bird species in the Sacramento Valley, particularly on yellow-billed magpie and American crow due to susceptibility to WNV.

Workshops on HCPs. Assisted Dr. Michael Morrison with organizing and conducting a 2-day workshop on Habitat Conservation Plans, sponsored by Southern California Edison, and another 1-day workshop sponsored by PG&E. These Workshops were attended by academics, attorneys, and consultants with HCP experience. We guest-edited a Proceedings published in Environmental Management.

Mapping of biological resources along Highways 101, 46 and 41. Used GPS and GIS to delineate vegetation complexes and locations of special-status species along 26 miles of highway in San Luis Obispo County, 14 miles of highway and roadway in Monterey County, and in a large area north of Fresno, including within reclaimed gravel mining pits.

GPS mapping and monitoring at restoration sites and at Caltrans mitigation sites. Monitored the success of elderberry shrubs at one location, the success of willows at another location, and the response of wildlife to the succession of vegetation at both sites. Also used GPS to monitor the response of fossorial animals to yellow star-thistle eradication and natural grassland restoration efforts at Bear Valley in Colusa County and at the decommissioned Mather Air Force Base in Sacramento County.

Mercury effects on Red-legged Frog. Assisted Dr. Michael Morrison and US Fish and Wildlife Service in assessing the possible impacts of historical mercury mining on the federally listed California red-legged frog in Santa Clara County. Also measured habitat variables in streams.

Opposition to proposed No Surprises rule. Wrote a white paper and summary letter explaining scientific grounds for opposing the incidental take permit (ITP) rules providing ITP applicants and holders with general assurances they will be free of compliance with the Endangered Species Act once they adhere to the terms of a "properly functioning HCP." Submitted 188 signatures of scientists and environmental professionals concerned about No Surprises rule US Fish and Wildlife Service, National Marine Fisheries Service, all US Senators.

Natomas Basin Habitat Conservation Plan alternative. Designed narrow channel marsh to increase the likelihood of survival and recovery in the wild of giant garter snake, Swainson's hawk and Valley Elderberry Longhorn Beetle. The design included replication and interspersions of treatments for experimental testing of critical habitat elements. I provided a report to Northern Territories, Inc.

Assessments of agricultural production system and environmental management in China. Twice visited China and interviewed scientists, industrialists, agriculturalists, and the Directors of the

Chinese Environmental Protection Agency and the Department of Agriculture to assess opportunities for research collaboration in the environmental and agricultural sectors.

Yolo County Habitat Conservation Plan. Conducted landscape ecology study of Yolo County to spatially prioritize allocation of mitigation efforts to improve ecosystem functionality within the County from the perspective of 29 special-status species of wildlife and plants. Used a hierarchically structured indicators approach to apply principles of landscape and ecosystem ecology, conservation biology, and local values in rating land units. Derived GIS maps to help guide the conservation area design, and then developed implementation strategies.

Mountain lion track count. Developed and conducted a carnivore monitoring program throughout California since 1985. Species counted include mountain lion, bobcat, black bear, coyote, red and gray fox, raccoon, striped skunk, badger, and black-tailed deer. Vegetation and land use are also monitored. Track survey transect was established on dusty, dirt roads within randomly selected quadrats.

Sumatran tiger and other felids. Upon award of Fulbright Research Fellowship, I designed and initiated track counts for seven species of wild cats in Sumatra, including Sumatran tiger, fishing cat, and golden cat. Spent four months on Sumatra and Java in 1988, and learned Bahasa Indonesia, the official Indonesian language.

Wildlife in agriculture. Beginning as post-graduate research, I studied pocket gophers and other wildlife in 40 alfalfa fields throughout the Sacramento Valley, and I surveyed for wildlife along a 200-mile road transect since 1989 with a hiatus of 1996-2004. The data are analyzed using GIS and methods from landscape ecology, and the results published and presented orally to farming groups in California and elsewhere. I also conducted the first study of wildlife in cover crops used on vineyards and orchards.

Agricultural energy use and Tulare County groundwater study. Developed and analyzed a data base of energy use in California agriculture, and collaborated on a landscape (GIS) study of groundwater contamination across Tulare County, California.

Pocket gopher damage in forest clear-cuts. Developed gopher sampling methods and tested various poison baits and baiting regimes in the largest-ever field study of pocket gopher management in forest plantations, involving 68 research plots in 55 clear-cuts among 6 National Forests in northern California.

Risk assessment of exotic species in North America. Developed empirical models of mammal and bird species invasions in North America, as well as a rating system for assigning priority research and control to exotic species in California, based on economic, environmental, and human health hazards.

Peer Reviewed Publications

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- Village Farms Project DEIR, Davis (2025; 19);
- 7336 PS Solar Project DEIR, Twentynine Palms (2026; 52);
- Baker Street Warehouse Project DEIR, Lake Elsinore (2026; 55);
- Dexter Village IS/MND, Lake Elsinore (2026 ; 52);
- 83 Princess Street, California Design Review, City of Sausalito (2026; 39);
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- Delta Conveyance Project Incidental Take Permit, California Department of Water Resources (2025; 37);
- Tri Pointe Homes Staff Report, City of Banning (2025; 38);
- Replies to responses to comments on Locust Gateway Development Project DEIR, City of Rialto (2025; 30);
- Meredith International Centre Specific Plan Amendment – Planning Area 3 Project FEIR Addendum, City of Ontario (2025; 44);
- Pepper 210 Commerce Center Project IS/MND, City of Rialto (2025; 35);
- Pacific Gateway Specific Plan Project DEIR, San Joaquin County (2025; 57);
- Lake Creek Logistics Center DEIR, City of Apple Valley (2025; 49);
- Replies to responses to comments on E&P Technology Way - Building A & B IS/MND, County of Napa (2025; 56);
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- Shingle Springs Band of Miwok Indians 295.7-Acre Fee-to-Trust Project Environmental Assessment (2025; 17);
- Catavina Residential Project IS/MND, Palm Desert (2025; 52);

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- FSRE Industrial Concord Project DEIR, City of Concord (2025; 34);
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- San Francisco Housing Element 2022 Update FEIR Addendum (2025; 22);
- Trails at Lyons Canyon DEIR, County of Los Angeles (2025; 55);
- Replies to responses to comments on Conejo Summit Project DEIR, Thousand Oaks (2025; 30);
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- Replies to responses to comments on Town & Country Village Project DEIR, County of El Dorado (2025; 46);
- Arroyo Vista Project DEIR. County of Riverside (2025; 46);
- Rubio Village Mixed-Use Project IS/MND, City of San Gabriel (2025; 64);
- Replies to responses to comments on Bickmore Warehouse IS/MND, Hesperia (2025; 4);
- Vesting Tentative Tract Map 7500 Staff Report, City of Bakersfield (2025; 10);
- Spirit Living at 55 Thomas Dr/70 Knoll Rd Design Plans, Tiburon (2025; 39);
- Cargo Solutions Truck Warehouse and Truck Stop Hesperia Project IS/MND (2025; 40);
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- Desert Business Park MSD Addendum, County of Riverside (2025; 29);
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- Mesa Verde Specific Plan DSEIR, City of Calimesa (2025; 53);
- Harvest Landing Retail Center & Business Park DEIR, City of Perris (2025; 40);
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- Perris Airport Logistics Center DEIR, Perris (2025; 41);
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- Recreation Area (2025; 17);
- Dakota Warehouse Project IS/MND, Apple Valley (2025; 36);
- Delta Conveyance Project FEIR, CDFW ITP, California Department of Water Resources (2025; 45);
- Oceanside Transit Center EIR, Oceanside (2025; 41);
- Auburn Development, Ecosave III (LDP 23-02) IS/MND, Adelanto (2025; 39);
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- Intex Corporate Office and Fulfillment Center Project, Long Beach (2025; 35);
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- Vista Santa Domingo Warehouse Project rezone, Otay Mesa (2025; 28);
- Replies to responses to comments on Airport South Industrial Park and City Annexation DEIR, Sacramento (2025; 33);
- Flat Creek Solar Project 94-c Permit for Major Renewable Energy Facility, Montgomery County, New York (2025; 29);
- Bickmore Warehouse IS/MND, Hesperia (2025; 25);
- Replies to responses to comments on Brew Enterprises Warehouse, Perris (2025; 41);
- Nexus Hotel IS.MND, Palm Springs (2025; 33);
- Ranegras Plains Energy Center Project DEIS, Arizona (2025; 58);
- Riverside County General Plan Amendment for 350,000+ sf warehouse (2025; 31);
- Riverside County General Plan Amendment for 224,800 sf warehouse (2025; 29);
- Hageman Industrial Park DEIR, Bakersfield (2025; 42);
- Adelanto Warehouse CEQA Exemption (2025; 25);
- Tire Recycling Facility IS/MND, Adelanto (2025; 29);
- Replies to responses to comments on Sites Reservoir Application to California Water Board (2025; 41);
- Bakersfield General Plan Amendment/Zone Change No. 24-0372, Bakersfield (2025; 29);
- The Pointe Apartments CEQA Exemption, Oxnard (2025; 37);
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- Replies to responses to comments on March Plaza IS/MND, Perris (2025; 5);
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- Replies to responses to comments on Arcadia Town Center IS/MND, Arcadia (2025; 3);
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- Briones Regional Park Staff Report, East Bay Regional Park District (2024; 63);
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- 11623 Glenoaks Blvd (no CEQA review), City of Los Angeles (2024; 28);
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- Replies to responses to comments on ENV-2022-6190-CE Categorical Exemption - Class 32,

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- 380 North First Street DEIR, San Jose (2024; 21);
- Site Plan Review 23-014 IS/MND, Lancaster (2024; 29);
- Big Ranch Road Annexation Exemption, City of Napa (2024; 43);
- E&P Technology Way - Building A & B IS/MND, County of Napa (2024; 30);
- Outlaw Battery Energy Storage Project IS/MND, Kings County (2024; 26);
- Replies to responses to comments on Hills Preserve Project DEIR, Anaheim (2024; 57), and update (2024; 4);
- Replies to responses to comments on Tennessee Village Mixed-Use Project IS/MND, Redlands (2024; 26);
- Glen Annie Site (#11) in the Housing Element Update, County of Santa Barbara (2024; 61);
- Quail Meadows Apartments CEQA Exemption, Encinitas (2024; 61);
- Dogwood Geothermal and Solar DEIR, Imperial County (2024; 60);
- Hills Preserve Project DEIR, Anaheim (2024; 57), and update (2024; 14);
- Temescal Commercial Project EA/IS, County of Riverside (2024; 36);
- 11011 Torreyana Road Project SMND, Torrey Pines (2024; 42);
- Rosemount Storage Project IS/MND, Cathedral City (2024; 9);
- Town & Country Village Project DEIR, El Dorado County (2024; 40);
- Maruchan Expansion Project EIR Addendum, Irvine (2024; 30);
- American River One Project CEQA Exemption, Sacramento (2024; 35);
- Spruce & Red Oak Apartments Project Notice of Exemption Supplement Information, Rancho Cucamonga (2024; 38);
- SDG Commerce 220 Distribution Center DEIR, American Canyon (2024; 39);
- Simi Pak Industrial Project IS/MND, Simi Valley (2024; 33);
- Replies to responses to comments on 4th & Hewitt Project DEIR, Los Angeles (2024; 5);
- Replies to responses to comments on Hardt and Brier Business Park IS/MND, San Bernardino (2024; 5);
- Riverview Development Project IS/MND, Santa Clarita (2024; 37);
- Replies to responses to comments on 1360 N. Vine Street Project DEIR, Los Angeles (2024; 5);
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- 022-221-100 Corona Drive, Pacifica (2024; 26);
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- Early Times Cell Tower at 12415 Fig Road IS/MND, County of Sacramento (2024; 29);
- University Community Plan, San Diego (2024; 10);
- 2720 S Willow Industrial Project IS/MND, Rialto (2024; 31);
- Elisabeth Solar Energy Project EA, Yuma Arizona (2024; 75);
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- Tennessee Village Project IS/MND, Redlands (2024; 43);
- Declaration on Whistling Ridge Energy Project Site Certification Agreement, Washington Energy Facility Site Evaluation Council (2024; 30);
- Replies to responses to comments on Dynamo Solar IS/MND, Napa (2024; 11);
- Dynamo Solar IS/MND, Napa (2024; 37);

- Shirk & Riggin Industrial Park DEIR, Visalia (2024; 37);
- Replies to responses to comments on Cal 98 Holdings IS/MND, Imperial County (2024; 10);
- Cal 98 Holdings IS/MND, Imperial County (2024; 39);
- 2nd Replies to responses to comments on Amazing 34 Distribution Center IS/MND, San Bernardino (2024; 28);
- Western States Solar Plan DPEIS, Washington D.C. (2024; 66);
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- Replies to responses to comments on Sunset and Everett Project SCEA, Los Angeles (2024; 24);
- Sunset and Everett Project SCEA, Los Angeles (2024; 33);
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- PBP Industrial Project IS/MND, Palmdale (2024; 35);
- Replies to responses to comments on Lockwood III Apartments IS/MND, Oxnard (2024; 19);
- Lockwood III Apartments IS/MND, Oxnard (2024; 42);
- 1169 8th Ave. Mixed-use Development City Posting, San Diego (2024; 16);
- 2nd Brew Enterprises Warehouse IS/MND, Perris (2024; 39);
- Replies to responses to comments on Hughes SMCC Industrial Project DEIR, San Marcos (2024; 5);
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- Harvill and Water Warehouse IS/MND, County of Riverside (2024; 41);
- Brew Enterprises Warehouse IS/MND, Perris (2024; 34);
- Garden Street Hotel Staff Report, Santa Barbara (2024; 31);
- River Walk Specific Plan DEIR, Riverbank (2024; 72);
- Woodlake Holdings Industrial Park DEIR (2024; 34);
- 2nd Quail Meadows Apartments CEQA Exemption, Encinitas (2024; 60);
- Replies to responses to comments on One Hamilton Drive Affordable Housing DEIR, Mill Valley (2024; 29);
- Glen Annie Housing Element Update, County of Santa Barbara (2024; 53);
- Replies to responses to comments on 4260 Arch North Drive Class 32 Categorical Exemption, Los Angeles (2023; 10);
- 4260 Arch North Drive Class 32 Categorical Exemption, Los Angeles (2023; 27);
- 2nd Replies to responses to comments on Rubio Village IS/MND, San Gabriel (2023; 17);
- West Foothill Development IS/MND, Upland (2023; 9);
- Costco Camarillo IS/MND (2024; 37);
- Shiloh Business Park General Plan Consistency Checklist, Windsor (2023; 25);
- Assembly and Light Industrial Building IS/MND, Grand Terrace (2024; 33);
- SMP 38, SMP 39. SMP 40 DEIR, Livermore (2023; 41);
- Summit Ridge Wind Farm second visit, The Dalles (2024; 43);
- Summit Ridge Wind Farm first visit, The Dalles (2023; 31);
- 3601 E. Mission Class 32 Categorical Exemption, Los Angeles (2023; 31);
- [Redacted] Conservation Easement, Tennessee (2023; 55);
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- Sacramento Street CEQA Exemption, San Francisco (2023; 22);
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- Elmore North Geothermal site visit, Salton Sea (2023; 32);
- Morton Bay Geothermal site visit, Salton Sea (2023; 53);
- Black Rock Geothermal site visit, Salton Sea (2023; 29);
- Covelop Warehouse IS/MND, Paso Robles (2023; 39);
- Walnut Creek Flow Trail IS/MND (2023; 34);
- Replies to responses to comments on Rubio Village IS/MND, San Gabriel (2023; 15);
- Ashley Warehouse Environmental Checklist, Lathrop (2023; 38);
- Replies on 6615 Pacific Coast Highway Site Plan Review, Long Beach (2023; 12)
- Science Research Park Expansion Project EIR Addendum, San Diego (2023; 40);
- Rubio Village IS/MND, San Gabriel (2023; 14);
- Havana Investment Industrial Categorical Exemption, Jurupa Valley (2023; 22);
- New Cal Centre EIR Addendum, Kern County (2023; 39);
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- 4260 N Arch Drive Categorical Exemption, Los Angeles (2023; 27);
- 6700 Pacific Coast Highway Site Plan Review, Long Beach (2023; 29);
- Replies to responses to comments on 6615 Pacific Coast Highway Site Plan Review, Long Beach (2023; 12);
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- Moonlight Apartments biological assessment, Encinitas (2023; 46);
- Replies to responses to comments on Modera Melrose Mixed-use DEIR, Oceanside (2023; 11);
- Modera Melrose Mixed-use DEIR, Oceanside (2023; 39);
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- Living Spaces Development IS/MND, Fresno (2023; 28);
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- Replies to responses to comments on Shadowbox Studios DEIR, Santa Clarita (2023; 35);
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- Tulare 40 Generation Facility IS/MND, Tulare County (2023; 20);
- Garden Street Hotel Staff Report, Santa Barbara (2023; 19);
- Replies to responses to comments on 975 Manhattan Apartments Discretionary Approval, Los Angeles (2023; 10);
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- 6th visit Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2023; 14);
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- 3400 Tecate Warehouse Staff Report, Camarillo (2023; 26);
- Green Valley III Apartments DEIR, Fairfield (2023; 50);
- Pacific Specific Plan DEIR, San Marcos (2023; 55);
- Amara Bay Mixed Use Staff Report, Chula Vista (2023; 46);
- Greenlaw Partners Warehouse IS, Fresno (2023; 23);
- PODS Warehouse IS/MND, Desert Hot Springs (2023; 30);
- 6th visit Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2023; 9);
- Replies on Ormat Brawley Solar Project DEIR, Brawley (2023; 80);
- One Hamilton as part of City of Mill Valley's 2023-2031 Housing Element Update DSEIR (2023; 31);

- Second letter on Shinohara Project IS/MND, Chula Vista (2023; 22);
- 3890 Depot Road Project IS/MND, Hayward (2023; 33);
- Wellprofit Wellness Mixed-use project CEQA Exemption, Temecula (2023; 31);
- Quail Meadows Apartments CEQA Exemption, Encinitas (2023; 55);
- RCCB Fresno Distribution Center Notice of Exemption, Fresno (2022; 14);
- Stoddard Wells Industrial Project IS/MND, City of Victorville (2022; 31);
- 16454 Adelanto Road Warehouse Distribution Facility Class 32 Categorical Exemption, Adelanto (2022; 17);
- Replies on Pure Water Project – Las Virgenes-Triunfo Joint Powers Authority FPEIR, Agoura (2022; 26);
- Desert Gateway MND Addendum, Desert Hot Springs (2022; 35);
- Blue Oaks Commerce Center MND Addendum, City of Roseville (2022; 12);
- Replies on Coachillin Amendment to Specific Plan, Desert Hot Springs (2022; 24);
- Island View Mixed-Use CEQA Compliance Memo, City of Rancho Cucamonga (2022; 17);
- Prairie Station Apartments IS/MND, City of Inglewood (2022; 32);
- Golden Land Warehouse CEQA Exemption, City of Rialto (2022; 12);
- South Juarez Street Design Review, Banning (2022; 17);
- Replies on Pentair Expansion Industrial Warehouse FMND, Moorpark (2022; 13);
- 2nd Replies on Greentree FEIR, Vacaville (2022; 16);
- Replies on Temporary Outdoor Vehicle Storage FEIR, Port of Hueneme (2022; 21);
- National City-Bayfront, San Diego DEIR (2022; 56);
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- Primrose and Adelanto warehouse Categorical Exemption, Adelanto (2022, 14);
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- Waste to Hydrogen project IS/MND, Lancaster (2022, 36);
- Las Virgenes-Triunfo Pure Water Project <Agoura Hills, (2022; 43);
- Shinohara Project IS/MND, Chula Vista (2022; 30);
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- Meyers Ave, Warehouse IS/MND, Escondido IS/MND (2022; 27);
- Northgate Industrial Park IS/MND, Sacramento (2022; 28);
- Ramona-Indian Warehouse IS/MND, Perris (2022; 44);
- Norwalk Entertainment District EIR (2022; 29);
- Breeze Luxury Apartments IS/MND, Oceanside (2022; 40);
- Paso Commons Golden Hills Commerce Center IS/MND, Paso Robles (2022; 35);
- YS Industrial Park Application, Visalia (2022; 20);
- Pentair Expansion Industrial Warehouse IS/MND, Moorpark (2022; 28);
- Salvador Solar IS/MND, Riverside (2022; 27);
- Fresno General Plan Amendment 555 IS/MND (2022; 21);
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- Renaissance Ranch Commerce Center DEIR, Temescal Valley (2022; 53);
- Replies on Glen Ivy Senior Living IS/MND, Temescal Valley (2022; 24);
- Glen Ivy Senior Living IS/MND, Temescal Valley (2022; 46);
- FedEx Distribution Warehouse IS, Lancaster (2022; 35);
- Urban Villages EIR Addendum, San Marcos (2022; 32);

- NextEra San Ardos Solar IS/ND, San Ardo (2022; 20);
- Summit Avenue Warehouse IS/MND, Fontana (2022; 28);
- Gateway at the Oaks DEIR, Thousand Oaks (2022; 30);
- Primrose and Adelanto Warehouse CEQA Exemption, Adelanto (2022; 11);
- Fore Apartments Staff Report, Oxnard (2022; 29);
- 975 Manhattan Rd. discretionary approval, Los Angeles (2022; 12);
- Coachillin DEIR, North Palm Springs (2022; 30);
- 2740 W. Nielsen Ave Warehouse IS/MND, Fresno (2022; 25);
- Golf Center Warehouse Staff Report, Indio (2022; 26);
- Desert Peak Energy IS/MND, Palm Springs (2022; 26);
- Replies on Greentree FEIR, Vacaville (2022; 13);
- Greentree DEIR, Vacaville (2022; 31);
- Town Center DEIR, Laguna Niguel (2022; 16);
- 2nd Replies on Freedom Circle Focus Area and Greystar General Plan Amendment Project FEIR, San Jose (2022; 3);
- Corydon III CEQA Categorical Exemption, Lake Elsinore (2022; 11);
- Park Edge Apartments IS/MND, Santa Maria (2022; 30);
- Replies on UCSF New Hospital FEIR at Parnassus Heights FEIR. San Francisco (2022; 13);
- Replies on North Central Valley BESS Project IS/MND, Stockton (2022; 21);
- 9248 Holly Road Cannabis CEQA Exemption, Adelanto (2022; 12);
- Replies on Amazing 34 Distribution Center IS/MND, San Bernardino (2022; 10);
- Amazing 34 Distribution Center IS/MND, San Bernardino (2022; 28);
- Replies on Freedom Circle Focus Area and Greystar General Plan Amendment Project FEIR, San Jose (2022; 5);
- Replies on Alviso Hotel Project IS/MND, San Jose (2022; 49);
- Bussetto Foods IS/ND, Fresno (2022; 34);
- Spruce Ave Commerce Center, Rialto (2022;);
- 5006 and 5010 Mission Boulevard Warehouse IS/MND, Montclair (2022; 18);
- Conejo Summit IS/MND, Thousand Oaks (2022; 28);
- Sixth visit, Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2022; 4);
- TC NO. CAL. Development Warehousing and Distribution Facility Project DEIR, Stockton (2022; 33);
- Replies on Davidon Homes FEIR, Petaluma (2022; 49);
- Rural preservation and net conservation benefit coalition reply to post hearing briefs, Garnet Solar (2022; 24);
- Garnet Solar direct testimony, New York (2022; 17);
- Fifth visit, Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2022; 11);
- Shirk & Riggin Industrial Park Application, Visalia (2022; 22);
- Duarte Industrial Application, Visalia (2022; 17);
- Amond World Cold Storage Warehouse IS/MND, Madera (2022; 23);
- Replies on Schulte Logistics Centre EIR, Tracy (2022; 28);
- Alta Cuvee Mixed Use Project Recirculated IS/MND, Ranch Cucamonga (2022; 8);
- Fourth visit, Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2022; 9);
- Replies on 1242 20th Street Wellness Center Project FEIR, Santa Monica (2022; 5);

- 656 South San Vicente Medical Office Project EIR, Los Angeles (2022; 21);
- UCSF New Hospital at Parnassus Heights DEIR. San Francisco (2022; 40);
- DPR-21-021 Warehouse IS, Modesto (2022; 19);
- Ormat Brawley Solar Project DEIR, Brawley (2022; 37);
- Site visits to Heber 1 Geothermal Repower Project IS/MND (2022; 31);
- Heritage Industrial Center Design Review, Chula Vista (2022; 13);
- Temporary Outdoor Vehicle Storage DEIR, Port of Hueneme (2022; 31);
- CNU Medical Center and Innovation Park DEIR, Natomas (2022; 35);
- Beverly Boulevard Warehouse IS/MND, Pico Rivera (2021; 28);
- Hagemon Properties IS/MND Amendment, Bakersfield (2022; 23);
- Airport Distribution Center IS/MND, Redding (2021; 22);
- Orchard on Nevada Warehouse Staff Report, Redlands (2021; 24);
- Landings Logistics Center Exemption, Bakersfield (2021; 19);
- Replies on Hearn Veterans Village IS/MND, Santa Rosa (2021; 22);
- North Central Valley BESS Project IS/MND, Stockton (2021; 39);
- 2nd Replies on Heber 1 Geothermal Repower Project IS/MND (2022; 21);
- Stagecoach Solar DEIR, Barstow (2021; 24);
- Updated Sun Lakes Village North EIR Amendment 5, Banning, Riverside County (2021; 35);
- Freedom Circle Focus Area and Greystar General Plan Amendment Project EIR, San Jose (2021; 43);
- Operon HKI Warehouse IS/MND, Perris (2021; 26);
- Fairway Business Park Phase III IS/MND, Lake Elsinore (2021; 23);
- South Stockton Commerce Center IS/MND, Stockton (2021; 31);
- Starpoint Warehouse IS/MND, San Bernardino (2021; 24);
- Replies on Heber 1 Geothermal Repower Project IS/MND (2021; 15);
- Heber 1 Geothermal Repower Project IS/MND (2021; 11);
- Alviso Hotel Project IS/MND, San Jose (2021; 43);
- Replies on Easton Research Park West IS/MND, Rancho Cordova (2021; 3);
- Easton Research Park West IS/MND, Rancho Cordova (2021; 31);
- US Cold Storage DEIR, Hesperia (2021; 30);
- 1242 20th Street Wellness Center Project FEIR, Santa Monica (2021; 23);
- Third visit, Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2021; 10);
- Roseland Creek Community Park Project IS/MND, Santa Rosa (2021; 23);
- Vista Mar Declaration of Irreparable Harm, Pacifica (2021; 3);
- LogistiCenter at Fairfield IS/MND (2021; 25);
- Alta Cuvee Mixed Use Project IS/MND, Ranch Cucamonga (2021; 29);
- Caligrows Architectural and Site Plan Review, Patterson (2021; 21);
- 1055 E. Sandhill Avenue Warehouse IS/MND, Carson (2021; 10);
- Chestnut & Tenth Street Commercial Project IS/MND, Gilroy (2021; 27);
- Libitzky Management Warehouse IS/MND, Modesto (2021; 20);
- 3rd Replies on Heber 2 Geothermal Repower Project IS/MND, El Centro (2021; 10);
- Medical Office Building DEIR, Santa Cruz (2021; 30);
- Scannell Warehouse DEIR, Richmond (2021; 24);
- Diamond Heights Application, San Francisco (2021; 24);

- Costa Azul Mixed-Use EIR Addendum, San Diego (2021; 25);
- Woodland Research Park DEIR (2021; 45);
- 2nd Replies on Diamond Street Industrial IS/MND, San Marcos (2021; 9);
- Replies on Diamond Street Industrial IS/MND, San Marcos (2021; 3);
- Diamond Street Industrial IS/MND, San Marcos (2021; 28);
- DHS 109 Industrial Park IS/MND, Desert Hot Springs (2021; 33);
- Jersey Industrial Complex Rancho Cucamonga (2022; 22);
- 1188 Champions Drive Parking Garage Staff Report, San Jose (2021; 5);
- San Pedro Mountain, Pacifica (2021; 22);
- Pixior Warehouse IS/MND, Hesperia (2021; 29);
- 2nd Replies on Heber 2 Geothermal Repower Project IS/MND, El Centro (2021; 9);
- Hearn Veterans Village IS/MND, Santa Rosa (2021; 23);
- Second visit, Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2021; 11);
- Replies on Station East Residential/Mixed Use EIR, Union City (2021; 26);
- Schulte Logistics Centre EIR, Tracy (2021; 30);
- 4150 Point Eden Way Industrial Development EIR, Hayward (2021; 13);
- Airport Business Centre IS/MND, Manteca (2021; 27);
- Dual-branded Hotel IS/MND, Santa Clara (2021; 26);
- Legacy Highlands Specific Plan EIR, Beaumont (2021; 47);
- UC Berkeley LRDP and Housing Projects #1 and #2 EIR (2021; 27);
- Santa Maria Airport Business Park EIR, Santa Maria (2021; 27);
- Replies on Coachella Valley Arena EIR Addendum, Thousand Palms (2021; 20);
- Coachella Valley Arena EIR Addendum, Thousand Palms (2021; 35);
- Inland Harbor Warehouse NOD, Ontario (2021; 8);
- Alvarado Specific Plan DEIR, La Mesa (2021; 35);
- Harvill Avenue and Rider Street Terminal Project MND, Riverside (2021; 23);
- Gillespie Field EIR Addendum, El Cajon (2021; 28);
- Heritage Wind Energy Project section 94-c siting process, New York (2021: 99);
- Commercial Street Hotels project Site Plans, Oakland (2021; 19);
- Heber 1 Geothermal Repower Project MND, El Centro (2021; 11);
- Citrus-Slover Warehouse Project MND, Fontana (2021; 20);
- Scott Ranch Project RDEIR (Davidon Homes), Petaluma (2021; 31);
- Replies on StratosFuel Renewable H2 Project MND, Victorville (2021; 5);
- StratosFuel Renewable H2 Project MND, Victorville (2021; 25);
- Replies on PARS Global Storage MND, Murietta (2021; 22);
- Baldwin-Zacharias Master Plans EIR, Patterson (2021; 38);
- 1000 Gibraltar Drive EIR, Milpitas (2021; 20);
- Mango Avenue Industrial Warehouse Project, Fontana, MND (2021; 20);
- Veterans Affairs Site Plan Review No. 20-0102 MND, Bakersfield (2021; 25);
- Replies on UCSF Comprehensive Parnassus Heights Plan EIR (2021; 13);
- 14 Charles Hill Circle Design Review (2021; 11);
- SDG Commerce 217 Warehouse IS, American Canyon (2021; 26);
- Mulqueeney Ranch Wind Repowering Project DSEIR (2021; 98);
- Clawiter Road Industrial Project IS/MND, Hayward (2021; 18);

- Garnet Energy Center Stipulations, New York (2020);
- Heritage Wind Energy Project, New York (2020: 71);
- Ameresco Keller Canyon RNG Project IS/MND, Martinez (2020; 11);
- Cambria Hotel Project Staff Report, Dublin (2020; 19);
- Central Pointe Mixed-Use Staff Report, Santa Ana (2020; 20);
- Oak Valley Town Center EIR Addendum, Calimesa (2020; 23);
- Coachillin Specific Plan MND Amendment, Desert Hot Springs (2020; 26);
- Stockton Avenue Hotel and Condominiums Project Tiering to EIR, San Jose (2020; 19);
- Cityline Sub-block 3 South Staff Report, Sunnyvale (2020; 22);
- Station East Residential/Mixed Use EIR, Union City (2020; 21);
- Multi-Sport Complex & Southeast Industrial Annexation Suppl. EIR, Elk Grove (2020; 24);
- Sun Lakes Village North EIR Amendment 5, Banning, Riverside County (2020; 27);
- 2nd comments on 1296 Lawrence Station Road, Sunnyvale (2020; 4);
- 1296 Lawrence Station Road, Sunnyvale (2020; 16);
- Mesa Wind Project EA, Desert Hot Springs (2020; 31);
- 11th Street Development Project IS/MND, City of Upland (2020; 17);
- Vista Mar Project IS/MND, Pacifica (2020; 17);
- Emerson Creek Wind Project Application, Ohio (2020; 64);
- Replies on Wister Solar Energy Facility EIR, Imperial County (2020; 12);
- Wister Solar Energy Facility EIR, Imperial County (2020; 28);
- Crimson Solar EIS/EIR, Mojave Desert (2020, 35) not submitted;
- Sakioka Farms EIR tiering, Oxnard (2020; 14);
- 3440 Wilshire Project IS/MND, Los Angeles (2020; 19);
- Replies on 2400 Barranca Office Development Project EIR, Irvine (2020; 8);
- 2400 Barranca Office Development Project EIR, Irvine (2020; 25);
- Replies on Heber 2 Geothermal Repower Project IS/MND, El Centro (2020; 4);
- 2nd comments on Heber 2 Geothermal Repower Project IS/MND, El Centro (2020; 8);
- Heber 2 Geothermal Repower Project IS/MND, El Centro (2020; 3);
- Lots 4-12 Oddstad Way Project IS/MND, Pacifica (2020; 16);
- Declaration on DDG Visalia Warehouse project (2020; 5);
- Terraces of Lafayette EIR Addendum (2020; 24);
- AMG Industrial Annex IS/MND, Los Banos (2020; 15);
- Replies to responses to comments on responses on Casmalia and Linden Warehouse, Rialto (2020; 15);
- Clover Project MND, Petaluma (2020; 27);
- Ruby Street Apartments Project Env. Checklist, Hayward (2020; 20);
- Replies to responses to comments on responses on 3721 Mt. Diablo Boulevard Staff Report (2020; 5);
- 3721 Mt. Diablo Boulevard Staff Report (2020; 9);
- Steeno Warehouse IS/MND, Hesperia (2020; 19);
- UCSF Comprehensive Parnassus Heights Plan EIR (2020; 24);
- North Pointe Business Center MND, Fresno (2020; 14);
- Casmalia and Linden Warehouse IS, Fontana (2020; 15);
- Rubidoux Commerce Center Project IS/MND, Jurupa Valley (2020; 27);

- Haun and Holland Mixed Use Center MND, Menifee (2020; 23);
- First Industrial Logistics Center II, Moreno Valley IS/MND (2020; 23);
- GLP Store Warehouse Project Staff Report (2020; 15);
- Replies on Beale WAPA Interconnection Project EA & CEQA checklist (2020; 29);
- 2nd comments on Beale WAPA Interconnection Project EA & CEQA checklist (2020; 34);
- Beale WAPA Interconnection Project EA & CEQA checklist (2020; 30);
- Levine-Fricke Softball Field Improvement Addendum, UC Berkeley (2020; 16);
- Greenlaw Partners Warehouse and Distribution Center Staff Report, Palmdale (2020; 14);
- Humboldt Wind Energy Project DEIR (2019; 25);
- Sand Hill Supplemental EIR, Altamont Pass (2019; 17);
- 1700 Dell Avenue Office Project, Campbell (2019, 28);
- 1180 Main Street Office Project MND, Redwood City (2019; 19);
- Summit Ridge Wind Farm Request for Amendment 4, Oregon (2019; 46);
- Shafter Warehouse Staff Report (2019; 4);
- Park & Broadway Design Review, San Diego (2019; 19);
- Pinnacle Pacific Heights Design Review, San Diego (2019; 19);
- Pinnacle Park & C Design Review, San Diego (2019; 19);
- Preserve at Torrey Highlands EIR, San Diego (2019; 24);
- Santana West Project EIR Addendum, San Jose (2019; 18);
- The Ranch at Eastvale EIR Addendum, Riverside County (2020; 19);
- Hageman Warehouse IS/MND, Bakersfield (2019; 13);
- Oakley Logistics Center EIR, Antioch (2019; 22);
- 27 South First Street IS, San Jose (2019; 23);
- 2nd replies on Times Mirror Square Project EIR, Los Angeles (2020; 11);
- Replies on Times Mirror Square Project EIR, Los Angeles (2020; 13);
- Times Mirror Square Project EIR, Los Angeles (2019; 18);
- East Monte Vista & Aviator General Plan Amend EIR Addendum, Vacaville (2019; 22);
- Hillcrest LRDP EIR, La Jolla (2019; 36);
- 555 Portola Road CUP, Portola Valley (2019; 11);
- Johnson Drive Economic Development Zone SEIR, Pleasanton (2019; 27);
- 1750 Broadway Project CEQA Exemption, Oakland (2019; 19);
- Mor Furniture Project MND, Murietta Hot Springs (2019; 27);
- Harbor View Project EIR, Redwood City (2019; 26);
- Visalia Logistics Center (2019; 13);
- Cordelia Industrial Buildings MND (2019; 14);
- Scheu Distribution Center IS/ND, Rancho Cucamonga (2019; 13);
- Mills Park Center Staff Report, San Bruno (2019; 22);
- Site visit to Desert Highway Farms IS/MND, Imperial County (2019; 9);
- Desert Highway Farms IS/MND, Imperial County (2019; 12);
- ExxonMobil Interim Trucking for Santa Ynez Unit Restart SEIR, Santa Barbara (2019; 9);
- Olympic Holdings Inland Center Warehouse Project MND, Rancho Cucamonga (2019; 14);
- Replies to responses to comments on responses on Lawrence Equipment Industrial Warehouse, Banning (2019; 19);
- PARS Global Storage MND, Murietta (2019; 13);

- Slover Warehouse EIR Addendum, Fontana (2019; 16);
- Seefried Warehouse Project IS/MND, Lathrop (2019; 19)
- World Logistics Center Site Visit, Moreno Valley (2019; 19);
- Merced Landfill Gas-To-Energy Project IS/MND (2019; 12);
- West Village Expansion FEIR, UC Davis (2019; 11);
- Site visit, Doheny Ocean Desalination EIR, Dana Point (2019; 11);
- Replies to responses to comments on responses on Avalon West Valley Expansion EIR, San Jose (2019; 10);
- Avalon West Valley Expansion EIR, San Jose (2019; 22);
- Sunroad – Otay 50 EIR Addendum, San Diego (2019; 26);
- Del Rey Pointe Residential Project IS/MND, Los Angeles (2019; 34);
- 1 AMD Redevelopment EIR, Sunnyvale (2019; 22);
- Lawrence Equipment Industrial Warehouse IS/MND, Banning (2019; 14);
- SDG Commerce 330 Warehouse IS, American Canyon (2019; 21);
- PAMA Business Center IS/MND, Moreno Valley (2019; 23);
- Cupertino Village Hotel IS (2019; 24);
- Lake House IS/ND, Lodi (2019; 33);
- Campo Wind Project DEIS, San Diego County (DEIS, (2019; 14);
- Stirling Warehouse MND site visit, Victorville (2019; 7);
- Green Valley II Mixed-Use Project EIR, Fairfield (2019; 36);
- We Be Jammin rezone MND, Fresno (2019; 14);
- Gray Whale Cove Pedestrian Crossing IS/ND, Pacifica (2019; 7);
- Visalia Logistics Center & DDG 697V Staff Report (2019; 9);
- Mather South Community Masterplan Project EIR (2019; 35);
- Del Hombro Apartments EIR, Walnut Creek (2019; 23);
- Otay Ranch Planning Area 12 EIR Addendum, Chula Vista (2019; 21);
- The Retreat at Sacramento IS/MND (2019; 26);
- Site visit to Sunroad – Centrum 6 EIR Addendum, San Diego (2019; 9);
- Sunroad – Centrum 6 EIR Addendum, San Diego (2018; 22);
- North First and Brokaw Corporate Campus Buildings EIR Addendum, San Jose (2018; 30);
- South Lake Solar IS, Fresno County (2018; 18);
- Galloo Island Wind Project Application, New York (not submitted) (2018; 44);
- Doheny Ocean Desalination EIR, Dana Point (2018; 15);
- Stirling Warehouse MND, Victorville (2018; 18);
- LDK Warehouse MND, Vacaville (2018; 30);
- Gateway Crossings FEIR, Santa Clara (2018; 23);
- South Hayward Development IS/MND (2018; 9);
- CBU Specific Plan Amendment, Riverside (2018; 27);
- 2nd Replies to responses to comments on responses on Dove Hill Road Assisted Living Project MND (2018; 11);
- Replies to responses to comments on responses on Dove Hill Road Assisted Living Project MND (2018; 7);
- Dove Hill Road Assisted Living Project MND (2018; 12);
- Deer Ridge/Shadow Lakes Golf Course EIR, Brentwood (2018; 21);

- Pyramid Asphalt BLM Finding of No Significance, Imperial County (2018; 22);
- Amáre Apartments IS/MND, Martinez (2018; 15);
- Petaluma Hill Road Cannabis MND, Santa Rosa (2018; 21);
- 2nd comments on Zeiss Innovation Center IS/MND, Dublin (2018: 12);
- Zeiss Innovation Center IS/MND, Dublin (2018: 32);
- City of Hope Campus Plan EIR, Duarte (2018; 21);
- Palo Verde Center IS/MND, Blythe (2018; 14);
- Logisticenter at Vacaville MND (2018; 24);
- IKEA Retail Center SEIR, Dublin (2018; 17);
- Merge 56 EIR, San Diego (2018; 15);
- Natomas Crossroads Quad B Office Project P18-014 EIR, Sacramento (2018; 12);
- 2900 Harbor Bay Parkway Staff Report, Alameda (2018; 30);
- At Dublin EIR, Dublin (2018; 25);
- Fresno Industrial Rezone Amendment Application No. 3807 IS (2018; 10);
- Nova Business Park IS/MND, Napa (2018; 18);
- Updated Collision Risk Model Priors for Estimating Eagle Fatalities, USFWS (2018; 57);
- 750 Marlborough Avenue Warehouse MND, Riverside (2018; 14);
- Replies to responses to comments on responses on San Bernardino Logistics Center IS (2018; 12);
- San Bernardino Logistics Center IS (2018; 19);
- CUP2017-16, Costco IS/MND, Clovis (2018; 11);
- Desert Land Ventures Specific Plan EIR, Desert Hot Springs (2018; 18);
- Ventura Hilton IS/MND (2018; 30);
- North of California Street Master Plan Project IS, Mountain View (2018: 11);
- Tamarind Warehouse MND, Fontana (2018; 16);
- Lathrop Gateway Business Park EIR Addendum (2018; 23);
- Centerpointe Commerce Center IS, Moreno Valley (2019; 18);
- Amazon Warehouse Notice of Exemption, Bakersfield (2018; 13);
- CenterPoint Building 3 project Staff Report, Manteca (2018; 23);
- Cessna & Aviator Warehouse IS/MND, Vacaville (2018; 24);
- Napa Airport Corporate Center EIR, American Canyon (2018, 15);
- 800 Opal Warehouse Initial Study, Mentone, San Bernardino County (2018; 18);
- 2695 W. Winton Ave Industrial Project IS, Hayward (2018; 22);
- Trinity Cannabis Cultivation and Manufacturing Facility DEIR, Calexico (2018; 15);
- Shoe Palace Expansion IS/MND, Morgan Hill (2018; 21);
- Newark Warehouse at Morton Salt Plant Staff Report (2018; 15);
- Northlake Specific Plan FEIR “Peer Review”, Los Angeles County (2018; 9);
- Replies to responses to comments on responses on Northlake Specific Plan SEIR, Los Angeles County (2018; 13);
- Northlake Specific Plan SEIR, Los Angeles County (2017; 27);
- Bogle Wind Turbine DEIR, east Yolo County (2017; 48);
- Ferrante Apartments IS/MND, Los Angeles (2017; 14);
- The Villages of Lakeview EIR, Riverside (2017; 28);
- Data Needed for Assessing Trail Management Impacts on Northern Spotted Owl, Marin

- County (2017; 5);
- Notes on Proposed Study Options for Trail Impacts on Northern Spotted Owl (2017; 4);
- Pyramid Asphalt IS, Imperial County (Declaration) (2017; 5);
- San Geronio Crossings EIR, Riverside County (2017; 22);
- Replies to responses to comments on responses on Jupiter Project IS and MND, Apple Valley (2017; 12);
- Proposed World Logistics Center Mitigation Measures, Moreno Valley (2017, 2019; 12);
- MacArthur Transit Village Project Modified 2016 CEQA Analysis (2017; 12);
- PG&E Company Bay Area Operations and Maintenance HCP (2017; 45);
- Central SoMa Plan DEIR (2017; 14);
- Suggested mitigation for trail impacts on northern spotted owl, Marin County (2016; 5);
- Colony Commerce Center Specific Plan DEIR, Ontario (2016; 16);
- Fairway Trails Improvements MND, Marin County (2016; 13);
- Review of Avian-Solar Science Plan (2016; 28);
- Replies on Pyramid Asphalt IS, Imperial County (2016; 5);
- Pyramid Asphalt IS, Imperial County (2016; 4);
- Agua Mansa Distribution Warehouse Project Initial Study (2016; 14);
- Santa Anita Warehouse MND, Rancho Cucamonga (2016; 12);
- CapRock Distribution Center III DEIR, Rialto (2016; 12);
- Orange Show Logistics Center IS/MND, San Bernardino (2016; 9);
- City of Palmdale Oasis Medical Village Project IS/MND (2016; 7);
- Comments on proposed rule for incidental eagle take, USFWS (2016, 49);
- Replies on Grapevine Specific and Community Plan FEIR, Kern County (2016; 25);
- Grapevine Specific and Community Plan DEIR, Kern County (2016; 15);
- Clinton County Zoning Ordinance for Wind Turbine siting (2016);
- Hallmark at Shenandoah Warehouse Project Initial Study, San Bernardino (2016; 6);
- Tri-City Industrial Complex Initial Study, San Bernardino (2016; 5);
- Hidden Canyon Industrial Park Plot Plan 16-PP-02, Beaumont (2016; 12);
- Kimball Business Park DEIR (2016; 10);
- Jupiter Project IS and MND, Apple Valley, San Bernardino County (2016; 9);
- Revised Draft Giant Garter Snake Recovery Plan of 2015 (2016, 18);
- Palo Verde Mesa Solar Project EIR, Blythe (2016; 27);
- Reply on Fairview Wind Project Natural Heritage Assessment, Ontario, Canada (2016; 14);
- Fairview Wind Project Natural Heritage Assessment, Ontario, Canada (2016; 41);
- Reply on Amherst Island Wind Farm Natural Heritage Assessment, Ontario (2015, 38);
- Amherst Island Wind Farm Natural Heritage Assessment, Ontario (2015, 31);
- Second Reply on White Pines Wind Farm, Ontario (2015, 6);
- Reply on White Pines Wind Farm Natural Heritage Assessment, Ontario (2015, 10);
- White Pines Wind Farm Natural Heritage Assessment, Ontario (2015, 9);
- Proposed Section 24 Specific Plan Agua Caliente Band of Cahuilla Indians DEIS (2015, 9);
- Replies on 24 Specific Plan Agua Caliente Band of Cahuilla Indians FEIS (2015, 6);
- Sierra Lakes Commerce Center Project DEIR, Fontana (2015, 9);
- Columbia Business Center MND, Riverside (2015; 8);
- West Valley Logistics Center Specific Plan DEIR, Fontana (2015, 10);

- Willow Springs Solar Photovoltaic Project DEIR (2015, 28);
- Alameda Creek Bridge Replacement Project DEIR (2015, 10);
- World Logistic Center Specific Plan FEIR, Moreno Valley (2015, 12);
- Elkhorn Valley Wind Power Project Impacts, Oregon (2015; 143);
- Bay Delta Conservation Plan EIR/EIS, Sacramento (2014, 21);
- Addison Wind Energy Project DEIR, Mojave (2014, 32);
- Replies on the Addison Wind Energy Project DEIR, Mojave (2014, 15);
- Addison and Rising Tree Wind Energy Project FEIR, Mojave (2014, 12);
- Palen Solar Electric Generating System FSA (CEC), Blythe (2014, 20);
- Rebuttal testimony on Palen Solar Energy Generating System (2014, 9);
- Seven Mile Hill and Glenrock/Rolling Hills impacts + Addendum, Wyoming (2014; 105);
- Rising Tree Wind Energy Project DEIR, Mojave (2014, 32);
- Replies on the Rising Tree Wind Energy Project DEIR, Mojave (2014, 15);
- Soitec Solar Development Project PEIR, Boulevard, San Diego County (2014, 18);
- Oakland Zoo expansion on Alameda whipsnake and California red-legged frog (2014; 3);
- Alta East Wind Energy Project FEIS, Tehachapi Pass (2013, 23);
- Blythe Solar Power Project Staff Assessment, California Energy Commission (2013, 16);
- Clearwater and Yakima Solar Projects DEIR, Kern County (2013, 9);
- West Antelope Solar Energy Project IS/MND, Antelope Valley (2013, 18);
- Cuyama Solar Project DEIR, Carrizo Plain (2014, 19);
- Desert Renewable Energy Conservation Plan (DRECP) EIR/EIS (2015, 49);
- Kingbird Solar Photovoltaic Project EIR, Kern County (2013, 19);
- Lucerne Valley Solar Project IS/MND, San Bernardino County (2013, 12);
- Tule Wind project FEIR/FEIS (Declaration) (2013; 31);
- Sunlight Partners LANDPRO Solar Project MND (2013; 11);
- Declaration in opposition to BLM fracking (2013; 5);
- Blythe Energy Project (solar) CEC Staff Assessment (2013;16);
- Rosamond Solar Project EIR Addendum, Kern County (2013; 13);
- Pioneer Green Solar Project EIR, Bakersfield (2013; 13);
- Replies on Soccer Center Solar Project MND (2013; 6);
- Soccer Center Solar Project MND, Lancaster (2013; 10);
- Plainview Solar Works MND, Lancaster (2013; 10);
- Alamo Solar Project MND, Mojave Desert (2013; 15);
- Replies on Imperial Valley Solar Company 2 Project (2013; 10);
- Imperial Valley Solar Company 2 Project (2013; 13);
- FRV Orion Solar Project DEIR, Kern County (PP12232) (2013; 9);
- Casa Diablo IV Geothermal Development Project (2013; 6);
- Reply on Casa Diablo IV Geothermal Development Project (2013; 8);
- Alta East Wind Project FEIS, Tehachapi Pass (2013; 23);
- Metropolitan Air Park DEIR, City of San Diego (2013;);
- Davidon Homes Tentative Subdivision Rezoning Project DEIR, Petaluma (2013; 9);
- Oakland Zoo Expansion Impacts on Alameda Whipsnake (2013; 10);
- Campo Verde Solar project FEIR, Imperial Valley (2013; 11pp);
- Neg Dec comments on Davis Sewer Trunk Rehabilitation (2013; 8);

- North Steens Transmission Line FEIS, Oregon (Declaration) (2012; 62);
- Summer Solar and Springtime Solar Projects IS/MND Lancaster (2012; 8);
- J&J Ranch, 24 Adobe Lane Environmental Review, Orinda (2012; 14);
- Replies on Hudson Ranch Power II Geothermal Project and Simbol Calipatria Plant II (2012; 8);
- Hudson Ranch Power II Geothermal Project and Simbol Calipatria Plant II (2012; 9);
- Desert Harvest Solar Project EIS, near Joshua Tree (2012; 15);
- Solar Gen 2 Array Project DEIR, El Centro (2012; 16);
- Ocotillo Sol Project EIS, Imperial Valley (2012; 4);
- Beacon Photovoltaic Project DEIR, Kern County (2012; 5);
- Butte Water District 2012 Water Transfer Program IS/MND (2012; 11);
- Mount Signal and Calxico Solar Farm Projects DEIR (2011; 16);
- City of Elk Grove Sphere of Influence EIR (2011; 28);
- Sutter Landing Park Solar Photovoltaic Project MND, Sacramento (2011; 9);
- Rabik/Gudath Project, 22611 Coleman Valley Road, Bodega Bay (CPN 10-0002) (2011; 4);
- Ivanpah Solar Electric Generating System (ISEGS) (Declaration) (2011; 9);
- Draft Eagle Conservation Plan Guidance, USFWS (2011; 13);
- Niles Canyon Safety Improvement Project EIR/EA (2011; 16);
- Route 84 Safety Improvement Project (Declaration) (2011; 7);
- Rebuttal on Whistling Ridge Wind Energy Power DEIS, Skamania County, (2010; 6);
- Whistling Ridge Wind Energy Power DEIS, Skamania County, Washington (2010; 41);
- Klickitat County's Decisions on Windy Flats West Wind Energy Project (2010; 17);
- St. John's Church Project DEIR, Orinda (2010; 14);
- Results Radio Zone File #2009-001 IS/MND, Conaway site, Davis (2010; 20);
- Rio del Oro Specific Plan Project FEIR, Rancho Cordova (2010;12);
- Results Radio Zone File #2009-001, Mace Blvd site, Davis (2009; 10);
- Answers to Questions on 33% RPS Implementation Analysis Preliminary Results Report (2009; 9);
- SEPA Determination of Non-significance regarding zoning adjustments for Skamania County, Washington (Second Declaration) (2008; 17);
- Draft 1A Summary Report to CAISO (2008; 10);
- Hilton Manor Project Categorical Exemption, County of Placer (2009; 9);
- Protest of CARE to Amendment to the Power Purchase and Sale Agreement for Procurement of Eligible Renewable Energy Resources Between Hatchet Ridge Wind LLC and PG&E (2009; 3);
- Tehachapi Renewable Transmission Project EIR/EIS (2009; 142);
- Delta Shores Project EIR, south Sacramento (2009; 11 + addendum 2);
- Declaration in Support of Care's Petition to Modify D.07-09-040 (2008; 3);
- The Public Utility Commission's Implementation Analysis December 16 Workshop for the Governor's Executive Order S-14-08 to implement a 33% Renewable Portfolio Standard by 2020 (2008; 9);
- The Public Utility Commission's Implementation Analysis Draft Work Plan for the Governor's Executive Order S-14-08 to implement a 33% Renewable Portfolio Standard by 2020 (2008; 11);
- Draft 1A Summary Report to California Independent System Operator for Planning Reserve

- Margins (PRM) Study (2008; 7.);
- SEPA Determination of Non-significance regarding zoning adjustments for Skamania County, Washington (Declaration) (2008; 16);
- Colusa Generating Station, California Energy Commission PSA (2007; 24);
- Rio del Oro Specific Plan Project Recirculated DEIR, Mather (2008; 66);
- Replies on Regional University Specific Plan EIR, Roseville (2008; 20);
- Regional University Specific Plan EIR, Roseville (2008; 33);
- Clark Precast, LLC's "Sugarland" project, ND, Woodland (2008; 15);
- Cape Wind Project DEIS, Nantucket (2008; 157);
- Yuba Highlands Specific Plan EIR, Spenceville, Yuba County (2006; 37);
- Replies to responses to comments on responses on North Table Mountain MND, Butte County (2006; 5);
- North Table Mountain MND, Butte County (2006; 15);
- Windy Point Wind Farm EIS (2006; 14 and Powerpoint slide replies);
- Shiloh I Wind Power Project EIR, Rio Vista (2005; 18);
- Buena Vista Wind Energy Project NOP, Byron (2004; 15);
- Callahan Estates Subdivision ND, Winters (2004; 11);
- Winters Highlands Subdivision IS/ND (2004; 9);
- Winters Highlands Subdivision IS/ND (2004; 13);
- Creekside Highlands Project, Tract 7270 ND (2004; 21);
- Petition to California Fish and Game Commission to list Burrowing Owl (2003; 10);
- Altamont Pass Wind Resource Area CUP renewals, Alameda County (2003; 41);
- UC Davis Long Range Development Plan: Neighborhood Master Plan (2003; 23);
- Anderson Marketplace Draft Environmental Impact Report (2003; 18);
- Negative Declaration of the proposed expansion of Temple B'nai Tikyah (2003; 6);
- Antonio Mountain Ranch Specific Plan Public Draft EIR (2002; 23);
- Replies on East Altamont Energy Center evidentiary hearing (2002; 9);
- Revised Draft Environmental Impact Report, The Promenade (2002; 7);
- Recirculated Initial Study for Calpine's proposed Pajaro Valley Energy Center (2002; 3);
- UC Merced -- Declaration (2002; 5);
- Replies on Atwood Ranch Unit III Subdivision FEIR (2003; 22);
- Atwood Ranch Unit III Subdivision EIR (2002; 19);
- California Energy Commission Staff Report on GWF Tracy Peaker Project (2002; 20);
- Silver Bend Apartments IS/MND, Placer County (2002; 13);
- UC Merced Long-range Development Plan DEIR and UC Merced Community Plan DEIR (2001; 26);
- Colusa County Power Plant IS, Maxwell (2001; 6);
- Dog Park at Catlin Park, Folsom, California (2001; 5);
- Calpine and Bechtel Corporations' Biological Resources Implementation and Monitoring Program (BRMIMP) for the Metcalf Energy Center (2000; 10);
- Metcalf Energy Center, California Energy Commission FSA (2000);
- US Fish and Wildlife Service Section 7 consultation with the California Energy Commission regarding Calpine and Bechtel Corporations' Metcalf Energy Center (2000; 4);
- California Energy Commission's Preliminary Staff Assessment of the proposed Metcalf Energy Center (2000; 11);

- Site-specific management plans for the Natomas Basin Conservancy's mitigation lands, prepared by Wildlands, Inc. (2000: 7);
- Affidavit of K. Shawn Smallwood in *Spirit of the Sage Council, et al. (Plaintiffs) vs. Bruce Babbitt, Secretary, U.S. Department of the Interior, et al. (Defendants)*, Injuries caused by the No Surprises policy and final rule which codifies that policy (1999: 9).
- California Board of Forestry's proposed amended Forest Practices Rules (1999);
- Sunset Sky ranch Airport Use Permit IS/MND (1999);
- Ballona West Bluffs Project Environmental Impact Report (1999; oral presentation);
- Draft Recovery Plan for Giant Garter Snake (Fed. Reg. 64(176): 49497-49498) (1999; 8);
- Draft Recovery Plan for Arroyo Southwestern Toad (1998);
- Pacific Lumber Co. (Headwaters) HCP & EIR, Fortuna (1998; 28);
- Natomas Basin HCP Permit Amendment, Sacramento (1998);
- San Diego Multi-Species Conservation Program FEIS/FEIR (1997; 10);

Volunteer comments on other Environmental Review Documents:

- Proposed Regulation for California Fish and Game Code Section 3503.5 (2015: 12);
- Statement of Overriding Considerations related to extending Altamont Winds, Inc.'s Conditional Use Permit PLN2014-00028 (2015; 8);
- Covell Village PEIR, Davis (2005; 19);
- Bureau of Land Management Wind Energy Programmatic EIS Scoping (2003; 7.);
- NEPA Environmental Analysis for Biosafety Level 4 National Biocontainment Laboratory (NBL) at UC Davis (2003: 7);
- Notice of Preparation of UC Merced Community and Area Plan EIR, on behalf of The Wildlife Society—Western Section (2001: 8.);
- Preliminary Draft Yolo County Habitat Conservation Plan (2001; 2 letters totaling 35.);
- Merced County General Plan Revision, notice of Negative Declaration (2001: 2.);
- Notice of Preparation of Campus Parkway EIR/EIS (2001: 7.);
- Draft Recovery Plan for the bighorn sheep in the Peninsular Range (*Ovis candensis*) (2000);
- Draft Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*), on behalf of The Wildlife Society—Western Section (2000: 10.);
- Sierra Nevada Forest Plan Amendment Draft Environmental Impact Statement, on behalf of The Wildlife Society—Western Section (2000: 7.);
- State Water Project Supplemental Water Purchase Program, Draft Program EIR (1997);
- Davis General Plan Update EIR (2000);
- Turn of the Century EIR (1999: 10);
- Proposed termination of Critical Habitat Designation under the Endangered Species Act (Fed. Reg. 64(113): 31871-31874) (1999);
- NOA Draft Addendum to the Final Handbook for Habitat Conservation Planning and Incidental Take Permitting Process, termed the HCP 5-Point Policy Plan (Fed. Reg. 64(45): 11485 - 11490) (1999; 2 + attachments);
- Covell Center Project EIR and EIR Supplement (1997).

Position Statements I prepared the following position statements for the Western Section of The Wildlife Society, and one for nearly 200 scientists:

- Recommended that the California Department of Fish and Game prioritize the extermination of the introduced southern water snake in northern California. The Wildlife Society--Western Section (2001);
- Recommended that The Wildlife Society—Western Section appoint or recommend members of the independent scientific review panel for the UC Merced environmental review process (2001);
- Opposed the siting of the University of California's 10th campus on a sensitive vernal pool/grassland complex east of Merced. The Wildlife Society--Western Section (2000);
- Opposed the legalization of ferret ownership in California. The Wildlife Society--Western Section (2000);
- Opposed the Proposed “No Surprises,” “Safe Harbor,” and “Candidate Conservation Agreement” rules, including permit-shield protection provisions (Fed. Reg. Vol. 62, No. 103, pp. 29091-29098 and No. 113, pp. 32189-32194). This statement was signed by 188 scientists and went to the responsible federal agencies, as well as to the U.S. Senate and House of Representatives.

Posters at Professional Meetings

- Leyvas, E. and K. S. Smallwood. 2015. Rehabilitating injured animals to offset and rectify wind project impacts. Conference on Wind Energy and Wildlife Impacts, Berlin, Germany, 9-12 March 2015.
- Smallwood, K. S., J. Mount, S. Standish, E. Leyvas, D. Bell, E. Walther, B. Karas. 2015. Integrated detection trials to improve the accuracy of fatality rate estimates at wind projects. Conference on Wind Energy and Wildlife Impacts, Berlin, Germany, 9-12 March 2015.
- Smallwood, K. S. and C. G. Thelander. 2005. Lessons learned from five years of avian mortality research in the Altamont Pass WRA. AWEA conference, Denver, May 2005.
- Neher, L., L. Wilder, J. Woo, L. Spiegel, D. Yen-Nakafugi, and K.S. Smallwood. 2005. Bird's eye view on California wind. AWEA conference, Denver, May 2005.
- Smallwood, K. S., C. G. Thelander and L. Spiegel. 2003. Toward a predictive model of avian fatalities in the Altamont Pass Wind Resource Area. Windpower 2003 Conference and Convention, Austin, Texas.
- Smallwood, K.S. and Eva Butler. 2002. Pocket Gopher Response to Yellow Star-thistle Eradication as part of Grassland Restoration at Decommissioned Mather Air Force Base, Sacramento County, California. White Mountain Research Station Open House, Barcroft Station.
- Smallwood, K.S. and Michael L. Morrison. 2002. Fresno kangaroo rat (*Dipodomys nitratoides*) Conservation Research at Resources Management Area 5, Lemoore Naval Air Station. White Mountain Research Station Open House, Barcroft Station.
- Smallwood, K.S. and E.L. Fitzhugh. 1989. Differentiating mountain lion and dog tracks. Third Mountain Lion Workshop, Prescott, AZ.
- Smith, T. R. and K. S. Smallwood. 2000. Effects of study area size, location, season, and allometry on reported Sorex shrew densities. Annual Meeting of the Western Section of The Wildlife Society.

Presentations at Professional Meetings and Seminars

Smallwood, N., and S. Smallwood. 2025. Improving methods in environmental review Part 1:

Habitat assessment of wildlife species with potential to occur on a project site. The Wildlife Society – Western Section, Visalia, California, 5 February 2025.

Smallwood, S., and N. Smallwood. 2025. Improving methods in environmental review part 2: reconnaissance surveys for characterizing the wildlife community. The Wildlife Society – Western Section, Visalia, California, 5 February 2025.

Eagle mortality at wind turbines. Wings over the Columbia Gorge. Friends of the Columbia Gorge, 4 January 2024.

Ecology and recent population trend of burrowing owls in the Altamont Pass Wind Resource Area. The Wildlife Society – Western Section Burrowing Owl Symposium, Riverside, California, 6 February 2023.

Renewable energy impacts to burrowing owls. The Wildlife Society – Western Section Burrowing Owl Symposium, Riverside, California, 7 February 2023.

Smallwood, K.S. and D.A. Bell. Long-Term Population Trend of Burrowing Owls in Vasco Caves. Via Zoom to Audubon Society, 21 October 2021.

Long-Term Population Trend of Burrowing Owls in the Altamont. Golden Gate Audubon, 21 October 2020.

Long-Term Population Trend of Burrowing Owls in the Altamont. East Bay Regional Park District 2020 Stewardship Seminar, Oakland, California, 18 November 2020.

Smallwood, K.S., D.A. Bell, and S. Standish. Dogs detect larger wind energy effects on bats and birds. The Wildlife Society, 28 September 2020.

Smallwood, K.S. and D.A. Bell. Effects of wind turbine curtailment on bird and bat fatalities in the Altamont Pass Wind Resource Area. The Wildlife Society, 28 September 2020.

Smallwood, K.S., D.A. Bell, and S. Standish. Dogs detect larger wind energy effects on bats and birds. The Wildlife Survey, 7 February 2020.

Smallwood, K.S. and D.A. Bell. Effects of wind turbine curtailment on bird and bat fatalities in the Altamont Pass Wind Resource Area. The Wildlife Survey, 7 February 2020.

Dog detections of bat and bird fatalities at wind farms in the Altamont Pass Wind Resource Area. East Bay Regional Park District 2019 Stewardship Seminar, Oakland, California, 13 November 2019.

Repowering the Altamont Pass. Altamont Symposium, The Wildlife Society – Western Section, 5 February 2017.

Developing methods to reduce bird mortality in the Altamont Pass Wind Resource Area, 1999-2007. Altamont Symposium, The Wildlife Society – Western Section, 5 February 2017.

Conservation and recovery of burrowing owls in Santa Clara Valley. Santa Clara Valley Habitat Agency, Newark, California, 3 February 2017.

Mitigation of Raptor Fatalities in the Altamont Pass Wind Resource Area. Raptor Research Foundation Meeting, Sacramento, California, 6 November 2015.

From burrows to behavior: Research and management for burrowing owls in a diverse landscape. California Burrowing Owl Consortium meeting, 24 October 2015, San Jose, California.

The Challenges of repowering. Keynote presentation at Conference on Wind Energy and Wildlife Impacts, Berlin, Germany, 10 March 2015.

Research Highlights Altamont Pass 2011-2015. Scientific Review Committee, Oakland, California, 8 July 2015.

Siting wind turbines to minimize raptor collisions: Altamont Pass Wind Resource Area. US Fish and Wildlife Service Golden Eagle Working Group, Sacramento, California, 8 January 2015.

Evaluation of nest boxes as a burrowing owl conservation strategy. Sacramento Chapter of the Western Section, The Wildlife Society. Sacramento, California, 26 August 2013.

Predicting collision hazard zones to guide repowering of the Altamont Pass. Conference on wind power and environmental impacts. Stockholm, Sweden, 5-7 February 2013.

Impacts of Wind Turbines on Wildlife. California Council for Wildlife Rehabilitators, Yosemite, California, 12 November 2012.

Impacts of Wind Turbines on Birds and Bats. Madrone Audubon Society, Santa Rosa, California, 20 February 2012.

Comparing Wind Turbine Impacts across North America. California Energy Commission Staff Workshop: Reducing the Impacts of Energy Infrastructure on Wildlife, 20 July 2011.

Siting Repowered Wind Turbines to Minimize Raptor Collisions. California Energy Commission Staff Workshop: Reducing the Impacts of Energy Infrastructure on Wildlife, 20 July 2011.

Siting Repowered Wind Turbines to Minimize Raptor Collisions. Alameda County Scientific Review Committee meeting, 17 February 2011

Comparing Wind Turbine Impacts across North America. Conference on Wind energy and Wildlife impacts, Trondheim, Norway, 3 May 2011.

Update on Wildlife Impacts in the Altamont Pass Wind Resource Area. Raptor Symposium, The Wildlife Society—Western Section, Riverside, California, February 2011.

Siting Repowered Wind Turbines to Minimize Raptor Collisions. Raptor Symposium, The Wildlife Society - Western Section, Riverside, California, February 2011.

Wildlife mortality caused by wind turbine collisions. Ecological Society of America, Pittsburgh, Pennsylvania, 6 August 2010.

Map-based repowering and reorganization of a wind farm to minimize burrowing owl fatalities. California burrowing Owl Consortium Meeting, Livermore, California, 6 February 2010.

Environmental barriers to wind power. Getting Real About Renewables: Economic and Environmental Barriers to Biofuels and Wind Energy. A symposium sponsored by the Environmental & Energy Law & Policy Journal, University of Houston Law Center, Houston, 23 February 2007.

Lessons learned about bird collisions with wind turbines in the Altamont Pass and other US wind farms. Meeting with Japan Ministry of the Environment and Japan Ministry of the Economy, Wild Bird Society of Japan, and other NGOs Tokyo, Japan, 9 November 2006.

Lessons learned about bird collisions with wind turbines in the Altamont Pass and other US wind farms. Symposium on bird collisions with wind turbines. Wild Bird Society of Japan, Tokyo, Japan, 4 November 2006.

Responses of Fresno kangaroo rats to habitat improvements in an adaptive management framework. California Society for Ecological Restoration (SERCAL) 13th Annual Conference, UC Santa Barbara, 27 October 2006.

Fatality associations as the basis for predictive models of fatalities in the Altamont Pass Wind Resource Area. EEI/APLIC/PIER Workshop, 2006 Biologist Task Force and Avian Interaction with Electric Facilities Meeting, Pleasanton, California, 28 April 2006.

Burrowing owl burrows and wind turbine collisions in the Altamont Pass Wind Resource Area. The Wildlife Society - Western Section Annual Meeting, Sacramento, California, February 8, 2006.

Mitigation at wind farms. Workshop: Understanding and resolving bird and bat impacts. American Wind Energy Association and Audubon Society. Los Angeles, CA. January 10 and 11, 2006.

Incorporating data from the California Wildlife Habitat Relationships (CWHR) system into an impact assessment tool for birds near wind farms. Shawn Smallwood, Kevin Hunting, Marcus Yee, Linda Spiegel, Monica Parisi. Workshop: Understanding and resolving bird and bat impacts. American Wind Energy Association and Audubon Society. Los Angeles, CA. January 10 and 11, 2006.

Toward indicating threats to birds by California's new wind farms. California Energy Commission, Sacramento, May 26, 2005.

Avian collisions in the Altamont Pass. California Energy Commission, Sacramento, May 26, 2005.

Ecological solutions for avian collisions with wind turbines in the Altamont Pass Wind Resource Area. EPRI Environmental Sector Council, Monterey, California, February 17, 2005.

Ecological solutions for avian collisions with wind turbines in the Altamont Pass Wind Resource

Area. The Wildlife Society—Western Section Annual Meeting, Sacramento, California, January 19, 2005.

Associations between avian fatalities and attributes of electric distribution poles in California. The Wildlife Society - Western Section Annual Meeting, Sacramento, California, January 19, 2005.

Minimizing avian mortality in the Altamont Pass Wind Resources Area. UC Davis Wind Energy Collaborative Forum, Palm Springs, California, December 14, 2004.

Selecting electric distribution poles for priority retrofitting to reduce raptor mortality. Raptor Research Foundation Meeting, Bakersfield, California, November 10, 2004.

Responses of Fresno kangaroo rats to habitat improvements in an adaptive management framework. Annual Meeting of the Society for Ecological Restoration, South Lake Tahoe, California, October 16, 2004.

Lessons learned from five years of avian mortality research at the Altamont Pass Wind Resources Area in California. The Wildlife Society Annual Meeting, Calgary, Canada, September 2004.

The ecology and impacts of power generation at Altamont Pass. Sacramento Petroleum Association, Sacramento, California, August 18, 2004.

Burrowing owl mortality in the Altamont Pass Wind Resource Area. California Burrowing Owl Consortium meeting, Hayward, California, February 7, 2004.

Burrowing owl mortality in the Altamont Pass Wind Resource Area. California Burrowing Owl Symposium, Sacramento, November 2, 2003.

Raptor Mortality at the Altamont Pass Wind Resource Area. National Wind Coordinating Committee, Washington, D.C., November 17, 2003.

Raptor Behavior at the Altamont Pass Wind Resource Area. Annual Meeting of the Raptor Research Foundation, Anchorage, Alaska, September, 2003.

Raptor Mortality at the Altamont Pass Wind Resource Area. Annual Meeting of the Raptor Research Foundation, Anchorage, Alaska, September, 2003.

California mountain lions. Ecological & Environmental Issues Seminar, Department of Biology, California State University, Sacramento, November, 2000.

Intra- and inter-turbine string comparison of fatalities to animal burrow densities at Altamont Pass. National Wind Coordinating Committee, Carmel, California, May, 2000.

Using a Geographic Positioning System (GPS) to map wildlife and habitat. Annual Meeting of the Western Section of The Wildlife Society, Riverside, CA, January, 2000.

Suggested standards for science applied to conservation issues. Annual Meeting of the Western Section of The Wildlife Society, Riverside, CA, January, 2000.

The indicators framework applied to ecological restoration in Yolo County, California. Society for Ecological Restoration, September 25, 1999.

Ecological restoration in the context of animal social units and their habitat areas. Society for Ecological Restoration, September 24, 1999.

Relating Indicators of Ecological Health and Integrity to Assess Risks to Sustainable Agriculture and Native Biota. International Conference on Ecosystem Health, August 16, 1999.

A crosswalk from the Endangered Species Act to the HCP Handbook and real HCPs. Southern California Edison, Co. and California Energy Commission, March 4-5, 1999.

Mountain lion track counts in California: Implications for Management. Ecological & Environmental Issues Seminar, Department of Biological Sciences, California State University, Sacramento, November 4, 1998.

“No Surprises” -- Lack of science in the HCP process. California Native Plant Society Annual Conservation Conference, The Presidio, San Francisco, September 7, 1997.

In Your Interest. A half hour weekly show aired on Channel 10 Television, Sacramento. In this episode, I served on a panel of experts discussing problems with the implementation of the Endangered Species Act. Aired August 31, 1997.

Spatial scaling of pocket gopher (*Geomys*) density. Southwestern Association of Naturalists 44th Meeting, Fayetteville, Arkansas, April 10, 1997.

Estimating prairie dog and pocket gopher burrow volume. Southwestern Association of Naturalists 44th Meeting, Fayetteville, Arkansas, April 10, 1997.

Ten years of mountain lion track survey. Fifth Mountain Lion Workshop, San Diego, February 27, 1996.

Study and interpretive design effects on mountain lion density estimates. Fifth Mountain Lion Workshop, San Diego, February 27, 1996.

Small animal control. Session moderator and speaker at the California Farm Conference, Sacramento, California, Feb. 28, 1995.

Small animal control. Ecological Farming Conference, Asylomar, California, Jan. 28, 1995.

Habitat associations of the Swainson's Hawk in the Sacramento Valley's agricultural landscape. 1994 Raptor Research Foundation Meeting, Flagstaff, Arizona.

Alfalfa as wildlife habitat. Seed Industry Conference, Woodland, California, May 4, 1994.

Habitats and vertebrate pests: impacts and management. Managing Farmland to Bring Back Game Birds and Wildlife to the Central Valley. Yolo County Resource Conservation District, U.C. Davis,

February 19, 1994.

Management of gophers and alfalfa as wildlife habitat. Orland Alfalfa Production Meeting and Sacramento Valley Alfalfa Production Meeting, February 1 and 2, 1994.

Patterns of wildlife movement in a farming landscape. Wildlife and Fisheries Biology Seminar Series: Recent Advances in Wildlife, Fish, and Conservation Biology, U.C. Davis, Dec. 6, 1993.

Alfalfa as wildlife habitat. California Alfalfa Symposium, Fresno, California, Dec. 9, 1993.

Management of pocket gophers in Sacramento Valley alfalfa. California Alfalfa Symposium, Fresno, California, Dec. 8, 1993.

Association analysis of raptors in a farming landscape. Plenary speaker at Raptor Research Foundation Meeting, Charlotte, North Carolina, Nov. 6, 1993.

Landscape strategies for biological control and IPM. Plenary speaker, International Conference on Integrated Resource Management and Sustainable Agriculture, Beijing, China, Sept. 11, 1993.

Landscape Ecology Study of Pocket Gophers in Alfalfa. Alfalfa Field Day, U.C. Davis, July 1993.

Patterns of wildlife movement in a farming landscape. Spatial Data Analysis Colloquium, U.C. Davis, August 6, 1993.

Sound stewardship of wildlife. Veterinary Medicine Seminar: Ethics of Animal Use, U.C. Davis. May 1993.

Landscape ecology study of pocket gophers in alfalfa. Five County Grower's Meeting, Tracy, California. February 1993.

Turbulence and the community organizers: The role of invading species in ordering a turbulent system, and the factors for invasion success. Ecology Graduate Student Association Colloquium, U.C. Davis. May 1990.

Evaluation of exotic vertebrate pests. Fourteenth Vertebrate Pest Conference, Sacramento, California. March 1990.

Analytical methods for predicting success of mammal introductions to North America. The Western Section of the Wildlife Society, Hilo, Hawaii. February 1988.

A state-wide mountain lion track survey. Sacramento County Dept Parks and Recreation. April 1986.

The mountain lion in California. Davis Chapter of the Audubon Society. October 1985.

Ecology Graduate Student Seminars, U.C. Davis, 1985-1990: Social behavior of the mountain lion; Mountain lion control; Political status of the mountain lion in California.

Other forms of Participation at Professional Meetings

- Scientific Committee, Conference on Wind energy and Wildlife impacts, Berlin, Germany, March 2015.
- Scientific Committee, Conference on Wind energy and Wildlife impacts, Stockholm, Sweden, February 2013.
- Workshop co-presenter at Birds & Wind Energy Specialist Group (BAWESG) Information sharing week, Bird specialist studies for proposed wind energy facilities in South Africa, Endangered Wildlife Trust, Darling, South Africa, 3-7 October 2011.
- Scientific Committee, Conference on Wind energy and Wildlife impacts, Trondheim, Norway, 2-5 May 2011.
- Chair of Animal Damage Management Session, The Wildlife Society, Annual Meeting, Reno, Nevada, September 26, 2001.
- Chair of Technical Session: Human communities and ecosystem health: Comparing perspectives and making connection. Managing for Ecosystem Health, International Congress on Ecosystem Health, Sacramento, CA August 15-20, 1999.
- Student Awards Committee, Annual Meeting of the Western Section of The Wildlife Society, Riverside, CA, January, 2000.
- Student Mentor, Annual Meeting of the Western Section of The Wildlife Society, Riverside, CA, January, 2000.

Printed Mass Media

Smallwood, K.S., D. Mooney, and M. McGuinness. 2003. We must stop the UCD biolab now. Op-Ed to the Davis Enterprise.

Smallwood, K.S. 2002. Spring Lake threatens Davis. Op-Ed to the Davis Enterprise.

Smallwood, K.S. Summer, 2001. Mitigation of habitation. The Flatlander, Davis, California.

Entrikan, R.K. and K.S. Smallwood. 2000. Measure O: Flawed law would lock in new taxes. Op-Ed to the Davis Enterprise.

Smallwood, K.S. 2000. Davis delegation lobbies Congress for Wildlife conservation. Op-Ed to the Davis Enterprise.

Smallwood, K.S. 1998. Davis Visions. The Flatlander, Davis, California.

Smallwood, K.S. 1997. Last grab for Yolo's land and water. The Flatlander, Davis, California.

Smallwood, K.S. 1997. The Yolo County HCP. Op-Ed to the Davis Enterprise.

Radio/Television

PBS News Hour,

FOX News, Energy in America: Dead Birds Unintended Consequence of Wind Power Development, August 2011.

KXJZ Capital Public Radio -- Insight (Host Jeffrey Callison). Mountain lion attacks (with guest Professor Richard Coss). 23 April 2009;

KXJZ Capital Public Radio -- Insight (Host Jeffrey Callison). Wind farm Rio Vista Renewable Power. 4 September 2008;

KQED QUEST Episode #111. Bird collisions with wind turbines. 2007;

KDVS Speaking in Tongues (host Ron Glick), Yolo County HCP: 1 hour. December 27, 2001;

KDVS Speaking in Tongues (host Ron Glick), Yolo County HCP: 1 hour. May 3, 2001;

KDVS Speaking in Tongues (host Ron Glick), Yolo County HCP: 1 hour. February 8, 2001;

KDVS Speaking in Tongues (host Ron Glick & Shawn Smallwood), California Energy Crisis: 1 hour. Jan. 25, 2001;

KDVS Speaking in Tongues (host Ron Glick), Headwaters Forest HCP: 1 hour. 1998;

Davis Cable Channel (host Gerald Heffernon), Burrowing owls in Davis: half hour. June, 2000;

Davis Cable Channel (hosted by Davis League of Women Voters), Measure O debate: 1 hour. October, 2000;

KXTV 10, In Your Interest, The Endangered Species Act: half hour. 1997.

Reviews of Journal Papers (Some scientific journals for whom I've provided peer review)

Journal	Journal
American Naturalist	Journal of Animal Ecology
Journal of Wildlife Management	Western North American Naturalist
Auk	Journal of Raptor Research
Biological Conservation	National Renewable Energy Lab reports
Canadian Journal of Zoology	Oikos
Western Birds	Journal of Caribbean Ornithology
Ecosystem Health	The Prairie Naturalist
Environmental Conservation	Restoration Ecology
Environmental Management	Southwestern Naturalist
Functional Ecology	The Wildlife Society--Western Section Trans.
Journal of Zoology (London)	Proc. Int. Congress on Managing for Ecosystem Health
Journal of Applied Ecology	Transactions in GIS
Ecology	Tropical Ecology
Wildlife Society Bulletin	Peer J
Conservation Biology	Biology Open
Western Wildlife	PLOS One
Heliyon	Global Ecology and Conservation
Wildlife Monographs	Journal for Nature Conservation
Biological Control	Ecological Solutions and Evidence

Journal	Journal
Wind Energy	Environmental and Ecological Statistics
The Condor	Ecosphere
Diversity	Renewable and Sustainable Energy Reviews
Northeastern Naturalist	

Committees

- Scientific Review Committee, Alameda County, Altamont Pass Wind Resource Area
- Ph.D. Thesis Committee, Steve Anderson, University of California, Davis
- MS Thesis Committee, Marcus Yee, California State University, Sacramento

Other Professional Activities or Products

Testified in Federal Court in Denver during 2005 over the fate of radio-nuclides in the soil at Rocky Flats Plant after exposure to burrowing animals. My clients won a judgment of \$553,000,000. I have also testified in many other cases of litigation under CEQA, NEPA, the Warren-Alquist Act, and other environmental laws. My clients won most of the cases for which I testified.

Testified before Environmental Review Tribunals in Ontario, Canada regarding proposed White Pines, Amherst Island, and Fairview Wind Energy projects.

Testified in Skamania County Hearing in 2009 on the potential impacts of zoning the County for development of wind farms and hazardous waste facilities.

Testified in deposition in 2007 in the case of O'Dell et al. vs. FPL Energy in Houston, Texas.

Testified in Klickitat County Hearing in 2006 on the potential impacts of the Windy Point Wind Farm.

Memberships in Professional Societies

The Wildlife Society
Raptor Research Foundation

Honors and Awards

Fulbright Research Fellowship to Indonesia, 1987
J.G. Boswell Full Academic Scholarship, 1981 college of choice
Certificate of Appreciation, The Wildlife Society—Western Section, 2000, 2001
Northern California Athletic Association Most Valuable Cross Country Runner, 1984
American Legion Award, Corcoran High School, 1981, and John Muir Junior High, 1977
CIF Section Champion, Cross Country in 1978
CIF Section Champion, Track & Field 2 mile run in 1981
National Junior Record, 20 kilometer run, 1982
National Age Group Record, 1500 meter run, 1978

Community Activities

District 64 Little League Umpire, 2003-2007
Dixon Little League Umpire, 2006-07

Davis Little League Chief Umpire and Board member, 2004-2005

Davis Little League Safety Officer, 2004-2005

Davis Little League Certified Umpire, 2002-2004

Davis Little League Scorekeeper, 2002

Davis Visioning Group member

Petitioner for Writ of Mandate under the California Environmental Quality Act against City
of Woodland decision to approve the Spring Lake Specific Plan, 2002

Served on campaign committees for City Council candidates

EXHIBIT B



Board of Directors

Malcolm Sproul
President

Claudia Hein
Secretary

Burt Bassler
Treasurer

Keith Alley
John Gallagher
Joseph Garaventa
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Proud Member of

Land Trust Alliance
California Council of Land Trusts
Bay Area Open Space Council



January 27th, 2020

Anthea G. Hansen
Del Puerto Water District
17840 Ward Av./PO Box 1596
Patterson, CA 95363

RE: Save Mount Diablo Comments on the Del Puerto Canyon Reservoir draft Environmental Impact Report – SCH # 2019060254

Dear Ms. Hansen,

Save Mount Diablo (SMD) is a non-profit conservation organization founded in 1971 which acquires land for addition to parks on and around Mount Diablo and monitors land use planning which might affect protected lands. We build trails, restore habitat, and are involved in environmental education. In 1971 there was just one park on Mount Diablo totaling 6,778 acres; today there are almost 50 parks and preserves around Mount Diablo totaling 110,000 acres. We include more than 8,000 donors and supporters.

Thank you for the opportunity to comment on the draft Environmental Impact Report (dEIR) for the proposed Del Puerto Canyon Reservoir (Project). We became aware of the Project through several partner organizations that are concerned about the negative impacts it could have on biological resources, cultural resources, wildlife habitat, views and recreational opportunities associated with birding. Having reviewed the dEIR, we are concerned that some proposed mitigation measures for biological impacts lack enough detail to determine if significant impacts would be mitigated to a less than significant level by applying them. This and other issues render the dEIR inadequate. We elaborate on our concerns about Project impacts on listed wildlife species, sensitive habitats and wildlife corridors below, but list our main issues here:

1. Mitigation measures for several sensitive species lack specific mitigation ratios for impacted habitat and do not specify multiple protocol-level surveys to determine absence;
2. On-site habitat preservation in Del Puerto Canyon should be considered.
3. More detail related to potential Project benefits to wildlife refuges is required if water to refuges from the Project is being discussed as a potential benefit;
4. The dEIR seems to mischaracterize golden eagle nesting habitat;
5. Impacts and proposed mitigation for San Joaquin kit fox is vague and insufficient as stated in the dEIR;
6. Greater detail should be disclosed on potential alternative sites for the Project.

Mitigation Measures for Sensitive Species Lack Important Detail

Section 3.4.3 of the dEIR describes impacts and proposed mitigation measures for several sensitive plant and animal species and habitats. Mitigation Measures BIO-TERR-1f and 1g, which deal with California Tiger Salamander (CTS) and California red-legged frog (CRLF), respectively. The impact analyses for these species calculates the permanent and temporary acreage impacts on the various kinds of habitat types for these species, including aquatic habitat, yet the mitigation measures do not include key details.



These mitigation measures state that if protocol level surveys for these species determine that they are not present then no compensatory mitigation would be required. However, determining the absence of a species is difficult, since the absence of target individuals in any one survey may simply be because they survey missed the individuals that are present. Repeated surveys are necessary to determine absence, but the dEIR does not clarify if absence could be determined after just one survey. If protocol level surveys for each species state that it is necessary to conduct several surveys to determine species absence, then the dEIR should state that. Or if protocol surveys for these species do not detail how to determine absence, the dEIR should state how many times surveys would be repeated to determine CTS or CRLF absence from the Project site. It is entirely possible that surveys would have to be conducted over several consecutive years to determine the likely absence of these species.

In addition, BIO-TERR-1f and 1g do not detail mitigation ratios for different CTS and CRLF habitat types. They only state that permanently impacted habitat will be mitigated at a minimum 1:1 ratio. Since both species require scarce aquatic habitat to breed, impacts to breeding habitat types are typically mitigated at a higher ratio than 1:1, such as 3:1.

For example, the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (ECCC HCP/NCCP; <https://www.contracosta.ca.gov/depart/cd/water/HCP/archive/final-hcp-rev/pdfs/ch05constrat.pdf>) covers permitting for a range of activities that would impact sensitive species by requiring conservation actions to compensate for impacts. It uses habitat type preservation and restoration ratios as a basis for achieving species mitigation and conservation actions. CTS, CRLF, foothill yellow-legged frog (FYLF) and western spadefoot toad (WST, which is on a 12 month status review for potential listing at the federal level) all rely on aquatic habitat and are evaluated as a part of the Project impact analysis, with known occurrences of FYLF and WST being present near the Project site. The ECCC HCP/NCCP specifies preservation ratios of 2:1 for riparian woodland/scrub, 3:1 for seasonal wetlands and 2:1 for perennial streams. Restoration ratios are 1:1 for riparian, 2:1 for seasonal wetland and 1:1 for perennial streams.

The dEIR states that a “generally perennial stream” (dEIR pg. 3.12-4) that flows through the Project site would be drowned by the proposed reservoir site. The Project study area includes, and the proposed reservoir would impact, more than 40 acres of riparian woodland and wetlands, 3 acres of seeps and seasonal wetlands and more than a half-acre of pond habitat. The dEIR should specify separate protection and restoration ratios that are greater than 1:1 for these habitat types that support so many rare species.

To summarize:

1. The dEIR should specifically state if protocol-level surveys would be repeated to determine species absence. If they would not be repeated, that is inadequate;
2. Specific mitigation ratios should be stated in the dEIR for each listed species habitat type;
3. Mitigation measures for sensitive habitat types, such as wetland areas, require greater detail and high ratios.

Protection of Upper Del Puerto Canyon as Mitigation

Grassland, oak woodland, coastal scrub and riparian habit would all be destroyed by the proposed Project. The upper reaches of the Project Study Area contain most of these habitat types, as reflected in dEIR Figure 3.4-1. The dEIR also shows that the proposed Project would basically cut off part of a wildlife corridor in the Mount Diablo – Diablo Range Linkage identified in Penrod et al. 2013 (i.e., Bay Area Critical Linkages Report) as being important for the movement and population connectivity of American badger (a state Species of Special Concern), and also meant to serve populations of San Joaquin kit fox (SJKF), northern harrier, white-tailed kite, burrowing owl, loggerhead shrike, San Joaquin coachwhip, coast horned lizard, CRLF and WST.

Oak woodland, coastal scrub and riparian habitats are present above and around the area that would be flooded by the proposed reservoir. In order to protect part of the remaining wildlife corridor and the remaining diverse habitats in Del Puerto Canyon, on-site habitat preservation and restoration should be included as a component of the Project’s mitigation requirements, as well as the mitigation via easements and mitigation banks already described in the dEIR. Though flooding of the Project area would undoubtedly destroy the value of much of the designated wildlife corridor for the above-mentioned species, protecting the rest of it around the Project site would help to protect the value of the remaining corridor and its potential use by wildlife.

To summarize:

1. The proposed Project site would destroy a designated American badger wildlife corridor that could also be used by many other sensitive species;
2. Mitigation for impacts to this corridor should include preservation of upper Del Puerto Canyon which would protect sensitive habitat types impacted by the Project.

Insufficient Information on Potential Wildlife Refuge Water

The dEIR states that the Project could provide water to “Level 4” wildlife refuges south of the Sacramento-San Joaquin Delta. However, the dEIR does not include information on which refuges could receive water from the Project, which species inhabit the refuges, and most importantly, details related to the certainty that the Project would deliver water to the refuges. While the Project proponents have touted water going to wildlife refuges as one of the benefits of the Project, no specific agreement guaranteeing that such deliveries would occur are presented. If Project proponents are stating that increased refuge water is a benefit of the Project, information that demonstrates that such benefits would actually occur should be included for analysis, including a discussion on if any species that would benefit at the refuges are sensitive species, or just gamebird or waterfowl populations targeted for sport hunting.

To summarize:

1. Much more detail on potential benefits the Project would provide to wildlife refuges should be included in the dEIR;
2. If there are no water agreements or concrete plans to deliver water to refuges, then this should not be touted as a potential benefit of the Project.

Golden Eagle Nesting Habitat Mischaracterization

Pages 3.14-15-16 in the dEIR seem to infer that golden eagle primarily nest on cliff faces. This is not true, as the great majority of eagle nests in the Diablo Range are in trees. The dEIR should clarify that golden eagle could be nesting in the proposed Project site if suitable trees are present, such as those in the riparian and oak woodland habitats that would be impacted by the Project.

To summarize:

1. Golden eagles present in the region nest primarily in trees;
2. The Project could impact nesting eagles by removing oak woodland and riparian habitat. The dEIR should clarify and analyze this, as well as propose mitigation measures for golden eagle nesting habitat.

Impacts on, and Mitigation for, San Joaquin Kit Fox (SJKF)

The importance of the mouth of Del Puerto Canyon west of I-5 is to serve as part of the movement corridor linking eastern Contra Costa and Alameda Counties, and western San Joaquin County, with occupied SJKF habitat to the south, in the vicinity of San Luis reservoir. The further west you go up Del Puerto Canyon the less suitable the habitat is for this purpose. The best lands are the flat to rolling grasslands immediately west of I-5.

While the dEIR acknowledges the potential of orchards to be used by SJKF, it also discounts the possibility of the orchards that would be flooded by the Project as being useful to SJKF, instead focusing on the potential for protection and restoration of properties along I-5/California Aqueduct to serve as SJKF mitigation. However, the dEIR fails to describe how many acres of conservation easements would be obtained along I-5/California Aqueduct and the area that would undergo restoration to improve SJKF dispersal potential. As such, Mitigation Measure BIO-TERR-1p is inadequate as written. It is far too vague and needs to specify the location and amount of mitigation.

The dEIR states that 197 acres of SJKF habitat would be permanently lost and 82 acres would be temporarily affected. Given that SJKF is federally listed as Endangered and state listed as Threatened, the dEIR should specify a 3:1 mitigation ratio for impacts to SJKF habitat. Since part of a designated wildlife corridor (discussed above) would be

destroyed as useful habitat for a number of sensitive species, restoring a large amount of degraded habitat for species such as SJKF is an appropriate mitigation action.

In addition, any new road built should incorporate new or retrofit/enlarge large under-crossings to facilitate wildlife movement. Related to this, “Impact BIO-TERR-1n Impact on San Joaquin Kit Fox” on dEIR pg. 3.4-59 should include roadkill as a potential impact on SJKF as well as American badger. A study in Contra Costa County found a surprisingly high number of badger deaths due to being run over on roads, and two of the three CNDDDB records for SJKF are roadkills.

The dEIR states less than 200 acres of SJKF habitat would be permanently lost, yet also states that more than 800 acres of badger habitat would be permanently impacted by the Project. Since both are grassland-dependent species, the reason for this large discrepancy is unclear. The dEIR should clarify this and increase modeled impacts to SJKF habitat to be on par with impacts to modeled badger habitat as appropriate.

To summarize:

1. Proposed mitigation for SJKF impacts is vague and lacks detail on amount and location of SJKF habitat restoration and protection;
2. The dEIR should include specific mitigation ratios for SJKF habitat impacts;
3. Roadkills should be listed as an impact for SJKF and badger, and appropriate mitigation measures, such as wildlife crossings, should be implemented;
4. The large discrepancy between badger and SJKF modeled habitat impacts should be discussed and clarified.

Greater Consideration of Alternative Sites

The dEIR and associated appendices discuss Ingram Canyon and other site as potential alternative Project locations. However, the main reason for the disqualification of the Ingram Canyon site is not described in detail. While energy costs associated with a longer water conveyance system to higher elevations is mentioned as a reason for Ingram Canyon’s infeasibility as an alternative site, there does not seem to be any financial data presented in the appendices that details why this is so. It should be noted that since the reservoir for this location would be smaller than the one proposed for Del Puerto Canyon, mitigation costs could also potentially be lower, which would help cancel out greater costs associated with conveyance infrastructure.

To summarize:

1. More detail, including financial analysis, should be included as to why the Ingram Canyon site is infeasible.

Regards,

Juan Pablo Galván
Senior Land Use Manager

Good Afternoon,

Attached is a letter from the Tule River Yokut Tribes Elder Council to Governor Newsom, opposing the Del Puerto Water Districts proposed dam project in Del Puerto Canyon. It is stated on your website that the Native American Tribes have been consulted and that there was no concern being expressed about the historical, archaeological, and sacred sites that would be desecrated by this project.

Please read and know that the Tule River Yokut Tribe does have concern and is in favor of this site being preserved and protected for future generations.

R6-1

This letter has been forwarded to the Bureau of Reclamation, Del Puerto Water District, Stanislaus Board of Supervisors, and the Native American Heritage Commission.

Thank you,

Elias Funez
Xochi Heather Vasquez
916.628.7016

Save Del Puerto Canyon
savedelpuertocanyon@gmail.com
www.savedelpuertocanyon.org



Letter R6

TULE RIVER TRIBAL ELDERS' COUNCIL TULE RIVER INDIAN RESERVATION

Gavin Newsom, Governor of the State of California
1303 10th Street
Sacramento, CA. 95814
(916) 445-2841

January 7, 2026

Dear Governor Newsom,

At a duly called meeting December 22, 2025, it was Presented to our Tule River Elders Council that a Native American Historical village site is in danger of being destroyed by a proposed dam. The Del Puerto Canyon site is near the City of Patterson California in Stanislaus County, west of Modesto, CA.

Mr. Elias Funez presented a video of the area, and we are hoping to make a personal trip there to walk the land for ourselves. It was shown that the land is rich with wildlife with a creek running east and west. It looks to be a beautiful environmental educational site with a walk path.

R6-1

It was also noted that the California Water Commission has stated that the damming project was not feasible for the area. The City of Patterson also recognizes the land as a Wildlife Reserve and Geologist from around the world have studied there.

Our hope is to preserve the natural beauty of the land where it can be enjoyed by future generations to come. Please take another look at this project and all considerations. A video is on display on YouTube – A guide to Mysterious Del Puerto Canyon.

Sincerely,

C.T. Eugene 1-7-26

Craig T. Eugene - Vice-Chairman

Zona Franco

Zona Franco - Secretary



TULE RIVER TRIBAL ELDERS' COUNCIL

TULE RIVER INDIAN RESERVATION

Tule River Elders Council

Special Working Meeting

December 22, 2025

Robin Burrough, Chairperson

Craig T. Eugene, Vice-Chairman

Patsy Vega, Treasurer

Zona Franco, Secretary

Elizabeth Perez, Member

Betsey Foote, Member

Curtis Gibson, Member

Ambrose Manuel, Member

Rita Rodilez, Member

C.T. Eugene
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R6-1

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Thank you,

Elias Funez
Xochi Heather Vasquez
916.628.7016

Save Del Puerto Canyon
savedelpuertocanyon@gmail.com
www.savedelpuertocanyon.org



Letter R6

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Del Puerto Water District Attorney Anthea Hanson,

Del Puerto Canyon is at risk of being destroyed by the Del Puerto Water District's proposed dam project.

Del Puerto Canyon should instead be a park with expanded recreational access, including for equestrian use.

Its current name of Del Puerto Canyon was given by Spanish explorers conducting their first inland traverse of the Central Valley, en route to the San Francisco Bay Area in the late 1700s.

They described the narrow rock opening in the mountain as "Del Puerto."

After entering through that historic gateway where Del Puerto Creek emerges, the first of Del Puerto Canyon's valleys opens.

Flanked by steep rolling hills and perennial wildflowers of every color, the sights from the first few miles of Del Puerto Canyon are among the most spectacular in California.

Bobcats and mountain lions have been seen here, as well as burrowing owls, badgers, and countless other animals, including evidence of the endangered San Joaquin kit fox. One of the large golden eagle populations in the state resides right through the Gateway.

One of California's iconic most endangered species, the California condor, was recently documented visiting Del Puerto Canyon. These sightings were not addressed in the first environmental impact report (EIR).

The beautiful canyon is now at risk with the construction of the proposed 260-foot-tall dam. The Gateway, along with a carved prehistoric pathway, would all be destroyed.

The Del Puerto Water District would use the dam to shut the Gateway and store water within the first five miles of the Del Puerto Creek drainage, which would mean no recreational access to the area.

The historic roadway would have to be re-routed away from the proposed reservoir and connected to Diablo Grande Parkway. The land is extremely rugged, so the rerouting of the road would be very expensive, and would damage the land extensively.

This is not a drinking water project. Water conservation and ground water storage are better, cheaper alternatives.

The trees, including the sacred cottonwood trees that are the last living link to the Hoyumne and Miumne Yokuts, would be cut down.

If built, water from the Del Puerto Reservoir would envelop an area of the Del Puerto Creek drainage that is known to be some of the fastest eroding in the state of California, with active landslides.

The Del Puerto Water District's plans show the dam would be built along the San Joaquin fault line. Recent seismic activity near the project site was mentioned nowhere in the first EIR.

Interstate 5, the California Aqueduct, and the Delta Mendota Canal would be in danger of being washed away if there was a catastrophic failure of the dam, not to mention the risk of massive flooding that could tragically impact residents of Patterson.

R7-1

The Patterson City Parks and Recreation Department, as well as previous city leaders, have all recognized the Gateway as an area of great cultural and ecological significance.

They've called for preservation of the area with recreational access for horseback riding, hiking, and mountain biking, as well as plans for an outdoor amphitheater.

Instead of being a benefit to the community, the Del Puerto Reservoir would have major impacts to access, safety, and recreation for a city of over 25,000 residents. There has been no meaningful outreach to the City of Patterson, particularly to underrepresented community members.

Residents are becoming more aware of the hazards posed by the dam. Many are appalled at the potential loss of this natural treasure.

Please do not go forward with your proposal to build the Del Puerto Canyon dam and reservoir.

Sincerely,

Name

[email](#)

address

From: Vicki Ryman <vicki.ryman@yahoo.com>

Sent: Monday, December 29, 2025 6:51 AM

To: dpcr-environment <dpcr-environment@woodardcurran.com>

Subject: save the canyon

when i first moved to California over 30 years ago a friend took me to see Del Puerto Canyon. what a jewel it is. beautiful ancient hills eroded perfectly by time, a babbling creek, caves, wildlife, breathtaking majesty. how in the world or why would anyone want to fill it up with water? please don't. let's keep this canyon pristine just the way it is.

R8-1

i protest at putting a reservoir there and please hear my outcry. SAVE DEL PUERTO CANYON.

thank you for your time

Vicki Ryman
Modesto, CA
209-735-2301

From: Harvey Duncan <noreply@adv.actionnetwork.org>
Sent: Friday, January 16, 2026 12:27 PM
To: dpcr-environment <dpcr-environment@woodardcurran.com>
Subject: Save Del Puerto Canyon

Del Puerto Water District Attorney Anthea Hanson,

This is the second time I've voiced my opposition about this reservoir. And now, having revisited one of my favorite old driving roads last weekend, I still stand by my opinion that filling any part of this canyon would be detrimental. I've driven a number of passes through the Diablo Range, in fact that day I went up Del Puerto, returned via Mines Rd. and Tesla road, which is a pass immediately to the north exiting into Tracy California. And while yes, that did have its own unique features, it, and similar passes through the Diablo range, don't compare to Del Puerto.

The sheer diversity of plant life alone shows what a different environment it is. And considering how many different animals occupy this location, I would hate to see it disrupted. It's not just about the water, it's about the land that these creatures traverse: it will affect migration, it will affect their living space, where they hide, where they hunt. Then there's the fact that I'm a bit of a geology nerd. And there are a great number of fault boundaries that run through that canyon (which weight and lubrication from a reservoir could cause shifts). You can clearly see the fault boundries in the cuts in the road. My junior college geology professor used to use that as a field trip location for a reason. I'm pretty sure other science classes, not just geology, were taking advantage of the natural beauty and diversity of Del Puerto Canyon.

R9-1

There are other places to build reservoirs, and even then I look at how many reservoirs have actually done damage and covered up what once was. I'm glad to see the Klamath River going back to its natural state, I'm glad the tribes get to have their land and way of life slowly coming back to them. I see time and time again the difference between the American Court history versus the realities that are revisionist history.

For decades, generations, perhaps even hitting the century mark, this country and its government have glossed over the realities to the people, not just taking the land of the natives that came before, but the land of the citizens that our government is here to serve. Building another reservoir, especially in the way the Del Puerto Canyon Society is portraying, is a very old-fashioned, narrow-minded way of fixing a problem that only exists because of the national greed that's been bred into us for so long. I'm tired of seeing the natural beauty eating up by urban sprawl for the wealthy, rather than affordable, sustainable housing for those struggling as inflation engulfs our lives.

Their template:

Del Puerto Canyon is at risk of being destroyed by the Del Puerto Water District's proposed dam project.

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R9-1
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R9-1
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Please do not go forward with your proposal to build the Del Puerto Canyon dam and reservoir.

Sincerely,

Harvey Duncan
hduncan2587@yahoo.com
119 Village Cir
Sacramento, California 95838

From: J P <noreply@adv.actionnetwork.org>
Sent: Sunday, January 25, 2026 9:47 AM
To: dpcr-environment <dpcr-environment@woodardcurran.com>
Subject: Finally, we get some infrastructure

Del Puerto Water District ,

I am pleased to vote for more water. Tired of being in a drought. We haven't had anything built like this since 1950. Please move forward with the reservoir.

R10-1

Sincerely,

J P
pinkevich@ymail.com
4124 Gold Valley Ct
Salida, California 95368

From: Chris Quock <cqotherprojects@gmail.com>

Sent: Monday, January 26, 2026 7:47 PM

To: dpcr-environment <dpcr-environment@woodardcurran.com>

Subject: Public comment for Del Puerto Canyon Reservoir's partially revised dEIR

The comments below are with regards to potential downstream impacts to wildlife and new data post 2022 concerning wildlife.

While your revised dEIR states that your project would provide releases of water during normally wet years into the downstream portion of Del Puerto Creek, one of the stated benefits of the reservoir is flood control. You have mentioned in your own previous "Myths and Facts" materials that Del Puerto Creek has flooded 15 times in the past 60 years and that they would have not taken place if the dam were there. Given this known pattern of periodic flooding every few years, potential effects on downstream habitat suitability from these events. Periodic flood events which are energetic enough to scour and create surface depressions have been noted as a mechanism by which ephemeral/vernal pools are created in floodplain areas. This is not meant as a direct position statement on considerations for property damage from these uncontrolled events, but rather the relevance for properly assessing and mitigating for any positive outcomes for wildlife which depend on ephemeral pools, patterns of nutrient deposition and leeching, and dispersals of plant material by hydrochory that may arise from these notable floods.

R11-1

Your assertion that you only need to rely on reconnaissance surveys versus protocol-based surveys is problematic. Reconnaissance surveys are designed to be used as a first-step in surveying for potential legally endangered or sensitive species. Once potentially suitable habitat for such species has been identified, like the riparian areas you mention, this should trigger the need for more intensive protocol-based surveys.

R11-2

During my years conducting multiple insect surveys as contract work for parks, protocol-based surveys using combinations of ground traps, aerial traps, and transects always detected far more species than preliminary sight-based scouting of study areas. This has implications for surveys intended to detect the presence or absence of sensitive/endangered species which by their very nature are less common and more difficult to detect.

CONCERNING MONARCH BUTTERFLIES AND MILKWEEDS:

Populations of milkweeds along the West Coast tend to grow in smaller and more isolated patches that are much harder to detect via conventional visual surveys. Even in areas where milkweeds grow in relatively more noticeable patches, the survey type chosen to detect them has a significant effect. Nevertheless, these isolated patches and their phenology (timing of vegetative growth, flowering, and seasonal dormancy) are important for Monarch Butterflies migrating to-and-from inland sites and coastal overwintering sites. Given the known occurrence of milkweeds and Monarch butterflies based on opportunistic observations in other parts of the canyon in association with Del Puerto Creek, the ability of milkweeds to be propagated through both seeds and dislodged root material by hydrochory during creek flood events/higher flow periods, and the naturally brief above-ground growing periods of many species, it is likely that there are patches along Del Puerto Creek downstream of the project zone that have gone undetected. More extensive surveys throughout the year should be considered before

R11-3

determining the presence or absence of milkweeds in this area. Given the known seasonality with which milkweeds can or cannot be easily identified by visual ground surveys, the short temporal duration of the on-foot surveys conducted by the biologists contracted by Del Puerto Water District are highly likely to have missed the sensitive species being targeted.

As stated, the mere presence or absence of milkweed available to Monarch Butterflies is only one component that must be considered for this migratory species. Patches of host plants that are too ephemeral may be too difficult for adults to detect and not provide adequate foliage for larvae to feed on to complete their development. However, patches that persist for too long and encourage sub-populations of Monarchs to become more sedentary may promote density-dependent insect diseases like *Ophryocystis elektroscirrha* (OE). Thus, to support healthy populations of Monarch Butterflies, above ground milkweed patches must persist for specific windows of time and then die back to encourage sub-populations of butterflies to move on. These developmental stages for several species of CA milkweeds, including *A. fascicularis*, are influenced by changes in moisture and temperature. Given the probability that isolated patches of milkweed may have been missed by initial surveys, considerations for upstream changes that may alter the annual growth regimes for any plants downstream should still be taken into account.

CONCERNING VERNAL POOL BRANCHIOPODS:

In 2024, some pictures were taken of organisms swimming in a roadside ditch within the right-of-way in the eastern section of Del Puerto Canyon that were identified by a wildlife biologist as being fairy shrimp, likely species *Branchinecta lindahli* (pers. comm.). The cysts of this species can lay dormant in soil for many years, and it has been identified as a potential liability for hybridizing with and out-competing other species of fairy shrimp that are federally listed and more closely associated with natural vernal pools if dormant cysts are transported to novel areas through mass movements of soil or by associated worker and vehicular traffic. Current project plans to grade the bottom of the canyon for various building materials, including borrow for the main and saddle dams and supports for sections of the proposed new roadway should take this contamination risk into account.

R11-4

References:

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Leong, K. L. H.; M. A. Yoshimura; H. K. Kaya; H. Williams (1997). "Instar Susceptibility of the Monarch Butterfly (*Danaus plexippus*) to the Neogregarine Parasite, *Ophryocystis elektroscirrha*". *Journal of Invertebrate Pathology*. 69 (1): 79–83. doi:10.1006/jipa.1996.4634.

MacArthur-Waltz, D. J., Sommer, D. S., Singh, P., & Yang, L. H. (2025). Temperature and precipitation explain species-specific phenological patterns in five native California milkweed species (*Asclepias* spp.). *Journal of Ecology*, 113, 3637–3649. <https://doi.org/10.1111/1365-2745.70185>

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John Herrick
PO Box 579242
Modesto, CA 95357

January 30, 2026

Del Puerto Water District
Attn: Anthea Hansen, General Manager
17840 Ward Avenue/PO Box 1596
Patterson, CA 95363

Emailed comments directed at: dpcr-environment@woodardcurran.com

Re: Del Puerto Canyon Reservoir PRDEIR comments

Dear Ms Hansen:

Thank you for the opportunity to comment on the Partially Recirculated Draft Environmental Impact Report (PRDEIR) for the Del Puerto Canyon Reservoir Project (DPCR) prepared for the Del Puerto Water District (DPWD).

The PRDEIR does not meet the adequacy requirements of CEQA Statute and Guidelines, (CEQA) §15151. The PRDEIR does not present a sufficient degree of analysis in three areas:

- 1) The PRDEIR does not “*present the additional environmental analysis to address the single deficiency identified by the court*” (**PRDEIR 1-2**) based upon the approximately 105-acre Study Area.
- 2) PRDEIR botanic surveys are not consistent with California Department of Fish and Wildlife *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW Protocols)
- 3) The PRDEIR does not evaluate the DPCR impacts to the California condor (*Gymnogyps californianus*), observed roosting on a Mt Oso communications tower in 2023 and subsequent years.

R12-1

1) 105-acre Study Area

The Study Area should be expanded to include the Del Puerto Creek floodplain “to ensure a comprehensive assessment of potential impacts to downstream terrestrial species”.

PRDEIR 3.4-1. The Opinion of the California Court of Appeal, Fifth District (Opinion) determined that the 2020 Final Environmental Impact Report (FEIR) “does not reference downstream Del Puerto Creek, the flows of which will be impacted to some extent by the project (at least in terms of annual volume).” (**Opinion page 14**). The Study Area includes “the full extent of riparian habits along Del Puerto Creek” including a variable width buffer... “designed to encompass the full range of existing habitat types that may support terrestrial or semi-terrestrial species along the creek”. **PRDEIR 3.4-1.**

The DPCR will capture flows to the Del Puerto Creek floodplain, a flood-control goal of the project. The floodplain is shown in Figure 3.11-1 *City of Patterson Flood Insurance Rate Map* in the FEIR. A more informative map of the Del Puerto Creek floodplain appears in a slide entitled “*The Project Prevents 100-Yr Flood Events*” for a March 2, 2020, DPWD presentation to the Stanislaus County Agricultural Advisory Board (attached), comparing pre- and post- DPCR downstream conditions. Both maps show the extensive floodplain coverage, compared to the Study Area, and include reaches to the northeast of Del Puerto Creek, flowing to the San Joaquin River and to the southeast, connecting with Salado Creek. The eastern extent of the floodplain is not shown due to the limits of the “Modeled Area” represented on the map.

R12-2

The loss of the floodplain, including DPCR impacts to Salado Creek, is not addressed in the PRDEIR. Floodplain benefits to terrestrial species are many and well documented, including dispersing seed, stimulating germination and establishing pioneer native species

1

¹ Barbour, M., Keeler-Wolf, T., & Schoenherr, A. (2007). *Terrestrial Vegetation of California*, third edition. UC Press, Berkeley.

2) PRDEIR botanic surveys are not consistent with CDFW Protocols

The CDFW Protocols sets forth the standards for field investigations. The current version of the Protocols is dated March 20, 2018, with minor editorial revisions made February 3, 2021.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

Definitions of Special status plant species begin on page 2 of the CDFW Protocols and include:

- *Considered locally significant plants, that is, plants that are not rare from a statewide perspective but are rare or uncommon in a local context such as within a county or region (CEQA Guidelines, § 15125, subd. (c)), or as designated in local or regional plans, policies, or ordinances (CEQA Guidelines, Appendix G). Examples include plants that are at the outer limits of their known geographic range or plants occurring on an atypical soil type.*

There is no discussion of native plants that are considered *rare or uncommon in a local context* (locally rare) in the RPDEIR or in **Appendix C Special Status Species Tables**.

Because the PRDEIR relies on reconnaissance-level surveys as opposed to CDFW protocol-level surveys, it is impossible for the PRDEIR reviewer to determine the presence of special status plant species including locally rare native plants. Several locally rare native plants appear in the plant lists prepared for the FEIR, though the FEIR did not consider DCRP impacts to locally rare native plants. This is a significant shortcoming of the PRDEIR. The reviewer cannot provide meaningful comments on the DPCR impacts or recommend mitigation measures because DPWD has chosen to use reconnaissance-level surveys for the PRDEIR preparation and it does not consider impacts to locally rare native plants.

R12-3

The CDFW Protocols provide guidance when special status plant species are not found (CDFW Protocols page 6):

Adverse conditions from yearly weather patterns may prevent botanical field surveyors from determining the presence of, or accurately identifying, some special status plants in the project area. Disease, drought, predation, fire, herbivory, or other disturbance may also preclude the presence or identification of special status plants in any given year. Discuss all adverse conditions in the botanical survey report.

The failure to locate a known special status plant occurrence during one field season does not constitute evidence that the plant occurrence no longer exists at a location, particularly if adverse conditions are present. For example, botanical field surveys over a number of years may be necessary if the special status plant is an annual or short-lived plant having a persistent, long-lived seed bank and populations of the plant are known to not germinate every year. Visiting the project area in more than one year increases the likelihood of detecting special status plants, particularly if conditions change. To further substantiate negative findings for a known occurrence, a visit to a nearby reference site may help ensure that the timing of botanical field surveys was appropriate.

Under Survey Objectives (CDFW Protocols page 4)

Conduct botanical field surveys in a manner which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.

R12-3
cont'd

The PRDEIR does not meet the Substantial Evidence standards in CEQA §15384 based on the conclusions reached regarding special status plant species and the failure to consider locally rare plants.

Del Puerto Canyon lies at the northern end of the San Joaquin Desert ², and several native plants in Stanislaus County are at the northern extent of their range. Two *locally rare* native plant species listed in *FEIR Volume II, Appendix B3: Table 2, Plant Species Observed in the Study Area, dated April 22, 2020* (FEIR Plant List) are reported³ only in the DPCR project area; Temblor clarkia (*Clarkia tembloriensis* subsp. *tembloriensis*) and San Joaquin tarweed (*Holocarpha obconica*). Other native plant species reported in the FEIR Plant List occur only in Del Puerto Canyon and/or in the Stanislaus County portion of the Diablo Range, include Rigid cryptantha (*Cryptantha nevadensis* var. *rigida*) and Parry's mallow (*Eremalche parryi*).

Elegant silverpuffs (*Microseris elegans*), Foothill penstemon (*Penstemon heterophyllus* var. *heterophyllus*), Clubhair mariposa lily (*Calochortus clavatus*) among others, appear in *FEIR Volume II, Appendix B3: Table 3, Plant Species Recorded in the Study Area but not Observed During the Botanical Surveys*. Several native plant species reported in the FEIR Plant List have limited reported occurrences in other parts of Stanislaus County. The seven native plant species listed above serve as examples of native plants that occur in other parts of California but would be considered *locally rare* in Stanislaus County.

R12-3
cont'd

Mitigation for adverse native plant impacts should occur within the San Joaquin Desert region, preferably within Stanislaus County.

2) The San Joaquin Desert is a sub-division within the designated San Joaquin Valley (SnJV) subregion of the Great Valley (GV) region of the California Floristic Province appearing in Baldwin, B.G., D.H. Goldman, D.J. Keil, R. Patterson, T.J. Rosatti, and D.H. Wilken, editors. (2012). *The Jepson manual: vascular plants of California*, second edition, UC Press, Berkeley. Its boundaries defined by several factors, “including precipitation, soils, plants and vertebrates.” See Germano, D.J., Rathbun, G.B., Saslaw, L.R., Cypher, B.L., Cypher, E.A and Vredenburg, L.M. (2011) *The San Joaquin Desert of California: Ecologically Misunderstood and Overlooked*, Natural Areas Journal, 31(2): 138-147. More recently, cattle spinach, (*Atriplex polycarpa*) and yellow mock aster (*Eastwoodia elegans*) are considered key indicator species of the San Joaquin Desert - see minute 41:31 in the *Flora of the San Joaquin Desert* presentation

<https://www.youtube.com/watch?v=Odijftmtd8E> . The presentation includes a list of San Joaquin Desert endemic plant species beginning at minute 21:33. Both taxa have been found in the DPCR area. Yellow mock aster is reported in *FEIR Volume II, Appendix B3: Table 2, Plant Species Observed in the Study Area*, dated April 22, 2020. Yellow mock aster is also included in *Table 3, Plant Species Recorded in the Study Area but not Observed During the Botanical Surveys*. Cattle spinach appears in DPCR area in California Flora but does not appear in the FEIR Species Lists.

3) Occurrence information is based on a review of the Calflora database referenced in footnote 2 and a review of the Consortium of California Herbaria records <https://www.cch2.org/portal/> Unreported occurrences may also exist. Fieldwork is necessary to confirm species' rarity in Stanislaus County.

3) California condor (*Gymnogyps californianus*) impacts

Analysis of DPCR impacts to the California condor was rejected for consideration in the RPDEIR because “(these) species are not expected to occur within the study area due to the absence of recorded occurrences” (within a 5-mile radius) “and lack of suitable habitat”. **PRDEIR page 3.4-12.**

In 2023, several California condors were observed on a Mt Oso communications tower approximately 8 miles north of the project site. The difference between five miles and eight miles is insignificant for condors that were fledged or released from Pinnacles National Park in Monterey and San Benito Counties.

<https://savemountdiablo.org/blog/first-flock-in-100-years-six-california-condors-visit-mount-diablo-and-contra-costa-county/>

The PRDEIR does not meet the Substantial Evidence standards in CEQA §15384 regarding the California condor.

The License Agreement for the California Natural Diversity Database states:

file:///C:/Users/Owner/Desktop/Web%20downloads/CNDDDB_License_Agreement.pdf

R12-4

DFW does not portray its databases as an exhaustive or comprehensive inventory of all rare species and natural communities statewide. For any given location in California, a lack of species occurrences or records in no way indicates or implies that the species do not occur there. Field observations by qualified persons and using the proper protocols at appropriate times are necessary to support negative findings. Much of the state has never been surveyed for plant and animal species.

According to the US Fish and Wildlife Service (FWS) California condor webpage

<https://www.fws.gov/species/california-condor-gymnogyps-californianus>

California condors use vast expanses of varying habitats for foraging, roosting, and nesting. Condors roost on large trees or snags, or on rocky outcrops and cliffs. Nests are located in caves and ledges of steep rocky terrain or in cavities and broken tops of old growth conifers created by fire or wind. Foraging habitat includes open grasslands, oak savanna foothills, and beaches adjacent to coastal mountains. With the right air conditions, condors are known to fly up to 250 miles a day across mountainous terrain in search of food.

The FWS California condor webpage includes an interactive map showing the California condor range.

The PRDEIR does not explain how it reached its “lack of habitat” conclusion.

Critical habitat for the California condor was designated in 1976 in Tulare, San Luis Obispo, Kern, Santa Barbara, Ventura and Los Angeles counties and updated in 2025 with no additions beyond the covered counties.

The 1996 US Fish and Wildlife Service *Recovery Plan for the California Condor* https://ecos.fws.gov/docs/recovery_plan/960425.pdf discusses threats and hazards.

R12-4
cont'd

The PRDEIR must consider how DPCR construction, including the relocation of transmission lines, and project operation will impact the California condors roosting at Mt Oso.

DPCR-related impacts to California condors in the Mt Oso vicinity should be included in the project review and the EIR recirculated in accordance with CEQA §15088.5.

CONCLUSION

The DPCR PRDEIR should not be certified until impacts analyses have been revised to include: a Study Area that encompasses the Del Puerto Creek 100-year floodplain, evaluates DPCR impacts on locally rare native plants, conducts protocol-level plant surveys prior to certification and considers DPCR impacts to California condors soaring and roosting above Del Puerto Canyon.

R12-5

Please contact me if you have questions regarding these comments.

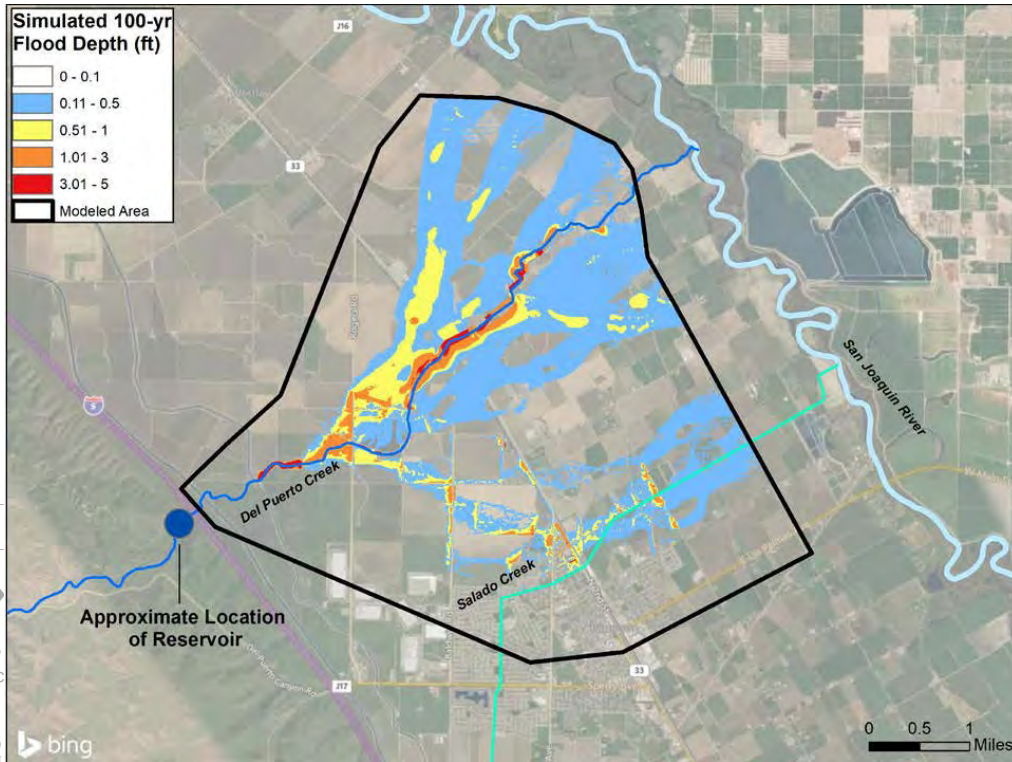
Sincerely,

John E. Herrick (not John Herrick of the South Delta Water Agency)
Modesto, Ca.

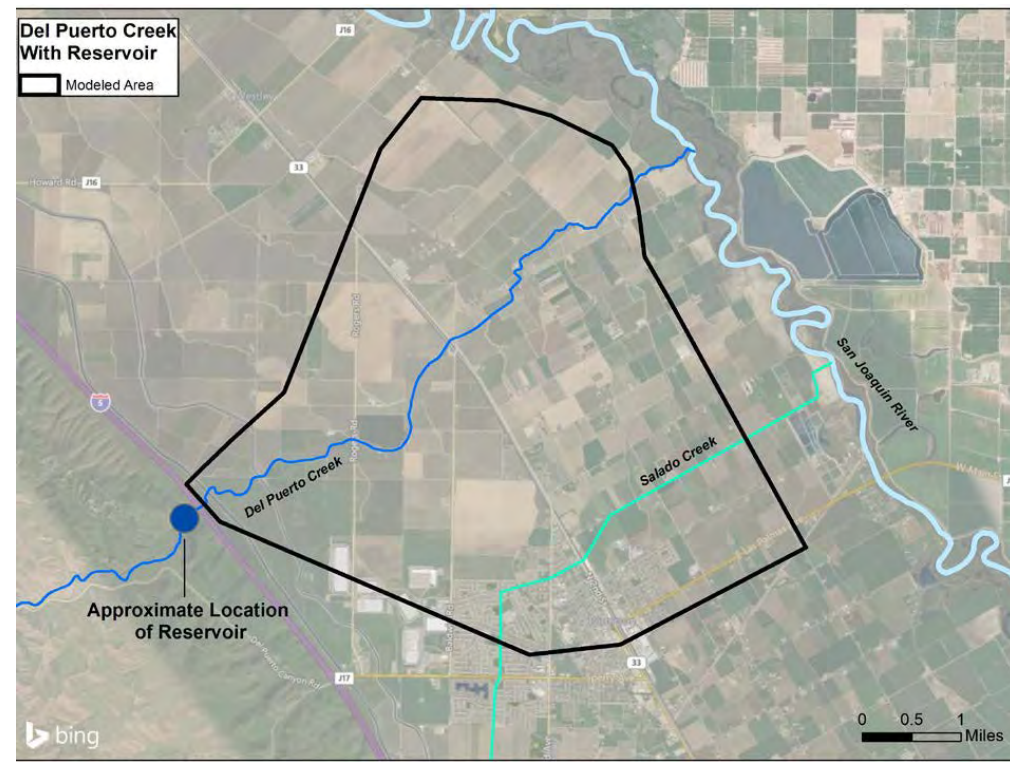
Attachment: The Project Prevents 100-Yr Flood Events

The Project Prevents 100-Yr Flood Events

PRE-PROJECT



POST-PROJECT



? This flood analysis shows only flooding from Del Puerto Creek



Department of Conservation
Geologic Energy Management Division

Gavin Newsom, Governor
 Jennifer Lucchesi, Director
 715 P Street, MS 1803
 Sacramento, CA. 95814
 T: (916) 445-5986

Letter R13

February 17, 2026

VIA EMAIL

Del Puerto Water District
Anthea G. Hansen
17840 Ward Ave/PO Box 1596, Patterson CA 95363
ahansen@delpuertowd.org

Assessor Parcel Number(s): Multiple
 Property Owner(s): N/A
 Project Location Address: *Del Puerto Canyon Rd, Stanislaus County*

PROJECT TITLE: *SCH2019060254 Del Puerto Canyon Reservoir*

Public Resources Code (PRC) section 3208.1 establishes re-abandonment responsibility when previously plugged and abandoned oil, gas or geothermal wells will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near previously abandoned oil, gas, and geothermal wells.

The California Geologic Energy Management Division (CalGEM) has received the above-referenced project dated 2/4/2026. To assist local permitting agencies, property owners, and developers in making safe and practical land use decisions regarding potential development near oil, gas, or geothermal wells, CalGEM provides a table in the attached enclosure of the wells within the parcel boundary or in its vicinity, based on CalGEM's Well Finder database (<https://maps.conservation.ca.gov/doggr/wellfinder/>).

R13-1

CalGEM categorically advises against building over, or in any way impeding access to, oil, gas, or geothermal wells. Impeding access to a well could result in the need to remove any structure or obstacle that prevents or impedes access including, but not limited to, buildings, housing, fencing, landscaping, trees, pools, patios, sidewalks, roadways, and decking at the landowner's expense if there is a need to access a well. Maintaining sufficient access is considered the ability for a well servicing unit and associated necessary equipment (consisting of well servicing rig, pumping equipment, pipe trailer) to reach a well from a public street or access way, solely over the parcel on which the well is located. A well servicing unit, and any necessary equipment, should be able to pass unimpeded along and over the route, and should be able to access the well without disturbing the integrity of surrounding infrastructure. Impermeable barriers such as

State of California Natural Resources Agency | Department of Conservation

Northern District

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Sacramento Office and Mail: 715 P Street, MS 1804, Sacramento, CA 95814 | T: (916) 322-1110 | F: (916) 445-3319

Ventura Office: 1000 S. Hill Road, Suite 116, Ventura, CA 93003 | T: (805) 937-7246 | F: (805) 654-4765

Ventura Mail: 195 S. Broadway, Suite 101, Orcutt, CA 93455

conservation.ca.gov

February 17, 2026

asphalt, concrete, and plastic may trap hazardous gases and liquids underneath and could create a safety hazard if built over a well that later develops a leak.

CalGEM recommends that any well for which access is impeded or built over, against CalGEM's advice, should be evaluated by a qualified petroleum professional for compliance with the statutory objectives of isolating all hydrocarbon-bearing strata; protecting underground and surface waters; prevention of subsequent damage to life, health, property, and other resources; and prevention of loss of oil, gas, or reservoir energy. CalGEM recommends that wells that do not meet these standards are abandoned or re-abandoned prior to construction. The well information can be accessed through CalGEM's Well Finder database mentioned above. PRC section 3208, subdivision (a), provides the primary statutory authority for CalGEM to oversee adequate abandonment of wells. Additionally, CalGEM has developed the regulatory guidance for operators to be followed during well abandonment, which are listed within California Code of Regulation, title 14 (CCR) section 1723 and associated sub-sections (for onshore wells), and section 1745 and associated sub-sections (for offshore wells).

There is no guarantee that a well abandoned in compliance with current Division requirements as prescribed by law will not start leaking in the future. Due to the inability to predict all subsurface conditions or changes, it always remains a possibility that any well may start to leak oil, gas, and/or water after abandonment, no matter how thoroughly the well was plugged and abandoned. CalGEM acknowledges wells plugged and abandoned to the most current Division requirements as prescribed by law have a lower probability of leaking in the future, however there is no guarantee that such abandoned wells will not leak.

CalGEM advises that all wells identified on the development parcel prior to, or during, development activities be tested for liquid and gas leakage. Surveyed locations in Latitude and Longitude, NAD 83 decimal format, and leak testing results should be provided to CalGEM. CalGEM expects any wells found leaking to be reported to CalGEM immediately.

PRC section 3208.1 gives CalGEM the authority to order or permit the re-abandonment of any well where it has reason to question the integrity of the previous abandonment. Responsibility for re-abandonment costs may be affected by the choices made by the local permitting agency, property owner, and/or developer in considering the general advice set forth in this letter. The PRC continues to define the person or entity responsible for re-abandonment as:

R13-1
cont'd

1. The property owner - If the well was plugged and abandoned in conformance with Division requirements at the time of abandonment, and in its current condition does not pose an immediate danger to life, health, and property, but requires additional work solely because the owner of the property on which the well is located proposes construction on the property that would prevent or impede access to the well for purposes of remedying a currently perceived future problem, then the owner of the property on which the well is located shall obtain all rights necessary to re-abandon the well and be responsible for the re-abandonment.
2. The person or entity causing construction over or near the well - If the well was plugged and abandoned in conformance with Division requirements at the time of plugging and abandonment, and the property owner, developer, or local agency permitting the construction failed either to obtain an opinion from the supervisor or district deputy as to whether the previously abandoned well is required to be re-abandoned, or to follow the advice of the supervisor or district deputy not to undertake construction that impedes access, then the person or entity causing the construction over or near the well shall obtain

February 17, 2026

all rights necessary to re-abandon the well and be responsible for the re-abandonment.

3. The party or parties responsible for disturbing the integrity of the abandonment - If the well was plugged and abandoned in conformance with Division requirements at the time of plugging and abandonment, and after that time someone other than the operator or an affiliate of the operator disturbed the integrity of the abandonment in the course of developing the property, then the party or parties responsible for disturbing the integrity of the abandonment shall be responsible for the re-abandonment.

Should any wells require abandonment or re-abandonment, the responsible party must submit a Notice of Intention (NOI) to CalGEM through WellSTAR. The NOI form can be accessed in the 'Plugging and Abandonment' section of the following link:

https://www.conservation.ca.gov/calgem/for_operators.

No well work may be performed on any oil, gas, or geothermal well without written approval from CalGEM. Well work requiring approval includes, but is not limited to, mitigating leaking gas or other fluids from abandoned wells, modifications to well casings, and/or any other re-abandonment work. CalGEM also regulates the top of a plugged and abandoned well's minimum and maximum depth below final grade. CCR section 1723.5 states well casings shall be cut off at least 5 feet but no more than 10 feet below the surface of the ground. If any well needs to be lowered or raised (i.e. casing cut down or casing riser added) to meet this regulation, a permit from CalGEM is required before work can start.

CalGEM makes the following additional recommendations to the local permitting agency, property owner, and developer:

1. To ensure that present and future property owners are aware of (a) the existence of all wells located on the property, and (b) potentially significant issues associated with any improvements near oil or gas wells, CalGEM recommends that information regarding the below identified well(s), and any other pertinent information obtained after the issuance of this letter, be communicated to the appropriate county recorder for inclusion in the title information of the subject real property.
2. CalGEM recommends that any soil containing hydrocarbons be disposed of in accordance with local, state, and federal laws. Please notify the appropriate authorities if soil containing significant amounts of hydrocarbons is discovered during development.

R13-1
cont'd

As indicated in PRC section 3106, CalGEM has statutory authority over the drilling, operation, maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to CalGEM's authority to order work on wells pursuant to PRC sections 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC sections 3236, 3236.5, and 3359 for violations within CalGEM's jurisdictional authority. CalGEM does not regulate grading, excavations, or other land use issues.

Should you have any questions, or if any wells are encountered that were not part of this letter, contact CalGEM at 916-322-1110 or via email at CalGemNorthern@conservation.ca.gov

February 17, 2026

Sincerely,

May Soe

May Soe
Supervising Oil & Gas Engineer – Northern District – Sacramento

Enclosure

cc: *Robin Cort, Woodward & Curran, rcort@woodardcurran.com*

R13-1
cont'd

February 17, 2026

Enclosure: The wells listed below are reported to be located within and nearby the parcel boundary and may have future access impeded.

R13-1
cont'd

API No.	Well Name
0409920033	Senate Res., Inc. 4
0409900049	Luard Valerdi 1
0409920034	Senate Res., Inc. 5
0409920035	Senate Res., Inc. 6
0409920036	Senate Res., Inc. 7
0409900050	Elfers 36X-28
0409920018	Hanson B-1



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
MEGHAN HERTEL, Director



Letter R14

April 2, 2026

Anthea G. Hansen
General Manager
Del Puerto Water District
17840 Ward Avenue / P.O. Box 1596
Patterson, California 95363
ahansen@delpuertowd.org

Subject: Del Puerto Canyon Reservoir Project (Project)
Recirculated Draft Environmental Impact Report (RDEIR)
SCH#: 2019060254

Dear Anthea Hansen:

The California Department of Fish and Wildlife (CDFW) received a RDEIR from the Del Puerto Water District (DPWD) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

R14-1

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.

Anthea G. Hansen
 Del Puerto Water District
 April 2, 2026
 Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. The fully protected golden eagle (*Aquila chrysaetos*) is known to occur in the Project area (CDFW 2026). Take of any fully protected species was previously prohibited and CDFW was not able to authorize their incidental take. Senate Bill No. 147, which became effective on July 10, 2023, amended Fish and Game Code sections 3511, 4700, 5050, and 5515, and added section 2081.15, to authorize CDFW to issue a permit under CESA that authorizes the take of a fully protected species resulting from impacts attributable to the implementation of specified projects, which include maintenance, repair, or improvement projects to critical regional or local water agency infrastructure, if certain conditions are satisfied.

Other Special Status Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

R14-1
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Bird Protection: 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 that protect birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

Water Rights: The use of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water.

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CDFW, therefore, has a material interest in assuring adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

PROJECT DESCRIPTION SUMMARY

Scope of RDEIR: Environmental analysis in the RDEIR is limited to impacts on downstream terrestrial biological resources. The biological study area for the RDEIR is along the Del Puerto Creek from the proposed reservoir dam downstream to the confluence with the San Joaquin River.

Project Proponents: The Del Puerto Water District (DPWD) and the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) together are the Project Sponsors. DPWD is CEQA lead agency for preparation of the Environmental Impact Report (EIR). United States Bureau of Reclamation (Reclamation) is the lead agency for the preparation of an Environmental Impact Statement under the National Environmental Impact Act (NEPA).

Overall Project Description: The Project description is separated into components subject to CEQA analysis by DPWD, and other Project components subject to NEPA analysis by Reclamation. DPWD in partnership with the Exchange Contractors proposes to construct an 82,000-acre-foot reservoir in Del Puerto Canyon west of Patterson and I-5. Water would be conveyed from the Delta-Mendota Canal (DMC) and stored in the reservoir and discharged back to the DMC. Water would serve agriculture and potentially environmental purposes, such as wildlife refuge water supply (refuge water).

R14-2

Background and Scope of DEIR: The scope of the Project under CEQA includes construction of a main dam, three saddle dams, a spillway, inlet/outlet works, conveyance facilities (DMC diversion facility, pumping plant, pipeline and appurtenant components) and electrical facilities (power supply line and substation). The Project description under CEQA includes relocating Del Puerto Canyon Road and existing utilities that run through the reservoir site. Project-related construction activities are not proposed for lower Del Puerto Creek downstream of the dam and inundation area, however the reach downstream of the reservoir is subject to flow releases from dam operation.

The Project Sponsors conducted an initial CEQA scoping hearing for the DPCR Project on July 24, 2019. After considering comments and concerns during the initial scoping meeting, the Project Sponsors published the Del Puerto Canyon Reservoir DEIR to review the Project under CEQA. The DEIR was published on December 12, 2019, for a 45-day public comment period, which ended on January 27, 2020. The DPWD prepared

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an EIR which analyzed the construction and operation of a new reservoir on Del Puerto Creek to provide approximately 82,000 acre-feet (AF) of additional off-stream storage to the Central Valley Project (CVP). Project components are the reservoir (including the main dam, three saddle dams, and other facilities), conveyance facilities to transport water to/from the DMC (including a pipeline and pumping plant), electrical facilities, relocation of Del Puerto Canyon Road, and relocation of existing and proposed utilities that are within the Project area.

CDFW provided comments on the DEIR dated January 27, 2020 (Attachment A). On October 9, 2020, the Project Sponsors released the FEIR addressing comments received on the DEIR.

The FEIR was challenged by the Sierra Club together with a consortium of other environmental groups (Sierra Club et al. v. DPWD; Stanislaus Superior Court Case No. No. CV-20-005193). The Superior Court's judgement was appealed, and the appellate court found that the EIR complied with CEQA in all respects but one. Specifically, the court found that the FEIR failed to adequately analyze the Project's potential impacts to terrestrial species associated with Del Puerto Creek downstream of the proposed reservoir.

Proposed Federal Action Subject to NEPA: For DPWD and Exchange Contractors to construct and as authorized operate the proposed Project, Reclamation would need to complete several actions, including entering into a Partnership Agreement for the Project pursuant to the Reclamation's Water Infrastructure Improvements for the Nation Act (WIIN Act), adding a point of redirection to storage to Reclamation's water rights, preparing and executing, as appropriate, any necessary agreements with DPWD and the Exchange Contractors for a new diversion point off of the DMC, management of refuge water, and approving use authorizations related to construction of a Diversion/Outfall facility and modifications to the DMC pursuant to Title 43 Code of Federal Regulations Part 429- *Use of Bureau of Reclamation Land, Facilities, and Waterbodies*. In addition, Reclamation may provide an investment in the Project consistent with the authorities provided under the WIIN Act.

R14-2
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Location: The proposed Project (reservoir and dam) is located along Del Puerto Creek in the foothills west of the City of Patterson and Interstate-5. The area of analysis for the RDEIR is located along Del Puerto Creek downstream of the proposed reservoir to the San Joaquin River confluence.

Timeframe: Construction of the proposed Project is expected to take approximately six years.

Water Supplies, Demands, and Rights: The proposed Project (reservoir and related construction) would store CVP water allocated to and made available through

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equivalent conservation activities by the Project Sponsors within the developed water rights of the CVP, as well as other water for which the Project Sponsors obtain water rights. A point of diversion to storage in the new reservoir (Del Puerto Canyon Reservoir or Ingram Canyon Reservoir alternative) would need to be added to Reclamation's existing water rights, and a change petition would be prepared in coordination with the Project Sponsors. The water would be pumped into the reservoir from the DMC and would be subsequently pumped back into the DMC as needed by the Project Sponsors and CVPIA refuges.

R14-2
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The proposed Project would also capture and store water from Del Puerto Creek, which would require a new water right permit from the State Water Resource Control Board's Division of Water Rights. Currently, there are no existing water rights on Del Puerto Creek.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist DPWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project. The following species list is updated from CDFW's comment letter on the DEIR dated January 27, 2020 (Attachment A).

There are many special-status resources present in and adjacent to the Project area, including the reach of Del Puerto Creek downstream of the proposed reservoir to the San Joaquin River confluence. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*); the State endangered and federally threatened foothill yellow-legged frog – central coast distinct population segment (DPS) (*Rana boylei* pop. 4); the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State fully-protected and CDFW watch list golden eagle (*Aquila chrysaetos*); the State candidate for listing western burrowing owl (*Athene cunicularia hypugaea*), white sturgeon (*Acipenser transmontanus*), and Crotch's bumble bee (*Bombus crotchii*); the State rare Tracy's eriastrum (*Eriastrum tracyi*); the federally threatened and the State species of special concern California red-legged frog (*Rana draytonii*), steelhead – Central Valley DPS (*Oncorhynchus mykiss irideus* pop. 11), and green sturgeon – southern DPS (*Acipenser medirostris* pop. 1); the federally proposed threatened and State species of special concern western spadefoot (*Spea hammondi*) and northwestern pond turtle (*Actinemys marmorata*); and the State species of special

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concern American badger (*Taxidea taxus*), loggerhead shrike (*Lanius ludovicianus*), northern legless lizard (*Anniella pulchra*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), California glossy snake (*Arizona elegans occidentalis*), and coast horned lizard (*Phrynosoma blainvillii*); the CDFW watch list prairie falcon (*Falco mexicanus*) and California horned lark (*Eremophila alpestris actia*), central California roach (*Hesperoleucus symmetricus symmetricus*), and Chinook salmon (*Oncorhynchus tshawytscha*). Other sensitive wildlife in the Project area include tule elk (*Cervus canadensis nannodes*) and American bumble bee (*Bombus pensylvanicus*).

R14-3
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Properties with recorded conservation easements are located at the confluence of Del Puerto Creek and the San Joaquin River (CDFW 2026) which provide conservation planning linkages for the Great Valley (north) ecosystems. These easements were placed for perpetual protection of riparian and wetland habitats and provide habitat connectivity with nearby State Parks, Federal Wildlife Refuges, CDFW owned and operated lands, and CDFW held conservation easements. The conservation easements provide a contiguous riparian and wetland corridor occupied by special status species such as Swainson's hawk and tricolored blackbird, as well as several other special status species listed above.

R14-4

Per the RDEIR (pp. 3.4-9 and 3.4-10), biological analysis for special status species consisted of review of available literature and databases including the California Natural Diversity Database (CNDDB), and reconnaissance biological surveys conducted on July 14, 2025. In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any avoidance, minimization, and mitigation measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

R14-5

CDFW's considers its prior comments and recommendations regarding the DEIR dated January 27, 2020, still relevant for the RDEIR, and has attached these comments (Attachment A). This includes prior comments regarding San Joaquin kit fox, California tiger salamander, Swainson's hawk, foothill yellow-legged and California red-legged frogs, least Bell's vireo, Crotch's bumble bee, tule elk, western spadefoot, special status plants, impacts to riparian and aquatic habitats, CDFW's Lake and Streambed Alteration regulatory authority pursuant to Fish and Game Code section 1600 et seq., and water rights.

R14-6

The following comments include species listed above not addressed in prior CDFW comments on the DEIR. CDFW recommends that the following modifications and/or edits be incorporated into the RDEIR, including proposed avoidance, minimization, and compensatory measures, prior to its certification or approval by DPWD.

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Nesting Golden Eagle (GOEA)

GOEA occurrences have been documented within the Project vicinity (CDFW 2026). The Reclamation's DEIS acknowledges the observation of GOEA nests located from 0.13 to 0.37 miles of the Project area during wildlife surveys but did not offer specific mitigation measures for GOEA (p. 3.4-46). Environmental Protection Measure (Measure) BIO-TERR-1k states that no-disturbance buffers for nesting birds (other than Swainson's hawk) will be a minimum of 50-feet for ground nesting and a minimum of 500-feet for tree nesting birds. The analysis does not provide a biological basis of how this mitigation measure is determined adequate to avoid significant impacts, including but not limited to take of individuals through nest failure or other means, as a result of Project implementation. Without appropriate avoidance and minimization measures for GOEA, potential significant impacts associated with Project activities include loss of foraging and/or nesting habitat, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 1: Focused Surveys for Nesting Eagles

The RDEIR did not cite the survey protocol followed for GOEA. Without appropriate survey methods, nesting eagle could remain undetected, resulting in avoidance and minimization measures not being effectively implemented. In addition, human activity near nest sites can cause reduced provisioning rates of GOEA chicks by adults (Steidl et al. 1993). CDFW recommends incorporating survey methods outlined in the *Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment* (Driscoll 2010). If Project activities take place during the bird nesting season of February 1 through September 15, CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

R14-7

Recommended Mitigation Measure 2: Eagle Avoidance

CDFW recommends a survey buffer of ½-mile radius for eagles. If an active eagle nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 3: Eagle Take Authorization

Please note that GOEA are State fully protected species pursuant to Fish and Game Code section 3511. With the passage of Senate Bill No. 147, the incidental take of GOEA may be authorized for certain categories of projects, including maintenance, repair, or improvement to critical regional or local water agency infrastructure. If nesting eagles are detected and the ½-mile no-disturbance buffer is infeasible, or if

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the Project proponent chooses to assume presence during Project implementation, consultation with CDFW is recommended to discuss how to implement the Project and avoid take; or if avoidance is not feasible, to potentially acquire an ITP for GOEA prior to Project activities, pursuant Fish and Game Code section 2081, subdivision (b).

Western Burrowing Owl (BUOW)

The RDEIR acknowledges that BUOW occur within the Project area and potentially significant direct impacts associated with Project activities include habitat loss, burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Measure BIO-TERR-1j incorporates measures that if implemented may result in take ("take" as defined by Fish and Game Code section 86) including passive relocation of BUOW.

The BUOW mitigation measures describe buffers that are recommended by the California Burrowing Owl Consortium's CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFG 2012) for low level of disturbance activities. The sizes of buffers depend on type and intensity of disturbance, presence of visual buffers, and other variables that could affect susceptibility of the owls to disturbance. The analysis does not provide a basis of how the no-disturbance buffer is determined as adequate to avoid significant impacts, including but not limited to take of individuals.

Recommended Mitigation Measure 4: BUOW Surveys

R14-8

If suitable habitat is present on or in the vicinity of the Project area, CDFW recommends assessing presence or absence of BUOW by having a qualified biologist conduct surveys following CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFG 2012) (2012 Staff Report). This report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (i.e., April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot buffer around the Project area.

Recommended Mitigation Measure 5: BUOW Avoidance

Should a BUOW or known BUOW burrow (active or inactive) be detected, either during pre-construction surveys or Project activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report, be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

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Recommended Mitigation Measure 6: BUOW Take Authorization

If a BUOW or known BUOW burrow (active or inactive) is detected, and the no disturbance buffers outlined in the 2012 Staff Report are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take of any BUOW or active BUOW burrow is not feasible, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA.

R14-8
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Tricolored Blackbird (TRBL)

TRBL have been documented within and adjacent to the Project area, and in the nearby vicinity (CDFW 2026). Measure BIO-TERR 1k proposes to avoid and minimize impacts to nesting birds by establishing no-disturbance buffers developed by a qualified biologist. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with subsequent development include nesting habitat loss, nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Recommended Mitigation Measure 7: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the bird nesting season of February 1 through September 15. If Project activity that could disrupt nesting must take place during that time, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence or absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

R14-9

Recommended Mitigation Measure 8: TRBL Colony Avoidance

If an active TRBL nesting colony is found during surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's (2015) *Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*, until the breeding season has ended or until a qualified biologist has determined that nesting has ceased and the young have fledged and are no longer reliant upon the nest site for survival.

Recommended Mitigation Measure 9: TRBL Take Authorization

If the avoidance buffer around a TRBL nesting colony is infeasible, consultation with CDFW is warranted to discuss whether the Project can avoid take and, if take avoidance is not feasible, to acquire an ITP for TRBL pursuant to Fish and Game Code section 2081, subdivision (b), prior to any Project activities.

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Northwestern Pond Turtle (NWPT)

NWPT occur in the Project area (CDFW 2026), and a review of aerial imagery shows habitats that WPT utilize for nesting, overwintering, dispersal, and basking, including streams, ponded areas, irrigation canals, and riparian and upland habitats. NWPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Noise, vegetation removal, movement of workers, construction and ground disturbance as a result of Project activities have the potential to significantly impact NWPT populations. Without appropriate avoidance and minimization measures for NWPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

R14-10

Recommended Mitigation Measure 10: NWPT Surveys

CDFW recommends that a qualified biologist conduct focused surveys for NWPT within 10 days prior to Project implementation, and that focused surveys for nests occur during the egg-laying season of March through August.

Recommended Mitigation Measure 11: NWPT Avoidance and Minimization

CDFW recommends that any NWPT nests that are discovered remain undisturbed with a no-disturbance buffer maintained around the nest until the eggs have hatched and neonates are no longer in the nest or Project areas. If NWPT individuals are discovered at the site during surveys or Project activities, CDFW recommends that they be allowed to move out of the area of their own volition without disturbance.

Other State Species of Special Concern

American badger, San Joaquin coachwhip, northern legless lizard, California glossy snake, coast horned lizard, prairie falcon, California horned lark, and loggerhead shrike are known to occur in the vicinity of the Project (CDFW 2026), which supports habitats these species are known to use, including grassland and upland shrub areas with friable soils (Williams 1986, Thomson et al. 2016). Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss, nest/den/burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

R14-11

Recommended Mitigation Measure 12: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if Project areas or their immediate vicinity contain suitable habitat for the species mentioned above.

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Recommended Mitigation Measure 13: Avoidance

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for small mammals, reptiles, and amphibians. CDFW also advises that any individuals observed be allowed to leave the Project area of their own volition.

R14-11
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Editorial Comments:

Flow Releases and Fisheries Impacts: Unimpaired flows from storm events along Del Puerto Canyon Creek provides benefits to fish and wildlife, and their habitat, including the San Joaquin River downstream of its confluence with Del Puerto Canyon Creek. Rain events resulting in increased streamflow specifically benefits white sturgeon spawning habitat and is a cue for spawning (Jackson 2016). Increased stream flow similarly benefits steelhead and spring- and fall-run chinook salmon.

Section 1.2.1 of the RDEIR states Project operation would include reservoir releases to meet environmental or regulatory commitments made during development and permitting of the Project. For every flow event of 500 cubic feet per second (cfs) or greater, environmental releases would be made in a pattern that mimics the unimpaired flow in Del Puerto Creek based on a new stream gage to be installed upstream of the proposed reservoir impoundment area. If the stream gauge measurement exceeds 500 cfs, then releases would increase on the first day of the environmental release program, mimicking the measured natural flow, with flows up to 600 cfs, or the peak natural flow (whichever is less). After the first day, there would be up to six additional days of releases with a decreasing flow rate each subsequent day, eventually returning to at or near zero releases after no more than 7 days. Implementation of the proposed Project would alter the volume and timing of flows by reducing unimpaired flow while altering the seasonal flow regime downstream of the reservoir (p. 3.4-24 RDEIR).

R14-12

Figure 3.4-6 of the RDEIR is a graph of Del Puerto Creek flows from 2000 to 2025. This graph details a flashy stream system with several flow events of between 250 and 500 cfs which would be excluded from environmental releases based on the flow release criteria proposed in the RDEIR. Flows less than 500 cfs can still provide a meaningful biological cue or signal for downstream aquatic species.

The DEIR (Impact BIO-FISH-1; p. 3-5-10; Figures 3.5-4 – 3.5-8), characterized Del Puerto Canyon Creek as contributing a very small fraction of flows in the lower San Joaquin River. The DEIR compares the daily flow of the San Joaquin River measured at Crows Landing (River Mile (RM) 108) and Vernalis (RM 73), and Del Puerto Creek confluence (RM 92). This comparison discounts that the San Joaquin River flow at Vernalis includes flows from the Stanislaus River (RM 75) and the Tuolumne River (RM 83) which are subject to operational flow management requirements. The watershed

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area for the Stanislaus River is 1,075 square miles and the Tuolumne River watershed area is 1,958 square miles. Del Puerto Creek watershed is approximately 76 square miles and therefore would be expected to provide less flow than the San Joaquin River. However, the flows provided by Del Puerto Creek to the San Joaquin River would still provide important benefit for habitat and biological cues for local fish and other aquatic species.

The Del Puerto Creek Draft Aquatic Resources Delineation Report, March 2020 (Appendix H of the DEIS, p. 3-1), and the DEIS (p. 3.5-16) characterize Del Puerto Creek as providing negligible flows to the San Joaquin River. However, the Delineation Report states its maximum documented flow in 1983 was 34,628 acre-feet which, assuming it meant acre-feet per day, converts to 17,458 cfs. A review of the United States Geological Survey (USGS) current conditions for USGS Gage 11274630 on Del Puerto Creek (USGS 2026) shows several stream flows well above 500 cfs between 1988 and 2024, including over 5,000 cfs in 1998. However, the proposed releases will be a maximum of 600 cfs regardless of the maximum unimpaired flow rate, eliminating unimpaired peak natural flows above 600 cfs. A flow of 5,000 cfs would provide a biological cue or signal of ten times the magnitude of a 500 cfs flow event. The RDEIR did not include an analysis of impacts for the operational loss of peak flow events and the effect that may have on aquatic resources along the San Joaquin River downstream of the confluence with Del Puerto Creek.

R14-12
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CDFW recommends the RDEIR include a site-specific study conducted by a qualified hydrologist and ecologist to determine suitable bypass flows necessary in Del Puerto Creek to maintain in good condition any riparian and aquatic habitat and fish and wildlife resources that are likely to exist in downstream reaches, including at the confluence with the San Joaquin River, under the current flow regime.

CDFW recommends a mitigation and monitoring plan to address reduced flow impacts to plant, fish, and/or wildlife resources including, but not limited to, the species listed above. CDFW recommends this plan include a survey that quantifies the loss of resources that may occur as a result of this Project and specify measures that will be taken to offset impacts to resources and outline specific mitigation and monitoring programs. CDFW recommends the plan account for reduced spring flows and related impacts to fisheries, including salmonids and sturgeons, along the San Joaquin River downstream of the confluence with Del Puerto Creek.

Western Spadefoot: Be advised that on September 24, 2025, the Fish and Game Commission (Commission) received a petition to list the northern population of WESP as threatened species and the southern population of WESP as an endangered species under CESA. If the Commission takes action and WESP becomes listed as a Candidate for listing pursuant to CESA (possible in 2026), or ultimately becomes listed as threatened or endangered pursuant to CESA, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), would

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be necessary to comply with CESA if full avoidance of WESP could not be achieved. Please note that implementation of the recommended WESP measures in CDFW's January 27, 2020 letter (Attachment A) would help minimize impacts to WESP as required by CEQA, but would not fully avoid impacts and thus take; additional measures would need to be implemented to avoid take of WESP. In the event that WESP becomes protected under CESA, CDFW recommends early consultation to help identify if avoidance is feasible or if not, to initiate discussions regarding the need for ITP acquisition.

R14-13
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Mitigation Measures and State Incidental Take: The Mitigation Measures for biological resources proposed in the RDEIR (and used by reference from the DEIR) contain components that, if implemented, may result in take ("take" as defined in Fish and Game Code § 86). This includes Measures such as passive relocation or destruction of dens (BIO-TERR-1j, BIO-TERR-1o), insufficient no-disturbance buffers around active nests or dens (BIO-TERR-1k, BIO-TERR1l), handling and relocation of the animal (BIO-TERR-1e, BIO-TERR-1i), and installation of exclusion fencing (BIO-TERR-1e). Other mitigation measures propose compensation for loss of habitat if State-listed species are present (BIO-TERR-1f, BIO-TERR-1h). State incidental take authorization is warranted for any Project-related activities resulting in take of State-listed or State-candidate species. CDFW strongly recommends the Project proponents obtain State take authorization in advance of Project implementation.

R14-14

Water Rights: Project-related diversions to storage will impact riparian, wetland, fisheries and terrestrial (upland) wildlife species and their habitats. The Project will capture surface flow from Del Puerto Creek, and additional surface storage would come from existing contracts that the DPWD and the Exchange Contractors have for CVP water supply delivered through the DMC, which would be diverted and pumped from the DMC to the proposed reservoir.

The Project proponents are required to obtain a water right from the SWRCB Division of Water Rights for the right to store surface flow from Del Puerto Creek. Reclamation will be filing a petition for change with the SWRCB to add a point of rediversion for storage in the new reservoir. As stated previously, CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application and change petition process. CDFW will have additional opportunity to provide comments and recommendations during the public comment period when the water right application and change petition are noticed by the SWRCB.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

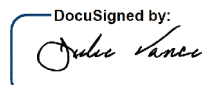
R14-16

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist DPWD in identifying and mitigating the Project's impact on biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). A Mitigation and Monitoring Program (MMRP) (Attachment B) is included to assist DPWD with incorporating the recommended mitigation measures provided above. If you have any questions, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or Annette.Tenneboe@wildlife.ca.gov.

R14-17

Sincerely,

DocuSigned by:

 FA83F09FE08945A...
 Julie A. Vance
 Regional Manager

Attachment A

Attachment B - MMRP

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Del Puerto Water District
April 2, 2026
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Attachment A



DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 27, 2020

Anthea Hansen, General Manager
Del Puerto Water District
17840 Ward Avenue
Patterson, California 95363

Subject: Del Puerto Canyon Reservoir (Project)
Draft Environmental Impact Report (DEIR)
SCH#: 2019060254

Dear Ms. Hansen:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Del Puerto Water District for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

The use of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW, therefore, has a material interest in assuring adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

PROJECT DESCRIPTION SUMMARY

Proponent: Del Puerto Water District

Objective: The Project proposes the construction and operation of a new reservoir on Del Puerto Creek to provide approximately 82,000 acre-feet (AF) of additional off-stream storage to the Central Valley Project (CVP). Project components are the reservoir (including the main dam, three saddle dams, and other facilities), conveyance facilities to transport water to/from the Delta-Mendota Canal (DMC) (including a pipeline and pumping plant), electrical facilities, relocation of Del Puerto Canyon Road, and relocation of existing and proposed utilities that are within the Project area.

Location: The Project site is located in the foothills west of the City of Patterson and Interstate-5.

Timeframe: Construction of the proposed Project is expected to take approximately six years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Del Puerto Water District in adequately identifying and/or mitigating the Project's significant, or potentially

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significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State candidate-listed as threatened foothill yellow-legged frog (*Rana boylei*), the State and federally endangered least Bell's vireo (*Vireo bellii pusillus*), the State candidate-listed as endangered Crotch bumble bee (*Bombus crotchii*), and the State species of special concern California red-legged frog (*Rana draytonii*), western spadefoot (*Spea hammondi*), the State rare Tracy's eriastrum (*Eriastrum tracyi*) and tule elk (*Cervus canadensis nannodes*). In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

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 United States Fish and Wildlife Service (USFWS)?

COMMENT 1: California Tiger Salamander (CTS)

Issue: CTS have the potential to occur in the Project site. Aerial imagery shows that the Project site consists of upland habitat and Del Puerto Creek which likely serve as refugia and breeding habitat for CTS that are dispersing from and into the area.

Specific Impacts: Aerial imagery shows that the proposed Project site has upland habitat for refugia and Del Puerto Creek which may function as breeding habitat. Potential ground- and vegetation-disturbing activities associated with Project activities include: water inundation as a result of the proposed new reservoir, collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia,

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water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact would be significant: Up to 75% of historic CTS habitat has been lost to urban and agricultural development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS in both the Central and San Joaquin valleys. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015, USFWS 2017a). The Project site is within the range of CTS and has suitable habitat (i.e., grasslands interspersed with burrows and vernal pools). CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have been documented to occur near the Project site (CDFW 2019). Given the presence of suitable habitat within the Project site, ground-disturbing activities have the potential to significantly impact local populations of CTS.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for CTS is present throughout the Project site, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the environmental impact report (EIR) prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Focused CTS Protocol-level Surveys

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 2: CTS Avoidance

If CTS protocol-level surveys as described in Mitigation Measure 1 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within

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and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW a State Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081(b).

Recommended Mitigation Measure 3: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b). As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

COMMENT 2: Swainson's Hawk (SWHA)

Issue: SWHA have the potential to nest near the Project site, and forage within the Project site. SWHA have been documented to occur within the Project site (CDFW 2020), and the DEIR indicates that they were observed during wildlife surveys in the Project site.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include: nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment and loss of foraging habitat, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable foraging habitat for SWHA is present throughout the Project site, CDFW recommends conducting the following evaluation of the Project site,

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incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 4: SWHA Surveys

CDFW agrees with Mitigation Measure BIO-TERR-1L of the DEIR that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) prior to project implementation. However, the 0.25-mile survey distance from the Project site as indicated in the DEIR is inconsistent with the SWHA TAC; the SWHA TAC recommends a 0.5-mile survey distance from the limits of disturbance. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Recommended Mitigation Measure 5: No-disturbance Buffer

If ground-disturbing activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. Mitigation Measure BIO-TERR-1L of the DEIR states that a minimum no-disturbance buffer of 600 feet shall be established around all active SWHA nests. CDFW recommends a minimum no-disturbance buffer of ½-mile 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.

Recommended Mitigation Measure 6: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Recommended Mitigation Measure 7: Loss of SWHA Foraging Habitat

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

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- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of $\frac{3}{4}$ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of $\frac{1}{2}$ acre of HM land for each acre of development is advised.

Recommended Mitigation Measure 8: SWHA Nest Trees

CDFW recommends that the removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

COMMENT 3: San Joaquin Kit Fox (SJKF)

Issue: SJKF have been documented to occur within the vicinity of the Project site (CDFW 2020). SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. Presence/absence in any one year is not necessarily a reliable indicator of SJKF potential to occur on a site. SJKF may be attracted to project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to colonize the Project area or to occupy adjacent grassland.

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with Project activities include den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). The Project area is bordered by some of the only remaining undeveloped land in the vicinity. Therefore, subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

To evaluate potential impacts to SJKF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

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Recommended Mitigation Measure 9: SJKF Surveys

CDFW agrees with Mitigation Measure BIO-TERR-10 in the DEIR that presence/absence of SJKF be assessed by conducting surveys and implementing den avoidance buffers following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground-disturbing activities.

Recommended Mitigation Measure 10: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b).

COMMENT 4: Foothill Yellow-Legged Frog (FYLF) and California Red-Legged Frog (CRLF)

Issue: FYLF are primarily stream dwelling and requires shallow, flowing water in streams and rivers with at least some cobble-sized substrate; CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). FYLF and CRLF have been documented to occur in the vicinity of the Project site (CDFW 2020). The Project site contains habitat that may support both species. Avoidance and minimization measures are necessary to reduce impacts to FYLF and CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for FYLF and CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: FYLF and CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to FYLF and CRLF (Thomson et al. 2016, USFWS 2017b). Project activities have the potential to significantly impact both species.

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Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to FYLF and CRLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 11: FYLF and CRLF Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for FYLF and CRLF in accordance with the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if FYLF and CRLF are within or adjacent to the Project area; while this survey is designed for CRLF, the survey may be used for FYLF with focus on stream/river habitat.

Recommended Mitigation Measure 12: FYLF and CRLF Avoidance

If any FYLF or/and CRLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF and CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for FYLF and CRLF.

Recommended Mitigation Measure 13: FYLF Take Authorization

Species such as FYLF with a Candidate listing are treated as threatened or endangered by CDFW. If through surveys it is determined that FYLF are occupying or have the potential to occupy the Project site and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

COMMENT 5: Least Bell's Vireo (LBV)

Issue: LBV are known to occur within the Project site along the Del Puerto Creek (CDFW 2020). Review of aerial imagery indicates the presence of riparian woodland vegetation, suitable to support LBV, both within the Project site and its vicinity. Therefore, the Project has the potential to impact LBV.

Specific impact: Without appropriate avoidance and minimization measures for LBV, potential significant impacts associated with Project development include nest

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abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: LBV were abundant and widespread in the United States until the 1950s (Grinnell and Miller 1944). By the 1960s, they were considered scarce (Monson 1960), and by 1980, there were fewer than 50 pairs remaining (Edwards 1980), although this number had increased to 2,500 by 2004 (Kus and Whitfield 2005). The primary cause of decline for this species has been the loss and alteration of riparian woodland habitats (USFWS 2006). Fragmentation of their preferred habitat has also increased their exposure to brown-headed cowbird (*Molothrus ater*) parasitism (Kus 2002). Current threats to their preferred habitat include colonization by non-native plants and altered hydrology (diversion, channelization, etc.) (USFWS 2006).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential impacts to LBV, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 14: LBV Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its immediate vicinity contains suitable habitat for LBV. Although LBV inhabit riparian woodlands, the species has also been found to benefit from non-riparian systems including brushy fields, second-growth forest or woodland, scrub oak, coastal chaparral, and mesquite brushlands (Kus and Miner 1989 in Poulin et al. 2011).

Recommended Mitigation Measure 15: LBV Avoidance

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15).

Recommended Mitigation Measure 16: LBV Surveys

If Project activities must take place during the typical bird breeding season, and suitable LBV habitat is detected during habitat assessments, CDFW recommends assessing presence/absence of LBV by conducting surveys following the USFWS' "Least Bell's Vireo Survey Guidelines" (2001) well in advance of the start of Project implementation to evaluate presence/absence of LBV nesting in proximity to Project activities, and to evaluate potential Project-related impacts and permitting needs.

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Additionally, CDFW advises conducting focused pre-construction surveys for LBV in all areas of potentially suitable habitat within 10 days of Project implementation, when initiated during the bird breeding season.

Recommended Mitigation Measure 17: LBV Take Authorization

LBV detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b).

COMMENT 6: Crotch Bumble Bee (CBB)

Issue: On June 28, 2019, the Fish and Game Commission published findings of its decision to advance CBB to candidacy as endangered. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of CBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the CBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, CBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of CBB during the status review period is prohibited unless authorization pursuant to CESA is obtained.

CBB have been documented to occur within the vicinity of the Project area (CDFW 2020). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local CBB populations.

Specific impact: The DEIR does not address CBB. Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow

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collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

Evidence impact is potentially significant: CBB was once common throughout most of the central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CBB associated with the Project, CDFW recommends incorporating the following mitigation measures into the EIR prepared for this Project and implementing the following mitigation measures as a condition of approval for the Project.

Recommended Mitigation Measure 18: CBB Surveys

CDFW recommends that a qualified biologist conduct focused surveys for CBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Del Puerto Canyon Road and utility relocations, and potential impacts resulting from inundation as a result of the new reservoir.

Recommended Mitigation Measure 19: CBB Take Avoidance

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 20: CBB Take Authorization

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

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COMMENT 7: Western spadefoot

Issue: Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Review of aerial imagery indicates that the Project contains these requisite habitat elements.

Specific impact: Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance include water inundation as a result of the proposed new reservoir, collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to western spadefoot (Thomson et al. 2016). The Project area is within the range of western spadefoot and contains suitable upland habitat (i.e., grasslands interspersed with burrows) and breeding habitat (i.e., vernal pools and swales). As a result, ground-disturbing activities associated with development of the Project site have the potential to significantly impact local populations of this species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to western spadefoot associated with the Project, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 21: Western Spadefoot Surveys

CDFW recommends that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 22: Western Spadefoot Avoidance

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows.

COMMENT 8: Tule Elk

Issue: Elk are California's largest land mammal and an important wildlife resource whose population growth in recent decades has been of great interest to the public.

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Prior to non-indigenous settlement, it is estimated the elk population in California was more than 500,000 animals. Non-indigenous settlement decimated California's elk populations. By 1872, only a few tule elk remained in the San Joaquin Valley. Conservation organizations and hunters were able to restore elk to the California landscape. Elk population growth since 1970 has been significant and California now supports approximately 5,700 tule elk (CDFW 2018). CDFW regional biologists have confirmed tule elk within and adjacent to the Project site. The Project has the potential to impact this species.

Specific impact: Tule elk are known to utilize the Project site and adjacent areas. During routine population assessment surveys in early November 2019, several groups of tule elk were sighted by CDFW staff west of the Project site; tule elk were also found to regularly utilize the lower flats in the Project site. Potential impacts to tule elk as a result of the Project includes loss of habitat, loss of habitat connectivity to other elk herds, mortality resulting from vehicle collisions, and entanglement with fences and other structures. Without appropriate mitigation measures for tule elk, potentially significant impacts include loss of habitat.

Evidence impact is potentially significant: Habitat loss and fragmentation resulting from development or conversion to other land uses are the primary threat to tule elk. The Project site is within the range of tule elk and is utilized by tule elk based on CDFW population assessment surveys. As a result, ground-disturbing activities associated with development of the Project site have the potential to significantly impact local populations of this species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to tule elk, CDFW recommends incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 23: Tule Elk habitat

The Project as proposed will result in the loss of tule elk habitat. CDFW recommends that tule elk habitat be conserved at a minimum 1:1 ratio to the loss of habitat within the general vicinity of the Project site.

Recommended Mitigation Measure 24: Fencing

Physical barriers such as fencing, mesh wire, panels, electric fence, and visual barriers (such as landscaping cloth hung between fence poles) have the potential to impact tule elk. CDFW recommends not utilizing physical barriers that may impede tule elk habitat connectivity to other elk herds, access to water, and foraging areas.

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COMMENT 9: Tracy's eriastrum, and other California Rare Plant Rank (CRPR) plant species

Issue: Tracy's eriastrum and other CRPR plant species are known to occur in the vicinity of the Project area (CDFW 2020). Tracy's eriastrum occurs in chaparral and Valley and foothill grassland habitat (CNPS 2020).

Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Tracy's eriastrum and many of the CRPR-listed plant species above are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 25: Special-Status Plant Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species.

Recommended Mitigation Measure 26: Focused Surveys

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

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Recommended Mitigation Measure 27: Special-Status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 28: Special-Status Plant Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. However; if take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

II. Editorial Comments and/or Suggestions

Riparian impacts

Issue: The proposed Project and associated reservoir effectively inundate and remove the aquatic and riparian habitat and associated species within the Del Puerto Creek and surrounding area of the Project footprint. The DEIR does not include a hydrologic study or other information that identifies and analyzes the impacts of the removal of riparian woodland and aquatic habitats in the Del Puerto Creek or the species supported by these habitats.

Specific Impact: Watershed and habitat protection are vital to the CDFW's management of California's diverse fish, wildlife, and plant resources. The riparian zone of Del Puerto Canyon supports riparian woodland habitat and associated annual grassland, and may potentially support several sensitive species listed as threatened or endangered under CESA and the Federal Endangered Species Act (FESA), as well as several State special-status species including least Bell's vireo, San Joaquin kit fox, Swainson's hawk, California red-legged and foothill yellow-legged frog. CDFW is concerned that the loss of riparian habitat will result in direct and cumulative adverse impacts to these fish and wildlife and other public trust resources supported by the Del Puerto Creek and its associated riparian habitats.

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Recommended Analysis

The DEIR does not include a hydrologic study or other information that identifies and analyzes the impacts to the riparian woodland and aquatic habitats in the Del Puerto Creek or the species supported by these habitats.

Study Plan

Where a project could affect the hydrologic regime of a watershed, the necessary elements to successfully maintain the downstream biological diversity and avoid impacts to threatened and endangered species needs to be identified to facilitate sound management decisions. CDFW recommends the Lead Agency develop and implement a site-specific study to evaluate potential Project-related impacts to the Del Puerto Creek and determine appropriate measures to reduce impacts due to the proposed diversion to a less than significant level. CDFW recommends that the MND be amended and recirculated with the results of this study and proposed mitigation and monitoring measures.

At a minimum, the study plan should include the following:

1. Identification of minimum bypass flows necessary to maintain the health and perpetuation of aquatic and riparian resources in the Del Puerto Canyon downstream of the reservoir.
2. A complete updated (within the last two years) assessment of the flora and fauna within, adjacent to, and downstream of the Project footprint with particular emphasis on identifying endangered, threatened, and sensitive species and sensitive habitats. The assessment should be based on the findings of appropriate applicable protocol surveys to determine the presence or absence of special-status species within the Project footprint of Del Puerto Canyon. These surveys should be conducted on the project site, including adjacent habitats and downstream reaches affected by the discharge.
3. A quantification of the loss of biological resources that will occur as a result of the inundation of Del Puerto Canyon and associated tributaries, and an evaluation of the impacts to resources.
4. A mitigation plan to replace lost plant, fish, and/or wildlife resources including, but not limited to the species or habitats described above. This plan must include a survey which quantifies the loss of resources that will occur as a result of this project. It must also specify measures that will be taken to offset impacts to resources and outline specific mitigation and monitoring programs.

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Lake and Streambed Alteration: The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Water Rights: Project-related diversions to storage will impact riparian, wetland, fisheries and terrestrial (upland) wildlife species and their habitats. The Project will capture surface flow from Del Puerto Creek, and additional surface storage would come from existing contracts that the Del Puerto Water District (DPWD) and the San Joaquin River Exchange Contractors (Exchange Contractors) have for Central Valley Project (CVP) water supply delivered through the Delta-Mendota Canal (DMC), which would be diverted and pumped from the DMC to the proposed reservoir.

The Project proponents have applied to the SWRCB Division of Water Rights for the right to store surface flow from Del Puerto Creek. As stated previously, CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to sensitive species and their habitats, it is advised that consultation with CDFW occur well in advance of the SWRCB water right application process.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS and SJKF. Take under FESA is more broadly 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 nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 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).

CDFW appreciates the opportunity to comment on the Project to assist Del Puerto Water District in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

cc: See Page Twenty

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cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, California 95812

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

ec: Annette Tenneboe, Bob Stafford, and Cristen Langner; CDFW

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Attachment B

Attachment B
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)

PROJECT: Del Puerto Canyon Reservoir Project, Recirculate EIR
SCH No.: 2019060254

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Golden Eagle (GOEA)	
Recommended Mitigation Measure 1: Focused Surveys for Nesting Eagles	
Recommended Mitigation Measure 3: Eagle Take Authorization	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 4: BUOW Surveys	
Recommended Mitigation Measure 6: BUOW Take Authorization	
Tricolored Blackbird (TRBL)	
Recommended Mitigation Measure 7: TRBL Surveys	
Recommended Mitigation Measure 9: TRBL Take Authorization	
Northwestern Pond Turtle (NWPT)	
Recommended Mitigation Measure 10: NWPT Surveys	
Other State Species of Special Concern (SSC)	
Recommended Mitigation Measure 12: SSC Habitat Assessment	
<i>During Construction</i>	
Golden Eagle (GOEA)	
Recommended Mitigation Measure 2: Eagle Avoidance	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 5: BUOW Avoidance	
Tricolored Blackbird (TRBL)	

Recommended Mitigation Measure 8: TRBL Colony Avoidance	
Northwestern Pond Turtle (NWPT)	
Recommended Mitigation Measure 11: NWPT Avoidance and Minimization	
Other State Species of Special Concern (SSC)	
Recommended Mitigation Measure 13: SSC Avoidance	



June 19, 2026

Sent via email

Anthea G. Hansen
General Manager
Del Puerto Water District
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Re: Del Puerto Canyon Reservoir Project, SCH # 2019060254

Dear Ms. Hansen:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the proposed Del Puerto Canyon Reservoir Project (“Project”). The Center has reviewed the Partially Recirculated Draft Environmental Impact Report (“PRDEIR”) closely and is concerned that the Del Puerto Water District (“District”) has failed to adequately disclose, analyze, and mitigate the potential environmental impacts of the Project. Critically, the PRDEIR is deficient in regard to the Project’s impacts on terrestrial biological resources located downstream of the Project site, including sensitive and special-status species, and wildlife connectivity. The Center urges the District to amend and recirculate a revised EIR that sufficiently discloses the Project’s effects on Del Puerto Creek, analyzes the impacts of these effects on terrestrial species, including on wildlife movement and habitat connectivity, and commits to sufficient, enforceable mitigation measures for these impacts.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.8 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the San Joaquin Valley.

I. The DREIR Fails to Adequately Disclose, Analyze, and Mitigate Impacts to Downstream Terrestrial Species.

In 2025, the Court of Appeal in *Sierra Club et al. v. Del Puerto Water District et al.*, upheld a judgement vacating the District’s approval of the Project and the issuance of a writ of mandate directing the District to conduct a compliant environmental review under the California Environmental Quality Act (“CEQA”) which adequately addressed the Project’s potential impacts on downstream terrestrial species. (PRDEIR at 1-1; *See also* PRDEIR Appendix A at 15.) However, despite this requirement, the District’s PRDEIR fails to adequately disclose, analyze, and mitigate the impacts of the Project on terrestrial species below the proposed dam site. In order to remedy this deficiency, the District must, *inter alia*, fully describe the

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operational impacts of the Project on Del Puerto Creek flows; commit to an enforceable, effective, functional flow regime for the creek; and adequately analyze the direct and indirect impacts of the Project on wildlife movement and connectivity.

A. The PRDEIR Fails to Adequately Describe the Extent of the Study Area and Area of Impact Analysis.

As a threshold matter, the PRDEIR inconsistently describes its area of study and analysis. As described *supra*, consistent with the Court of Appeal’s opinion, the scope of the PRDEIR must encompass terrestrial species downstream of the Project site, which were excluded from analysis in the prior environmental review documents. The PRDEIR states that the District elected to define the “downstream” area as comprising a “variable-width buffer” along 7.4 miles of Del Puerto Creek from “a location immediately east of Interstate 5 (I-5)” to the confluence of the Creek and the San Joaquin River. (PRDEIR at 3.4-1.) This study area is repeatedly referred to as including the entirety of the Creek downstream of I-5. (See e.g. PRDEIR at 3.4-2, 3.4-18, 3.4-25.) However, the area of analysis of Project impacts is described inconsistently with this study area. Analysis of impact BIO-TERR-DS-1, which includes sub-analyses of all special-status species, is described as “Substantial Adverse Effect on Listed, Candidate, Sensitive, or Special-Status Species on Del Puerto Creek *Downstream of Delta-Mendota Canal*.” (PRDEIR at 3.4-24 [emphasis added.]) The Delta-Mendota Canal is situated approximately 0.75 miles east of the boundary of I-5. This is inconsistent with the study area as defined elsewhere in the PRDEIR, and it is unclear whether the spatial extent of the impacts analysis corresponds to the entirety of the study area. The District must revise the impact analysis to clearly align with the study area and justify the exclusion of the portion of lower Del Puerto Creek between the dam site and eastern levee of the Delta-Mendota Canal from its impact analysis.

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B. The PRDEIR Lacks a Complete Description of Project Impacts on Del Puerto Creek Flows

An accurate, stable, and finite project description remains the sine qua non of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) But here the PRDEIR’s project description lacks clarity and falls short of accurately describing and assessing the operational effects of the Project on Del Puerto Creek flows. A full description of the impacts on creek flows is not included anywhere in the PRDEIR. Information included in the October 2020 Final EIR states that average Del Puerto Creek flows into the San Joaquin River are currently 2.7 thousand-acre-feet (“TAF”) per year, and under Project operation flows would decline to approximately 0.3 TAF annually. (FEIR at 3.5-10.) By contrast, the PRDEIR offers only vague and indefinite descriptions of the Project’s impact on the Creek’s flows. For example, the PRDEIR repeatedly states that the Project “could influence” the volume and timing of downstream flows. (PRDEIR at 3.4-34, 3.4-36, 3.4-41.) The PRDEIR similarly states repeatedly that the Project “may result in changes to flow volumes” in lower Del Puerto Creek. (PRDEIR at 3.4-34, 3.4-37, 3.4-38.) Elsewhere the PRDEIR states that the Project “would result in changes” to Del Puerto Creek flows but does not specify what those changes would consist of. (See e.g. DEIR at 3.4-31 – 3.4-33.) As a result, the description of the Project in the PRDEIR is vague and conflicting (“may” and “could” versus “would”). Further, this general ambiguity is directly inconsistent with the data included in the October 2020 FEIR. The lack of

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specificity and the internal inconsistency in the description of the impacts of the Project on Del Puerto Creek flows together undermine the informational value of the PRDEIR.

i. The PRDEIR Unlawfully Compresses the Discussion of Project Operation and Analysis of Mitigation.

Average annual flows are only one general description of Project impacts on Del Puerto Creek flows, because the operations also include a program of reservoir releases to meet “environmental or regulatory commitments” of the Project. (PRDEIR at 1-3.) These so-called commitments consist of statements that during peak flow events (defined as flows of 500 cubic feet per second (“cfs”) or greater) the Project would release water in a pattern that “mimics” the unimpeded flows on Del Puerto Creek. (*Id.*) Released flows would initially meet either the lesser of the peak natural flow rate or 600 cfs and would continue for as many as six subsequent days, with flows gradually declining to “at or near zero” after at most seven days. (*Id.*) The PRDEIR repeatedly describes these flows as serving to “replicate” key hydrologic characteristics of the natural flow regime without providing substantial evidence to support such claims. (*See e.g.* PRDEIR at 3.4-27, 3.4-29.)

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Ultimately, the PRDEIR concludes that all impacts to downstream terrestrial species resulting from the Project would be less than significant, based in part on these “environmental commitments” to mimic the natural flow regime. Consequently, the EIR’s analysis provides no insight into the Project’s actual biological resources impacts, the magnitude of mitigation required, or whether there are alternate measures or alternatives that would better address the impacts, in violation of *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655–656. ([Holding that the failure to separately analyze the significance of project impacts and the efficacy of mitigation measures rendered an EIR fatally flawed.] *See also People ex rel. Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222.) It is impossible for the District to evaluate the impact of the Project and therefore the necessity of mitigation measures because of this circular reliance on Project operations to reduce the severity of the Project impacts. Therefore, it is impossible to evaluate whether other more effective measures than those proposed should be considered. (*Id.*) This improperly compresses the analysis of impacts and mitigation measures into a single issue, in violation of a principle set forth in *Lotus*. (*Id.* at 655–656.)

C. The PRDEIR Must Commit to an Effective Functional Flows Approach.

The PRDEIR describes the environmental releases element of Project operations as consistent with a “functional flow” approach while neglecting to consider the diverse and varied flows of natural systems. (PRDEIR at 3.4-27, 3.4-35.) Project commitments only include reservoir releases designed to mimic the relative magnitude of high flow events. (PRDEIR at 1-3.) This does not constitute a true “functional flow” approach, which should be based on a number of key flow components, including wet-season baseflows, channel-wide enhancement, and maintenance of overbank areas, described below. (Grantham et al., 2020; S. Yarnell et al., 2020.) Committing to releases that only mimic the relative magnitude high flow events falls short of an operations regime that adequately replicates the natural flows of Del Puerto Creek. These “environmental commitments” must be revised to include environmental releases that

R15-5

mimic the full range of functional flow characteristics in order to support the conclusion that Project operations would have a less than significant impact on downstream species and habitat.

i. A Functional Flow Approach Requires Wet-Season Baseflows.

The “functional flows” approach to stream management is based on the assumption that the maintenance of key natural flow characteristics can be achieved through five defined components which are collectively important for maintaining ecosystem health. (Grantham et al., 2020.) High wet-season flow magnitudes are only one of the identified components. Another of the critical components is a relatively greater wet-season baseflow. (S. M. Yarnell et al., 2015.) The maintenance of seasonally varied baseflows supports channel margin habitats and promotes groundwater recharge. (*Id.*) The importance of wet-season baseflows to achieving functional flows in California streams has been increasingly recognized, such that they are now considered one of the central characteristics of the functional flow approach. (Grantham et al., 2020.) The natural flow regime of Del Puerto Canyon Creek is only sparingly described in the PRDEIR. However, the Creek’s annual daily discharge for the 2019-2020 water year is plotted in Figure 3.4-8. (PRDEIR at 3.4-27.) This graph shows that, in addition to intermittently peaking at various points during the winter and spring, Del Puerto Creek does experience a relatively greater baseflow throughout the wet season. (*Id.*) However, the PRDEIR does not discuss the relevance of this characteristic to habitat or species. Further, the environmental commitments fail to include a component that would maintain the seasonal baseflow, instead stating that releases could decline to zero following the high-flow event releases. (PRDEIR at 1-3.) Given the evidence of a distinct wet-season baseflow on Del Puerto Creek, and the recognized importance of this characteristic to a “functional flow” approach to stream management, the PRDEIR must include a wet-season baseflow commitment in order to mitigate Project impacts on downstream habitat and species, or else sufficiently justify the exclusion of this component.

R15-6

ii. Functional Flows Must Include Channel-Wide Enhancement and Maintenance of Overbank Areas.

Ephemeral rivers and streams are critical components of many ecosystems, especially in dry climates. They support aquatic ecosystems and riparian zones and play significant roles in numerous biogeochemical cycles. They also support unique biota that are not found in perennial waters—species that reside in ephemeral rivers and streams have adapted to intermittent flows, and the biological and ecological dynamics of ephemeral rivers lead to different patterns of biodiversity compared to permanent rivers. The biogeochemical cycles of these rivers are also more variable than permanent rivers and streams. They serve as conduits for water, energy, material, and even species even when surface water is not present. They also move nutrients back and forth between the stream channel and the surrounding upland and floodplain. They provide terrestrial and aquatic connectivity at the regional scale. Such connectivity is essential to drought resilience, especially in arid climates (Acuña et al., 2017).

R15-7

Thus, because of the importance of habitat availability and connectivity between stream channels and surrounding areas, full channel-width and even overbank areas of these streams are relevant to a functional flows approach. (S. M. Yarnell et al., 2015) Near tributary junctions, such as the Del Puerto Creek – San Joaquin River confluence, the varied habitat and hydrologic

dynamics present over the full width of the channel make these areas “biological hotspots” that serve to buffer riparian communities against environmental change and provide refuge for recolonization of habitats following disturbances. (*Id.*) These benefits are maintained when channel-filling or overbank flows occur, because these flows initiate nutrient cycling, disperse seeds, and deposit woody debris, which have positive effects on riparian vegetation. (*Id.*) For these reasons, in order to adequately mitigate the impacts of the Project on downstream habitat and species, the Project must commit to environmental release metrics that include full-channel and overbank flows in riparian habitat areas. In addition, the PRDEIR should pair this metric with the enhancement, maintenance, and expansion of overbank habitat.

D. The PRDEIR Inconsistently and Incompletely Describes the Environmental Setting Regarding the Foothill Yellow-Legged Frog.

The CEQA Guidelines require an EIR to include a description of the existing physical conditions within the project’s vicinity, in order to fully inform decisionmakers and the public of the “environmental setting” of the project and to establish the “baseline” against which a lead agency will make significance determinations regarding project impacts. (CEQA Guidelines §§ 15125, subd. (a), 15064 subd. (b)(1); *Buena Vista Water Storage Dist. v. Kern Water Bank Authority* (2022) 76 Cal.App.5th 576, 591.) Where the description of a project’s environmental setting is “inaccurate, incomplete or misleading[.]” the Environmental Impact Report (“EIR”) violates these requirements. (*Id.* at 592, quoting *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87.) An environmental setting which is inadequate due to a failure to accurately and completely describe existing environmental conditions that might be impacted by the project precludes legally adequate determinations of both the significance of the project’s impacts on these conditions and the sufficiency of proposed mitigation for these impacts. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 [impact analysis and mitigation conclusions in a project FEIR were legally inadequate where the environmental setting excluded information regarding the extent of wetland habitat within the project area].)

R15-8

The PRDEIR offers inconsistent and misleading environmental setting information regarding the special-status species known as foothill yellow-legged frog (*Rana boylei*) within the Project area. The PRDEIR describes the species as occurring in a wide variety of vegetation types, including in riparian areas like those of Del Puerto Creek. (PRDEIR at 3.4-15.) In addition, in describing the environmental setting of the Project the PRDEIR identifies a CNDDDB occurrence for the species approximately one mile west of the study area, and states that potential aquatic and upland habitats are present within the study area. (*Id.*) However, the District ultimately failed to analyze Project impacts on the foothill yellow-legged frog. (PRDEIR at 3.4-21 [“Species Not Evaluated Further”].) In support of this decision, the PRDEIR states that the foothill yellow-legged frog only has one CNDDDB occurrence within five miles of the project site, that this occurrence was three miles southwest of the study area, and that appropriate aquatic habitat is not present within the study area. (*Id.*) Based on the difference in the identified locations of the CNDDDB occurrences, the PRDEIR’s analysis supporting the decision to exclude the foothill yellow-legged frog from further consideration is clearly inconsistent with the information in the environmental setting.

Further, each of these references to the species in the body of the PRDEIR is inconsistent with the information included in the supporting documents in Appendix C. Appendix C consists of tables identifying all special-status species with potential to occur in the Project area. Here, the foothill yellow-legged frog is described as having four CNDDDB occurrences within five miles of the study area, the closest being “on the southwestern boundary” of the study area, with the Creek and adjacent areas being identified as riparian habitat for the species. (PRDEIR Appendix C, C-8.)

R15-8
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Also, the PRDEIR fails to mention that areas of Del Puerto Creek have been recommended by the U.S. Fish and Wildlife Service for designation as critical habitat for the foothill yellow-legged frog. (Fed. Reg. 90(8), 3424 (Jan. 14, 2025).) In light of this omission, the conflicting descriptions of foothill yellow-legged frog occurrences and habitat, and the lack of focused surveys conducted pursuant to CDFW protocols, the environmental setting for this species fails to support the conclusion not to further evaluate the foothill yellow-legged frog for Project impacts. The District must rectify the internally inconsistent, incomplete description of the environmental setting of the foothill yellow-legged frog in order for the PRDEIR to be informationally adequate and in order to support the analysis of the potential impacts from the Project on this species.

E. The PRDEIR Fails to Adequately Disclose and Analyze the Project’s Impacts on Wildlife Movement and Connectivity.

Habitat connectivity is vital for wildlife movement and biodiversity conservation. As detailed in a 2021 Center report (Yap et al., 2021), limiting movement and dispersal with barriers (e.g., development, roads, or fenced-off croplands) can affect animals’ behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individuals, populations, communities, and landscapes (Ceia-Hasse et al., 2018; Cushman, 2006; Haddad et al., 2015; Trombulak & Frissell, 2000; Van Der Ree et al., 2011). Individuals can die off, populations can become isolated, sensitive species can become locally extinct, and important ecological processes like plant pollination and nutrient cycling can be lost. Habitat loss and fragmentation also severely impact plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al., 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al., 2019). In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Cushman et al., 2013; Heller & Zavaleta, 2009).

R15-9

i. The PRDEIR Provides Misleading and Inconsistent Descriptions of the Wildlife Movement and Connectivity Value of Del Puerto Creek and Adjacent Areas.

The PRDEIR’s description of the environmental setting relevant to wildlife movement within the Project area is inaccurate and misleading. The PRDEIR concludes without evidence that surrounding lands, including agricultural lands, are unsuitable for wildlife habitat. (PRDEIR at 3.4-2 [“In general, the upland areas beyond the narrow riparian strip of Del Puerto Creek are so altered by current and historic agriculture activities...that they do not provide potential habitat

for special status terrestrial wildlife.”].) This conclusion is unjustified. Under CEQA, an environmental review document must evaluate the potential environmental impacts of the project as compared to the existing environmental conditions (i.e., the “environmental baseline”), so that the project’s impacts can be meaningfully analyzed and compared to alternatives. (CEQA Guidelines § 15125(a); *see County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952; *Neighbors for Smart Rail v. LA County Metropolitan Transit Authority* (2013) 57 Cal.4th 310, 315.) While the agricultural lands in the Project vicinity may not be prime habitat for many species, that does not mean that species do not regularly occupy and/or pass through them. In fact, numerous wildlife species—especially birds—use agricultural areas as permanent and migratory habitat. This inaccurate, incomplete, and misleading language obscures the environmental setting and fails to support adequate analysis of Project impacts.

R15-9
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ii. The PRDEIR Fails to Adequately Analyze Project Impacts on Wildlife Connectivity.

Despite evidence that Del Puerto Creek exists within a broad network of wildlife linkages, PRDEIR concludes that Project impacts to wildlife movement would be less than significant. (PRDEIR at 3.4-37.) However, this conclusion is unsupported and erroneous, and the DEIR fails to accurately assess and mitigate impacts on wildlife connectivity. (Pub. Res. Code § 21168.5; *Sierra Club* 6 Cal.5th 502, 512.) Most significantly, the PRDEIR fails to address the clearest and most direct impact of the Project on area habitat connectivity and species movement: the barrier that would result from construction of the proposed dam and associated reservoir.

The PRDEIR states that numerous regionally significant wildlife corridors are present in the vicinity of the study area, including but not limited to north-south linkages associated with the San Joaquin River. (PRDEIR at 3.4-18.) The PRDEIR also identifies the presence of riparian woodland, a Natural Community of Special Concern, on 16.47 acres of the study area. (PRDEIR at 3.4-8.) The PRDEIR states that the patchwork of riparian woodlands along the Del Puerto Creek banks may provide important habitat functions, including for foraging, movement, or nesting. (*Id.*) Ultimately, the PRDEIR concludes that “habitat within the study area contributes to a broader network of ecological linkages.” (PRDEIR at 3.4-20.) These are not merely theoretical landscape-scale functions but provide benefits to numerous special-status species, including but not limited to those that are identified in the PRDEIR, likely present within the Project vicinity. Research indicates that intermittent waterways serve as important corridors for wildlife movement, with the channels themselves used extensively by a wide range of species. (Goodrich et al., 2018; Levick et al., 2008) In addition, as discussed *supra*, because of the value of tributary junctions to riparian biodiversity, the Del Puerto Creek – San Joaquin River confluence means that the Creek itself likely plays an important role in species refuge and dispersal within the broader ecosystem.

R15-10

However, nowhere in the PRDEIR is there an analysis of how the physical barrier created by the damming of the Del Puerto Creek would directly affect wildlife connectivity for downstream terrestrial species. Instead, the PRDEIR focuses solely on the changes to the flow regime in Del Puerto Creek that would occur due to the proposed operation of the Project. (PRDEIR at 3.4-37.) The PRDEIR defines this methodology as reflecting only “indirect effects” related to “changes in flow volume, timing, and hydrologic dynamics in Del Puerto Creek.”

(PRDEIR at 3.4-21.) However, this fails to adequately assess the impact of the Project on wildlife movement and connectivity. In addition to altered flow dynamics, dams cause direct habitat fragmentation, including through the fragmentation of the dammed rivers. (Bohada-Murillo et al., 2021) This fragmentation results in changes to terrestrial vertebrate communities, including by negatively affecting species richness. (*Id.*) A 2024 Center report found that dams and reservoirs in California impair wildlife connectivity by physically cutting off habitat and preventing species movement. (Prado-Irwin et al., 2024) Further, the 2019 Project DEIR, in analyzing the potential for wildlife connectivity impacts posed by the dam structure and reservoir, determined that once constructed, the Project would represent a permanent and impassible obstruction to wildlife connectivity and movement. (2019 DEIR at 3.4-64.) Although the scope of the PRDEIR is necessarily limited to downstream terrestrial species, given the evidence in the PRDEIR that the Creek serves wildlife connectivity functions, the likelihood of special-status species in the vicinity benefiting from these connectivity functions, and the evidence (including the conclusions of the 2019 DEIR) that the dam would represent a serious impediment to wildlife movement, the District cannot simply omit any discussion of the wildlife connectivity impacts of the physical barrier proposed by the Project itself on downstream terrestrial species. The PRDEIR should be amended to include an analysis of these impacts.

R15-10
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F. The PRDEIR Fails to Analyze Potential Edge Effects Resulting from the Project.

The PRDEIR does not adequately consider the potential impact on wildlife connectivity on downstream terrestrial species resulting from the loss of undeveloped areas or the introduction of new structures, traffic, and other human impacts that would result from the proposed Project. Although construction and operation of the proposed Project would not directly impact the study area, these activities could still impact sensitive and special-status species that are in adjacent portions of the study area. Edge effects, including but not limited to increased traffic, noise, light, and human presence, can disrupt wildlife even outside the Project footprint. The edge effects of development can impact key wide-ranging predators, such as mountain lions, bobcats, and American badgers (Crooks, 2002; Delaney et al., 2010; Lee et al., 2012; Riley et al., 2006; Smith et al., 2015, 2017; Vickers et al., 2015; Wang et al., 2017), as well as smaller species with smaller home ranges, such as song birds, bats and other small mammals, and herpetofauna (Benítez-López et al., 2010; Bunkley & Barber, 2015; Cushman, 2006; Delaney et al., 2010; Gray, 2017; Kociolek et al., 2011; McClure et al., 2013a; Slabbekoorn & Ripmeester, 2008; Ware, McClure, et al., 2015). For example, the federally endangered and state threatened San Joaquin kit fox is extremely vulnerable to roads and development in their already-declining habitat. Limiting movement and dispersal can affect species' ability to find food, shelter, mates, and refugia after disturbances like fires or floods.

R15-11

The proposed Project would result in habitat loss and edge effects due to increased human presence and activities that would degrade undeveloped areas. Additionally, the increased traffic, noise, and activity on roads serving the Project that would result from Project operations would hinder wildlife movement, impairing local connectivity. Increased traffic could also lead to elevated atmospheric nitrogen deposition within and outside of the Project footprint, which can be harmful to nitrogen-limited ecosystems (Fenn et al., 2018; Weiss & Longcore, 2020). The PRDEIR fails to adequately disclose, assess, and mitigate the Project's edge effects on wildlife connectivity and therefore fails to comply with CEQA.

i. *The PRDEIR Fails to Analyze the Impacts of Project Light Pollution on Wildlife.*

Light pollution at night affects many nocturnal species, including bats, birds, insects, and terrestrial mammals, among others. The impacts of light pollution are varied, and different species respond to artificial light at night in different ways. Individual impacts of light pollution include numerous physiological (e.g., hormone levels) and behavioral changes (e.g., shifts in activity patterns) that can impact an animal's ability to survive and thrive in their environment (Aulsebrook et al., 2020; Dominoni, 2015; Gaston et al., 2014; Kempenaers et al., 2010). These individual impacts can cascade into ecological changes like phenological mismatches and shifts in predation patterns that can disrupt population- and ecosystem-level dynamics, including mortality, fecundity, and community productivity, among others (Ditmer et al., 2021; Gaston et al., 2013; Sanders et al., 2020). Light pollution was only considered in the context of aesthetics in the DEIR and FEIR, and was not addressed at all in the PRDEIR. As a result the potential light pollution impacts on wildlife downstream of the dam site were not analyzed or mitigated, in violation of CEQA. This must be remedied through a full analysis. Following the expansion of the Project lighting analysis to reflect the potential for light-related impacts on downstream terrestrial wildlife, the PRDEIR should be amended to require an implementable and enforceable lighting plan at the time of environmental review.

R15-12

ii. *The PRDEIR Fails to Analyze the Impacts of Project Noise on Wildlife*

Similarly, the PRDEIR fails to acknowledge noise impacts on wildlife. Undoubtedly, ongoing noise from dam construction and operation will impact wildlife beyond the Project footprint. (*See, e.g., Keep Our Mountains Quiet*, 236 Cal.App.4th at 734 [requiring an EIR before authorizing project because substantial evidence indicated that noise may impact surrounding residents and biological resources, even if the project would not generate noise in excess of the county's noise ordinance and general plan].) Impacts from noise include altered vocal behavior to mitigate masking (where elevated noise levels interfere with an animal's ability to perceive a sound), changes in vigilance and foraging behavior, and impacts on individual fitness and the structure of ecological communities. (Shannon et al., 2016.) And these impacts do not always improve over time; researchers have postulated that some species in areas with chronic noise pollution may become more sensitive to noise stressors instead of becoming habituated or less sensitive to them. (Goudie & Jones, 2004.) Therefore, special-status and sensitive species and other native wildlife in and around the Project site could be significantly adversely affected by ongoing noise from the Project.

R15-13

Additionally, other studies show that high levels of anthropogenic noise harm wildlife and plants across diverse taxa. For example, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds. (Ware et al., 2015.) Subjects exposed to 55 and 61 dBA of traffic noise exhibited decreased feeding behavior and duration, as well as increased vigilance behavior. (*Id.*) Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. Another study found a 28 percent decrease in bird abundance in areas when traffic noise was present compared to when there was no traffic noise. (McClure et al., 2013.) The Project construction would result in increased traffic and industrial noise, suggesting that Project-related noise could have significant adverse impacts on special-status and sensitive species. Yet, the PRDEIR fails

to adequately analyze noise impacts on biological resources, in violation of CEQA. (CEQA Guidelines § 15064(f)(1); *see also No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 75.)

II. Conclusion

Thank you for the opportunity to submit comments on the Partially Recirculated Draft EIR for the Del Puerto Canyon Reservoir Project. In summary, the Center is concerned that the District failed to adequately disclose the impacts of the Project on the downstream terrestrial ecosystem of Del Puerto Creek. The PRDEIR lacks a clear and comprehensive description of the Project's impacts on stream flows and fails to adequately analyze the Project's impacts on habitat and wildlife connectivity in and around Del Puerto Creek. In addition, the PRDEIR fails to adequately mitigate the Project's impacts due to the absence of binding, enforceable commitments to a fully "functional" flow regime as well as the lack of analysis of edge effects including traffic, light pollution, and noise. As written, the PRDEIR fails to comply with CEQA. A revised and recirculated EIR that addresses these deficiencies is needed.

R15-14

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the District complies with its legal obligations including those arising under CEQA, we would like to remind the District of its statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.) Maintenance and preservation of the administrative record requires that, *inter alia*, the District (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Please include the Center on your notice list for all future updates to the Project, using the contact information below, and do not hesitate to contact the Center with any questions.

Sincerely,



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