

DEL PUERTO CANYON **RESERVOIR**

SECOND FINAL

Environmental Impact Report Volume V-Response to Comments on PRDEIR



SCH# 2019060254

August 2026



Del Puerto Canyon Reservoir

Second Final Environmental Impact Report Volume V – Response to Comments on Partially Recirculated Draft EIR SCH# 2019060254

Prepared for:
Del Puerto Water District
17840 Ward Avenue/P.O. Box 1596
Patterson, CA 95363

Prepared by:
Woodard & Curran
2175 North California Boulevard, Suite 810
Walnut Creek, CA 94596

This page intentionally left blank

Table of Contents

Chapter 11	Introduction to Second Final EIR	11-1
11.1	Project Background	11-1
11.2	Partially Recirculated Draft EIR Public Review Process	11-1
11.3	Purpose of the Second Final EIR	11-1
11.4	CEQA Requirements	11-2
11.5	Consideration of Recirculation	11-2
11.6	Requirements for Certification and Future Steps in Project Approval	11-2
11.7	Organization of this Document	11-3
11.8	Use of Comment Summaries	11-3
11.9	Comments Received on the Partially Recirculated Draft EIR	11-4
Chapter 12	Response to Comments on Partially Recirculated Draft EIR	12-1
12.0	Master Responses	12-1
12.1	Comment Letter R1 – Amphibian Refuge, Eric R. Johnson, Executive Director	12-28
12.2	Comment Letter R2 – California Native Plant Society, Brendan Wilce, Conservation Program Coordinator	12-29
12.3	Comment Letter R3 – Friends of the River, Sierra Club Motherlode Chapter, Center for Biological Diversity, Save Del Puerto Canyon, Save Mount Diablo, Mount Diablo Bird Alliance	12-34
12.4	Comment Letter R4 – Lozeau Drury on Behalf of Save Mount Diablo, Rebecca L. Davis	12-51
12.5	Comment Letter R5 – Merced County Farm Bureau	12-97
12.6	Comment Letter R6 – Save Del Puerto Canyon, Elias Funez,	12-97
12.7	Comment Letter R7 – Form Letter submitted by Multiple Individuals	12-98
12.8	Comment Letter R8 – Vicki Ryman	12-99
12.9	Comment Letter R9 – Harvey Duncan	12-99
12.10	Comment Letter R10 - JP	12-99
12.11	Comment Letter R11 – Chris Quock	12-99
12.12	Comment Letter R12 – John Herrick	12-103
12.13	Comment Letter R13 – California Department of Conservation, Geologic Energy Management Division, Mary Soe, Supervising Oil & Gas Engineer	12-107
12.14	Comment Letter R14 – California Department of Fish and Wildlife, Julie A Vance, Regional Manager	12-107
12.15	Comment Letter R15 – Center for Biological Diversity, Seth Alston, Associate Attorney	12-121
12.16	References	12-140

List of Tables

Table 11-1: List of Commenters	11-4
--------------------------------------	------

List of Figures

Figure 12 1 San Joaquin River Floodplain at the Del Puerto Creek Confluence	12-24
Figure 12 2: Foothill Yellow-legged Frog Proposed Critical Habitat	12-133

Chapter 11 Introduction to Second Final EIR

11.1 Project Background

Del Puerto Water District (DPWD), as California Environmental Quality Act (CEQA) lead agency representing the Project Partners for the Del Puerto Canyon Reservoir Project (DPCR or proposed project), has prepared this Second Final Environmental Impact Report (Final EIR). The Project Partners for the DPCR include DPWD and the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors). The Exchange Contractors is a California Joint Powers Authority consisting of four entities responsible for water delivery and conveyance: Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and the Columbia Canal Company.

This Second Final EIR has been developed to provide the public and responsible and trustee agencies reviewing the DPCR an analysis of potential effects on the local and regional environment associated with construction and operation of the DPCR. The primary purpose of the DPCR is to develop additional, locally controlled south of Delta water storage for the Project Partners, who largely depend on the U.S. Bureau of Reclamation's federal Central Valley Project (CVP) for delivery of a major portion of their water supplies. The proposed reservoir would provide 82,000 acre-feet (AF) of new off-stream storage.

11.2 Partially Recirculated Draft EIR Public Review Process

DPWD, as the CEQA Lead Agency, released the Partially Recirculated Draft EIR for the DPCR for public review On December 5, 2025. A Notice of Availability was published in the Patterson Irrigator and was sent to local agencies and to interested parties who had asked to be put on the Project mailing list. A 56-day public review period ended on January 30, 2026. A separate subsequent public review period for State agencies was initiated by a Notice of Completion filed with the State Clearinghouse on February 4, 2026, with a 59-day agency review period ending on April 3, 2026.

11.3 Purpose of the Second Final EIR

This document, though entitled the *Second* Final EIR, is being issued by DPWD as the ultimate Final EIR for the DPCR. This Second Final EIR should not be confused with the first, initial Final EIR, which the DPWD Board of Directors certified by resolution on October 21, 2020, but later vacated by a subsequent resolution February 15, 2023, as directed by the Stanislaus County Superior Court through the issuance of an adverse Judgment and a Peremptory Writ of Mandate (Writ). This second Final EIR *supersedes* the original Final EIR while at the same time *containing* the earlier Final EIR.

This approach reflects the very limited remedy imposed on DPWD by the California Court of Appeal for the Fifth Appellate District in the litigation over the original Final EIR. The Court of Appeal's Opinion came after the original trial court judgment and writ, which required the DPWD to vacate its certification resolution. The Opinion found the October 2020 Final EIR to be adequate in all respects but one. The remedy was therefore focused on a single issue: the Project's potential impacts to terrestrial species associated with Del Puerto Creek downstream of the proposed reservoir. DPWD issued a Partially Recirculated Draft EIR (PRDEIR) to address this single issue, as that document explains.¹ The 2020 Final EIR remains adequate for all purposes other than the new analysis included in the PRDEIR. What is new in this Second Final EIR, compared with the 2020 Final EIR, are the PRDEIR (and supporting materials) and the written responses to comments on the PRDEIR.

Thus, this Second Final EIR for the DPCR consists of the following: the 2020 Final EIR, which includes updated text from the 2019 Draft EIR and technical appendices and responses to the comments on the 2019 Draft EIR (Volumes I, II, and III); the Partially Recirculated Draft EIR (Volume IV); and the

¹ The PRDEIR included the Court of Appeal Opinion as Appendix A.

responses to comments on the PRDEIR (Volume V, this volume). The DPWD Board of Directors will review and consider the Second Final EIR before approving or denying the proposed action.

11.4 CEQA Requirements

Section 15132 of the CEQA Guidelines specifies that, in typical circumstances, *“The Final EIR shall consist of:*

- a) The draft EIR or a revision of the draft.*
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary.*
- c) A list of persons, organizations, and public agencies commenting on the draft EIR.*
- d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.*
- e) Any other information added by the Lead Agency.”*

The Second Final EIR meets these requirements with respect to the PRDEIR, comments on that document, and responses to comments on that document. The Second Final EIR also contains the original 2020 Final EIR, as explained above in Section 11.3 (Purpose of the Second Final EIR).

11.5 Consideration of Recirculation

If significant new information is added to an EIR after public review but prior to certification, the lead agency is required to recirculate some portions of or all of the draft EIR to address that significant new information (CEQA Guidelines Section 15088.5). Significant new information includes, for example, a new significant environmental impact or a substantial increase in the severity of a previously disclosed impact. New information is not considered significant unless the document is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or comment on a feasible mitigation measure that the proponent has declined to implement.

DPWD has carefully reviewed all of the information included or referenced in the comments on the PRDEIR, and has concluded that none of the information discloses any new significant impacts or any substantial increase in the severity of the impacts addressed in the PRDEIR. DPWD has therefore determined that recirculation of the PRDEIR is not necessary or required by Section 15088.5. The bases for this conclusion are set forth in detail in the various written responses to the comments on the PRDEIR.

11.6 Requirements for Certification and Future Steps in Project Approval

The Partially Recirculated Draft EIR was circulated for review, and opportunities for public and agency review and comments were made available in accordance with CEQA. Pursuant to Section 15088 of the CEQA Guidelines, DPWD has made its responses to agency commenters available to those agency commenters for at least 10 days prior to the date on which the DPWD will consider certifying the Second Final EIR.

DPWD will consider certification of the Second Final EIR at the regularly scheduled Board Meeting on August 19, 2026 8:30 a.m. at the Del Puerto Water District office at 17840 Ward Avenue, Patterson, CA. In order to certify the Final EIR, the DPWD Board of Directors must find that:

- the Second Final EIR has been completed in compliance with CEQA;

- the Second Final EIR was presented to the DPWD Board of Directors, which then reviewed and considered the information contained in the Second Final EIR prior to taking action on the proposed Project; and
- The Second Final EIR reflects DPWD's independent judgment and analysis (CEQA Guidelines 15090).

DPWD will consider the Second Final EIR for certification as complete under Section 15090 of the CEQA Guidelines, and the Exchange Contractors will consider its own discretionary actions with respect to the Project as a Responsible Agency. The DPWD Board will also prepare and adopt written findings of fact for each significant environmental impact identified in the EIR. Because the project has significant, unavoidable environmental impacts, the DPWD Board will need to prepare a Statement of Overriding Considerations to be included in the record of project approval (CEQA Guidelines 15093). CEQA requires that, where the decision-making body of a Lead Agency or Responsible Agency takes a discretionary action with respect to a Project for which feasible mitigation measures are being adopted, the Agency must also adopt a Mitigation Monitoring and Reporting Program (MMRP) ensuring that those mitigation measures will be carried out. Here, because the PRDEIR did not include any new mitigation measures, the DPWD would readopt the MMRP originally adopted on October 21, 2020.

11.7 Organization of this Document

As explained in Section 11.3 (Purpose of the Second Final EIR), the Second EIR, in its entirety, consists of five volumes: the 2020 Final EIR (Volumes I, II, and III); the Modified Partially Recirculated Draft EIR (Volume IV); and the responses to comments on the PRDEIR (Volume V).

The current volume (V) consists of the Comment Letters on the Partially Recirculated Draft EIR and the Responses to those Comment Letters. Some text changes have been made in the text of the Partially Recirculated Draft EIR and those changes are shown with new text underlined and deleted text shown by ~~strike through~~. Those text changes are reflected in the updated Volume IV, which has been republished as the Modified Partially Recirculated Draft EIR.

This document is Volume V of the Second Final EIR for the DPCR. This volume contains three chapters: Chapter 11 is the introduction to the Second Final EIR, Chapter 12 presents the responses to comments on the Partially Recirculated Draft EIR, and Chapter 13 contains the complete comments.

Chapter 12 includes responses to all significant environmental issues raised in the comments on the PRDEIR. Because there were quite a few topics that generated a large number of similar comments, and raised some issues that were clearly important to many commenters, Chapter 12 begins with three Master Responses that provide information to address comments that were expressed in multiple comments. Revisions to text of the Partially Recirculated Draft EIR based on comments are included in these responses. Text revisions in the responses in Chapter 12 are formatted in revision mode for ease of reference: ~~strikeouts~~ indicate removed text and underlines indicate new text.

11.8 Use of Comment Summaries

The full text of all written comments on the PRDEIR is included in Chapter 13. Each letter is identified by a number and each comment is identified by a comment number in the margin; responses use the same number system. To distinguish comment letters that were submitted on the Partially Recirculated Draft EIR from comments submitted on the 2020 Draft EIR, each letter includes the letter "R" in the numbering. The first comment letter on the PRDEIR is thus Letter R1 and Comment 1 in Letter R1 is designated Comment R1-1. In addition, to facilitate reading the Response to Comments, a summary of each comment is inserted in *italics* just prior to each response. This summary does not substitute for the actual comment; the reader is urged to read the full original text of all comments. The responses are prepared in answer to the full text of the original comment, and not to the abbreviated summary.

11.9 Comments Received on the Partially Recirculated Draft EIR

DPWD received 14 unique comment submittals (letters and emails) on the Draft EIR during the 56-day public review period and the 59-day state agency review period. DPWD also received one public comment letter almost five months after the end of the public review period, which ended on January 30 2026. Although under no obligation to do so, DPWD has nevertheless responded to that late letter in the interests of transparency and full disclosure. (See Pub. Resources Code Section 21092.5[c] [“[n]othing in this section requires the lead agency to respond to comments not received within the comment periods specified in” CEQA].) Written comments include those submitted by email, regular mail, or delivered directly to the DPWD office. Each comment letter received is listed in **Table 11-1** and identified by number, comment author, and date.

DPWD also received a large number of comments that were identical to, or virtually identical to, each other. These comments expressed strong opposition to the project without raising issues with the analysis presented in the PRDEIR. The names of the individuals who submitted such comments are set forth below, after Table 11-1.

Table 11-1: List of Commenters

Letter #	Comment Author	Comment Date
Organizations		
R1	Amphibian Refuge, Eric R. Johnson, Executive Director	12/30/25
R2	California Native Plant Society, Brendan Wilce, Conservation Program Coordinator	1/30/26
R3	Friends of the River, Keiko Mertz, Policy Director; Sierra Club Motherlode Chapter, Sean Wirth, Conservation Committee Chair; Center for Biological Diversity, John Buse, Senior Counsel; Save Del Puerto Canyon, Elias Funez, President and Xochi Heather Vasquez, Vice President; Save Mount Diablo, Edward Sortwell Clement, Jr., Executive Director; Mount Diablo Bird Alliance, Juan Pablo Galvan Martinez, Conservation Chair	1/30/26
R4	Lozeau Drury, Rebecca L. Davis, on behalf of Save Mount Diablo	1/30/26
R5	Merced County Farm Bureau, Breanne Vandenberg, Executive Director	1/30/26
R6	Save Del Puerto Canyon, Elias Funez,	1/30/26
Individuals		
R7	Form letter submitted by 322 individuals (see list below)	various
R8	Vicki Ryman	12/29/25
R9	Harvey Duncan	1/16/26
R10	JP	1/25/26
R11	Chris Quock	1/26/26
R12	John Herrick	1/30/26
State Agencies		
R13	California Department of Conservation, Geologic Energy Management Division, Mary Soe, Supervising Oil & Gas Engineer	2/17/26
R14	California Department of Fish and Wildlife, Julie A. Vance, Regional Manager	4/2/26
Comment Received after End of Public Review Period		
R15	Center for Biological Diversity, Seth Alston, Associate Attorney	6/19/26

List of Individuals Submitting Form Letter

Ro Blakesley	Amanda Buila	Jacquelyn Freeman
Raelene Alvarez	Jessica Burg	Shawn Froats
Shivaugn Alves	Hector Camacho	Laura Funez
Michael Hughes	April Capil	Jo Ann Gallagher
Yvonne Lee	Carole Caracol	Arturo Gallardo
Domanique Lemon	Rosanne Carey	Victoria Galvan
Rigoberto Ramirez	Brian Carr	Roy Gamez
Michelle Santiago	Vanessa Castro	Jazmine Garcia
Amber Stark	Chriselda Cepeda	Margarita Garcia
Sevy Toscano	Emmanuel Chavez	Marisela Garcia
Jose Lopez-Gallego	Kavin Chawla	Nattaly Garcia
7keirsten@gmail.com	Sasha Cherkassky	Sandy Garcia
Michelle Aaberg	Danielle Chorjel	Jordan Gausling
Corry Akbarian	JD Clark	Shelley Geisler
Lucis Albers	Charmaine Clay	Frank & Marti Gill
Tim Albert	Jon Clifford	Paul Glassner
Josephine Alexander-	Patti Cole	Elizabeth Godinez
Hutchins	Bailey Collins	Zoe Goldblatt
Abbygail Allen	Scott Cooper	Joselito Gonzalez
Sandy Almansa	Denise Cornejo	Deija Griffin
Michael Anderson	Fabiola Cornejo	Ann K Griffith
Jennifer Apkarian	Cathy Correia	Tea H
Terrie Arnold	Jennifer Courtney	Sage Hackett
Jordan Arredondo	Kathleen Cox	Sterling Hada
Judy Arredondo	Kylie Creighton	Gary Hagen
Gabriel Avila	Leio Daniel	Chris Hall Hall
Manny Ayala	Clark Datuin	Diana Hall
G B	America Davila	Meredith Hall
Valerie Baake	Karin Deas	Suzanne Hall-Whitney
Ken Back	Rafael Delgadillo	Susan Hampton
Les Barclay	Ade Diaz	Darren Harper
Mark Barnum	Catherine Dickert	Maria Harrison
Veronica Barron	Katherine Dillon	Simone Harrison
Karen Beck	Katherine Dillon	Cecile Haynes
Craig Bender	Daniel Dozier	Devean Hernandez
Noel Benkman	Trina Duenas	Fernando Hernandez
Annette Benton	Ben Duncan	Gladys Herrera
Lars Bergen	Destiny Duran	Zandra Hertzmann
Richard Bixler	Kehiw Eagletail	Cynthia Alex Hidalgo
Peter Boffey	Kevin Eckels	Marcos Hidalgo
Alex Bonta	Scott Ehlers	Alison Hill
Jose Borroel	Peter Ellingson	Brodie Hilp
Susan Bagg Bradford	Lelah Eusey	Max Hinkle
Stephen Braitman	Rosie Fabela	Donit Hohenstein
Agatha Braza	Mimsie Farrar	Leah Holt
Beth Bridegroom	Sarah Fischbach	Cindy Horton
Bjorn Broekman	Lisa Florez	Harry Hugel
Jeffrey Bryant	Peter Frazier	Anna Hughes

Lauren Hughes
 Michele Hughes
 Ray Hughes
 Michael Hundt
 Katherine Jarrett
 Carey Jaspar
 Tony Jasso
 Sofia Jimenez
 Elizabeth Johnke
 Patrick Johnson
 Joan Johnston
 Tom Jones
 Judycarlos209@gmail.com
 Hardip Kalsi
 Hari Kaur
 kday9@aol.com
 Patricia Keadjian
 Patricio Kearney
 Aasia Khanum
 Jean King
 Valary Laccoarce
 Matt Lasky
 Jason Lauborough
 Philip Lawrence
 Kathryn Lee
 Ron Letourneau
 Michelle Leyva
 Milo Linaman
 Sarah Liron
 Paul Liu
 Elizabeth Lobos
 Steve Lombardi
 Beverly Loomis
 Robert Loomis
 Edward Loosli
 Lindsey Loperena
 Jessica Lopez
 Joseph Lopez
 Ray Lopez
 Carol Louisell
 Heather Luckert
 Sarah Luegge
 Tracy Luegge
 Peggy Luna
 Cristina Madrigal
 Polly Marble
 Trish Martin
 Daniel Matarozzi
 Phil Matthews
 Tyler McManus
 Keirsten McPheeters

Alexxis Medina
 Alejandro Melesio
 Joshua Mendoza
 John Mercurio
 Lilia Michel
 Jeanna Mielcarek
 Suzanne Miller
 Maryanne Mitchell
 Idalis Monroy
 Fernanda Montes
 PATRICIA Moore
 Maricarmen Rabago
 Moreno
 Pete Mu Ñoz-Cowan
 Jessica Munoz
 Jennifer Murray
 Linda Myers
 Sylvia Nachlinger
 Ayat Nagi
 Sasha Nelson
 Ted Nirgiotis
 Alyssa Noriega
 Angelica Nuno
 Mike Oakes
 Panfilo Ochoa
 Jeanette Okuye
 Ramiro Orozco
 Osmara Osorio
 Nancy Painter
 Rosemary Pando
 Jason Patent
 David Perra
 Sandra Peters
 Sandra Peters
 Kirk Peterson
 Jose Picos-Nunez
 Celie Pineda
 Veronica Plascencia
 David Poeschel
 Noelle Porras
 Steve Potts
 David Prado
 Albert Baker Price
 Timothy Quinn
 Sheryl Rachal
 Cecilia Ramirez
 Jeannette Ramirez
 Jessica Ramirez
 Marissa Ramos
 Judy Reens
 Amanda Reeves

Deanna Longoria Rendon
 Marybeth Rice
 Trista Riddle
 Xavier Rios
 Julio Rivera
 Faviola Rizo
 Tracy Rodriguez
 Joshua Roebuck
 Susan Rohlicek
 Jorge Roman
 Bella Rosales
 Musy Ruiz
 Charles Russell
 Jennifer Russell
 Maria Saenz
 P Saenz
 Edgar Sanchez
 Lubia Sanchez
 Thomas Sandoval
 sandraroseabbott@hotmail.com
 Vanessa Santos
 Cheyenne Saunders
 Marcel Saunders
 Elizabeth Save
 Rob Savre
 Glenn Scott
 Christine Seely
 Juanita Serpa
 Kerri Shepard
 Cindy Shular
 Rosanne Siino
 R. Keith Silva Silva
 Heather Siten
 Donna Skarloken
 slzphoto@sbcglobal.net
 Daniel Smith
 Fred Smith
 Sandra Smith
 Joel Sokolsky
 Armando Solis
 Antonio Soto
 Anne Squire
 stdboar@aol.com
 Luke Stevens
 Eileen Straus
 Christina Tarr
 Alexis Thayne
 Alma Torres
 Cassandra Torres
 Lauren Torres
 Lauren Torres

Sue Townsend
Ana Trujillo
Tim Tsai
Titus Turner
Madalene Velasco
Trisha Vil
Christine Villa
Juan Villicana
Pa Villicana

Maria Vivar
Jessica Wade
Mary Ann Walsh
Kimberly Washington
wbennett510@gmail.com
Karen Wetherell
Annalisa White
Sharon White
Barbara Wiley

Leticia Williams
Julie Winn
Lottie Woodbridge-
Thompson
Daniel Wright
Evan Wright
Julia Yarak
Cheryl Young
Kendra Young

Chapter 12 Response to Comments on Partially Recirculated Draft EIR

These responses address only those comments that were received on the Partially Recirculated Draft EIR and are in addition to the Responses to Comments that were prepared in 2020 to address comments on the original Draft EIR.

12.0 Master Responses

12.0.1 Master Response 1 – Scope of the PRDEIR

Comment Summary: Several commenters contend that the Partially Recirculated Draft EIR (PRDEIR) should have addressed various additional matters beyond the issue of potential biological effects on terrestrial species from reduced flows in Del Puerto Creek downstream from the proposed Del Puerto Canyon Reservoir (the Project). Relatedly, some commenters also contend that the Del Puerto Water District (the District), as lead agency, improperly narrowed the scope of permissible comments on the PRDEIR.

For example, Save Mount Diablo argues in its comment R4-3 of its letter that “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.” This same commenter, in comment R4-4, then criticizes the PRDEIR for not addressing the impacts of the proposed realignment of Del Puerto Canyon Road. Save Mount Diablo further asserts, in comments R4-12 and R4-13, that the District should commit to protecting Upper Del Puerto Canyon as mitigation, and that the PRDEIR should have addressed the loss of recreational opportunities in Del Puerto Canyon.

Similar claims that the PRDEIR should have addressed issues other than downstream biological impacts on terrestrial species from reduced flows in Del Puerto Creek were made in a comment letter jointly filed by the Sierra Club, Friends of the River, the Center for Biological Diversity, Save Del Puerto Canyon, Save Mount Diablo, and the Mount Diablo Bird Alliance. These entities contend, in comment R3-2 of their letter, that the PRDEIR is inadequate in that it does not revisit the effects of the rest of the Project, all of which were addressed in the original October 2020 EIR for the Project. The commenters argue that “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.”

In comment R3-5 of their letter, these same entities argue that the PRDEIR should have addressed “how the presence of Del Puerto dam and reservoir will act as a species migration or dispersion barrier on terrestrial species downstream.” In comment R3-12, the commenters urge, as Save Mount Diablo did in its separate letter, that the PRDEIR should have addressed the relocation of Del Puerto Canyon Road.

All of these contentions are unpersuasive. They reflect the commenters’ unwillingness to accept the appropriately narrow focus of the PRDEIR, which was prepared in response to the January 30, 2025, Court of Appeal Opinion addressing the adequacy of the original Final EIR for the Project, as certified by the District’s Board of Directors (Board) in October 2020. DPWD was under no obligation to address the additional issues raised by these commenters because, rather than preparing a new EIR from scratch, the District was preparing a limited, focused analysis addressing the one and only flaw that the Court of Appeal found in the October 2020 Final EIR.

The Opinion and the subsequent Modified Judgment of the Stanislaus County Superior Court came after a broad-ranging attack on the 2020 Final EIR involving 25 discrete legal arguments, 24 of which were unsuccessful. Among the parties making these 24 unsuccessful arguments were the Sierra Club, Friends of the River, and the Center for Biological Diversity, who are obviously aware of their lack of success on those arguments. As a matter of law, the EIR is presumed adequate with respect to all of these 24 issues,

as there is a superior court judgment, informed by a Court of Appeal opinion, premised on the rejection of legal arguments raising those issues. The PRDEIR appropriately focused on the one and only infirmity in the 2020 EIR found by the Court of Appeal: potential impacts on terrestrial species due to reduced flows in Del Puerto Creek downstream from the proposed reservoir site.

The District's limited obligations in the PRDEIR are the consequence of both (i) the application of legal principles governing the scope of remands in CEQA cases and (ii) the specific factual backdrop here, in which three of the commenting parties engaged in more than five years of litigation over the original Final EIR for the Project, purportedly on behalf the public generally. This litigation resulted in a January 30, 2025, Opinion from the Court of Appeal for the Fifth Appellate District finding only one problem with the EIR. The details of this litigation are set forth below in the first subsection (A) of this Master Response.

The limited focus of the PRDEIR is consistent with Public Resources Code section 21168.9, which requires courts to fashion narrow remedies in situations such as this one. The statute does *not* require lead agencies, in the face of only one EIR deficiency, to start from scratch and to open up to further legal attack aspects of the EIR explicitly upheld by courts as being compliant with CEQA. The requirements of section 21168.9 are addressed in detail in the second subsection ((B)(1)) of this Master Response below.

The narrow focus of the PRDEIR is also consistent with the legal principles of res judicata and collateral estoppel, which prevent parties to litigation or those in privity to them from relitigating issues previously resolved against the parties or from litigating issues that those parties could have litigated previously but chose not to litigate. These principles are also discussed in more detail below in the second subsection of this Master Response ((B)(2)).

A. Litigation History

On October 21, 2020, the District Board adopted a resolution that (i) certified the Final EIR for the Project and (ii) approved the Project itself. These actions were preceded by a substantial period of internal work on the EIR and an extensive public process intended to obtain input from responsible agencies and interested members of the public. The District had issued the Notice of Preparation (NOP) for the Project, formally initiating the CEQA process, in June 2019, and had published the Draft EIR in December 2019.

On November 20, 2020, litigation attacking the Board's actions under CEQA was filed in Stanislaus County Superior Court by the Sierra Club, the California Native Plant Society, the Center for Biological Diversity, and the Friends of the River (*Sierra Club et al.*). (See *Sierra Club et al. v. Del Puerto Water District* (Stanislaus County Superior Court Case No. CV-20-005193).)

In filing their lawsuit, these parties (Petitioners) repeatedly suggested that they were doing so to benefit the environment and the interests of the public at large. They alleged, for example, that “[t]he environmental interests of petitioners *and the public* will be substantially and irreparably harmed” unless the court granted them the relief they sought. (Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorney's Fees, ¶ 20, *italics added*.) Petitioners also stated their intention to ultimately seek an award of attorneys' fees under Code of Civil Procedure section 1021.5 because, they alleged, their potential success in the litigation would confer “a significant benefit on the public[.]” (*Id.*, Prayer for Relief, ¶ 3.)

The Petitioners' superior court briefing raised a total of 25 separate arguments addressing a broad panoply of subjects and EIR components. These arguments alleged that:

- (1) “The EIR Fails to Describe Whether and How the Project Will Affect Delta Pumping”;
- (2) “The EIR's Conflicting Statements about How the Project Will Affect Diversions from the Delta Hinder Informed Public Review”;
- (3) “The EIR Unlawfully Postpones Analyzing Increases in Delta Diversions”;

- (4) “The EIR’s Choice of Baseline Is Incorrect as a Matter of Law”;
- (5) “The EIR Improperly Segments the Project By Excluding Relocation of Del Puerto Canyon Road”;
- (6) “The EIR’s Analysis of the Project’s Environmental Impacts Is Inadequate” as to Biological Resources in that “[t]he EIR Excludes Impacts on Downstream Biological Resources”;
- (7) “The EIR’s Analysis of the Project’s Environmental Impacts Is Inadequate” as to Biological Resources in that “[t]he EIR’s Lack of Comprehensive Biological Resource Surveys Precludes a Meaningful Understanding of the Project’s Impacts”;
- (8) “The EIR’s Analysis of the Project’s Impacts to Water Quality Is Inadequate” with respect to “Agricultural Return Flows”;
- (9) “The EIR’s Analysis of the Project’s Impacts to Water Quality Is Inadequate” with respect to “Diversion from Del Puerto Creek”;
- (10) “The EIR Fails to Analyze Impacts to Recreational Activities”;
- (11) “The EIR Ignores Impacts on Views from Within Del Puerto Canyon”;
- (12) “The EIR’s Analysis of Traffic, Transportation, and Fuel Use Is Inadequate” with respect to “Safety Hazards from Project Trucks on Del Puerto Canyon Road”;
- (13) “The EIR’s Analysis of Traffic, Transportation, and Fuel Use Is Inadequate” with respect to “Impacts from Repaving Induced by Project Truck Traffic”;
- (14) “The EIR’s Analysis of Traffic, Transportation, and Fuel Use Is Inadequate” with respect to “Fuel Use from Increased Traffic on Interstate 5”;
- (15) “The EIR Unlawfully Defers Mitigation for Biological Resources”;
- (16) “The EIR Defers Formulation of Air Quality Mitigation Measures”;
- (17) “The EIR’s Mitigation Measures for Construction Truck Traffic Are Deferred”;
- (18) “The EIR Defers Mitigation of Seismic and Geologic Hazards”;
- (19) “The EIR Fails to Explain Why Mitigation of Significant Impacts” Resulting from Greenhouse Gas Emissions Is Infeasible;
- (20) “The EIR Fails to Explain Why Mitigation of Significant [Traffic] Impacts Is Infeasible”;
- (21) “The EIR Unlawfully Fails to Respond to Public Comment”;
- (22) “The EIR’s Analysis of Alternatives is Inadequate” in that “[t]he EIR Uses an Improperly Narrow Statement of Purpose and Need”;
- (23) “The EIR’s Analysis of Alternatives is Inadequate” in that “[t]he EIR Fails to Analyze a Reasonable Range of Alternatives”;
- (24) “The EIR’s Analysis of Alternatives is Inadequate” in that “[t]he EIR’s Alternatives Analysis Is Improperly cursory”; and
- (25) “The EIR’s analysis of the Project’s cultural resources impacts violates CEQA because it fails to describe ten archeological sites present within the area affected by the Project due to a misinterpretation of Public Resources Code section 21083.2 and Guidelines section 15064.5, subdivision (c).”

On January 25, 2023, the superior court issued its first Judgment in the case, to which a detailed Ruling was attached. Although the court rejected 23 of Petitioners’ 25 arguments, the court agreed with the

Petitioners as to argument (5) above (Del Puerto Canyon Road relocation) and a variation of argument (25) (cultural resources).

Following respondents' unsuccessful Motion to Vacate and Amend Judgment (Motion to Vacate) concerning the court's cultural resources ruling, the Petitioners filed an appeal from the Judgment, but in doing so abandoned more than half of the 25 arguments they had pursued in the trial court. On appeal, Petitioners pursued only the following ten arguments:

- (i) "The EIR Fails to Describe Where and How The Project Will Affect Delta Pumping" in that "[t]he EIR's Conflicting Statements About How the Project Will Affect Diversions From the Delta Hinder Informed Public Review";
- (ii) "The EIR Fails to Describe Where and How The Project Will Affect Delta Pumping" in that "[t]he EIR Unlawfully Postpones Analyzing Increases in Delta Diversions";
- (iii) "The EIR Fails to Describe Where and How The Project Will Affect Delta Pumping" in that "[t]he EIR's Choice of Baseline is Incorrect as a Matter of Law";
- (iv) "The EIR Provides an Inadequate Analysis of The Project's Impacts to Biological Resources" in that "[t]he EIR Excludes Impacts on Downstream Biological Resources";
- (v) "The EIR Provides an Inadequate Analysis of The Project's Impacts to Biological Resources" in that "[t]he EIR's Lack of Comprehensive Biological Resource Surveys Precludes a Meaningful Understanding of the Project's Impacts";
- (vi) "The EIR's Mitigation Measures are Inadequate" in that "[t]he EIR Unlawfully Defers Mitigation Measures";
- (vii) "The EIR's Mitigation Measures are Inadequate" in that "[t]he EIR Defers Formulation of Mitigation for Biological Resources";
- (viii) "The EIR's Alternative Analysis is Inadequate" in that "[t]he EIR Uses an Improperly Narrow Statement of Purpose and Need";
- (ix) "The EIR's Alternative Analysis is Inadequate" in that "[t]he EIR Fails to Analyze a Reasonable Range of Alternatives"; and
- (x) "The EIR's Alternative Analysis is Inadequate" in that "[t]he EIR's Alternatives Analysis is Improperly Cursory."

The San Joaquin River Exchange Contractors Water Authority (SJRECWA or Exchange Contractors), the Real Party in Interest in the litigation, filed both a cross-appeal and a separate appeal as a way of challenging the trial court's adverse rulings on arguments (5) (Del Puerto Canyon Road relocation) and (25) (cultural resources). The SJRECWA sought to overturn the trial court's Judgment on argument (25) through an appeal from the superior court's denial of the Motion to Vacate filed by DPWD and SJRECWA. The Motion to Vacate had unsuccessfully attempted to persuade the trial court to change its mind on argument (25) (cultural resources).

During the extensive appellate proceedings, which involved (i) an appeal, (ii) a cross-appeal, and (iii) a separate appeal from the denial of the Motion to Vacate, the parties collectively filed a total of nine briefs, some of which were combined with one another. (See Appellants' Opening Brief [Sierra Club *et al.*]; Joint Respondents' Brief [DPWD and SJRECWA]; Cross-Appellant's Opening Brief [SJRECWA]; Appellant's Opening Brief [SJRECWA]; Appellants' Reply Brief [Sierra Club *et al.*]; Cross-Respondents' Opposition Brief [Sierra Club *et al.*]; Respondents' Opposition Brief [Sierra Club *et al.*]; Reply Brief of Cross-Appellant [SJRECWA]; and Reply Brief of Appellant [SJRECWA].)

On January 30, 2025, the Fifth District Court of Appeal issued an unpublished opinion (the Opinion) confirming in part and reversing in part the trial court's Judgment. (*Sierra Club et al. v. Del Puerto Water*

District (Fifth District Court of Appeal Case No. F086218.) The District included a full copy of the Opinion as Appendix A to the PRDEIR. The Court concluded that “the FEIR was sufficient with respect to the relocation of Del Puerto Canyon Road and cultural resources” (arguments (5) and (25)) but that “the FEIR was insufficient with respect to impacts on terrestrial species downstream from the proposed reservoir” (argument (6)). (Opinion, p. 45.)

In addressing the substance of argument (6), the Opinion states that, “while [the EIR] considers impacts to downstream species, it does so for aquatic rather than terrestrial species.” (*Id.* at p. 14.) “What is missing is analysis of whether there will be impacts to species that are both downstream and *terrestrial*. [¶] It may very well be the case that the project’s efforts to mimic natural patterns of flow variability will result in the project having no impacts to downstream terrestrial species. That is a scientific matter on which we offer no input. What matters in the present action is that the FEIR does not expressly conclude as much. As a result, it fails as an informational document to adequately consider a potentially significant environmental impact.” (*Id.*, pp. 14-15, footnote omitted, italics added.)

In summary, first the superior court and later the Court of Appeal sorted through a wide-ranging set of arguments attacking nearly all aspects of the 2020 EIR and found that only one of the arguments had merit. Even as to that one argument, the appellate court found no fault with the analysis of downstream impacts on *aquatic* resources, but only with the lack of analysis of impacts on *terrestrial* resources. The Petitioners, claiming to represent the interests of the public at large, had made a determined effort to force the District back to the drawing board, but had largely failed. Just one limited environmental issue required further attention.

On April 8, 2025, the superior court issued a Modified Judgment consistent with the Court of Appeal Opinion. Specifically, the Modified Judgment (i) confirmed the outcome on the two appeals and the cross-appeal and (ii) retroactively granted the previously-denied Motion to Vacate.

On February 15, 2023, almost two years prior to issuance of the Court of Appeal’s Opinion and the Modified Judgment, the District’s Board, in response to the original Judgment, had set aside its certification of the 2020 FEIR and approval of the Project. The Modified Judgment required no additional action by the Board, other than for the District to ultimately bring the revised analysis required by the Opinion back to the superior court for its review for adequacy under CEQA. (See Pub. Resources Code, § 21168.9, subd. (b).)

As a result of the Board’s decertification of its 2020 FEIR, the status of the District’s limited new environmental review process now resembled that of a lead agency that had circulated a full Draft EIR but had subsequently determined that a partial recirculation was necessary to address one discrete topic before a Final EIR could be certified. Accordingly, the legal principles governing partial recirculation applied, as was explained in the PRDEIR on pages 1-2 and 1-7.

Full or partial recirculation of a Draft EIR is governed by CEQA Guidelines section 15088.5, which requires recirculation when “significant new information” is added to an EIR after the release of a Draft EIR but before Final EIR certification. Subdivision (c) of that section provides that “[i]f the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.” Subdivision (f)(2) further provides that:

[w]hen the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency’s request

that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

Consistent with (i) these legal principles, (ii) the Court of Appeal’s Opinion, (iii) the Modified Judgment, and (iv) additional legal principles described in subsection B below, the District prepared the PRDEIR with additional environmental analysis limited to what was necessary to address the single deficiency identified by the Court of Appeal. The PRDEIR did not revise the October 2020 FEIR in any other respect and was not required to do so. Consistent with the courts’ rejection of 24 of the original 25 legal contentions made by the Petitioners, the District has continued to treat the 2020 FEIR as including adequate responses to all of the comments that were timely filed during the public review period for the original December 2019 Draft EIR.

B. Legal Principles Governing Remands in CEQA Cases

1. Narrow Judicial Remedies Under Public Resources Code section 21168.9

Although the substantive provisions of CEQA are interpreted broadly to protect the environment, the litigation provisions of CEQA are interpreted in light of different legislative policies favoring the prompt resolution of CEQA litigation. (*Board of Supervisors v. Superior Court* (1994) 23 Cal.App.4th 830, 836 (*Board of Supervisors*).) CEQA’s goal of ensuring “extremely prompt resolution of lawsuits claiming noncompliance with the Act is evidenced throughout the statute’s procedural scheme.” (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 500 (*Stockton Citizens*); see also *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 12 (*County of Orange*).)

For example, CEQA has “unusually short” CEQA limitations periods, “after which persons may no longer mount legal challenges, however meritorious,” reflecting the fact that the Legislature was “sensitive to the particular need for finality and certainty in land use planning decisions[.]” (*Stockton Citizens, supra*, 48 Cal.4th at p. 488.) Where the statute of limitations expires without the filing of litigation, an EIR is presumed by law to be legally adequate. (Pub. Resources Code, § 21167.2.) Even where a lawsuit is timely filed against a lead agency, responsible agencies are nevertheless required to treat EIRs as legally adequate. (*Id.*, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1181 “[t]he evident intent of section 21167.3 is to expedite CEQA review where a lawsuit contesting CEQA documentation is pending by designating *one forum* for resolution of claims of unlawful documentation and by requiring project review to proceed while the claims are resolved”], original italics.)

In addition, CEQA cases have priority over all other civil matters. (Pub. Resources Code, § 21167.1, subd. (a); *Stockton Citizens, supra*, 48 Cal.4th at p. 500.) CEQA also provides that “more populous counties must designate one or more judges to develop CEQA expertise so as to permit prompt disposition of CEQA claims; and expedited briefing and hearing schedules are required.” (*Ibid.*; Pub. Resources Code, §§ 21167.1, subd. (b), 21167.4, subd. (c).)

These provisions reflect the Legislature’s recognition that, because large investments in private development and public infrastructure projects are often premised on the legal validity of EIRs, the need for “finality” for EIRs is of paramount public importance. (See, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 (*Laurel Heights II*) “[a]fter certification, the interests of finality are favored over the policy of encouraging public comment”]; *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 949 [the Legislature set a high threshold for supplemental environmental review out of concern for “finality and efficiency”].)

“[T]he Legislature has recognized that, particularly in the CEQA context, time is money.” (*County of Orange, supra*, 113 Cal.App.4th at p. 12.) “CEQA challenges, with their obvious potential for financial prejudice and disruption, must not be permitted to drag on to the serious injury of the real party in interest.” (*Board of Supervisors, supra*, 23 Cal.App.4th at p. 837.) “A project opponent can ‘win’ even

though it ‘loses’ in an eventual appeal because the sheer extra time required for the unnecessary appeal (with the risk of higher interest rates and other expenses) makes the project less commercially desirable, perhaps even to the point where a developer will abandon it or drastically scale it down.” (*County of Orange, supra*, 113 Cal.App.4th at p. 6.)

Consistent with these policy considerations and cost concerns, a lead agency need not start from scratch again whenever a court finds any sort of problem with an EIR. Rather, when a lead agency wins on some EIR issues, but loses on others, the lead agency may tailor its revised EIR to address only those areas specifically found inadequate by the court. “[T]he Agency need only correct the deficiency in the EIR that we have identified before considering recertification of the EIR. The form of that correction is a matter for the Agency to determine in the first instance.” (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112 (*Amador Water*), citing Pub. Resources Code, § 21168.9, subd. (c) [“[n]othing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way”].) “Likewise, whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification.” (*Amador Water, supra*, 116 Cal.App.4th at p. 1112; see also *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 [“[w]hether the correction requires recirculation of the EIR is for [the respondent agency] to decide in light of the standards governing recirculation of an EIR prior to certification”].)

“‘[W]here an EIR is inadequate in some respects, but not others[,] ... the writ of mandate need only require the preparation, circulation and consideration under CEQA of a legally adequate EIR *on limited issues*[.]’” (*LandValue 77, LLC v. Board of Trustees of Cal. State Univ.* (2011) 193 Cal.App.4th 675, 682 [quoting Robie et al., *Cal. Civil Practice: Environmental Litigation* (2010) § 8:33], italics added.)

Public Resources Code section 21168.9 is the statute within CEQA governing how courts must fashion remedies to address adjudicated CEQA violations. Under subdivision (a), a court may require a lead agency (i) to set aside the CEQA determinations, findings, or decisions; (ii) to suspend specific project activities; (iii) to take specific actions needed to comply with CEQA; or (iv) to combine these remedies as appropriate. (See also *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 757 [summarizing these options].)

Subdivision (b) of section 21168.9 provides that, where a court finds CEQA violations, judicial remedies must be fashioned so as to “include *only* those mandates which are necessary to achieve compliance” with CEQA. (Italics added.) In other words, remedies should be narrowly tailored to address only the aspects of a CEQA document that failed to pass legal muster. Consistent with the presumption of legal validity mentioned above (see Pub. Resources Code, § 21167.2), the aspects of a CEQA document that comply with CEQA generally need not be revisited.

Section 21168.9 also states, in relevant part, that “[t]he trial court shall retain jurisdiction over the public agency’s proceeding by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.” (Pub. Resources Code, § 21168.9, subd. (b).) The trial court’s jurisdiction here is limited, however, to ensuring that the agency complies with the peremptory writ of mandate requiring that identified violations be cured. (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 480 (*Ballona*).) Thus, a trial court is not allowed “to consider any *newly asserted challenges* arising from the same material facts in existence at the time of the judgment.” (*Ibid.*, italics added.) This limit on the scope of the trial court’s jurisdiction protects the finality of the judgment, helping to promote judicial efficiency as well as stability and certainty the legal system.

In commenting on the PRDEIR, over which the Stanislaus County Superior Court maintains continuing jurisdiction under Public Resources Code section 21168.9, subdivision (b), several commenters, as noted earlier, are raising issues that go beyond the scope of the single issue that the Court of Appeal required DPWD to address on remand and that could have been raised earlier. If and when the District Board (i) certifies a new Final EIR that includes (a) the 2020 Final EIR, (b) the PRDEIR, and (c) responses to

comments on the PRDEIR, these commenters will not be able to raise these extrinsic issues to the superior court, as the court will lack jurisdiction over them. Rather, the court's only function will be to determine whether the District has dealt sufficiently with its analysis of impacts on terrestrial species downstream of the Project site due to reduced flows in Del Puerto Creek.

2. Res Judicata and Collateral Estoppel

The statutory requirement that remands in CEQA cases should be focused only on issues for which a court has found errors is closely related to the long-standing general legal concept of “res judicata” (also known as “claim preclusion”). Under this concept, any issues that were – or could have been – conclusively resolved in earlier litigation may not be relitigated in a subsequent lawsuit between the same parties or their “privies” (i.e., other individuals or entities with interests aligned with those of the parties). (*Bernhard v. Bank of America Nat. Trust & Savings Association* (1942) 19 Cal.2d 807, 810–811 (*Bernhard*)). Res judicata requires plaintiffs to assert all legal claims they may have against a defendant in connection with the facts that gave rise to the litigation or to be understood to waive those claims. Thus, the doctrine of res judicata “seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration” and thereby “promotes judicial economy.” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897 (*Mycogen*)). “The rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy.” (*Bernhard, supra*, 19 Cal.2d at p. 811.)

In contrast to res judicata, the closely related concept of collateral estoppel, or “issue preclusion,” “precludes relitigation of issues argued and decided in prior proceedings.” (*Mycogen, supra*, 28 Cal.4th at p. 896.) For collateral estoppel to apply, the issue sought to be precluded must be identical to an issue that was actually litigated and necessarily decided in a former proceeding that was final, on the merits, and against the same party in the prior proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

The policy bases for res judicata are particularly applicable to CEQA cases, which, as discussed above, are to be resolved promptly, consistent with the goal of achieving finality and certainty in land use and resource planning. (See *Board of Supervisors, supra*, 23 Cal.App.4th at p. 836 [CEQA evinces a clear legislative determination that the public is not served if CEQA cases are not promptly decided].) Thus, numerous courts have applied the doctrine of res judicata to CEQA lawsuits. (See e.g., *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 299 (*Silverado Modjeska*); *Ballona Wetlands, supra*, 201 Cal.App.4th at pp. 480–481; *Atwell v. City of Rohnert Park* (2018) 27 Cal.App.5th 692, 703–704 (*Atwell*); *The Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 782 (*Inland Oversight*); *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador* (2019) 33 Cal.App.5th 165, 171 (*Ione Valley*); and *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 209 (*Central Delta*)).

In *Ballona Wetlands, supra*, 201 Cal.App.4th at p. 481, the court summarized the applicable principles as follows:

[A]ny challenge to an EIR or other agency action arising from facts in existence before the entry of judgment must be asserted in the proceeding before the entry of judgment. The failure to assert such a challenge before the entry of judgment or the failure to successfully appeal the judgment on an issue arising from facts in existence before the entry of judgment *precludes a party from asserting the challenge* in connection with postjudgment proceedings concerning compliance with the writ. (Italics added.)

Another leading CEQA case involving res judicata is *Ione Valley, supra*, 33 Cal.App.5th 165, where a petitioner, in a second round of litigation, attempted without success to raise issues that either were or could have been raised in the first round of litigation. The case is instructive insofar as the petitioner tried, but failed, to take a second bite at the apple, so to speak, with respect to numerous legal arguments. Res judicata precluded such a legal strategy.

The case involved Amador County's reapproval of, and recertification of an EIR for, a proposed quarry project after compliance with the writ of mandate issued by the trial court after the first round of litigation. In rejecting many of the petitioner's arguments in the second round of litigation, the Court of Appeal held that "[r]es judicata bars all of [Petitioner's] objections to the partially recirculated EIR certification and project approval, except for those issues arising from the partially recirculated EIR concerning traffic impacts[.]" (*Id.* at p. 170.) The court reached this conclusion "because the remaining issues were [previously] litigated and resolved, or could have been litigated and resolved, in connection with the first petition, and the writ of mandate did not require the County to revisit issues other than traffic impacts." (*Id.* at p. 170.)

The first petition in the case raised a host of objections to the EIR in question. The document was flawed, it was alleged, with respect to impacts to air quality, water supply and water quality, and traffic and circulation. The County was allegedly required to, but did not, recirculate the DEIR, and allegedly failed to consult with a trustee agency and to adequately respond to comments. The first petition also alleged an absence of substantial evidence to support the statement of overriding considerations. (*Id.* at pp. 168–169.) The trial court found against the petitioner with respect to all issues other than traffic impacts, and issued a writ requiring reconsideration of traffic impacts only and partial recirculation of the EIR. (*Id.* at p. 169.)

The County did as the court directed, partially recirculating the EIR before recertifying it and reapproving the quarry project. (*Ibid.*) In a second petition, the petitioner alleged impacts to water supply and water quality, traffic and circulation, biological resources, air quality, as well as inadequate mitigation measures, the failure to recirculate the entire EIR, inadequate responses to comments, inadequate support for the statement of overriding considerations, and alleged violations of the Planning and Zoning Law. (*Id.* at p. 170.)

The court found that res judicata barred all of the issues raised in the second petition other than the traffic impact issues required to be revisited by the trial court's writ. (*Ibid.*; see also *Atwell, supra*, 27 Cal.App.5th at p. 702.) The court concluded that "the County was not required to revisit impacts or issues other than traffic impacts because the trial court's writ of mandate only required recirculation of the EIR as to traffic impacts. ... The trial court's limited writ of mandate in this case did not require the County to revisit issues other than traffic impacts. [¶] We further conclude that all issues [petitioner] seeks to raise on appeal are precluded except those having to do with traffic impacts because the remaining issues were litigated, or could have been litigated, in the prior proceeding and because the writ of mandate only required further action as to traffic impacts." (*Ione Valley, supra*, 33 Cal.App.5th at p. 173; see also *Sierra Club v. County of Fresno* (2020) 57 Cal.App.5th 979, 990 ["[b]ased on the principle set forth in *Ione Valley*, new challenges to the parts of the EIR that have been upheld are not allowed in proceedings on remand. *** Developer is protected by res judicata, collateral estoppel and the requirement for the exhaustion of administrative remedies"].)

Here, similarly, the doctrine of res judicata requires that comments by the Sierra Club, the Center for Biological Diversity, Friends of the River, and the California Native Plant Society on the legal adequacy of the PRDEIR should have been limited solely to new information that was not included in the 2020 EIR, namely, the new analysis of potential effects on terrestrial species downstream of the Project site due to reduced flows in Del Puerto Creek.

This same limited focus also applies to *privies* of these four litigant organizations. As noted earlier, res judicata and collateral estoppel apply not only to the actual parties in litigation, but also to their *privies*, that is, persons or entities in "privity" with the parties in litigation. (*Bernhard, supra*, 19 Cal.2d at p. 810.) In this context, privity refers to "such an identification in interest of one person with another as to represent the same legal rights." (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 229 (*PCL*).) "The determination of privity depends upon the fairness of binding [a party] with the result obtained in earlier proceedings in which it did not participate." (*Id.* at pp. 229–230.)

In litigation involving the public interest, courts have held that nonprofit organizations that sue on the behalf of the public at large or for very generalized purposes may be in *privity* with the entire public at large, as well as like-minded or similar nonprofit organizations. (See, e.g., *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Association* (1998) 60 Cal.App.4th 1053, 1064-1075 (*Citizens for Open Access*)).) Thus, where such a non-profit organization has filed litigation over a matter of public controversy, and that litigation is resolved, no other members of the public or other non-profits may subsequently, in later litigation, raise claims that were, or could have been, raised by the organization that filed the earlier litigation. (See, e.g., *id.* at pp. 1064–1075.)

For privity to exist, (1) the parties in privity must share a common interest, and (2) the party to the first action must have “asserted the common interest with adequate vigor” so that it is fair to bind the subsequent party to the earlier proceedings. (*PCL, supra*, 180 Cal.App.4th at p. 230.)

Where all parties seek to enforce CEQA, the first requirement for privity is met. (*PCL, supra*, 180 Cal.App.4th at p. 230 [seeking enforcement of CEQA on behalf of the public demonstrates a “common interest” for privity purposes]; *Silverado Modjeska, supra*, 197 Cal.App.4th at p. 299 & fn. 10 [to conclude otherwise would “subject [CEQA compliance] to continuing challenges by different parties successively asserting similar claims, in contravention of the legislative goal of avoiding delay and achieving prompt resolution of CEQA claims”]; *Central Delta, supra*, 69 Cal.App.5th at p. 209 [“litigation of CEQA claims against a defendant on behalf of the public is generally sufficient to support a finding of common interest to establish privity,” even where the parties assert different causes of action].)

Courts have reached this conclusion even where one of the parties claims that it is asserting only its own personal interests. (See, e.g., *Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1512–1513 [court finds no evidence that individual harms were different “in any respect from any alleged harm to the community or the public”]; *Atwell, supra*, 27 Cal.App.5th at pp. 703–704 [same]; *Inland Oversight, supra*, 27 Cal.App.5th at p. 782 [same].)

The second requirement for privity is met so long as the party in the earlier litigation “displayed a [sufficient] level of care regarding the public’s interest.” (*PCL, supra*, 180 Cal.App.4th at p. 231.) If the party “abdicat[es] the role of public agent,” however, the party cannot also preserve privity. (*Id.* at pp. 231–233.) Courts have concluded that such abdication may include the decision to voluntarily dismiss the action due to a lack of funds for continued litigation (*id.* at p. 231) or a consent to discharge a writ in which the party “expressly disavow[s] and abandon[s] [its] role as public agent.” (*Central Delta, supra*, 69 Cal.App.5th at pp. 209–211.)

Thus, where a CEQA petitioner fails to assert a particular potential legal ground for attacking an EIR, such a potential ground is waived, not only by the petitioner but by any other party in “privity” to the petitioner (i.e., often the public at large). Where a petitioner unsuccessfully makes a legal argument in the superior court but fails to make that same argument on appeal, the argument is also waived. Where a court, after full argument and a full hearing on the merits, finds limited flaws in an EIR and directs the respondent agency to take certain actions to remedy those flaws, the petitioner’s ability, and that of its privies, to challenge the new or revised environmental document on remand is severely limited or nonexistent. The petitioner and its privies may not raise claims that could have been raised in the earlier round of litigation.

In the matter at hand, as noted earlier, the 2020 EIR was vigorously challenged over a period of more than five years by the Sierra Club, the California Native Plant Society, the Center for Biological Diversity, and the Friends of the River. As also explained above, three out of four of these parties, in commenting on the PRDEIR, have raised legal contentions that they either raised, or could have raised, in the previous litigation. Under *res judicata* and collateral estoppel, neither the Stanislaus County Superior Court nor the Fifth District Court of Appeal may entertain and resolve those contentions on the merits. Rather, the contentions are barred. These parties are not entitled to a second chance to litigate claims on which they

have already lost or to raise new claims that, for whatever reason, they could have raised but chose not to raise.

Based on these principles governing privity, nonprofit organizations other than the Sierra Club, the California Native Plant Society, the Center for Biological Diversity, and the Friends of the River, as well as other commenters purporting to represent the general public interest, will be subject to res judicata and thus will be unable to raise issues that these Petitioners either already have raised or could have raised in the first round of litigation. These unavailable issues include all 24 arguments rejected by the trial and appellate courts, as well as other hypothetical arguments that the Petitioners could have made but chose not to make. Of other entities that commented on the PRDEIR, those in privity with the Petitioners include Save Mount Diablo, Save Del Puerto Canyon, the Mount Diablo Bird Alliance, Amphibian Refuge, and John E. Herrick. Privies to the Petitioners also include all persons who filed form comments generally opposing the Project. While there is a limited exception under unique circumstances when res judicata “may not apply when ‘there are changed conditions and new facts which were not in existence at the time the action was filed upon which the prior judgment is based,’” facts necessary to substantiate the exception are not present here because the PRDEIR prepared on remand has not “materially changed” from the original Final EIR based on significant new or different information. (*PCL, supra*, 180 Cal.App.4th at p. 227, quoting *McGaffey v. Sudowitz* (1961)189 Cal.App.2d 215, 217–218.)

Because “material change” under res judicata effectively equates to “significant new information” under CEQA (see Pub. Resources Code, § 21092.5; CEQA Guidelines, § 15088.5), commenters on the PRDEIR were not precluded from bringing to the District’s attention what the commenters regard as any “significant new information.” This term of art is defined in CEQA Guidelines section 15088.5, subdivision (a), as including “a disclosure showing that: [¶] (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. [¶] (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. [¶] (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it. [¶] (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

Notably, however, a commenter’s mere assertion that certain new facts constitute “significant new information” does not prove that the facts truly rise to the level of “significant new information” for CEQA purposes. Rather, a lead agency is entitled to assess the persuasiveness of the assertion in light of legal standards and factual evidence. The threshold for finding “significant new information” is not a low one.

The District has never denied commenters’ right to identify what they consider potential “significant new information.” Thus, nothing in the PRDEIR text purported to forbid commenters from raising such issues. At the time of the public release of the PRDEIR (December 5, 2025), the District was unaware of any such information; and for that reason, the District *requested* that commenters limit their comments to the new analysis of potential impacts on terrestrial resources downstream on Del Puerto Creek from the Project footprint. The District’s main intended point was that the issuance of the PRDEIR was not an opportunity to raise legal issues that had already been raised earlier or could have been raised earlier. The District did not attempt, however, to *forbid* people from raising issues they believed involved significant new information.

As explained, however, in the District’s individual responses to individual comments on the PRDEIR, no significant new information in the form of changed conditions or new material facts required the District to expand the scope of the PRDEIR or materially change the underlying EIR. Accordingly, the limited exception to principles of res judicata for materially changed conditions is not present here; and as set

forth above, all claims that were or could have been brought in the prior litigation are now barred by res judicata and claim preclusion.

12.0.2 Master Response 2 – Project Opposition

Comment Summary: Many comments expressed opposition to the proposed Project.

The District recognizes that there are strong opinions about the Project and is committed to maintaining a dialogue with both project opponents and project supporters. Comments expressing general opposition to the Project are noted and will be considered by the District’s Board of Directors in making decisions about whether to move forward with the Project. However, general expressions of opposition to the project are not comments on the environmental analysis presented in the PRDEIR, and CEQA does not require a substantive response to such comments.

As an initial matter, it is important to note the procedural context in which these comments were received. As discussed in more detail in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address a single deficiency identified by the Court of Appeal in the 2020 Final EIR: the absence of an analysis of potential impacts to terrestrial species downstream of the proposed reservoir due to changes in Del Puerto Creek flows. The Court of Appeal found the 2020 Final EIR adequate in all other respects. Consistent with CEQA Guidelines section 15088.5, subdivision (f)(2), the District requested that commenters limit their comments to the revised analysis presented in the PRDEIR, and the District is required to respond only to comments received during the recirculation period that relate to the revised portions of the EIR.

Some comments cited the Project’s significant unavoidable impacts as reasons that the Project should not be approved. While it is true that the Project will have such impacts, this fact has been well known for several years and is not new information. The 2020 Final EIR disclosed that the Project would have significant unavoidable impacts associated with aesthetics, cultural resources, greenhouse gas emissions, construction traffic and utility relocation. (See 2019 Draft EIR, p. 5-1.) The PRDEIR did not find or disclose any new significant impacts, much less any new significant and unavoidable impacts. As explained in the 2020 Final EIR, because the Project has significant and unavoidable impacts, the District Board would be required to adopt Findings and prepare a Statement of Overriding Considerations as part of any Project approval, as the Board did in October 2020. Under CEQA, projects with significant and unavoidable impacts may be approved where the project’s benefits are found to outweigh those impacts. One of the purposes of the EIR is to disclose such impacts to the public and to decisionmakers so that the environmental consequences of the project are fully considered.

Some commenters also cited concerns about impacts to air quality, geology and biological resources. These topics were addressed in the 2020 Final EIR: air quality impacts in Section 3.3, terrestrial biological resources in Section 3.4, aquatic biological resources in Section 3.5, and geology and seismicity in Section 3.8 of the Draft EIR. Except with respect to terrestrial biological species downstream of the Project footprint, the adequacy of these analyses was either upheld by the courts or not challenged in the underlying litigation, and those sections are not open for further comment in this recirculation, as explained in Master Response 1: Scope of the PRDEIR. To the extent commenters raise specific concerns about the downstream terrestrial biological resources analysis presented in the PRDEIR, those comments are addressed individually in this Second Final EIR.

Although some commenters expressed doubts about the financial feasibility of the project, CEQA does not require an EIR to include an analysis of project costs or financial feasibility. (See CEQA Guidelines, § 15131, subd. (a); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 689 (*San Franciscans*) “[a]s is self-evident from its name, an EIR is an *environmental* impact report”]; “[a]s such, it is an informational document, not one that must include ultimate determinations of economic feasibility”, original italics; *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1502-1506 [agreeing with conclusions in *San Franciscans*]; *Association of*

Irritated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1401 [“economic data is not required to be included in an EIR”]; and CEQA Guidelines Section 15131(c) [“Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.”].) Financial considerations are relevant to the Project Partners’ decision whether to proceed with the Project but are outside the scope of environmental review.

Upon completion of this Second Final EIR – which consists of the 2019 Draft EIR, the 2020 Final EIR, the PRDEIR, all comments received during the PRDEIR public review period, and the District’s responses to those comments – the District’s Board of Directors will consider whether to certify the Second Final EIR and reapprove the Project. Consistent with Public Resources Code section 21168.9, subdivision (b), the Stanislaus County Superior Court retains jurisdiction to review whether the District has complied with the Court of Appeal’s directive. Comments expressing support for or opposition to the Project, as well as all other comments received, will be available to the Board and to the court as part of the administrative record.

12.0.3 Master Response 3 – Biological Baseline and Species Occurrence

Comment Summary: Several commenters contend that the PRDEIR inadequately evaluates downstream terrestrial biological impacts by failing to consider potential species displacement and indirect effects on downstream terrestrial species and wildlife corridors. The comments also question the adequacy of the biological baseline, the sufficiency of field survey efforts, and the use of biological databases to evaluate species occurrence.

Under CEQA, an EIR is required to identify a project’s potentially significant effects on the environment, and the baseline is an essential part of that determination because it establishes the setting against which a project’s prospective environmental impacts are compared. (Pub. Resources Code, § 21002.1, subd. (a); CEQA Guidelines, § 15125, subd. (a)(1).) CEQA defines a “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.) Normally, the baseline for assessing the significance of a project’s impacts under CEQA is the environmental setting, or existing conditions, at the time the EIR’s Notice of Preparation (NOP) is issued. (CEQA Guidelines, §§ 15125, subd. (a)(1), 15126.2, subd. (a).) A lead agency may also rely on a baseline consisting of environmental conditions over a range of time periods where supported by substantial evidence. (CEQA Guidelines, § 15125, subd. (a)(1); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328.)

Information regarding the biological baseline is contained in Section 3.4.1, *Environmental Setting*; Section 3.4.3, *Impact Analysis*; Appendix B, *Species Lists*; Appendix C, *Special-Status Species Tables*; and Appendix D, *Streamflow Estimates for lower Del Puerto Creek*. This information documents existing physical conditions in the lower Del Puerto Creek study area and provides the setting against which the PRDEIR evaluates the significance of the Project’s operational impacts on downstream habitat conditions, terrestrial species, and the ecological and hydrological functions of lower Del Puerto Creek within the study area.

The PRDEIR’s downstream terrestrial analysis evaluates whether Project-related changes in downstream flow conditions would materially alter the hydrologic and ecological processes currently supporting riparian habitat and other terrestrial biological resources in lower Del Puerto Creek under existing altered conditions. As discussed in Section 3.4.1, *Environmental Setting*, and Section 3.4.3, *Impact Analysis*, lower Del Puerto Creek is presently a highly modified intermittent system influenced by agricultural return flows, operational spills from the West Stanislaus Irrigation District (WSID), channel simplification, altered sediment dynamics, and historical loss of riparian habitat. The PRDEIR’s analysis

therefore focuses on changes to the baseline conditions and ecological functions currently supporting downstream riparian, wetland, and terrestrial habitats within this existing downstream system, rather than assuming restoration of historical pre-disturbance conditions. Streamflow data indicate that the downstream reaches east of Interstate 5 (I-5) are frequently hydrologically disconnected from upstream runoff during the dry season and are maintained primarily by irrigation return flows and operational spills from WSID. Please refer to the discussion starting on page 3.4-24 of the PRDEIR, which provides data that demonstrate that during the dry season the lower portion of the creek becomes hydrologically disconnected from the lower reaches east of I-5. During much of the dry season there is no flow measured at the stream gauge on Del Puerto Creek west of I-5, but measurable flows downstream due to agricultural return flows and operational flows from the WSID. As stated on page 3.4-27:

“These data indicate that streamflow in lower Del Puerto Creek east of I-5 no longer follows natural seasonal patterns and that irrigation return flows, which are provided by the agricultural land uses surrounding the study area and are augmented by WSID operational spills, maintain creek flow during dry periods. These irrigation return flows supplement the natural runoff from rainfall that would normally flow down the creek. During certain times of the year, these irrigation return flows and operational spills are the only source of water in some portions of the creek. Overall, the streamflow patterns in lower Del Puerto Creek show that it is often hydrologically disconnected from upstream portions of the creek. As such, changes in flows as a result of the proposed Project are not expected to materially impact flows in lower Del Puerto Creek, particularly during the dry season when upstream contributions to flows downstream are minimal or absent.”

The quoted conclusion concerns the Project’s effect on the overall hydrologic conditions supporting downstream terrestrial habitat, particularly during the dry season. It does not mean that the Project would cause no reduction in the natural upstream runoff reaching lower Del Puerto Creek. The Project-related changes to these hydrologic conditions, and the ecological significance of those changes, are addressed in Master Response 4: Project-Related Flow Changes, and the habitat-and species-specific impact analyses in Section 3.4.3.

A. Survey Information

As detailed in Chapter 3.4, *Biological Resources—Downstream Terrestrial*, the PRDEIR evaluates the Project’s potential operational effects on downstream terrestrial species and habitat in lower Del Puerto Creek—the specific issue the Court of Appeal identified as requiring further analysis. To support that analysis, ICF conducted reconnaissance-level biological surveys, database reviews, and habitat characterization of the lower Del Puerto Creek study area. Species were carried forward for detailed analysis where suitable habitat is present and Project-related flow changes could reasonably affect the habitat or another ecological resource on which the species depends. The Court of Appeal rejected petitioners’ challenge to the 2020 Final EIR’s reliance on reconnaissance-level surveys supplemented by habitat assessment and assumed-presence analysis in evaluating footprint-related biological impacts. (Opinion, pp. 15–18; see *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396–1397 (*AIR*); see also Response to Comment R2-4 [discussing judicial precedent concerning protocol-level surveys].)

Reconnaissance-Level Biological Survey. Qualified ICF biologists Eric Stitt and Mitch Soto conducted a reconnaissance-level biological survey covering the accessible portions of the lower Del Puerto Creek study area on July 14, 2025.

The biologists collectively surveyed the accessible length of Del Puerto Creek from I-5 to the confluence of the San Joaquin River. They divided the survey efforts, with Mitch Soto surveying from I-5 to Vineyard Avenue (from west to east) and Eric Stitt surveying from Vineyard Avenue to the San Joaquin River (from west to east). Survey access was limited north of Del Puerto Creek, nearing the San Joaquin River, due to a dense, impenetrable growth of vegetation. The total survey effort was approximately 12

person hours, and conditions were hot: 72° F at the start of the survey at 09:00 hours and 108° F at the end of the survey at 15:00 hours. Winds were minimal (<5 mph) and skies were clear.

The purpose of the reconnaissance-level survey was to make a general assessment of the creek's habitat conditions, assess the quality of the riparian corridor, characterize the existing hydrologic conditions, and identify potential habitat for special-status and non-listed plant and wildlife species. The reconnaissance-level survey was not intended to serve as a comprehensive wildlife or botanical inventory or to establish species absence. The reconnaissance survey was not relied upon to establish the absence of rare plants, nor does the PRDEIR represent that the survey met CDFW's standards for focused botanical surveys.

The level of survey effort was tailored to the nature of the impact analysis conducted in the PRDEIR. The PRDEIR's downstream terrestrial analysis does not rely on precise population estimates, exhaustive species detection, or complete characterization of the wildlife community to determine impact significance. Rather, the analysis evaluates whether Project-related changes in downstream flow conditions would materially alter the hydrologic and ecological processes currently supporting existing riparian, wetland, and terrestrial habitats under current hydrologic and land-use conditions. Accordingly, the significance analysis focuses on habitat conditions, ecological function, hydrologic processes, and identifiable impact pathways, rather than on the precise number or distribution of individual species observations. Because the PRDEIR assumes the presence of special-status species where suitable habitat occurs, additional protocol-level surveys or species-detection efforts would not materially alter the analysis of whether Project operations would affect the habitat structure, ecological function, or environmental processes supporting downstream terrestrial biological resources.

Protocol-Level Elderberry Longhorn Beetle Survey. A protocol-level valley elderberry longhorn beetle (VELB) survey was conducted on September 9, 2025. During this survey, ICF biologist Mitch Soto revisited the eastern extent of the study area to thoroughly quantify the number of elderberry shrubs present and collect precise GIS data to document the locations of elderberry observations. All elderberry shrubs were mapped as points or polygons, and, where feasible, were inspected for evidence of valley elderberry longhorn beetle presence.

Baseline Characterization. In addition, qualified biologist Danika Tsao conducted extensive literature and data reviews to support the characterization of the environmental baseline using the best available scientific data and resources (e.g., agency databases, scientific literature, aerial imagery, existing reports). Information concerning the biological baseline is contained in Section 3.4.1, *Environmental Setting*; Section 3.4.3, *Impact Analysis*; Appendix B, *Species Lists*; Appendix C, *Special-Status Species Tables*; and Appendix D, *Streamflow Estimates for lower Del Puerto Creek*. The baseline and impact analysis support informed decisionmaking by calculating existing land cover acreages and by providing decision makers with an understanding of the types and magnitudes of potential impacts on terrestrial species. If necessary, mitigation measures would have been proposed to reduce any significant impacts that were identified (none were).

Biologists' Qualifications. All surveys and baseline characterizations were conducted by qualified biologists whose credentials make them more than qualified to conduct reconnaissance-level and impact-focused biological surveys and analyses under CEQA, which does not set any minimum qualifications for scientists or other experts but rather is generally focused on the need for substantial evidence and reasoned analysis in support of environmental conclusions.

Eric Stitt is a wildlife ecologist/herpetologist with more than 25 years of experience conducting biological surveys and impact analyses throughout California. He is a Wildlife Society (TWS) Certified Wildlife Biologist® with extensive expertise in vertebrate field surveys, including special-status reptiles, amphibians, birds, and mammals. Mr. Stitt is authorized under multiple federal and state permits to survey, handle, and collect special-status species, including California red-legged frog, California tiger salamander, foothill yellow-legged frog, western pond turtle, and other listed and sensitive species. Mr. Stitt has a Master of Science in Wildlife and Fisheries Science.

Mitch Soto is a wildlife biologist with more than 15 years of experience conducting biological surveys and monitoring throughout California, including work for the California Department of Fish and Wildlife's Big Game Program. He has extensive field experience surveying and monitoring special-status species, including California tiger salamander, giant garter snake, foothill yellow-legged frog, California red-legged frog, San Joaquin kit fox, and Swainson's hawk. Mr. Soto has conducted thousands of hours of survey and monitoring work across multiple life stages and habitats and has substantial experience with trapping, burrow excavation, and species handling. Mr. Soto holds a Bachelor of Science in Environmental Studies.

Danika Tsao is a senior wildlife biologist with more than 25 years of experience conducting avian and general wildlife surveys, habitat assessments, and special-status species surveys throughout northern California. She has specialized expertise in biology and impact assessments and has prepared biological assessments, regulatory permit applications, and terrestrial biological sections of environmental documents prepared in compliance with CEQA and its federal analogue, the National Environmental Policy Act (NEPA). Ms. Tsao holds a Master of Science in Ecology.

B. Database Use

As presented in Section 3.4.1, *Environmental Setting*, biological databases such as the California Natural Diversity Data Base (CNDDB), California Native Plant Society (CNPS) online Inventory of Rare and Endangered Plants of California, United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) list, eBird, and iNaturalist were used in combination with field observations and habitat assessments. These sources were used to determine the potential for species occurrence in the study area and to supplement field survey information. Occurrence and impact determinations were based primarily on site-specific habitat conditions, species ecology, hydrologic conditions, and identifiable impact pathways. Database records were evaluated and used as supplemental information. The PRDEIR did not treat the absence of records as evidence of species absence.

C. Species Screening and Habitat Characterization

The PRDEIR's downstream terrestrial analysis evaluates whether Project-related changes in downstream flow conditions would substantially alter the habitat conditions, hydrologic functions, ecological processes, and environmental features that support terrestrial biological resources in the downstream study area. Accordingly, the significance determinations presented in the PRDEIR are based on an evaluation of habitat conditions, ecological functions, habitat requirements, and potential impact pathways, rather than on preparation of a complete inventory of every plant and wildlife species that may occur within the study area.

To support this analysis, as noted above, the biological baseline was also developed through a habitat-focused characterization of the downstream study area using multiple lines of evidence, including reconnaissance-level field investigations, habitat assessments, aerial imagery, land-cover mapping, hydrologic data, species life-history information, scientific literature, agency databases, and other available environmental information. These sources were used to identify and characterize the habitat types, vegetation communities, wetland features, riparian resources, hydrologic conditions, wildlife movement functions, and other ecological features potentially affected by Project operations. Field observations were used to verify that the land-cover mapping generally reflected field conditions, and to further characterize the presence, quality, extent, and distribution of habitat features required by special-status species and to evaluate the suitability of those habitats for special-status and other terrestrial species.

To further document the basis for the biological baseline and habitat characterization, this Second Final EIR includes a new appendix, Appendix E, that includes field documentation from the biological investigations, representative photographs, habitat observations, and plant and wildlife species

observation lists compiled during the July 2025 reconnaissance-level survey, the September 2025 protocol-level VELB survey, and other relevant field investigations.

The purpose of these efforts was to characterize the habitat features relevant to the impact analysis, not to develop a complete inventory of all species present or establish species absence. For this reason, the PRDEIR did not rely on the absence of records in CNDDDB or other occurrence databases as evidence that a species does not occur within the study area.

Specifically, species screening considered: (1) documented geographic range and regional distribution; (2) federal, state, and CEQA special-status designations; (3) known occurrence records from CNDDDB, CNPS, USFWS IPaC, eBird, iNaturalist, and other available sources; (4) species-specific habitat requirements; (5) presence or absence of suitable habitat features within the study area; (6) mapped vegetation communities and land-cover types using publicly available GIS data; (7) hydrologic and environmental conditions necessary to support the species; (8) species life-history requirements such as breeding, nesting, roosting, dispersal, foraging, or refugia needs; and (9) field observations. In addition, field observations were used to verify that the land-cover mapping generally reflected field conditions and to further characterize the presence, quality, extent, and distribution of habitat features required by special-status species and served as an independent line of evidence supporting habitat-suitability determinations. Field observations also helped identify whether suitable breeding, nesting, roosting, foraging, dispersal, refugia, or other life-history habitat was present within the study area. The absence of a species during reconnaissance surveys was not, however, treated as proof that the species was absent. Based on these criteria, species were then evaluated to determine whether a reasonable potential existed for occurrence.

In addition to occurrence potential, the screening process evaluated whether a plausible flow-related impact pathway existed. Specifically, species were assessed to determine whether Project-related changes in downstream flow conditions could reasonably affect the habitat features, hydrologic processes, vegetation communities, or ecological functions on which they depend. Species were carried forward for detailed analysis where the species was documented or reasonably could occur, suitable habitat was present, and Project-related changes could reasonably affect the species or the habitat features on which it depends. Conversely, species were not carried forward where suitable habitat was absent or no reasonable flow-related mechanism existed through which Project operations could affect the species. Low occurrence potential, based on available occurrence information, habitat conditions, and field observations, was considered as additional evidence but was not treated as independently dispositive where suitable habitat and a plausible impact pathway were present.

Consequently, the identification of additional species observations does not, by itself, demonstrate that the habitat characterization is incomplete or that the PRDEIR's impact conclusions are incorrect. Additional species information would materially affect the analysis only if it identified a previously unrecognized habitat resource, ecological function, species dependency or sensitivity, or Project-related impact pathway that was not already evaluated in the PRDEIR. A change in a species' regulatory or listing status, without new information showing a different physical impact, habitat dependency, or impact pathway, would not by itself alter the environmental analysis. Where additional observations involve species whose habitat dependencies and potential impact pathways were already characterized and analyzed, those observations supplement the biological record but do not necessarily change the basis of the impact analysis or the resulting significance determinations.

Accordingly, while the District reviewed and considered the additional species-occurrence information submitted by commenters, including Dr. Smallwood, that information does not alter the habitat characterization, impact pathways, or significance determinations presented in the PRDEIR because it does not identify a previously unrecognized habitat condition, ecological function, species dependency or

sensitivity, or Project-related impact mechanism. Individual species-specific issues are addressed in the corresponding responses to comments and should be read in conjunction with this Master Response.

12.0.4 Master Response 4 – Project-Related Flow Changes

Comment Summary: Several commenters questioned how downstream ecological processes supporting downstream terrestrial resources would be retained despite reduced total flow volume.

The ecological consequences of Project-related flow changes must be evaluated in the context of the existing conditions within the downstream study area. Lower Del Puerto Creek is not a continuous, high-quality riparian system. The PRDEIR describes a substantially altered creek corridor constrained by surrounding agricultural and developed uses, with channel modification, degraded water quality, extensive developed and disturbed land, ruderal grasslands, invasive vegetation, and narrow, fragmented patches of riparian woodland and wetland habitat. Approximately 39.56 acres of the 105.59-acre study area are mapped as developed or disturbed, and the approximately 16.47 acres of riparian woodland occur primarily in small, discontinuous patches. Habitat quality is not uniform, however. Riparian vegetation becomes denser and more developed toward the San Joaquin River, and the remaining riparian and wetland patches may provide important nesting, foraging, cover, and movement functions.

A. Existing Hydrologic Conditions and the Ecological Processes They Support

Del Puerto Creek has a naturally highly variable seasonal flow regime. The 7.4-mile study reach extends from immediately east of Interstate 5 (I-5) to the San Joaquin River and has a distinctly different hydrology from the foothill reach west of I-5. Additional information has been included in a new Appendix G, Del Puerto Creek Monthly Flows, which provides monthly flow data for the 100-year period of record. The data in Appendix G, Del Puerto Creek Monthly Flows, document that flows occur almost exclusively from December through April and primarily from January through March, with substantially higher volumes in Wet and Above Normal years compared to drier year types. Natural flows from Del Puerto Creek reach the San Joaquin River in less than half of years over the 100-year period of record. Further, although flows can occur from December to April, the vast majority of flows occur in January through March (see Table 1). Natural flows reaching the river have never occurred in July through November. During lower-flow periods, conditions within the study area are also influenced by agricultural return flows and West Stanislaus Irrigation District (WSID) operational discharges, channel seepage, localized groundwater recharge, residual soil moisture, and conditions near the San Joaquin River confluence.

Table 1: Number of Years Over 100-Year Period with Creek Flows Reaching River in Each Month

Month	Number of Years with Flows Reaching River
December	4
January	24
February	32
March	29
April	8
May	1
June	1

Source: Appendix G

Because lower Del Puerto Creek naturally experiences extended periods with little or no upstream flow contribution reaching the San Joaquin River, riparian and wetland conditions reflect not only total annual runoff volume, but also the timing of flow events, recession patterns, seasonal groundwater recharge, residual soil moisture, and the intermittent hydrologic processes that sustain vegetation adapted to these variables.

These hydrologic conditions support several related physical and ecological processes. The processes do not occur uniformly throughout the study area or in every year. Their function depends on the timing, magnitude, frequency, and duration and rate of flow change (Chapman et al. 1982; Williams and Hynes 1977), as well as channel conditions and the location of the water source within the creek.

As discussed above, natural runoff in Del Puerto Creek is concentrated in episodic winter and early-spring storm events. Long-term USGS hydrographs for Del Puerto Creek indicate that peak flow events exceeding approximately 500 cubic feet per second (cfs), which are most likely to mobilize sediment and inundate channel margins, occur primarily during the winter runoff period, generally from January through March. During these events, higher flows can scour and redistribute sediment, transport gravel and other coarse material, and wet portions of the channel, banks, and adjacent floodplain. Those processes help maintain channel and floodplain surfaces, redistribute nutrients and organic material, and create or renew conditions that support riparian vegetation and other terrestrial habitat. mobilize and redistribute sediment, transport gravel, nutrients, and other coarse material, and inundate portions of the channel and its margins. These materials replenish floodplain soils, support riparian vegetation growth, and maintain nutrient cycling in terrestrial ecosystem.

As described in the 2020 Final EIR's evaluation of impacts on aquatic resources, Del Puerto Creek's intermittent, flashy events are important to the downstream transport of coarse sediment and gravel. (2020 Final EIR, pp. 3.5-14–3.5-15.) Large-magnitude flows during the annual flood season typically carry a substantial share of the sediment transported by an unregulated stream. (*Ibid.*) Those events can also flush or redistribute sediment containing pesticides and other contaminants, maintain flow and sediment conditions that support native aquatic and riparian species, and disadvantage introduced species that are less adapted to the creek's variable flow regime. (2020 Final EIR, pp. 3.5-14–3.5-15.)

Lower-flow periods also perform important ecological functions. Periods of low flow can create recruitment opportunities for riparian vegetation in systems with intermittent or seasonal hydrology (Wharton et al. 1981). Streams that experience temporary drying, particularly in arid regions, often support riparian species adapted to highly variable conditions (Williams and Hynes 1977; Nilsen et al. 1984). In these systems, moderate flood events and their subsequent recession can establish suitable recruitment conditions along channel margins, while local geomorphic and hydrologic factors influence where recruitment occurs and whether it succeeds. Differences in species' tolerance of prolonged flooding and extended low-flow conditions also allow riparian communities to persist under variable hydrologic regimes, although less tolerant species may be displaced (Chapman et al. 1982; Williams and Hynes 1977). Consistent with conditions in other intermittent stream systems, during extended low-flow periods, riparian vegetation in the study area may rely on seasonal groundwater recharge, residual soil moisture, and other sources of subsurface moisture, rather than continuous surface flow (Stromberg et al. 1996; Griggs 2009).

The ecological significance of these conditions also varies seasonally. Natural runoff from the upper watershed occurs principally during the cool-season rainfall period, while upstream surface flows generally cease by late spring or early summer. During the hot, dry season, when average high temperatures reach approximately 100°F in July, surface water in lower Del Puerto Creek is supported primarily by agricultural return flows and WSID operational discharges, together with localized groundwater and subsurface moisture. (PRDEIR, pp. 3.4-2, 3.4-27–3.4-28.) Thus, the creek's existing riparian and wetland communities experience a recurring seasonal transition from episodic winter and spring runoff to dry-season conditions governed largely by local downstream water sources and stored subsurface moisture.

Fremont cottonwood (*Populus fremontii*) provides a representative example of how these geomorphic and hydrological processes interact. Successful cottonwood recruitment is widely recognized as an indicator of riparian ecosystem health. Cottonwood depends on the maintenance of key hydrologic and geomorphic

processes, including periodic flooding, groundwater availability, and gradual flow recession (Mahoney and Rood 1998; ESSA Technologies Ltd. 2011; Phillips et al. 2021).

Application of the riparian recruitment model described by Phillips et al. (2021) demonstrates that successful cottonwood recruitment depends on the interaction of multiple hydrologic and geomorphic processes rather than on flow magnitude alone. The study evaluated recruitment potential as a function of bed preparation, recession rates, inundation patterns, and scour and burial processes. The results indicate that successful cottonwood establishment depends on the availability of suitable recruitment surfaces, favorable flow-recession conditions, and appropriate levels of disturbance, while no single factor determines recruitment success (Phillips et al. 2021). These findings indicate that the ecological effect of reduced flows depends not simply on the change in total runoff volume, but on how the reduction affects disturbance, recruitment surfaces, recession conditions, and moisture availability for establishment.

The SacEFT model similarly evaluates cottonwood establishment by considering the relationship among daily flow hydrographs, stage-discharge relationships, channel cross sections, seed-dispersal timing, root growth, capillary-fringe height, drought tolerance, and viable rooting depth. The model identifies the seed dispersal period as approximately April 15 to June 21. It assumes a capillary-fringe height of 30 centimeters, a seedling taproot growth rate of 22 millimeters per day, drought tolerance of approximately five days, and a successful access to sufficient moisture once seedlings reach a viable rooting depth of 50 centimeters (ESSA Technologies Ltd. 2011). These parameters illustrate that cottonwood recruitment is controlled by the timing and rate of stage recession in relation to root growth and moisture availability, rather than by total runoff volume alone.

Taken together, the available literature and site-specific information show that the ecological condition of lower Del Puerto Creek is shaped by the interaction of several hydrologic and geomorphic factors. Peak events provide disturbance, inundation, and sediment movement; recession affects the exposure and moisture conditions of recruitment surfaces; and seasonal recharge, residual soil moisture, and subsurface water availability help sustain vegetation during extended low-flow periods. The relative importance of those factors varies by location, season, water year, and species.

Accordingly, a change in total runoff volume does not by itself establish the ecological effect of a flow reduction. The relevant inquiry is how the change affects the timing, magnitude, frequency, duration, and recession of flow events, together with recharge, soil-moisture availability, and the other hydrologic conditions supporting riparian and wetland resources.

B. What the Project Would Change

The Project would reduce the amount of natural Del Puerto Creek runoff that passes through the proposed reservoir site and enters lower Del Puerto Creek. The magnitude of that change depends on the location and hydrologic measure being considered.

At the proposed dam site, average annual flow is approximately 4.4 thousand acre-feet (TAF). Inflow varies substantially by water-year type, averaging approximately 9.6 TAF in Wet years and 6.2 TAF in Above Normal years, but decreasing to approximately 0.9 TAF in Dry years and 0.7 TAF in Critical years.

As discussed above, not all flows measured at the dam site reach the San Joaquin River under existing conditions. As water moves through the approximately 7.4-mile lower-creek reach, a portion infiltrates through the channel bed or is otherwise retained within the creek system before reaching the San Joaquin River. Appendix G, Del Puerto Creek Monthly Flows, therefore, separately estimates the amount of natural Del Puerto Creek flow that would traverse the entire lower-creek reach and reach the San Joaquin River.

Appendix G, Del Puerto Creek Monthly Flows, estimates that, at the San Joaquin River confluence, average annual natural Del Puerto Creek flow would decrease from approximately 1.9 TAF under No

Action conditions to approximately 0.7 TAF under Project conditions – a reduction of approximately 1.2 TAF, or 63 percent. Although this is a substantial percentage reduction in natural creek flow reaching the confluence, the confluence-level percentage does not by itself describe the biological effect throughout the study area. The relevant biological question is how the Project-related changes would affect the hydrologic and geomorphic processes that support terrestrial habitat within the study area.

The modeled changes in natural creek flow reaching the San Joaquin River would occur principally during the winter and early spring runoff period, as shown in Table 2.

Table 2: Rounded Monthly Average Flows (AF/month)

Month	No Action	With Project	Reduction
January	390	180	210
February	870	230	640
March	490	210	280
April	130	60	70
May	10	0	10
June	10	10	0
July	0	0	0
August	0	0	0
September	0	0	0
October	0	0	0
November	0	0	0
December	40	10	30
Annual Total	1,900	700	1,200

Source: Appendix G

The greatest average monthly reduction would occur in February, followed by March and January. A smaller average reduction would occur in April, and Appendix G, Del Puerto Creek Monthly Flows, shows a small reduction in May associated with infrequent late-season flows. The modeling shows no average reduction in natural creek flow reaching the San Joaquin River from June through November. These monthly averages describe long-term modeled conditions at the confluence and do not mean that the same amount of flow would occur, or be reduced, in every year. Del Puerto Creek is highly variable, with many years in which natural upstream runoff does not reach the San Joaquin River, and occasional wetter years in which substantially greater volumes occur (see Table 3).

Table 3: Months Per Year with Creek Flows Reaching San Joaquin River (Years 1921–2021)

# months flows reach river	Year	Total number of years
0	1923, 1924, 1925, 1926, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1939, 1946, 1947, 1948, 1949, 1950, 1953, 1954, 1955, 1957, 1960, 1961, 1964, 1966, 1968, 1970, 1971, 1972, 1974, 1976, 1977, 1979, 1981, 1985, 1987, 1988, 1989, 1990, 1994, 1999, 2001, 2002, 2004, 2007, 2009, 2012, 2013, 2014, 2015, 2018, 2020, 2021	53
1	1936, 1944, 1945, 1951 (Dec 1950), 1965, 1975, 1984 (Dec 1983), 1991, 1992, 2000, 2003 (Dec 2002), 2006, 2008, 2016	14
2	1937, 1938, 1942, 1943, 1952, 1956 (Dec 1951), 1959, 1962, 1967, 1980, 1986, 1996, 2010, 2011, 2019	15
3	1922, 1927, 1928, 1940, 1958, 1963, 1969, 1973, 1978, 1982, 1995, 1997, 2005, 2017	14
4	1941, 1993	4
5	1998	

6	1983	1
---	------	---

The following subsection describes the Project release and other water sources that would continue to influence lower Del Puerto Creek under Project conditions.

C. Water Sources and Releases That Would Remain under Project Conditions

Although the Project would reduce natural runoff from Del Puerto Creek, it would not eliminate downstream flow or other water sources that presently influence lower Del Puerto Creek. Under Project conditions, lower Del Puerto Creek hydrology would continue to reflect several distinct water sources, each with different timing, frequency, magnitude, and spatial influence.

Qualifying storm-event bypass releases. As discussed in Section 1.2.1, *Reservoir Releases*, of the PRDEIR, for every flow event of 500 cfs or greater, environmental releases would be made based on measurements from a new stream gauge installed upstream of the proposed impoundment area. If the gauge measurement exceeds 500 cfs, the first-day release would increase with the measured natural flow, up to 600 cfs or the natural peak period, whichever is less. The release would then decline over as many as six additional days, and return to at or near zero after no more than seven days. (PRDEIR, p. 1-3.)

Agricultural return flows. Lower Del Puerto Creek would continue to receive irrigation return flows from the surrounding agricultural lands. These flows are independent of the natural runoff and would not be altered by the Project. They currently provide much of the surface flow observed in lower Del Puerto Creek during the dry season, when natural upstream runoff is minimal or absent. The July 2025 reconnaissance survey observed visible water inputs from adjacent irrigated fields and estimated creek flow at approximately 5–10 cfs, which is a substantial flow for the arid mid-summer climate conditions of the northern San Joaquin Valley. (PRDEIR, p. 3.4-11.)

WSID operational discharges. WSID operational discharges would also continue independently of Project operations. As explained in the PRDEIR, these discharges occur generally from March through November and augment agricultural return flows during the dry season. At certain times and locations, agricultural return flows and WSID operational discharges are the principal, and sometimes the only, sources of surface water in lower Del Puerto Creek. (PRDEIR, p. 3.4-27.) The Project would not alter either source.

Releases for lower creek groundwater recharge. The Project would implement Mitigation Measure HYD-2, Develop Operation Requirements to Deliver Recharge Water to Lower Del Puerto Creek, as shown on page 3.11-22 of the 2020 Final EIR. That measure requires the Project Partners to develop operating requirements for releases to the lower reach of Del Puerto Creek to make up for natural seepage that would otherwise be lost because of Project operations. Depending on water-year type, antecedent conditions, and Del Puerto Creek inflows, these releases would provide up to 1,700 acre-feet for the benefit of the City of Patterson and would augment existing in-stream recharge conditions. The measure does not require a fixed 1,700-acre-foot release every year. The City's proposed groundwater recharge area, where these recharge benefits would occur, is located directly adjacent to lower Del Puerto Creek at the intersection of the Delta-Mendota Canal and Zacharias Road. Because releases under Mitigation Measure HYD-2 would occur upstream of this location, the released water would provide recharge benefits within lower Del Puerto Creek.

Reservoir excess-inflow spills. The modeling in Appendix F, *Del Puerto Canyon Reservoir Modeling*, further shows that reservoir operations would prioritize environmental bypass requirements and other release obligations, and excess inflows would continue to spill downstream during wetter years. The reservoir modeling indicates that excess-inflow spills would occur in approximately 20 out of 100 modeled years, principally during wetter conditions. These spills would provide episodic downstream flow in addition to the qualifying storm-event releases, although at reduced magnitude and frequency relative to existing natural runoff.

Precipitation and local runoff. Lower Del Puerto Creek would continue to receive direct precipitation and runoff generated from local rainfall events. As discussed in Section 3.4.1, *Environmental Setting*, of the 2020 FEIR, the average annual precipitation is 11.52 inches, with precipitation falling entirely as rain, mostly between October and April. Direct precipitation is highly variable from year to year; however, it contributes to soil moisture, shallow groundwater recharge, seasonal ponding, and short-duration runoff within and adjacent to the creek corridor. These locally generated inputs occur independently of Project operations, providing a recurring source of moisture that supports riparian vegetation and other biological resources in the downstream study area.

Natural infiltration. Existing flow estimates, as shown in Appendix D, *Streamflow Estimates for lower Del Puerto Creek*, of the PRDEIR, account for seepage from the creek channel into the subsurface. That seepage contributes to shallow groundwater recharge and soil moisture within the lower-creek reach, which are among the moisture sources relevant to existing riparian vegetation. The amount and location of infiltration vary along the creek. Agricultural return flows, WSID operational discharges, releases under Mitigation Measure HYD-2, and other downstream releases described above would continue to provide water potentially available for infiltration.

Influence of the San Joaquin River. Conditions at the eastern end of the study area would continue to be influenced by the San Joaquin River. The San Joaquin River influences hydrologic and ecological conditions on Del Puerto Creek near the confluence by providing a consistent source of surface water and groundwater that supports more consistent soil moisture, resulting in a more extensive and complex riparian vegetation structure than is present further upstream on Del Puerto Creek. Seasonal inundation, elevated groundwater levels, and connectivity to the broader San Joaquin River corridor also facilitates wildlife movement through the region.

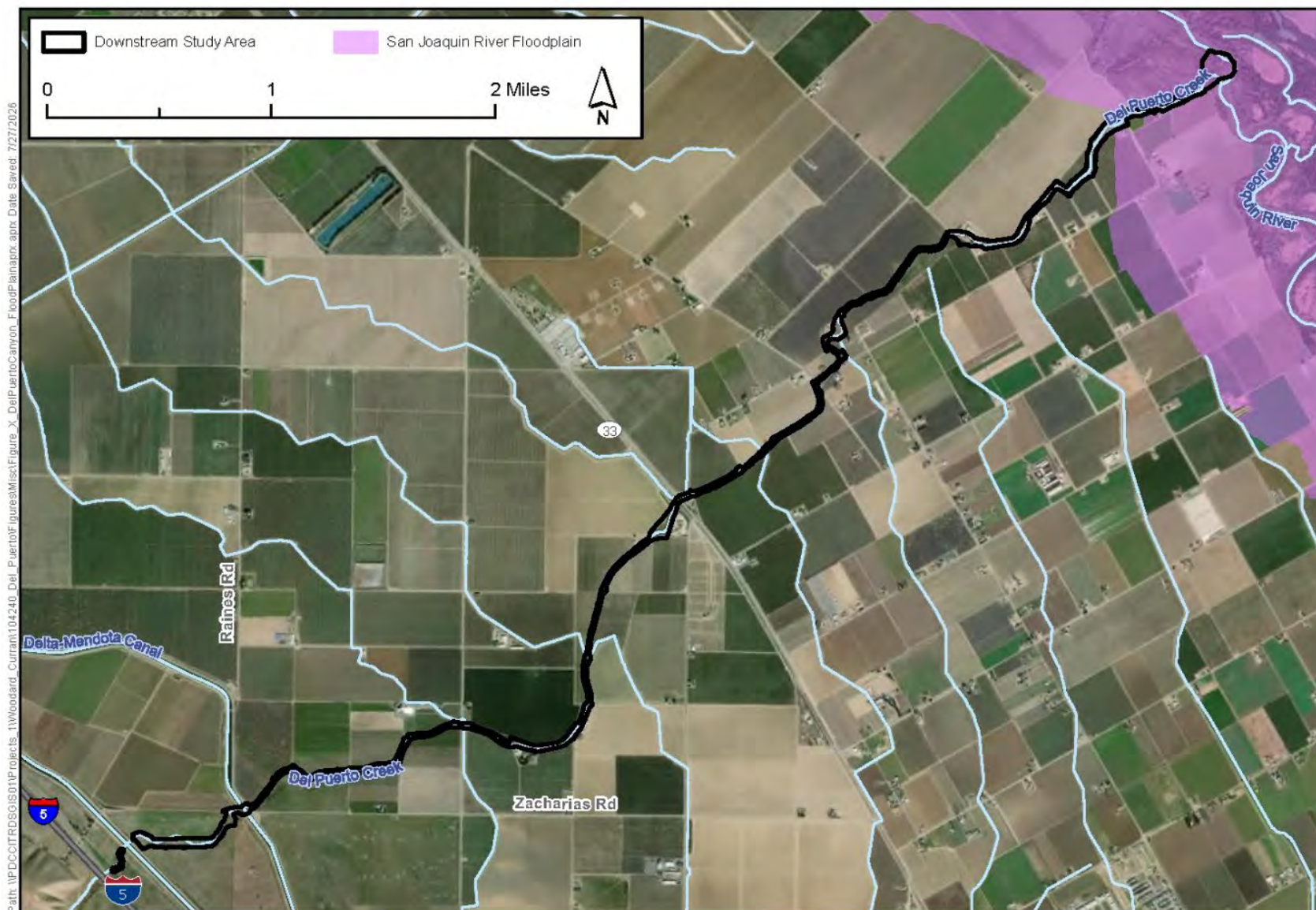
Figure 12-1 illustrates the extent of the San Joaquin River floodplain (shown in purple) at its confluence with Del Puerto Creek. Near the confluence, the broader riparian corridor along Del Puerto Creek lies within the San Joaquin River floodplain. In contrast, the majority of Del Puerto Creek in the downstream study area is located outside of the San Joaquin River floodplain, and is characterized by a narrow, fragmented riparian corridor surrounded by intensive agricultural development and associated residences.

The PRDEIR reports that flow and inundation are more persistent closer to the river and the riparian overstory becomes denser and more developed east of Elm Avenue approaching the confluence. It also identifies denser willow understory and more suitable riparian and aquatic habitat in that portion of the study area, as well as a regional movement corridor along the San Joaquin River (PRDEIR, pp. 3.4-10, 3.4-15, 3.4-18).

The Project would not materially alter the San Joaquin River setting. Appendix F estimates that Project-related changes in average monthly San Joaquin River flow at Vernalis would be less than one percent and would not appreciably change river or Delta flow conditions. Accordingly, the more persistent hydrologic conditions, developed riparian vegetation, and regional connectivity documented near the confluence would remain under Project conditions.

These sources would continue under Project conditions, but they would differ in timing, magnitude, duration, frequency, and location and would not replace natural runoff on a one-for-one basis. The post-Project hydrologic regime would therefore be altered from existing conditions. The analysis below considers how the reduction in natural runoff, together with the continuing releases and downstream water sources described above, would affect the ecological processes identified in Section A.

Figure 12-1 San Joaquin River Floodplain at the Del Puerto Creek Confluence



D. Effect of Project-Related Changes on Ecological Processes

As described in Section B, the Project would reduce the amount of natural runoff entering lower Del Puerto Creek, including the magnitude and frequency of some winter and early-spring flow events. As described in Section C, the post-Project hydrologic regime would nevertheless continue to include qualifying storm-event bypass releases, releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, natural infiltration, and the more persistent hydrologic conditions near the San Joaquin River confluence. The ecological effect of the Project therefore depends on how the reduction in natural runoff, together with those continuing water sources, would alter the processes described in Section A.

Storm Event Disturbance, Sediment Movement, and Inundation

The Project would reduce some of the natural winter and early-spring flows that presently mobilize sediment, inundate channel margins, and create or renew disturbance conditions within lower Del Puerto Creek. Smaller runoff events that do not trigger the 500-cfs release threshold would not produce the same downstream flow under Project conditions, and natural peaks exceeding 600 cfs would not be reproduced at their full magnitude. The Project would therefore reduce the frequency, magnitude, or duration of some storm-driven sediment movement and channel-margin inundation.

Those processes would not be eliminated. For qualifying events, the Project would release up to 600 cfs or the natural peak, whichever is less, followed by a declining release over as many as six additional days. The 2020 Final EIR explains that these releases are intended retain characteristics of Del Puerto Creek's, intermittent, flashy flow regime and continue the downstream transport of coarse sediment and gravel. (2020 Final EIR, pp. 2-13, 3.5-14 to 3.5-15.) Reservoir excess-inflow spills would provide additional downstream flow in approximately 20 of the 100 modeled years, principally during wetter conditions. (Appendix F.)

The remaining higher-flow events would not reproduce every natural storm event or preserve all existing sediment-transport and inundation opportunities. They would, however, continue to provide episodic flows capable of mobilizing sediment, wetting portions of the channel and its margins, and renewing some of the physical conditions that support riparian and wetland vegetation. The effect would therefore be a reduction in the frequency and extent of those processes, rather than their elimination.

Flow Recession, Groundwater Recharge, and Moisture Availability

The Project would also alter recession patterns following some natural runoff events. The declining release required after a qualifying event would retain a short, event-scale recession, but the Project would not reproduce every natural post-peak decline or the longer seasonal recession that may follow a sequence of storms. Because smaller events would not necessarily trigger a release, some existing opportunities for gradual wetting and drying of channel-margin surfaces would also be reduced.

The Project would also reduce natural seepage and recharge associated with runoff that would otherwise pass through lower Del Puerto Creek. The U.S. Bureau of Reclamation's Draft Environmental Impact Statement (EIS) for the Project estimated that approximately 2,400 acre-feet per year of Del Puerto Creek runoff presently percolates into the groundwater basin between the DMC and the San Joaquin River. Under Project conditions, that amount was estimated to decline to approximately 1,300 acre-feet per year, while reservoir seepage would contribute approximately 800 acre-feet per year of additional recharge, resulting in a net reduction of approximately 300 acre-feet per year. (Draft EIS, p. 3.10-11.) Mitigation Measure HYD-2 was developed to address that remaining reduction. It requires an operations manual providing releases to lower Del Puerto Creek sufficient to make up for the estimated 300 acre-feet per year of lost natural seepage, augment flows in dry years, and allow continued in-stream recharge. Depending on water-year type and Del Puerto Creek inflows, the measure also provides for releases of up to 1,700 acre-feet per year to support the City of Patterson's proposed recharge project. (*Ibid.*) Thus, HYD-2 is intended to preserve lower-creek recharge as a hydrologic function, rather than simply replace

surface-flow volume on a one-for-one basis. Although the Draft EIS did not address whether subsurface conditions would remain unchanged at every location within the study area, the measure supports the conclusion that Project operations would continue to provide water for in-channel infiltration and groundwater recharge within the lower reach.

Other water available for infiltration would also remain. Agricultural return flows and WSID operational discharges would continue independently of the Project, including during the dry season when natural upstream runoff is minimal or absent. Qualifying storm-event releases, anticipated water-right bypasses, and occasional reservoir spills would provide additional water under applicable conditions. As those waters move through the lower creek, a portion would remain available for channel seepage, groundwater recharge, and subsurface moisture.

The available record does not establish that recharge would occur uniformly throughout the 7.4-mile study area or that groundwater elevations and soil-moisture conditions would remain unchanged at every location. The Project would reduce one source of recharge and would alter the timing and amount of water available for infiltration. But it would not eliminate the in-channel seepage, seasonal recharge, residual soil moisture, or other subsurface water sources that help sustain riparian vegetation during extended low-flow periods.

The timing of the modeled reductions is also relevant. As shown in Appendix F, *Del Puerto Canyon Reservoir Modeling*, while the Project would result in modeled reductions in Del Puerto Creek flow reaching the San Joaquin River, those reductions would occur primarily during the winter and early spring runoff period, generally December through April, with no modeled reductions from June through November. The Project would therefore reduce some cool-season runoff events and associated recharge opportunities, but it would not alter the agricultural return flows and WSID operational discharges that presently provide much of the surface water in lower Del Puerto Creek during the hottest and driest months. Nor would it eliminate residual soil moisture or subsurface water derived from preceding recharge. The seasonal effect is therefore a reduction in some winter and spring hydrologic inputs, rather than the removal of the water sources that presently sustain lower-creek conditions throughout the summer and fall.

Riparian and Wetland Vegetation Persistence and Recruitment

The Project-related reductions described above could affect riparian and wetland vegetation if they substantially reduced the disturbance, recruitment, or moisture conditions on which those communities depend. Fewer or smaller natural runoff events could reduce some opportunities for channel-margin inundation, sediment redistribution, preparation of recruitment surfaces, and natural recharge. Changes in recession patterns could also alter the timing with which recently wetted surfaces are exposed and the period during which newly establishing vegetation remains connected to available moisture.

The continuing hydrologic conditions would retain those functions in modified form. Qualifying storm-event releases and occasional spills would continue to wet and disturb portions of the channel and its margins. The declining release following qualifying events would retain part of the transition from higher flow to lower flow. Mitigation Measure HYD-2 and the other downstream water sources described in Section C would continue to contribute to recharge, residual soil moisture, and subsurface water availability. Agricultural return flows and WSID operational discharges would continue to provide much of the dry-season surface water observed in portions of lower Del Puerto Creek, particularly east of I-5. Near the confluence, the more persistent flow and inundation conditions and more developed riparian vegetation documented in the PRDEIR would remain associated with the San Joaquin River setting.

The Project would not preserve every natural recruitment opportunity or guarantee successful cottonwood or other riparian recruitment in any particular year. As discussed in Section A, recruitment depends on the interaction of disturbance, suitable substrate, seed-dispersal timing, recession conditions, rooting depth, and continued access to moisture. The relevant question is therefore whether the Project would so alter

those interacting processes that existing riparian and wetland vegetation could no longer persist or recruit over time.

The PRDEIR concludes that the Project would not cause that degree of change. The post-Project regime would continue to include episodic higher flows, declining releases, recharge, residual soil moisture, subsurface water availability, dry-season return flows, and the more persistent conditions near the San Joaquin River. Those conditions would not replicate the existing regime in full, but they would continue to support the principal disturbance and moisture processes relevant to riparian and wetland vegetation. (PRDEIR, pp. 3.4-27–3.4-31, 3.4-34–3.4-36.)

Overall Effect on Ecological Processes

The Project would reduce some natural winter and early-spring runoff and would thereby reduce some opportunities for storm-driven sediment movements, channel-margin inundation, natural recession, and in-stream recharge. At the same time, the Project would not eliminate the episodic higher-flow conditions, recession dynamics, sediment supply processes, or groundwater-supported conditions that continue to sustain riparian habitat. Qualifying storm-event releases and occasional spills would continue to provide episodic disturbance and sediment movement. Releases under Mitigation Measure HYD-2 and the other downstream water sources described in Section C would continue to contribute to recharge, residual soil moisture, and subsurface water availability. Agricultural return flows and WSID operational discharges would continue to support dry-season conditions, and the more persistent hydrologic setting near the San Joaquin River would remain. This outcome is consistent with the natural flow framework, which emphasizes that ecological integrity depends on maintaining the timing, magnitude, and variability of flows. Accordingly, the Project would modify the existing hydrologic regime and reduce the frequency or extent of some ecological processes, but the principal processes supporting downstream riparian and wetland vegetation would continue to operate. Therefore, the Project would not be expected to modify Del Puerto Creek flows to the extent that riparian habitats adjacent to the creek would be adversely affected.

12.1 Comment Letter R1 – Amphibian Refuge, Eric R. Johnson, Executive Director

12.1.1 Response to Comment R1-1

Comment Summary: The comment notes that sensitive amphibian species such as California red-legged frog, California tiger salamander, foothill yellow-legged frog and western spadefoot occur in, or near, the project area, and recommends that surveys should be conducted periodically and that amphibians should be protected if located. The comment also recommends that invasive bullfrogs should be removed if they are threatening the survival of other amphibian species.

All of the species listed in the comment are addressed in the PRDEIR. As discussed in the PRDEIR, the analysis evaluates potential indirect impacts to terrestrial species in the downstream study area resulting from changes in Del Puerto Creek flow conditions; no construction would occur in the study area and no direct habitat disturbance is anticipated. As noted on page 3.4-12 of the PRDEIR, California tiger salamander and western spadefoot were determined to have low potential to occur in the study area based on a review of occurrence records and habitat suitability. These species, along with the other special-status wildlife species evaluated in the PRDEIR, are discussed in detail in Section 3.4. California red-legged frog is discussed beginning on page 3.4-15 and foothill yellow-legged frog is discussed on page 3.4-16. The analysis determined that neither species is expected to occur along the downstream Del Puerto Creek study area due to the absence of suitable habitat. Because the PRDEIR determined that downstream impacts to these species would be less than significant, no additional mitigation is required beyond the measures included in the 2020 Final EIR.

The comment also recommends removal of invasive American bullfrogs where they may threaten other amphibian species. As disclosed in the 2020 EIR (pp. 3.4-47 to 3.4-49), the District acknowledged that creation of the proposed reservoir could support non-native aquatic species, including American bullfrogs and non-native fish, which could increase predation risk to native amphibians within the reservoir footprint. These potential effects were evaluated and addressed in the 2020 EIR and are outside the scope of the PRDEIR, which was prepared to address downstream flow-related effects only. Please refer to Master Response 1: Scope of the PRDEIR for additional information.

With respect to the downstream study area, Section 3.4.1, *Environmental Setting*, of the PRDEIR, documents the existing presence of American bullfrogs, which is among the indicators that the study area provides poor breeding habitat for certain native amphibians under baseline conditions. Because no construction or land-cover conversion would occur in the study area, and Project operations would not alter the habitat or hydrologic conditions that influence bullfrog distribution or abundance, the Project would not increase bullfrog abundance or predation pressure on native amphibians in the study area. The recommendations for invasive species removal therefore represents a management or policy preference, rather than identification of a Project-related impact requiring mitigation under CEQA.

Regarding the request for periodic amphibian field surveys, the Court of Appeal addressed and rejected the argument that the use of reconnaissance-level rather than protocol-level surveys rendered the biological resources analysis inadequate. (See Opinion, pp. 17–18.) The court found that the EIR provided a sound justification for its survey methodology. This reasoning applies with equal or greater force to the downstream study area, where no construction would occur, no land cover would be converted, and the potential impacts are limited to indirect effects from changes in flow conditions. The PRDEIR's reconnaissance-level surveys, supplemented by CNDDDB and USFWS occurrence data, species-specific habitat assessments, and the conservative assumption of species presence where suitable habitat exists, provide a sufficient basis for the impact analysis.

12.2 Comment Letter R2 – California Native Plant Society, Brendan Wilce, Conservation Program Coordinator

12.2.1 Response to Comment R2-1

Comment Summary: The commenter asserts that the study area was too narrowly defined, limited only to areas immediately adjacent to Del Puerto Creek, even though the entire floodplain could be affected. The commenter requests justification for the study area selection or expansion of the analysis.

The study area for downstream terrestrial resources was defined to capture all habitats and species that could reasonably be affected by Project-related changes in creek flows. As described in Section 3.4.1 of the PRDEIR, the study area includes the 7.4-mile reach of lower Del Puerto Creek from immediately east of I-5 to the San Joaquin River, together with a variable-width buffer extending outward from the creek channel. The buffer was defined based on the extent of adjacent agricultural lands and was designed to encompass the range of existing habitat types that may support terrestrial or semi-terrestrial species potentially affected by changes in creek flows, including riparian wetlands, seasonal wetlands, grasslands, orchards, and vineyards. The study area also includes adjacent upland habitat that may support terrestrial species independent of direct hydrological inputs. The surrounding landscape in this reach consists predominantly of flat agricultural land sloping toward the San Joaquin River, and the study area buffer extends across this area to capture the floodplain and other habitats that could be affected by flow-related changes.

Please refer to Master Response 1: Scope of the PRDEIR, which explains the judicial basis for confining the analysis in the PRDEIR to an assessment of impacts on downstream terrestrial biological resources, and Master Response 3: Biological Baseline and Species Occurrence, which explains how the biological baseline and study area were defined based on existing conditions and reasonable impact pathways.

12.2.2 Response to Comment R2-2

Comment Summary: The commenter states that botanical surveys were conducted outside the bloom periods of several special status plant species, making detection unlikely, and contends that additional surveys during appropriate seasonal windows are required. The commenter also asserts that the absence of reference sites and the brief, time limited nature of the surveys increase the likelihood that small, short lived, or easily overlooked species were missed.

Please refer to Master Response 3: Biological Baseline and Species Occurrence for additional background on the biological baseline and the information used to determine potential species occurrence in the study area.

Please also refer to Master Response 1: Scope of the PRDEIR, which explains that the scope of the PRDEIR is limited by the Court of Appeal's remand to evaluation of indirect, flow-related impacts on downstream terrestrial species.

Direct, footprint-level impacts on special-status plants, including the species cited in the comment, were identified and evaluated in the 2020 EIR, and discussed in Appendix B3, *Memorandum regarding Special-Status Plant Assessment–Del Puerto Canyon Reservoir Project*, of the 2020 EIR. The 2020 EIR includes Mitigation Measure BIO-TERR-1b, which requires that prior to the start of any proposed project activities, surveys shall be conducted in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* during the season that special-status plant species would be evident and identifiable, which generally is during their blooming season.

The plant species cited in the comment – Lemmon's jewelflower (*Caulanthus lemmonii*; CRPR 1B.2), San Benito poppy (*Eschscholzia hypocoides*; CRPR 4.3), and diamond-petaled California poppy (*Eschscholzia rhombipetala*; CRPR 1B.1) – are native plant species with no federal or state listing status.

Reconnaissance-level surveys conducted within the downstream study area did not observe any special-status plants. Notwithstanding the absence of observation, these species were treated as potentially present in the downstream study area based on their documented occurrence in or near Del Puerto Canyon, and were carried forward for analysis in Impact BIO-TERR-DS-1a (Special-Status Plants).

The impact analysis in Impact BIO-TERR-DS-1a evaluated whether Project-related changes in downstream flow conditions could affect habitat for these species. No construction or land-cover conversion would occur in the study area; dry-season flows in lower Del Puerto Creek are supplied primarily by irrigation return flows from adjacent land uses and operational discharges from the West Stanislaus Irrigation District, which would be unchanged under Project operations. The Project's environmental flow commitments would retain selected characteristics of qualifying early-season storm events, while separate recharge releases, occasional excess-inflow spills, irrigation return flows, and WSID operational discharges would continue to support subsurface moisture, seasonal groundwater recharge, and residual soil moisture, and other subsurface moisture conditions relevant to downstream vegetation. Plant species in this region may rely, during extended low-flow periods, on seasonable groundwater recharge, residual soil moisture, and other sources of subsurface moisture rather than continuous surface flow. The PRDEIR therefore concludes (i) that Project operations would not materially alter the soil-moisture and habitat conditions relevant to diamond-petaled California poppy, San Benito poppy, and Lemmon's jewelflower, (ii) that no measurable change in the extent or quality of habitat for these species is expected, and (iii) that impacts would be less than significant. Because these species were treated as potentially present and the impact analysis turns on whether Project operations would change the habitat conditions on which they depend, rather on whether individual plants are detected through bloom-period surveys, additional bloom-period or referenced-site botanical surveys in the downstream study area would not yield information material to the impact conclusion in Impact BIO-TERR-DS-1a.

12.2.3 Response to Comment R2-3

Comment Summary: The commenter disagrees with the PRDEIR's decision not to carry forward 21 special-status plant species that the commenter contends have suitable habitat in the study area. The commenter argues that the decision improperly relies on the absence of documented occurrences, misuses CNDDDB data and violates the database's use agreement. The commenter requests that a complete analysis of these species be included in a Supplemental PRDEIR.

The PRDEIR does not conclude that only the species expressly identified in the document occur within the study area. Rather, special-status species were screened and either carried forward or dismissed from further analysis based on habitat suitability, species life-history requirements, proximity of known occurrences, and whether a plausible mechanism exists by which Project operations could affect the species. Species were not carried forward for detailed analysis where no such impact pathway was identified.

The PRDEIR does not rely solely on the absence of CNDDDB records to exclude the 21 special-status plant species from further analysis. As described in Appendix C, *Special Status Species Tables* and Chapter 3.4, *Biological Resources—Downstream Terrestrial*, Section 3.4.1, *Environmental Setting*, potential species occurrence was based on multiple factors, including documented species distribution requirements, blooming periods, known occurrences, mapped land-cover types, sensitive natural communities, and the presence of suitable habitat for these species within the study area. This environmental setting information provided the basis for determining which species could reasonably be expected to occur within the study area and warrant further impact analysis.

As detailed in Chapter 3.4, *Biological Resources—Downstream Terrestrial*, Section 3.4.1, *Environmental Setting*, certain species were included in the analysis even where they were not observed during past surveys, based on their documented regional occurrence within mapped suitable habitat in the study area (e.g., California alkali grass). For the 21 special-status plant species identified in the comment, the site-

specific habitat conditions necessary to support occurrence, such as saline soils or vernal pool features, were determined to be absent from the study area. The species were therefore not carried forward based on habitat conditions, not merely because no occurrence records were identified.

In this Second Final EIR, the text on page 3.4-21 of Section 3.4.3, *Impact Analysis*, of the PRDEIR has been revised to add this additional text to clarify that the analysis was not driven by CNDDDB database information alone and to explain that screening determinations were based on multiple factors, including species-specific habitat requirements, land cover mapping, and evaluation of site conditions.

“As presented in Section 3.4.1, *Environmental Setting*, biological databases such as the CNDDDB, CNPS online Inventory of Rare and Endangered Plants of California, USFWS IPaC list, eBird, and iNaturalist were used in combination with field observations and habitat assessments. These sources were used to determine the potential for species’ occurrence in the study area and to supplement field survey information. Occurrence and impact determinations were based primarily on site-specific habitat conditions, species ecology, hydrologic conditions, and identifiable impact pathways. Database records were evaluated and used as supplemental information. The absence of records is not treated as evidence of species absence.”

An unexpected observation of an individual species would not, by itself, establish a Project-related impact. Because no construction, grading, or land-cover conversion would occur in the downstream study area, any potential effect would have to arise through a change in a habitat feature or hydrologic condition on which the species depends. The comment does not identify such a dependency or impact pathway for the 21 species. Thus, even assuming an individual were occasionally present, the available information does not identify a reasonable mechanism by which Project operations would substantially affect the species.

The PRDEIR’s treatment of other-special status plants demonstrates that the screening process did not equate lack of observation with absence. Big tarplant, San Benito poppy, Diamond-petaled California poppy, Lemmon’s jewelflower, and California alkali grass were all carried forward where regional occurrence information and habitat conditions supported a reasonable potential for occurrence. Impact BIO-TERR-DS-1a, then evaluates whether Project-related changes in flow would materially alter the habitat features on which those species could depend.

Accordingly, the PRDEIR’s screening of special-status plant species was based on multiple lines of evidence and a species-specific evaluation of habitat and potential impact pathways. The comment does not identify information demonstrating that any of the 21 species depends on a habitat feature present in the study area that could be materially affected by Project-related changes in downstream flow.. Consistent with CEQA requirements, the Court of Appeal’s Opinion, and applicable case law, the survey methods and level of analysis presented in the PRDEIR constitute substantial evidence and adequately support the conclusions regarding potential impacts to special-status plant species. Preparation of a Supplemental PRDEIR is therefore not required.

12.2.4 Response to Comment R2-4

Comment Summary: The comment contends that reconnaissance-level surveys are insufficient to establish baseline conditions for the downstream study area and that protocol-level surveys should be conducted before the District can conclude that downstream impacts would be less than significant. The comment further argues that a Supplemental PRDEIR should be circulated for public review if protocol-level surveys are not conducted.

The Court of Appeal addressed and rejected essentially this same argument concerning protocol level surveys with respect to the 2020 Final EIR. The Petitioners (who include the commenter) in the underlying litigation argued that the EIR’s reliance on reconnaissance-level studies rather than protocol-level surveys rendered the biological resources analysis inadequate. The Court disagreed, finding that the EIR provided a sound justification for using reconnaissance-level surveys – namely, that protocol-level

surveys are typically valid for a limited period and may no longer be valid by the time construction begins – and that the EIR appropriately assumed species presence where suitable habitat existed. (See Opinion, pp. 17–18.) While the Court of Appeal’s discussion addressed the surveys within the Project footprint, its reasoning applies with equal or greater force to the downstream study area, where the potential for significant impacts is more attenuated and the PRDEIR concludes that no significant impacts would occur.

The Court of Appeal’s reasoning on this issue was consistent with a line of earlier cases reaching the same conclusion based on similar facts, where petitioners attempted to argue that CEQA somehow impliedly requires important biological protocols developed for laws other than CEQA. The opinions in this line of cases make clear that CEQA does not require that lead agency employ “protocol” survey methodologies that agencies such as CDFW or the United States Fish and Wildlife Service may require when engaged in their own permitting under laws such as the California Endangered Species Act or the federal Endangered Species Act. The need for such surveys, as the bases for conclusions in EIRs, was rejected, for example, in *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383. There, the respondent county’s biologists conducted a “reconnaissance level biological field survey” and reviewed the California Natural Diversity Data Base (CNDDB), which “indicated that five special-status animal species, four special-status plant species, and two natural vegetation communities have been reported in areas near the proposed project locations.” (*Id.* at p. 1393.) Based on the survey and project layout, however, the biologists concluded that “no significant impacts to threatened or endangered species or their habitats are expected as a result of this project.” (*Id.* at p. 1394.)

In commenting on Madera County’s Draft EIR, the Center on Race, Poverty and the Environment (CRPE) argued that the document’s conclusions regarding biological resources were unsupported “because the field study did not follow survey guidelines for sensitive species that were issued by Fish and Game to determine the presence of state listed species. [CRPE] asserted that County was required to conduct a protocol level study that complied with the survey guidelines.” (*Ibid.*) In addition, in comments on the Draft EIR, the USFWS (i) stated that “the dairy site provides ‘foraging habitat and a travel corridor’ for kit foxes,” (ii) asserted that the proposed project would require an “incidental take permit” under the Endangered Species Act, and (iii) urged the county to adopt mitigation requiring “compensation for any loss of habitat ... that impede the movement of the kit fox.” (*Id.* at pp. 1394-1395.) The county opted to reject all of these suggestions, maintaining that “the dairy is unlikely to adversely impact or result in a kit fox ‘take[.]’” (*Id.* at p. 1395.)

The Court of Appeal upheld the County’s approach, as its conclusions were supported by substantial evidence:

County was not required to conduct a protocol level study merely because CRPE requested it in its comment. CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project. The fact that additional studies might be helpful does not mean that they are required. [Citations.] The agency has discretion to reject a proposal for additional testing or experimentation. [Citation.] The response to CRPE’s comment adequately explains why a protocol level study in conformity with the survey guidelines was not conducted; no quality natural habitat was present on the site, no sensitive species or their sign was detected during the field survey and the NDDB query showed only one kit fox sighting a decade ago and it was over eight miles south of the dairy site. For these many reasons, we conclude that appellant has not shown that CEQA required use of the survey guidelines in this instance. The biological report (which discusses field survey, the NDDB query and the conclusions Duncan reached from this data) constitutes substantial evidence supporting the determination reached in the FEIR and the finding adopted by the board that, as mitigated, the dairy will not significantly affect the kit fox.

Although the biological resources section of the FEIR is brief, it contains sufficient information and analysis to enable the public to discern the analytic route the agency traveled from evidence to action. The FEIR explains that the dairy site has been in agricultural cultivation for many years and does not contain quality natural habitat. No kit fox or their sign was observed on the dairy site. The NDDDB query revealed that there had only been one kit fox sighting in the vicinity since 1990 and this sighting occurred eight miles away in a large tract of native land. Thus, it is likely that kit fox do not frequent the dairy site. ***

*** While there were differing opinions on the issue of whether the dairy would impact the kit fox and whether the mitigation measure would be effective, the board was entitled to choose to believe one side more than the other. [Citation] Appellants disagree with the analysis and conclusions reached in the FEIR. Yet, this does not render the FEIR legally insufficient.

(*Id.* at pp. 1396-1398.)

Other relevant case law echoes this deferential reasoning. (See, e.g., *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1124-1125 [upholding an analysis of impacts on the California tiger salamander even though it was not based on the methodology recommended by the Department of Fish and Game; “requiring a study that takes place over two winters could conflict with the requirement that EIRs for private projects be prepared and certified within one year”].)

Here, the PRDEIR explains its survey methodology on page 3.4-21, noting that “[f]ocused or protocol-level surveys are not warranted for this analysis, as the reconnaissance-level survey provided sufficient coverage and data to support the impact analysis in this PRDEIR.” The PRDEIR further explains that while potentially viable habitat conditions were identified in some instances, “habitat conditions suggest a low likelihood of the actual presence of such species” and that “[g]iven 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.” (*Ibid.*) This approach is consistent with the methodology upheld by the Court of Appeal in this case and the line of cases described above, and reflects the professional judgment of the biologists who conducted the surveys.

Moreover, the nature of the downstream analysis further supports the adequacy of reconnaissance-level surveys. As required by the Court, the PRDEIR evaluates the potential indirect impacts on downstream terrestrial species resulting from changes in Del Puerto Creek flow conditions. No direct impacts would occur downstream because construction would not occur in the downstream study area and the area is not included in the Project footprint. The impact pathway is limited to potential flow-related changes, and the analysis concludes that existing conditions would be maintained. As a result, exhaustive species-by-species protocol-level surveys are not necessary to support the significance determination.

Because the PRDEIR adequately addresses impacts to downstream terrestrial species, preparation of a Supplemental (or Recirculated) PRDEIR is not warranted.

Please also see Master Response 3: Biological Baseline and Species Occurrence, which explains how the biological baseline and survey approach were defined based on existing conditions, reasonable impact pathways, and CEQA requirements.

12.2.5 Response to Comment R2-5

Comment Summary: The commenter asserts that the Field Survey Results section lacks essential information required under CDFW's 2021 Protocols, including surveyor qualifications, survey effort, reference site data, species lists, maps, and discussions of survey limitations. Additional analysis requirements are suggested if special-status species are detected in subsequent surveys.

Please refer to Master Response 3: Biological Baseline and Species Occurrence, which describes the reconnaissance-level biological survey conducted in the downstream study area on July 14, 2025, and the protocol-level valley elderberry longhorn beetle survey conducted on September 9, 2025, including the surveyors' names and qualifications, survey effort and division, climatic conditions, and the intended scope of each survey. As explained in that Master Response, the July 14 survey was reconnaissance-level and was not represented or intended to satisfy CDFW's 2021 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, which govern protocol-level botanical surveys conducted to support direct, footprint-level impact assessment. Protocol-level botanical surveys for direct impacts to special-status plants in the Project footprint are required by Mitigation Measure BIO-TERR-1b of the 2020 EIR prior to any Project-related ground-disturbing activity. No ground-disturbing activities or land-cover conversion would occur in the downstream study area.

As further explained in Master Response 3, the PRDEIR assumes the presence of special-status species in the study area where suitable habitat is present. The impact analysis in Impact BIO-TERR-DS-1a evaluates whether Project-related changes in downstream flow conditions would alter habitat conditions on which special-status plants depend, rather than whether particular plants are detected during surveys. Because the impact conclusion turns on habitat conditions rather than on confirmed individual species occurrence, the additional protocol-level documentation items identified in the comment, including reference sites, phenology data, false-negative analysis, and the analytical content the comment identifies for follow-up surveys, would not yield information material to the impact conclusion in Impact BIO-TERR-DS-1a.

12.3 Comment Letter R3 – Friends of the River, Sierra Club Motherlode Chapter, Center for Biological Diversity, Save Del Puerto Canyon, Save Mount Diablo, Mount Diablo Bird Alliance

12.3.1 Response to Comment R3-1

Comment Summary: The comment acknowledges the PRDEIR's stated focus on downstream terrestrial impacts and submit their comments accordingly, while reserving the merits of the commenters' prior comments on the 2019 Draft EIR and their prior litigation positions.

To the extent the commenters intend to preserve arguments raised in prior comments on the 2019 Draft EIR, the District responded to those comments in the 2020 Final EIR, and those responses remain adequate as confirmed by the Superior Court and Court of Appeal.

To the extent the commenter seeks to preserve litigation positions that were, or could have been, advanced in *Sierra Club et al. v. Del Puerto Water District* (Stanislaus County Superior Court Case No. CV-20-005193; Court of Appeal Case No. F086218), the District notes that the Sierra Club, Friends of the River, and the Center for Biological Diversity were named Petitioners in that proceeding. Of the 25 arguments Petitioners raised in the trial court, 24 were ultimately rejected, either by the Superior Court, by the Court of Appeal, or by Petitioners' own decision not to pursue them on appeal. The PRDEIR appropriately addresses the sole issue on which Petitioners prevailed (i.e., analysis of downstream impacts to terrestrial species). The doctrine of collateral estoppel bars issues that were actually litigated and

necessarily decided against the Petitioners, and the doctrine of res judicata bars issues that could have been raised but were not. These doctrines apply directly to the Sierra Club, Friends of the River, and the Center for Biological Diversity as named parties in the prior proceeding, and also apply to Save Del Puerto Canyon and the Mount Diablo Bird Alliance as privies to the Petitioners, as discussed in Master Response 1: Scope of the PRDEIR.

The commenters' general reservation of "continuing merits" of prior positions does not alter this analysis or preserve any right to relitigate resolved claims. For a more detailed discussion of these principles, please see Master Response 1: Scope of the PRDEIR.

12.3.2 Response to Comment R3-2

Comment Summary: The comment asserts that the neither the 2019 Draft EIR nor the PRDEIR analyzed the "whole of the action" as required by CEQA Guidelines section 15378, and that the District must recirculate a revised Draft EIR addressing the entire project and alternatives.

These contentions are without merit and appear to be an attempt to get around the narrow scope of the remand required by the Court of Appeal opinion in this case. As an initial matter, the 2020 Final EIR did evaluate the whole of the Project, including the inundation of the area behind the dam and the effects of reservoir operations on downstream hydrology. The 2019 Draft EIR described the Project in detail in Chapter 2, Description of the Proposed Project, and thoroughly analyzed the environmental consequences of constructing and operating the Project, including impacts to hydrology and water quality, and land use and recreation, among others. The effects of reservoir inundation were addressed throughout the EIR's impact analyses, and the effects of reservoir operations on downstream conditions were specifically evaluated with respect to aquatic resources in Section 3.5, Biological Resources—Fisheries. The Court of Appeal found no deficiency in any of these analyses. The sole deficiency the court identified was the absence of an analysis of potential impacts to terrestrial species downstream of the proposed reservoir, which is the issue addressed in the PRDEIR.

The assertion that the PRDEIR must analyze "the entire proposed project and alternatives" fundamentally mischaracterizes the purpose and legal basis of the PRDEIR. The PRDEIR was not prepared as a new or replacement EIR. It was prepared to cure a single, narrowly defined deficiency identified by the Court of Appeal, consistent with Public Resources Code section 21168.9 and CEQA Guidelines section 15088.5. The District is not obligated to revisit aspects of the EIR that the Superior Court and Court of Appeal have held to be legally adequate. (See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112 [agency "need only correct the deficiency in the EIR that we have identified before considering recertification"].)

Furthermore, as discussed in Response to Comment R3-1 and Master Response 1: Scope of the PRDEIR, the doctrines of collateral estoppel and res judicata would bar the commenters from litigating the issue of whether the EIR failed to evaluate the "whole of the action."

12.3.3 Response to Comment R3-3

*Comment Summary: The comment contends that the PRDEIR's cumulative impact analysis is inadequate and unlawful because it relies on the existing degraded condition of the study area to minimize the significance of the Project's incremental contribution to cumulative impacts on downstream terrestrial resources. The comment argues that this approach sets a harmful precedent, particularly for environmental justice communities already suffering from cumulative pollution impacts, and notes that approximately 41.5 percent of the downstream study area remains in a natural or near-natural state based on the commenters' reanalysis of Table 3.4-1. The comment cite Public Resources Code section 21083, subdivision (b)(2), and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, for the principle that as cumulative conditions worsen, a smaller incremental contribution from a project may be sufficient to constitute a cumulatively considerable impact, and contend that the PRDEIR's approach is contrary to this standard.*

Please refer to Master Response 3: Biological Baseline and Species Occurrence, which details the biological baseline used in the PRDEIR.

The courts have repeatedly confirmed that degraded conditions must be included in the baseline. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321–322 [“the baseline for an agency’s primary environmental analysis under CEQA must ordinarily be the actually existing physical conditions rather than hypothetical conditions that could have existed under applicable permits and regulations”]; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 [baseline properly included conditions resulting from illegal mining and clearing activities]; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 [baseline properly included unauthorized airport expansion operations]; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357 [baseline properly included playground facilities constructed in potential violation of city code].) The principle that existing degraded environmental conditions should be reflected in the environmental baseline has specifically been applied to aquatic systems in which ongoing environmental impacts have harmed fisheries and other aquatic resources. (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 872-874 [baseline appropriately reflected ongoing Delta export operations].)

The requirement to include degraded conditions in the baseline serves CEQA’s informational purposes by providing “the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.” (CEQA Guidelines, §15125, subd. (a).) As one court explained, “how present conditions come to exist may interest enforcement agencies, but that is irrelevant to CEQA baseline determinations—even if it means preexisting development will escape environmental review under CEQA.” (*World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 502.) This approach ensures that environmental review focuses on the actual changes a project will cause to the environment as it currently exists, rather than comparing the project to an idealized or legally compliant baseline that does not reflect reality. (*Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 559– 560.)

Consistent with this authority, the PRDEIR’s description of the current condition of the study area properly includes its history of alteration by intensive agricultural activities, channel simplification, and water quality degradation. This is not an argument that further degradation is acceptable; it is a factual description of the existing conditions against which the Project’s potential impacts must be evaluated.

With respect to cumulative impacts specifically, the PRDEIR’s conclusion that the Project’s incremental contribution to cumulative impacts on downstream terrestrial biological resources would not be cumulatively considerable is based on the specific findings that no construction would occur within the downstream study area, that the Project’s environmental flow commitments are designed to maintain existing habitat conditions, that dry-season flows would remain unchanged, and that mitigation measures in the 2020 Final EIR would avoid, compensate for, or replace habitat for the Project as a whole. (PRDEIR, pp. 3.4-38 to 3.4-40.) In other words, the PRDEIR’s conclusion that the Project would not cause a cumulatively considerable impact on downstream terrestrial resources is based on the finding that the Project would not cause an incremental adverse effect to downstream terrestrial resources in the first place, rather than on a comparison of the Project’s contribution to the magnitude of the existing cumulative condition.

Regarding footnote 2 of the comment, which distinguishes the commenter’s concerns from those “that the Court found to be ‘speculative,’” it is not entirely clear which portion of the Opinion the commenter is referencing. The footnote appears to refer to the Court of Appeal’s discussion of whether the 2020 Final EIR was required to analyze the possibility that the Bureau of Reclamation might alter Delta pumping operations in the future. The Court found in favor of the District on that issue, agreeing that such indirect impacts were too speculative to require analysis. (See Opinion, pp. 6–10.) To the extent the commenters intend to distinguish its downstream ecosystem concerns from that holding, the District notes that the

PRDEIR's analysis of downstream terrestrial impacts does not rely on any finding of speculation. Rather, it directly evaluates the reasonably foreseeable indirect effects of reservoir construction and operations on terrestrial species and habitats within the study area, based on hydrologic data, field surveys, and the Project's environmental flow commitments.

The commenter correctly notes that there is a range of land cover types within the study area, including riparian woodland, riparian wetland, grassland, and intermittent stream features. The PRDEIR does not dispute that portions of the study area remain in "their natural or near-natural state." These natural and near-natural land cover types coexist with substantial modifications elsewhere in the study area from roadway infrastructure (e.g., highway and canal crossings), agricultural return flows, channelization and vegetation clearing for agricultural use, and water quality degradation, all of which are documented in Section 3.4.1, *Environmental Setting*. As further described therein, agricultural return flows play a dominant role in sustaining surface flows and soil-moisture conditions, while historical and ongoing physical disturbances have altered water and sediment quality in the portion of lower Del Puerto Creek within the study area. This baseline characterization reflects both the existence of natural and near-natural land cover types in the study area and the extensive modifications that have influenced the existing ecological conditions and functions of these land cover types. These natural and near-natural land cover types were evaluated in the PRDEIR's impact analysis, including impacts to riparian habitat (BIO-TERR-DS-2) and impacts to wetlands (BIO-TERR-DS-3). In sum, the PRDEIR's biological baseline does not minimize or disregard areas of natural vegetation within the study area, nor does it promote environmental degradation. Rather, consistent with CEQA requirements, it provides a balanced and factual description of existing baseline conditions to support an accurate evaluation of the Project's potential impacts on downstream terrestrial resources.

The District does not dispute the general legal principles cited by the comment that a cumulative impact analysis must not rely on the degraded condition of the study area to minimize the significance of a project incremental contribution to cumulative impacts (citing Public Resources Code section 21083, sub. (b)(2) and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98). However, for the reasons discussed above, the comment's argument rests on a mischaracterization of the PRDEIR's analysis. The PRDEIR does not use the degraded condition of the study area to trivialize the Project's incremental contribution to cumulative impacts. Rather, the PRDEIR's cumulative impact analysis concludes that the Project would not cause an adverse incremental effect on downstream terrestrial resources in the first place, because Project operations would maintain, in relative terms, the existing hydrologic and habitat conditions that support terrestrial species in the study area.

12.3.4 Response to Comment R3-4

Comment Summary: The comment contends that the PRDEIR's analysis of wildlife corridors (Impact BIO-TERR-DS-4) is internally inconsistent because the PRDEIR acknowledges the ecological importance of habitat connectivity and identifies regionally recognized wildlife corridors within and near the study area, but then, according to the comment, relies on the fragmented and agriculturally dominated condition of the landscape to support a less-than-significant finding. The comment argues that this approach undermines the purpose of connectivity analysis, which is to protect remaining connectivity rather than to dismiss its importance because prior fragmentation has already occurred.

The District disagrees with the comment's characterization of the PRDEIR's analysis.

As a threshold matter, the comment's discussion does not clearly distinguish between impacts to wildlife corridors within the Project footprint and impacts to wildlife corridors in the downstream study area. These are separate subjects with separate analyses addressing different geographic areas and different impact mechanisms. The 2020 Final EIR evaluated impacts to wildlife movement and corridors within and adjacent to the Project footprint, including impacts from reservoir inundation and the relocation of Del Puerto Canyon Road, and concluded that these impacts would be significant prior to mitigation. The

PRDEIR's analysis of Impact BIO-TERR-DS-4, by contrast, evaluates only whether changes in downstream flow conditions in the portion of lower Del Puerto Creek within the study area would interfere with wildlife movement or corridors in the study area downstream of the proposed reservoir. The PRDEIR's less-than-significant finding applies solely to this downstream analysis and does not revisit or alter the 2020 Final EIR's conclusions regarding impacts within the Project footprint, which the Court of Appeal found to be adequate.

To the extent the comment is addressing the PRDEIR's analysis of Impact BIO-TERR-DS-4, the commenter's concern reflects the same misconception regarding the PRDEIR's treatment of existing conditions addressed in Response to Comment R3-3. As discussed there, CEQA requires that existing physical conditions serve as the baseline against which a project's impacts are measured. (CEQA Guidelines, § 15125, subd. (a).) Describing the current state of habitat connectivity in the study area is a necessary component of the environmental setting that informs the significance determinations.

Importantly, the PRDEIR's less-than-significant finding for Impact BIO-TERR-DS-4 does not rest on the premise that connectivity in the study area is already too degraded to warrant protection. Rather, the finding rests on the following analytical conclusions and does not depend solely on the study area's existing level of fragmentation: (i) no construction would occur in the study area and no land cover would be converted; (ii) flows in lower Del Puerto Creek are primarily maintained by irrigation return flows and West Stanislaus Irrigation District (WSID) operational discharges, which would remain unchanged under the proposed Project; (iii) the Project's environmental flow commitments would retain selected characteristics of qualify rainy-season storm events, including an event-scale peak of up to 600 cfs or the natural peak, whichever is less, followed by a declining releasing over no more than seven days, while separate recharge releases, occasional excess-inflow spills, irrigation return flows, and WSID operational discharges would continue to support sediment transport, seasonal recharge, and the hydrologic conditions relevant to existing riparian corridors; and (iv) Project operations would not create a new physical barrier or otherwise exacerbate existing fragmentation.

The sentence in the PRDEIR, quoted by the comment, that "the existing landscape in the study area is fragmented and agriculturally dominated, which inherently limits habitat connectivity" provides factual context regarding the current state of connectivity in the study area. It does not serve as the basis for the less-than-significant determination. The basis for that determination is the affirmative finding, supported by hydrologic data and the Project's environmental flow commitments, that Project operations would maintain the structure and function of existing wildlife corridors and native wildlife nursery sites. The PRDEIR's analysis is consistent with the commenter's own stated concern about "saving the remaining connectivity" in that the analysis concludes, based on substantial evidence, that the remaining connectivity would in fact be preserved.

12.3.5 Response to Comment R3-5

Comment Summary: The contends that the PRDEIR fails to analyze how the physical presence of the dam and reservoir would act as a barrier to terrestrial species migration and dispersal, potentially isolating downstream populations from upstream habitat, reducing recolonization potential, and diminishing the ecological value of remaining downstream habitat. The comment argues that species with limited dispersal capability, such as amphibians and small mammals, would be unable to traverse the dam infrastructure or reservoir, and that this unaddressed impact pathway undermines the PRDEIR's assumption of stable downstream conditions.

The District acknowledges the ecological importance of connectivity between upstream and downstream habitats but notes that this comment conflates two distinct categories of impact that are addressed in different parts of the environmental review.

The physical barrier effects of the dam and reservoir on terrestrial species movement, including the loss of dispersal corridors, the creation of obstacles to north-south movement, and the potential for population

isolation, are impacts arising from the construction and physical presence of Project facilities within the Project footprint. These impacts were evaluated in the 2020 Final EIR's analysis of terrestrial biological resources within the Project site. That analysis expressly found that the reservoir would create a migratory barrier for many terrestrial species and that construction and operation of the Project would result in permanent habitat loss, fragmentation, and disruption of wildlife corridors. (See 2020 Final EIR, pp. 3.4-65 to 3.4-66 [discussion of Impact BIO-TERR-4].) These impacts were found to be significant, and the EIR identified a suite of mitigation measures to address them, including Mitigation Measures BIO-TERR-4a (wildlife crossing structures designed to maximize connectivity for a wide range of species), Mitigation Measure BIO-TERR-4b (wildlife corridor preservation and enhancement between the Project site and Interstate-5), and Mitigation Measure BIO-TERR-4c (wildlife crossing signage). The adequacy of this analysis and mitigation measures was not challenged by the Petitioners in the underlying litigation, and the Court of Appeal identified no deficiency in the EIR's treatment of wildlife corridor impacts or mitigation within the Project footprint.

The PRDEIR, by contrast, was prepared to address the single deficiency the Court of Appeal identified: the analysis of potential impacts to terrestrial species downstream of the proposed reservoir resulting from altered flow conditions in Del Puerto Creek. The Court of Appeal's Opinion specifically described the missing analysis as concerning "whether there will be impacts to species that are both downstream and terrestrial" in the context of the Project's effects on creek flows and hydrology, not the physical barrier effects of dam infrastructure. (See Opinion, pp. 14–15.) Impact BIO-TERR-DS-4 in the PRDEIR accordingly evaluates whether changes in downstream flow dynamics would interfere with wildlife movement and corridors in the study area, and concludes that the Project's environmental flow commitments, together with continued agricultural return flows and WSID operational spills, would maintain existing habitat conditions and preserve the structure and function of wildlife corridors in the downstream study area.

The impact associated with the physical obstruction of species movement by the dam is not a flow-related impact to downstream terrestrial resources. It is a footprint-related impact that was already analyzed, found significant, and addressed through mitigation measures in the 2020 Final EIR. To the extent the commenter believes that analysis was inadequate, that challenge could have been raised in the prior litigation and is now barred by res judicata and collateral estoppel, as discussed in Master Response 1: Scope of the PRDEIR.

12.3.6 Response to Comment R3-6

Comment Summary: The comment contends that the PRDEIR fails to consider how the inundation of the reservoir area would displace upstream species and disrupt the local stream ecosystem, causing species migration that could adversely affect downstream terrestrial species through increased competition, reduced habitat availability, and disruption of procreation. The comment notes that the 2020 Final EIR's mitigation for inundation impacts relies on habitat replacement that may occur elsewhere, which the commenters argue would not address the downstream ecological consequences of species displacement.

The comment further contends that the PRDEIR fails to analyze impacts to the downstream study area from changes to watershed and local hydrology caused by reservoir operations, including effects on groundwater recharge patterns, contamination and sedimentation rates, erosion, and concentration of downstream pollutants. The comment argues that the PRDEIR's less-than-significant findings for nearly all downstream terrestrial impacts (BIO-TERR-DS-1a through 1g, BIO-TERR-DS-2, BIO-TERR-DS-3, and BIO-TERR-DS-4) are undermined by the failure to account for these impact pathways, and requests that the District revise and recirculate the entire Draft EIR.

The comment correctly observes that the proposed reservoir would inundate existing terrestrial habitat upstream of the dam. As discussed in Response to Comment R3-5, those impacts were evaluated in the 2020 Final EIR, found to be significant, and addressed through mitigation measures. The Court of Appeal identified no deficiency in that analysis. Indeed, the comment's own footnote 8 cites pages 19–26 of the

Court of Appeal’s Opinion, which addressed and rejected the Petitioners’ argument that the 2020 Final EIR improperly deferred mitigation for impacts to terrestrial species within the Project footprint. The PRDEIR does not revisit those upstream construction and inundation impacts because it was prepared in response to the Court of Appeal’s limited remand directing the District to evaluate whether changes in downstream flows from Project operations could affect downstream terrestrial species. See Master Response 1: Scope of the PRDEIR.

The commenter further suggests that the 2020 Final EIR’s mitigation measures for inundation impacts are inadequate because habitat replacement may occur outside the affected area and therefore would not address alleged downstream ecological consequences of species displacement. However, the comment does not distinguish between impacts associated with habitat inundation within the Project footprint and the separate evaluation of downstream terrestrial resources in the PRDEIR. The mitigation measures adopted in the 2020 Final EIR were developed to address the permanent loss of habitat within the Project footprint resulting from reservoir inundation and were evaluated in that context. In contrast, the PRDEIR evaluates whether Project-related changes in downstream flow conditions would impact terrestrial species and habitats downstream of the proposed reservoir. The PRDEIR’s conclusion that downstream impacts would be less than significant is based on the determination that lower Del Puerto Creek would continue to support downstream terrestrial habitats and species through qualifying storm-event releases, recharge releases, occasional excess-inflow spills, agricultural return flows, WSID operational discharges, groundwater recharge, and other continuing hydrologic inputs. Accordingly, habitat replacement is not being used to offset downstream habitat degradation or species displacement; instead, the analysis in the PRDEIR concludes that significant downstream habitat degradation or species displacement would not occur.

Regarding the assertion that species displaced from the inundation area might migrate downstream and adversely affect downstream species through competition, habitat pressure, or other ecological interactions, the comment does not provide sufficient information to identify a reasonably foreseeable downstream impact pathway requiring additional detailed analysis. Among other things, the comment does not identify which species would be displaced downstream, what downstream habitat could be affected, what ecological interaction would cause an adverse effect, or why displaced species would concentrate in the downstream study area, which is already heavily agriculturally altered and fragmented, rather than dispersing into adjacent upland habitats. CEQA does not require analysis of such speculative impact pathways unsupported by evidence. (CEQA Guidelines, § 15064, subd. (d)(3); see also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1451 [“[a]gencies are not required to engage in ‘sheer speculation’ as to future environmental consequences of the project”], quoting *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145.)¹

¹ See also *Santa Rita Union School Dist. v. City of Salinas* (2023) 94 Cal.App.5th 298, 342-350 [EIR for a proposed specific plan was not deficient for failing to address the possible environmental impacts that might occur if proposed schools within the specific plan area could not be funded and built]; *East Oakland Stadium Alliance v. City of Oakland* (2023) 89 Cal.App.5th 1226, 1250 [“[w]hen the environmental impact from a particular project feature cannot be reliably ascertained and estimated, it is properly characterized as speculative”]; *Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 226-227 [EIR for a refinery modification project was not deficient for failing to address pollutant emissions from the ultimate use of refinery products; “the county reasonably concluded that quantification of downstream emissions would be speculative and thus no further analysis was required”]; *Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 105 [a lead agency need not speculate about as yet unknown details of project impacts and may discuss potential impacts at a level of specificity determined by the nature of the project and the rule of reason]; *Marin Municipal Water Dist. v. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1662–1663 [when the nature of future development is

In addition, the available evidence does not indicate that species displaced by reservoir inundation would preferentially migrate into the downstream study area. The reservoir footprint and the study area are separated by Interstate 5, the California Aqueduct, the Delta-Mendota Canal, and associated infrastructure, and the habitats within the two areas differ substantially. Species occupying grassland, woodland, scrub, and other upland habitats within the future reservoir footprint would have access to similar habitats throughout the surrounding landscape. The record therefore does not support the assumption that displaced individuals would concentrate within the downstream study area. Furthermore, as discussed in Master Response 4: Project-Related Flow Changes, Project operations would alter, but would not substantially impair, the hydrologic and habitat processes supporting downstream terrestrial resources. The downstream study area would therefore continue to provide habitat for species capable of using the habitat types present there. Nothing in the comment indicates that any foreseeable displacement would exceed the capacity of those habitats or otherwise cause a substantial adverse effect on downstream species.

Regarding the assertion that the PRDEIR fails to evaluate broader hydrologic and watershed effects, including groundwater recharge, sedimentation, erosion, pollutant concentration, and related processes, those issues were analyzed in Section 3.11, *Hydrology and Water Quality*, of the 2020 Final EIR, including the Project's effects on surface-groundwater interactions, sediment transport processes, erosion, and pollutant dynamics under a range of hydrologic conditions. The Court of Appeal did not identify any deficiency in those analyses. The PRDEIR incorporates and relies upon those existing analyses in evaluating whether Project operations would result in significant impacts to downstream terrestrial biological resources.

More specifically, as discussed in Section 3.4.3, *Impact Analysis*, the PRDEIR evaluates whether Project operations would materially alter the specific hydrologic and habitat conditions that support downstream terrestrial species, including soil moisture availability, frequency and duration of inundation, groundwater recharge influencing riparian vegetation, vegetation recruitment, and habitat connectivity. Because no construction or land-cover conversion would occur within the downstream study area, the Project would not directly remove or disturb downstream habitat. The PRDEIR therefore evaluates whether altered flow conditions could indirectly affect special-status plants and other terrestrial species by materially changing soil moisture, inundation, recharge, vegetation, or habitat connectivity.

As detailed in Master Response 4: Project-Related Flow Changes, the Project would reduce some natural winter and early-spring runoff and thereby reduce some opportunities for storm-driven sediment movement, channel-margin inundation, recession, and in-stream recharge. Those processes would not be eliminated. Qualifying storm-event releases would retain selected characteristics of larger runoff events, including an initial release of up to 600 cfs or the natural peak, whichever is less, followed by a declining release over no more than seven days. Separate recharge releases, occasional excess-inflow spills, agricultural return flows, WSID operational discharges, and other continuing water sources would contribute to recharge, residual soil moisture, and subsurface water availability. The modeled flow

nonspecific and uncertain, an EIR need not engage in “sheer speculation” as to future environmental consequences]; *Save the El Dorado Canal v. El Dorado Irrigation District* (2022) 75 Cal.App.5th 239, 263 [the possibility that a property owner might deliberately fill a ditch at some point in the future rather than maintain its property to minimize flood risk is not a reasonably foreseeable indirect impact of project, which included abandonment of the ditch]; *Citizens' Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 479 [city did not need to evaluate its potential responses to rising sea levels 50 to 80 years into the future, in part because “the range of projections for sea levels by that time are wide and sea levels at different ends of those projections could warrant significantly different responses”]; and *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 77, fn. 5 [“an impact statement prepared before reliable information is available would ‘tend toward uninformative generalities’”].)

reductions would occur primarily during the winter and early spring runoff period, generally January through March, with no modeled reductions from May through November and only limited reductions during portions of April in some years. Accordingly, the Project would alter, but would not substantially impair, the hydrologic and ecological processes supporting downstream riparian and terrestrial habitat.

The PRDEIR's less-than-significant conclusions for downstream terrestrial resources do not rest on a generalized assumption that hydrologic changes are irrelevant. Rather, as discussed above and in Master Response 4, the PRDEIR specifically evaluates the hydrologic and ecological processes identified in the comment, including groundwater recharge, sedimentation, erosion, water quality, and moisture availability.

The comment does not identify evidence demonstrating that displaced species would concentrate in the downstream study area, exceed available habitat capacity, or adversely affect downstream populations through competition or another identifiable ecological mechanism. Nor does it identify a hydrologic impact pathway materially different from those addressed in the PRDEIR and Master Response 4. The comment therefore does not establish a new significant impact, a substantial increase in the severity of a previously identified impact, or other significant new information requiring revision or recirculation under CEQA Guidelines section 15088.5.

12.3.7 Response to Comment R3-7

Comment Summary: The comment contends that the PRDEIR issues “no impact” and “less-than-significant” findings for numerous special-status species without providing a clear analytical pathway or substantial evidence. The commenters state that the PRDEIR ultimately dismisses the likelihood of impacts through general statements rather than a traced causal pathway from operations to hydrologic change to habitat response to species-level impacts. Additionally, the commenters assert that the PRDEIR does not analyze how altered storage and release patterns affect soil moisture, hydroperiod, riparian recruitment, and habitat persistence under reasonably foreseeable conditions, and that the PRDEIR treats irrigation return flows and West Stanislaus Irrigation District (WSID) operational spills as effectively constant background conditions without analyzing their variability over time. The commenters stress that CEQA requires a reasoned explanation supporting impact determinations, not unsupported assertions.

As detailed in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared specifically to address the Court of Appeal's finding that the underlying EIR did not expressly evaluate whether Project operations would result in impacts to downstream terrestrial species. In response, the PRDEIR provides a focused analysis of how Project-related changes in downstream flow conditions could affect the hydrologic and ecological processes supporting downstream riparian, wetland, and other terrestrial habitats supporting species in lower Del Puerto Creek under existing conditions. The analysis is supported by site-specific hydrologic data, streamflow records, reconnaissance-level survey observations, habitat assessments, and established ecological principles relevant to intermittent stream systems, and constitutes a good-faith, reasoned analysis in compliance with CEQA. (See CEQA Guidelines § 15151.)

The PRDEIR's downstream terrestrial analysis evaluates the causal relationship between Project operations, downstream flow conditions, habitat processes, and species-level effects using site-specific hydrologic and ecological information. As described in Section 3.4.1, *Environmental Setting*, the portion of lower Del Puerto Creek within the study area is hydrologically distinct from upstream Del Puerto Creek and is frequently disconnected from upstream flows, particularly during the dry season. The PRDEIR provides streamflow data from USGS gaging records from 2000 to 2025, which demonstrated high seasonal variability, including prolonged dry periods and pulse-driven flow events (Section 3.4.1, *Environmental Setting*, Figures 3.4-6 and 3.4-8). Additional information is also provided in new Appendix G, *Del Puerto Creek Monthly Flows*, which provides estimates of monthly creek flows reaching the San Joaquin River from 1921 to 2021. This data shows that during dry years, upstream natural runoff may be minimal or absent, yet measurable flows continue to occur in downstream reaches

during the irrigation season due to irrigation return flows from surrounding agricultural lands and operational spills from the West Stanislaus Irrigation District.

The PRDEIR further explains how existing terrestrial habitats and species in the study area are adapted to this seasonal variability. Riparian vegetation in intermittent stream systems may be sustained during extended low-flow periods by seasonal groundwater recharge, residual soil moisture, and subsurface water availability rather than continuous surface flows (Stromberg et al. 1996; Griggs 2009).

As discussed further in Master Response 4: Project-Related Flow Changes, existing hydrologic conditions in lower Del Puerto Creek are supported not only by seasonal surface flows, but also by seepage to the shallow groundwater system, localized recharge, agricultural return flows, and other sources of subsurface moisture. Together, these processes help maintain soil moisture and groundwater availability within the riparian corridor, even during periods of low or intermittent surface flow.

In addition, field surveys documented wildlife indicators of intermittent but sustained moisture availability within portions of the downstream study area. This includes North American beaver (*Castor canadensis*), a species dependent on a seasonally stable, relatively permanent water supply (Slough and Sadleir 1977 in Allen 1983). These observations are consistent with the presence of relatively persistent surface-water conditions in portions of lower Del Puerto Creek, although habitat and hydrologic conditions vary along the reach. As discussed further in Master Response 4: Project-Related Flow Changes, most flow occurs during winter and early spring runoff events, while much of the remainder of the year is characterized by low or intermittent surface flow. The highest flows occur during storm-driven runoff events, and the terrestrial habitats in lower Del Puerto Creek have developed under and adapted to these conditions.

As further discussed in Master Response 4, the Project's environmental flow commitments would retain selected characteristics of qualifying storm events. For natural inflow events exceeding 500 cfs, the first-day release would be up to 600 cfs or the natural peak, whichever is less, followed by a declining release over no more than seven days. Those releases would not reproduce every natural storm event, the full magnitude of larger peaks, or the complete seasonal recession, but would continue to provide episodic downstream flow, sediment movement, channel-margin wetting, and post-peak declines. Although the Project would reduce natural winter and early-spring runoff, several continuing water sources and releases would limit the resulting change in downstream habitat conditions. Agricultural return flows and WSID operational discharges, which currently provide much of the dry-season surface flow in portions of lower Del Puerto Creek, would remain unchanged. Qualifying storm-event releases and occasional excess-inflow spills would continue to provide episodic higher flows. Mitigation Measure HYD-2 would require releases intended to make up for Project-related losses of natural seepage and augment the in-stream recharge with the amount varying according to water year type and Del Puerto Creek inflows. As water from these sources moves through lower Del Puerto Creek, a portion would remain available for channel infiltration, recharge, residual soil moisture, and subsurface water availability. Please refer to Master Response 4 for the detailed comparison of existing and Project conditions.

Section 3.4.3, *Impact Analysis*, then applies this hydrologic analysis to the habitat and species impact pathways identified in the comment. Impact BIO-TERR-DS-1a evaluates whether modeled Project-related flow changes would materially alter soil moisture and other habitat conditions supporting special-status plants. Impact BIO-TERR-DS-2 evaluates whether reduced natural runoff would cause a measurable loss of substantial degradation of riparian habitat. Impact BIO-TERR-DS-3 evaluates whether the changes would substantially alter wetland inundation, soil saturation, or ecological functions. Impacts BIO-TERR-DS-1b through 1g and DS-4 evaluate whether the changes would alter the specific habitat features supporting the species or wildlife corridor at issue. Impact BIO-TERR-DS-4 evaluates whether any change in riparian or wetland habitat would substantially impair wildlife movement or corridor function. These analyses trace the pathway from Project operations, to hydrologic change, to habitat response, and finally to the applicable resource-level significance conclusion.

To the extent the comment speculates that independent future changes in agricultural practice, water use or WSID operations could alter downstream return flows over the life of the Project, those potential changes would result from independent third-party decisions or future regulatory or operational circumstances external to the Project, not from Project operations. The PRDEIR evaluates Project impacts based on the existing environmental setting and hydrologic conditions reflected in the available streamflow record. The PRDEIR does not assume that agricultural return flows or WSID operational discharges are numerically constant from month to month or year to year. It treats them as variable components of the existing seasonal hydrologic regime and assumes that the Project would not itself change their sources or operating conditions. The comment does not identify a reasonably foreseeable Project-induced change to either source.

Accordingly, the PRDEIR does not rely on a generalized assertion that water would remain downstream. It evaluates the modeled reduction in natural runoff, identifies the Project releases and independent downstream water sources that would continue, considers how the resulting regime would affect sediment movement, inundation, recession, recharge, soil moisture, vegetation persistence, and recruitment, and applies those findings to the habitats and species evaluated in Section 3.4. The PRDEIR provides a reasoned explanation, supported by hydrologic analysis, field observations, habitat assessment, and ecological literature, for its conclusion that Project operations would not result in significant impacts to downstream terrestrial species. The PRDEIR therefore satisfies CEQA's requirement for a good-faith effort at full disclosure and a reasoned analysis supported by substantial evidence.

12.3.8 Response to Comment R3-8

Comment Summary: The comment contends that the PRDEIR improperly excludes foothill yellow legged frog from analysis despite recent nearby observations and potential habitat and identifies this as an internal inconsistency. The commenter argues that the PRDEIR fails to provide a reasoned analysis of how altered flow timing and magnitude could affect the species' life history requirements, including breeding, migration, and egg mass survival.

As explained in Response to Comment R4-11 and Response to Comment R15-8, Appendix C, *Special-Status Species Tables*, has been revised to clarify that there is one CNDDDB occurrence record approximately 3 miles southwest of the downstream study area. No documented occurrences have been identified within the downstream study area itself.

The presence of occurrence records in the broader region does not, by itself, demonstrate that the species occurs within the downstream study area or that habitat conditions within the study area are suitable to support the species' breeding, rearing, or movement requirements. In addition, the PRDEIR does not conclude that aquatic habitat is entirely absent from the study area. Rather, it concludes that the downstream study area does not provide habitat features required for foothill yellow-legged frog breeding, rearing, or migration. Foothill yellow-legged frog is a stream-obligate amphibian that requires shallow, flowing water in small to moderate-sized streams with at least some cobble-sized substrate (Hayes and Jennings 1988; Jennings 1988). In addition, foothill yellow-legged frog requires a hydroperiod (i.e., period of time during which an area is saturated with or full of water) that is sufficient for successful breeding and survival through dry periods. The required timeframe and duration of the hydroperiod varies by year and by region because of regional differences in timing of hydrological breeding cues (e.g., water flows, temperature, spring recession flows), intrinsic tadpole growth rates (Catenazzi and Kupferberg 2017), and ambient conditions (e.g., temperature) that influence early life stage development.

As described in Section 3.4.1, *Environmental Setting*, and Section 3.4.3, *Impact Analysis*, the portion of lower Del Puerto Creek within the study area is characterized by intermittent surface flows that are sustained primarily by irrigation return flows and operational spills from the West Stanislaus Irrigation District, simplified channel morphology, fine sediments, and emergent vegetation. In contrast, the nearest documented occurrence of foothill yellow-legged frog is located approximately 3 miles southwest of the

downstream study area, where consolidated bedrock, cobble, and boulder substrates are more prevalent; stream gradients and water velocities are higher; elevations are substantially greater; and aquatic habitat persists for longer periods. These conditions are more consistent with typical foothill yellow-legged frog breeding and foraging habitat than the downstream study area.

In addition, the study area does not contain sufficient coarse substrates and microhabitats required for foothill yellow-legged frog breeding and larval development. American bullfrogs were also observed consistently during all field surveys in the study area, with bullfrog tadpoles present throughout much of the creek. The presence of American bullfrogs is indicative of poor breeding habitat for foothill yellow-legged frog (CDFW 2017). Because foothill yellow-legged frog habitat requirements are not present under baseline conditions in the study area, alterations to flow magnitude, timing, or recession associated with Project operations would not introduce a new impact pathway for this species.

The District also notes that the nearest CNDDDB occurrence for foothill yellow-legged frog is located approximately 3 miles southwest of the downstream study area, approximately 2.4 miles east of the Del Puerto Creek foothill yellow-legged frog critical habitat unit identified by the U.S. Fish and Wildlife Service (USFWS), as shown in Figure 12-2 in Response to Comment R15-8. As discussed in Response to Comment R4-11, the USFWS identified this area based on the presence of occupied habitat containing the physical and biological features necessary to support established foothill yellow-legged frog populations. Consequently, while the occurrence record confirms the species' presence elsewhere within the watershed, it does not indicate that the downstream study area contains occupied habitat or habitat conditions comparable to those supporting the documented occurrence. The PRDEIR's conclusions are based on the habitat conditions and impact pathways present within the downstream study area, not solely on the species' regional occurrence.

Effects of the physical presence of the dam or reservoir on foothill yellow-legged frog movement are Project-footprint impacts that were analyzed in the 2020 Final EIR. The Court of Appeal did not identify any deficiency in that analysis, and the PRDEIR does not revisit it on remand. Please refer to Master Response 1: Scope of the PRDEIR for additional information regarding the scope of the analysis.

12.3.9 Response to Comment R3-9

Comment Summary: The comment contends that the PRDEIR improperly dismisses potential impacts to San Joaquin kit fox despite nearby occurrences and fails to analyze habitat use, movement, and prey availability in the downstream riparian corridor.

As explained in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address a specific issue identified by the Court of Appeal of whether Project-related changes in downstream flow conditions in Del Puerto Creek would result in impacts to downstream terrestrial species. The PRDEIR therefore evaluates species for which there is a reasonable potential for occurrence within the downstream study area and a plausible flow-related impact pathway.

The PRDEIR's conclusion regarding San Joaquin kit fox is not based solely on the presence of a regional occurrence record. The CNDDDB occurrence record located approximately 1.5 miles southeast of the study area, on the west side of Interstate 5, was reported in 2004 as a roadkill record (CDFW 2025). That record documents the species' presence in the regional landscape, but does not establish occurrence or regular use within the study area itself. The PRDEIR does not treat the absence of a study-area occurrence record as evidence that kit fox cannot occasionally use the area.

As described in Section 3.4.1, *Environmental Setting*, the downstream study area does not contain sufficient suitable habitat to support regular foraging, denning, or sustained occupancy by San Joaquin kit fox. Suitable habitat for the San Joaquin kit fox home range typically consists of arid shrublands and grasslands characterized by sparse or no shrub cover, sparse groundcover with patches of bare ground, short herbaceous vegetation (less than 18 inches tall), and sandy to sandy-loam soils (Cypher et al. 2007). In contrast, the study area is dominated by agricultural land uses, narrow riparian corridors, and disturbed

landscapes adjacent to Del Puerto Creek. Only 18 acres of grassland habitat are present within the 105-acre study area.

The commenters' observation that the 1.5-mile occurrence is within the species' typical home range distance does not contradict the PRDEIR's analysis. As described in Section 3.4.1, kit fox home ranges in the Los Banos Valley average approximately 1,169 acres and range from 212 to 3,104 acres (Constable *et al.* 2009). The 18 acres of grassland habitat in the study area, only present as a narrow band between Del Puerto Creek and surrounding agricultural fields, is well below the area required to support a kit fox home range. At most, the study area functions as transient or dispersal habitat rather than primary home range, foraging, or denning habitat.

The PRDEIR does not assume that every riparian corridor provides the same movement function for every terrestrial species. As described in Section 3.4.1 and shown in Figure 3.4-5, the study area's connectivity value was assessed against the California Essential Habitat Connectivity dataset and other regional connectivity information. Movement value depends on the habitat requirements and behavior of the species being evaluated. As discussed under Impact BIO-TERR-DS-1g, primary movement corridors for San Joaquin kit fox are associated with broad, contiguous open habitats, characteristic of larger regional landscape features, not narrow riparian strips constrained by agriculture, infrastructure, and human activity. The downstream study area is constrained by surrounding agriculture, Interstate 5, the California Aqueduct, the Delta-Mendota Canal, and other infrastructure and contains only a limited amount of open grassland habitat. Although the creek corridor may provide movement functions for riparian-associated and other wildlife, the record does not indicate that it is a primary or necessary regional movement corridor for San Joaquin kit fox.

In any event, the Project would not construct a new physical barrier within the downstream study area, remove the limited grassland habitat present there, or alter adjacent upland habitat. As discussed in Master Response 4, Project-related flow changes also would not cause a substantial loss or degradation of the downstream riparian or wetland habitat that would remain available for wildlife use.

Regarding the commenters' assertion that the PRDEIR fails to analyze impacts to kit fox prey availability, kit fox preferentially forage in upland habitats, and grasslands for kangaroo rats and other small mammal species, including rabbits and ground squirrels (USFWS 2020). The narrow, intermittently wetted riparian margins along Del Puerto Creek within the study area do not contain such suitable foraging habitat for kit fox. Project operations would not alter upland land, grassland acreage, or the agricultural open habitats supporting kit fox uses or prey. The Project therefore would not materially reduce prey availability through any flow-related impact mechanism.

Accordingly, the PRDEIR does not dismiss San Joaquin kit fox based on the absence of a study-area occurrence record. It recognizes that occasional transient or dispersal use may occur and evaluates whether Project operations would materially alter habitat, movement opportunities or prey resources relevant to such use. Because the Project would not remove or fragment downstream habitat, create a new movement barrier, or alter the upland habitats and prey base on which kit fox primarily depends, impacts would remain less than significant.

To the extent the comment raises concerns regarding broader landscape connectivity, den disturbance, or construction-related impacts, those are Project-footprint impacts that were analyzed in the 2020 EIR. The Court of Appeal did not identify any deficiency in that analysis, and the PRDEIR does not revisit this topic.

12.3.10 Response to Comment R3-10

Comment Summary: The comment contends that the PRDEIR inadequately analyzes potential impacts to golden eagles by relying on proximity and home range assumptions rather than evaluating how downstream habitat conditions support foraging and prey availability. The commenter asserts that

localized habitat changes could cumulatively affect golden eagles and other migratory birds that depend on broad landscapes.

As explained in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address a specific issue identified by the Court of Appeal of whether Project-related changes in downstream flow conditions in Del Puerto Creek would result in impacts to downstream terrestrial species. The PRDEIR therefore evaluates species for which there is a reasonable potential for occurrence within the downstream study area and a plausible flow-related impact pathway.

The evaluation of golden eagles in the PRDEIR is not based solely on proximity assumptions. Rather, it reflects a reasoned evaluation of whether the downstream riparian corridor provides habitat resources necessary to support golden eagle breeding, roosting, or primary foraging, and whether Project-related flow changes could materially alter those resources. Golden eagles require large expanses of open upland terrain that support abundant prey populations of lagomorphs and ground-dwelling mammals, as well as rugged terrain, cliffs, or large trees for nesting and roosting. The Diablo Range supports a high regional density of golden eagles, with that population concentrated in the upland and mountainous habitat that provides the rugged terrain, cliffs, and large trees the species requires for nesting and roosting, and the open upland grasslands that support its prey base. The downstream study area, which consists of narrow riparian habitat, agricultural lands, and disturbed landscapes adjacent to Del Puerto creek, is bordered by but does not contain those upland habitat features.

The references cited in the comment's footnotes do not change this conclusion. Kochert et al. (2002) describes golden eagles as wide-ranging raptors most commonly associated with open spaces that provide hunting habitat and often near cliffs that supply nesting sites. Similarly, Wiens et al. (2015) found that occupancy and reproduction of territorial golden eagle pairs in the Diablo Range were most strongly associated with open landscapes and rugged terrain, and that densely populated areas and agricultural fields of the San Joaquin Valley were not evaluated because golden eagles were rarely observed in these landscapes. These sources therefore support the conclusion that the core habitat features sustaining the regional golden eagle population occur within the broader Diablo Range uplands rather than within the flat and narrow lower Del Puerto Creek riparian corridor evaluated in the PRDEIR.

The studies cited by the commenter also confirm that golden eagles have large home ranges and can forage across broad portions of the landscape. However, the existence of large home ranges does not demonstrate that Project-related changes in flow conditions within lower Del Puerto Creek would materially affect habitat conditions important to the species. The relevant question is whether Project operations would alter nesting habitat, primary foraging habitat, prey availability, or other habitat features on which golden eagles rely. As discussed under Impact BIO-TERR-DS-1f, the PRDEIR's conclusion that Project operations would not adversely affect special-status birds, including raptors, is based on substantive analysis of the relevant habitat components. The PRDEIR concludes that the quality of nesting habitat in the study area is limited by the narrow, fragmented nature of the riparian corridor and surrounding agricultural intensification, but that the Project's environmental flow commitments and continued agricultural runoff would maintain the flows that support that nesting habitat. The PRDEIR also finds that raptor foraging in the agricultural fields adjacent to the study area is supported by water sources independent of Del Puerto Creek, and that Project-related flow by changes would not affect those foraging conditions. The PRDEIR therefore concludes that Project operations would not adversely affect golden eagle or other special-status birds.

The comment cites decreased prey availability from human land uses as a regional threat to golden eagles. That regional concern does not establish a Project-specific impact mechanism in this context. Golden eagle prey species are found in upland habitats and agricultural fields outside the riparian study area. As discussed under Impact BIO-TERR-DS-1f, those agricultural foraging habitats are supported by water sources that are independent of Del Puerto Creek. Because no construction or land-cover conversion

would occur in the downstream study area, and Project operations would not materially alter upland land uses or prey habitats, Project operations would not reduce prey availability for golden eagles.

The PRDEIR's analysis recognizes the wide-ranging nature of golden-eagle behavior. The species' large home ranges do not, however, mean that every component of the landscape requires the same intensity of analysis. The relevant inquiry for the purposes of the PRDEIR is whether Project-related flow changes would degrade those habitat conditions. As discussed under Impact BIO-TERR-DS-1f, the PRDEIR concludes that Project operations would not adversely affect special-status birds, including raptors, because the Project's environmental flow commitments and continued irrigation runoff would maintain the flows that supporting nesting habitat in the riparian corridor, and because raptor foraging in adjacent agricultural fields is supported by water sources independent of Del Puerto Creek and would therefore be unaffected by Project-related flow changes. The species' wide-ranging behavior does not alter that analysis where the specific habitat features and water sources on which the species relies in and adjacent to the study area would be unaffected by Project operations. Cumulative impacts on terrestrial biological resources, including wide-ranging species, are addressed in the cumulative impact analysis at Section 3.4.3 of the PRDEIR; please also refer to Response to Comment R2-7 regarding cumulative impacts on downstream terrestrial resources.

The comment's footnote 18 states that the same critique is raised with respect to Swainson's hawk. Like the analysis of impacts to golden eagle, the PRDEIR's evaluation of Swainson's hawk is included in Impact BIO-TERR-DS-1f. The PRDEIR concludes that impacts on Swainson's hawk would be less than significant because existing nesting habitat in the riparian corridor would be maintained by flow preservation, and raptor foraging in adjacent fields uses water sources independent of Del Puerto Creek and would be unaffected by Project-related flow changes.

Finally, potential impacts to golden eagles associated with Project construction or infrastructure, such as disturbance, collision risk, or displacement, are Project-footprint impacts that were considered in the 2020 EIR. The Court of Appeal did not identify any deficiency in that analysis, and the PRDEIR does not revisit it on remand.

12.3.11 Response to Comment R3-11

Comment Summary: The comment contends that California condor should be included in the PRDEIR's biological resources analysis, highlighting recent observations from 2023 and data from the National Park Service. The commenters state that the PRDEIR's dismissal of condors based on lack of "suitable habitat" is unsupported, and because the condor is federally and state listed as endangered, the commenters assert that its exclusion constitutes a significant omission and represents new information requiring recirculation of the EIR.

As detailed in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address the Court of Appeal's finding that the underlying EIR did not expressly address whether Project operations would result in impacts to downstream terrestrial species. As a result, the PRDEIR's analysis focuses on Project-related changes in downstream flow conditions and impacts on downstream terrestrial species.

California condor presence in the study area and the broader Central Valley was considered during the PRDEIR's special-status species evaluations, as the California condor is currently listed as an endangered species under the federal Endangered Species Act. Qualified biologists determined that the potential for California condors to occur in the study area is low, as the area lies outside the species' current breeding range and there are no California Natural Diversity Database records documenting condor occurrences within the study area (see Appendix C, *Special Status Species Tables*). In addition to these records, eBird, a citizen-science based platform for bird observations, also reports that no California condor observations have been made in Del Puerto Canyon (eBird 2026).

Additional information on California condor activity was obtained from the Ventana Wildlife Society, which manages the central California condor population and maintains GPS-tracking data on individual

condors. Ventana's GPS-tracking data collected between 2020 and December 2025 indicates that 17 individual California condors have flown over portions of the Del Puerto Canyon during that period. (Kelly Sorenson, Ventana Wildlife Society, pers. comm., January 2026). Of these observations, one condor was recorded in the eastern portion of Del Puerto Canyon (west of the downstream study area), and another individual was documented at a location approximately four miles west of Del Puerto Canyon (Kelly Sorenson, Ventana Wildlife Society, pers. comm., January 2026).

The Ventana GPS-tracking data shows that California condor activity in the broader Del Puerto Canyon area, when it occurs, has included overflight, foraging, perching, and occasional roosting, all concentrated with use occurring intermittently rather than continuously.

The highest levels of condor activity were recorded at higher elevations to the west of the both the reservoir footprint and the downstream study area \where the rugged topography produces strong thermal uplift that condors require for efficient soaring. Much lower levels of condor use have been documented over the flatter terrain within and adjacent to the downstream study area, where thermal uplift conditions are less favorable for the species (Kelly Sorenson, Ventana Wildlife Society, pers. comm., January 2026). Ventana's data also indicates that California condors do not regularly extend their flights into the Central Valley region, as the necessary thermal uplift is not available. In addition, to date, no nesting or breeding activity has been documented within approximately 50 miles of the study area. In northern California, nesting and breeding activity is only known to occur near Big Sur and Pinnacles National Park (Kelly Sorenson, Ventana Wildlife Society, pers. comm., January 2026).

The comment cites the species' large home range and long-distance flight capability, the National Park Service GPS data showing condor use the Diablo Range, and the inclusion of the study area within the species' USFWS-mapped geographic range as evidence that condors should be expected to use the study area. The capacity for long-distance flights and large home ranges show a geographic envelope within which the species may occur, but they do not establish habitat use within any particular sub-area of that envelope. Likewise, the USFWS geographic range designations encompass the broad area within which a federally listed species may potentially occur, but do not establish that all sub-areas within that range function as habitat. The Ventana GPS-tracking data, which capture actual movement patterns of tracked individuals over a five-year period, demonstrates that condor habitat use in this region is concentrated in upland areas with rugged topography and thermal uplift conditions, and that the flatter agricultural and riparian terrain within and adjacent to the downstream study area does not support comparable levels of use.

Regarding the commenters' reference to the 1996 USFWS Recovery Plan's identification of grassland as condor foraging habitat, the Recovery Plan refers to grassland and rangeland systems in the broader landscape context where condors forage on the carcasses of large mammals such as deer and cattle. The 17.91 acres of grassland in the downstream study area, characterized in Table 3.4-1 as primarily ruderal habitats that support non-native grasses and forbs, is too limited in area and ecological character to function as primary foraging habitat for a species with a 200- to 400-square-mile home range. The Ventana GPS-tracking data demonstrates that condor foraging activity in this region is concentrated in upland areas, not in the agricultural and ruderal grasslands within the study area. Similarly, although the USFWS website notes that condors are found in rural rather than heavily urbanized areas, that does not mean that all rural areas function as condor habitat at a meaningful level of use.

Similarly, the additional scientific literature cited by the commenter confirms that California condors are highly mobile and can travel over very large areas while foraging. Meretsky and Snyder (1992) documented condors moving more than 200 kilometers in a single day and traversing much of their occupied range, while Rivers et al. (2014) found that condors routinely use extensive home ranges and move widely in search of patchily distributed food resources. In addition, FitzRandolph (2026) confirms that of the 116 birds currently soaring the Central California skies, these birds have been documented primarily in Big Sur, San Simeon and Pinnacles National Park, using data from the Ventana Wildlife

Society. However, these studies describe the species' movement ecology and geographic range use; they do not demonstrate that all portions of the broader landscape provide habitat of equal importance. Conversely, the Ventana GPS-tracking data provide site-specific information demonstrating that condor activity in the Del Puerto Canyon region is concentrated in rugged upland areas that provide favorable soaring conditions and is substantially lower within and adjacent to the downstream study area.

Finally, even assuming occasional presence of condor within or near the study area, Project-related changes in downstream flows would not result in significant impacts to California condor. Condors depend on carrion availability, thermal uplift conditions, and rugged terrain for nesting and roosting. None of those resources is supplied by, or affected by, flows in lower Del Puerto Creek. Project operations would not alter the upland topography, atmospheric conditions producing thermal uplift, availability of carrion, or other resources on which condors depend.

Recirculation under CEQA Guidelines section 15088.5 is required where significant new information shows a new significant environmental impact or a substantial increase in the severity of a previously identified impact. The information added in the Final EIR in this response supports the conclusion that condor presence in the study area is unlikely and the Project would not affect the species. Recirculation is therefore not required.

12.3.12 Response to Comment R3-12

Comment Summary: While acknowledging that the road relocation issue falls outside the scope of the PRDEIR, the comment notes that the Stanislaus County Board of Supervisors, at its February 4, 2025 meeting, recommended Route Alternative 9 for the relocation of Del Puerto Canyon Road, which is a different alignment than the one analyzed in the 2020 Final EIR. The comment cites the Court of Appeal's observation that a different alignment "may very well" require subsequent or supplemental environmental review under Public Resources Code section 21166, and indicates that the commenters look forward to reviewing and commenting on any such future environmental analysis.

The District appreciates the acknowledgment that the road relocation issue falls outside the scope of the PRDEIR.

As discussed in Response to Comment R4-4, Save Mount Diablo's comment regarding the road relocation, the Court of Appeal found that the 2020 Final EIR adequately addressed the proposed relocation of Del Puerto Canyon Road and that no piecemealing occurred. The road relocation issue was litigated and resolved in the District's favor, and the PRDEIR was not required to revisit it. For additional information regarding the appropriate scope of the PRDEIR, please refer to Master Response 1.

Regarding the Stanislaus County Board of Supervisors' February 4, 2025, action recommending Route Alternative 9 for the road relocation, as the comment recognizes, the Court of Appeal itself anticipated this possibility, noting that if 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" under Public Resources Code section 21166. (See Opinion, p. 36, fn. 12.) The District and the Exchange Contractors are actively engaged with Stanislaus County in developing an acceptable road alignment, and the District acknowledges that it will be subject to the rules governing supplemental environmental review under CEQA if and when an alignment other than the one included in the 2020 Final EIR is pursued. (See CEQA Guidelines, §§ 15162 – 15164; and *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 945-946, 949-953.) See also Response to Comment R4-4.

12.3.13 Response to Comment R3-13

Comment Summary: The comment raises concerns about potential project delays and feasibility, including the need for the Bureau of Reclamation to obtain approvals for a new point of redirection from the State Water Resources Control Board, escalating project costs, and the price sensitivity of

agricultural users compared to municipal and industrial users. The comment notes that similar water rights impediments contributed to the cancellation of the Pacheco Dam project and suggests that delays could cause the existing environmental review to go stale.

The comment's observations regarding project feasibility, costs, water rights, and potential delays are noted. These matters do not address the subject of the PRDEIR, which is limited to the analysis of potential impacts to terrestrial species downstream of the proposed reservoir due to reduced flows in Del Puerto Creek.

CEQA does not require an EIR to evaluate the economic feasibility or financial viability of a proposed project. (See CEQA Guidelines, § 15131, subd. (a); see also cases cited in Master Response 2 [Project Opposition].) Similarly, issues regarding the Bureau of Reclamation's water rights processes, the State Water Resources Control Board's regulatory approvals, and the comparison to other proposed storage projects such as Pacheco Dam are outside the scope of CEQA environmental review and outside the scope of this PRDEIR.

Regarding the statement that delays could cause the environmental analysis to "grow stale," the District observes that CEQA provides a specific mechanism for addressing changed circumstances. Under Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163, a lead agency considering discretionary actions needed for a project must prepare a subsequent or supplemental EIR if substantial changes occur with respect to the project or its circumstances, or if new information of substantial importance becomes available. These provisions, triggered by discretionary actions occurring after the initial discretionary actions associated with project approval, ensure that environmental review remains current without requiring a lead agency to speculate about hypothetical future circumstances that may or may not materialize.

12.3.14 Response to Comment R3-14

Comment Summary: The comment summarizes the preceding comments.

Please refer to Master Response 1 and Responses to Comment R3-1 through R3-13.

12.4 Comment Letter R4 – Lozeau Drury on Behalf of Save Mount Diablo, Rebecca L. Davis

12.4.1 Response to Comment R4-1

Comment Summary: The comment expresses strong opposition to the Project and contends that the PRDEIR is inadequate under CEQA. The comment asserts that in addition to the information provided to address the potential for impacts on terrestrial biological resources downstream of the reservoir, the remaining sections must be updated to address significant new information. The comment cites the realignment of Del Puerto Canyon Road, new information about biological resources, the potential to conserve upper Del Puerto Canyon as mitigation and the impacts that the project will have on recreational opportunities.

The District acknowledges Save Mount Diablo's interest in the Project and longstanding engagement in the CEQA process. The specific issues raised in this introductory comment are also addressed individually in the responses that follow.

Please also refer to Master Response 1, which explains the judicial basis for confining the analysis in the PRDEIR to an assessment of impacts on downstream terrestrial biological resources. As noted there, the relocation of Del Puerto Canyon Road, the potential for mitigation in upper Del Puerto Canyon and the impacts of the project on recreational opportunities are outside the scope of the PRDEIR. Master Response 1 also documents that there is no new information that would be deemed significant for CEQA purposes.

To the extent the comment expresses general opposition to the Project, please see Master Response 2: Project Opposition. The legal principles governing the District's consideration of changes to the proposed Del Puerto Canyon Road alignment as shown in the 2020 Final EIR are addressed in the Response to Comment R3-12.

12.4.2 Response to Comment R4-2

Comment Summary: The comment provides a general overview of CEQA's purposes and legal standards, including the informational role of the EIR, the requirement to avoid or reduce environmental damage through alternatives and mitigation, the standard for judicial review, and the requirement that an EIR include sufficient detail to enable meaningful public participation.

The District acknowledges the summary of general CEQA principles. Because this comment does not raise a specific concern about the PRDEIR's analysis of downstream terrestrial biological resources, no further response is required. To the extent these legal principles inform the commenter's specific comments that follow, the District addresses those comments individually in the responses below.

12.4.3 Response to Comment R4-3

Comment Summary: The comment contends that the Del Puerto Water District cannot limit public comment to the recirculated portions of the Draft EIR, arguing that because the entire EIR was decertified, the District must prepare and circulate a revised EIR addressing the full project before recertification. The comment cites Woodward Park Homeowners Assn., Inc. v. City of Fresno (2007) 150 Cal.App.4th 683 and King & Gardiner Farms, LLC v. County of Kern (2020) 45 Cal.App.5th 814 in support. The comment further argues that, as a matter of policy, the District should take this opportunity to hear from the public on all project aspects, and that restricting comment to the recirculated portions circumvents CEQA's informational purposes. The comment incorporates by reference the commenter's January 27, 2020 comment letter on the original Draft EIR.

For the reasons discussed below, the legal arguments set forth in the comment are unpersuasive.

As an initial matter, the contention that the District "cannot limit public comment to just the recirculated portions of the Draft EIR" mischaracterizes the District's obligations under CEQA. CEQA Guidelines section 15088.5, subdivision (f)(2), expressly authorizes a lead agency that is recirculating only revised portions of an EIR to "request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR." The Guidelines further provide that, in such circumstances, the lead agency "need only respond to ... comments received during the recirculation period that relate to chapters or portions of the earlier EIR that were revised and recirculated." (*Ibid.*) The District's request that commenters focus on the newly circulated analysis of downstream terrestrial biological resources is fully consistent with this provision. Where a court, after extensive litigation, finds only a single deficiency, or even a handful of deficiencies, in an EIR, the respondent agency's position on remand is akin to a lead agency facing a limited or partial recirculation. (See Master Response 1, Scope of the PRDEIR; see also *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (*Lotus*) ["[w]hether the correction requires recirculation of the EIR is for [the respondent agency] to decide in light of the standards governing recirculation of an EIR prior to certification"]; and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1112 (*Amador*) ["whether the correction requires recirculation of the EIR, in whole or in part, is for the Agency to decide in the first instance in light of the legal standards governing recirculation of an EIR prior to certification"].)

The comment's reliance on *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683 is misplaced. In that case, the lead agency attempted to approve a project without preparing any legally adequate EIR at all. Here, by contrast, the Court of Appeal found the 2020 Final EIR to be legally adequate in all respects but one: the absence of an analysis of potential impacts to terrestrial species downstream of the proposed reservoir due to reduced flows in Del Puerto Creek. The PRDEIR was prepared specifically to cure that single, identified deficiency, consistent with the Court of

Appeal’s Opinion and with Public Resources Code section 21168.9, which requires courts to fashion narrow remedies that “include only those mandates which are necessary to achieve compliance” with CEQA.

King & Gardiner Farms, LLC v. County of Kern (2020) 45 Cal.App.5th 814, cited in the comment, actually supports the District’s approach. In that case, the Court of Appeal directed the county to prepare “a revised EIR correcting the CEQA violations” identified in the opinion – specifically, deficiencies relating to water supply, particulate matter emissions, agricultural land impacts, and noise – and to circulate the revised EIR for public review and comment before recertification. (*Id.* at p. 901.) The court did not require the county to discard the entire EIR and start over. Rather, the remedy was tailored to the specific deficiencies identified by the court, consistent with Public Resources Code section 21168.9. (*Id.* at pp. 895–889.) Here too, the District properly focused the PRDEIR on the single deficiency found by the Court of Appeal, while treating the remainder of the 2020 Final EIR as adequate, as the courts held it to be.

The commenter’s assertion that the District must start the CEQA process from the beginning because the District’s Board of Directors (Board) set aside its certification of the 2020 Final EIR is also incorrect. The Board’s February 2023 decertification was a procedural step taken in compliance with the Superior Court’s peremptory writ of mandate, which reflected the Superior Court’s original Judgment, which had identified deficiencies in the EIR’s analysis of the relocation of Del Puerto Canyon Road and its evidentiary support for cultural resources findings. Notably, the Court of Appeal later reversed the Superior Court on both of those issues, finding the EIR adequate with respect to the road realignment and cultural resources. Because, however, the Board had already set aside its certification while the appeal was pending, the Superior Court, in issuing its Modified Judgment following the appellate Opinion, had no need to modify the original peremptory writ. Thus, the only remaining deficiency requiring correction was the downstream terrestrial species analysis identified by the Court of Appeal. It is clear, then, that the Board’s decertification was not an acknowledgment that the entire EIR was deficient. To the contrary, the appellate court found that the EIR complied with CEQA in all respects but one. CEQA Guidelines section 15088.5, subdivision (c), specifically provides that where “the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.” As noted earlier in this response to comment, the District’s position on remand is akin to that of a lead agency facing a partial recirculation under section 15088.5. (*Lotus, supra*, 223 Cal.App.4th at p. 658; and *Amador, supra*, 116 Cal.App.4th at p. 1112.)

The comment’s references to CEQA’s general public review requirements (CEQA Guidelines, §§ 15082–15088, 15105; Pub. Resources Code, § 21091, subd. (d)) and to *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256 do not alter this analysis. The District has fully complied with CEQA’s public review requirements as they apply to the partial recirculation of an EIR. The PRDEIR was circulated for public review and comment for a 56-day period, exceeding the requirements of CEQA Guidelines section 15105; written responses to all comments (those submitted by the comment submission deadline and the comments from CBD that were received approximately 140 days after the end of the public review and comment period) pertaining to the revised analysis have been prepared and are included in this Second Final EIR. See also Response to Comments R15-1 through R15-14, which address CBD’s untimely comment letter and explains its consideration in the environmental review process. Consistent with Public Resources Code section 21091, subdivision (d), and CEQA Guidelines section 15088.

The comment is correct that nothing legally prohibits the District from voluntarily expanding the scope of the PRDEIR beyond the single deficiency identified by the Court of Appeal. But CEQA equally does not require a lead agency to reopen settled aspects of an EIR that have been upheld through extensive litigation. To the contrary, CEQA reflects a strong legislative policy favoring finality of environmental review. (See Pub. Resources Code, §§ 21167.1 [CEQA actions entitled to preference]; 21167.2 [presumption of legal adequacy]; *Friends of College of San Mateo Gardens v. San Mateo County*

Community College District (2016) 1 Cal.5th 937, 949 [Legislature set a high threshold for supplemental review out of concern for “finality and efficiency”]; *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 488 [CEQA’s statutory scheme “is sensitive to the particular need for finality and certainty in land use planning decisions”].) Reopening the entire EIR for a new round of public comment on issues already resolved by the courts would be inconsistent with these policies and would undermine the certainty that CEQA’s litigation provisions are designed to protect. The District must act as a prudent steward of the funds that it controls. Following preparation of the 2020 Final EIR and more than five years of litigation regarding its adequacy, the District has already undertaken extensive environmental review of the Project. Additional environmental review beyond that required by CEQA would be duplicative of the analysis already completed and would not provide new meaningful environmental information or environmental benefits.

Public Resources Code section 21061, cited by the comment, does not support a different conclusion. That provision articulates CEQA’s general informational purpose, but it does not override the specific provisions governing partial recirculation of an EIR (CEQA Guidelines, § 15088.5) or the narrow remedy requirements applicable to CEQA litigation (Pub. Resources Code, § 21168.9). The public had a full opportunity to comment on the original Draft EIR in 2019 and 2020; and the commenter availed itself of that opportunity. (See 2020 Final EIR, Vol. 3, pp. 9-96 – 9-100 [responses to Comment Letter 15, San Mount Diablo, and Letter 15 (Letter from Juan Pablo Galvan, Senior Land Use Manager of Save Mount Diablo, to Anthea Hansen, General Manager of Del Puerto Water District)].) The 2020 Final EIR included responses to those comments. The Superior Court and Court of Appeal then considered and resolved challenges to the adequacy of the EIR, ultimately finding it deficient in only one respect. The PRDEIR provides a further opportunity for public input on that specific issue.

Regarding the comment’s incorporation of the commenter’s January 27, 2020, comment letter on the original Draft EIR, the District responded to those comments in the 2020 Final EIR, and those responses remain adequate as confirmed by the courts. The District has reviewed the commenter’s 2020 letter and notes that it did not raise the issue of potential impacts to terrestrial species associated with Del Puerto Creek downstream of the proposed reservoir. Because the 2020 letter does not raise issues pertaining to the revised analysis presented in the PRDEIR, no further response is required. (See CEQA Guidelines, § 15088.5, subd. (f)(2) [lead agency “need only respond to ... comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated”]; *Lotus*, *supra*, 223 Cal.App.4th at p. 658; and *Amador*, *supra*, 116 Cal.App.4th at p. 1112.)

For a more detailed discussion of the legal principles governing the scope of the PRDEIR, including the litigation history and the doctrines of res judicata and collateral estoppel, please refer to Master Response 1: Scope of the PRDEIR.

12.4.4 Response to Comment R4-4

Comment Summary: The comment asserts that the District is improperly piecemealed the Project by failing to analyze the environmental impacts of the realignment of Del Puerto Canyon Road in the PRDEIR. The comment argues that the road alignment analyzed in the 2020 EIR was rejected by Stanislaus County, that a new alignment will have environmental consequences for special-status species, wildlife corridors, fuel usage, public safety, aesthetics, and recreation, and that CEQA requires this analysis now rather than at some future date after the Project has gained irreversible momentum.

The issue of whether the District has improperly piecemealed the proposed Project with respect to the road realignment was squarely raised, fully briefed, and resolved in the District’s favor by the Court of Appeal in its Opinion in *Sierra Club et al. v. Del Puerto Water District* (Stanislaus County Superior Court Case No. CV-20-005193; Court of Appeal Case No. F086218).

As detailed in the Opinion (pp. 34–36), the Petitioners argued in the underlying litigation that the 2020 Final EIR improperly segmented the Project by excluding future relocation of Del Puerto Canyon Road.

The Court of Appeal rejected this argument, finding that the EIR analyzed the proposed road relocation and that no piecemealing had occurred. The court explained that the FEIR proposed a road relocation, analyzed its environmental impacts, and acknowledged that if a different alignment were ultimately pursued, the Project Partners “may very well be required to do a subsequent or supplemental EIR to study the new alignment. (See Pub. Resources Code, § 21166.)” (*Id.* at p. 36.) The court concluded that “[t]he fact remains that the environmental analysis of the road realignment was presented in the FEIR and was not segmented or deferred to a later date. The trial court erred in concluding otherwise.” (*Ibid.*)

The comment’s assertion that the road realignment analyzed in the 2020 EIR was “rejected by Stanislaus County” was also addressed by the Court of Appeal. The Court drew a distinction between a lack of support from a county department and an official rejection by the County’s Board of Supervisors, noting that the county “acts on the alignments of its roads through its board of supervisors” under the Streets and Highways Code, and that correspondence from a county committee expressing a different department’s lack of support did not constitute a rejection by the approving agency. (Opinion, p. 36.)

The concern stated in the comment that the road realignment will never receive adequate environmental review is also unfounded. The District and the Exchange Contractors are actively engaged with Stanislaus County in developing an acceptable road alignment. As the Court of Appeal itself recognized, if the Project Partners ultimately pursue a different alignment than the one analyzed in the 2020 Final EIR, the Project partners will be subject to Public Resources Code section 21166. (See Opinion, p. 36, fn. 12 [noting that a different alignment “may very well” require “a subsequent or supplemental EIR to study the new alignment,” citing Pub. Resources Code section 21166].) The District has discretion to undertake any such supplemental review at the appropriate time.

Although the Court of Appeal suggested that either a subsequent or supplemental EIR might be required, the precise form that the Project Partners’ supplemental environmental analysis pursuant to section 21166 might take was not before the Court. When the time comes, the Project Partners will do what is necessary under applicable legal principles, which derive from section 21166, the requirements of which were flushed out in CEQA Guidelines sections 15162 through 15164. The California Supreme Court characterized these principles in *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 943, 949 (*San Mateo Gardens*). There, the court explained that “[w]hen changes are proposed to a project for which an EIR has already been prepared, the agency must prepare a subsequent or supplemental EIR only if the changes are ‘[s]ubstantial’ and require ‘major revisions’ of the previous EIR,” and further explained that “[t]hese limitations are designed to balance CEQA’s central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency.”

The special rules governing supplemental review under CEQA were further explicated in *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656, 667-668 (*Save Our Heritage*). There, the Court of Appeal upheld against a facial attack the California Natural Resources Agency’s promulgation of CEQA Guidelines section 15164, which authorizes the preparation of an “addendum” to an EIR as a vehicle for explaining why, under given factual circumstances, a lead agency concludes that it need not prepare either a subsequent EIR or a supplement to an EIR. The Court explained that “Guidelines section 15164 is consistent with and furthers the objectives of Public Resources Code section 21166 by requiring an agency to substantiate its reasons for determining why project revisions do not necessitate further environmental review” and further found that “the addendum process reasonably implements section 21166’s objective of balancing the consideration of environmental consequences in public decisionmaking with interests in finality and efficiency.” Quoting the Supreme Court’s discussion in *San Mateo Gardens*, the Court added that “initiating further environmental review ‘every time plans or circumstances change, or whenever new information comes to light – “would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.”” (*Save Our Heritage, supra*, at p. 668, quoting *San Mateo Gardens, supra*, 1 Cal.5th at p. 956.)

Here, the extent of the Project Partners' supplemental environmental review, if any, will turn on the conclusions reached in its supplemental analysis. That analysis will address, among other things, whether proposed changes to the Project "are '[s]ubstantial' and require 'major revisions' of the previous EIR[.]" (*San Mateo Gardens, supra*, 1 Cal.5th at p. 943.)

In contrast to a future analysis of a possible new road realignment, the purpose of the PRDEIR is to satisfy the Court's directive to cure the single identified deficiency in the 2020 Final EIR so that the EIR may be recertified as legally adequate. Requiring the District to fold the road realignment analysis into the PRDEIR would improperly expand the scope of the remand beyond what the Court ordered and would effectively require the District to undertake supplemental review under Public Resources Code section 21166 before the underlying EIR has even been recertified.

Because the issue of whether the District improperly piecemealed review of road realignment was litigated and resolved in the District's favor on appeal, the District was under no obligation to revisit that issue in the PRDEIR. The commenter's attempt to raise this issue in the context of the PRDEIR is barred by the doctrine of res judicata, as discussed in Master Response 1: Scope of the PRDEIR. Moreover, the road realignment issue falls outside the narrow scope of the PRDEIR, which is prepared to address the single deficiency the Court of Appeal identified. The Court of Appeal did not find any deficiency in the EIR's treatment of the road realignment, and CEQA does not require the District to revisit an issue on which it prevailed.

12.4.5 Response to Comment R4-5

Comment Summary: The commenter, citing expert field surveys conducted by Dr. Smallwood, asserts that the PRDEIR substantially underestimates wildlife diversity and special-status species occurrence in the downstream study area. The commenter argues that the PRDEIR inadequately describes its survey methods, relies improperly on biological databases to infer species absence, screens out a large number of potentially occurring special status species, and therefore fails to accurately characterize the biological baseline needed to assess downstream terrestrial impacts under CEQA.

Please refer to Master Response 3: Biological Baseline and Species Occurrence, which provides a description of the adequacy of the biological baseline presented in the PRDEIR, consistent with CEQA Guidelines section 15125(a).

The comment, supported by a report from Dr. Shawn Smallwood, raises several specific issuers related to the PRDEIR's biological baseline and species occurrence analysis. The District and ICF biologists have reviewed Dr. Smallwood's report, including his field observations from January 25–26, 2026, nighttime acoustic monitoring, species list, and his analysis of the PRDEIR's species screening and database use. The issues raised are addressed below..

Purpose of the PRDEIR's Biological Baseline

The PRDEIR's biological baseline was developed to support the analysis required by the Court of Appeal: whether Project-related changes in downstream flow conditions could substantially affect terrestrial biological resources in lower Del Puerto Creek. The analysis does not depend on preparation of a complete census of every plant and wildlife species that may use the study area. It instead characterizes the existing vegetation communities, wetland and riparian resources, hydrologic conditions, habitat features, wildlife-use patterns, and ecological functions potentially affected by Project operations.

As explained in Master Response 3, the baseline was developed from multiple lines of evidence, including reconnaissance-level field surveys, a protocol-level elderberry survey, habitat assessments, land-cover mapping, aerial imagery, hydrologic data, species- life-history information, scientific literature, agency and public occurrence databases, and the professional judgment of qualified biologists. The PRDEIR assumes species presence where suitable habitat and a plausible Project-related impact pathway are present. The significance analysis therefore turns on whether Project operations would

materially affect the habitat conditions and ecological processes supporting terrestrial resources, not on whether every individual species was detected during a particular survey.

Dr. Smallwood's observations would affect the analysis only if they identify a previously unrecognized habitat feature, ecological function, or Project-related impact pathway, or demonstrate a materially different degree or type of habitat use than the PRDEIR assumed.

Dr. Smallwood's Additional Species Observations

Dr Smallwood's January 2026, surveys used daytime visual observation and nighttime acoustic monitoring, and identified vertebrate species not specifically listed in the narrative discussion of the PRDEIR's July 2025 reconnaissance survey. The District does not dispute the validity of those observations and acknowledges them as informative additions to the record.

The PRDEIR's narrative discussion did not identify every species observed during ICF's field work. Species such as American beaver, American bullfrog, Botta's pocket gopher, and California ground squirrel were specifically mentioned because they informed the description of habitat conditions, hydrologic functions, ecological characteristics, or species-specific impact pathways. Their inclusion was not intended to suggest that they were the only species observed or considered.

The Second Final EIR includes a new appendix, Appendix E, *Documentation of Biological Field Surveys*, documenting the field survey work conducted in the downstream study area, as well as a more complete plant and wildlife species observation list. This additional documentation provides a more complete record of the biological information considered in developing the PRDEIR baseline and impact analysis.

The District and ICF also reviewed the species listed in Dr. Smallwood's Exhibit A to determine whether they were expressly addressed in the PRDEIR or encompassed by the habitat- and impact-based analyses under Impacts BIO-TERR-DS-1a through BIO-TERR-DS-1g and Impact BIO-TERR-DS-4. Where appropriate, the FEIR has been revised to clarify how specific species are addressed within those impact analyses. These revisions do not alter the PRDEIR's conclusion that Project operations would not result in significant impacts to downstream terrestrial biological resources.

Survey Methodology and Differing Survey Purpose

ICF's July 2025 reconnaissance-level survey and Dr. Smallwood's January 2026 surveys used different methods and provided different kinds of information. Qualified ICF biologists Eric Sittt and Mitch Soto divided the 12.2-kilometer study area and surveyed its accessible length, with a total survey effort of approximately 12 person-hours. The survey was designed principally to characterize habitat conditions, riparian-corridor quality, land-cover patterns, existing hydrologic conditions, wildlife use, and the presence and suitability of habitat features relevant to the downstream flow-related impact analysis. It was not designed as a comprehensive inventory of nocturnal, migratory, cryptic, or acoustically-detectable wildlife.

Dr. Smallwood's surveys included approximately 4.5 hours of nighttime acoustic monitoring near the eastern end of the study area, as well as daytime wildlife observations. Those methods were suited to detecting nocturnal and acoustically detectable species and therefore reasonably produced additional occurrence information. The difference in results does not itself show that either survey was invalid. It reflects differences in timing, season, location, duration, and methodology. Dr. Smallwood employed a different methodology designed for a different purpose.

The relevant question is whether Dr. Smallwood's observations reveal habitat conditions or Project-related impact pathways not reasonably captured by the PRDEIR. Additional detections within already identified riparian, wetland, agricultural, grassland, and developed habitats do not, standing alone, demonstrate that the habitat characterization is inaccurate or that Project operations would cause a previously undisclosed impact.

Use of Occurrence Databases

The PRDEIR did not rely solely on CNDDDB, eBird, iNaturalist, or other occurrence databases to determine whether species could occur in the study area. Those databases were used as supplemental sources in combination with field observations, habitat assessment, land-cover mapping, regional distribution information, species ecology, hydrologic conditions, and species life-history requirements.

The District agrees that positive-occurrence databases generally confirm reported presence and are not comprehensive inventories from which species absence may be inferred. The PRDEIR does not rely on absence of database records as affirmative evidence that any species was absent. Instead, occurrence information was considered together with whether the study area contained the habitat features necessary to support the species and whether Project-related flow changes could affect those features.

Species Screening and the Number of Species Evaluated

Dr. Smallwood identifies 132 special-status wildlife species occurring within approximately 30 miles (an area of over 1.8 million acres) of the study area and contrasts that number with the 22 species evaluated for potential occurrence in the PRDEIR. The two numbers reflect different screening questions.

A regional list of species documented within 30 miles identifies a broad geographic pool of species that may occur somewhere within a large and ecologically diverse landscape. It does not establish that all listed species could reasonably occur within the approximately 105-acre downstream study area or depend on habitat conditions potentially affected by Project-related flow changes.

The PRDEIR screened species using the criteria discussed in Master Response 3, which include geography range, regulatory status, available occurrence information, species-specific habitat requirements, mapped vegetation and land-cover types, hydrologic conditions, breeding and foraging requirements, dispersal and refugia needs, and field observations. The PRDEIR then considered whether a plausible Project-related flow-impact pathway existed. Species were carried forward where suitable habitat and a reasonably foreseeable mechanism of effect were both present.

The PRDEIR therefore does not conclude that only 22 species could ever occur in the study area. Rather, those species were selected for more detailed discussion because their occurrence potential, habitat requirements, or possible dependency on flow-related habitat conditions warranted specific analysis. Other species may use the study area transiently or seasonally without presenting a distinct impact pathway beyond the habitat and ecological functions already analyzed.

As explained in Master Response 4, the Project would alter, but would not substantially impair, the hydrologic and ecological processes supporting downstream riparian, wetland, and terrestrial habitats. No construction or land-cover conversion would occur within the downstream study area, agricultural return flows and WSID operational discharges would remain unchanged, and the Project-related effects on riparian habitat, wetlands, special-status species, and wildlife movement are evaluated in Section 3.4. The identification of additional species within those habitat types does not by itself demonstrate a different environmental effect.

White-Tailed Kite and Other Observations Requiring a More Specific Response

Dr. Smallwood observed a pair of white-tailed kites mating within the study area. This observation confirms use of the study area and is consistent with the PRDEIR's determination that white-tailed kite has a moderate potential to occur based on the presence suitable nesting habitat within riparian woodland and ornamental trees and suitable foraging habitat within adjacent grasslands and agricultural areas.

The observation does not, by itself, establish an active nest, successful breeding, or a greater dependency on the study area than the PRDEIR assumed. It does, however, warrant clarification that white-tailed kite is specifically included in the analysis of special-status birds.

Impact BIO-TERR-DS-1f has therefore been revised on to state:

“The quality of nesting habitat for many birds remains limited due to the narrow, fragmented nature of the riparian corridor and the impacts of intensive agricultural activity in surrounding areas. Potential nesting habitat for white-tailed kite is nevertheless present in riparian woodlands and ornamental trees within the study area, and potential foraging habitat is present in grassland and nearby agricultural lands. While potential nesting habitat is present, changes to flows in Del Puerto Creek are not expected to cause a substantial loss or degradation of riparian habitat, and impact suitable foraging habitat for special-status birds and nesting migratory birds. ~~raptors in~~ nearby agricultural foraging habitat would remain unchanged fields, as these areas are either dry-farmed or irrigated using water sources that are independent of Del Puerto Creek. Therefore, impacts on special-status bird species and their habitat due to Project operation would be less than significant, and no mitigation would be required.”

Conclusion

Dr. Smallwood’s surveys provide useful additional occurrence information and confirm that the downstream study area supports a broader wildlife assemblage than the limited examples identified in the PRDEIR narrative. The District has considered those observations and has supplemented the record and revised the Second Final EIR where clarification is appropriate.

The PRDEIR’s baseline and impact analysis do not depend on detecting every species that may use the study area. They depend on reasonably characterizing the habitat types, hydrologic conditions, ecological functions, and wildlife uses potentially affected by Project-related flow changes and evaluating whether those changes would cause a substantial adverse effect.

Dr. Smallwood’s observations do not identify a previously unrecognized habitat type, ecological function, or flow-related impact pathway, or demonstrate a materially different degree or type of habitat use that would change the PRDEIR’s significance conclusions. The observations therefore supplement the biological record but do not demonstrate that the PRDEIR’s biological baseline is materially inaccurate or incomplete or that Project operations would result in a new significant impact or a substantial increase in the severity of a previously identified impact.

12.4.6 Response to Comment R4-6

Comment Summary: The comment contends that the PRDEIR fails to analyze how project related changes to Del Puerto Creek’s flow regime would affect downstream terrestrial wildlife, despite acknowledging substantial alterations to flow attributes. The commenter argues that the PRDEIR does not evaluate cascading effects on riparian vegetation and the terrestrial food web and contends that this omission renders the downstream terrestrial impact analysis inadequate under CEQA.

Regarding the assertion that Project-related changes in downstream flow conditions would reduce riparian vegetation and indirectly affect terrestrial wildlife through changes in habitat productivity and food resources, the PRDEIR evaluates the hydrologic and ecological pathways by which flow alterations could affect downstream terrestrial habitats and associated species. As described in Section 3.4.3, *Impact Analysis*, the analysis does not assume that reductions in total annual flow volume necessarily produce a corresponding reduction in riparian vegetation, wetland attributes, or terrestrial habitat function. Rather, the PRDEIR evaluates how Project operations would affect soil-moisture availability, the frequency and duration of creek inundation, groundwater recharge, vegetation persistence and recruitment, and habitat connectivity. These are among the principal pathways by which Project-related flow alterations could affect vegetation structure, habitat productivity, and the terrestrial species that use those resources. Refer to Master Response 4: Project-Related Flow Changes, for additional information.

The District acknowledges that the scientific literature cited by Dr. Smallwood documents circumstances in which altered flow regimes have affected riparian vegetation, channel processes, habitat productivity, and the wildlife communities that depend on those resources. The District does not dispute those general ecological principles. Rather, the District disagrees that the specific flow changes associated with Project

operations would produce comparable effects in lower Del Puerto Creek. As discussed further in Response to Comment R4-7, the cited studies primarily evaluate systems with hydrologic conditions, flow alterations, groundwater dependencies, geomorphic settings, or management regimes that differ materially from those analyzed for the Project. The studies, therefore, do not establish, without consideration of the site-specific hydrologic and habitat conditions, that the Project's modeled flow changes would produce the effects asserted in the comment.

As discussed in Master Response 4, the Project would reduce natural winter and early-spring runoff and some associated opportunities for sediment movement, channel-margin inundation, recession, and in-stream recharge. Those processes would not be eliminated, however. Qualifying storm-event releases would retain selected characteristics of larger runoff events, while releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, channel infiltration, residual soil moisture, and conditions near the San Joaquin River would continue to support downstream riparian and wetland vegetation. The modeled reductions would occur principally during the cool-season runoff period, while the agricultural return flows and WSID operational discharges that provide much of the surface water during the hottest and driest months would remain unchanged.

The PRDEIR also considers the asserted indirect pathway from vegetation and wetland changes to terrestrial wildlife. Riparian trees, shrubs, wetland vegetation, channel margins, and open-water features provide nesting and roosting sites, cover, foraging opportunities, and habitat for insects and other prey. A substantial reduction in the extent, structure, or function of those resources could therefore affect the terrestrial food web and the wildlife community supported by the creek corridor. As discussed in Master Response 4 and Impacts BIO-TERR-DS-1 through BIO-TERR-DS-4, however, the Project is not expected to cause a measurable loss of riparian or wetland habitat, a substantial reduction in vegetation structure or recruitment, or a material impairment of existing habitat connectivity. The record therefore does not indicate that Project operations would substantially reduce the vegetation, wetland functions, cover, nesting substrate, or prey-supporting habitat on which downstream terrestrial wildlife depends. Accordingly, the PRDEIR concludes that Project-related changes in flow volume and timing would not result in a substantial adverse change to downstream terrestrial habitats or the wildlife community those habitats support.

12.4.7 Response to Comment R4-7

Comment Summary: The comment contends that the PRDEIR incorrectly characterizes project operations as maintaining existing downstream flow conditions, citing data indicating substantial reductions in annual and monthly flows. The commenter argues that these reductions would adversely affect riparian vegetation and wildlife productivity and contends that the PRDEIR fails to analyze these foreseeable downstream terrestrial impacts.

Although this percentage reduction in the modeled natural creek flow reaching the downstream endpoint remains substantial, the percentage does not by itself establish the ecological effect within the 7.4-mile study area. Annual volume does not show when the reductions would occur, how flow and infiltration would vary along the reach, whether dry-season water sources would change, or how the resulting hydrologic regime would affect the disturbance, recharge, moisture, and habitat processes relevant to downstream terrestrial resources.

The modeled reductions would occur principally during the winter and early-spring runoff period. Appendix G, *Del Puerto Creek Monthly Flows*, also shows a small average reduction in May, which rounds to zero when expressed in whole cubic feet per second in Appendix F, *Del Puerto Canyon Reservoir Modeling*. No average reduction is modeled from June through November. Thus, the Project would reduce some cool-season natural runoff and associated recharge and disturbance opportunities, but would not alter the agricultural return flows and WSID operational discharges that presently provide much of the surface water in lower Del Puerto Creek during the hottest and driest months.

The District does not dispute the general proposition reflected in the scientific literature cited by Dr. Smallwood. The studies cited, including Rood et al. (2003), Ohmart (1994), Graf (2006), Stromberg et al. (2007), and Merritt and Bateman (2020), generally describe systems in which dam construction, flow regulation, streamflow dewatering, or other hydrologic alterations substantially modify floodplain inundation patterns, groundwater availability, sediment transport processes, channel morphology, riparian recruitment dynamics, or other hydrologic and geomorphic functions that sustain downstream riparian ecosystems. The relevance of those studies to this Project depends on the particular hydrologic alteration, the existing intermittent flow regime, the continuing downstream resources, groundwater and channel conditions, and the habitat and species at issue. The cited studies principally address systems with different hydrologic, geomorphic, or management conditions and do not establish that every reduction in annual runoff produces the same response.

With respect to geomorphic processes specifically, Graf (2006) evaluated the downstream effects of very large dams that substantially altered peak-flow regimes, sediment transport conditions, floodplain connectivity, and channel-forming processes on major river systems. The dams evaluated in that study each had storage capacities of at least 1 million acre-feet and were selected specifically because of their ability to exert substantial control over downstream hydrology and geomorphology. By comparison, the Project's proposed reservoir would have a storage capacity of approximately 82,000 acre-feet, making it more than twelve times smaller than the smallest dam evaluated by Graf (2006). For this reason, the effects described by Graf (2006) cannot reasonably be compared to the Project's potential impacts to flows in lower Del Puerto Creek without specific evidence demonstrating that comparable hydrologic alterations would occur.

In addition, the circumstances evaluated in Stromberg et al. (2007) and Rood et al. (2003) are not analogous to the conditions predicted for lower Del Puerto Creek under Project operations. Stromberg et al. (2007) largely addresses systems affected by perennial-to-intermittent flow transitions, stream dewatering, groundwater pumping, and substantial reductions in water availability. Similarly, Merritt and Bateman (2020) evaluated reptile and amphibian communities in riparian systems including the Middle Rio Grande and Virgin River, which are perennial river systems, and the San Pedro River, a larger intermittent river system with hydrologic and ecological characteristics that differ substantially from lower Del Puerto Creek. Notably, Merritt and Bateman (2020) did not evaluate the effects of a reservoir project, environmental flow program, or modeled reductions in annual runoff volume. Likewise, Rood et al. (2003) focuses on cottonwood responses where groundwater support for riparian vegetation was substantially diminished or lost due to stream dewatering and associated groundwater declines. In addition, Ohmart (1994) focuses heavily on large western river systems, especially the lower Colorado River, where dams eliminated flooding, altered salinity, reduced instream flows, and contributed to losses of cottonwood-willow recruitment and associated wildlife habitat. Ohmart (1994) further notes that such conditions may be reversible through appropriate flow management. Overall, the ecological responses described by Rood et al. (2003), Ohmart (1994), and the related studies are predicated on reductions in groundwater availability, loss of floodplain inundation, disruption of riparian recruitment processes, or other hydrologic alterations sufficient to affect the growth, recruitment, persistence, or structural complexity of riparian vegetation communities.

By contrast, lower Del Puerto Creek is already a naturally intermittent system that is much smaller in scale than the systems describe in Ohmart (1994). The ecological responses described in those studies cannot be assumed to occur under the Project's substantially different hydrologic setting and operating conditions. As explained in Master Response 4, the Project would reduce some natural winter and early-spring runoff and associated opportunities for sediment movement, channel-margin inundation, recession, and in-stream recharge. Those processes would not be eliminated, however. Qualifying storm-event releases would retain selected characteristics of larger runoff events. Releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, in-channel infiltration, residual soil moisture, and conditions near the San Joaquin River would continue

to contribute to the hydrologic and ecological conditions supporting downstream riparian and wetland habitat.

Master Response 4 also explains why the ecological effect of reduced flow cannot be determined from total runoff volume alone. The effect depends on how the reduction changes the timing, magnitude, frequency, duration, and recession of flows and the related disturbance, recharge, and moisture conditions supporting riparian and wetland resources. The PRDEIR applies that framework under Impacts BIO-TERR-DS-1 through BIO-TERR-DS-4 by evaluating potential effects on special-status species, riparian habitat, protected wetlands, and wildlife movement.

Accordingly, the updated modeling does not support the earlier 81-percent figure, but the District does not rely solely on the lower revised percentage to reach its conclusion. The conclusion rests on the site-specific hydrologic modeling, field observations, habitat characterization, scientific literature, and resource-specific analyses showing that Project operations would alter, but would not substantially impair, the ecological processes and habitat conditions supporting downstream terrestrial resources. The less-than-significant conclusions in the PRDEIR therefore remain unchanged.

.

12.4.8 Response to Comment R4-8

Comment Summary: The comment contends that the PRDEIR misrepresents scientific literature by citing an EPA report to downplay the significance of reduced flow volumes, asserting that the source does not support the claim that inundation frequency outweighs overall flow magnitude. The comment also contends that combined reductions in flow volume and altered hydropatterns pose a threat to downstream wetland and terrestrial resources that the PRDEIR fails to analyze.

The District agrees that EPA (2008) does not support the statement that wetland health is more strongly influenced by the frequency and duration of inundation than by total annual flow volume. The Second Final EIR therefore revises the discussion Impact BIO-TERR-DS-3 on page 3.4-35 of the PRDEIR and removes the citation to EPA (2008) for that proposition. The revised text states:

“While the proposed Project would reduce overall flow volumes in the study area, intermittent and seasonally dry systems can support wetland communities adapted to substantial hydrologic variability. Vegetation in arid environments may persist through seasonal groundwater recharge, residual soil moisture, subsurface water availability, and other adaptations to variable water conditions. (Williams and Hynes 1977; Nilsen et al. 1984). ~~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 (EPA 2008).~~”

This revision corrects the citation and clarifies the scientific basis for the discussion. It does not change the PRDEIR’s significance conclusion because that conclusion does not depend on the proposition that inundation frequency and duration are categorically more important than total flow volume.

The District also agrees that ecological effects can result from the combined influence of reduced flow volume and altered hydrologic patterns. The PRDEIR therefore evaluates both. As described in Section 3.4.3 and Master Response 4, the analysis considers how Project operations would affect flow magnitude, timing, frequency, duration, and recession, as well as channel-margin inundation, groundwater recharge, residual soil moisture, vegetation persistence and recruitment, wetland conditions, and habitat connectivity.

Lower Del Puerto Creek is an intermittent system with substantial seasonal and annual variability. Natural upstream runoff occurs primarily during the winter and early spring, while agricultural return flows and WSID operational discharges provide much of the surface water present during the hottest and driest months. During extended low-flow periods, riparian and wetland vegetation may also be sustained by

seasonal recharge, residual soil moisture, and other subsurface moisture sources rather than continuous surface flow.

As discussed in Master Response 4, the Project would reduce some natural winter and early-spring runoff and associated opportunities for inundation, sediment movement, recession, and recharge. Those processes would continue in modified form through qualifying storm-event releases, releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, channel infiltration, residual soil moisture, and conditions near the San Joaquin River. The Project would not fully reproduce the existing natural-flow regime, but the post-Project condition would continue to include the principal hydrologic and moisture processes relevant to downstream riparian and wetland resources.

Impact BIO-TERR-DS-3 applies that analysis to the wetlands present in the study area. It evaluates whether the combined changes in flow volume and hydrologic pattern would substantially alter inundation, soil saturation, recharge, vegetation, or wetland structure and function. Based on the site-specific hydrologic modeling, field observations, habitat characterization, and ecological literature, the PRDEIR concludes that the Project would not substantially reduce the extent or quality of downstream wetlands or cause a substantial hydrological interruption.

Accordingly, the District has corrected the unsupported characterization of EPA (2008), but that correction does not alter the analytical route or the less-than-significant conclusion under Impact BIO-TERR-DS-3. The conclusion rests on the site-specific evaluation of the combined changes in flow volume, timing, duration, frequency, recession, recharge, and moisture availability, rather than on the disputed statement attributed to EPA (2008).

12.4.9 Response to Comment R4-9

Comment Summary: The comment, relying on Dr. Smallwood's accompanying letter, contends that the PRDEIR understates project impacts by mischaracterizing flow reductions and failing to analyze resulting effects on the downstream riparian environment and terrestrial species. The comment also notes the rarity of riparian habitat in California. Citing substantial reductions in annual flow, the commenter asserts that reduced flows would degrade riparian vegetation, alter habitat structure, and diminish wildlife support functions, and contends that the absence of a comparative or species focused analysis renders the PRDEIR inadequate under CEQA.

The District agrees that riparian habitats are a limited and ecologically important resource in California and that remaining riparian corridors may provide disproportionately important habitat functions within otherwise developed or agriculturally dominated landscapes. The PRDEIR does not conclude that the lower Del Puerto Creek corridor lacks ecological value because it has been modified by historical disturbances. Rather, it describes the actual baseline condition in the study area, including roadway and canal infrastructure, channelization, agricultural return flows, vegetation clearing, and water-quality degradation, and narrow, fragmented habitat, while also recognizing the nesting, foraging, cover, and movement functions the remaining habitat may provide. (PRDEIR, pp. 3.4-2 to 3.4-10; see also Master Response 3: Biological Baseline and Species Occurrence).

These existing limitations do not make further degradation immaterial. They define the habitat features and ecological functions against which the Project's incremental effects are evaluated. The rarity or regional importance of riparian habitat is relevant to the sensitivity of the resource, but it does not by itself establish that the Project would cause a substantial adverse change. The significance determination depends on whether Project-related flow changes would measurably reduce the extent, quality, structure, or function of the riparian habitat that remains.

The District also does not dispute that reductions in streamflow can, under some circumstances, affect cottonwood recruitment, riparian vegetation structure, habitat complexity, non-native plant abundance, or wildlife use of riparian habitats.

However, the cited studies do not provide directly comparable examples because they generally evaluate systems that experienced substantially different hydrologic alterations than those predicted under Project operations. Those studies do not establish the effect of this Project without consideration of the existing intermittent flow regime, the magnitude and seasonal timing of the modeled reductions, continuing downstream water sources, groundwater and channel conditions, and the habitat resources present in the study area. Please refer to Response to Comment R4-7 for a more detailed discussion of the cited studies.

As explained in Master Response 4, the Project would reduce natural winter and early-spring runoff and some associated opportunities for sediment movement, channel-margin inundation, recession, and in-stream recharge. Those processes would continue in modified form through qualifying storm-event releases, releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, channel infiltration, runoff, residual soil moisture, and conditions near the San Joaquin River. Master Response 4 explains why the ecological effect of the reduction cannot be determined from the annual percentage alone and evaluates how the post-Project hydrologic regime would affect riparian vegetation persistence and recruitment, wetland conditions, habitat structure, prey-supporting resources, and movement functions.

The PRDEIR does not conclude that every natural cottonwood-recruitment opportunity would remain or that successful establishment would occur in any particular year. Rather, the PRDEIR evaluates whether the Project would substantially impair the interacting disturbance, recruitment-surface, recession, recharge, and moisture conditions that allow riparian vegetation to persist and recruit over time. For the reasons explained in Master Response 4, those processes would continue under a modified hydrologic regime, and the Project is not expected to cause widespread riparian loss, substantial degradation of vegetation structure, or a measurable reduction in the extent or quality of riparian habitat.

The PRDEIR also provides the comparative and species-focused analysis the comment contends is missing. The PRDEIR uses scientific literature to identify relevant ecological pathways, but bases its significance conclusions on the site-specific modeled changes and existing habitat conditions rather than assuming that effects documented in another dam-regulated rivers will occur here. Section 3.4.3 then applies the habitat-level analysis to the species and species groups carried forward under Impacts BIO-TERR-DS-1a through BIO-TERR-DS-1g and to riparian habitat, wetlands, and wildlife movement under Impacts BIO-TERR-DS-2 through BIO-TERR-DS-4.

Accordingly, the PRDEIR does not minimize the ecological importance of the lower Del Puerto Creek riparian corridor to treat existing degradation as justification for further loss. Rather, it appropriately analyzes the riparian corridor of Del Puerto Creek, evaluates its role in supporting terrestrial species, and provides an assessment of whether Project-related flow changes would adversely affect that environment based on substantial evidence. The PRDEIR therefore satisfies CEQA's requirements for disclosure and analysis of direct and indirect impacts to riparian habitats and associated terrestrial species and remains an adequate informational document.

12.4.10 Response to Comment R4-10

Comment Summary: The comment contends that the PRDEIR does not comply with CEQA's cumulative impacts requirements for downstream terrestrial species. Specifically, the commenter asserts that the PRDEIR's cumulative impact analysis is inadequate because (i) it relies on the cumulative project list from the 2020 Final EIR without addressing projects approved after that document was certified, (ii) it improperly narrows the geographic scope by dismissing projects based on distance rather than potential overlapping impacts, and (iii) it concludes that cumulative impacts would not occur due to mitigation and regulatory compliance by other projects and Project mitigation measures from the 2020 Final EIR. The commenter contends that a legally adequate analysis must evaluate how the Project's impacts combine with other past, present, and reasonably foreseeable projects to affect the same terrestrial resources over time.

The requirements of CEQA related to the cumulative analysis include an analysis of closely related past, present, and reasonably foreseeable probable future projects that could contribute to a cumulatively significant impact when combined with project impacts; and, for any cumulatively significant impacts, the EIR includes an analysis as to whether the project would make a cumulatively considerable contribution and, therefore, constitute a significant impact and an analysis as to whether the project's contribution has been rendered less than cumulatively considerable with mitigation. (CEQA Guidelines § 15355(b).) "The discussion should be guided by the standards of practicality and reasonableness." (*Id.* at § 15130(b).)

The PRDEIR's conclusion that the Project's incremental contribution to cumulative effects on downstream resources would not be cumulatively considerable rests on affirmative findings specific to the Project's design and operation, including that: (i) no construction or land-cover conversion would occur within the downstream study area; (ii) dry-season flows sustained by irrigation flows and West Stanislaus Irrigation District operational spills would remain unchanged; (iii) environmental flow commitments that would preserve select flow characteristics are included in the Project; and (iv) mitigation measures identified in the 2020 Final EIR address the habitat impacts associated with reservoir inundation and infrastructure relocation within the Project footprint, which were the subject of the prior CEQA review and were not disturbed by the Court of Appeal.

These findings establish that the Project, with implementation of its environmental commitments and the 2020 Final EIR mitigation measures, would not introduce an incremental adverse effect on downstream terrestrial habitats or species that could combine with effects of other projects referenced in the comment to produce a cumulatively significant impact in the study area. For additional information, please refer to Response to comment R3-3.

The PRDEIR's cumulative analysis is also informed by, and properly relies in part on, the regulatory framework applicable to other development in the cumulative study area. Other projects affecting terrestrial biological resources in the area would be subject to CEQA review, the federal and California Endangered Species Acts, the Clean Water Act, Fish and Game Code section 1602, and other applicable regulatory requirements that require evaluation, avoidance, minimization, and mitigation of significant effects on terrestrial biological resources. The expectation that future projects will comply with these requirements is a reasonable inference supported by the operation of the regulatory framework itself, not an unsupported assumption of voluntary mitigation by other projects. Considered together with the project-specific findings identified above, including the absences of construction in the downstream study area, the unchanged dry-season flow regime, and the environmental flow commitments that would preserve the seasonal hydrologic functions identified in the PRDEIR as supporting downstream riparian and terrestrial habitat conditions, the regulatory framework further supports the PRDEIR's conclusion that the Project's incremental contribution to cumulative effects on downstream terrestrial species would not be cumulatively considerable, even if cumulative impacts from past, present, and reasonably foreseeable future projects in the region may themselves be significant. (See PRDEIR, p. 3.4-40.)

Regarding geographic scope, the geographic scope for a cumulative impact analysis is properly defined by the resource at issue and the impact pathway through which other projects could combine with the Project to affect that resource. (See CEQA Guidelines, § 15130(b)(2) and (b)(3).) For downstream terrestrial resources, the relevant geographic scope is the study area and within one mile of the study area (PRDEIR, p. 3.4-38), which is the area through which Project-related changes in surface flows and associated habitat conditions could combine with the effects of other projects affecting the same resource. The reference in the 2020 Final EIR to projects being "sufficiently distant" from the Project facilities reflects the absence of a shared impact pathway. Projects that are upland of the study area, hydrologically disconnected from lower Del Puerto Creek, or otherwise lacking a mechanism by which the projects could combine with Project's related effects on downstream terrestrial resources do not share a cumulative impact pathway with the Project. In this instance, the PRDEIR evaluates whether other projects could compound impacts to hydrologic conditions, riparian habitat conditions, soil moisture

availability, habitat continuity, or terrestrial species use. Projects located outside the cumulative study area or otherwise lacking a mechanism to affect these processes do not have a cumulative relationship with the Project.

Regarding the cumulative project list, that list and the broader cumulative impact analysis methodology for the Project were established in the 2020 Final EIR (§ 3.0.3, Analysis of Cumulative Impacts; Table 3.0-1) and were upheld by the Court of Appeal except as to the downstream terrestrial species deficiency identified in the Opinion. The Modified Judgment entered April 8, 2025, directs preparation of a partially recirculated EIR addressing that deficiency, and the PRDEIR's recirculation under CEQA Guidelines section 15088.5, subdivision (f)(2), is limited to the downstream terrestrial impact analysis. The cumulative project list itself was not disturbed by the Court of Appeal and is not within the scope of the recirculation.

The District also acknowledges its independent obligation under CEQA Guidelines section 15088.5 to consider whether significant new information has emerged that would require additional analysis or recirculation of the PRDEIR. With respect to cumulative effects on downstream terrestrial resources, however, those obligations would be triggered only by the identification of a new cumulative project of such a magnitude that the resulting cumulative impacts would be so severe that the Project's incremental contribution thereto would have to be considered cumulatively considerable (and thus significant in and of themselves) rather than less than cumulatively considerable, as the PREIR finds.

The cumulative geographic scope for downstream terrestrial resources (the study area and areas within one mile), is dominated by agricultural land use, and the land uses and hydrologic conditions within that scope have not undergone the kind of character change that would alter the universe of cumulative projects relevant to downstream terrestrial resources or introduce new impact pathways not analyzed in the 2020 Final EIR. Review of publicly available Stanislaus County and City of Patterson notices and approvals since 2020 has not identified any project with a shared impact pathway. The closest project to the downstream study area is the Zacharias Master Plan project, which includes annexation and development of lands south of Zacharias Road and west and east of Rogers Road, south of the Del Puerto Creek study area. The comment does not identify any specific projects proposed or approved since preparation of the 2020 Final EIR that would (i) share the impact pathways relevant to downstream terrestrial resources in Del Puerto Creek, namely hydrologic alteration affecting surface flows, soil moisture availability, riparian habitat conditions, habitat continuity, or terrestrial species use within the study area, and (ii) combine with the Project such that the Project would now result in a cumulatively considerable impact (i.e., a new significant impact). Absent identification of specific projects leading to such consequences, no update to the cumulative project list is required to support the PRDEIR's analysis of the Project's less than cumulatively considerable incremental contribution to cumulative effects on downstream terrestrial resources.

12.4.11 Response to Comment R4-11

Comment Summary: The comment contends that new information and changed circumstances since certification of the 2020 EIR require preparation of a supplemental EIR addressing impacts beyond the downstream terrestrial analysis provided in the PRDEIR. Specifically, the comment asserts that numerous species within the reservoir footprint have either been newly documented or have experienced changes in regulatory status since 2020, including the listing or candidacy of several species under the California and federal Endangered Species Acts and recent observations of monarch butterfly, ferruginous hawk, and Bell's sparrow, which were not analyzed in the 2020 EIR because they were not documented at the time.

As a threshold matter, the District's Board of Directors set aside the 2020 Final EIR's certification on February 15, 2023. The Project is therefore not currently in the post-certification posture in which Public Resources Code section 21166 and CEQA Guidelines section 15162 apply. The operative question for the District's ongoing environmental review is whether recirculation is required under Public Resources Code

section 21092.1 and CEQA Guidelines section 15088.5. Under CEQA Guidelines section 15088.5, subdivision (a), recirculation is only required where significant new information shows that “[a] new significant environmental impact would result from the project” or that “[a] substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.” (CEQA Guidelines § 15088.5(a)(1)–(2).) Newly listed status, newly assigned candidacy, or newly documented species occurrences do not, standing alone, establish significant new information requiring recirculation under CEQA Guidelines section 15088.5.²

Changes in legal status do not themselves change the physical environmental baseline. Newly documented occurrences, however, may provide additional information about how existing habitat is used. The District therefore reviewed the status changes and observations identified in the comment to determine whether they (i) reveal a previously unrecognized habitat type, species dependency, degree of site use, or Project-related impact pathway; (ii) show that a previously disclosed impact would be substantially more severe; or (iii) demonstrate that the adopted mitigation would not operate as previously concluded.

Species previously analyzed whose status has changed. Foothill yellow-legged frog, western spadefoot, northwestern pond turtle, and western burrowing owl were evaluated in the 2020 Final EIR based on their habitat requirements and the Project’s potential construction, inundation, habitat-loss, and fragmentation effects. The 2020 Final EIR also adopted species-specific and general biological mitigation measures addressing avoidance, preconstruction surveys, biological monitoring, work restrictions, habitat compensation, and other protective measures. Based on the District’s review of the relevant rulemakings, these status changes or proposed status do not alter the type or acreage of habitat affected, introduce a new construction or operational impact mechanism, or demonstrate that the previously adopted measures would no longer reduce the identified effects as concluded in the 2020 Final EIR. The changes may affect the permits, consultation, or take authorization required before construction, and the District will comply with the requirements applicable when Project activities occur.

Newly documented species or habitat use. The District also reviewed the species observations identified in the comment to determine whether they constitute significant new information under CEQA Guidelines section 15088.5. For purposes of this analysis, the District assumes the reported observations are accurate unless otherwise noted. However, the relevant question under CEQA Guidelines section 15088.5 is not whether an additional species has been observed within or near the Project area, but whether the new observation demonstrates a new significant impact, a substantially more severe impact, or a previously unidentified impact mechanism. The District’s review concluded that the reported observations do not alter the significance determinations in the 2020 Final EIR because they do not identify a new impact pathway, materially different habitat conditions, or physical impacts beyond those already evaluated.

The observations of foothill yellow-legged frog, western spadefoot, northwestern pond turtle, and western burrowing owl cited by the commenter do not reveal a previously unidentified species occurrence that was excluded from the environmental analysis. Foothill yellow-legged frog (Impact BIO-TERR-1g), western spadefoot toad (now western spadefoot) (Impact BIO-TERR-1f), western (now northwestern) pond turtle (Impact BIO-TERR-1e), and western burrowing owl (Impact BIO-TERR-1j) were each identified, evaluated, and addressed through species-specific mitigation measures in the 2020 Final EIR.

² Courts have recognized that changes in listing status or new species observations do not require recirculation where the EIR already analyzed the relevant habitat impacts and the new information does not demonstrate a new or substantially more severe environmental effect (See e.g., *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1149; *Fort Mojave Indian Tribe v. California Department of Health Services* (1995) 38 Cal.App.4th 1574, 1605-1606; see also *Silverado Modjeska Recreation and Park District v. County of Orange* (2011) 197 Cal.App.4th 282 [observation of arroyo toad larvae near project site did not trigger duty to recirculate where agency’s expert determined that the sighting did not increase the probability that toads would be present on the project site].)

With respect to foothill yellow-legged frog, ICF biologists reviewed the occurrence information and the District has corrected inconsistencies contained in the PRDEIR regarding nearby CNDDDB records. As explained in Response to Comment R15-8, these corrections have been made in the Second Final EIR to revise page 3.4-15 of the PRDEIR, as well as Appendix C, *Special-Status Species Tables*, to state that the nearest confirmed CNDDDB occurrence is occurrence #75, located approximately 3 miles southwest of the downstream study area.

The referenced CNDDDB occurrence is located adjacent to designated foothill yellow-legged frog critical habitat (Unit CC-1, Subunit e: Del Puerto Creek), which was identified by the U.S. Fish and Wildlife Service (USFWS) based on the presence of occupied habitat containing the physical and biological features necessary to support established populations, including suitable breeding and rearing habitat, tributary refugia, upland habitat, and habitat connectivity (USFWS 2025). The USFWS identified these areas as having the hydrologic and geomorphic conditions needed to support long-term recruitment and population persistence.

The documented occurrence is located within a higher-gradient stream environment that differs substantially from conditions in the downstream study area. Specifically, consolidated bedrock, cobble, and boulder substrates are more prevalent, elevations range from approximately 500 feet above mean sea level (MSL) to 2,200 feet MSL, and the channel is narrower with higher water velocities. These characteristics provide suitable breeding and foraging habitat for foothill yellow-legged frog. In contrast, the downstream study area is located on the valley floor, with elevations ranging from approximately 216 feet MSL at its western extent to approximately 50 feet MSL at the confluence with the San Joaquin River, and lacks many of the hydrologic and geomorphic features associated with the documented occurrence and adjacent critical habitat.

Because the downstream study area is primarily characterized by intermittent flows, agricultural influences, and limited riparian habitat, habitat conditions for foothill yellow-legged frog are marginal in the study area. The downstream study area does not contain the same combination of breeding, rearing, and refuge habitat characteristics identified by the USFWS as essential to the species' conservation. Therefore, the occurrence record near designated critical habitat does not demonstrate that the downstream study area contains occupied habitat or habitat conditions comparable to those present at the documented occurrence location.

In summary, ICF's qualified biologists reviewed the reported observations and determined that the CNDDDB occurrence does not alter the conclusions of the analysis regarding foothill yellow-legged frog habitat suitability within the downstream study area. The occurrence does not increase the likelihood that the Project would affect occupied habitat beyond that already analyzed, nor does it identify a new impact pathway that was not previously considered. The comment does not identify substantial evidence demonstrating that the Project would result in physical impacts to these species or its habitat beyond those already disclosed and mitigated in the 2020 Final EIR.

The comment also identifies monarch butterfly, ferruginous hawk, and Bell's sparrow, as species recently documented within the reservoir's footprint. The District acknowledges that these species were not separately analyzed in the 2020 EIR. Ferruginous hawk and Bell's sparrow are not listed species under the federal Endangered Species Act or California Endangered Species Act. Ferruginous hawk may be found in the reservoir footprint during the non-breeding season when it utilizes open grasslands and agricultural areas for foraging and may roost in trees, structures, or other elevated features, while Bell's sparrow is associated with shrubland habitats. The 2020 EIR evaluated the effects of habitat loss, vegetation removal, construction disturbance, and nesting bird impacts associated with these habitat types and adopted Mitigation Measure BIO-TERR-1k, *Avoid and Minimize Impacts on Nesting Birds*, which requires preconstruction nesting bird surveys, establishment of species-appropriate avoidance buffers around active nests, and avoidance of nest disturbance during the breeding season. These measures apply broadly to nesting birds protected under the Migratory Bird Treaty Act and California Fish and Game

Code and would also apply to Bell's sparrow if active nests were present within areas subject to disturbance. ICF's qualified biologists reviewed the reported observations and determined that, even assuming the observations are accurate, they do not increase the likelihood that the Project would affect additional occupied habitat beyond that already analyzed, nor do they identify a new impact pathway not previously considered. The comment does not identify substantial evidence demonstrating that the Project would result in physical impacts to these species or their habitats beyond those already disclosed and mitigated in the 2020 Final EIR.

With respect to monarch butterfly, the comment concerns newly available information regarding monarch butterfly occurrence and habitat within and near the Del Puerto Canyon reservoir area west of Interstate-5, which was evaluated in the 2020 Final EIR. The District has considered the new information to determine whether it requires further recirculation of the 2020 Final EIR's analysis of impacts within the reservoir footprint. The District acknowledges that this species was not separately analyzed in the 2020 EIR. Since certification of that document, additional information has become available concerning monarch occurrence and habitat within the Del Puerto Canyon study area west of Interstate 5. The December 2025 *Del Puerto Canyon Reservoir Project Draft Environmental Impact Statement* reports one migratory monarch occurrence along Del Puerto Creek within that study area in 2023, three additional migratory observations and one breeding occurrence outside the study area, and milkweed documented during 2025 botanical surveys within the Del Puerto Canyon study area. Based on that information, the District assumes for purposes of this analysis that portions of the reservoir area may provide migration or foraging habitat and that locations supporting milkweed may provide potential breeding habitat.

The new information concerning monarch does not identify a new Project component, an additional area of disturbance, or an impact pathway not evaluated in the 2020 Final EIR. The habitat potentially used by monarch butterfly within the Del Puerto Canyon Reservoir study area, including riparian woodland, open grassland, and other vegetated areas, consists of the same land-cover types mapped and evaluated in the 2020 Final EIR. The 2020 Final EIR quantified the Project's permanent and temporary effects on those land-cover types and disclosed that reservoir construction, inundation, road realignment, utility relocation, and associated facilities would remove or disturb that vegetation and wildlife habitat. The later documentation of monarch occurrence and milkweed does not increase the acreage or type of habitat affected or identify a new impact mechanism.

The 2020 Final EIR also adopted mitigation measures addressing those physical effects. Mitigation Measure BIO-TERR-1a requires environmental training, limitation of grading and off-road travel to the minimum necessary, fencing of sensitive habitats, and biological monitoring during initial ground-disturbing activities and adjacent to grasslands and during tree removal. Mitigation Measures BIO-TER-2 and BIO-TER-3 require creation, acquisition, and permanent protection of compensatory riparian and wetland habitat sufficient to replace the functions and values lost through Project implementation. Together, these measures would avoid or minimize disturbance outside the Project footprint, reduce the potential for injury or mortality during construction, and replace affected habitat functions. They apply based on the vegetation and habitat affected, regardless of whether monarch butterfly had been separately identified when the 2020 Final EIR was prepared.

The new information does clarify that some of the vegetation already identified for removal or disturbance may provide monarch-specific migration, foraging, or breeding functions, including nectar resources and, where milkweed occurs, larval host habitat. The District therefore reviewed whether that species-specific use would make the previously disclosed habitat impacts substantially more severe. Although the Project could affect milkweed or nectar plants where they occur within permanent disturbance areas, the available information does not identify an overwintering site, concentrated migratory roost, substantial breeding population, or other monarch resource whose loss would make the Project's biological impacts materially more severe than the vegetation and habitat-loss impacts disclosed in the 2020 Final EIR.

The existing mitigation measures therefore already address the principal physical effects relevant to monarch butterfly and substantially reduce the potential for disturbance, injury, mortality, and loss of habitat function. To provide additional, species-specific protection and ensure that affected monarch host and nectar resources are expressly addressed during Project implementation, the District will also revise Mitigation Measure BIO-TERR-1a, as written below, in its Mitigation Monitoring and Reporting Program. However, these measures are not needed to address impacts in the downstream study area because the project would not affect monarch butterfly habitat in that area.

BIO-TERR-1a: Avoid and Minimize Impacts on Biological Resources.

The Project Partners shall incorporate the following measures into construction plans.

- Employees and contractors performing construction and decommissioning activities will receive environmental sensitivity training. Training will include review of environmental laws, mitigation measures, permit conditions, and other requirements that must be followed by all personnel to reduce or avoid effects on biological resources during construction activities.
- Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas to the extent practicable.
- Offroad vehicle travel will be avoided outside of the construction footprint.
- Grading will be restricted to the minimum area necessary.
- Prior to ground-disturbing activities, sensitive habitats will be flagged by a USFWS and CDFW approved biologist and temporary fencing will be in place during construction to reduce the potential for vehicles and equipment to stray into these areas.
- Vehicles or equipment will not be refueled within 100 feet of a wetland, stream, or other waterway unless a bermed and lined refueling area (i.e., a created berm made of sandbags or other removable material) is constructed.
- Erosion control measures will be implemented to reduce sedimentation in nearby aquatic habitat when activities are the source of potential erosion. Plastic monofilament netting (erosion control matting) or similar material containing netting will not be used at the project site. Acceptable substitutes include coconut coir matting or tackified hydroseeding compounds.
- The following will not be allowed at or near work sites for project activities: trash dumping, firearms, open fires (such as barbecues), hunting, and pets.
- First- and second-generation rodenticides will not be used within the project site except for the limited use of zinc phosphide, or a rodenticide allowed for use by the California Department of Pesticide Regulation.
- An approved biologist will be on site during initial ground-disturbing activities within and adjacent to grassland areas and during the removal of any trees. The biologist will assist the crew, as needed, to comply with all project implementation restrictions and guidelines. In addition, the biologist will be responsible for ensuring that contractors maintain exclusion areas adjacent to sensitive biological resources, and for documenting compliance with all biological resources-related mitigation measures.
- To minimize effects on monarch butterfly host plants, transplant milkweeds and nectar plants, or identify suitable alternatives, from areas that will be permanently impacted and into suitable habitats.
- In support of monarch butterfly conservation and conservation of other native pollinators, where permanent impacts cannot be avoided, milkweed and regionally appropriate nectar species will be transplanted or replaced with suitable alternatives and will be incorporated into mitigation lands, non operational areas, or appropriate rights of way, subject to site conditions and feasibility. Additionally, the use of herbicides and insecticides will be avoided or minimized in these areas to reduce potential harm to pollinators.

These requirements refine and strengthen the biological-resource measures applicable to vegetation removal and habitat compensation. They do not reflect a determination that the Project would cause a previously undisclosed significant impact on monarch butterfly or its habitat. The physical effects relevant to monarch butterfly were already encompassed by the 2020 Final EIR's analysis of vegetation removal, habitat loss, construction disturbance, and inundation, and the existing mitigation program already requires avoidance and minimization of construction-related effects and replacement of affected riparian and wetland functions and values. The additional monarch-specific provisions provide further assurance that milkweed and nectar resources will be avoided where practicable and transplanted or replaced where permanent impacts cannot be avoided.

The District has thus considered both the species-specific significance of the newly documented monarch occurrence and milkweed habitat and the applicability of the mitigation adopted in the 2020 Final EIR. The new information does not identify additional habitat loss, a new impact mechanism, or a new or substantially more severe physical impact. The existing mitigation program already addresses the vegetation removal, construction disturbance, inundation, and habitat-function losses relevant to monarch butterfly, and the revised Mitigation Measure BIO-TERR-1a adds focused protection for milkweed, nectar plants, and native pollinators. With implementation of those measures, impacts on monarch butterfly would be less than significant. Accordingly, the information cited by the commenter does not demonstrate the existence of a new significant impact or a substantial increase in the severity of a previously disclosed significant impact. It therefore does not constitute significant new information requiring recirculation under Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5.

12.4.12 Response to Comment R4-12

Comment Summary: The comment requests that, as mitigation for the Project's direct and indirect biological impacts, the District protect upper Del Puerto Canyon as on-site habitat preservation, in addition to off-site mitigation through conservation easements and mitigation banks. The comment asserts that the Project would destroy grassland, oak woodland, coastal scrub, and riparian habitats, as well as partially sever a wildlife corridor identified in the Bay Area Critical Linkages Report (Penrod et al. 2013). The comment notes that this corridor is important for movement and population connectivity of several species. The comment also notes a concern that mitigation banks may not include suitable habitat or available acres for much of the required mitigation.

The District acknowledges the importance of grassland, oak woodland, coastal scrub, and riparian habitats in Del Puerto Canyon and the role that regional wildlife linkages play in supporting species movement and connectivity.

The impacts the comment identifies, including loss of habitat within the inundation area and partial severance of a regional wildlife corridor, are Project-footprint impacts that were evaluated, disclosed, and mitigated for in the 2020 Final EIR. As explained in Response to Comment R3-5, the 2020 Final EIR evaluated impacts to wildlife movement and corridors within and adjacent to the Project footprint, including impacts from reservoir inundation and the relocation of Del Puerto Canyon Road, and concluded that these impacts would be significant prior to mitigation. The 2020 Final EIR identified and adopted mitigation measures to address these impacts, including wildlife crossing structures, corridor preservation and enhancement measures, and wildlife signage (Mitigation Measures BIO-TERR-4a through BIO-TERR-4c). The 2020 Final EIR also includes species-specific compensation and avoidance measures for the species identified in the comment, including American badger (BIO-TERR-1q), San Joaquin kit fox (BIO-TERR-1o and BIO-TERR-1p, the latter committing to conservation easements along the I-5/California Aqueduct corridor to improve kit fox dispersal habitat), western burrowing owl (BIO-TERR-1j), special-status nesting birds, including white-tailed kite and loggerhead shrike (BIO-TERR-1k), special-status reptiles (BIO-TERR-1i), and California red-legged frog (BIO-TERR-1g). The Court of

Appeal identified no deficiency in the 2020 Final EIR’s analysis or mitigation of wildlife corridor and connectivity impacts caused by the Project footprint (Opinion, pp. 14–15).

Under CEQA Guidelines section 15088.5, subdivisions (c) and (f)(2), the recirculated material reflected in the PRDEIR is limited to the single deficiency identified by the Court of Appeal—the analysis of downstream impacts on terrestrial species and habitat. To the extent the comment seeks additional or different mitigation measures for Project-footprint impacts already analyzed and mitigated in the 2020 Final EIR, those impacts are outside the scope of this recirculated analysis. CEQA does not require adoption of every feasible possible mitigation measure where the significant effects have already been substantially lessened through adopted feasible measures. For additional information, please refer to Master Response 1: Scope of the PRDEIR.

Although beyond the scope of the PRDEIR, it should be noted that the comment’s specific request for on-site habitat preservation to preserve wildlife corridors is already provided for in Mitigation Measure BIO-TERR-4b, which commits the District to “conserve” wildlife connectivity and habitat between the Project and I-5 “to the maximum extent possible,” with the conserved land “as wide as possible,” and incorporating habitat heterogeneity. The mitigation measures adopted in the 2020 Final EIR are also not limited to mitigation bank credits. The compensation measures provide for off-site fee acquisition, conservation easements, permittee-responsible restoration, and bank credits, separately or in combination, with final ratios and mechanism developed in coordination with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (see e.g., MM BIO-TERR-1b, BIO-TERR-1f, BIO-TERR-1m, BIO-TERR-1p, BIO-TERR-2, and BIO-TERR-3). The mitigation measures thus provide the flexibility to address the capacity concern raised in the comment.

The PRDEIR’s analysis of Impact BIO-TERR-DS-4 evaluates whether changes in downstream flow dynamics would interfere with wildlife movement or corridor function in the study area and concludes they would not. That less-than-significant finding applies solely to this downstream analysis.

12.4.13 Response to Comment R4-13

Comment Summary: The comment describes the recreational and aesthetic values of Del Puerto Canyon and contends that the Project would significantly affect these recreational opportunities. The comment asserts that these impacts must be acknowledged and mitigated. The comment also asserts that concerns raised in comments on the 2020 Final EIR have not been addressed.

This comment is outside the scope of the PRDEIR. Recreational and aesthetic impacts were evaluated in the 2020 Final EIR. Section 3.12 of the 2019 Draft EIR addressed the Project’s impacts on land use and recreation, and Section 3.1 addressed aesthetic impacts, including the effects of the reservoir on views from Del Puerto Canyon Road. Comments submitted on these topics during the original public review period were responded to in the 2020 Final EIR. The adequacy of these analyses was not challenged in the subsequent litigation, or, to the extent it was, was resolved in the District’s favor. Specifically, as explained in Master Response 1 (Scope of the PRDEIR), the Petitioners’ argument that the EIR failed to analyze impacts to recreational activities (argument (10) in the trial court) and their argument regarding impacts on views from within Del Puerto Canyon (argument (11)) were rejected by the Superior Court, and the Petitioners did not pursue either argument on appeal. The Court of Appeal’s Opinion identified no deficiency in the EIR’s treatment of recreation or aesthetics.

The commenter’s assertion that concerns raised in comments on the 2020 EIR “still have not been addressed” is incorrect. The 2020 Final EIR included written responses to all comments timely submitted during the public review period, including comments on the topics of recreational and aesthetic impacts. The partial recirculation of the EIR does not reopen these previously addressed topics for further comment or response. (See CEQA Guidelines, § 15088.5, subd. (f)(2).)

For a more detailed discussion of the legal principles governing the scope of the PRDEIR, please refer to Master Response 1: Scope of the PRDEIR.

12.4.14 Response to Comment R4-14

Comment Summary: The comment expresses concern that the Project's estimated cost has increased and will continue to rise. The comment attributes much of the increase to the cost of relocating Del Puerto Canyon Road through steep and rugged terrain, and requests disclosure of geotechnical and road engineering studies related to road relocation feasibility and costs. The comment also argues that the District should disclose the costs of less environmentally harmful alternatives such as water conservation and groundwater storage.

CEQA does not require an EIR to include a cost-benefit analysis or to evaluate the economic feasibility of a proposed project. (See CEQA Guidelines, § 15131, subd. (a) ["Economic or social effects of a project shall not be treated as significant effects on the environment"]; *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1401 ["[E]conomic data is not required to be included in an EIR"]; see also Master Response 2 [Project Opposition] and additional court cases cited therein.)

Nor does CEQA require an EIR to evaluate a project sponsor's willingness to finance a project, predict whether a project will ultimately be constructed, or reassess federal funding eligibility determinations. While economic considerations may be relevant to the Project Partners' ultimate decision whether to proceed with the Project, they are not required components of the environmental review process and do not bear on the adequacy of an EIR. Ultimate decisions regarding Project financing and implementation will be made by the Project Sponsors and any other participating partners based on applicable law and their independent assessments of project viability.

Moreover, project cost issues were within the scope of matters that could have been raised in the CEQA litigation over the 2020 Final EIR but were not. The PRDEIR's partial recirculation does not reopen the entire EIR for comment on previously available topics. (See CEQA Guidelines, § 15088.5, subd. (f)(2).) For a more detailed discussion of the legal principles governing the scope of the PRDEIR, please see Master Response 1: Scope of the PRDEIR.

12.4.15 Response to Comment R4-15

Comment Summary: The comment provides closing remarks, including asserting that the PRDEIR remains deficient and requesting that the District revise and recirculate the PRDEIR to address the concerns expressed in the comments above.

For the reasons set forth in Responses R4-1 through R4-14, and in the Master Responses referenced therein, the District respectfully disagrees that the PRDEIR is deficient or that revision and recirculation are required. The PRDEIR adequately addresses the single issue that the Court of Appeal directed the District to consider – potential impacts to terrestrial species downstream of the proposed reservoir due to changes in Del Puerto Creek flows as a result of the Project. No new significant environmental impacts, substantial increases in the severity of previously identified impacts, or other circumstances requiring recirculation under CEQA Guidelines section 15088.5 have been identified. Accordingly, recirculation and expansion of the scope of the PRDEIR is not required.

12.4.16 Response to Comment R4-16

Comment Summary: The comment is prepared by Dr. Sean Smallwood, an ecologist with extensive professional experience in wildlife survey and conservation biology. The comment focuses on wildlife species that may comprise the terrestrial wildlife community within the PRDEIR study area along Del Puerto Creek, between the proposed reservoir and the San Joaquin River. The comment asserts that the PRDEIR mischaracterizes the existing environmental setting by inadequately describing the wildlife community, relies too heavily on special-status species screening, and fails to analyze impacts to the broader assemblage of wildlife species that support ecological function and special-status species. The comment contends that CEQA requires consideration of entire wildlife communities, not solely

special-status species, and that the PRDEIR's survey methods and interpretation of detected species are insufficient to support its conclusions regarding impacts and mitigation.

The District acknowledges Dr. Smallwood's January 2026 observations of wildlife species within and adjacent to the eastern end of downstream study area, including observations of raptors, migratory birds, and other species associated with riparian and agricultural habitats in lower Del Puerto Creek. As discussed in Response to Comment R4-5, these observations provide useful additional occurrence information and are generally consistent with the PRDEIR's recognition that habitat conditions and wildlife use vary across the study area; Dr. Smallwood's observations supplement the biological record, but do not alter the PRDEIR's significance conclusions.

As described in Section 3.4.1, *Environmental Setting*, the riparian corridor becomes more structurally developed and biologically diverse east of Elm Avenue approaching the confluence with the San Joaquin River, where the PRDEIR documents denser overstory vegetation, increased shrub diversity, and more persistent wetland and riparian features occur. The PRDEIR recognizes that these eastern reaches support higher-quality riparian habitat conditions and greater wildlife use relative to more simplified portions of lower Del Puerto Creek upstream. The PRDEIR therefore does not assume that conditions observed in the more simplified upstream portions of lower Del Puerto Creek are representative of the entire study area. The PRDEIR's impact analysis thus evaluates whether Project operations would materially alter the hydrologic and ecological processes supporting these existing habitat conditions.

As described in Master Response 3: Biological Baseline and Species Occurrence, the analysis in the PRDEIR does not, as the comment suggests, treat special-status species screening as a substitute for evaluating the broader wildlife community. The analysis characterizes vegetation communities, wetland features, seasonal hydrology, surrounding upland habitats, and connectivity with the San Joaquin River, and assesses whether Project-related flow changes would materially affect those habitat conditions and ecological functions. Impacts BIO-TERR-DS-1a through BIO-TERR-DS-1g address species and species groups with particular habitat dependencies, while Impacts BIO-TERR-DS-2 through BIO-TERR-DS-4 evaluate riparian habitat, wetlands, and wildlife movement functions that support the broader wildlife assemblages.

Species screening was used to determine which species warranted additional species-specific discussion. It considered habitat suitability, life-history and ecological requirements, occurrence potential, and whether a plausible Project-related impact pathway existed. The PRDEIR's significance conclusions do not depend on the number of species detected during a particular field survey or on a conclusion that only the species expressly listed in the document use the study area. . See Master Response 3: Biological Baseline and Species Occurrence, for additional discussion of the PRDEIR's screening methodology.

Additional occurrence information could affect the analysis if it identified a previously unrecognized habitat feature, ecological function, or Project-related impact pathway, or demonstrated a materially different degree or type of habitat use than the PRDEIR assumed. The District therefore reviewed Dr. Smallwood's observations rather than dismissing them merely because they concern species not individually discussed in the PRDEIR. As explained in Response to Comment R4-5, the observations generally involve wildlife use of riparian, wetland, grassland, agricultural, and developed habitats already identified and evaluated. Certain observations, including white-tailed kite mating behavior, are addressed specifically where they clarify the degree or type of habitat use.

The Project would not involve construction, vegetation removal, or land-cover conversion within the downstream study area. The potential effect on the broader wildlife community is therefore indirect and depends on whether Project-related flow changes would materially reduce or degrade the vegetation, wetlands, habitat structure, food resources, or movement functions supporting that community. As explained in Master Response 4, Project operations would alter, but would not substantially impair, the hydrologic and ecological processes supporting downstream riparian, wetland, and other terrestrial

habitat. Response to Comment R4-6 further addresses the asserted pathway from hydrologic change to vegetation, habitat productivity, food resources, and the broader terrestrial wildlife community.

Accordingly, the PRDEIR does not limit its analysis to whether individual special-status species would be directly affected. It evaluates whether Project operations would cause a substantial adverse change in the habitat conditions and ecological functions supporting both special-status species and the broader wildlife assemblage. Dr. Smallwood's observations supplement the biological record but do not demonstrate that the PRDEIR omitted a material community-level habitat function or that Project operations would cause a new significant impact or a substantial increase in the severity of an identified impact.

To the extent the comment raises broader concerns about the wildlife community analysis within the Project footprint or in connection with other portions of the 2020 Final EIR, those matters are outside the scope of the PRDEIR's analysis. Please refer to Master Response 1: Scope of the PRDEIR, which explains the judicial basis for confining the analysis in the PRDEIR to an assessment of impacts on downstream terrestrial biological resources.

12.4.17 Response to Comment R4-17

Comment Summary: Sean Smallwood reports conducting a wildlife survey at the eastern end of the PRDEIR study area over two days in January 2026, totaling approximately 4.4 hours of daytime observation and an attempted nocturnal bat survey using binoculars, auditory detection, and an acoustic bat detector. The commenter reports observing 60 species of vertebrate wildlife at or near the study area, including 13 species identified as special-status. Observations included raptors and other birds commonly associated with riparian and agricultural landscapes, as well as behaviors suggesting potential breeding activity (e.g., copulating white-tailed kites). The comment also reports possible, but unconfirmed, observations of riparian brush rabbit and San Joaquin Valley woodrat and asserts that more extensive surveys are needed to determine whether these endangered species occur in the study area. The comment provides a detailed species list to support the conclusion that the downstream study area supports a relatively diverse wildlife assemblage that warrants further investigation.

The District acknowledges Dr. Smallwood's January 2026 site visit and the wildlife observations reported. The observations provide additional information regarding wildlife use of portions of the downstream study area but do not require revisions of the PRDEIR's analysis or conclusions, for the reasons discussed below.

As discussed in Response to Comment R4-16 and Master Response 3: Biological Baseline and Species Occurrence, the PRDEIR's analysis appropriately focuses on whether Project-related changes in downstream flow conditions would materially alter the habitat conditions or ecological processes that support terrestrial biological resources in the study area. The presence of multiple wildlife species, including special-status species, does not by itself demonstrate a significant impact or identify a new impact pathway. In addition, the PRDEIR does not rely on surveys to establish species absence and does not assert that all species present were detected. Because no construction or terrestrial habitat disturbance would occur in the study area, and because Project operations would not materially alter downstream habitat conditions result in direct habitat conversion in the downstream study area, additional inventory-level surveys are not required under CEQA.

As also noted in Response to Comment R4-16, Dr. Smallwood's reported observations are generally consistent with the PRDEIR's characterization of the study area agriculturally influenced riparian corridor that nevertheless supports substantial wildlife use and habitat diversity, particularly in the more structurally developed eastern reaches approaching the confluence with the San Joaquin River. As described in Section 3.4.1, *Environmental Setting*, riparian vegetation structure, shrub diversity, and habitat complexity increase in the eastern portion of the study area, where denser overstory and riparian vegetation support greater wildlife use associated with riparian and agricultural-edge environments in the northern San Joaquin Valley. Although the surrounding landscape has been substantially altered by

historic channel modification, agricultural activity, altered hydrology, and degraded water quality, riparian corridors within such modified systems can continue to provide foraging habitat, movement opportunities, seasonal habitat functions, and connectivity for a diverse range of wildlife species. The PRDEIR does not dispute the presence or ecological use of these habitats, nor does it assert that all wildlife species potentially present were detected during ICF's reconnaissance-level surveys. Rather, the PRDEIR evaluates whether Project operations would materially alter the hydrologic and habitat conditions supporting that wildlife use. Dr. Smallwood's observations do not demonstrate that the PRDEIR failed to reasonably characterize habitat conditions or wildlife use within the study area, nor do they alter the PRDEIR's conclusions regarding Project effects.

ICF's and Dr. Smallwood's field efforts were also designed to address different analytical objectives. ICF's July 2025 reconnaissance-level survey, conducted by qualified biologists during a period appropriate for reconnaissance-level evaluation of habitat conditions and species assemblages within the study area, was intended to characterize the vegetation communities, habitat features, wildlife use patterns, and terrestrial habitat reasonably supported by the study area at the level of detail necessary to evaluate the Project's effects on downstream terrestrial biological resources. IFC biologists also returned to the study area in September 2025 to conduct a protocol-level elderberry shrub survey. The PRDEIR's characterization of the biological setting is supported not only by these field efforts, but also by habitat assessments, species ecology, database searches (including CNDDDB, USFWD IPaC, eBird, iNaturalist), and professional judgment by qualified biologists experienced in evaluating biological resources and habitat conditions.

Dr. Smallwood's January 2026 survey, by contrast, was conducted over two winter days at the eastern end of the study area, and was designed primarily to detect and enumerate species observable during that limited-duration effort. The species-accumulation curves and related modeling presented in the comment are tools used to estimate the completeness of species detection within a particular sampling effort. While such methods may provide information regarding localized species richness, they do not establish that the PRDEIR failed to reasonably characterize habitat conditions or the wildlife assemblages supported within the broader downstream study area. Nor do they materially alter the analytical conclusions of the PRDEIR, which do not rely on species counts or detection probabilities to characterize baseline conditions or evaluate the significance of Project impacts.

Differences between the wildlife observations reported by Dr. Smallwood and those documented during ICF's field efforts are also expected, given differences in survey timing, season, location, and methodology. Wildlife observations made during a winter site visit would be expected to differ from those recorded during the July and September surveys conducted by ICF's qualified biologists. In particular, observations of migratory or seasonally mobile bird species, such as white-tailed kite, during winter months may reflect transient use of the area for foraging or movement rather than breeding, nesting, or long-term residency. As discussed in Response to Comment R4-5, the District acknowledges that Dr. Smallwood's January 26, 2026 observation of a copulating pair of white-tailed kites may indicate territorial behavior or the early stages of courtship activity preceding the species' breeding season. The observation is therefore consistent with the PRDEIR's conclusion that suitable nesting and foraging habitat for white-tailed kite occurs within the downstream study area. Importantly, the observation does not identify a previously unrecognized habitat resource, alter the PRDEIR's characterization of riparian and adjacent foraging habitats, or demonstrate a new Project-related impact pathway. As discussed under Impact BIO-TERR-DS-1f, the issue analyzed in the PRDEIR is whether Project operations would materially affect the habitat conditions supporting special-status birds, including white-tailed kite. Because Project operations would not remove nesting habitat or result in direct habitat conversion of the riparian and agricultural habitats used by white-tailed kite in the downstream study area, the observation does not alter the impact analysis or significance determination.

For these reasons, differences in species observations between ICF's and Dr's Smallwood's surveys do not demonstrate that ICF's reconnaissance-level survey was inadequate or that the PRDEIR analysis is

unsupported. With the exception of riparian brush rabbit (*Sylvilagus bachmani riparius*) and riparian woodrat (*Neotoma fuscipes riparia*), discussed below, the species identified in the comment are generally consistent with the wildlife uses described in the PRDEIR, and their inclusion does not materially alter the PRDEIR's characterization of the biological setting or the terrestrial species it supports.

With respect to the possible, but unconfirmed, observations of riparian brush rabbit and San Joaquin Valley woodrat, both species historically have been associated with relatively dense riparian forest habitats along portions of the San Joaquin River and certain tributaries. Based on species ecology, available occurrence records, habitat conditions within the downstream study area, and professional evaluations by ICF's qualified biologists, the downstream study area along Del Puerto Creek does not provide the dense riparian forest habitat conditions typically associated with occupancy by either species. The unconfirmed observations reported in the comment therefore do not establish the presence of either species within the study area. In any event, because the Project would not result in habitat disturbance or material alteration of the physical terrestrial habitat conditions within the downstream study area, the PRDEIR's conclusion that the Project would not result in significant impacts on terrestrial biological resources remains unchanged.

In summary, while Dr. Smallwood's wildlife observations provide supplemental information regarding wildlife use within portions of the study area, they do not negate the findings of the reconnaissance-level survey or the habitat-based analysis presented in the PRDEIR. The PRDEIR's conclusions regarding downstream terrestrial biological resources remain supported by substantial evidence, including field observations, habitat conditions, hydrologic analysis, species ecology, available occurrence records, and the professional judgment of qualified biologists, consistent with CEQA.

12.4.18 Response to Comment R4-18

Comment Summary: The comment reports detecting 60 vertebrate wildlife species during a brief reconnaissance-level survey and asserts that this level of species richness indicates a biologically intact and species-rich wildlife community in the downstream study area. The comment argues that all observed species would be adversely affected by the Project's replacement of an existing flow regime with a regulated one. To support the claim that additional species were present but undetected, the comment applies species-accumulation modeling to the survey data, using nonlinear regression to estimate that between 67 and 83 species were available for detection during the short survey periods.

The comment further compares the observed detection rates to hundreds of prior reconnaissance surveys conducted at other sites, including near-pristine reference areas such as the San Joaquin River National Wildlife Refuge, and contends that detection rates at the study area exceeded or matched those benchmarks. Based on this comparison, and on the low proportion of non-native species detected, the comment concludes that the downstream study area exhibits high ecological integrity.

Using additional modeling based on a large long-term dataset collected at the Altamont Pass Wind Resource Area, the comment extrapolates that the study area could support an estimated 213 vertebrate wildlife species over longer-term survey efforts, including a substantial number of special-status species. The comment asserts that limited survey effort cannot adequately characterize the wildlife community and that substantially expanded, multi-season survey efforts are warranted to inform impact analysis for the Project.

The comment asserts that high wildlife species richness detected during a brief reconnaissance survey, combined with statistical species-accumulation modeling, demonstrates that the study area supports an ecologically intact wildlife community and that the PRDEIR therefore understates both baseline conditions and potential project impacts.

The comment presents species-accumulation curves and related modeling intended to estimate the number of wildlife species that could potentially be detected within the study area under expanded survey effort. The comment asserts that these analyses demonstrate that the PRDEIR underestimates wildlife diversity

within the downstream study area and therefore fails to adequately characterize the existing environmental setting or evaluate Project impacts on downstream terrestrial biological resources.

The District acknowledges that species-accumulation modeling and related statistical tools can be used in some ecological contexts to estimate potential species richness within a particular survey area under expanded sampling effort. The analysis presented in the comment, however, does not demonstrate that the PRDEIR failed to reasonably characterize habitat conditions or evaluate whether Project operations would materially affect downstream terrestrial biological resources.

As discussed in Responses to Comments R4-16, R4-17, and Master Response 3: Biological Baseline and Species Occurrence, the PRDEIR did not rely on exhaustive species inventory, species counts, or quantitative richness estimates to characterize baseline conditions or evaluate the significance of impacts. Rather, the PRDEIR evaluated whether Project-related changes in downstream flow conditions would materially alter the habitat conditions and ecological processes supporting downstream terrestrial biological resources. The PRDEIR concludes that Project operations would not result in construction activities, habitat removal, land-cover conversion, or material alteration of the geomorphic and ecological processes supporting downstream riparian and terrestrial habitat functions.

The comment also assumes that the adequacy of the PRDEIR's biological analysis depends on whether all species potentially present within the study area were detected or could be predicted through statistical extrapolation. CEQA does not impose such a requirement. CEQA requires a reasonable, good-faith effort at full disclosure, supported by substantial evidence and analysis sufficient to permit informed decisionmaking and public participation. Reconnaissance-level biological surveys, habitat assessments, database reviews, and professional evaluation by qualified biologists are commonly used and accepted methods for evaluating indirect operational impacts to biological resources, particularly where no direct habitat disturbance or construction-related impacts would occur within the study area.

As explained in Master Response 3: Biological Baseline and Species Occurrence, the reconnaissance-level biological survey conducted for the PRDEIR covered the entire accessible study area on foot, extending from I-5 to the confluence of Del Puerto Creek with the San Joaquin River. The survey was designed to characterize habitat conditions, riparian corridor quality, hydrologic conditions, and land-cover patterns across the full reach of the study area. Conversely, the wildlife observations cited by Dr. Smallwood were geographically limited to the far eastern portion of the study area, near the confluence with the San Joaquin River, where the PRDEIR itself recognizes that riparian vegetation structure, shrub diversity, and habitat complexity increase relative to upstream portions of lower Del Puerto Creek. The PRDEIR does not dispute that these eastern reaches support greater wildlife use and more developed riparian habitat conditions.

While the confluence of Del Puerto Creek with the San Joaquin River contains locally more complex riparian and aquatic features, observations from this localized portion of the study area do not alter the broader characterization of the study area as a highly modified intermittent riparian system influenced by agricultural return flows, altered hydrology, and surrounding agricultural land uses. As recognized in the PRDEIR, habitat structure, riparian vegetation complexity, and wildlife use vary across the study area, with more developed riparian conditions occurring near the San Joaquin River confluence, whereas the majority of the study area has more limited habitat complexity, continuity, and likelihood of sustained species occurrence. The PRDEIR's habitat-based assessment accounts for these spatial distinctions and does not assume that conditions observed near the confluence are representative of the entire study area.

The comment's extrapolation of species occurrence from regional datasets and modeled estimates also reflects a different analytical approach from the habitat-based assessment used in the PRDEIR. Predictive estimates of additional nocturnal, cryptic, transient, or seasonally present species that may occur within portions of the study area, do not, by themselves, demonstrate that the PRDEIR failed to reasonably characterize habitat conditions or evaluate Project-related impact pathways. The PRDEIR's analysis does not depend on quantifying total species richness or detecting every species potentially present within the

study area. Rather, the analysis evaluates whether Project operations would materially affect the hydrologic and habitat conditions supporting downstream biological resources under existing altered conditions. CEQA does not require agencies to rely on regional extrapolation modeling or predictive species richness where such analyses are not necessary to evaluate reasonably foreseeable project-related effects or determine impact significance.

The PRDEIR acknowledges that additional wildlife species may use portions of the study area seasonally, intermittently, or under varying hydrologic conditions, and that reconnaissance-level surveys conducted over limited periods cannot detect every species potentially be present within the study area. The PRDEIR therefore does not rely on survey detections to establish species absence. Rather, the analysis evaluates whether Project operations would substantially affect the hydrologic and habitat conditions supporting downstream biological resources under existing altered conditions. Under CEQA, the presence or detection of additional wildlife species does not, alone, demonstrate that Project operations would result in a significant biological impact.

Finally, the comment's assertion that all detected species would experience habitat degradation due to alteration of a natural flow regime does not establish that Project operations would materially degrade habitats on which those species depend. As discussed in Master Response 4 and Response to Comment R4-8, the PRDEIR evaluates how modeled flow changes would affect riparian and wetland vegetation, habitat structure, food resources, and wildlife movement.. Based on the hydrologic analysis, habitat assessment, field observations, and species ecology, the PRDEIR concludes that Project operations would alter, but would not substantially impair, the processes supporting downstream terrestrial resources or cause a substantial loss or degradation of existing riparian, wetland, or other terrestrial habitat.

12.4.19 Response to Comment R4-19

Comment Summary: The comment argues that the PRDEIR fails to accurately characterize the biological environmental setting because it relies on insufficiently rigorous surveys and misinterprets survey results, undermining CEQA's requirement for informed public disclosure of potential impacts. Specifically, the comment contends that the PRDEIR improperly conflates reconnaissance surveys, detection (protocol-level) surveys, and preconstruction surveys, despite their distinct purposes under CEQA. The comment claims that detection surveys are required prior to document circulation to establish species presence/absence and disclose impacts, whereas preconstruction surveys are a mitigation tool implemented just before construction to avoid take. The commenter asserts that reliance on reconnaissance surveys cannot support conclusions about species absence, that survey effort and methods were inadequately described and contextualized, and that the PRDEIR mischaracterizes relevant case law and CDFW protocols. Overall, the commenter concludes that additional, appropriately timed detection surveys and more rigorous interpretation of survey data are necessary to meet CEQA's analytical standards.

The comment's principal contention is that the PRDEIR conflates protocol-level "detection" surveys (used to establish species presence or absence) with preconstruction surveys (used as a mitigation tool just before construction to avoid take), and it relies inappropriately on reconnaissance-level surveys, whereas, in the commenter's view, detection surveys are required.

The distinction the commenter draws does not alter the adequacy of the PRDEIR's analysis. As footnote 2 of the PRDEIR correctly explains, protocol-level surveys may serve different purposes depending on the nature of the project-related impact pathways. Where a project proposes ground disturbance or habitat modification that would directly affect occupied or potentially occupied habitat, protocol-level surveys may be used at the CEQA stage to inform the impact determination, or they may be committed to as part of a mitigation measure to be conducted before construction. Both approaches are accepted practice under CEQA, and the choice between them depends on whether the presence of species affects the outcome of the analysis.

For the downstream study area evaluated in the PRDEIR, as discussed in Response to Comment R4-18, the Project would not involve ground disturbance or habitat modification. The Project's downstream effects are instead limited to changes in the flow regime, which the PRDEIR analyzes through hydrological modeling and habitat-based assessment. Because no construction or habitat modification is proposed, the PRDEIR did not require protocol-level detection surveys to evaluate the impact pathways analyzed here. Similarly, preconstruction surveys to avoid take are not a meaningful mitigation tool in this context where there is no construction. The Swainson's hawk and other preconstruction survey protocols cited in the comment are included in the 2020 Final EIR mitigation measures for the reservoir footprint where construction is proposed, but they are not applicable for the purposes of the PRDEIR because no ground disturbance or other construction activities are proposed.

The PRDEIR's reliance on reconnaissance-level surveys and existing data is appropriate for the downstream impact analysis because they serve the analytical purpose of evaluating whether Project-related flow changes would materially alter downstream habitat conditions and terrestrial biological resources by characterizing existing habitat conditions and identifying the species and assemblages reasonably present so that the analysis can evaluate whether Project operations would alter those conditions.

The PRDEIR does not rely on reconnaissance surveys to establish species absence. As discussed in Response to Comment R4-16 and Master Response 3: Biological Baseline and Species Occurrence, reconnaissance-level surveys were supplemented by habitat assessments, historical species records, and database reviews to evaluate potential impacts to downstream terrestrial resources, including terrestrial species. The Court of Appeal did not hold that protocol-level detection surveys or exhaustive species inventories were required for the biological analysis. (Opinion, pp. 17–18.)

As also explained in Master Response 3, the PRDEIR establishes the CEQA baseline consistent with CEQA Guidelines §15125(a)(1) and applicable case law by describing the existing physical and ecological conditions of the study area. The environmental setting properly reflects the habitat conditions within the study area, including the habitat conditions caused by agricultural activity, channel modification, and degraded hydrologic conditions. Baseline information is contained in Section 3.4.1, *Environmental Setting*; Section 3.4.3, *Impact Analysis*; Appendix B, *Species Lists*; Appendix C, *Special Status Species Tables*; and Appendix D, *Streamflow Estimates for lower Del Puerto Creek*.

To the extent the comment contends that CEQA required exhaustive protocol-level surveys throughout the downstream corridor before the PRDEIR could evaluate operational flow-related impacts to terrestrial biological resources, the District disagrees for the reasons discussed above.

Finally, as discussed Master Response 1: Scope of the PRDEIR, the analysis in the PRDEIR is limited to the single deficiency identified by the Court of Appeal—the analysis of impacts on downstream terrestrial species. To the extent the comment raises broader concerns about the survey methodology applied or other portions of the 2020 Final EIR or the Project as a whole, those matters are outside the scope of the present analysis.

12.4.20 Response to Comment R4-20

Comment Summary: The comment asserts that the PRDEIR lacks a standalone biological resources technical report and therefore insufficiently discloses the methods, effort, and results of the reconnaissance-level biological surveys, as required by CEQA Guidelines §15147. The comment argues that the PRDEIR does not adequately describe who conducted the surveys, their qualifications, survey timing and duration, or how a large and complex study area could have been comprehensively surveyed in a single day. The comment further contends that the PRDEIR fails to report a complete list of wildlife species observed during the survey and instead relies on generalized statements regarding habitat degradation and agricultural disturbance to infer low habitat value, which the comment disputes based on independent observations.

The comment also claims that the reconnaissance survey was inadequate to assess special-status plant species because it did not conform to CDFW rare plant survey guidelines and therefore cannot support conclusions regarding absence. In addition, the comment raises concerns about the vegetation mapping used in the PRDEIR, asserting that the document does not clearly explain how field surveys informed vegetation classification, ground-truthing, or mapping accuracy, and that inaccuracies in vegetation mapping could undermine habitat-based species occurrence determinations.

In addition, the comment challenges the PRDEIR's conclusion that reconnaissance-level surveys adequately characterize biological resources, asserting that the limited species reported lack evidentiary support and that the study area supports more wildlife species, including special-status species, than acknowledged in the PRDEIR. The comment specifically challenges the statement on page 3.4-2 of the PRDEIR that upland areas beyond the narrow riparian strip do not provide potential habitat for special-status terrestrial wildlife, and challenges the conclusion on page 3.4-21 that the reconnaissance-level survey adequately characterizes biological resources, asserting that this conclusion lacks evidentiary support given the limited number of species reported.

CEQA does not require the preparation or inclusion of a separate biological technical report so long as the EIR itself contains sufficient summarized technical information to permit informed review and decision-making. The PRDEIR meets this standard by disclosing survey methods, baseline conditions, habitat characteristics, species screening methodology, and impact analysis in Section 3.4.1, *Environmental Setting*; Section 3.4.3, *Impact Analysis*; Appendix B, *Species Lists*; Appendix C, *Special-Status Species Tables*; and Appendix D, *Streamflow Estimates for lower Del Puerto Creek*. The absence of a standalone technical report does not constitute an informational deficiency.

Please refer to Master Response 3: Biological Baseline and Species Occurrence, which identifies the qualified ICF biologists who conducted the reconnaissance-level and protocol-level on July 14, 2025, describes the survey scope and access conditions, summarizes the biologists' qualifications, and explains the survey's purpose, which was to assess overall habitat conditions, riparian corridor quality, existing hydrologic conditions, and the presence of features that could support special-status or common plant and wildlife species. As described in Master Response 3, the reconnaissance survey was not intended to serve as a comprehensive biological inventory or to establish species absence, and the PRDEIR does not rely on this survey for those purposes.

With respect to special-status plants, the PRDEIR does not rely on the July 14, 2025, reconnaissance-level survey to establish absence of rare plants, and Section 3.4.1, *Environmental Setting*, does not represent that the survey constituted a focused or protocol-level botanical survey conducted under CDFW guidance. As discussed in Response to Comments R4-18 and R4-19, the appropriate level and type of survey effort under CEQA depends on the nature of the Project-related impact pathways being evaluated. Focused or protocol-level botanical surveys are commonly used where direct disturbance, habitat modification, or other Project-related effects could materially affect special-status plant populations or where species-specific occurrence information is necessary to evaluate the significance of impacts. Here, the PRDEIR evaluates whether Project-related changes in downstream flow conditions would materially alter downstream habitat conditions and terrestrial biological resources. Based on hydrologic analysis, habitat assessment, species ecology, available occurrence data, and reconnaissance-level field observations, the PRDEIR concludes that the Project would not materially alter the downstream habitat conditions supporting terrestrial resources. Under these circumstances, focused or protocol-level botanical surveys were not necessary to support the PRDEIR's analysis or conclusions.

A discussion of wildlife observations from the reconnaissance survey is provided in Section 3.4.1, *Environmental Setting*, including California ground squirrel, Botta's pocket gopher, American beaver, and American bullfrog. These species were referenced in Section 3.4.1 to illustrate the range of habitat conditions present in the study area rather than to characterize species diversity or abundance. California ground squirrels were noted because their burrows can provide potential habitat for other species,

including burrowing owl. Botta's pocket gopher was also noted because it provides prey for a number of species and contributes to habitat diversity and health through mixing and building soils. American beaver were highlighted because they function as ecosystem engineers whose activities modify channel and wetland conditions and create habitat features used by other species, particularly those associated with lentic environments; their presence also indicates a degree of ecosystem stability. American bullfrogs were also highlighted as they are a widespread amphibian species that is often associated with modified or degraded aquatic systems and can occur in areas that also provide similar habitat conditions for native amphibians. Collectively, these wildlife observations illustrate functional habitat characteristics and site conditions relevant to the analysis, such as evidence of perennial inundation, hydrologic inputs, and habitat disturbance within the study area. Appendix C, *Special-Status Species Tables*, provides further information regarding species presence and potential occurrence informed by field surveys and desktop analysis, and is expressly incorporated into the impact analysis.

The statement on page 3.4-2 of the PRDEIR regarding “upland areas beyond the narrow riparian strip of Del Puerto Creek” refers to the dry row crop, orchard, and vineyard lands surrounding the study area, not the riparian corridor and associated habitats within the study area itself. The PRDEIR does not assert that special-status terrestrial wildlife categorically do not use agricultural settings. Rather, the PRDEIR reflects a site-specific habitat suitability determination regarding the predominantly agricultural upland lands surrounding the riparian corridor. The study area itself is described in Section 3.4.1, *Environmental Setting*, and quantified in Table 3.4-1, which identifies grassland, riparian woodland, riparian wetland, intermittent stream, and developed/disturbed areas as the predominant land cover types within the 105.59-acre study area. Orchard and vineyard land cover within the study area collectively comprise approximately three percent of the total study area acreage. The PRDEIR's habitat-based screening evaluates the actual habitat conditions present within the study area, including these riparian and upland features, and does not assume that the surrounding agricultural lands are representative of the study area as a whole.

Please refer to Response to Comment R4-17 regarding differences in survey timing, duration, seasonality, objectives, geographic focus, and methodology between the reconnaissance-level survey conducted for the PRDEIR and the commenter's January 2026 site visit. As explained here, those differences would reasonably be expected to result in differences in wildlife observations and species detections. The PRDEIR does not rely on the reconnaissance survey to establish a complete inventory of all wildlife species potentially present within the study area or to quantify total species richness. Rather, the survey was used, together with habitat assessments, species ecology, and available occurrence data, to support the PRDEIR's evaluation of whether Project operations would materially alter downstream habitat conditions and terrestrial biological resources.

With respect to the vegetation mapping presented in Figures 4.3-1 through 3.4-3, as described in Section 3.4.1, *Environmental Setting*, the land cover mapping was developed through interpretation of recent aerial photography (NAIP 2020/22 and Maxar 10/2023) using ArcGIS Pro 3.3, in combination with available environmental datasets, including CALVEG and the National Hydrology Dataset, and field-level verification. Observations from the July 14, 2025 reconnaissance survey were used to verify the accuracy of the aerial imagery interpretation and existing datasets, confirm vegetation types, and inform the understanding of the overall structure and extent of land cover types within the study area. These methods are standard for CEQA-level analysis and were commensurate with the purpose of the evaluation, which was to identify the locations and general extent of land cover types, sensitive natural communities, and wetlands and other waters sufficient to inform the impact analysis. The level of detail presented in Figures 3.4-1 through 3.4-3 is appropriate given the scope of the Project and the nature of the biological analysis.

With respect to the comment's argument that uncertainty in vegetation mapping undermines the habitat-based screening analysis, the species occurrence evaluation in Appendix C, *Special-Status Species Tables*, was not dependent on precise vegetation delineation. Rather, where habitat conditions associated with a

particular vegetation type were present within or adjacent to the study area, special-status species associated with those habitat conditions were conservatively carried forward for further evaluation. Under this screening approach, minor spatial variations in vegetation mapping would not materially alter the species-screening or the PRDEIR's impact conclusions.

12.4.21 Response to Comment R4-21

Comment Summary: The comment contends that the PRDEIR's literature review, database searches, and species-screening methodology are incomplete and improperly applied, resulting in the underestimation of occurrence likelihoods for numerous special-status species. The comment argues that databases such as CNDDDB, eBird, and iNaturalist are positive-sighting tools that cannot support absence determinations or low likelihood classifications and were therefore misused to screen species from further analysis. The comment further asserts that habitat-based screening is uncertain absent detection and that the PRDEIR fails to apply a precautionary approach (citing National Research Council 1986) when evaluating special-status species.

Based on the commenter's own review and field observations, the comment identifies 132 special-status wildlife species occurring within 30 miles of the study area, 14 of which the commenter recorded in the study area, and asserts that the PRDEIR evaluates only 22 of these species. The comment identifies 12 special-status species the commenter detected during the January 2026 site visit that are not addressed in the PRDEIR, including northern harrier, Cooper's hawk, cackling goose, oak titmouse, Nuttall's woodpecker, and yellow-billed magpie.

The comment further challenges multiple species-specific occurrence determinations, including (i) the "no possibility of occurrence" determinations for riparian brush rabbit and San Joaquin Valley woodrat; (ii) the "low likelihood" determinations for burrowing owl and tricolored blackbird, asserting that the presence of California ground squirrels detected in the study area would warrant breeding-season detection surveys for burrowing owl under CDWF (2012) guidelines; (iii) the white-tailed kite analysis at PRDEIR page 3.4-17, citing eBird records within approximately 900 meters of the study area, while the PRDEIR reports no CNDDDB occurrences within five miles and the closest occurrence at 23 miles; (iv) the valley elderberry longhorn beetle (VELB) determination, citing five exit holes on elderberry shrubs and indicative of VELB presence; (v) the dismissal of an observation by ICF biologists of a small canid that the commenter asserts may have been, San Joaquin kit fox; and (v) the monarch butterfly determination at PRDEIR page 3.4014, asserting that the PRDEIR's reliance on absence of milkweed conflates breeding with migratory use and conflicts with the Western Monarch Butterfly Conservation Plan 2021–2069. The comment concludes that the PRDEIR inadequately characterizes baseline biological conditions and species occurrence potential and that additional surveys are warranted.

Please refer to Master Response 3: Biological Baseline and Species Occurrence, and Responses to Comments R4-18 and R4-19. As explained there, the PRDEIR used occurrence databases as supplemental sources, together with observations made during reconnaissance-level surveys, habitat assessments, land-cover mapping, hydrologic conditions, aerial imagery, scientific literature, and professional judgment. The absence of a database record was not treated as evidence that a species was absent. Species were screened based on whether suitable habitat and a reasonable potential for occurrence existed and whether Project-related flow changes could affect the habitat features or ecological processes on which species depend.

The comment's assertion that habitat suitability cannot be evaluated without direct species detection is incorrect. CEQA and the CEQA Guidelines do not require species detection through field surveys to evaluate occurrence potential, particularly where no ground disturbance or habitat removal would occur within the study area. Habitat-based screening, supported by substantial evidence of site conditions, species ecology, and proximity records, is a recognized basis for evaluating species occurrence potential under CEQA. As discussed in Responses to Comments R4-18 and R4-19, the PRDEIR's downstream terrestrial analysis concerns indirect operational effects associated with Project-related flow changes, not

direct construction impacts within the downstream study area. Under these circumstances, the PRDEIR appropriately relied on habitat conditions, species ecology, occurrence information, and reconnaissance-level field observations to evaluate whether Project operations would materially alter downstream habitat conditions supporting terrestrial biological resources. The precautionary principle cited by the comment does not require agencies to analyze every species with a broad regional occurrence record or speculative occurrence potential irrespective of habitat conditions, species ecology, or the nature of the Project-related impact pathways being evaluated.

The comment's presentation of an expanded list of more than 130 special-status species occurring within 30 miles of the study area reflects a broad regional occurrence compilation rather than a legally required scope of analysis for the PRDEIR. It does not establish that every listed species could reasonably occur within the approximately 105-acre study area or depends on habitat conditions potentially affected by Project-related flow changes. The District nevertheless reviewed the species identified by the commenter, including the January 2026 observations, to determine whether they reveal a previously unrecognized habitat feature, degree or type of habitat use, or flow-related impact pathway.

The District reviewed each species-specific issue identified in the comment. Some observations confirm or clarify occurrence potential already recognized in the PRDEIR; others require correction or additional explanation. None, however, identifies a Project-related flow impact that would change the applicable significance conclusion for the reasons discussed below.

Riparian brush rabbit and San Joaquin Valley woodrat: As discussed in Response to Comment R4-17, the study area lies outside the known geographic range of the species, and the narrow and fragmented riparian vegetation along lower Del Puerto Creek does not provide the dense, continuous riparian forest and understory conditions typically associated with occupancy. The observations reported by Dr. Smallwood were not confirmed as to species or subspecies and do not establish their presence. Even assuming occasional occurrence, however, the Project would not remove habitat within the downstream study area, and, as explained in Master Response 4, is not expected to cause a substantial loss or degradation of the riparian habitat potentially available to these species.

Burrowing owl: The presence of California ground squirrels within the study area indicates that potential burrows may occur, but does not itself establish burrowing owl occupancy. The PRDEIR's low-likelihood determination is based on the limited extent and configuration of open grassland habitat, surrounding land uses, available occurrence information, and the absence of a direct ground-disturbance pathway. The CDFW guidance cited in the comment was developed primarily to support avoidance, minimization, and mitigation of impacts associated with ground-disturbing activities and potential take of occupied burrow. No construction or land-cover conversion would occur within the downstream study area. Protocol-level breeding surveys are thus not needed to evaluate the Project-related impact pathways addressed in the analysis. See Response to Comment R4-19 for additional information.

Tricolored blackbird: The PRDEIR determined that tricolored blackbird has a low likelihood of nesting in the study area because emergent marsh and suitable upland nesting habitat are present only in limited areas that are not large enough to support the colonial nesting conditions typically required by the species. The comment does not identify a colony or evidence that the available habitat is used for nesting.

White-tailed kite: The PRDEIR (p. 3.4-17) determined a moderate likelihood of occurrence for that species based on the presence of suitable nesting habitat in riparian woodlands and ornamental trees and foraging habitat in narrow grassland strips throughout the study area. The PRDEIR's reference to the absence of CNDDDB records within five miles was one consideration among several and was not the determinative factor underlying the moderate-likelihood determination, which reflects integrated consideration of habitat suitability, available occurrence information, and regional species distribution. The eBird records cited by the commenter from locations approximately 900 meters from the study area are generally consistent with the PRDEIR's conclusion that the species has potential to occur within the study area. The PRDEIR assigned a moderate likelihood of occurrence based on the presence of suitable

foraging habitat within and adjacent to the study area, the species' known distribution in the region, and the availability of scattered trees and other potential nesting substrates in the surrounding landscape. Dr. Smallwood's January 2026 observation of white-tailed kite supports the PRDEIR's moderate-likelihood determination and warrants the clarifying revision to impact BIO-TERR-DS-1 described in Response to Comment R4-5. The reported observation is consistent with the species' expected occurrence in the vicinity and does not provide new information indicating more frequent use, breeding activity, or a greater dependence on habitats within the study area than was already assumed in the impact analysis.

Valley elderberry longhorn beetle: As discussed in Master Response 3: Biological Baseline and Species Occurrence, a qualified ICF biologist conducted a protocol-level VELB survey on September 9, 2025, consistent with U.S. Fish and Wildlife Service (USFWS) protocols. The survey included identification and mapping of elderberry shrubs in the study area (see PRDEIR, Figure 3.4-4), collection of precise GIS information, and inspection of accessible shrubs for evidence of VELB presence. Twelve elderberry shrubs were identified within the study area, all containing stems greater than one inch in diameter, which USFWS considers suitable VELB habitat. Five exit holes were documented on these shrubs. As explained in the PRDEIR, exit holes provide the only approved method for surveying the species. Although exit holes are not species-specific and can also be created by other wood-boring insects, USFWS guidance recognizes their presence as evidence of historical VELB use. As such, because exit holes are indicative of VELB occupancy, the presence of VELB is conservatively assumed.

The Project would not involve construction, vegetation removal, ground disturbance, or direct modification of any elderberry shrub within the downstream study area. The PRDEIR therefore evaluated whether Project-related changes in downstream flow conditions could affect elderberry shrubs or VELB habitat and concluded they would not. Accordingly, the PRDEIR concludes that operational impacts on VELB and its obligate host plant, the elderberry shrub, would be less than significant. (PRDEIR, pp. 3.4-12 through 3.4-14.) As discussed under Impact BIO-TERR-DS-1b and in Master Response 4, Project operations would alter some natural winter and early-spring runoff and associated recharge and moisture processes, but are not expected to cause a substantial loss or degradation of downstream riparian vegetation or the habitat conditions supporting the elderberry shrubs. Agricultural return flows and WSID operational discharges would remain unchanged, and seasonal recharge, residual soil moisture, channel infiltration, storm-event releases, and other downstream water sources would continue to contribute to vegetation-supporting conditions. Thus, regardless of the interpretation of the exit holes, the impact conclusion remains the same. The Project would not remove or directly disturb elderberry shrubs, and the site-specific hydrologic and habitat analysis does not indicate that Project operations would substantially degrade their habitat value.

San Joaquin kit fox: As noted above, the PRDEIR (p. 3.4-18) recognizes the potential for the San Joaquin kit fox to utilize the study area as transient or dispersal habitat. The commenter challenges the PRDEIR's discussion of an observation of a small canid by ICF biologists during the reconnaissance-level survey, asserting that the bases for not attributing the observation to San Joaquin kit fox are inadequate. The sighting was a fleeting view of a canid in the distance and could not be confirmed to species, as juvenile coyotes and kit foxes are commonly confused under poor viewing conditions (Cypher 2024). Nonetheless, the PRDEIR carries San Joaquin kit fox forward as having potential for transient or dispersal use of the study area (Impact BIO-TERR-DS-1g). The PRDEIR concludes that Project-related changes in flow conditions in lower Del Puerto Creek would not materially affect movement or dispersal habitat for San Joaquin kit fox in adjacent agricultural lands because those areas are dry-farmed or irrigated from sources independent of Del Puerto Creek. Accordingly, the PRDEIR concludes that operational impacts on San Joaquin kit fox would be less than significant. (PRDEIR, pp. 3.4-33 to 3.4-34.)

Monarch: As noted above, the PRDEIR (p. 3.4-14) acknowledges that the broader Del Puerto Creek corridor may provide limited stopover or foraging habitat during migration. The PRDEIR's reference to the absence of milkweed on page 3.4-14 addresses the potential for monarch breeding within the study area, not migratory or foraging use, and is consistent with the species' life cycle. Monarch reproduction

depends on milkweed as the larval host plant, while migrating and foraging adults rely on nectar from a variety of sources rather than milkweed. (*Ibid.*) The PRDEIR's analysis distinguishes between these uses and acknowledges the potential for limited migratory or foraging use of the study area. The PRDEIR concludes that, although the study area may provide limited migratory or stopover habitat for monarch butterfly, the relatively limited floral resources and fragmented condition of riparian and grassland habitats indicate that any use of the area would likely be limited and transient. In addition, because the Project would not remove vegetation or result in any direct disturbance to habitat in the downstream study area, and is not expected to cause a substantial loss or degradation of the limited nectar and stopover habitat present, Project operations would not materially interfere with potential migratory or foraging use. Accordingly, Project implementation would remain consistent with the objectives in the Western Monarch Butterfly Conservation Plan 2016–2069.

The additional observations supplement and, in several instances, clarify the biological baseline. The District has considered whether they identify a previously unrecognized habitat feature, materially different habitat use, or Project-related flow impact pathway. Subject to the species-specific clarifications described above, the observations fall within the riparian, wetland, grassland, agricultural, and developed habitat types and ecological functions already evaluated in Section 3.4. They therefore do not demonstrate that Project operations would cause a new significant impact or a substantial increase in the severity of an identified downstream terrestrial impact.

12.4.22 Response to Comment R4-22

Comment Summary: The comment contends that the reconnaissance-level field survey conducted on July 14, 2025 could not have comprehensively covered the study area due to its size and complex vegetation, and that the PRDEIR provides insufficient reporting and contextualization of survey effort and results. The comment further asserts that the desktop review improperly relied on CNDDDB data, screened an inappropriately small pool of special-status species, and relied on speculative habitat assessments rather than adequate species-specific surveys, including for bats and fossorial mammals. According to the comment, limited survey effort and habitat-based screening result in an inaccurate characterization of the wildlife community, which the comment argues undermines the reliability of impact predictions and the formulation of mitigation measures for special-status species.

Please refer to Master Response 3: Biological Baseline and Species Occurrence and Responses to Comments R:16 through R4-20 for additional discussion of the reconnaissance-level survey conducted on July 14, 2025. As explained, the survey was intended to assess habitat conditions, characterize the riparian corridor, identify potential habitat for special-status species, and inform the evaluation of potential Project-related impact pathways. The survey was not intended to serve as an exhaustive inventory of each wildlife species potentially present within the study area or to establish species absence. Nor was exhaustive species detection necessary to determine impact significance.

The comment's characterization of desktop-review methodology does not accurately reflect the role of occurrence databases in the PRDEIR's analysis. As discussed in Responses to Comment R4-16 and R4-21, databases such as CNDDDB, eBird, and iNaturalist, were used to identify documented species occurrences in combination with habitat assessments, field observations, available literature, and professional judgment. The PRDEIR does not treat lack of database records as evidence of species absence and does not rely on database information in isolation to determine species occurrence potential. Species occurrence determinations based on habitat conditions, species ecology, available occurrence information, and assessment of Project-related impact pathways are standard components of CEQA biological review.

The comment's claim that the PRDEIR "resorts to speculation" by not conducting surveys for bats, fossorial mammals, or other species potentially detectable through more extensive survey effort similarly does not establish a deficiency on the PRDEIR's analysis. Focused or protocol-level surveys for these groups are typically conducted to support take avoidance and mitigation for projects that would result in

ground disturbance, removal of roosting or burrowing habitat, or other direct impacts to roosting or breeding individuals. As explained in Responses to Comments R4-18 and R4-19, the relevance of species-specific or protocol-level surveys is dependent on the nature of the Project-related impact pathways being evaluated. Here, the PRDEIR evaluates the indirect operational effects associated with Project-related flow changes and concludes, based on hydrologic analysis, habitat assessment, species ecology, field observations, and available occurrence information, that Project operations would not materially alter downstream habitat conditions supporting terrestrial biological resources. Under these circumstances, additional surveys would not meaningfully inform the impact analysis or conclusions presented in the PRDEIR.

The PRDEIR does not purport to provide a complete census of all wildlife species potentially using the downstream corridor. Rather, it evaluates whether Project-related changes in downstream flow conditions would materially affect the habitat conditions and ecological processes supporting downstream terrestrial biological resources. CEQA does not require agencies to conduct every conceivable survey or to identify every species that could potentially occur with a study area. Instead, CEQA requires a reasonable, good-faith evaluation of potential environmental impacts supported by substantial evidence sufficient to permit informed decisionmaking and public participation. As explained in Master Response 3: Biological Baseline and Species Occurrence, the biological analysis satisfies this standard.

The comment advocates for a different and more survey-intensive analytical approach, but it does not demonstrate that the PRDEIR's methodology, biological baseline, or conclusions regarding downstream terrestrial resources lack substantial evidentiary support or are insufficient for informed decisionmaking.

12.4.23 Response to Comment R4-23

Comment Summary: The comment asserts that circumstances affecting special-status species have materially changed since certification of the 2020 Del Puerto Canyon Reservoir EIR. The comment states that 23 species have since been newly designated or elevated in status, several of which have been documented on the project site, and that some are now listed or candidates for listing under the federal or California Endangered Species Acts or designated as Birds of Conservation Concern. The comment further contends that monarch butterfly, ferruginous hawk, and Bell's sparrow have been documented on the reservoir site since EIR certification but were not previously analyzed. Based on these asserted changes, the comment argues that the environmental baseline has shifted and that preparation of a revised draft EIR for the project footprint is warranted.

Please refer to Response to Comment R4-11. As discussed there, the operative issue for the District's ongoing environmental review is whether recirculation is required under Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5. Under CEQA Guidelines section 15088.5, recirculation is required only where significant new information demonstrates a new significant environmental impact or a substantial increase in the severity of a previously identified impact unless mitigation measures are adopted that reduce the impact to a level of insignificance. Newly listed status, newly assigned candidacy, or newly documented species occurrences do not, standing alone, establish significant new information requiring recirculation.

The comment primarily identifies changes in regulatory status and additional occurrence information for special-status species since certification of the 2020 Final EIR. The comment does not, however, identify substantial evidence demonstrating that ecological conditions within the Project area have changed in a manner that would cause new or substantially more severe Project-related impacts than those already analyzed. Nor does the comment identify feasible mitigation measures or alternatives that were previously infeasible and would materially reduce Project impacts.

As further discussed in Response to Comment R4-11, several of the species identified in the comment, including foothill yellow-legged frog, western spadefoot, northwestern pond turtle, and western burrowing owl, were specifically evaluated in the 2020 Final EIR, and species-specific mitigation

measures were adopted to address impacts to habitat and individuals associated with Project construction and operation. The comment does not identify substantial evidence demonstrating that changes in regulatory status for these species would alter the nature, extent, or severity of the physical impacts already disclosed and mitigated in the 2020 Final EIR.

Similarly, as further discussed in Response to Comment R4-11, the comment's references to monarch butterfly, ferruginous hawk, Bell's sparrow, and other species documented more recently within or near the reservoir footprint do not, by themselves, demonstrate a new or substantially more severe Project-related impact requiring recirculation. The comment does not explain how these additional observations establish a new impact pathway or materially alter the impact conclusions previously reached in the biological resources analysis. Species occurrence information, standing alone, does not establish a new or substantially more severe significant impact under CEQA Guidelines section 15088.5.

In addition, as discussed in Responses to Comments R4-16 through R4-22 and Master Response 3: Biological Baseline and Species Occurrence, the PRDEIR's biological analysis does not rely solely on species detections or occurrence records. The analysis evaluates habitat conditions, species ecology, available occurrence information, hydrologic conditions, and the nature of Project-related impact pathways. The PRDEIR also does not rely on absence of observations to conclude that species are absent from the study area. Accordingly, additional occurrence information or changes in species status do not, by themselves, demonstrate that the biological baseline was materially inaccurate or incomplete.

The comment further does not identify substantial evidence showing that Project operations would cause new or substantially more severe impacts to the species identified beyond those already disclosed in the EIR. As discussed throughout the PRDEIR, the downstream terrestrial analysis evaluates whether Project-related changes in downstream flow conditions would materially alter habitat conditions and ecological processes supporting terrestrial biological resources. The PRDEIR concludes that Project operations would not materially alter those habitat conditions in a manner resulting in significant impacts to downstream terrestrial biological resources.

To the extent the comment requests preparation of a revised EIR addressing broader biological conditions within the reservoir footprint, that request exceeds the scope of the PRDEIR prepared in response to the Court of Appeal's limited remand concerning analysis of downstream terrestrial species. The comment does not identify substantial evidence satisfying the standards for recirculation under Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5.

Accordingly, while the comment provides additional information regarding species observations and regulatory status changes since the certification of the 2020 Final EIR, it does not demonstrate significant new information requiring recirculation under CEQA.

12.4.24 Response to Comment R4-24

Comment Summary: The comment argues that the PRDEIR's biological impact analysis relies on speculation rather than scientifically grounded prediction because it inadequately characterizes the existing environmental setting, particularly the wildlife community associated with lower Del Puerto Creek. The comment contends that accurate impact prediction under CEQA requires comparative analysis, robust field data, and inference drawn from other projects, which the PRDEIR allegedly fails to provide. The comment also contends that the PRDEIR's reliance on Kiernan et al. (2012) is inapposite because that study addressed native fish in Putah Creek and has no bearing on terrestrial wildlife or on Del Puerto Creek's existing flow regime.

The comment focuses on downstream effects of altered flow regimes, citing the 2020 Final EIR's projection of an 81 percent reduction in annual flows in lower Del Puerto Creek (from 2,100 acre-feet to 400-acre-feet), with monthly reductions of 70 percent in January, 86 percent in February, 85 percent in March, and 67 percent April. The comment asserts these reductions would degrade riparian vegetation, including cottonwood-dominated areas (citing Rood et al. 2003 regarding cottonwoods sensitivity to

reduced water tables and Ohmart 1994 regarding reductions in cottonwood vertical profile), reduce wetland biomass, diminish the wildlife foodbase, and harm species including Swainson's hawk and yellow-billed cuckoo. It argues that the PRDEIR downplays adverse effects on wildlife movement, habitat complexity, and riparian vegetation—especially cottonwood-dominated areas—and improperly minimizes the ecological value of the remaining riparian corridor Citing Graff 2006 and Stromberg et al. 2007, the comment further notes that compared to undammed rivers, dammed rivers tend to alter downstream geomorphology and shrink riparian environments, and shift plant species composition to non-natives.

The comment also disputes the PRDEIR's reliance on EPA (2008), asserting that the cited source does not support claims that inundation frequency and duration are more important than overall flow volumes.

The comment emphasizes the ecological importance and rarity of riparian corridors, particularly in intensively farmed landscapes, and asserts that the easternmost portion of the study area near the San Joaquin River should be prioritized for preservation (citing Cameron et al. 2022). The comment further asserts that the 2020 Final EIR's discussion at page 9-26 acknowledges that the Project would reduce the floodplain associated with Del Puerto Creek, and that this reduction would harm riparian-obligate and special-status species that benefit from occasional inundation outside of permanent wetlands. The comment concludes that without a more accurate and comparative characterization of the wildlife community and riparian system, the PRDEIR cannot reasonably predict impacts or formulate adequate mitigation.

The District has reviewed Dr. Smallwood's comments regarding projected reductions in downstream flow volume, riparian vegetation, cottonwood recruitment, food-web support, wildlife movement, and the applicability of literature addressing dam-related effects on riparian systems. The District acknowledges that the PRDEIR identifies substantial percentage reductions in modeled annual runoff volume under Project operations, including the updated flow-reduction information discussed in Master Response 4 and Response to Comment R4-7. However, the ecological significance of those reductions cannot be determined from annual volume percentages alone. The relevant issue for downstream terrestrial biological resources is whether Project operations would materially alter the hydrologic, geomorphic, and habitat-supporting functions that currently maintain riparian, wetland, and terrestrial habitat in lower Del Puerto Creek.

In addition, the District agrees that the hydrologic setting, resource focus, and study objectives of Kiernan et al. (2012) differ from those evaluated in the PRDEIR's downstream terrestrial biological analysis. The text referencing Kiernan et al. (2012) has been removed from Section 1.2.1, *Reservoir Releases*, of the PRDEIR, as shown in the Second Final EIR.

Hydrologic Conditions and Modeled Average Flow Reductions

The District also acknowledges that Project operations would reduce the modeled average annual natural runoff volumes reaching the endpoint of the creek in the San Joaquin River. As explained in Response to Comment R4-7, updated modeling estimates a reduction from approximately 1,900 acre-feet under No Action conditions to approximately 700 acre-feet under Project conditions, or about 63 percent based on the rounded values reported in Appendix G, *Del Puerto Creek Monthly Flows*. Master Response 4: Project-Related Flow Changes presents the updated annual and monthly results and explains the seasonal distribution of the modeled reductions.

As discussed in Master Response 4, annual volume alone does not predict the resulting terrestrial effect. It does not show when the reductions occur, how flows and infiltration vary along the downstream reach, whether continuing dry-season water sources would change, or how the resulting hydrologic regime would affect riparian vegetation, wetlands, habitat structure, recruitment, prey resources, or movement functions. The PRDEIR therefore evaluates those site-specific pathways rather than assuming either that a

large annual percentage reduction necessarily causes substantial habitat degradation or that retention of some storm-event characteristics necessarily prevents it.

As explained in Master Response 4, the Project would reduce natural winter and early-spring runoff and some associated opportunities for sediment movement, channel-margin inundation, recession, and in-stream recharge. Those processes would not be eliminated, however. Qualifying storm-event releases would retain selected characteristics of larger runoff events, while releases under Mitigation Measure HYD-2, occasional reservoir excess-inflow spills, agricultural return flows, WSID operational discharges, channel infiltration, residual soil moisture, and conditions near the San Joaquin River would continue to contribute to downstream hydrologic and ecological conditions. The Project would not reproduce the existing flow regime in full, and the PRDEIR does not rely on such a conclusion.

Section 3.4.3, Impact Analysis, then applies the modeled post-Project condition to the resources at issue. Impacts BIO-TERR-DS-1a through BIO-TERR-DS-1g evaluate whether the hydrologic changes would materially affect the habitat features supporting special-status species and species groups. Impacts BIO-TERR-DS-2 and BIO-TERR-DS-3 evaluate effects on riparian habitat and wetlands, including vegetation persistence and recruitment, inundation, recharge, and habitat structure. Impact BIO-TERR-DS-4 evaluates wildlife movement and connectivity. These analyses provide the resource-specific application that the comment contends is absent.

Cottonwood Recruitment

Dr. Smallwood cites literature, including Rood et al. (2003) and Ohmart (1994), for the general principles that cottonwoods are sensitive to water-table changes, floodplain inundation, and hydrologic alteration, and that reductions in flow can affect riparian vertical structure and associated wildlife habitat. The District does not dispute that riparian vegetation depends on hydrologic processes; however, the literature cited by Dr. Smallwood does not support the conclusion that projected reductions in total annual runoff volume would necessarily result in the ecological effects he describes in lower Del Puerto Creek. The application of these processes to this Project depends on the specific hydrologic alteration, the existing intermittent flow regime, continuing downstream water sources, channel and groundwater conditions, and the habitat resources present in lower Del Puerto Creek. Studies of other regulated rivers therefore help identify relevant ecological mechanisms, but do not by themselves establish the magnitude or significance of the effect in the study area.

As discussed in Master Response 4: Project-Related Flow Changes, cottonwood recruitment depends on periodic flooding, groundwater availability, gradual flow recession, and channel processes that create and maintain suitable recruitment sites (Mahoney and Rood 1998; ESSA Technologies Ltd. 2011; Phillips et al. 2021). As described by Phillips et al. (2021), successful cottonwood establishment is controlled by the interaction of multiple hydrologic and geomorphic factors. These studies indicate that successful recruitment depends primarily on the relationship between flow recession and moisture availability during the recruitment period, not on total annual runoff volume alone.

As discussed in Response to Comment R4-7, Rood et al. (2003) focuses on cottonwood responses where groundwater support for riparian vegetation was substantially diminished or lost due to stream dewatering and associated groundwater declines. In addition, Ohmart (1994) focuses heavily on large western river systems, especially the lower Colorado River, where dams eliminated flooding, altered salinity, reduced instream flows, and contributed to loss of cottonwood-willow reproduction and avian habitat. By contrast, as discussed in Master Response 4: Project-Related Flow Changes, lower Del Puerto Creek is already a naturally intermittent system that is much smaller in scale than the systems describe in Ohmart (1994). Because the Project is not expected to eliminate flood-related recruitment processes, substantially lower groundwater support, or cause widespread cottonwood-willow mortality, the PRDEIR does not identify a mechanism by which Project operations would reduce the vertical structural complexity of riparian vegetation in the manner described by Ohmart (1994).

Wildlife Food base and Movement

Dr. Smallwood also asserts that reduced flows would decrease wetland biomass, diminish the wildlife food base, impair wildlife movement, and adversely affect species such as Swainson's hawk and yellow-billed cuckoo. The PRDEIR addresses these potential impact mechanisms by evaluating whether Project operations would substantially alter the habitat conditions, hydrologic processes, and ecological functions that support downstream terrestrial species, including wetland and riparian vegetation, prey-supporting habitat, foraging opportunities, and corridor functions.

With respect to yellow-billed cuckoo, the PRDEIR's analysis evaluates whether Project operations would materially alter the riparian habitat structure and hydrologic conditions that could support riparian-associated wildlife. The Project would not remove or convert land cover within the downstream study area or eliminate the hydrologic functions identified as supporting existing riparian habitat.

Dr. Smallwood also asserts that reduced flows would decrease wetland biomass, diminish the wildlife food base, impair wildlife movement, and adversely affect species such as Swainson's hawk and yellow-billed cuckoo. The PRDEIR addresses these potential impact mechanisms by evaluating whether Project operations would substantially alter the habitat conditions, hydrologic processes, and ecological functions that support downstream terrestrial species.

With respect to yellow-billed cuckoo, the PRDEIR's analysis evaluates whether Project operations would materially alter the riparian habitat structure and hydrologic conditions that could support riparian-associated wildlife. The Project would not remove or convert land cover or eliminate the hydrologic functions identified as supporting existing riparian habitat. As discussed in Master Response 4, Project operations would alter some natural winter and early-spring runoff and associated hydrologic process, but would not substantially impair the riparian vegetation, habitat structure, or moisture conditions supporting the existing corridor. The comment therefore does not identify a Project-related mechanism by which downstream habitat suitability for yellow-billed cuckoo or other riparian-associated species would be substantially reduced.

The PRDEIR similarly evaluates whether changes in wetland and riparian vegetation would materially reduce the insects, small mammals, birds, and other prey resources supporting the downstream wildlife community, including foraging habitat potentially used by Swainson's hawk. As discussed in Responses to Comments R4-6 and R4-9, the PRDEIR concludes that Project operations would not cause a substantial loss or degradation of the wetland, riparian, grassland, or agricultural-edge habitats that support those food resources.

The PRDEIR's conclusions regarding terrestrial wildlife movement and riparian corridor functionality in the study area are supported by substantial evidence. As discussed in Response to Comment R3-3, the 2020 Final EIR evaluated wildlife movement impacts associated with reservoir inundation and infrastructure relocation and concluded those impacts would be significant prior to mitigation. As discussed in Master Response 1: Scope of the PRDEIR, the PRDEIR's focused scope is limited to evaluating whether changes in downstream flow conditions, absent construction or land-cover change, would interfere with wildlife corridors, movement, or nursery sites.

Furthermore, as summarized in Response to Comment R4-9, the less-than-significant determination made under Impact BIO-TERR-DS-4 is based on factual evidence that (i) no construction would occur in the downstream study area; (ii) dry-season flows sustained by irrigation return flows and operational spills would remain unchanged; (iii) qualifying storm-event releases, recharge releases, occasional excess-inflow spills, infiltration, residual soil moisture, and other downstream water sources would continue to support habitat conditions within the corridor; and (iv) Project operations would not create a new physical barrier or otherwise exacerbate existing habitat fragmentation.

Applicability of Cited Literature

Dr. Smallwood cites Graf (2006) and Stromberg et al. (2007) for the general proposition that dammed rivers can experience altered downstream geomorphology, reduced riparian extent, and shifts in plant species composition toward non-native vegetation. The District does not dispute that such effects can occur in some river systems under certain hydrologic conditions.

However, the hydrologic changes associated with the Project are not anticipated to be of the magnitude, duration, or character necessary to produce the types of geomorphic and ecological responses described in the literature cited by Dr. Smallwood. As discussed in Response to Comment R4-7, Graf (2006) evaluated the downstream effects of very large dams that had storage capacities of at least 1 million acre-feet and were selected specifically because of their ability to exert substantial control over downstream hydrology and geomorphology. By comparison, the Project's proposed reservoir would have a storage capacity of approximately 82,000 acre-feet, making it more than twelve times smaller than the smallest dam evaluated by Graf (2006). For this reason, the effects described by Graf (2006) cannot reasonably be compared to the Project's potential impacts on lower Del Puerto Creek without specific evidence demonstrating that comparable hydrologic alterations would occur.

Similarly, Stromberg et al. (2007) primarily evaluated systems affected by perennial-to-intermittent flow transitions, stream dewatering, groundwater pumping, and substantial reductions in water availability that fundamentally altered riparian hydrology and vegetation processes. By contrast, lower Del Puerto Creek is already an intermittent system, and Project operations would not dewater the downstream corridor or substantially alter the irrigation return flows and operational spills that currently support habitat conditions in lower Del Puerto Creek. As discussed in Master Response 4, the Project's environmental flow commitments are intended to preserve key seasonal flow functions that support sediment transport, seasonal recharge, moisture retention, riparian vegetation recruitment, and the existing structure and function of riparian and wetland habitats in lower Del Puerto Creek. The PRDEIR also does not identify a mechanism by which Project operations would favor widespread conversion from native riparian vegetation to non-native-dominated stands because Project operations are not expected to eliminate the seasonal wetting, groundwater recharge, hydrograph recession, or recruitment processes that support existing native riparian vegetation.

Accordingly, while Graf (2006) and Stromberg et al. (2007) identify potential mechanisms by which large-scale hydrologic alteration can affect riparian systems, the comment does not demonstrate that those mechanisms would occur in lower Del Puerto Creek under Project operations. Nor does the comment identify substantial evidence that Project operations would cause the types of geomorphic changes, riparian contraction, or vegetation conversion described in those studies.

Land Preservation

The comment emphasizes the ecological importance and relative rarity of riparian corridors, particularly within intensively farmed landscapes, and cites Cameron et al. (2022) in support of prioritizing preservation of the easternmost portion of the study area near the San Joaquin River. The District does not dispute the general ecological value of riparian habitats or the importance of conserving high-quality riparian resources where opportunities exist.

However, the issue presented in the PRDEIR is not whether additional land preservation along Del Puerto Creek would provide ecological benefits, but whether Project operations would substantially affect existing downstream terrestrial biological resources. The Project does not include development or habitat conversion in the downstream study area, nor does it involve decisions regarding acquisition, preservation, restoration, or long-term management of privately owned lands along lower Del Puerto Creek. Preservation of land along Del Puerto Creek is outside the purview of the Project Partners and is not an element of the proposed Project. Accordingly, while the District acknowledges the general

conservation principles discussed in Cameron et al. (2022), those principles do not demonstrate that Project operations would result in a significant impact to downstream terrestrial biological resources.

Floodplain Reduction

The comment mischaracterizes the discussion in the 2020 Final EIR. The referenced text was addressing the Project's anticipated reduction in downstream flooding hazards in the vicinity of Patterson, including areas currently used for agricultural, industrial, and residential purposes that experience periodic flooding. Although the 2020 Final EIR used the term "floodplain" in that discussion, the context was the reduction of flooding within developed flood-prone areas rather than the loss of ecologically functioning riparian floodplain habitat.

The PRDEIR's biological resources analysis separately evaluated potential effects on riparian habitat, riparian wetlands, special-status species, and associated habitat functions in lower Del Puerto Creek.

Accordingly, the referenced statement from the 2020 Final EIR does not support the assertion that the Project would harm riparian obligate or special-status species through the loss of ecologically significant floodplain inundation. The PRDEIR evaluated those resources directly and concluded that Project operations would not result in significant adverse impacts to downstream terrestrial biological resources.

Conclusion

Based on the modeled hydrologic changes, field observations, habitat characterization, and scientific literature, the PRDEIR concludes that Project operations would alter, but would not substantially impair, the hydrologic and ecological processes supporting downstream terrestrial resources or cause a substantial loss or degradation of the riparian, wetland, and other terrestrial habitats present in the study area. The removal of the Kiernan et al. citation does not alter that conclusion because the conclusion rests on the broader site-specific evidentiary record and the resource-specific analyses described above.

12.4.25 Response to Comment R4-25

Comment Summary: The comment argues that the PRDEIR's cumulative impacts analysis for biological resources is flawed and inconsistent with CEQA. Specifically, the comment quotes statements on page 3.4-39 of the PRDEIR that other projects in the cumulative study area would be required to comply with federal and state regulatory programs, and that mitigation measures from the 2020 Final EIR would avoid, compensate for, or replace habitat for the Project as a whole. The comment asserts that mitigation of individual project impacts does not necessarily avoid or reduce a project's incremental contribution to cumulative impacts, and that the PRDEIR's reliance on these considerations is therefore inconsistent with CEQA's definition of cumulative impacts.

Please refer to Responses to Comment R3-3 and R4-10. As explained those responses, the PRDEIR's cumulative impacts analysis for downstream terrestrial resources is based on the finding that the Project would not cause an incremental adverse effect to downstream terrestrial resources in the first place. That finding rests on the affirmative determinations that no construction would occur in the downstream study area, that dry-season flows sustained by irrigation return flows and operational spills would remain unchanged, and that the Project's environmental flow commitments are designed to preserve hydrologic characteristics and seasonal flow functions identified in the PRDEIR as supporting existing downstream riparian and terrestrial habitat conditions.

In addition, the mitigation measures required in the 2020 EIR would continue to apply (PRDEIR, pp. 3.4-38 to 3.4-40). Although the PRDEIR concludes that Project operations would not result in significant impacts to downstream terrestrial biological resources and therefore do not require new mitigation, the 2020 Final EIR mitigation measures remain relevant because they reduce the Project's overall effects on biological resources through habitat avoidance, compensatory mitigation, habitat preservation, species-specific protection measures, and long-term habitat management. These measures address Project-related habitat loss, impacts on special-status species, and effects on wildlife movement and connectivity

associated with the broader Project footprint. By reducing or compensating for biological resource impacts in the Project footprint, the measures lessen the Project's overall contribution to cumulative biological resource effects. Accordingly, implementation of the 2020 Final EIR mitigation measures reinforces the conclusion that the Project would not make a cumulatively considerable contribution to impacts on downstream terrestrial biological resources.

The comment correctly identifies the principle that mitigation of project-specific impacts does not, by itself, necessarily eliminate a project's incremental contribution to a cumulatively considerable impact. The PRDEIR's conclusion regarding cumulative impacts on downstream terrestrial resources does not rely on that proposition. Rather, the PRDEIR concludes that the Project's incremental contribution to cumulative effects on downstream terrestrial species would not be cumulatively considerable because Project operations would not produce an incremental adverse effect on those resources.

The PRDEIR's cumulative analysis also considers the regulatory framework applicable to other projects in the cumulative study area, including CEQA, the federal and California Endangered Species Acts, the Clean Water Act, and Fish and Game Code section 1602, all of which require evaluation and mitigation of impacts to biological resources. As discussed in Response to Comment R4-10, the expectation that future projects will comply with these requirements is a reasonable assumption supported by the operation of the regulatory framework itself. Considered together with the Project-specific findings discussed above, the PRDEIR concludes that the Project's incremental contribution to cumulative impacts on downstream terrestrial biological resources would not be cumulatively considerable.

12.4.26 Response to Comment R4-26

Comment Summary: The comment contends that the PRDEIR's mitigation strategy for biological resources is inadequate because it is not based on a sufficiently detailed characterization of the wildlife community along lower Del Puerto Creek. The comment asserts that detection-level surveys, analysis of wildlife movement, evaluation of detection probabilities, and comparative review of survey results from other sites are necessary to inform mitigation, and argues that continued reliance on mitigation measures from the 2020 EIR is improper.

The comment further argues that the Project's environmental flow commitments would not replicate natural hydropatterns and would substantially reduce annual flows, adversely affecting riparian vegetation and wildlife habitat. In addition, the comment contends that continued reliance on agricultural tailwater flows would perpetuate or worsen pesticide accumulation in sediments, potentially resulting in cumulative impacts to plants and wildlife in lower Del Puerto Creek.

Please refer to Master Response 3: Biological Baseline and Species Occurrence and Response to Comments R3-5, R3-6, R4-5, R4-16, R4-19, and R4-21 regarding the characterization of downstream wildlife community, survey methodology, species screening, and wildlife movement. As explained there, the PRDEIR does not depend on a complete census of all species using lower Del Puerto Creek. The PRDEIR uses field observations, habitat assessments, species ecology, occurrence information, land-cover mapping, hydrologic data, scientific literature, and professional judgment to identify the habitat conditions and ecological functions potentially affected by Project-related flow changes.

The need for additional mitigation measures depends on the impacts identified through that analysis. CEQA does not require mitigation measures for impacts determined to be less than significant. (Pub. Resources Code § 21081; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).) Accordingly, the mitigation measures adopted in the 2020 EIR continue to apply to the Project's previously identified significant biological impacts, while the PRDEIR appropriately concludes that additional mitigation measures are not required for downstream terrestrial biological resources because Project operations would not result in new significant downstream terrestrial impacts.

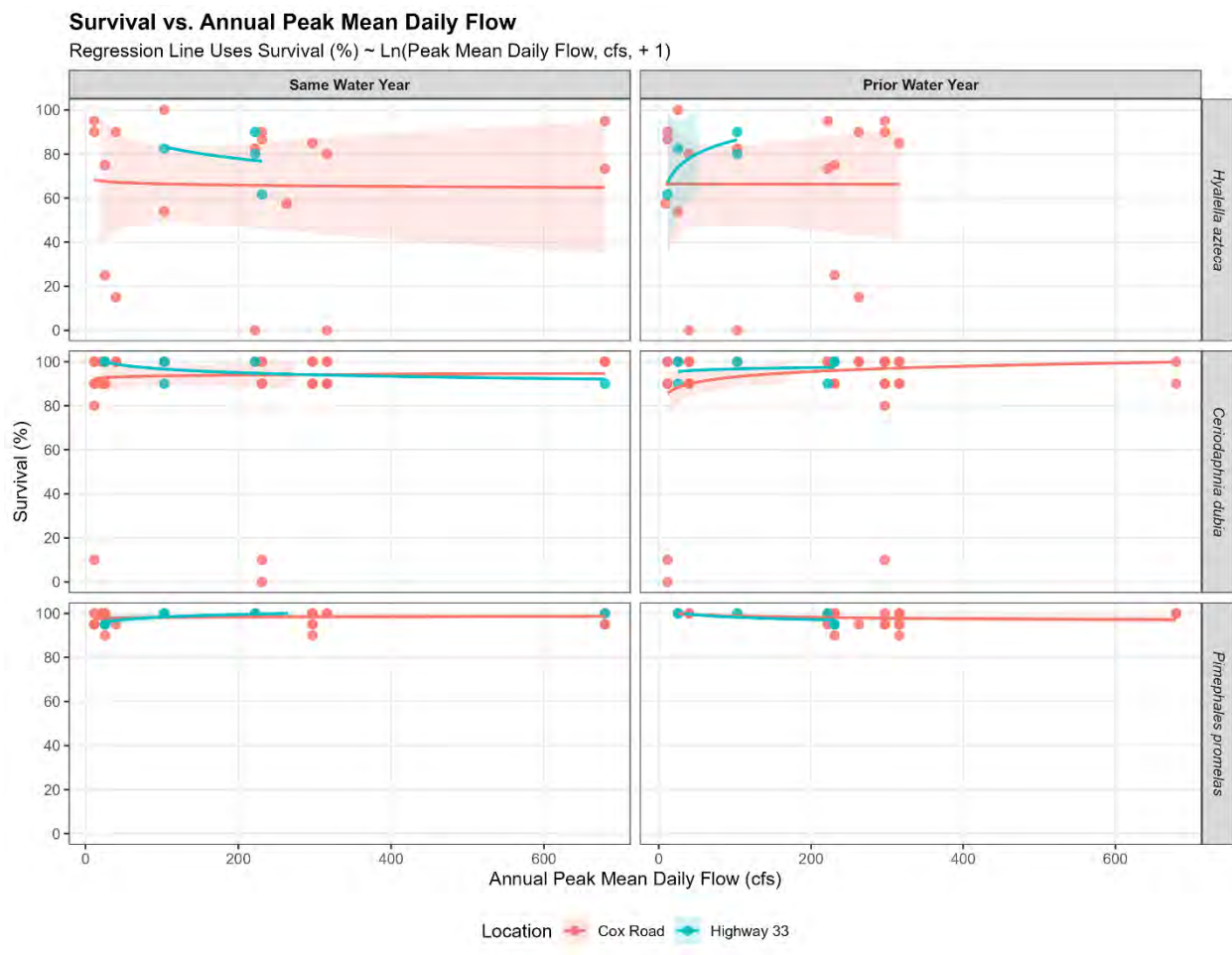
The comment's assertion that mitigation must be preceded by protocol-level surveys, modeling of potential species occurrence, or comparative analyses misstates CEQA requirements. As explained in

Response to Comment R4-5, CEQA does not require agencies to establish species absence, quantify the probability of species occurrence, or fully characterize wildlife movement patterns where the agency has reasonably concluded, based on substantial evidence, that Project operations would not materially alter downstream habitat conditions or create additional significant impact pathways. Instead, CEQA requires a reasonable, good-faith evaluation of potential impacts based on substantial evidence.

The District agrees that the Project's environmental releases would not replicate the existing natural hydrograph in full. Project operations would reduce natural winter and early-spring runoff and some associated opportunities for sediment movement, inundation, recession, and recharge. However, as explained in Master Response 4: Project-Related Flow Changes, qualifying storm-event releases, releases under Mitigation Measure HYD-2, occasional excess-inflow spills, agricultural return flows, WSID operational discharges, channel infiltration, residual soil moisture, and conditions near the San Joaquin River would continue to support downstream hydrologic and ecological processes. Based on the site-specific analysis, the resulting changes are not expected to cause a substantial loss or degradation of riparian or wetland habitat, a material reduction in prey-supporting resources, or a substantial impairment of wildlife movement.

The District also acknowledges the comment's concern regarding pesticides associated with agricultural return flows. The continuation of agricultural return flows is an existing condition in lower Del Puerto Creek, and these flows are augmented by operational spills from the West Stanislaus Irrigation District. During the dry season, natural upstream flows in lower Del Puerto Creek are frequently minimal or absent, and irrigation return flows and operational spills constitute the primary source of surface flow within lower Del Puerto Creek. The PRDEIR discloses that pesticide concentrations associated with agricultural activity have sometimes reached levels acutely toxic to sensitive invertebrates. However, the Project itself would not cause or increase pesticide application, alter surrounding agricultural practices, introduce a new contaminant source, or increase the mass of pesticides discharged through agricultural return flows.

Available site-specific monitoring data from lower Del Puerto Creek does not indicate that contaminant-related effects due to pesticides are strongly influenced by the magnitude of peak flows. Water quality data are available for the lower reaches of Del Puerto Creek within the downstream study area, at locations near Cox Road and Highway 33, through the California Environmental Data Exchange Network (CEDEN). Water-quality monitoring conducted through the CEDEN includes aquatic-toxicity testing using standard indicator organisms, including *Hyalella azteca* (an amphipod crustacean), *Ceriodaphnia dubia* (a water flea), and *Pimephales promelas* (fathead minnow). The figure below compares annual peak mean daily flows in lower Del Puerto Creek with survival rates observed during aquatic-toxicity testing, evaluating both flow conditions during the same water year and the preceding water year using data collected from the CEDEN (CEDEN 2026a; CEDEN 2026b).



Across the range of observed peak-flow conditions, survival rates for the three test organisms generally remain high and relatively consistent. In particular, the Cox Road dataset, which contains the most extensive record of toxicity testing, does not exhibit a statistically significant positive relationship between annual peak flows and test-organism survival. In addition, the data does not indicate that years with lower peak flows are associated with reduced survival or increased toxicity. Overall, when monitoring data is considered with reservoir flow reductions, there is no relationship between reduced flows or mortality of test species related to contaminants. In addition, pesticide applications associated with surrounding agricultural operations generally occur during the irrigation season, when downstream flows are already dominated by irrigation return flows and West Stanislaus Irrigation District operational spills, which would remain unchanged as they are independent of the Project. Accordingly, the available monitoring record does not support the conclusion that Project-related flow reductions would result in pesticide accumulation sufficient to result in significant impacts to terrestrial biological resources in the downstream study area.

This monitoring record is consistent with the physical processes that govern sediment-bound contaminants in the channel. Such contaminants are mobilized, redistributed, and transported by periodic higher-flow events, rather than total annual runoff volume alone. As discussed in Master Response 4: Project-Related Flow Changes, the Project's environmental releases would retain periodic peak-flow events capable of mobilizing sediment: qualifying inflows of at least 500 cubic feet per second would trigger an event-scale peak followed by a gradual recession over no more than seven days. These releases would retain a periodic sediment-mobilization and transport function even with reductions in natural winter and early-spring runoff. Although the releases would not replicate the existing natural hydrograph

in full, the flow reductions would not remove the higher-flow events through which sediment and associated contaminants move through the channel. The monitoring data and retained periodic sediment-mobilization and transport function together support the conclusion that Project-related flow reductions would not cause a material increase in contaminant retention or exposure.

Thus, based on the available information, the Project would not increase contaminant loading, and the record does not indicate that the altered flow regime would cause a material increase in pesticide retention or exposure sufficient to substantially degrade downstream riparian or wetland habitat, reduce prey-supporting resources, or otherwise cause a significant terrestrial biological effect.

12.5 Comment Letter R5 – Merced County Farm Bureau

12.5.1 Response to Comment R5-1

Comment Summary: The comment expresses support for the project.

The Del Puerto Water District appreciates the expression of support for the Project. The comment does not question the adequacy of the PRDEIR.

12.6 Comment Letter R6 – Save Del Puerto Canyon, Elias Funez,

12.6.1 Response to Comment 6-1

Comment Summary: The comment submits a January 7, 2026, letter from the Tule River Tribal Elders' Council addressed to Governor Newsom opposing the Project. The Elder Council letter, adopted at a December 22, 2025, meeting, expresses concern about the potential destruction of a Native American historical village site in Del Puerto Canyon and states the Council's hope to preserve the area for future generations. The letter describes the canyon as rich with wildlife and environmentally significant, and notes that the California Water Commission has stated the project is not feasible, references the City of Patterson's recognition of the area as a wildlife reserve, and notes the site's geological significance. The accompanying comment summarizing the letter disputes the characterization on the District's website that consulted Native American Tribes expressed no concerns about historical, archaeological, and sacred sites, and states that the Tule River Tribe Elders favor preservation and protection of the site. The comment notes that the letter has also been forwarded to the Bureau of Reclamation, the Stanislaus County Board of Supervisors, and the Native American Heritage Commission.

The District acknowledges and respects the Tule River Tribal Elders' Council's interest in the preservation of Del Puerto Canyon, including the Native American historical village site referenced in the Council's January 7, 2026, letter. The Council's letter and the commenter's concerns will be made available to the District's Board of Directors for consideration. There is no statement on the Project website that claims that "Native American Tribes have been consulted and that there was no concern being expressed about the historical, archaeological, and sacred sites." The website states specifically that "There are no tribal cultural resources, including sacred lands, recorded as present in the project area. The project partners have consulted with the Native American Heritage Commission and are coordinating with the North Valley Yokuts Tribe, to ensure respectful treatment of the existing archaeological sites and any artifacts that may be found within the project area." Coordination with the North Valley Yokuts is ongoing and included a site visit to Del Puerto Canyon with a tribal representative on March 5, 2026.

The concerns raised in the letter and the accompanying comment, including cultural resources, tribal consultation, the protection of historical and sacred sites, project feasibility, wildlife, and recreation, were addressed in the 2020 Final EIR. The adequacy of the EIR's cultural resources analysis was raised in the underlying litigation; the Court of Appeal found the 2020 Final EIR adequate on this issue and reversed the trial court's contrary ruling. (See Opinion, pp. 22–33.) These topics are outside the scope of the PRDEIR, which addresses only the single deficiency the Court of Appeal identified: the analysis of potential impacts to terrestrial species downstream of the proposed reservoir due to flow changes in Del

Puerto Creek. For a more detailed discussion of the scope of the PRDEIR, please refer to Master Response 1: Scope of the PRDEIR. For a response to comments expressing general opposition to the Project, please refer to Master Response 2: Project Opposition.

Regarding the Council's reference to the California Water Commission, the Council's characterization is not accurate. The Commission has made formal findings supporting the feasibility of the Project. By Resolution 2019-05 dated September 19, 2019, the Commission found the Project to be consistent with the California Water Quality, Supply and Infrastructure Improvement Act (Proposition 1). On December 20, 2021, the Commission adopted Resolution 2021-14, finding that the Project is "feasible to meet the requirements of Water Code section 79757" and that the Project "will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta." In any event, the Commission's feasibility proceedings are outside the scope of the PRDEIR, which is limited to the analysis of potential impacts to downstream terrestrial species.

The District notes that tribal consultation obligations under Assembly Bill 52 and other applicable laws remain ongoing and are not limited to the PRDEIR process. The District is committed to meaningful government-to-government consultation with interested tribes as the Project moves forward.

12.7 Comment Letter R7 – Form Letter submitted by Multiple Individuals

12.7.1 Response to Comment R7-1

Comment Summary: The comment expresses strong opposition to the Project and advocates that the Project area should be preserved as a park with expanded recreational access, including equestrian use. The comment describes the canyon's scenery, wildlife (including bobcats, mountain lions, burrowing owls, badgers, golden eagles and San Joaquin kit fox), and cultural and historical significance, including its connection to the Hoyo and Miumne Yokuts and its naming by Spanish explorers. The comment notes recent sightings of California condor that were not addressed in the original EIR. The comment also raises concerns about seismic safety and dam failure risk to Interstate 5, the California Aqueduct, the Delta-Mendota Canal, and the City of Patterson; the cost of road relocation through rugged terrain; the loss of recreational access; the lack of outreach to Patterson residents, particularly underrepresented community members; and the availability of alternatives such as water conservation and groundwater storage.

The commenter's opposition to the Project, including concerns about the canyon's ecological, cultural, and recreational values, and interest in the preservation of canyon, are noted. These views will be made available to the District's Board of Directors for consideration.

The comment raises a number of topics, including recreational access, cultural resources, seismic safety, dam failure risk, road relocation costs, and alternatives, that were addressed in the 2020 Final EIR and are outside the scope of the PRDEIR. The PRDEIR was prepared to address the single deficiency identified by the Court of Appeal: the analysis of potential impacts to terrestrial species downstream of the proposed reservoir due to changes in Del Puerto Creek flows. The Court of Appeal found the 2020 Final EIR adequate in all other respects. For a more detailed discussion of the scope of the PRDEIR, please refer to Master Response 1: Scope of the PRDEIR. For a response to comment expressing general opposition to the Project, please refer to Master Response 2: Project Opposition.

Regarding the comment's reference to California condor sightings in or near Del Puerto Canyon, please see Response to Comment R3-11, which addresses this topic.

Regarding the comment's suggestion that water conservation and groundwater storage are preferable alternatives, the 2020 Final EIR evaluated a reasonable range of potentially feasible alternatives, as

required by CEQA. The adequacy of the alternatives analysis was addressed in the underlying litigation and resolved in the District's favor.

12.8 Comment Letter R8 – Vicki Ryman

12.8.1 Response to Comment R8-1

Comment Summary: The comment expresses opposition to the project.

Please refer to Master Response 2 regarding opposition to the project.

12.9 Comment Letter R9 – Harvey Duncan

12.9.1 Response to Comment R9-1

Comment Summary: The comment expresses opposition to the project and cites the diversity of plant life in the canyon and the interesting geology of the section. The comment also quotes the entire form letter that was submitted by multiple individuals.

Please refer to Master Response 2 regarding opposition to the project. Please refer to Response R7-1 regarding the issues that were brought up in the form letter. The environmental issues mentioned in the comment were addressed in the 2020 Final EIR for the project and are outside the scope of the PRDEIR, Please refer to Master Response 1, which explains that the analysis in the PRDEIR is properly confined to the assessment of project impacts on terrestrial biological resources downstream of the reservoir, as mandated by the court.

12.10 Comment Letter R10 - JP

12.10.1 Response to Comment R10-1

Comment Summary: The comment expresses support for the project and cites the need for more water.

The Del Puerto Water District, on behalf of the Project Partners, appreciates the support for the project.

12.11 Comment Letter R11 – Chris Quock

12.11.1 Response to Comment R11-1

Comment Summary: The comment asserts that the Project's flood control function would reduce periodic flood events that support downstream ecological processes, such as the formation of ephemeral or vernal pools through flood scour, patterns of nutrient deposition and leaching, and plant material dispersal by hydrochory, and contends that these effects should be evaluated and in the downstream terrestrial analysis and, where appropriate, mitigated.

As explained in Response to Comment R4-6, the PRDEIR provides a focused analysis of downstream hydrology, habitat conditions, and terrestrial species occurrence, supported by site-specific hydrologic data, streamflow records, hydrologic modeling, field surveys, and established ecological principles, consistent with CEQA Guidelines section 15151. The PRDEIR evaluates whether Project operations would materially alter hydrologic characteristics that support downstream terrestrial habitat function, including seasonal flow variability, sediment transport, and maintenance of riparian vegetation and soil moisture conditions. Please refer to Master Response 4: Project-Related Flow Changes.

The Project would attenuate certain high-magnitude flood events and reduce natural winter and early-spring runoff. The Project would therefore reduce some opportunities for floodplain inundation, sediment and nutrient transport, hydrochory, scour, recession, and in-stream recharge. The PRDEIR does not assume that the Project's environment releases would replicate the existing natural hydrograph or retain every ecological function associated with the largest natural floods. The Project would, however, retain

selected characteristics of qualifying storm events. As explained in section 1.2.1, *Reservoir Releases*, of the PRDEIR, when natural inflow measured upstream reaches 500 cubic feet per second (cfs) or greater, the environmental release rule would provide a first-day release of 600 cfs or the measured natural peak, whichever is less, followed by declining release over no more than six additional days.

Occasional excess-inflow spills would also continue in wetter years. As explained in Master Response 4: Project-Related Flow Changes, these release and spills would retain some periodic sediment movement, channel inundation, seasonal groundwater recharge, and transport functions, although at reduced magnitude or frequency. In addition, channel infiltration, residual soil moisture, and hydrologic influences near the San Joaquin River would continue to support downstream hydrologic and ecological processes.

Although the Project would reduce some flood-related processes relative to existing conditions, the available evidence does not indicate that these reductions would impair the ecological functions that support downstream terrestrial biological resources. Project-related releases and occasional spill events would continue to provide periodic high-flow conditions, while other hydrologic inputs would maintain riparian and wetland habitat functions. Furthermore, based on site-specific habitat assessments, hydrologic data, field observations, and species-occurrence information, the PRDEIR did not identify any vegetation community, wetland habitat, or terrestrial species whose continued viability depends on flood-related nutrient deposition, scour, hydrochory, or inundation that would be substantially reduced or eliminated by Project operations. Likewise, no ephemeral pools, wetland features, or other flood-dependent habitat conditions were identified that would be lost as a result of the modeled flow changes in lower Del Puerto Creek.

As further described in Master Response 4: Project-Related Flow Changes, the ecological condition of lower Del Puerto Creek is influenced by the interaction of multiple hydrologic and geomorphic processes rather than flood magnitude alone. Site-specific hydrologic data demonstrate that the creek naturally experiences highly variable seasonal flows, including extended periods when little or no upstream runoff reaches the San Joaquin River. Existing riparian and wetland habitats persist under these conditions through the combined influence of periodic storm flows, recession flows, seasonal groundwater recharge, residual soil moisture, subsurface water availability, agricultural return flows, West Stanislaus Irrigation District operational discharges, and hydrologic conditions near the San Joaquin River. Accordingly, the available evidence does not support the conclusion that Project-related reductions in flooding potential would result in significant impacts to downstream terrestrial biological resources.

Furthermore, the comment does not identify a particular downstream vegetation community, wetland, or terrestrial species whose continued viability depends on the frequency or magnitude of flood-related nutrient deposition that the Project would eliminate. The PRDEIR's habitat analysis does not indicate that the modeled flow changes would cause a substantial reduction in vegetation extent, structure, productivity, or wetland function through this pathway.

12.11.2 Response to Comment R11-2

Comment Summary: The comment asserts that reliance on reconnaissance-level surveys is inadequate to determine the presence or absence of sensitive or special-status species and contends that that identification of suitable habitat should trigger protocol-level surveys. The comment also cites the commenter's personal survey experience conducting inspect surveys to support the view that protocol-based methods detect more species, particularly rare ones.

As explained in Master Response 3: Biological Baseline and Species Occurrence, under CEQA, the scope and intensity of biological surveys should be commensurate with the nature of the project and the potential for impacts. The PRDEIR's analysis of downstream terrestrial resources relied on reconnaissance-level surveys conducted by qualified and experienced biologists, supported by comprehensive literature reviews, database queries (e.g., CNDDB, eBird, iNaturalist), habitat assessments, evaluation of species requirements, and assumed presence of special-status-species where

suitable habitat occurs. In addition, as discussed under Impact BIO-TERR-DS-1b, protocol-level VELB surveys were conducted in September 2025. Species occurrence determinations were based on habitat suitability and the presence or absence of plausible impact pathways, not solely on potential presence. Master Response 3 provides additional information on the PRDEIR's methodology, including the qualifications of the biologists who conducted the surveys, as well as CEQA legal requirements concerning the environmental baseline.

Consistent with the commenter's suggestion, when the reconnaissance-level survey identified elderberry shrubs within the study area, a protocol level valley elderberry longhorn beetle survey was conducted. However, the identification of riparian habitat or other suitable habitat does not automatically trigger protocol-level surveys. Protocol-level surveys are typically conducted where direct disturbances, species-specific permitting requirements, or focused avoidance measures depend on presence/absence determinations. Here, the PRDEIR instead evaluates whether Project-related changes in downstream flow conditions would materially alter the hydrologic and ecological processes supporting existing riparian, wetland and terrestrial habitats in lower Del Puerto Creek. Because the PRDEIR assumes the presence of special-status species where suitable habitat occurs, additional species-detection efforts would not materially affect the analysis (see Master Response 3). The downstream analysis concerns indirect, flow-related operational effects, not ground-disturbing construction and land-cover conversion, as none would occur within the downstream study area.

12.11.3 Response to Comment R11-3

Comment Summary: The comment asserts that milkweed populations along the West Coast typically occur in small, isolated, and seasonally variable patches that are difficult to detect through conventional visual surveys, and that such patches are important for monarch butterfly migration and reproduction. The comment contends that short-duration on-foot surveys likely missed milkweed in the study due to phenology and hydrologic variability. The comment further contends milkweed propagates downstream through hydrochory during higher-flow event, that monarch butterflies depend on the timing and persistence of milkweed patches in ways linked to moisture and temperature, and that potential upstream flow changes should be considered for downstream milkweed growth regimes relevant to monarch life history needs.

As discussed in Master 3: Biological Baseline and Species Occurrence, the PRDEIR's downstream terrestrial analysis relies on reconnaissance-level surveys, database review, habitat assessment, and assumed presence of special-status species where suitable habitat occurs. The PRDEIR does not rely on reconnaissance-level surveys to conclude milkweed absence in absolute terms, nor does it assert that all small or transient patches were detected. Rather, the analysis evaluates whether Project operations would materially affect habitat conditions in a manner that could adversely affect monarch butterflies. Because no construction or ground disturbance would occur in the downstream study area, there would be no direct removal or disturbance of milkweed plants or associated habitat during Project construction.

As discussed in Section 3.4.1, *Environmental Setting*, and Section 3.4.3, *Impact Analysis*, monarch butterfly breeding habitat is dependent on the presence of milkweed species, which are generally not shade tolerant and typically occur in open grasslands or disturbed upland settings. Although narrow-leaf milkweed can occur in certain disturbed settings, including canal banks, roadsides, and similar managed habitats, field observations and habitat assessments conducted for the PRDEIR did not identify milkweed within the downstream study area. In addition, available nectar resources and other habitat features that would support sustained monarch breeding activity were found to be limited. While individual monarchs have been observed opportunistically near the downstream study area during migration, no milkweed populations were documented, and available floral resources are limited. Based on these habitat conditions, the PRDEIR characterizes the downstream study area as providing minimal and temporary migratory value rather than sustained breeding habitat for monarch butterflies.

With respect to operational flow effects, as discussed in Response to Comment R11-1, the Project would not eliminate downstream flow events. Project operations include environmental releases that would preserve key storm-event characteristics downstream. Surface flows in the portion of lower Del Puerto Creek within the study area during the dry season are primarily sustained by irrigation return flows from surrounding agricultural lands and operational spills, and the Project's environmental flow commitments would preserve key hydrologic functions relevant to the riparian and associated terrestrial habitat within the downstream study area, as discussed in Master Response 4: Project-Related Flow Changes.

The PRDEIR does not identify evidence demonstrating that hydrochory during higher-flow events currently results in the establishment of persistent downstream milkweed populations that support monarch breeding, or that the habitat conditions characterized in Section 3.4.1 depend on episodic flood-driven processes for their continued functions. Even if small, isolated milkweed patches occur intermittently within the study area, the Project would not physically disturb those areas, and, as discussed in Response to Comment R11-1, bypass releases and operational spill events would continue under Project operations, preserving the higher-flow mechanisms that facilitate hydrochory.

No construction or ground disturbance would occur within the downstream study area. As explained under Impact BIO-TERR-DS-1c, given the absence of construction activities in the study area, the maintenance of dry-season flows through existing agricultural inputs and operational spills, and the implementation of the Project's environmental flow commitments, potential monarch butterfly migratory habitat in the study area would be maintained under Project operations. The PRDEIR therefore concludes that Project operations would not result in a substantial adverse change to monarch butterfly habitat or habitat suitability, and impacts would be less than significant.

12.11.4 Response to Comment R11-4

*Comment Summary: The comment reports a 2024 observation of organisms identified as fairy shrimp, likely *Branchinecta lindahli*, in a roadside ditch in the eastern section of Del Puerto Canyon. The comment raises concerns that dormant cysts of this non-listed species could be transported through Project-related grading, soil movement, or vehicle traffic. The comment asserts that such transport could pose a risk of contamination or competitive effects on federally listed vernal pool branchiopods and recommends that this potential risk be considered in connection with grading for the main and saddle dams and the proposed new roadway.*

As discussed in Master Response 3: Biological Baseline and Species Occurrence, addressing biological survey scope and impact pathways, the PRDEIR evaluates Project-related impacts based on identified mechanisms of disturbance and habitat alteration, consistent with CEQA requirements. With respect to downstream terrestrial resources and federally listed vernal pool branchiopods, the PRDEIR specifically focuses on flow-related operational effects, as no construction-related ground disturbance or physical habitat modification would occur within the study area. Within the downstream study area, the Project would not involve any ground disturbance in areas where fairy shrimp cysts could be mobilized, nor would Project operations create new pathways for transport of cysts within the study area.

Construction-related impacts on vernal pool branchiopod habitat within the Project footprint were analyzed in the 2020 Final EIR, which the Court of Appeal upheld in all respects except its analysis of downstream terrestrial species. (Opinion, pp. 15–18.) As described in the 2020 Final EIR, reconnaissance-level surveys identified potentially suitable vernal pool branchiopod habitat within portions of the Project footprint. The 2020 Final EIR therefore incorporated Mitigation Measures BIO-TERR-1a and BIO-TERR-1c to avoid, minimize, and compensate for potential impacts on vernal pool branchiopod habitat and associated species. However, subsequent coordination with USFWS conducted in connection with Project permitting indicates that some or all of the areas initially identified as potentially suitable habitat may not meet the habitat characteristics necessary to support listed vernal pool branchiopods. Nevertheless, the 2020 Final EIR's Mitigation Measures BIO-TERR-1a and BIO-TERR-1c would be

implemented to avoid, minimize, and compensate for potential impacts on vernal pool branchiopod habitat and associated species.

Mitigation Measure BIO-TERR-1a requires implementation of construction controls intended to minimize disturbance and prevent unnecessary movement through sensitive habitat areas, including restricting grading to the minimum area necessary, avoiding off-road vehicle travel outside the construction footprint, fencing sensitive habitat areas, and requiring vehicles and equipment to use existing roads and disturbed areas to the extent practicable.

In addition, Mitigation Measure BIO-TERR-1c requires protocol-level surveys for listed large branchiopods before disturbance of potential habitat, consistent with the U.S. Fish and Wildlife Service's 2015 survey guidelines. If federally listed branchiopods are identified within permanent disturbance areas, compensatory mitigation would be required through purchase of credits at a U.S. Fish and Wildlife Service-approved mitigation bank.

Accordingly, the potential for construction-related effects on vernal pool branchiopod habitat and associated species has already been evaluated and addressed through mitigation measures adopted as part of the 2020 Final EIR. The comment does not identify a new significant impact or substantially more severe impact than previously disclosed in the 2020 Final EIR.

12.12 Comment Letter R12 – John Herrick

12.12.1 Response to Comment R12-1

Comment Summary: The comment summarizes specific issues that are expanded upon in the subsequent portion of the comment letter, contending that the study area should be expanded, botanical surveys did not follow appropriate protocols, and the PRDEIR does not evaluate impacts to California condor.

Please refer to Responses to Comments R12-2, R12-3, and R12-4 for a response to each of these specific comments.

12.12.2 Response to Comment R12-2

Comment Summary: The comment contends that the PRDEIR's 105-acre study area is inadequate and should be expanded to include the full Del Puerto Creek floodplain, including reaches extending northeast toward the San Joaquin River and southeast connecting with Salado Creek. The comment cites the Court of Appeal's Opinion (p. 14) for the proposition that the 2020 Final EIR did not address downstream flow impacts, and references the City of Patterson Flood Insurance Rate Map and a March 2, 2020, DPWD presentation depicting pre- and post-Project floodplain conditions. The comment asserts that the Project would capture flows that currently reach the floodplain, resulting in loss of floodplain benefits to terrestrial species such as seed dispersal, germination stimulation, and establishment of pioneer native species. The comment also asserts that the PRDEIR fails to address impacts on Salado Creek.

Please refer to Master Response 1: Scope of the PRDEIR. The Court of Appeal's decision did not specify a geographic scope for the downstream terrestrial species. The Opinion referred only to impacts "downstream" along Del Puerto Creek and left the definition of an appropriate study area to the District's reasonable discretion. While the Opinion could reasonably have been interpreted to confine the study area to the bed and banks of Del Puerto Creek, the District elected to analyze a substantially broader area to ensure a comprehensive assessment of potential impacts to downstream terrestrial species. The 105-acre study area encompasses a 7.4-mile segment of lower Del Puerto Creek, from immediately east of Interstate 5 to the confluence with the San Joaquin River, with a variable-width buffer extending outward from the creek channel. The buffer was specifically designed to encompass the full range of existing habitat types that may support terrestrial or semi-terrestrial species along the creek, including riparian

wetlands, seasonal wetlands, grasslands, orchards, and vineyards. The study area also captures adjacent upland habitats that may support terrestrial species independent of direct hydrological inputs. As explained in Response to Comment R4-7, the PRDEIR evaluates whether Project operations would materially alter the specific hydrologic and habitat conditions in the study area, including soil moisture availability, frequency and duration of inundation, groundwater recharge, vegetation recruitment, and habitat connectivity, which are recognized in the scientific literature as principal pathways by which flow alterations can affect wetland and riparian health.

Much of the mapped floodplain beyond the study area consists of developed or intensively managed agricultural lands, as well as portions of the City of Patterson, where terrestrial species are not dependent on flooding for habitat viability or population support. Floodplain mapping is prepared by the Federal Emergency Management Agency (FEMA), as reflected in flood insurance rate maps and related outreach materials, and is intended to identify areas subject to inundation for risk-management and flood insurance purposes; such mapping does not constitute a determination that all mapped areas function as terrestrial habitat warranting separate CEQA analysis.

Regarding the assertion that the Project would capture flows reaching the floodplain, please refer to Response to Comment R11-1. As explained there, the Project does not eliminate flood-magnitude flows. The Project's environmental flow commitments, based on a functional-flow approach, would preserve the timing, duration, and relative magnitude of major flow events, including the bypass of inflow events of 500 cubic feet per second or greater along with a seven-day flow recession. Operational spills would continue to pass inflows that exceed reservoir storage capacity. These flows would continue to support geomorphic and ecological processes along the creek corridor, including soil moisture replenishment, sediment transport, and riparian habitat maintenance. Although the Project would attenuate certain high-magnitude flood events as part of its flood control function, the record does not contain evidence demonstrating that areas beyond the 105-study area support terrestrial habitat features whose continued existence depends on floodplain processes that Project operations would substantially alter.

With respect to Salado Creek, Salado Creek is a separate watershed from Del Puerto Creek, and the comment does not establish a hydrologic or ecological nexus between Project operations and terrestrial habitat conditions in the Salado Creek watershed. Any geographic overlap between the Del Puerto Creek and Salado Creek floodplains shown on FEMA flood insurance rate maps reflects modeled inundation during peak 100-year flood events, not a hydrologic connection that would be altered by Project operations

12.12.3 Response to Comment R12-3

Comment Summary: The comment contends that the PRDEIR's reconnaissance-level botanical surveys are inconsistent with CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities, and are insufficient to establish baseline conditions for the downstream study area. The comment further argues that the PRDEIR fails to consider impacts to locally rare native plants and identifies seven species documented in the 2020 Final EIR's plant lists that the commenter considers locally rare, including Temblor clarkia and San Joaquin tarweed, which are reported only in the Del Puerto Canyon project area. The comment notes that Del Puerto Canyon lies at the northern end of the San Joaquin Desert and that several native plants in the area are at the northern extent of their range. The commenter requests that protocol-level surveys be conducted and that any mitigation for adverse plant impacts occur within the San Joaquin Desert region, preferably within Stanislaus County.

As explained in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address a limited issue identified by the Court of Appeal: whether Project-related changes in downstream flow conditions would result in impacts to downstream terrestrial species. The PRDEIR therefore focuses on indirect, flow-related effects within the downstream study area, where no construction, grading, or land-cover conversion would occur. The required analysis does not revisit or expand the comprehensive

botanical surveys and impact analysis conducted for the 2020 EIR, which addressed direct and indirect impacts to special-status and locally rare native plant species within the Project footprint due to implementation of the Project.

The 2020 Final EIR evaluated impacts on special-status and locally rare native plant species within the Project area, including species identified in Appendix B3, *Memorandum regarding Special-Status Plant Assessment–Del Puerto Canyon Reservoir Project*, and referenced in the comment. Mitigation measures addressing direct impacts on special-status biological resources were adopted as part of the Project approval process. The Court of Appeal upheld the biological impact analysis in all respects except its analysis of downstream terrestrial species.

As discussed in Master Response 3: Biological Baseline and Species Occurrence, and Response to Comment R2-4, the PRDEIR does not rely on reconnaissance-level surveys to establish definitive species absence or to generate a complete floristic inventory of the downstream study area. Rather, the PRDEIR evaluates whether Project operations would substantially alter downstream habitat conditions relevant to terrestrial biological resources. The level of survey effort was tailored to that kind of impact analysis and was supplemented by habitat assessments, literature review, database review, and conservative assumptions regarding potential species occurrence.

The CDFW Protocols cited by the comment provide guidance on botanical surveys but do not establish mandatory minimum survey requirements for CEQA. As discussed in Response to Comment R2-4, CEQA does not require protocol-level surveys in every circumstance, and a lead agency retains discretion to determine the appropriate level of investigation based on the nature of the project and the impact pathway being evaluated. (See, e.g., *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396.)

The PRDEIR conservatively carries forward several plant species for analysis even where they were not detected during reconnaissance-level surveys, based on their documented regional occurrence and the presence of mapped suitable habitat (e.g., California alkali grass). By contrast, special-status and locally rare plant species associated with vernal pools, alkali meadows, or saline soils were excluded from further analysis because the essential habitat features required to support those species are demonstrably absent from the creek channel and the narrow riparian corridor that defines the study area, thereby eliminating any reasonable potential for a Project-related impacts to those species.

The seven locally rare native plant species cited in the comment—Temblor clarkia (*Clarkia tembloriensis* subsp. *tembloriensis*), San Joaquin tarweed (*Holocarpha obconica*), rigid cryptantha (*Cryptantha nevadensis* var. *rigida*), Parry's mallow (*Eremalche parryi*), elegant silverpuffs (*Microseris elegans*), foothill penstemon (*Penstemon heterophyllus* var. *heterophyllus*), and clubhair mariposa lily (clavatus)—were documented within the Project footprint (i.e., the proposed reservoir inundation and construction area) (2020 Final EIR, Appendix B3, *Memorandum regarding Special-Status Plant Assessment–Del Puerto Canyon Reservoir Project*). As noted above, potential impacts to special-status and locally rare plant species within the Project footprint were analyzed in Chapter 3.4, *Biological Resources—Terrestrial*, of the 2020 EIR, and mitigation measures addressing special-status and locally rare native plants were adopted where significant impacts were identified.

Within the downstream study area, no construction, grading, or land-cover conversion would occur, and the analysis evaluates indirect, flow-related effects on terrestrial habitat conditions. The PRDEIR's reconnaissance-level botanical surveys, supplemented by habitat assessment and database review, are appropriate for evaluating that limited operational issue. The comment does not identify a documented occurrence of any of the seven cited species within the downstream study area that would alter the impact analysis.

12.12.4 Response to Comment R12-4

Comment Summary: The comment contends that the PRDEIR improperly excluded California condor from the downstream terrestrial species analysis based on the absence of recorded occurrences within a 5-mile radius and lack of suitable habitat. The comment notes that several California condors were observed in 2023 on a communications tower at Mount Oso, approximately 8 miles north of the project site, and argues that the 5-mile radius is insufficient given the species' extensive range and ability to fly up to 250 miles per day. The comment cites the California Natural Diversity Database (CNDDB) License Agreement's disclaimer that a lack of recorded occurrences does not indicate species absence, references U.S. Fish and Wildlife Service (USFWS) information on condor habitat requirements and range, and argues that the PRDEIR must consider how Project construction (including transmission line relocation) and operation would impact condors roosting at Mount Oso. The comment requests recirculation of the EIR under CEQA Guidelines section 15088.5.

As discussed in Master Response 3: Biological Baseline and Species Occurrence, the PRDEIR's evaluation of special-status species in the study area was based on reconnaissance-level survey, eBird review, and habitat assessment, and assumed-presence where suitable habitat occurs. As discussed in Response to Comment R3-11, additional information on California condor presence in the broader Del Puerto Canyon area was obtained from Ventana Wildlife Society, which manages the central California condor population and maintaining GPS-tracking data on individual condor. As further explained in Response to Comment R3-11, the study area lacks the terrain and structural features required to support regular California condor use, as it does not provide suitable nesting, roosting, or primary foraging habitat. Unlike the steep, rugged landscapes with strong thermal updrafts and prominent roosting structures found in core condor areas such as the coastal ranges near Big Sur and Pinnacles National Park, the study area consists of low-relief terrain, agricultural lands, and scattered riparian vegetation.

Although California condors are a wide-ranging species capable of long-distance movements, expansion of the search radius is appropriate only where a plausible Project-related impact mechanism exists. In this case, the 5-mile search radius applied in the special-status species review was sufficient and conservative given the purpose of the PRDEIR and the nature of the potential impact pathways. The 5-mile radius was selected to capture known occurrences, roosting areas, and habitat features in proximity to the downstream study area that could reasonably be affected by Project-related changes in hydrology or habitat conditions. Because flow changes would not affect the terrain, thermal conditions, or structural features required for condor nesting, roosting, or primary foraging, extending the analysis beyond the study area would not provide information relevant to Project impacts. CEQA does not require analysis of indirect impact pathways that are unsupported by evidence or that cannot be reasonably predicted.

Regarding the commenter's reference to condor roosting activity near Mount Oso, the District notes that Mount Oso is located in higher-elevation terrain west of the both the reservoir footprint and downstream study area and does not rely on hydrologic conditions within the study area. The PRDEIR evaluates downstream flow-related impacts and does not address upland habitat use unrelated to the scope of the PRDEIR, as explained in Master Response 1: Scope of the PRDEIR. Occasional condor use of high-elevation areas in the region has been documented, as noted in Response to Comment R3-11. In addition, the comment does not identify a new impact mechanism, change in Project design, or newly available information regarding condor behavior demonstrating that Project operations would result in a new or more severe impact than disclosed in the 2020 Final EIR. Accordingly, the Mount Oso information does not require expansion of the PRDEIR's analysis or recirculation of the 2020 Final EIR.

To the extent the comment raises concerns related to Project construction activities, including transmission line relocation or potential collision risks, those effects constitute Project-footprint impacts rather than downstream flow-related impacts and were within the scope of the 2020 EIR. As discussed in Master Response 1: Scope of the PRDEIR, the Court of Appeal did not identify any deficiency in the

2020 Final EIR's treatment of terrestrial biological resources except for those that might be affected by decreased flows in Del Puerto Creek downstream from the Project footprint, which are the subject of the PRDEIR. Nothing in the Court of Appeal opinion required the District to revisit the larger universe of impacts to terrestrial biological resources resulting from construction activities. The analysis of such impacts are deemed to be legally adequate and cannot be legally challenged at this late stage of the litigation over the 2020 Project EIR.

12.12.5 Response to Comment R12-5

Comment Summary: The comment asserts that the PRDEIR should not be certified until additional impact analysis has been conducted to evaluate the entire Del Puerto Creek floodplain, conduct protocol-level plant surveys and address impacts to California condor.

As detailed in Response to Comments R8-2, R8-3, and R8-4, additional analysis is not required and is outside the scope of the PRDEIR as mandated by the court.

12.13 Comment Letter R13 – California Department of Conservation, Geologic Energy Management Division, Mary Soe, Supervising Oil & Gas Engineer

12.13.1 Response to Comment R13-1

Comment Summary: The comment provides information about abandoned oil, gas and geothermal wells in the project vicinity and recommends that access to those wells should not be impeded.

The Del Puerto Water District appreciates the information provided by the Department of Conservation, most of which (with the exception of the list of wells on the last page) consists of a generic discussion of generally applicable legal requirements. Because the PRDEIR is focused on impacts to downstream terrestrial biological resources, the comment is outside the scope of the PRDEIR. However, the original Draft EIR addressed the presence of abandoned oil wells in the project area in Section 3.10, Hazards and Hazardous Materials, and provides a figure showing the location of those wells (see Figure 3.10-1 on page 3.10-3 of the original Draft EIR). The original Draft EIR also includes Mitigation Measure HAZ-1c, which requires avoidance of those wells to the extent feasible, and Mitigation Measure HAZ-1d, which requires appropriate management of any wells that cannot be avoided, including coordination with the California Geologic Energy Management Division.

12.14 Comment Letter R14 – California Department of Fish and Wildlife, Julie A Vance, Regional Manager

12.14.1 Response to Comment R14-1

Comment Summary: The comment summarizes the role of the California Department of Fish and Wildlife (CDFW) as a trustee agency for fish and wildlife resources and explains CDFW's jurisdiction over fully protected species and other special status species. The comment also describes CDFW jurisdiction over birds, permitting authority certain water infrastructure projects added by Senate Bill 147, and involvement in the water rights process.

The District acknowledges CDFW's comments on the PRDEIR and appreciates CDFW's continued coordination and participation in the CEQA review process in its roles as both Trustee Agency and Responsible Agency. The District recognizes CDFW's statutory responsibilities for the conservation and management of fish, wildlife, native plants, and associated habitats, as well as its regulatory authorities under the Fish and Game Code. The 2020 Final EIR and PRDEIR were prepared with these regulatory frameworks in mind, and the District will continue to coordinate with CDFW as the Project advances through permitting and implementation.

12.14.2 Response to Comment R14-2

Comment Summary: The comment summarizes the description of the Del Puerto Canyon Reservoir, the procedural background of the original Draft EIR, the 2020 Final EIR, the Sierra Club litigation, and the Court of Appeal's holding, the scope of the PRDEIR, and anticipated federal actions subject to the National Environmental Policy Act (NEPA).

The District acknowledges the commenter's summary of the Project, the scope of the PRDEIR, and the procedural background of the CEQA and NEPA review processes. The District agrees that the PRDEIR was prepared for the limited purpose directed by the Court of Appeal. The District further acknowledges the description of the Project sponsors, lead agencies, project components, permitting framework, water supply sources, and regulatory approvals that may be required at the state and federal levels. This information provides helpful context for understanding the Project and the focused scope of the PRDEIR.

12.14.3 Response to Comment R14-3

Comment Summary: The comment introduces CDFW's comments and recommendation and asserts that special-status biological resources are present in and adjacent to the Project area, including the downstream reach of Del Puerto Creek. The comment recommends that these resources "may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes," and provides an updated species list (updated from CDFW's January 27, 2020, comment on the original Draft EIR) identifying state and federally listed, candidate, fully protected, watch list, and species of concern potentially occurring in and near the Project area, including downstream reaches).

The District acknowledges CDFW's concerns regarding potential impacts to special-status plant and wildlife species within and adjacent to the Project area, including lower Del Puerto Creek, and appreciates the updated species list. The list will inform the District's continued coordination with CDFW on Project permitting and authorizations required under the Fish and Game Code, including under Fish and Game Code section 1600 et seq. and the California Endangered Species Act.

As explained in Master Response 1: Scope of the PRDEIR, the PRDEIR was prepared to address the single issue identified by the Court of Appeal: whether Project-related changes in downstream Del Puerto Creek flows would result in impacts on terrestrial species. For that purpose, Section 3.4.3, Impact Analysis, of the PRDEIR evaluates several of the species identified in the comment, including least Bell's vireo (Impact BIO-TERR-DS-1d), northwestern pond turtle (Impact BIO-TERR-DS-1e), special-status birds and nesting migratory birds, including Swainson's hawk and golden eagle (Impact BIO-TERR-DS-1f), and San Joaquin kit fox (Impact BIO-TERR-DS-1g). Please refer to Master Response 3: Biological Baseline and Species Occurrence for additional discussion of the species considered in the PRDEIR.

12.14.4 Response to Comment R14-4

Comment Summary: The comment notes that existing conservation easements at the confluence of Del Puerto Creek and the San Joaquin River provide perpetual protection for riparian and wetland habitats, establish regional habitat connectivity, and support a contiguous corridor occupied by multiple special-status species.

The District acknowledges the presence recorded conservation easements at the confluence of Del Puerto Creek and the San Joaquin River and their purpose in perpetually protecting riparian and wetland habitats and supporting regional habitat connectivity. As discussed in Section 3.4.1, *Environmental Setting* and depicted in Figure 3.4-5, *Wildlife Corridors within the Study Area*, the PRDEIR recognizes that the eastern portion of the study area, including the confluence with San Joaquin River, supports wildlife corridors and regional habitat connectivity, including approximately 57.6 acres of corridors identified by the UC Davis Core Reserves Study (Huber et al. 2010) as part of a regional linkage connecting conservation lands to the north and south.

Potential impacts of Project operations on these resources are evaluated in Impact BIO-TERR-DS-3 (state or federally protected wetlands) and Impact BIO-TERR-DS-4 (movement of resident and migratory wildlife species, wildlife corridors, and native wildlife nursery sites). The PRDEIR concludes that impacts in both categories would be less than significant because flows in lower Del Puerto Creek are primarily maintained by irrigation return flows and operational spills that would remain unchanged under the Project, and the Project's environmental flow commitments would preserve key hydrologic functions that support these habitats, as discussed in Master Response 4. Accordingly, Project operations would not result in significant impacts to the riparian and wetland habitats protected by the easements or the special-status species that rely on those conserved lands, including Swainson's hawk, tricolored blackbird, and other species identified in the comment.

12.14.5 Response to Comment R14-5

Comment Summary: The comment asserts that reliance on literature review, database searches, and a single reconnaissance survey is insufficient to adequately assess potential impacts to biological resources, and requests that focused, seasonally appropriate biological surveys be conducted by qualified biologists to determine the presence of special-status species and to inform avoidance, minimization, mitigation measures, and any need for protocol-level surveys, particularly in non-agricultural areas.

Please refer to Master Response 3: Biological Baseline and Species Occurrence for additional detail regarding the surveys and other sources of information used to inform the PRDEIR. As described there and in Section 3.4.1, *Environmental Setting*, biological data collection included a review of available literature and databases, land-cover mapping verified through field observation, site-specific hydrologic data and streamflow estimates, a reconnaissance-level field survey conducted by qualified biologists on July 14, 2025, and a protocol-level valley elderberry longhorn beetle (VELB) survey conducted on September 9, 2025 by qualified biologists in accordance with guidance from the U.S. Fish and Wildlife Service (USFWS). The protocol-level VELB survey included detailed mapping of elderberry shrubs and inspection for evidence of VELB presence consistent with USFWS guidance and was used to inform both species occurrence screening and impact evaluation. The reconnaissance-level survey was conducted to characterize existing habitat conditions, assess riparian corridor quality and continuity, verify that the land-cover mapping generally reflected field conditions, and identify potential species occurrence. The PRDEIR does not represent that this survey was intended to establish species presence or absence or to satisfy agency standards for focused or protocol-level botanical or wildlife surveys.

This information was used by qualified biologists exercising their professional judgment to determine whether additional focused surveys or mitigation measures were warranted; and based on that evaluation, the biological experts reasonably concluded that further protocol-level surveys for other special-status species were not necessary to inform the impact analysis. Collectively, these sources, and professional judgment provide substantial evidence to support the PRDEIR's characterization of existing habitat conditions and the existing flow regime in the downstream study area and to evaluate whether Project-related changes in downstream flows would result in potential significant impacts to terrestrial biological resources.

Focused and protocol-level surveys remain required pursuant to the mitigation measures identified in the 2020 Final EIR for direct impacts associated with Project construction in the Project footprint. Mitigation Measure BIO-TERR-1b of the 2020 Final EIR requires that protocol-level botanical surveys be conducted prior to any Project-related ground-disturbing activity in the footprint area, during the season when special-status plant species would be evident and identifiable, in accordance with CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Other mitigation measures in the 2020 Final EIR require preconstruction surveys for special-status wildlife in the footprint area.

The District will continue coordinating with CDFW concerning any additional surveys required as part of future CDFW permitting for the Project.

12.14.6 Response to Comment R14-6

Comment Summary: The comment states that CDFW considers its prior comments and recommendations regarding the DEIR dated January 27, 2020, still relevant for the PRDEIR, 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.

As explained in Master Response 1, Scope of the PRDEIR, and in Section 1.1, *Purpose*, of the PRDEIR, the PRDEIR was narrowly focused on the single issue that the District was required by the Court of Appeal to address on remand: whether Project-related changes in downstream flow conditions in Del Puerto Creek would result in impacts on terrestrial species. All other aspects of the October 2020 Final EIR for the Project were either found by the Stanislaus Superior Court or the Court of Appeal to be legally adequate or were deemed by operation of law to be legally adequate. The District is not required, on remand, to revisit those resolved issues. Consistent with CEQA Guidelines section 15088.5, subdivision (f)(2), the District has limited responses in this Second Final EIR to comments relating to the revised analysis presented in the PRDEIR. The District has also considered, consistent with CEQA Guidelines section 15088.5, subdivision (a), whether any of the comments received on the PRDEIR present significant new information that would require further recirculation, and has determined that no further recirculation is required.

Notwithstanding the limited scope of the PRDEIR, the District has reviewed CDFW's comment letter January 27, 2020, with an eye towards any specific comments relevant to the issues of potential biological effects on terrestrial species from reduced flows in Del Puerto Creek downstream from the Project site. In preparing responses to CDFW's comment letter on the PRDEIR, dated April 2, 2026, the District has been careful to address similar concerns from the January 27, 2020, letter, even if those similar concerns are not specifically identified as such.

Of particular note in the current context were the following comments from pages 17 and 18 of CDFW's January 27, 2020, comments on the Draft EIR:

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.*

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 [sic] 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.

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.

The District believes that the Court of Appeal was aware of these earlier CDFW comments when it issued its Opinion requiring the District, on remand, to include new analysis addressing potential biological effects on terrestrial species from reduced flows in Del Puerto Creek downstream from the Project site. Notably, the Court of Appeal did not require the District to revisit the issue of potential effects on *aquatic resources* downstream of the Project site. The District therefore did not revisit this specific category of impact.

In preparing the PRDEIR, the District and its biological resource consultants were cognizant of this prior input from CDFW. Where CDFW's suggestions relating to potential effects on terrestrial species

downstream from the Project site were consistent with the informed scientific judgment of the expert biological resource specialists who conducted the surveys and analysis that informed the PRDEIR, those suggestions from CDFW were followed. Notably, these authors did not find any significant environmental effects on terrestrial biological resources due to reduced flows in Del Puerto Creek. There was therefore no need to develop a mitigation plan to address any such effects. Please also refer to Responses to Comments R14-3, R14-4, and R14-5 for responses concerning the species list, conservation easements, and survey-related issues raised in this comment letter.

12.14.7 Response to Comment R14-7

Comment Summary: The comment asserts that the PRDEIR inadequately addresses potential impacts to nesting golden eagles occurring near the Project area and requests revisions prior to certification. CDFW contends that existing mitigation measures lack a sufficient biological basis to avoid significant impacts and recommends additional measures, including focused protocol-level eagle surveys, expanded no-disturbance buffers for active nests, and consultation with CDFW regarding avoidance or incidental take authorization if avoidance is infeasible.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR. As noted therein, the PRDEIR was prepared solely to address the Court of Appeal's remand issue concerning the potential impacts of reduced flows in Del Puerto Creek on downstream terrestrial biological resources; all other components of the 2020 EIR were previously upheld or deemed legally adequate and were not reopened or reevaluated through this supplemental review. The PRDEIR therefore evaluates only those species for which there is a reasonable potential for occurrence within the study area and a plausible nexus between Project-related flow changes and potential impact pathways.

Golden eagle is discussed in Section 3.4.1, Environmental Setting, of the PRDEIR, and impacts on golden eagle are evaluated in Impact BIO-TERR-DS-1f. The PRDEIR acknowledges that golden eagle is known to occur in the Project vicinity, including nesting territories in Del Puerto Canyon upstream of the downstream study area. As discussed in Response to Comment R3-10, however, the downstream study area does not contain the upland habitat features that golden eagle requires for nesting and roosting, such as cliffs, large trees, rugged terrain, and open grassland supporting abundant prey. Additionally, golden eagle foraging in adjacent agricultural fields is supported by water sources independent of Del Puerto Creek (agricultural return flows and operational spills) that would be unaffected by Project-related flow changes. Project operations would therefore not result in loss of golden eagle foraging or nesting habitat, nest abandonment, reduced reproductive success, or reduced health or vigor of eggs or young in the downstream study area.

The comment's recommendations for focused golden eagle surveys, expanded disturbance buffers, and incidental take authorization pertain to potential impacts that were evaluated in the 2020 EIR, and neither the trial court nor the Court of Appeal identified any deficiency in that analysis.

The mitigation measures recommended by the comment, including focused protocol-level eagle surveys (Driscoll 2010), a one-half mile no-disturbance buffer for active nests, and incidental take authorization, pertain to direct, footprint-related impacts of Project construction. Direct construction impacts on golden eagle and other special-status birds were addressed the 2020 Final EIR, which included mitigation measures, including Mitigation Measure BIO-TERR-1k, *Avoid and Minimize Impacts on Nesting Birds*, that remain applicable to the Project's construction impacts to nesting birds, including golden eagles. In combination with Mitigation Measures BIO-TERR-1a, BIO-TERR-1m, BIO-TERR-2, BIO-TERR-5, and AES-2 through AES-5, the 2020 Final EIR concluded that the Project's construction-related footprint impacts to special-status and nesting migratory birds would be reduced to a less-than-significant level.

The District acknowledges that golden eagle is a fully protected species under Fish and Game Code section 3511, and that Fish and Game Code section 2081.15, added by Senate Bill 147 (eff. July 10, 2023), authorizes CDFW to issue permits authorizing take of fully protected species for specified

categories of projects, including projects involving improvement of critical regional or local water agency infrastructure, where statutory conditions are met. The District will continue to coordinate with CDFW regarding the applicability of section 2081.15 and any other permits or authorizations that may be required under the Fish and Game Code in connection with the Project's construction. Permitting agencies apply their independent statutory standards and, as appropriate, may require additional focused or protocol-level surveys or habitat assessments at the time of construction based on Project design, timing, and site-specific conditions.

12.14.8 Response to Comment R14-8

Comment Summary: The comment asserts that the PRDEIR inadequately addresses potentially significant impacts to burrowing owl and questions the adequacy of existing mitigation measures, including no-disturbance buffers and passive relocation, to avoid take under the California Endangered Species Act. CDFW recommends additional measures, including protocol-level burrowing owl surveys consistent with the 2012 CDFW Staff Report, implementation of expanded no-disturbance buffers for breeding and wintering owls, and consultation with CDFW to obtain incidental take authorization if avoidance buffers are infeasible.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f).

Please refer to Response to Comment R4-21 for a discussion of burrowing owl occurrence in the downstream study area. The PRDEIR discusses burrowing owl in Section 3.4.1, *Environmental Setting*, and Appendix C, *Special-Status Species Tables*, and evaluates potential impacts under Impact BIO-TERR-DS-1f. The PRDEIR determined that burrowing owl has a low likelihood of occurrence in the downstream study area based on integrated consideration of habitat conditions, available occurrence records, land-use context, and species ecology. As discussed in Response to Comment R4-21, the CDFW Staff Report on Burrowing Owl Mitigation (CDFG 2012) cited in the comment was developed primarily to support avoidance, minimization, and mitigation of impacts associated with ground-disturbing activities and potential take of occupied burrows. Project operations would not involve ground-disturbing activities within the downstream study area. The comment's discussion of habitat loss, burrow collapse, passive relocation, and nest disturbance pertains to potential impacts in the Project footprint.

Mitigation measures adopted in the 2020 EIR, including Mitigation Measure BIO-TERR-1j, *Avoid and Minimize Impacts on Western Burrowing Owl*, remain applicable to the Project's construction. In combination with Mitigation Measures BIO-TERR-1a, these measures were determined in the 2020 EIR to reduce construction-related footprint impacts to burrowing owl to a less-than-significant level.

The District acknowledges that, because the burrowing owl is a candidate for listing under the California Endangered Species Act, CDFW currently has permitting authority to require the issuance of a Incidental Take Permits prior to the take of burrowing owls under Fish and Game Code section 2081, subdivision (b). This authority will continue if the California Fish and Game Commission ultimately formally lists the species. The District will continue to coordinate with CDFW regarding any authorizations that may be required under the Fish and Game Code in connection with Project construction.

12.14.9 Response to Comment R14-9

Comment Summary: The comment asserts that tricolored blackbirds (TRBL) occur within and near the Project area and contends that existing mitigation measures for nesting birds do not adequately address potential impacts to TRBL. CDFW recommends additional avoidance and minimization measures, including seasonal timing restrictions or pre-construction nesting surveys, establishment of no-disturbance buffers around active TRBL nesting colonies consistent with CDFW guidance, and consultation with CDFW to obtain incidental take authorization if avoidance buffers are infeasible.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f). Please also refer to Response to Comment R4-21 for a discussion of the PRDEIR's analysis of tricolored blackbird occurrence in the downstream study area.

The PRDEIR discusses tricolored blackbird in Section 3.4.1, *Environmental Setting*, and Appendix C, *Special-Status Species Tables*, and evaluates potential impacts under Impact BIO-TERR-DS-1f. As discussed in Response to Comment R4-21, the PRDEIR determined that tricolored blackbird has a low likelihood of occurrence in the downstream study area based on consideration of habitat conditions, available occurrence records, land-use context, and species ecology. Project operations would not involve ground-disturbing activities, land-cover conversion, or direct disturbance to nesting substrates, colony habitat or foraging resources in the downstream study.

Section 3.4.3, *Impact Analysis*, evaluates how Project-related flow changes affect downstream habitat conditions, including nesting habitat that may support tricolored blackbird. As discussed in Master Response 4: Project-Related Flow Changes, the significance determination is based not solely on changes in annual flow volume, but on evaluation of the hydrologic, geomorphic, and habitat-supporting functions most relevant to downstream terrestrial resources, including seasonal wetting, storm-event flows, moisture retention, and maintenance of riparian and wetland habitat conditions. The PRDEIR concludes that Project-related flow changes would not alter nesting substrates, colony habitat, or foraging resources relied upon by tricolored blackbirds. Accordingly, Project operations would not result in colony abandonment, reduced reproductive success, or other significant impacts to this species.

The comment's recommended mitigation measures, including surveys timed to the breeding season, disturbance buffers, and incidental take authorization, pertain to Project footprint-related construction impacts. The 2020 Final EIR addressed direct, construction-related impacts on tricolored blackbird, and concluded that, with implementation of mitigation, including Mitigation Measure BIO-TERR-1k, *Avoid and Minimize Impacts on Nesting Birds*, in combination with Mitigation Measures BIO-TERR-1a, BIO-TERR-1m, BIO-TERR-2, BIO-TERR-5, and AES-2 through AES-5, impacts to tricolored blackbird would be reduced to a less-than-significant level.

The District acknowledges that CDFW retains permitting authority over tricolored blackbird under the California Endangered Species Act, including authority to issue Incidental Take Permits under Fish and Game Code section 2081, subdivision (b). The District will continue to coordinate with CDFW regarding any authorizations that may be required under the Fish and Game Code in connection with Project construction.

12.14.10 Response to Comment R14-10

Comment Summary: The comment asserts that northwestern pond turtle occur within the Project area and that suitable nesting, overwintering, and basking habitat is present. CDFW contends that Project-related construction, noise, vegetation removal, and ground disturbance could result in significant impacts to northwestern pond turtle, including nest loss, reduced reproductive success, entrapment, and mortality. The comment recommends additional mitigation measures, including focused pre-construction and nesting-season surveys, establishment of no-disturbance buffers around nests, and avoidance measures to allow individuals to move away from Project areas without disturbance.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f). Please refer to Response to Comment R4-11 for a discussion of the 2020 Final EIR's evaluation and mitigation measures for impacts to northwestern pond turtle within the Project footprint.

The PRDEIR discusses northwestern pond turtle in Section 3.4.1, *Environmental Setting*, and Appendix C, *Special-Status Species Tables*, and evaluates potential impacts under Impact BIO-TERR-DS-1e. The PRDEIR acknowledges that northwestern pond turtle has potential to occur in lower Del Puerto Creek and identifies suitable aquatic habitat in the eastern portion of the downstream study area, which experiences more consistent flows from due to the accumulation of inflows from irrigation runoff and year-round hydrologic connectivity with the San Joaquin River. The PRDEIR also explains that individuals from nearby populations in the San Joaquin River may move into the downstream study area but notes that upland nesting opportunities in the downstream study area are limited by the deeply compacted soils characteristic of long-term agricultural use.

Project-operations would not involve ground-disturbing activities, vegetation removal, construction noise, movement of construction workers, or other construction disturbance in the downstream study area. Project operations would therefore not cause direct construction-related impacts to northwestern pond turtle in the downstream study area, including nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs or young, and direct mortality. Impact BIO-TERR-DS-1e addresses whether Project-related changes in flow conditions may affect downstream aquatic conditions that may support northwestern pond turtle. It concludes that Project operations would not substantially alter habitat conditions for the northwestern pond turtle because suitable habitat in the eastern portion of the study area is maintained primarily by agricultural return flows, and the Project includes environmental flow commitments that would preserve key hydrologic characteristics supporting aquatic habitat. Consequently, the PRDEIR concludes that Project operations would not modify nesting substrates, aquatic refuge habitat, or upland nesting areas in a manner that could result in significant impacts to northwestern pond turtle.

The comment's recommended measures for focused surveys, nest buffers, and avoidance, pertain to direct impacts of construction within the Project's footprint. As discussed in Response to Comment R4-11, direct construction impacts on northwestern pond turtle were addressed in the 2020 Final EIR (Impact BIO-TERR-1i). The 2020 Final EIR concludes that, with implementation of the mitigation measures included in the 2020 EIR, including Mitigation Measure BIO-TERR-1a, *Avoid and Minimize Impacts on Biological Resources*, impacts on northwestern pond turtle would be reduced to a less-than-significant level.

The District will continue to coordinate with CDFW regarding northwestern pond turtle and any authorizations that may be required under the Fish and Game Code in connection with Project construction, including under section 1600 et seq.

12.14.11 Response to Comment R14-11

Comment Summary: The comment notes that several State Species of Special Concern are known to occur near the Project area and that suitable grassland and upland shrub habitats are present. CDFW asserts that ground-disturbing activities could result in habitat loss, den or nest abandonment, reduced reproductive success, or direct mortality, and recommends additional measures, including a pre-implementation habitat assessment by a qualified biologist, establishment of no-disturbance buffers around dens or burrows, and avoidance measures allowing individuals to exit the Project area voluntarily.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f). Please refer to Response to Comment R4-11 for a discussion of the 2020 Final EIR's evaluation of and mitigation measures for impacts to special-status species within the Project footprint.

The species identified in the comment, including American badger, San Joaquin coachwhip, northern legless lizard, California glossy snake, coast horned lizard, prairie falcon, California horned lark, and loggerhead shrike, are generally associated with grassland, shrubland, or other upland habitats. Although grassland and upland habitats occur within the downstream study area, the habitat is limited in extent and heavily influenced by surrounding agricultural land uses. The field reconnaissance conducted in the downstream study area indicated that habitat conditions are generally unsuitable or of low quality for some of these species due to extensive soil compaction, a long history of manipulation, a lack of food resources, and/or the lack of substantial areas of intact upland habitat.

Project operations would not involve ground disturbance, vegetation removal, or changes to land use within the downstream study area. Section 3.4.3, *Impact Analysis*, instead analyzes whether Project-related changes in flow conditions would materially alter the habitat features and ecological processes supporting downstream terrestrial species. As explained there and in Master Response 4: Project-Related Flow Changes, the Project would reduce some natural winter and early-spring runoff and associated opportunities for inundation, recession, sediment movement, and recharge, but would not substantially impair the riparian, wetland, and other terrestrial habitat conditions present in the study area. Agricultural return flows and WSID operational discharges, which provide much of the dry-season surface water, would remain unchanged, and qualifying storm-event releases, recharge releases, occasional excess-inflow spills, channel infiltration, residual soil moisture, and other downstream water sources would continue to support habitat conditions. Project operations also would not directly modify upland habitats, burrows, dens, or nesting features relied upon by the State Species of Special Concern identified in the comment. As a result, the PRDEIR appropriately concludes that the modeled flow changes would not cause a significant impact to these species.

The comment's recommendations for additional habitat assessments, delineation of no-disturbance buffers, and avoidance measures pertain to direct, construction impacts within the Project footprint. As explained in Response to Comment R14-7, direct construction impacts on special-status species were evaluated in the 2020 Final EIR and addressed through species-specific mitigation measures, including Mitigation Measure BIO-TERR-1k, *Avoid and Minimize Impacts on Nesting Birds*, governing impacts to nesting birds, including prairie falcon, California horned lark, and loggerhead shrike, Mitigation Measure BIO-TERR-1q, *Avoid and Minimize Impacts on American Badger*, governing impacts to American badger, and Mitigation Measure BIO-TERR-1i, *Avoid and Minimize Impacts on Special-Status Reptiles*, governing impacts to San Joaquin coachwhip and northern California legless lizard. The 2020 Final EIR concluded that, in combination with other applicable measures (including Mitigation Measures BIO-TERR-1a, BIO-TERR-1m, BIO-TERR-1p, and AES-2 and AES-3), these measures would reduce construction and footprint-related impacts to these species to a less-than-significant level.

12.14.12 Response to Comment R14-12

Comment Summary: The comment contends that unimpaired storm-driven flows in Del Puerto Creek provide important ecological benefits to fish, wildlife, and downstream aquatic habitats, including the San Joaquin River, and asserts that the PRDEIR inadequately evaluates the biological consequences of altering those flows. CDFW further asserts that the proposed flow release criteria would eliminate smaller but biologically meaningful flow events and truncate larger peak flows that may serve as critical spawning cues for species such as white sturgeon, steelhead, and Chinook salmon. The comment further challenges the PRDEIR's characterization of Del Puerto Creek as contributing negligible flows to the San Joaquin River, citing historical flow records showing much higher peak flows. CDFW recommends preparation of a site-specific hydrologic and ecological study to determine appropriate bypass flows and the development of a mitigation and monitoring plan to address reduced flow impacts on riparian, aquatic, and fishery resources downstream of the confluence.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f). As noted therein, the PRDEIR was prepared solely to address the Court of Appeal's remand directive concerning the potential impacts of reduced flows in Del Puerto Creek on downstream terrestrial biological resources. All other components of the 2020 EIR were previously upheld or deemed legally adequate and were not reopened or reevaluated through this recirculated review.

The comment raises concerns regarding the biological importance of storm-related flows in Del Puerto Creek for downstream fish species, including sturgeon and salmonids, and requests additional analysis related to the magnitude, frequency, and timing of peak flow events and their role as biological cues. The Court of Appeal did not identify any deficiency in the 2020 EIR's analysis of aquatic biological resources, which includes fish species and aquatic habitat, and those analyses were either upheld or deemed legally adequate by operation of law. The PRDEIR therefore does not revisit issues related to aquatic habitat conditions, spawning cues, or fisheries benefits associated with flow events. Requests for expanded studies focused on aquatic biological resources, such as additional mitigation and monitoring measures for fisheries, concern issues that were resolved in the prior CEQA process and are outside the scope of the Court-ordered remand. The comment does not identify significant new information requiring those issues to be revisited through recirculation under CEQA Guidelines section 15088.5, subdivision (a).

It is also important to clarify that the comment incorrectly characterizes flow data cited from Appendix H, *Aquatic Resources Delineation Report*, of the Draft Environmental Impact Statement (EIS) for the Del Puerto Canyon Reservoir Project. The comment assumes that the 34,628 acre-feet per year (afy) value cited in Appendix H, *Aquatic Resources Delineation Report*, represents acre-feet-per day. However, page 3-1 of Appendix H, *Aquatic Resources Delineation Report*, of the Draft EIS states that "[t]otal annual streamflow between 1966 and 2018 ranged from a minimum of approximately 22 acre-feet per year (afy) (1977) to a maximum of approximately 34,628 afy (1983), with a mean of approximately 5,206 afy." The 34,628 afy figure therefore represents total annual streamflow, not a daily flow rate. Converted to an average annual flow rate, 34,628 afy equates to approximately 48 cfs, not 17,458 cfs.

Finally, responsible and trustee agencies, including CDFW, continue to retain independent authority under other state and federal statutes to impose site-specific operational requirements, monitoring, or mitigation measures through permitting or regulatory processes, as appropriate. CEQA, however, does not require the PRDEIR to undertake further analysis or impose additional mitigation for aquatic biological resources where those issues were previously evaluated and not found deficient.

12.14.13 Response to Comment R14-13

Comment Summary: The comment notes that a petition was submitted to the Fish and Game Commission in September 2025 to list the northern population of western spadefoot as threatened and the southern population as endangered under the California Endangered Species Act (CESA), and that the species could become a CESA candidate or listed species as early as 2026. CDFW advises that if western spadefoot becomes listed or a CESA candidate or listed species and Project activities could not fully avoid impacts, incidental take authorization would be required. The comment further states that the western spadefoot measures recommended in CDFW's January 27, 2020, comment letter on the original Draft EIR would help minimize impacts but may not fully avoid take, and recommends early consultation with CDFW to determine feasibility of avoidance or the need for an incidental take permit if listing occurs.

The District acknowledges the comment regarding the September 24, 2025, petition submitted to the Fish and Game Commission to list the northern population of western spadefoot as threatened and the southern population as endangered under the CESA, and the possibility that western spadefoot could be designated as a candidate or listed species in the future. As of the publication of this Second Final EIR, western spadefoot is a California Species of Concern and federal proposed threatened, and is not listed or designated as a candidate under CESA.

As discussed in Appendix C, *Special-Status Species Tables*, of the PRDEIR, western spadefoot was determined to have a low likelihood of occurrence in the downstream study area based on the limited availability of suitable upland habitat, the absence of suitable aquatic habitat, and the location of the nearest CNDDDB occurrence record approximately 3.5 miles southwest of the downstream study area.

The possible future designation of western spadefoot as a candidate or listed species does not constitute significant new information requiring recirculation under CEQA Guidelines section 15088.5. The 2020 Final EIR evaluated potential impacts on western spadefoot based on the species' habitat requirements and footprint-related disturbance mechanisms, not solely on its regulatory status at the time. The mitigation measures included in the 2020 Final EIR require habitat avoidance and minimization, preconstruction surveys, worker training, biological monitoring, and other species-protective measures designed to reduce impacts on sensitive amphibian species and associated habitation (see Mitigation Measures BIO-TERR-1a, BIO-TERR-1e, BIO-TERR-1f, BIO-TERR-1g, BIO-TERR-3, AES-2, and AES-3). Those measures would continue to apply and be effective at reducing impacts to a less-than-significant level regardless of any future change in the species' listing status.

In addition, the comment does not identify any substantial evidence demonstrating that a future change in regulatory status would create a new significant impact or substantially increase the severity of a previously identified impact. For additional discussion regarding changes in special-status species designations, please refer to Response to Comment R4-10.

12.14.14 Response to Comment R14-14

Comment Summary: The comment asserts that several biological mitigation measures included in the original Draft EIR and carried forward in the PRDEIR could result in "take" of wildlife species as defined by Fish and Game Code section 86, including through activities such as passive relocation, den removal, nest or den disturbance, animal handling, exclusion fencing, and habitat compensation. CDFW contends that any Project-related take of State-listed or State-candidate species requires incidental take authorization and strongly recommends that the Project proponent obtain State incidental take authorization in advance of Project implementation.

Please refer to Response to Comment R14-6 for a discussion of the limited scope of the PRDEIR, including limitations on responses to comments pursuant to CEQA Guidelines section 15088.5, subdivision (f).

The mitigation measures identified in the comment are drawn directly from CDFW's published guidance for the species at issue. Mitigation Measure BIO-TERR-1j (western burrowing owl) was developed based on CDFW's *Staff Report on Burrowing Owl Mitigation* (2012). Mitigation Measure BIO-TERR-1m (Swainson's hawk foraging habitat) follows CDFW's *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California* (1994). Mitigation Measure BIO-TERR-1e (special-status amphibians) incorporates CDFW's *Considerations for Conserving the Foothill Yellow-Legged Frog* (2018b) and the joint USFWS/CDFW *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (2003). Mitigation Measure BIO-TERR-1b incorporates CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (2018a). The avoidance, minimization, relocation, and exclusion methodologies described in these measures reflect the approaches that CDFW has identified as appropriate for the species and habitats present in the study area.

The 2020 Final EIR also expressly disclosed the potential for Project-related injury and mortality to special-status wildlife. Each sub-impact within Impact BIO-TERR-1 (a through o) identifies the potential for injury and/or mortality in the pre-mitigation significance determination, and the mitigation measures are designed to avoid and minimize those impacts and, where significant, compensate for unavoidable habitat loss. The comment does not identify any previously unanalyzed impact requiring additional review in either the 2020 Final EIR or the PRDEIR.

The 2020 Final EIR likewise disclosed and contemplated the need for state incidental take authorization where appropriate. Mitigation Measure BIO-TERR-1l, for example, provides that no construction-related entry into an active Swainson's hawk nest buffer will be allowed "unless approved by CDFW through issuance of an Incidental Take Permit or through coordination during project construction." Mitigation Measures BIO-TERR-1f, BIO-TERR-1g, BIO-TERR-1h, BIO-TERR-1i, and BIO-TERR-1p likewise require CDFW, or CDFW and USFWS jointly, to approve relocation sites, conservation lands, mitigation plans, and qualified biologists before implementation. CDFW therefore retains its independent authority under CESA and other applicable provisions of the Fish and Game Code through both the approval mechanisms embedded in the mitigation measures and any separate incidental take permitting process.

The conservation land acquisition, habitat compensation, and habitat restoration measures identified in the 2020 Final EIR are designed to avoid, minimize, and compensate for habitat impacts and do not, by themselves, constitute "take" as that term is defined in Fish and Game Code section 86. Rather, the determination of whether incidental take authorization is required depends on whether specific Project activities could result in the hunting, pursuing, catching, capturing, killing, or attempted hunting, pursuing, catching, capturing, or killing of covered species, based on species status, site-specific conditions, and construction methods at the time of implementation.

Accordingly, CEQA and CESA serve distinct legal functions, and neither the adoption of CEQA mitigation measures nor the implementation of habitat compensation measures, standing alone, authorizes or constitutes take. Determinations regarding whether Project activities require incidental take authorization depend on species status, site-specific conditions, and Project design at the time of construction, and fall within CDFW's independent permitting authority under the CESA and other applicable provisions of the Fish and Game Code. The District will obtain any necessary Incidental Take Permit well in advance of commencement of Project-related activities that may result in take of state-listed or state-candidate species, including, as applicable, an Incidental Take Permit under Fish and Game Code section 2081, subdivision (b), or authorization under Fish and Game Code section 2081.15.

12.14.15 Response to Comment R14-15

Comment Summary: The comment asserts that Project-related water diversions and storage would affect riparian, wetland, fisheries, and terrestrial wildlife resources and notes that the Project requires water rights approvals from the State Water Resources Control Board (SWRCB), including a water right from the SWRCB Division of Water Rights for the right to store surface flow from Del Puerto Creek and a petition for change to be filed by the U.S. Bureau of Reclamation, to add a new point of diversion for storage in the new reservoir. CDFW emphasizes its role as a trustee agency in the SWRCB water rights process, advises early coordination with CDFW prior to application and change petition submittals to address potential impacts to fish and wildlife, and notes that it will have additional opportunities to provide comments and recommendations during the SWRCB's public review process.

The District acknowledges the comment regarding water rights and associated agency coordination. Approvals related to storage of surface flows from Del Puerto Creek, as well as any application or petition for change, are subject to the independent authority of the SWRCB. As a trustee agency, CDFW participates directly in the SWRCB's water rights process and will have opportunities to provide input through that forum. However, nothing in the Court of Appeal Opinion or CEQA more generally requires the PRDEIR to resolve or predetermine water rights determinations or associated permitting conditions. Accordingly, no revisions to the PRDEIR are required, and water rights compliance will continue to be addressed through the applicable permitting processes.

12.14.16 Response to Comment R14-16

Comment Summary: The comment requests that any special-status species or natural communities identified during Project surveys be formally reported to the CNDDDB, consistent with CEQA's requirement that information developed in environmental documents be incorporated into databases used for future environmental determinations.

The District acknowledges the comment regarding reporting requirements under Public Resources Code section 21003, subdivision (e), and the CNDDDB. The District agrees that CNDDDB is an important statewide repository used to inform future environmental review and agency decision-making. Observations of special-status species and natural communities documented during Project surveys would be submitted to CNDDDB by qualified biologists, as appropriate and consistent with CNDDDB reporting requirements and data quality standards. CNDDDB submittals are a standard implementation practice addressed outside the CEQA document itself and do not bear on the adequacy of the PRDEIR's environmental analysis. No revisions to the PRDEIR are required in response to this comment.

12.14.17 Response to Comment R14-17

Comment Summary: The comment expresses CDFW's appreciation for the opportunity to review the Project, provides a reference to CDFW's survey and monitoring protocol resources, includes a draft Mitigation and Monitoring Reporting Program with recommended mitigation measures, and offers a point of contact for further coordination or questions.

The District appreciates CDFW's review of the PRDEIR and its continued participation in the CEQA and permitting processes for the Project as a responsible and trustee agency. The District acknowledges CDFW's survey and monitoring protocol guidance and has considered the recommendations provided. The District will continue to coordinate with CDFW throughout Project implementation and subsequent permitting, as applicable. No revisions to the PRDEIR are required in response to this comment.

Late Comment Letter

The District received the following comment letter 140 days after the end of the PRDEIR's public review and comment period. CEQA does not require a lead agency to provide written responses to comments received after that period. (Pub. Resources Code, § 21092.5, subd. (c) ["n]othing in this section requires

the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a[n] ... environmental impact report").) The District has nonetheless elected to provide the responses below to aid the Board's consideration and the public's understanding.

12.15 Comment Letter R15 – Center for Biological Diversity, Seth Alston, Associate Attorney

Response to Comment R15-1

Comment Summary: The comment asserts that the Court of Appeal in Sierra Club v. Del Puerto Water District upheld a judgment vacating the District's approval of the Project and directing preparation of an environmental review adequately addressing the Project's potential impacts on downstream terrestrial species, and contends that the PRDEIR fails to adequately disclose, analyze, and mitigate the Project's impacts on terrestrial species below the proposed dam site. The comment states that, to remedy this asserted deficiency, the District must, among other things, fully describe the 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.

The comment's description of the appellate proceedings warrants clarification, because it bears directly on the scope of the PRDEIR. The superior court's original judgment set aside the District's certification of the 2020 Final EIR and approval of the Project on two grounds: the analysis of the relocation of Del Puerto Canyon Road and the evidentiary support for the cultural resources findings. On appeal, the Court of Appeal reversed the superior court on both of those grounds, holding that the 2020 Final EIR was adequate as to road relocation and cultural resources. The Court of Appeal identified a single deficiency that the superior court had not found: the 2020 Final EIR's discussion of potential impacts on terrestrial biological resources downstream of the Project footprint resulting from changes in Del Puerto Creek flows. The superior court's setting aside of the District's approvals thus remained in effect, but on a ground different from those on which the superior court had relied. Because the District's Board had already set aside its certification and approvals in February 2023 in response to the original judgment, the superior court's April 2025 Modified Judgment required no further set-aside; it directed the District to prepare the additional analysis identified by the Court of Appeal and return that analysis to the court for a determination of adequacy under Public Resources Code section 21168.9, subdivision (b). The scope of the District's obligation on remand is therefore defined by the one deficiency the Court of Appeal identified—the downstream terrestrial analysis—and not by the grounds on which the superior court had originally relied. These matters are addressed in Master Response 1: Scope of the PRDEIR.

With that clarification, the comment correctly identifies the purpose of the PRDEIR. Following the Court of Appeal's decision, the District prepared the PRDEIR to address the one respect in which the Court found the 2020 Final EIR insufficient: the potential effects of Project-related changes in Del Puerto Creek flows on downstream terrestrial species. (See Master Response 1: Scope of the PRDEIR.) The new analysis is found in PRDEIR Section 3.4, which is entitled, Biological Resources—Downstream Terrestrial. This new Section 3.4 describes the affected downstream environment along the 7.4-mile reach of Del Puerto Creek from immediately east of Interstate 5 to the confluence with the San Joaquin River, characterizes the Project's operational effects on the volume and timing of creek flows, evaluates the potential for those altered flows to affect downstream terrestrial and semi-terrestrial species and their habitats, describes the environmental flow commitments the District would implement to maintain the flow dynamics that support those habitats, and evaluates potential effects on wildlife movement and connectivity along the downstream corridor.

This scope of analysis was appropriate in light of direction from the Court of Appeal, which found no problem with the District's analysis of impacts to terrestrial biological resources associated with the

Project's *footprint*. As the PRDEIR explains on page 1-6, "[t]he existing Section 3.4, which evaluates impacts within the footprint of the proposed Project, stands as written and is not being revised. The Court of Appeal did not find the analysis of terrestrial biological impacts within the Project footprint to be inadequate, therefore no additional studies or analyses are required regarding such footprint-related impacts. Nor did the Court of Appeal find any deficiencies in the FEIR's analysis of aquatic resources within Del Puerto Creek downstream from the Project footprint."

The comment provides an overview of topics that are developed in the comment's more specific contentions and addressed in the responses below. In particular, the description of the Project's operational effects on Del Puerto Creek flows is addressed in Responses to Comments R15-2 and R15-3 and in Master Response 4: Maintenance of Functional Flows and Support of Ecological Processes; the adequacy and enforceability of the environmental flow commitments, including the components of the functional flow regime, are addressed in Response to Comment R15-4 and Master Response 4; and the analysis of the Project's effects on wildlife movement and connectivity is addressed in Response to Comment R15-6. See also Responses to Comments R3-9 and R3-10. To the extent the comment concerns the physical presence of the dam as a barrier to species movement, that subject is addressed in Responses to Comments R15-6 and R3-5.

For the reasons set forth in the PRDEIR and in the responses identified above, the District does not agree with the late commenter's assertions that the PRDEIR fails to adequately disclose, analyze, or mitigate the Project's potential impacts on downstream terrestrial species.

Finally, the District notes that the public review period for the PRDEIR opened on December 5, 2025, and closed on January 30, 2026, following a 56-day comment period. This comment letter was submitted on June 19, 2026, long after the close of that period. Under CEQA, a lead agency's obligation to provide written responses extends only to comments received during the public review period. (Pub. Resources Code, § 21091, subd. (d); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1110.) In the interest of a complete administrative record and full public disclosure, however, the District has elected to provide written responses to this letter notwithstanding its late submittal. In doing so, the District does not waive, and expressly reserves, its position that the letter was not timely submitted and that the District was not required to respond, as well as the scope limitations applicable to the recirculated analysis discussed in Master Response 1: Scope of the PRDEIR.

Response to Comment R15-2

Comment Summary: The comment contends that the PRDEIR inconsistently defines the geographic extent of its downstream biological analysis. Specifically, it notes that the PRDEIR generally defines the downstream study area as Del Puerto Creek from immediately east of I-5 to the San Joaquin River, but Impact BIO-TERR-DS-1 is titled as addressing species downstream of the Delta-Mendota Canal, approximately 0.75 mile farther downstream. The comment asserts that this inconsistency creates uncertainty regarding the actual area analyzed and requests clarification and justification for any exclusion of the portion of Del Puerto Creek between I-5 and the Delta-Mendota Canal.

The comment correctly identifies an inconsistency in geographic labels, but incorrectly assumes that the impact analysis excluded the reach of Del Puerto Creek between Interstate 5 (I-5) and the Delta-Mendota Canal. Section 3.4.1, Environmental Setting, of the PRDEIR, accurately describes the downstream terrestrial biological resources study area consists of an approximately 105-acre, variable-width buffer along approximately 7.4 miles of Del Puerto Creek, extending from immediately east of I-5 to the confluence with the San Joaquin River. Figures 3.4-1 through 3.4-3 map that area, including the reach between I-5 and the Delta-Mendota Canal. Section 3.4.3, Impact Analysis, of the PRDEIR, applies the impact analysis to the study area defined in Section 3.4.1, Environmental Setting. In addition, as stated on page 3.4-10, ICF biologists surveyed the entire study area on foot. The environmental setting and impact evaluation, including habitat mapping, special-status species screening, database reviews, field

reconnaissance, and assessment of potential hydrologic effects, therefore included the reach from I-5 to the Delta Mendota Canal.

The reference to “Del Puerto Creek Downstream of Delta-Mendota Canal” and “Downstream of DMC” in the narrative headings for Impacts BIO-TERR-DS-1 through BIO-TERR-DS-5, and Impact BIO-TERR-DS-7 are inconsistent with the defined study area. The narrative heading for Impact BIO-TERR-DS-1 has therefore been revised to: “Substantial Adverse Effect on Listed, Candidate, Sensitive, or Special-Status Species on Del Puerto Creek Downstream of ~~Delta-Mendota Canal~~ Interstate 5.” And the narrative headings for BIO-TERR-DS-2, -3, -4, 5, and -7, have been revised to: “... Del Puerto Creek Downstream of ~~DMC~~ Interstate 5.” These revisions clarify the existing analysis; they do not change the study area, methodology, or impact conclusions.

The comment’s final sentence refers more broadly to the reach between the proposed dam site and the Delta-Mendota Canal. The portion west of I-5 lies within the proposed Project site and is addressed in the 2020 Final EIR’s analysis of terrestrial biological resources within the Project footprint. The portion east of I-5 through the Delta Mendota Canal lies within the downstream study area evaluated in the PRDEIR. The Project’s environmental analysis therefore addresses the reach identified in the comment. The comment identifies a labeling inconsistency, not an omitted area of analysis.

Response to Comment R15-3

Comment Summary: The comment asserts that the PRDEIR does not provide a clear, stable, or sufficiently specific description of Project-related changes to flows in Del Puerto Creek. The commenter contends that the PRDEIR uses vague and inconsistent terminology, stating in various locations that the Project “could influence,” “may result in changes,” or “would result in changes” to downstream flows without clearly describing the nature or magnitude of those changes. The comment further argues that these statements are inconsistent with flow information presented in the 2020 Final EIR, which quantified average annual flows reaching the San Joaquin River under existing and Project conditions. The commenter therefore concludes that the Project description and impact analysis are inadequately defined and fail to provide the informational clarity required under CEQA.

The comment conflates the Project description with the analysis of Project-related flow changes. The project description, including operational characteristics of the Project, is stable, finite, and complete. The Project would capture and store a portion of runoff from Del Puerto Creek, resulting in reduced volumes of upstream runoff reaching lower Del Puerto Creek, while also making environmental flow releases, meeting bypass requirements, and passing periodic spill events, as described in Section 1.2.1, Reservoir Releases, of the PRDEIR. As explained on page 1-3 of the PRDEIR, for every flow event of 500 cubic feet per second (cfs) or the peak natural flow, releases would mimic the unimpeded flow of Del Puerto Creek, rising on the first day to the lesser of 600 cfs of the peak natural flow, then declining over as many as six additional days to at or near zero within seven days. Project operations would not alter agricultural return flows or West Stanislaus County Irrigation District (WSID) operational spills. Project operations would therefore reduce the amount of upstream runoff reaching lower Del Puerto Creek and alter the timing of some wet season flows.

The Project and its operating rules have not changed since the 2020 Final EIR. For additional information regarding the Project’s operational rules, the hydrologic baseline and quantified project-flow information, the commenter is directed to the following sections of the 2020 Final EIR:

- Section 2.3, Operation and Maintenance (pp. 2-11 to 2-15), describing both inflows and releases;
- Table 3.11-1 (p. 3.11-1), “Historic Flows in Del Puerto Creek;”
- Table 3.11-6 (p. 3.11-24), “Del Puerto Creek and San Joaquin River Average Annual Flows (AFY);”
- Table 3.11-7 (p. 3.11-25), “Del Puerto Creek Monthly Average Flows without and with the Project (AF);” and

- Appendix F, “Reservoir Operations Model and CalSIM Modeling (Revised), including Section 3.3.4, discussing Del Puerto Creek Inflows (p. 13), and Section 3.3.5, discussing Environmental Releases (pp. 14–15).

The Petitioners in the underlying litigation, *Sierra Club et al. v. Del Puerto Water District* (Stanislaus County Superior Court Case No. CV-20-005193), including the Center for Biological Diversity, did not challenge the 2020 Final EIR’s Project description, its description of the hydrologic baseline, or its post-Project flow estimates. As explained in Master Response 1: Scope of the PRDEIR, the District is not required to reopen aspects of the Final EIR that were left undisturbed on appeal. The principles governing that limitation, including the doctrine of res judicata and the finality of issues that were raised, or could have been raised, in the original litigation, are addressed in that Master Response.

The commenter is correct that portions of the PRDEIR use phrases such as “could influence” or “may result in changes” when discussing downstream flow conditions. However, those statements generally occur within discussions of potential impacts rather than in the project description itself. In those contexts, the conditional language describes the relationship between a known flow change and its ecological consequences, which, turn on multiple interacting variables. The use of conditional language in discussing potential impacts does not indicate uncertainty regarding Project operations or Project-related changes in flow conditions. However, for clarification, the text in Section 3.4, Biological Resources—Downstream Terrestrial, has been revised to indicate that Project operation would result in changes in flows. As explained in Master Response 4, the question the downstream analysis evaluates is not whether flows would be reduced (they would), but whether that reduction would significantly affect downstream terrestrial resources. Nor is there any inconsistency between the PRDEIR and the 2020 Final EIR regarding the fundamental nature of Project operations.³ The Project would reduce runoff volumes reaching downstream portions of Del Puerto Creek compared to existing conditions. The PRDEIR acknowledges this repeatedly and evaluates the ecological consequences of those reductions as part of the downstream terrestrial biological resources analysis. The issue evaluated in the PRDEIR is not whether flow reductions would occur, but whether those reductions would result in significant impacts to downstream terrestrial biological resources.

In addition, the PRDEIR includes substantially more information regarding downstream hydrology than is suggested by the comment. Section 3.4, Biological Resources—Downstream Terrestrial, of the PRDEIR incorporates streamflow analyses, hydrographs, gauge data, a discussion of seasonal flow patterns, the evaluation of existing irrigation return flows and operational spills, and consideration of the Project’s environmental flow release requirements. In addition, Appendix D, *Streamflow Estimates for Lower Del Puerto Creek*, provides additional quantitative information regarding downstream flows. Furthermore, the Second Final EIR has been revised to include additional appendices, including Appendix F, *Del Puerto Canyon Reservoir Modeling*, and Appendix G, *Del Puerto Creek Monthly Flows*, which present additional reservoir modeling information and flow data for lower Del Puerto Creek.

The PRDEIR therefore does not leave the reader uncertain about the nature of the Project or its operational effects on Del Puerto Creek. Rather, it identifies that Project operations would reduce portions

³ The commenter correctly quotes page 3.5-10 of the 2020 Final EIR, which states that average annual Del Puerto Creek flow reaching the San Joaquin River would change from 2.7 thousand acre-feet (TAF) without the Project to 0.3 TAF under Project conditions. It should be noted that those estimates were superseded during preparation of the 2020 Final EIR. In response to Comment 4-6, the District updated the estimated average annual Del Puerto Creek flow reaching the San Joaquin River from approximately 2.7 TAF to 2.1 TAF acre-feet under existing conditions and from approximately 0.3 TAF to approximately 0.4 TAF under Project conditions. Revised Table 3.11-7 of the 2020 Final EIR (p. 3.11-25) presents these monthly values. The corresponding passage on page 3.5-10 was inadvertently not revised to conform to the revised hydrology discussion. Updated modeling performed as part of the Project’s review under the National Environmental Policy Act determined that estimated average annual Del Puerto Creek flow reaching the San Joaquin River is approximately 1.9 TAF under No Action conditions and approximately 0.7 TAF under Project conditions.

of upstream runoff, describes the Project’s environmental flow commitments, and evaluates whether those changes would result in significant effects to downstream terrestrial biological resources. The revisions made in response to this comment clarify the existing analysis; they do not change the Project or its significance conclusions.

Response to Comment R15-4

Comment Summary: The comment contends that the PRDEIR unlawfully compresses the discussion of Project operation and the analysis of mitigation. It argues that the PRDEIR relies on the Project’s environmental reservoir-release commitments to reach less-than-significant conclusions for downstream terrestrial species, with the result that the PRDEIR does not separately analyze the significance of the Project’s impacts and the efficacy of mitigation. The comment asserts this violates the principle in Lotus v. Department of Transportation (2014) 223 Cal.App.4th 645, 655–656 (Lotus) and cites People ex rel. Bonta v. County of Lake (2024) 105 Cal.App.5th 1222 (Bonta).

The comment reads Lotus, supra, 223 Cal.App.4th 645 more broadly than the decision supports. Lotus does not prohibit a lead agency from relying on operational commitments as evidence supporting a less-than-significant impact conclusion, provided that the EIR describes those commitments and how they address potential effects. As explained in a more recent appellate decision, what Lotus prohibits is the mischaracterization of project components or mitigation measures in a manner that “precludes or obfuscates required disclosure of the project’s environmental impacts and analysis of potential mitigation measures.” (Mission Bay Alliance v. Office of Community Investment & Infrastructure (2016) 6 Cal.App.5th 160, 185 (Mission Bay Alliance), citing Lotus, supra, 223 Cal.App.4th at pp. 654–656, 657, fn. 8.) In Lotus, the mischaracterization was significant because it compounded a threshold omission: the EIR applied no standard of significance to the impacts on the root systems of old-growth redwoods, so a reader could not determine whether mitigation was required or evaluate whether more effective measures should be considered. (Mission Bay Alliance, supra, 223 Cal.App.4th at pp. 184–185, citing Lotus, supra, 223 Cal.App.4th at pp.654–656.) By contrast, where an EIR fully discloses the impact, applies significance thresholds, and explains the basis for its conclusions, the incorporation of project commitments into the analysis does not offend Lotus. (Mission Bay Alliance, supra, 6 Cal.App.5th at pp. 184–186.)

Here, the PRDEIR presents no such mischaracterization or obfuscation. The environmental commitments are components of Project operations, and are described in PRDEIR Chapter 1, Project Description, Section 1.2.1, Reservoir Releases. These commitments include the operating rules governing releases during peak-flow events, which are carried forward from the 2020 Final EIR. (PRDEIR, p. 1-3.) The impact analysis in Chapter 3.4 then evaluates the Project as it would be operated, states a significance determination for each downstream terrestrial resource in Impacts BIO-TERR-DS-1 through BIO-TERR-DS-11, and explains the basis for each determination. The explanations include information about the existing hydrologic conditions in lower Del Puerto Creek, the changes to flow volume and timing that Project operations would produce, the continued contribution of agricultural return flows and West Stanislaus Irrigation District operational spills, and the Creek’s historical flow characteristics, as well as the flow patterns to be maintained by Project operations. Each impact is found to be less than significant, with no mitigation is required. A reader can therefore discern both the impact and the operational features bearing on it, which is the level of analysis and disclosure required by Lotus, Mission Bay Alliance, and their progeny. CEQA does not require mitigation measures or alternatives for impacts that are less than significant. (CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15126.6, subds. (a), (b).)

Bonta, supra, 105 Cal.App.5th 122, is inapposite. There, the court found the treatment of wildfire risk in an EIR for a mixed-use development project deficient because it “present[ed] no industry standard modeling tools, no methodology or analysis for its conclusory findings, nor any other discussion of how the Wildfire Plan proposes to address the existing baseline conditions other than the project design proposal itself.” (Id. at p. 1235.) Here, in contrast, the commenter does not even attempt to explain how

the PRDEIR contains a comparable deficiency. No such deficiency exists. The 2020 Final EIR describes the operational flow regime in detail, and the PRDEIR addresses the potential effects of Project-related flow changes on downstream terrestrial resources in detail. The analyses are supported by site-specific hydrologic data, streamflow estimates, reconnaissance-level survey observations, habitat assessments, and established ecological principles. The evidentiary bases for the conclusion that Project operations would maintain the flow characteristics supporting downstream habitat are discussed further in Master Response 4: Maintenance of Functional Flows and Support of Ecological Processes, and in Response to Comment R15-3.

Finally, to the extent the comment suggests that the environmental commitments are not binding or enforceable, the commitments are a defined component of the Project as described and analyzed in the environmental review, not discretionary practices that the District may disregard at will. The flow-release commitments are integral to the Project the District would approve, and the analysis of the Project's downstream effects rests on them. Should the District later propose to operate the Project in a manner materially inconsistent with those commitments, that change could itself require further CEQA review to assess whether the altered operations may result in a significant effect on the environment not examined in the current review. (See, e.g., *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1037–1038 [rejecting the contention that a lead agency could not be relied upon to limit project operations to the levels assumed in its environmental document, and observing that if the agency later increased the number of evening stadium events substantially beyond the analyzed range, it “may be required to conduct an additional CEQA review to determine whether the increased number of events may result in a significant effect on the environment”].) The enforceability of the commitments is thus secured by CEQA itself: because the Project's less-than-significant conclusions depend on the flow regime, the District cannot abandon or materially reduce it without exposing that departure to further environmental review.

Response to Comment R15-5

Comment Summary: The comment asserts that the PRDEIR improperly characterizes the Project's environmental release program as a "functional flow" approach. The commenter contends that the Project's operational commitments are limited to releases associated with larger storm events and do not include the full suite of flow components identified in functional-flow frameworks such as Grantham et al. (2020) and Yarnell et al. (2020), including wet-season baseflows, channel-maintenance flows, and overbank flows. The comment argues that the Project therefore does not implement a true functional-flow regime and cannot rely on that framework to support conclusions that impacts to downstream terrestrial species and habitats would be less than significant. The commenter requests revision of the environmental release program to mimic the full range of functional flow characteristics.

The commenter correctly observes that scientific literature identifies multiple hydrologic components that contribute to ecological processes in river and stream systems. However, the PRDEIR does not contend that the Project would recreate every component of the existing hydrograph or every flow characteristic discussed in the literature. Rather, the PRDEIR evaluates whether Project operations would substantially alter the hydrologic, geomorphic, and habitat-supporting functions relevant to downstream terrestrial biological resources in lower Del Puerto Creek.

The PRDEIR's use of the term "functional flow" is intended to describe the Project's preservation of the selected flow components associated with larger storm events and recession periods that support sediment transport, seasonal recharge, moisture retention, and riparian recruitment processes. Project operations include environmental releases designed to preserve key characteristics of larger runoff events, including peak-flow timing and recession patterns.

The commenter incorrectly assumes that every hydrologic component identified in broader functional-flow frameworks must be replicated to avoid significant impacts to downstream terrestrial biological resources. As explained in Master Response 4, however, ecological function in lower Del Puerto Creek is

influenced by multiple interacting factors, including flow timing, recession rates, groundwater recharge, residual soil moisture, sediment transport, recruitment-surface development, and existing habitat conditions. Scientific literature cited in Master Response 4 demonstrates that riparian recruitment processes, including Fremont cottonwood recruitment, are governed by the interaction of these hydrologic and geomorphic factors rather than by annual runoff volume or any single flow component alone. Master Response 4 further explains that the Project's environmental releases were evaluated specifically in the context of maintaining the functions most relevant to downstream riparian habitat, including storm-event flows.

The comment also overlooks the existing hydrologic condition of lower Del Puerto Creek. As described in Section 3.4.1, Environmental Setting, of the PRDEIR, lower Del Puerto Creek is a highly modified intermittent system influenced by irrigation return flows, operational spills, channel simplification, and historical riparian habitat loss. During much of the dry season, streamflow conditions are supported primarily by irrigation return flows and operational spills from WSID rather than upstream runoff. The Project would not alter these existing sources of water that contribute flows to lower Del Puerto Creek. Accordingly, the significance determination is based on evaluation of habitat functions within the existing hydrologic setting of lower Del Puerto Creek rather than on the premise that the Project would restore or maintain all attributes of the existing flow regime in lower Del Puerto Creek.

The PRDEIR likewise does not conclude that the Project entirely replicates natural flow conditions. References to "functional flows" or "replicating" flow characteristics are noted in the context that the Project's environmental flow commitments are intended to replicate larger flow events rather than all elements of a natural flow regime. This clarification does not alter the impact conclusions because the significance determination does not depend on a finding that every functional-flow component described by Grantham et al. (2020) or Yarnell et al. (2020) is maintained. Whether a particular release requirement is necessary depends on the site-specific hydrology, habitat conditions, species needs, and Project-related changes at issue. Here, the PRDEIR, as supplemented by Master Response 4 and Appendices D, F, and G, evaluates those site-specific conditions and processes that support downstream terrestrial resource. The less-than-significant impact finding reflects the conclusions of the District's qualified biological and hydrologic experts that Project operations would not substantially alter the hydrologic and ecological functions that currently support downstream terrestrial biological resources in lower Del Puerto Creek.

Response to Comment R15-6

Comment Summary: The comment asserts that the PRDEIR misapplies the functional-flow framework by focusing primarily on preservation of peak-flow events while failing to address another key component of functional flows: wet-season baseflows. The commenter cites Yarnell et al. (2015) and Grantham et al. (2020) and argues that wet-season baseflows are an important component of functional flow regimes because they support channel-margin habitats, groundwater recharge, and other ecological functions. The comment further notes that Figure 3.4-8 shows the presence of wet-season baseflows in Del Puerto Creek under existing conditions, but the PRDEIR does not evaluate their ecological importance or explain why Project operations do not include releases intended to maintain them. The commenter concludes that the PRDEIR must either incorporate a wet-season baseflow release component or provide a stronger justification for why such a component is unnecessary to avoid significant impacts to downstream terrestrial biological resources.

Refer to response to Comment R15-5. The comment notes that wet-season baseflow is one of several hydrologic characteristics that can support ecological function. However, the PRDEIR does not conclude that Project operations would recreate all components of an unimpaired natural flow regime or implement the full suite of functional-flow components identified in statewide frameworks. Rather, the analysis evaluates whether Project operations would result in significant impacts to the hydrologic and ecological processes that support terrestrial biological resources in the downstream study area.

As described in Section 3.4.1, Environmental Setting, and in Master Response 4, lower Del Puerto Creek is hydrologically distinct from upstream Del Puerto Creek and is characterized by a highly variable, seasonal, and intermittent flow regime. Natural runoff occurs almost exclusively from December through April and primarily from January through March, with substantially higher volumes in Wet and Above Normal years compared to drier year types. In addition, historic USGS data shows that peak flow events occur primarily during the winter runoff period, generally January through March. In the majority of years, no wet season flows from Del Puerto Creek reach the San Joaquin River. Thus, lower Del Puerto Creek does not function as a perennial stream dependent on sustained wet-season baseflows.

Figure 3.4-8 depicts observed wet-season flow during the 2019–2020 water year together with a 58-year median daily statistic at the USGS gauge west of Interstate 5. That hydrograph does not demonstrate that a continuous or dedicated wet-season baseflow is a persistent, limiting, or necessary condition for maintaining downstream terrestrial habitats or species in the downstream study area. For this reason, the occurrence of wet-season baseflows in some years does not, by itself, demonstrate that a dedicated wet-season baseflow commitment is necessary to mitigate significant impacts to terrestrial biological resources in the downstream study area. Rather, as discussed in Master Response 4: Project-Related Flow Changes, the site-specific record indicates that existing downstream habitat conditions are maintained through multiple interacting processes, such as episodic storm flows, recession patterns, seasonal groundwater recharge, residual soil moisture, and localized groundwater-supported conditions. Accordingly, the impact analysis in the PRDEIR focuses on whether Project operations would alter the hydrologic and ecological processes that support terrestrial biological resources within the context of lower Del Puerto Creek's hydrologic regime.

In addition, the PRDEIR does not rely on annual flow volume or peak-flow events alone to make significance determinations. As discussed in Master Response 4: Maintenance of Functional Flows and Support of Ecological Processes, the Project's environmental flow commitments are designed to retain selected hydrologic and geomorphic characteristics of natural winter and early-spring storm events, including periodic channel inundation, sediment movement, gravel transport, seasonal groundwater recharge, and recession patterns. For flow events of 500 cfs or greater, releases would mimic upstream hydrographs, including peak flows up to approximately 600 cfs or the natural peak, followed by a gradual recession over several days. These releases are intended to retain the creek's naturally intermittent and flashy flow regime and to continue some of the disturbance, sediment-transport, inundation, and recession processes that help maintain channel-margin surfaces, redistribute nutrients, create recruitment opportunities for riparian vegetation, and replenish soil moisture and shallow groundwater. While the Project would not reproduce every natural storm event or preserve all existing opportunities for these processes, the result would be a reduction in the frequency or extent of these processes rather than their elimination.

The downstream-terrestrial impact analysis does not rely on the storm-event releases alone. As discussed in Master Response 4, habitat conditions in lower Del Puerto Creek reflect the interaction of storm-event flows, recession patterns, sediment transport, seasonal recharge, residual soil moisture, groundwater availability, agricultural return flows, WSID operational spills, and conditions near the San Joaquin River. Separate from the Project's storm-event releases, Mitigation Measure HYD-2, Develop Operation Requirements to Deliver Recharge Water to Lower Del Puerto Creek, requires releases of up to approximately 1.7 TAF per year to support groundwater recharge in lower Del Puerto Creek, depending on the hydrologic and operational conditions specified in that measure. Mitigation Measure HYD-2 was specifically developed to provide for in-channel infiltration and groundwater recharge, rather than simply replacing surface-flow volume. Reservoir modeling also shows that excess inflows would continue to spill downstream during wetter years, with spill events occurring in approximately 20 out of 100 modeled years. These releases and spills would provide additional downstream flow beyond the releases associated with qualifying storm events and would continue to contribute to seasonal recharge, channel wetting,

sediment movement, and other hydrologic processes that support riparian and wetland habitats in the downstream study area.

The Project would not alter agricultural return flows or WSID operational spills. No party has proposed, approved, or announced a change to those existing sources, and the record does not identify any reasonably foreseeable change attributable to the Project. CEQA requires the EIR to evaluate the Project against the existing physical conditions in lower Del Puerto Creek; it does not require speculation about undefined future actions by independent third parties. (CEQA Guidelines, §§ 15125, subd. (a), 15145.) Any future change to them would result from independent third-party, operational, regulatory, or land-use decisions, and would be evaluated under the laws applicable if and when such a change is proposed. Accordingly, although the Project would reduce overall upstream runoff volume reaching lower Del Puerto Creek, it would not eliminate episodic higher-flow conditions, recession dynamics, recharge processes, or groundwater-supported conditions that help sustain existing terrestrial habitats in the downstream study area.

The District therefore disagrees that the PRDEIR must include a separate wet-season baseflow commitment to support a less-than-significant conclusion. A dedicated wet-season baseflow could provide additional ecological benefit, but the record does not show that such a commitment is required to mitigate significant impacts to terrestrial habitats or species in the downstream study area. As discussed in Master Response 4: Project-Related Flow Changes, riparian and wetland vegetation persistence depends on the interaction of multiple hydrologic and geomorphic processes rather than on total runoff volume alone. Because the Project would retain these processes in a modified form through storm-event releases, recharge water releases, excess-inflow spills, ongoing dry-season water sources, and the continued influence of the San Joaquin River, the available evidence does not indicate that the modeled flow changes would result in a substantial reduction in vegetation extent, habitat structure, habitat productivity, or wetland function.

The PRDEIR's significance determination is based on the existing hydrologic setting, modeled Project operations, field-documented habitat conditions, and species-specific impact pathways in the downstream study area. Based on that site-specific evidence, the PRDEIR concludes that Project operations would not result in significant impacts to downstream terrestrial biological resources, and no additional mitigation in the form of a wet-season baseflow commitment is necessary.

Response to Comment R15-7

Comment Summary: The comment emphasizes the ecological importance of ephemeral and intermittent streams, noting that these systems support unique biological communities, facilitate nutrient cycling and ecological connectivity, and contribute to drought resilience, and contends that the Project's environmental release program should address channel-filling and overbank flows. Citing Acuña et al. (2017) and Yarnell et al. (2015), the comment asserts that such channel-filling and overbank flows can support riparian vegetation through nutrient exchange, seed dispersal, woody debris transport, and habitat connectivity. The comment contends that the Project should include environmental release commitments designed to maintain full-channel and overbank flows in downstream riparian areas and should provide enhancement, maintenance, and expansion of overbank habitat to mitigate impacts to downstream habitats and species.

The comment correctly explains that intermittent and ephemeral stream systems can provide important habitat, ecological connectivity, nutrient transport, seed dispersal, drought resilience, and other ecosystem functions. The studies cited in the comment generally describe these ecological values and the role that channel-filling and overbank flows can play in supporting floodplain and riparian processes. The existence and ecological values of such processes, however, do not by themselves establish that Project operations would substantially impair those functions within lower Del Puerto Creek or that a separate full-channel or overbank-flow release requirement is necessary to mitigate significant impacts to downstream terrestrial biological resources.

As discussed in Master Response 4: Project-Related Flow Changes, the PRDEIR evaluates potential impacts to downstream terrestrial biological resources based on the existing site-specific hydrologic, geomorphic, and biological conditions present in the downstream study area. Lower Del Puerto Creek functions as a highly intermittent, pulse-driven system characterized by substantial seasonal variability. Hydrologic conditions within the downstream study area are influenced by multiple water sources in addition to upstream runoff, including localized groundwater recharge, subsurface moisture, agricultural return flows, and operational spills from the West Stanislaus Irrigation District. These sources contribute to moisture availability within the riparian corridor during periods when surface flows are limited or absent. Project operations would not alter agricultural return flows or West Stanislaus Irrigation District operational spills because those sources are independent of Project operations. Project operations would also provide releases of up to approximately 1.7 TAF annually to support groundwater recharge in lower Del Puerto Creek.

The Project would reduce the magnitude and frequency of some natural winter and early-spring runoff events and, therefore, some opportunities for channel-filling flows, overbank inundation, sediment redistribution, nutrient exchange, hydrochory, and floodplain connectivity. However, during the field reconnaissance, ICF's biologists documented that the downstream study area is dominated by a discontinuous riparian corridor, scattered riparian shrubs, annual grasslands, agricultural lands, and intermittently wetted channel features. Field observations made during the field reconnaissance did not identify any habitat features indicative of frequent or prolonged overbank inundation. Accordingly, while periodic higher-flow events contribute to channel and floodplain processes, the existing habitat in the downstream study area does not exhibit signs of regular overbank flooding. There is no overbank/floodplain habitat adjacent to the creek as habitat is confined to the creek channel itself.

As explained in Master Response 4: Project-Related Flow Changes and Response to Comment R15-6, the Project's environmental flow commitments have been designed to maintain qualifying storm-event releases and associated recession patterns that would continue to support sediment transport, channel-margin inundation, in-channel hydrologic processes, and seasonal groundwater-recharge functions. The qualifying storm-event releases would retain key characteristics of natural storm events, including periodic higher-flow conditions, sediment movement, localized channel-margin inundation, and event-scale recession patterns. Reservoir modeling also indicates that excess-inflow spills would continue during wetter years, occurring in approximately 20 out of 100 modeled years. In addition, releases under Mitigation Measure HYD-2 would continue to support groundwater recharge and in-channel infiltration functions in lower Del Puerto Creek.

Accordingly, the significance determination does not depend on the assumption that overbank inundation or floodplain connectivity are absent from the downstream study area. Rather, the PRDEIR evaluates whether Project operations would substantially impair the hydrologic and geomorphic functions that support existing habitats in the downstream study area. Based on site-specific hydrologic data, habitat assessments, field observations, and species-occurrence information, the PRDEIR concluded that the Project would not substantially impair the hydrologic and geomorphic processes that support terrestrial habitats in the downstream study area.

The analysis in the PRDEIR did not identify any riparian community, wetland habitat, special-status species, ephemeral pool, or other flood-dependent habitat feature within the downstream study area whose continued viability depends on inundation patterns that would be eliminated by Project operations. Existing riparian and wetland resources persist under a combination of hydrologic influences, including periodic storm flows, seasonal groundwater recharge, residual soil moisture, agricultural return flows, West Stanislaus Irrigation District operational spills, and hydrologic conditions associated with the nearby San Joaquin River. Based on the available information, the PRDEIR concluded that the modeled flow changes would not substantially reduce vegetation extent, habitat structure, habitat productivity, wildlife-supporting functions, or wetland function within the downstream study area.

The comment also recommends enhancement, maintenance, and expansion of overbank habitat. Such measures could provide additional ecological benefits. CEQA, however, requires mitigation only for significant impacts caused by the Project; it does not require a project to improve existing environmental conditions absent a significant Project-related impact. The commenter has not cited, and the record does not contain, substantial evidence of significant Project-related loss of overbank habitat or ecological function requiring such mitigation. Substantial evidence, including the site-specific hydrologic record, habitat assessments, field observations, operational modeling, and evaluation of species-specific impact pathways, supports the PRDEIR's conclusion that Project operations would not result in significant impacts to downstream terrestrial biological resources. The District therefore declines to add a separate full-channel or overbank-flow commitment or an overbank-habitat enhancement requirement.

Response to Comment R15-8

Comment Summary: The comment contends that the PRDEIR provides an inconsistent, incomplete, and misleading environmental setting for foothill yellow-legged frog (FYLF), thereby undermining the adequacy of the species screening analysis and the decision not to carry the species forward for detailed impact analysis. The comment points to apparent discrepancies among: (1) the environmental setting discussion, which identifies a CNDDDB occurrence approximately one mile from the study area and states that potential aquatic and upland habitat is present; (2) the "Species Not Evaluated Further" discussion, which states that appropriate aquatic habitat is not present and references a different occurrence location; and (3) Appendix C, which identifies four CNDDDB occurrences within five miles of the study area, including one near the study area boundary. The comment further asserts that the PRDEIR omits discussion of the proposed federal critical habitat designation for FYLF, did not conduct protocol-level surveys, and therefore lacks a sufficient factual basis to exclude FYLF from further analysis.

The commenter correctly identifies differing descriptions in the PRDEIR regarding the location and number of nearby foothill yellow-legged frog occurrence records. In response to this comment, ICF's biologists re-reviewed the underlying California Natural Diversity Database (CNDDDB) records, mapped occurrence locations, and associated database entries cited in the PRDEIR. That review determined that the references to multiple occurrence records within 5 miles of the study area and differing descriptions of the nearest occurrence location were the result of inconsistencies in summarizing the CNDDDB data rather than evidence of additional confirmed occurrences. Additional details are provided in *Supplemental Review of California Natural Diversity Database Records for Foothill Yellow-Legged Frog (Rana boylei) Near the Del Puerto Canyon Reservoir Project Downstream Study Area* (ICF 2026).

The record review confirmed that the nearest documented foothill yellow-legged frog occurrence is CNDDDB occurrence #75, originally recorded in 1954 and located approximately 3 miles southwest of the downstream study area. The review also confirmed that no documented foothill yellow-legged frog occurrences are located within the downstream study area itself. References to this occurrence information has been corrected in the Second Final EIR to revise page 3.4-15 of the PRDEIR:

“The closest CNDDDB occurrence for foothill yellow-legged frog is approximately ~~one mile~~ 3 miles southwest of the study area (CDFW 2025).”

In addition, Appendix C, *Special-Status Species Tables*, has been revised in this Second Final EIR to state that the potential for occurrence is:

“~~Low. Moderate.~~ Del Puerto Creek and adjacent riparian habitat represents marginal habitat in the study area due to intermittent flows, agricultural runoff, and limited riparian habitat. There ~~are four~~ is one CNDDDB records within 5 miles of the study area, with the closest record ~~on the southwestern boundary~~ approximately 3 miles southwest of the study area (from 1954; occurrence #~~2073~~ 75).”

These corrections do not change the habitat-based conclusion that the species is not expected to occur in the downstream study area.

To the extent the comment suggests a conflict exists between the PRDEIR's general statement that aquatic and upland habitat occurs in the study area and the conclusion that suitable aquatic habitat for foothill yellow-legged frog is not present, those statements address different questions. The first describes the habitat types present in the study area generally. The second addresses whether those habitats possess the species-specific characteristics needed to support foothill yellow-legged frog. The presence of aquatic or riparian habitat generally does not establish the presence of habitat suitable for this species.

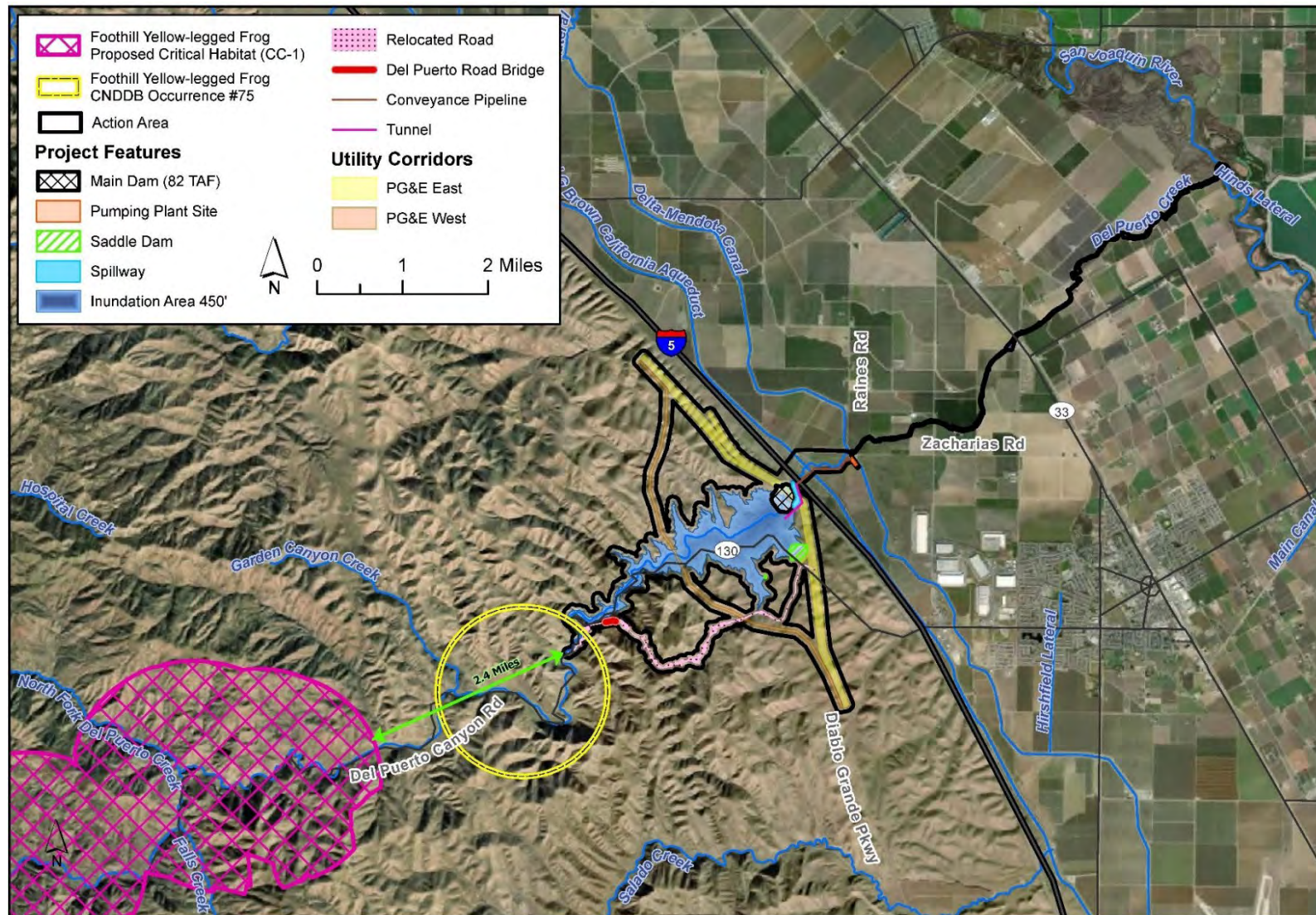
The comment also references the U.S. Fish and Wildlife Service's (USFWS) January 2025 proposed critical habitat designation for four distinct population segments of foothill yellow-legged frog. The proposal includes a Del Puerto Creek subunit in the upper watershed, predominantly within Santa Clara County. However, the proposed subunit is approximately 2.4 miles from the original study area and approximately 5 miles southwest of the downstream study area, as depicted in **Figure 12-1** below.

The proposed rule does not identify a new or substantially more severe Project-related environmental effect. The 2020 Final EIR already identified potential foothill yellow-legged frog habitat in Del Puerto Creek and adjacent riparian areas within the Project-footprint study area, assumed that the species could be present, and concluded that construction and reservoir inundation could cause significant habitat loss and potential injury or mortality without mitigation. (2020 Final EIR, Section 3.4.1, Environmental Setting, p. 3.4-16, and Section 3.4.3, Impact Analysis, Impact BIO-TERR-1g, pp. 3.4-49 to 3.4-50.) The EIR quantified the potential loss, required protocol-level surveys, required avoidance and minimization measures, and required compensatory mitigation if the species is found. (*Ibid.*) Thus, the potential presence of the species and the Project's effects on habitat capable of supporting it were not omitted from the prior analysis.

Nor does the proposed critical-habitat rule establish a new effect within downstream study area. A proposed critical-habitat designation identifies areas considered important to the species' conservation for purposes of the federal Endangered Species Act. It does not, by itself, establish species occupancy or suitable habitat at every location within or near a proposed unit. The PRDEIR's conclusions regarding foothill yellow-legged frog are based on the site-specific habitat conditions, occurrence records, and impact pathways present within the downstream study area.

Accordingly, the proposed critical habitat designation does not constitute significant new information requiring preparation of a subsequent or supplemental EIR or further recirculation. It does not reveal a new significant impact, a substantial increase in the severity of a previously disclosed impact, or a feasible mitigation measure or alternative that the District declined to adopt (See CEQA Guidelines, §§ 15162–15163, 15088.5, subd. (a)). At most, it provides updated regulatory and conservation context for species and habitat that the 2020 EIR already evaluated. It does not alter the 2020 Final EIR's or the PRDEIR's impact analyses or conclusions regarding potential impacts to foothill yellow-legged frog. The proposed rule does not demonstrate that the Project would cause an environmental impact different from or more severe than those previously identified.

Figure 12-2: Foothill Yellow-legged Frog Proposed Critical Habitat



Response to Comment R15-9

Comment Summary: The comment asserts that the PRDEIR inaccurately characterizes agricultural lands adjacent to Del Puerto Creek as unsuitable wildlife habitat and, in doing so, misrepresents the environmental setting for wildlife movement and habitat use. The commenter argues that although agricultural lands may not constitute high-quality habitat for many species, numerous wildlife species—including birds and other mobile species—regularly use agricultural areas for foraging, dispersal, seasonal movement, and migratory habitat. The comment contends that the PRDEIR's statement that agriculturally altered uplands "do not provide potential habitat for special-status terrestrial wildlife" is overly broad, unsupported, and inconsistent with the existing environmental baseline required under CEQA. The commenter further asserts that this characterization could undermine the impact analysis by understating the ecological role of agricultural lands in the study area.

The comment correctly notes that agricultural landscapes can provide habitat value for certain wildlife species and may facilitate wildlife movement, foraging, dispersal, or seasonal use. The District did not intend the PRDEIR to suggest that agricultural lands are devoid of ecological value or incapable of supporting wildlife use. The cited sentence was intended to distinguish the generally lower habitat value of intensively cultivated uplands from the more concentrated riparian habitat associated with Del Puerto Creek. The Second Final EIR revises the sentence to make that distinction clear.

Section 3.4.1, Environmental Setting, of the PRDEIR acknowledges that wildlife use occurs throughout the broader landscape and Section 3.4.3, Impact Analysis, specifically evaluates wildlife movement, habitat connectivity, and species occurrence within that existing landscape. The analysis does not assume that surrounding agricultural lands are unused by wildlife. Rather, it recognizes that the narrow riparian corridor associated with Del Puerto Creek provides the primary habitat and movement feature within the downstream study area, while surrounding agricultural lands generally provide lower-quality or more limited habitat opportunities for many special-status species.

Moreover, the conclusions regarding wildlife movement and habitat connectivity do not rely on the disputed sentence. As discussed under Impact BIO-TERR-DS-4 and in responses to related comments, the downstream study area would not be subject to construction, land-cover conversion, vegetation removal, fencing, or other physical changes that could impede wildlife movement in the study area. The relevant potential operational effect is the change in downstream flow condition. As explained in Impact BIO-TERR-DS-4 and Master Response 4, those flow changes would not substantially alter the structure or function of the riparian corridor, agricultural movement areas, or other habitat features that currently support wildlife movement and connectivity.

The Second Final EIR therefore revises page 3.4-2 of the PRDEIR to acknowledge that agricultural lands may support wildlife habitat and movement functions while generally providing lower-quality or more limited habitat for many special-status terrestrial species than the riparian corridor.

Intensive agricultural activities have altered water and sediment quality in the study area, with pesticide concentrations sometimes reaching levels that are acutely toxic to sensitive invertebrates (Weston et al. 2008; Ensminger et al. 2009; Hall and Anderson 2018). 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 lower-quality and more limited potential habitat for special status terrestrial wildlife than the riparian corridor. However, agricultural landscapes adjacent to Del Puerto Creek can provide habitat value for certain wildlife species and may facilitate wildlife movement, foraging, dispersal, or seasonal use.

Response to Comment R15-10

Comment Summary: The comment asserts that the PRDEIR fails to adequately analyze the Project's impacts on wildlife connectivity and that the PRDEIR's conclusion that impacts to wildlife movement would be less than significant is unsupported. The comment asserts that Del Puerto Creek lies within a broad network of wildlife linkages, that the PRDEIR identifies regionally significant corridors, riparian woodland, and a contribution to a broader network of ecological linkages, and that intermittent waterways and tributary junctions serve important movement and dispersal functions. The comment principally contends that the PRDEIR only analyzes flow-related indirect effects and does not analyze the impacts of the physical barrier of the dam and reservoir on downstream terrestrial species. The comment cites the 2019 Draft EIR's finding that the Project would be a permanent and impassible obstruction to wildlife movement. The comment asserts that the PRDEIR should be revised to analyze the dam and reservoir barrier's effect on downstream terrestrial species.

The PRDEIR analyzes the Project's operational effects on wildlife movement and connectivity for downstream terrestrial species in Impact BIO-TERR-DS-4. That analysis describes the environmental setting for wildlife corridors along lower Del Puerto Creek, including the regionally recognized corridors depicted in Figure 3.4-5, the San Joaquin River corridor that overlaps the eastern and western portions of the study area, and the study area's contribution to a broader network of ecological linkages. (PRDEIR, pp. 3.4-18 through 3.4-20.) The analysis then evaluates whether Project-related changes in the volume and timing of downstream flows would substantially interfere with wildlife movement or reduce the connectivity value of the corridor. It concludes that, because flows in lower Del Puerto Creek are primarily maintained by irrigation return flows and West Stanislaus Irrigation District operational spills that would remain unchanged, and because the Project's environmental commitments would maintain the timing, relative magnitude, duration, and variability of existing rainy-season flows, the habitat and hydrologic conditions that support corridor function would be maintained, and reductions in flow volume would have minimal effect on existing wildlife corridors. (PRDEIR, pp. 3.4-35 through 3.4-37.) The PRDEIR further explains that the existing downstream landscape is fragmented and agriculturally dominated, and that by not altering the natural flow regime, Project operations would not worsen that existing condition. (Ibid.) The evidentiary basis for the conclusion that Project operations would maintain the flow characteristics on which downstream riparian habitat and its connectivity functions depend is discussed further in Master Response 4: Maintenance of Functional Flows and Support of Ecological Processes.

The comment's observations regarding the connectivity value of intermittent waterways and the Del Puerto Creek–San Joaquin River confluence concern the significance of that corridor, which the PRDEIR does not dispute; the operative question in Impact BIO-TERR-DS-4 is whether Project-related flow changes would substantially reduce that connectivity value, and the analysis concludes they would not.

The comment's principal contention is that the PRDEIR should also analyze the physical barrier to wildlife connectivity created by the dam and reservoir and that “nowhere in the PRDEIR” is that barrier analyzed. The physical presence of the dam and reservoir, and its effect on wildlife movement, is not a flow-related effect on downstream terrestrial species. Rather, the extent to which the dam and reservoir will affect wildlife movement relates to the Project's construction and permanent physical footprint. Such footprint related impacts were analyzed in the 2019 Draft EIR and 2020 Final EIR, and are distinct from any effects that might result from reduced flows downstream from the Project footprint. In particular, Impact BIO-TERR-4 of the original EIR analyzed the Project's physical obstruction to wildlife connectivity and movement. (Final EIR, pp. 3.4-65 to 3.4-67.) That analysis concluded that the Project “would present a large permanent obstruction to wildlife connectivity and movement and would be impassable to many species of terrestrial wildlife”; that it would eliminate live-in habitat serving as the basis for connectivity of low-mobility fauna; and that the reservoir and relocated roadway together would fragment regionally significant wildlife corridors and increase the potential for wildlife-vehicle collisions. (Ibid.) This impact was determined to be significant. To reduce this impact to less than significant, the

2020 Final EIR included Mitigation Measures BIO-TERR-4a through BIO-TERR-4c, which require wildlife crossings and directional fencing, corridor preservation and enhancement between the Project and Interstate 5, and roadway wildlife-crossing signage. (Id. at pp. 3.4-66 through 3.4-67.) The Court of Appeal identified no deficiency in the 2020 Final EIR’s discussion of barrier-related impacts on wildlife movement or corridors. The barrier-related impact the comment describes was therefore already analyzed and upheld. It is too late for the commenter to raise such issues now.

The comment relies on the 2019 Draft EIR’s statement, at page 3.4-64, that the Project would be a “permanent and impassible obstruction to wildlife connectivity and movement.” That statement is the operation-impacts discussion within Impact BIO-TERR-4, carried forward into the 2020 Final EIR at pages 3.4-65 through 3.4-66. It is the District’s own characterization of the impact prior to mitigation; it is not evidence of an unanalyzed impact. Read in context, the language the comment cites is drawn from the very analysis that the comment asserts is missing.

The PRDEIR is not required to revisit the impact of the physical barrier of the dam and reservoir on wildlife movement or corridors. As the PRDEIR explains at page 1-1, the Court of Appeal observed that the 2020 Final EIR analyzed impacts to downstream aquatic species and to terrestrial species that are not downstream, but did not analyze impacts to species that are both downstream and terrestrial resulting from Project-related changes in flow. (PRDEIR, p. 1-1, citing Opinion, pp. 13–15.) The court described “[w]hat is missing” as the analysis of whether flow changes would affect downstream terrestrial species, and expressly framed the informational deficiency in terms of the Project’s efforts to mimic natural patterns of flow variability. (PRDEIR, p. 1-1, quoting Opinion, pp. 14–15.) The Court of Appeal’s remand was directed to that flow-related question. The analysis of the physical barrier of the dam and reservoir in Impact BIO-TERR-4 of the 2019 Draft EIR and 2020 Final EIR is a footprint-related impact analysis, which is distinct from the downstream flow effects that the court directed the District to analyze. The court did not order the District to reopen such footprint related impact analyses on remand.

The doctrines of res judicata and collateral estoppel would bar the commenter—a party to the previous litigation—from relitigating the adequacy of the 2020 Final EIR’s footprint-related impact analysis, as further discussed in Master Response 1: Scope of the PRDEIR. For additional information concerning analysis of wildlife corridors, refer to Response to Comment R3-5.

Response to Comment R15-11

Comment Summary: The comment asserts that the PRDEIR fails to analyze potential edge effects on wildlife connectivity for downstream terrestrial species. The comment asserts that, although construction and operation of the Project would not directly affect the study area, edge effects, including increased traffic, noise, light, and human presence, and increased atmospheric nitrogen deposition from Project-area roads, could disrupt sensitive and special-status species in adjacent areas, hinder wildlife movement, and impair local connectivity. The comment identifies wide-ranging predators such as mountain lions, bobcats, and American badgers, smaller species including songbirds, bats, and herpetofauna, and the San Joaquin kit fox as vulnerable to such effects, and asserts that the PRDEIR fails to disclose, assess, and mitigate the Project’s edge effects.

The PRDEIR addresses the potential for flow-related changes to expose downstream terrestrial species to edge effects. In Impact BIO-TERR-DS-4, the PRDEIR recognizes that changes in flow dynamics can influence terrestrial wildlife movement by altering the availability and quality of habitat corridors and potentially increasing exposure to edge effects or human-related disturbances, and that maintaining natural hydrologic conditions is important for preserving connectivity between habitat patches for species that rely on riparian habitat for movement, such as the San Joaquin kit fox. (PRDEIR, pp. 3.4-35 through 3.4-36.) The analysis concludes that, because Project operations would maintain the timing, relative magnitude, duration, and variability of existing rainy-season flows, and because flows in lower Del Puerto Creek are primarily sustained by irrigation return flows and operational spills that would remain unchanged, the habitat conditions supporting corridor function would be maintained, and the reductions in

flow volume would have minimal effect on existing wildlife corridors. (Ibid.) The PRDEIR further explains that the existing downstream landscape is already fragmented and agriculturally dominated, and that by not altering the natural flow regime, Project operations would not exacerbate that existing condition. (Ibid.) To the extent edge effects on downstream species could arise from Project-related changes in flow, the PRDEIR analyzes that pathway and finds the effect less than significant.

The edge effects the comment describes, however, are not flow-related effects. The mechanisms the comment identifies, including, increased traffic, noise, light, and human presence, and nitrogen deposition from roads serving the Project, are effects of the construction and operation of the Project footprint. No construction, land cover conversion, or Project maintenance would occur in the downstream study area. (See PRDEIR, pp. 3.4-21, 3.4-22.) The only pathway by which Project operations would reach downstream terrestrial species is through the changes in creek flows that Chapter 3.4 of the PRDEIR analyzes. The comment does not identify a mechanism by which construction traffic, structures, lighting, or human presence at the dam and reservoir would produce edge effects on species in the downstream study area independent of changes in flow.

The edge effects of the Project footprint on wildlife and wildlife corridors were analyzed in the 2020 Final EIR. Impact BIO-TERR-4 of the 2020 Final EIR evaluated the Project's construction and operational effects on wildlife movement, including habitat loss and fragmentation, and the effects of noise, light, traffic, human presence, and edge effects associated with construction and with operation of the reservoir and relocated roadway. (2020 Final EIR, pp. 3.4-65 through 3.4-67.) As discussed in Response to Comment R15-10, the 2020 Final EIR concluded that Impact BIO-TERR-4 would be less than significant with mitigation. The Court of Appeal identified no deficiency in the 2020 Final EIR's treatment of these footprint-related effects. The recirculated analysis was prepared to address the single deficiency the Court identified—the potential effects of Project-related changes in Del Puerto Creek flows on downstream terrestrial species. As noted in response to Comment R15-10, the doctrines of res judicata and collateral estoppel would bar the commenter from relitigating the adequacy of the 2020 Final EIR's footprint-related impact analysis, as further discussed in Master Response 1: Scope of the PRDEIR.

Response to Comment R15-12

Comment Summary: The comment asserts that the PRDEIR fails to analyze the effects of Project-related lighting on downstream terrestrial biological resources. The commenter notes that artificial lighting can affect a wide range of wildlife species, including bats, birds, insects, and mammals, through behavioral, physiological, and ecological mechanisms. The comment contends that light pollution was previously considered only as an aesthetic issue and that the PRDEIR does not evaluate potential biological impacts associated with Project lighting. The commenter therefore argues that the PRDEIR is incomplete under CEQA and should be revised to include an analysis of light-related impacts on wildlife, along with an enforceable lighting management plan.

The comment cites general scientific literature showing that artificial light can affect wildlife behavior, physiology, movement, foraging, reproduction, and predator-prey relationships. The District does not dispute that artificial lighting can affect wildlife under some circumstances. The relevant question, however, is whether lighting from the proposed Project would cause a substantial adverse effect on terrestrial species or habitat within the downstream study area.

The comment does not identify site-specific evidence demonstrating that light from Project facilities would extend into or appreciably illuminate lower Del Puerto Creek or alter habitat conditions within that area. Project-related lighting would be associated with the reservoir infrastructure primarily located within or near the Project footprint, west of Interstate 5 (I-5), including the dam control house, inlet/outlet works control building, and bifurcation structure. The Project also includes a pump station and conveyance pipeline located east of I-5 within the downstream study area; however, lighting associated with the pump station would be minimal. The potential impacts of lighting associated with the pump

station were evaluated in the 2020 Final EIR, as discussed further below. No lighting would be installed for the conveyance pipeline.

The 2020 Final EIR also evaluated the potential for construction and operational lighting to affect terrestrial wildlife within and adjacent to the Project footprint. That analysis considered lighting effects on special-status amphibians, reptiles, bird, bats, San Joaquin kit fox, and other wildlife. (2020 Final EIR, Section 3.4.3, Impact BIO-TERR-1a through Impact BIO-TERR-1q, pp. 3.4-38 to 3.4-63.) The analysis identified Mitigation Measures AES-2 (Nighttime Construction Lighting) and AES-3 (Directional Lighting for Dam Control Building, Inlet/Outlet Works Control Building and Bifurcation Structure in Unincorporated Stanislaus County) to reduce lighting-related impacts on special-status species to less than significant by minimizing nighttime lighting and light spill into surrounding habitat areas. (*Ibid.*) The District would readopt those measures as part of any renewed Project approval following certification of the Second Final EIR.

The literature cited by the comment describes potential ecological effects of artificial light generally. It does not provide evidence that Project lighting would measurably increase nighttime illumination within the downstream study area or result in species-specific impacts to resources evaluated in the PRDEIR. The Project would not place lights in the downstream study area, remove or illuminate downstream habitat, or introduce a new source of lighting along lower Del Puerto Creek. Given the distance from Project lighting sources, the intervening presence of I-5, and the enforceable lighting controls already required by Mitigation Measures AES-2 and AES-3, the record does not support a conclusion that Project-related lighting would result in significant impacts to downstream terrestrial biological resources.

The comment requests a separate lighting management plan. The 2020 Final EIR already identifies enforceable mitigation measures governing construction and operational lighting. As discussed in Master Response 1: Scope of the PRDEIR, the PRDEIR does not reopen environmental topics unrelated to the Court's remand or the purpose of the recirculated analysis. The comment has not identified substantial evidence demonstrating a reasonable connection between Project lighting and significant impacts within the downstream study area analyzed in the PRDEIR. No new mitigation is required.

Response to Comment R15-13

Comment Summary: The comment asserts that the PRDEIR fails to evaluate the effects of Project-related noise on biological resources. The commenter cites scientific literature describing potential effects of anthropogenic noise on wildlife behavior, communication, foraging, vigilance, habitat use, fitness, and community composition and argues that Project construction, traffic, and operational activities could adversely affect special-status species and other wildlife. The comment further contends that these potential effects were not adequately analyzed in the PRDEIR and therefore the document fails to comply with CEQA's requirements for evaluating impacts to biological resources.

The District does not dispute that anthropogenic noise can affect wildlife under certain circumstances. The relevant question is whether construction, traffic, or operational noise from the proposed Project would substantially affect terrestrial species, habitat, or wildlife movement within the downstream study area. The general literature cited by the comment identifies potential wildlife responses to noise, but it does not establish that noise from this Project would cause a significant downstream biological impact. The 2020 Final EIR expressly considered noise and related disturbance in its terrestrial biological-resources analysis. Section 3.4, Biological Resources—Terrestrial evaluated whether construction, maintenance, traffic and facility operations could disrupt normal behavior through noise, vibration, lighting, visual disturbances, and increased human activity. It considered those effects in evaluating special-status amphibians, reptiles, birds, bats, San Joaquin kit fox, American badger, and other wildlife. (2020 Final EIR, Section 3.4.3, Impact Analysis, Impact BIO-1-TERR-1, pp. 3.4-38 to 3.4-63.) The analysis of wildlife-movement likewise evaluated whether construction noise, traffic, vibration, lighting, and increased human presence could cause temporary habitat avoidance, altered movement, population fragmentation, or increased wildlife-vehicle conflicts. (*Id.*, pp. 3.4-65 to 3.4-67 [Impact BIO-TERR-4].)

For example, the 2020 Final EIR concluded that maintenance activities, including vegetation control, erosion control, rodent control, and associated vehicle traffic, could disrupt normal behaviors through noise and visual disturbance. (2020 Final EIR, pp. 3.4-38 to 3.4-63.) It also evaluated construction noise and lighting as potential sources of disturbance to nesting and foraging birds, roosting bats, amphibian, movement, and mammal foraging and dispersal. (*Id.*, at pp. 3.4-65 to 3.4-67.) Those effects were considered together with habitat loss, mortality risk, movement barriers, and other Project effects in the species- and habitat-species significance determinations.

The 2020 Final EIR also included mitigation measures addressing the biological effects of the Project disturbance. Depending on the species and activity, those measures include biological monitoring, preconstruction and protocol level surveys, seasonal work restrictions, disturbance buffers, authority to haul or modify work when wildlife is being adversely affected, restrictions on nighttime work and lighting, and species-species avoidance minimization requirements. (2020 Final EIR, pp. 3.4-39, 3.4-44–46, 3.4-50–51, 3.4-53–57, 3.4-58–62; see also Mitigation Measures BIO-TERR-1a, -1e, -1j, -1k, -1l, -1n, -1o, and -1q; Mitigation Measures AES-2 and AES-3.) Those measures formed part of the mitigation framework supporting the 2020 Final EIR’s biological impact conclusions and are carried forward in the current review.

The 2019 Initial Study for the Project separately evaluated the physical characteristics of Project-generated noise. It considered construction of the reservoir, conveyance facilities, pumping plant, and roadway realignment, as well as operational noise from the roadway and pumping facilities. It estimated that, even assuming five unenclosed 2,000-horsepower pumps producing approximately 97 dBA at five feet, operational noise would attenuate to less than 45 dBA at the nearest identified residence and below 38 dBA at another nearby residence. Those levels would be below existing ambient noise levels. Operational roadway noise would be similar to existing traffic noise on Del Puerto Canyon Road, and construction of the dam, conveyance facilities, and pumping plant would be temporary and limited to daytime hours. The Initial Study concluded that noise impacts would be less than significant based on the temporary and daytime nature of construction, the location of Project activities, the distance to nearby receptors, and attenuation of operational noise with distance.

Project-related noise was evaluated in the 2019 Initial Study prepared for the Project. That analysis considered construction of the reservoir, conveyance, facilities, roadway realignment, and DMC pumping plant, as well as operational noise from the relocated roadway and pump station, as well as operational noise from the relocated roadway and pump station. The Initial Study concluded that noise impacts would be less than significant based on the location of the facilities, the absence of nighttime construction, the temporary nature of construction activities, the distance to identified receptors, and the attenuation of operational noise with distance.

The Initial Study estimated that, even assuming five unenclosed 2,000-horsepower pumps producing approximately 97 A-weighted decibels (dBA) at five feet, pump noise would attenuate to less than 45 dBA at the nearest residence on Raines Road and below 38 dBA at the rural residence east of the DMC. Those levels would be below existing ambient noise levels and would not be perceptible at the identified receptors. Operational roadway noise likewise would be similar to existing traffic noise on Del Puerto Canyon Road. Construction of the dam, conveyance facilities, and pumping plant would occur during daytime hours and would be temporary.

Taken together, the Initial Study and the 2020 Final EIR evaluated both the physical characteristics of Project-generated noise and its potential effects on terrestrial biological resources. The adequacy of that original analysis is not reopened in this limited review. As explained in Master Response 1: Scope of the PRDEIR, the relevant question is whether the comment identifies significant new information showing a new or substantially more severe downstream biological effect from Project noise. It does not.

Response to Comment R15-14

Comment Summary: The comment provides the Center's concluding summary of its concerns and asserts that a revised and recirculated EIR is needed. The comment further reminds the District of its duty to maintain and preserve the administrative record under Public Resources Code section 21167.6, subdivision (e), and Golden Door Properties, LLC v. Superior Court (2020) 53 Cal.App.5th 733 (Golden Door), stating that preservation requires the District to suspend all data-destruction policies and preserve all relevant hardware unless an exact replica of each file is made. The comment also requests that the Center be added to the Project notice list.

The comment restates the concerns developed in the preceding portions of the Center's late comment letter. Those concerns are addressed in the responses to the specific comments in which they are raised: the description of the Project's operational effects on Del Puerto Creek flows in responses to Comments R15-2 and R15-3; the adequacy and enforceability of the environmental flow commitments in Response to Comment R15-4 and Master Response 4: Maintenance of Functional Flows and Support of Ecological Processes; the analysis of habitat and wildlife connectivity in Response to Comment R15-10; and the analysis of edge effects in Response to Comment R15-11. For the reasons stated in those responses, the District does not agree that the PRDEIR fails to comply with CEQA or that further recirculation is required.

The District acknowledges its obligation under Public Resources Code section 21167.6 to prepare and preserve the record of proceedings for the Project, including the writings that section 21167.6, subdivision (e), designates for inclusion in that record, and is aware of the retention obligations recognized in *Golden Door*, supra, 53 Cal.App.5th 733. The District will continue to comply with those obligations. The scope of those obligations is defined by the current text of section 21167.6. As *Golden Door* itself recognized, the retention obligation extends to writings relevant to the Project and to the agency's CEQA compliance and does not require a lead agency to retain every communication or draft without regard to relevance. (Id. at pp. 778–779.) In addition, effective June 30, 2025, Senate Bill 131 amended section 21167.6, subdivision (e)(10), to provide that, for projects other than those including a distribution center or oil and gas infrastructure, internal agency communications do not include electronic communications such as emails that were not presented to the final decisionmaking body, other than those consulted or reviewed by a lead agency executive or other administrative official in a supervisory role reviewing the project. (Pub. Resources Code, § 21167.6, subd. (e)(10)(B)(iii).) The District's record-of-proceedings and preservation obligations under CEQA are governed by section 21167.6 as so amended. The District does not, by this response, adopt the comment's characterization of the specific measures its obligations require, but has noted the Center's request that Project-related records be preserved.

Future notices regarding the Project will be provided to the Center at the contact information provided in the comment letter.

12.16 References

- Allen, A.W. 1983. *Habitat Suitability Index Models: Beaver (Castor canadensis)*. U.S. Fish and Wildlife Service. Washington, D.C.: U.S. Department of the Interior, Fish and Wildlife Service.
- Bateman, H.L., & Merritt, D.M. 2020. *Complex riparian habitats predict reptile and amphibian diversity*. *Global Ecology and Conservation*, 22, e00957.
- California Department of Fish and Game (CDFG). 1994. *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*. Wildlife Management Division and Environmental Services Division. November 8, 1994. Sacramento, CA.
- California Department of Fish and Game (CDFG). 2012. *Staff Report on Burrowing Owl Mitigation*. State of California Natural Resources Agency, Department of Fish and Game. Sacramento, CA. March 7, 2012.

- California Department of Fish and Wildlife (CDFW). 2017. *Evaluation of the Petition from the Center for Biological Diversity to List the Foothill Yellow-legged Frog (Rana boylei) as Threatened under the California Endangered Species Act*. Prepared for the California Fish and Game Commission, Sacramento, California.
- California Department of Fish and Wildlife (CDFW). 2018a. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*. State of California Natural Resources Agency, Department of Fish and Wildlife, Sacramento, CA. March 20, 2018.
- California Department of Fish and Wildlife (CDFW). 2018b. *Considerations for Conserving the Foothill Yellow-Legged Frog*. California Department of Fish and Wildlife. May 14, 2018. Sacramento, CA.
- California Department of Fish and Wildlife (CDFW). 2025. *California Natural Diversity Database (CNDDB)*. Commercial Version dated May 2, 2025. Biogeographic Data Branch, Sacramento, California. Report printed May 7, 2025.
- California Environmental Data Exchange Network (CEDEN). 2026a. *Station CEDEN-541XDPCHW, Del Puerto Creek at Highway 33: Water Quality Monitoring Data*. Available at: <https://mywaterway.epa.gov/monitoring-report/STORET/CEDEN/CEDEN-541XDPCHW/>. Accessed July 21, 2026.
- California Environmental Data Exchange Network (CEDEN). 2026b. *Station CEDEN-541XDPCCR, Del Puerto Creek at Cox Road: Water Quality Monitoring Data*. Available at: <https://mywaterway.epa.gov/monitoring-report/STORET/CEDEN/CEDEN-541XDPCCR/>. Accessed July 21, 2026.
- Cameron, D. R., Schloss, C. A., Theobald, D. M., and Morrison, S. A. 2022. *A framework to select strategies for conserving and restoring habitat connectivity in complex landscapes*. Conservation Science and Practice 4(6): e12698.
- Chapman, R.J., Hinckley, T.M., Lee, L.C., and Teskey, R.O. 1982. *Impact of Water Level Changes on Woody Riparian and Wetland Communities. Volume 10*. Kearneysville, WV: U.S. Fish and Wildlife Service, Office of Biological Services. Publication No. OBS-82/83.
- Cornell Lab of Ornithology (eBird). 2026. *eBird: Discover a New World of Birding*. Available at: <https://ebird.org/home>. Accessed June 1, 2026.
- Cypher, B.L. 2024. *The San Joaquin Kit Fox: Biology, Ecology, and Conservation of an Endangered Species*. Comstock Publishing Associates, an imprint of Cornell University Press, Ithaca, New York. 222 pp.
- Cypher, B.L., S.E. Phillips, and P.A. Kelly. 2007. *Habitat Suitability and Potential Corridors for San Joaquin Kit Fox in the San Luis Unit: Fresno, Kings, and Merced Counties, California*. Final. Prepared for the U.S. Bureau of Reclamation, South-Central Area Office, and the USFWS Endangered Species Program.
- Driscoll, D.E. 2010. *Protocol for Golden Eagle Occupancy, Reproduction, and Prey Population Assessment*. American Eagle Research Institute, Apache Junction, AZ. 55 pp.
- ESSA Technologies Ltd. 2011. *Sacramento Ecological Flows Tool (SacEFT) Version 2: Record of Design*. Prepared for the California Department of Water Resources. ESSA Technologies Ltd., Vancouver, British Columbia.
- FitzRandolph, J. 2026. *116 condors are now flying free in Central California skies—most since 1979*. San Luis Obispo Tribune, January 10, 2026. Available at: <https://www.sanluisobispo.com/news/local/environment/article314238136.html>. Accessed June 1, 2026.

- Graf, W. L. 2006. Downstream hydrologic and geomorphic effects of large dams on American rivers. *Geomorphology* 79(3–4): 336–360.
- Griggs, F.T. 2009. *California Riparian Habitat Restoration Handbook, Second Edition*. River Partners and Riparian Habitat Joint Venture.
- Kochert, M.N., K. Steenhof, C.L. McIntyre, and E.H. Craig. 2002. *Golden Eagle (Aquila chrysaetos)*. In *The Birds of North America*, No. 684. A.F. Poole and F.B. Gill (eds.). Ithaca, NY: Cornell Lab of Ornithology.
- Kupferberg, S.J., Catenazzi, A., Lunde, K., Lind, A.J., & Palen, W.J. 2009. *Parasitic copepod (Lernaea cyprinacea) outbreaks in foothill yellow-legged frogs (Rana boylei) linked to unusually warm summers and amphibian malformations in Northern California*. *Copeia*, 2009(3), 529–537.
- Hayes, M.P., and Jennings, M.R. 1988. *Habitat correlates of distribution of the California red-legged frog (Rana aurora draytonii) and the foothill yellow-legged frog (Rana boylei): implications for management*. In: *Management of Amphibians, Reptiles, and Small Mammals in North America*. USDA Forest Service, General Technical Report RM-166, pp. 144–158.
- Huber, P.R., S.E. Greco, and J.H. Thorne. 2010. *Spatial Scale Effects on Conservation Network Design: Trade-Offs and Omissions in Regional versus Local Scale Planning*. *Landscape Ecology* 25(5): 683–695.
- ICF. 2026. *Supplemental Review of California Natural Diversity Database Records for Foothill Yellow-Legged Frog (Rana boylei) Near the Del Puerto Canyon Reservoir Project Downstream Study Area*.
- Mahoney, J.M., and Rood, S.B. 1998. *Streamflow Requirements for Cottonwood Seedling Recruitment – an Integrative Model*.
- Meretsky, V. J., & Snyder, N. F. R. 1992. Range use and movements of California condors. *The Condor*, 94(2), 313–335.
- Nilsen, E.T., Sharifi, M.R., and Rundel, P.W. 1984. “Comparative Water Relations of Phreatophytes in the Sonoran Desert of California.” *Ecology* 65(3): 767–778.
- Ohmart, R. D. 1994. The effects of human-induced changes on the avifauna of western riparian habitats. *Studies in Avian Biology* 15:273–285.
- Phillips, S.J., G.B. Pasternack, and K. Larrieu. 2021. *Application of Automated Riparian Vegetation Recruitment Potential Model for Habitat Enhancement Pilot Study*. American Geophysical Union Fall Meeting Poster EP25C-1325, University of California, Davis.
- Rivers, J. W., Johnson, J. M., Haig, S. M., Schwarz, C. J., Burnett, L. J., Brandt, J., George, D., & Grantham, J. 2014. *An analysis of monthly home range size in the critically endangered California Condor (Gymnogyps californianus)*. *Bird Conservation International* 24(4): 492–504.
- Rood, S. B., Braatne, J. H., and Hughes, F. M. R. 2003. Ecophysiology of riparian cottonwoods: stream flow dependency, water relations and restoration.
- Slough, B. G., & Sadleir, R. M. F. S. (1977). A land capability classification system for beaver (*Castor canadensis* Kuhl). *Canadian Journal of Zoology*, 55(8), 1324–1335.
- Stromberg, J.C., Tiller, R., & Richter, B. 1996. *Effects of groundwater decline on riparian vegetation of semiarid regions: The San Pedro, Arizona*. *Ecological Applications*, 6(1), 113–131.
- Stromberg, J. C., Beauchamp, V. B., Dixon, M. D., Lite, S. J., and Paradzick, C. 2007. Importance of low-flow and high-flow characteristics to restoration of riparian vegetation along rivers in arid south-western United States. *Freshwater Biology* 52(4):651–679.

- U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). 2003. *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander*. October 2003. U.S. Fish and Wildlife Service and California Department of Fish and Game.
- U.S. Fish and Wildlife Service (USFWS). 2020. *Species Status Assessment Report for the San Joaquin Kit Fox (*Vulpes macrotis mutica*)*. Version 1.0. Prepared by USFWS. Available: <https://ecos.fws.gov/ServCat/DownloadFile/185116>. Accessed July 28, 2026.
- U.S. Fish and Wildlife Service (USFWS). 2025. *Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Four Distinct Population Segments of the Foothill Yellow-Legged Frog*. Proposed Rule. Federal Register 90(8): 3412–3470. January 14, 2025.
- Wharton, C.H., Lambou, V.W., Newsome, J., Winger, P.V., Gaddy, L.L., and Mancke, R. 1981. “The Fauna of Bottomland Hardwoods in the Southeastern United States.” In: Clark, J.R., and Benforado, J. (eds.), *Wetlands of Bottomland Hardwood Forests*. Developments in Agricultural and Managed Forest Ecology, Vol. 11. New York: Elsevier Scientific Publishing Company, pp. 87–160.
- Wiens, J.D., Kolar, P.S., Fuller, M.R., Hunt, W.G., and Hunt, T. 2015. *Estimation of occupancy, breeding success, and abundance of golden eagles (*Aquila chrysaetos*) in the Diablo Range, California, 2014*. U.S. Geological Survey Open-File Report 2015–1039, 23 p.
- Williams, D. D., & Hynes, H. B. N. 1977. *The ecology of temporary streams II. General remarks on temporary streams*. Internationale Revue der Gesamten Hydrobiologie, 62(1), 53–61.
- Yarnell, S.M., Stein, E.D., Webb, J.A., Grantham, T., Lusardi, R.A., Zimmerman, J., Peek, R.A., Lane, B.A., Howard, J., & Sandoval-Solis, S. 2015. *A functional flows approach to selecting ecologically relevant flow metrics for environmental flow applications*. River Research and Applications, 31(7), 847–863.



*Prepared by: Woodard & Curran
2175 N. California Blvd., Suite 810
Walnut Creek, CA 94596
925.627.4100*



Solving the region's needs through local partnerships