Notice of Determination

Appendix D

To:

☒ Office of Planning and Research

U.S. Mail:	*Street Address:*
P.O. Box 3044	1400 Tenth St., Rm 113
Sacramento, CA 95812-3044	Sacramento, CA 95814

☐ County Clerk
County of: _____
Address: _____

From:
Public Agency: The California Natural Resourcse Agency
Address: 1416 9th Street, Suite 1311
Sacramento CA, 95814
Contact: Heather Baugh
Phone: 916-653-8152

Lead Agency (if different from above):
_____
Address: _____
Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): _____

Project Title: Salton Sea Conservation Habitat Program

Project Applicant: N/A

Project Location (include county): Imperial County

Project Description:
The preferred alternative/least environmentally damaging practicable alternative/proposed project (Alternative 3 in the Draft EIS/EIR) would create approximately 3,770 acres of shallow ponds, contained within low berms, on either side of the New River at elevations less than -228 feet mean sea level. The ponds would be supplied with a combination of brackish and saline water. This water would be pumped from the New River and Salton Sea, respectively, and blended to maintain an appropriate salinity range. See further discussion attached.

This is to advise that the The California Natural Resources Agency has approved the above
(☒ Lead Agency or ☐ Responsible Agency)

described project on August 5, 2013 and has made the following determinations regarding the above
(date)
described project.

1. The project [☒ will ☐ will not] have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☒ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☒ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☒ was ☐ was not] adopted for this project.
6. Findings [☒ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
1416 9th Street, Suite 1311 Sacramento CA 95814

Signature (Public Agency): John Laird Title: Secretary

Date: August 5, 2013 Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2011

Continued project description: The SCH Project is designed as a "proof-of-concept" project in which several Project features, characteristics, and operations could be tested under an adaptive management framework. The proof-of-concept period would last for approximately 10 years after completion of construction. By that time, managers would have had time to identify those management practices that best meet the Project goals. After the proof-of-concept period, the Project would be operated until the end of the 75-year period covered by the Quantification Settlement Agreement (2078) or until funding were no longer available. The SCH ponds would be constructed and operated by the California Department of Fish and Wildlife (DFW), on behalf of the California Natural Resources Agency, who would be responsible for ensuring that mitigation measures are implemented prior to, during, and after construction of the Project. If another alternative is selected by the decision makers, or if Alternative 3 is modified as part of the approval process, this MMRP will be updated to ensure that all applicable mitigation measures are implemented.

Baugh, Heather@CNRA

From: Scott Morgan [Scott.Morgan@OPR.CA.GOV]
Sent: Monday, August 05, 2013 9:21 AM
To: Baugh, Heather@CNRA
Cc: Christopher Calfee; Alvis, Julie@CNRA; Maisonneuve, Vivien@DWR; Nelson, Kent@DWR; Lorraine Woodman (lorraine.woodman@cardno.com); Pallick, Kimberly@CNRA; Randolph, Liane@CNRA
Subject: RE: Salton Sea HCP EIR

Heather: Yes, this e-mail will suffice for letting us know that the document is exempt from the DFW CEQA filing fee.

Scott Morgan
State Clearinghouse Director
Deputy Director, Administration
Governor's Office of Planning and Research
ph (916)445-0613 fax (916)323-3018

From: Baugh, Heather@CNRA [mailto:heather.baugh@resources.ca.gov]
Sent: Monday, August 05, 2013 9:18 AM
To: Scott Morgan
Cc: Christopher Calfee; Alvis, Julie@CNRA; Maisonneuve, Vivien@DWR; Nelson, Kent@DWR; Lorraine Woodman (lorraine.woodman@cardno.com); Pallick, Kimberly@CNRA; Randolph, Liane@CNRA
Subject: Salton Sea HCP EIR

Hi Scott,

We are filing an NOD in this project today. The Department of Water Resources is managing it and the Department of Fish and Wildlife is implementing it on the Agency's behalf, though the Agency is lead. I don't think the filing fee needs to be paid. In the legal view of Fish and Wildlife, the project would be exempt from filing fees under both 711.4(c)(2)(B) and (D) of the Fish and Game Code as a project "being undertaken by the department" and "being implemented by the department through a contract with . . . a local government agency." Your office seemed to suggest that we need some sort of a memo in this regard. Can you please let me know if this email will do it so it can be properly filed today?

Thanks.

Heather C. Baugh, Assistant General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Telephone: 916-653-5656
Fax: 916-653-8123

CALIFORNIA natural resources AGENCY

EDMUND G. BROWN JR., Governor
JOHN LAIRD, Secretary for Natural Resources

DECISIONS RELATING TO THE
SALTON SEA SPECIES CONSERVATION HABITAT PROJECT
ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

1. Certification of the Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) for the Salton Sea Species Conservation Habitat Project.

As Secretary for the California Natural Resources Agency, the designated lead agency under the California Environmental Quality Act ("CEQA") for the Salton Sea Species Conservation Habitat Project Final EIS/EIR prepared for the Secretary by the Department of Water Resources and the Department of Fish and Wildlife, I have reviewed the Final EIS/EIR, including the responses to comments on the Draft EIS/EIR, and other related documents.

I hereby certify:

(a) The Final EIS/EIR attached as Exhibit A, has been completed in compliance with the CEQA,
(b) The Final EIS/EIR was presented to me in my capacity as the Natural Resources Agency's decision-making body,
(c) The Final EIS/EIR reflects the Natural Resources Agency's independent judgment and analysis, and
(d) I have reviewed and considered the information contained in the Final EIS/EIR prior to approval of the Project.

2. CEQA Findings and Statement of Overriding Considerations

I have adopted the Findings and Statement of Overriding Considerations, attached as Exhibit B.

3. Project Approval.

I approve the Salton Sea Species Conservation Habitat Project as described as the Preferred Alternative (Alternative 3) in the Final EIS/EIR.

4. Mitigation Monitoring and Reporting Program

I adopt the Mitigation, Monitoring and Reporting Program (Attachment 4 of the Final EIS/EIR), attached herein as Exhibit C.

5. Notice of Determination

The Notice of Determination will be filed with the Office of Planning and Research.

John Laird

John Laird, Secretary for Natural Resources
California Natural Resources Agency

8/5/13
Date

Exhibit A: Final EIS/EIR for the Salton Sea Species Conservation Habitat Project
Exhibit B: CEQA Findings and Statement of Overriding Considerations
Exhibit C: Mitigation Monitoring and Reporting Program

EXHIBIT A

Salton Sea Species Conservation Habitat Program Final EIS/EIR

EXHIBIT B

Salton Sea Species Conservation Habitat Program Findings of Fact and Statement of Overriding Considerations

CALIFORNIA NATURAL RESOURCES AGENCY

SALTON SEA SPECIES CONSERVATION HABITAT PROJECT
ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

Findings and Statement of Overriding Considerations

August 2013

Table of Contents

This page intentionally blank

Project-Specific Findings of Fact

Section 15091 of the California Environmental Quality Act (CEQA) Guidelines states:

> (a) No public agency shall approve or carry out a project for which an [Environmental Impact Report] has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.
>
> The possible findings are:
>
> 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
>
> 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
>
> 3. Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.
>
> (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
>
> (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(CEQA Guidelines, § 15091, subds. (a)-(c).)

These findings accomplish the following: (a) they address the significant environmental effects identified in the Environmental Impact Statement(EIS)/ Environmental Impact Report (EIR) for the Salton Sea Species Conservation Habitat Project ("Proposed Project"); (b) they incorporate all mitigation measures associated with these significant impacts identified in either the Draft EIS/EIR or the Final EIS/EIR; and (c) they indicate whether a significant effect is avoided or reduced by the adopted mitigation measures to a less than significant level, or if it remains significant and unavoidable, either because there are no feasible mitigation measures or because, even with implementation of mitigation measures, a significant impact will occur.

A statement of overriding considerations is presented for any effects that remain significant and unavoidable. The conclusions presented in these findings are supported by substantial evidence in the record and are based on the Final EIS/EIR (including the Draft EIS/EIR and responses to comments on the Draft EIS/EIR) and other evidence in the record of proceedings.

To the extent that the findings below conclude that various proposed mitigation measures are feasible and within the California Natural Resources Agency's (Natural Resources Agency) authority to implement for the Proposed Project, the Natural Resources Agency, by approving the Proposed Project, agrees to implement these measures, thereby incorporating them into the Proposed Project prior to approval. The California Department of Fish and Wildlife (DFW[1]), acting on behalf of the Natural Resources Agency, will be responsible for ensuring that implementation of the mitigation measures occurs in accordance with the Mitigation Monitoring and Reporting Program (MMRP). Some of these mitigation measures incorporated into the Proposed Project will avoid or substantially lessen the significant effects identified in the Final EIS/EIR to a less than significant level. Even with the mitigation measures incorporated into the Proposed Project, some impacts will remain significant and unavoidable because some residual effects will still exist after implementation of the mitigation measures. The findings below summarize the impacts and mitigation measures for each impact and reference the relevant sections of the Draft EIS/EIR or Final EIS/EIR where they are discussed and the specific mitigation measures are described. The specific mitigation measures are referenced in the MMRP, are adopted concurrently with these findings, and will become effective through Proposed Project implementation.

Potentially Significant Impacts Reduced to a Less Than Significant Level by Mitigation Measures Incorporated into the Proposed Project

The Proposed Project EIS/EIR identifies significant impacts that are reduced to less than significant levels by the incorporation of mitigation measures identified in the Final EIS/EIR as part of Proposed Project approval. The Natural Resources Agency finds that the significant environmental impacts that these mitigation measures address will be avoided or substantially lessened by their inclusion in the Proposed Project.

3.4 Biological Resources

Impact BIO-1a: Project construction and operation would affect habitat and individuals of desert pupfish and several special-status bird species.

Desert Pupfish

Because desert pupfish are or could be present in agricultural drains and in shallow water along the Salton Sea's shoreline, construction activities for the ponds and diversion of the drain outflows around the Proposed Project area would result in habitat loss, alteration of adjacent habitat through turbidity and potential discharge of sediments unsuitable for berm construction, and mortality of some individuals. If construction activities occurred during the desert pupfish

[1] When the Draft EIS/EIR was issued, the Department of Fish and Wildlife was known as the Department of Fish and Game. Its name was changed to the Department of Fish and Wildlife on January 1, 2013; hence, this is the name used in the Final EIS/EIR and the Findings and Statement of Overriding Considerations.

breeding season (approximately April through October), reproductive success for those mature pupfish in the Proposed Project footprint and at the sediment discharge location could be greatly reduced. Operation of the pump stations to bring saline water to the ponds has the potential to entrain desert pupfish until the Salton Sea becomes too saline for their survival. The intake would be screened until that time, and maintenance activities to clean or to replace the screen could affect pupfish in the intake's immediate vicinity. Maintenance of the pump stations could result in release of lubricants or other chemicals potentially toxic to pupfish. Due to the proposed location of the pump stations (adjacent to the outer berm and offshore from the ponds), few desert pupfish are likely to be affected by maintenance activities. Maintenance activities for the ponds, such as excavation of materials for berm repair, also could affect desert pupfish that are present in the ponds. Turbidity effects, disturbance of feeding and spawning areas, and direct mortality could occur. Dropping the water level of one or more ponds for maintenance could strand desert pupfish resulting in mortality from desiccation or predation by birds. Under an emergency situation, draining one or more of the ponds for maintenance could occur and would strand desert pupfish resulting in mortality from desiccation or predation by birds.

Bird Species

Construction as well as operation and maintenance activities could affect special-status bird species that are present within the Proposed Project footprint through direct habitat disturbance, noise, and human presence. Individuals immediately adjacent to Proposed Project activities, including staging area(s) for construction of the ponds and gravity diversion, could also be affected by noise. Noise has been documented to adversely affect avian reproduction, and thus, construction noise and activity, if adjacent to areas occupied by nesting birds, could result in nesting failure if such activities occur during the breeding season. Potentially affected species include the burrowing owl; California black rail; Yuma clapper rail; nesting birds such as redhead, least bittern, and yellow-headed blackbird, and western snowy plover; riparian bird species, such as white-tailed kite, little willow flycatcher, yellow-breasted chat, gila woodpecker, and crissal thrasher; gull-billed tern, black skimmer; and loggerhead shrike.

- **Mitigation Measure BIO-1: Prepare and implement a desert pupfish protection and relocation plan.** This plan applies primarily to construction and maintenance of the drain interception ditches but will also apply to pond construction and maintenance activities as noted and will provide:

  1. Protocols for preconstruction or premaintenance surveys to assess species presence and spawning within or immediately adjacent to work areas (e.g., in the drains/drain channels, along the shoreline if construction is in the "wet," and around the pond margins for maintenance);

  2. Capture (e.g., trapping in the drains for construction and maintenance; or trapping, dip netting, and seining in the ponds if drained or if the water level is dropped) and transport methods to minimize handling and stress as well as exposure to heat, low dissolved oxygen, and crowding;

  3. Identification of locations for release of captured desert pupfish;

4. Timing windows when construction or maintenance in shallow shoreline areas and in the drain mouths/channels may be conducted with minimal effects on desert pupfish spawning;

5. Protocols for maintenance activities in the drain interception ditches, such as a rotating schedule to ensure only a portion of the channel is maintained at one time, clearing only part of the vegetation at one time, and timing of maintenance to avoid peak spawning;

6. Maintenance protocol for the 1/8-inch mesh screen on the saline water intake until salinity reaches 68 ppt; and

7. Adaptive management procedures that include assessment of mitigation measure effectiveness, development of revised measures to improve effectiveness, and similar assessment of revised measures to verify effectiveness.

All desert pupfish mitigation measures will be in conformance with the Biological Opinion from U.S. Fish and Wildlife Service for the Proposed Project.

- **Mitigation Measure BIO-2: Prepare and implement a preconstruction/maintenance survey plan for bird species.** The plan will include preparation of suitable habitat maps that are updated periodically to focus survey locations as well as survey methods consistent with current science and regulations. Adaptive management measures will also be included in the plan. The following describes the surveys and their timing for various bird species.

  Burrowing Owl. To avoid impacts on nesting or wintering burrowing owls within the Proposed Project impact area, conduct preconstruction (or premaintenance) surveys within suitable burrowing owl habitat that could be affected by Proposed Project activities. Surveys will be conducted using the latest protocol methods and with concurrence from DFW; currently, methods described by the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (DFG 1995) will be used. If burrowing owls are detected nesting or wintering within the Proposed Project impact area, a buffer will be established around the active burrow so that direct impacts on the burrow will be avoided. For construction during the breeding season (February through August), a buffer of 250 feet around the active nesting burrow will be maintained until breeding is complete and the young have fledged (can fly). For nonbreeding birds, the buffer will be 160 feet. If burrowing owls are detected occupying a burrow within the Proposed Project impact area at any time of year, the owls will be removed using passive methods during the nonbreeding season. Passive removal involves excluding owls from their occupied burrows and creating alternate natural or artificial burrows for them that are at least 160 feet from the impact area and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair (DFG 1995). Passive relocation may be implemented during the breeding season if a qualified biologist can verify through noninvasive methods, such as scoping, that breeding has not begun or juveniles are foraging independently and able to fly. The unoccupied burrows would be collapsed in accordance with DFW-approved guidelines (DFG 1995).

  California Black Rail and Yuma Clapper Rail. Conduct preconstruction (or premaintenance) focused surveys for California black rail and Yuma clapper rail where Proposed Project features are within or immediately adjacent to suitable habitat. Surveys will be conducted using current USFWS methods and/or methods approved by the DFW. If

California black rails or Yuma clapper rails are detected within 500 feet of planned construction/maintenance activity locations, work within that distance of the birds will be rescheduled for after the birds complete nesting.

Nesting Birds. Conduct preconstruction (or premaintenance) surveys for all Proposed Project features within suitable habitat if construction or maintenance activities will take place during the breeding season. Breeding birds are protected under the Migratory Bird Treaty Act as described in Impact BIO-5a. Surveys will be conducted using methods approved by the DFW. If breeding birds are detected within the Proposed Project impact area, a protective buffer (100 to 500 feet, depending on species) will be provided until it is confirmed that breeding is complete.

Western Snowy Plover. Conduct preconstruction (or premaintenance) focused surveys for western snowy plovers within suitable habitat that could be affected. Surveys will be conducted using current USFWS methods and/or methods approved by the DFW. If western snowy plovers are detected within the Proposed Project impact area, construction or maintenance activities will be conducted under a qualified biologist's supervision so that direct impacts are avoided. If breeding western snowy plovers are detected within the Proposed Project impact area, construction or maintenance will be postponed and a protective buffer of at least 100 feet (as determined by a qualified biologist at the site) provided until it is confirmed that breeding is complete.

- **Mitigation Measure BIO-3: Conduct noise calculations/measurements and implement noise attenuation measures, if needed.** Based on equipment specifications, calculate or measure the distance from equipment where noise would be greater than or equal to 60 A-weighted decibels (dBA) equivalent sound level (L_{eq}). This would also include multiple noise sources, if applicable. Then, use that distance to determine where noise could exceed 60 dBA L_{eq} within known or potential nesting habitat adjacent to the Proposed Project footprint. If any such overlaps occur, schedule work to avoid the breeding season in those areas. If construction must occur during the breeding season at those sites, monitor nesting activity to determine if any effects are occurring. If effects are observed, implement noise attenuation measures such as noise walls and hay bales. Monitor the noise and bird behavior to verify that attenuation measures are successful. Develop and implement additional protection measures if monitoring shows that impacts are still occurring. If noise would be less than 60 dBA L_{eq}, no additional measures are required. (Note: The threshold of 60 dBA L_{eq} used here to protect bird nesting is a conservative estimate of the level above which adverse effects could occur. The actual threshold varies by species and type of noise.)
- **Mitigation Measure BIO-4: Design interception ditches to avoid alteration of water levels in adjacent marshes.** Design of the interception ditches will balance local surface and subsurface water movement so that the amount of water in adjacent marshes is not affected.
- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

Impact BIO-2: Project construction and operation would cause a temporary disturbance or loss of riparian habitat and/or sensitive habitat.

Proposed Project construction activities could result in removal of riparian habitat, particularly stands of tamarisk adjacent to the New River, depending on the amount of excavation required for material to construct the ponds and berms. For areas to be inundated by the ponds or where structures would be placed (e.g., access roadways along the river berms, river water intake), the loss would be permanent. Riparian habitat would be disturbed or temporarily removed for construction of the water delivery pipelines and berms separating the river from the ponds. A small amount of mesquite bosque is anticipated to be avoided but could also be affected by construction of the diversion structure and sedimentation basin, depending on their exact location. However, these Proposed Project structures would be placed to minimize or avoid impacts to the maximum extent feasible. In addition, habitat removed by the Proposed Project would be restored to its original condition, or better quality habitat, following construction of the conveyance pipelines. For example, it would be acceptable to replace tamarisk scrub that was removed with screwbean mesquite bosque.

If removal of riparian habitat were substantial (greater than 2 acres) or if screwbean mesquite bosque were removed, this impact would be significant. As currently planned, mesquite bosque would not be removed, approximately 7 acres of tamarisk would be temporarily removed for construction of the diversion along the New River, and approximately 87 acres of tamarisk scrub and woodland could be removed for construction of the ponds. Removal of up to 87 acres of tamarisk for pond construction represents the worst case, and actual numbers would probably be lower depending on exact limits of excavation for material required to construct the berms.

- **Mitigation Measure BIO-5: Prepare and implement a Habitat Protection, Mitigation, and Restoration Program.** Plan preparation will be complete prior to commencement of construction. The restoration program will address the following considerations:

  1. Avoidance of sensitive and riparian habitats to the greatest extent feasible, including avoidance of disturbances in or near these habitats during the bird breeding season.

  2. Quantifying maximum area of naturally occurring plant communities that could be temporarily and permanently removed for construction of Proposed Project facilities, by plant community.

  3. Restoration at a minimum rate of 1:1 for nonnative plant communities (i.e., tamarisk woodland or scrub) and 3:1 for native plant communities temporarily removed during Proposed Project construction, or as required in Proposed Project permits. Habitats restored at 1:1 will be preferentially restored where they were removed, unless it is infeasible or a more desirable off-site location is identified. Species to be used in restoration may include either those that were removed or native species that occur or occurred naturally in the Proposed Project area and are suitable to the site. If native species are used to replace nonnative species, mitigation ratios can be reduced. For restoration of tamarisk temporarily removed, natural colonization of the disturbed area is likely to occur and no planting may be needed. The area would still be monitored to document restoration. Permanently removed riparian habitat within the pond area would

be replaced by aquatic habitat of equal surface area with a similar or greater ecological value.

4. Identification of locations for on- and off-site restoration, including funding for land purchases and/or easements and agreements with property owners to complete the restoration.

5. Use of only local native seed (or propagule) sources for native species used in restoration.

6. Details on propagation, planting/seeding, irrigation, maintenance (including weed control for species that could interfere with restoration), site access, remedial measures, monitoring, reporting, and photo-documentation. These details will be specific to each site if more than one planting area or type is addressed in the plan.

7. Performance criteria to be met for each habitat type being restored.

8. Monitoring, with a funding source, until performance criteria are met, which may be for a minimum of 5 years.

- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

Impact BIO-5a: Project construction, operation, and maintenance could affect nesting by some common bird species and introduction of invasive species.

The Salton Sea and surrounding region provide nesting, wintering, and migration stopover habitat for hundreds of bird species and thousands of individuals. The Proposed Project area provides habitat for a subset of the species and individuals that occur within the greater Salton Sea area. A number of common bird species could be affected by the Proposed Project. (Effects on special-status birds such as burrowing owl, black skimmer, and gull-billed tern have been addressed under Impact BIO-1a.)

Because common species are or could be present nesting and/or foraging for breeding, within or immediately adjacent to the Proposed Project footprint, construction activities for the ponds, drain interception ditches around the Proposed Project area, and diversion facilities, if they were to occur during the bird breeding season (March through September), could result in destruction of nests and nest abandonment by adults due to direct disturbance or noise and human activity. Nesting birds are protected under the Migratory Bird Treaty Act and Fish and Game Code Section 3503.

Maintenance activities have the potential to disturb bird nesting on the islands and along the berms if such activities occurred during the breeding season. Such disturbances could cause nest abandonment or nest destruction if physical activities occurred on the islands or along the berms. During operations, both pump stations would provide an isolated structure that could be used by some species of birds for resting, roosting, or even nesting. These structures may include deterrents to bird use. If such deterrents are not used or are not effective, maintenance of the

pump stations would intermittently disturb any birds using the structures. Disturbance during the nesting season could result in nest failure for the pairs using the structures.

Invasive plants and animals could be brought into the Proposed Project site on construction and operations/maintenance equipment, including hand tools, as well as vehicles and boots of workers. Invasive terrestrial plants not already present are less likely to be introduced than invasive aquatic plant species. Invasive aquatic animal species are also a concern, particularly in fresh to brackish areas, where they can alter ecological functions by competing for space and food as well as harboring parasites that can affect fish productivity. Several invasive species of snails are known to be present in the Salton Basin and could be transported to the SCH site via equipment operated by local contractors as well as local workers. Invasive species from outside the region could also be brought in on equipment from other areas.

- **Mitigation Measures BIO-2** and **MM BIO-3** apply to disturbance impacts on nesting birds.
- **Mitigation Measure BIO-6: Clean equipment prior to site delivery.** Specifications for ensuring that all equipment, personal gear, and materials brought to the site are clean and free of invasive plants (including seeds) and animals will be included in all construction and maintenance contracts. Equipment, gear, and other materials will be inspected to verify that it is clean.
- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

3.5 Cultural Resources

Impact CR-1: Ground-disturbing activities could change the significance of historical resources, damage unique archaeological resources, disturb human remains, eliminate important examples of the major periods of California history or prehistory, and adversely affect historic properties.

None of the proposed activities would be located in the vicinity of known cultural resources. Therefore, no direct impacts on known cultural resources would occur as a result of construction of this alternative. The Proposed Project would be located in an archaeologically sensitive area, however, and construction activities could encounter cultural resources or human remains associated with the area's historical occupation by both Native Americans and Euroamericans.

- **Mitigation Measure CR-1: Prepare and implement a survey plan and an inadvertent discovery plan.** A plan for the survey of the Proposed Project areas not previously surveyed would be prepared to facilitate identification of cultural resources prior to initiation of ground-disturbing activities. A plan for the inadvertent discovery of cultural resources and human remains also would be prepared and would provide protocols for addressing the discovery of cultural resources and human remains including, but not limited to, monitoring; immediately halting all construction in the vicinity of a discovery; investigation of the discovery by an archaeologist that meets the Secretary of the Interior's Standards and Guidelines for Professional Qualifications in order to evaluate the eligibility of the resources pursuant to California Register of Historic Resources (CRHR) and National Register of

Historic Places (NRHP) criteria; and implementation of California Health and Safety Code section 7050.5, CCR section 15064.5(d) and (e), and, if applicable, 36 CFR part 800.13. Resources considered significant would be avoided or subject to a data recovery program. The data recovery program would be designed in consultation with appropriate state (i.e., Office of Historic Preservation) and Federal agencies and include excavation of an archaeological site to recover any buried artifacts or other data.

- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

3.10 Hazards and Hazardous Materials

Impact HAZ-6: Project construction could release air and dust-borne disease causing viruses.

Earth-moving activities during construction could release air and dust-borne diseases such as valley fever into the air exposing workers.

- **Mitigation Measure HAZ-1: Worker training will be provided to workers who may be exposed to air-borne diseases during excavation activities.** Training will include recognizing symptoms and use of personal protective equipment.
- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

3.15 Paleontological Resources

Impact PALEO-1: Ground-disturbing activities could expose and damage undiscovered paleontological resources.

Based on the records and literature searches, no known paleontological resources have been exposed at the surface within the Proposed Project area. In agricultural areas where the brackish water pipeline would be located, the underlying geology has been disturbed by repetitive plowing and other agricultural activities. Nonetheless, underlying geological formations present in the Proposed Project area are known to have a high sensitivity or potential to exist within the study area, and potential is high that ground-disturbing activities, including pond excavations and brackish water pipeline construction, may expose and damage or remove from their stratigraphic context buried and unknown paleontological resources in the Lake Cahuilla beds and, to a lesser extent, in the Brawley Formation. They could include scientifically useful fossils.

- **Mitigation Measure PALEO-1: Prepare and implement a survey plan and a paleontological monitoring plan.** A plan for the survey of Proposed Project areas will be prepared to facilitate identification of paleontological resources prior to initiation of ground-disturbing activities. Additionally, prior to construction, a certified paleontologist retained by the lead agencies will supervise monitoring of construction excavations and produce a

Paleontological Resource Management Recovery Plan. Paleontological monitoring will include inspection of exposed rock units and microscopic examination of matrix to determine if fossils are present. The monitor will have authority to temporarily divert grading away from exposed fossils to recover the fossil specimens. Monitoring will take place on a full-time basis when construction occurs at depths greater than 5 feet, part-time (4 hours a day) when excavations exceed 2 feet, and on a spot-check basis on excavations less than 2 feet. The paleontologist will document interim results of the construction monitoring program with monthly progress reports. Additionally, at each fossil locality, field data forms will record that locality, stratigraphic columns will be measured, and appropriate scientific samples will be submitted for analysis.

- **Mitigation Measure PALEO-2: Conduct worker training.** Construction supervisors and crew will receive training by a certified paleontologist in the procedures for identifying and protecting paleontological resources, as well as procedures to be implemented in the event fossil remains are encountered during ground-disturbing activities.

- **Mitigation Measure PALEO-3: Prepare and implement a paleontological resource data recovery plan.** If fossils are encountered during construction, construction activities will be temporarily diverted from the discovery, and the monitor will notify all concerned parties and collect matrix for testing and processing as directed by the Proposed Project paleontologist. To expedite removal of fossil-bearing matrix, the monitor will be empowered to request heavy machinery to assist in moving large quantities of matrix out of the path of construction to designated stockpile areas. Construction will resume at the discovery location once all the necessary matrix is stockpiled, as determined by the paleontological monitor. Testing of stockpiles will consist of screen washing small samples to determine if important fossils are present. If such fossils are present, the additional matrix from the stockpiles will be water screened to ensure recovery of a scientifically significant sample. Samples collected will be limited to a maximum of 6,000 pounds per locality.

  The Proposed Project paleontologist will direct identification, laboratory processing, cataloguing, analysis, and documentation of the fossil collections. When appropriate, splits of rock or sediment samples will be submitted to commercial laboratories for microfossil, pollen, or radiometric dating analysis. Prior to construction, the lead agencies will enter into a formal agreement with a recognized museum repository and will curate the fossil collections, appropriate field and laboratory documentation, and the final Paleontological Resource Recovery Report in a timely manner following construction. A final technical report will be prepared to summarize construction monitoring and present the results of the fossil recovery program. The report will be prepared in accordance with Society of Vertebrate Paleontology guidelines and lead agency requirements. The final report will be submitted to the lead agencies and the curation repository.

- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that changes or alterations have been required in, or incorporated into, the Proposed Project, which avoid or substantially lessen the significant environmental effect as identified in the Final EIS/EIR, and as shown in the MMRP.

Potentially Significant Impacts that Cannot be Reduced to a Less Than Significant Level by Mitigation Measures Incorporated into the Proposed Project

The SCH Project EIS/EIR identifies potentially significant impacts that cannot be reduced to a less than significant level by the inclusion of mitigation measures identified in the EIS/EIR as part of proposed project approval. These are therefore significant unavoidable impacts attributable to the proposed project. As described below in the findings for these impacts, there are either no feasible mitigation measures or the feasible mitigation measure(s) would only partially mitigate this significant impact and the residual effect would remain significant.

3.3 Air Quality

Impact AQ-3a: The Project would contribute incrementally to violations of Federal and state ozone (O_3,), and particulate matter less than 10 and 2.5 microns in diameter (PM_{10}, and $PM_{2.5}$) standards, and exceed Imperial County Air Pollution Control District's (ICAPCD) nitrogen oxides (NO_X) and PM_{10} thresholds during construction.

No ambient air quality violations would occur solely due to Proposed Project emissions for any pollutant, although the Proposed Project would incrementally contribute to existing violations of state and Federal air quality standards for O_3, PM_{10}, and $PM_{2.5}$ during construction. These contributions would occur primarily through diesel engine exhaust and fugitive dust emissions during construction activities. Peak daily NO_X and fugitive PM_{10} emissions from on- and off-site sources during construction would exceed ICAPCD's thresholds.

- **MM AQ-1: Implement fugitive PM_{10} control measures**. The following measures will be incorporated into the construction contract specifications in order to reduce PM_{10} emissions from fugitive dust:
  - Water exposed soil with adequate frequency for continued moist soil so that visible dust emissions would be limited to 20 percent opacity for dust emissions at all times (as indicated by soil and air conditions).
  - Replace ground cover in disturbed areas as quickly as possible.
  - Limit vehicle speed for all construction vehicles to 15 miles per hour on any unpaved surface at the construction site.
  - Develop a trip reduction plan to achieve a 1.5 average vehicle ridership for construction employees.
- **MM AQ-2: Implement diesel control measures**. The following measures will be incorporated into the construction contract specifications in order to reduce PM_{10} and NO_x emissions from diesel engines:
  - A schedule of low-emissions tune-ups will be developed and such tune-ups will be performed on all equipment, particularly for haul and delivery trucks.
  - Low-sulfur (≤ 15 ppmw S) fuels will be used in all stationary and mobile equipment.
  - Curtail construction during periods of high ambient pollutant concentrations as directed by the ICAPCD.

- Reschedule activities to reduce short-term impacts to the extent feasible.

- **Finding:** Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make it infeasible for the mitigation measures or Proposed Project alternatives identified in the Final EIS/EIR to reduce this impact to less than significant.

Impact AQ-5: Project construction would result in a cumulatively considerable/significant net increase in emissions.

NO_X and PM_{10} emissions during construction would exceed regulatory thresholds and should other projects considered in the cumulative impact analysis be under construction at the same time, also emitting NO_X and PM_{10}, the cumulative impact would be significant, and the Proposed Project's contribution would be cumulatively considerable/significant.

- **Mitigation Measure AQ-1**: Implement fugitive PM_{10} control measures.
- **Mitigation Measure AQ-2**: Implement diesel control measures

- **Finding**: Based on the EIS/EIR and the entire record before the Natural Resources Agency, the Natural Resources Agency finds that specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make it infeasible for the mitigation measures or Proposed Project alternatives identified in the Final EIS/EIR to reduce this impact to less than significant.

Findings Regarding Alternatives to the Project

In accordance with the CEQA Guidelines, the alternatives considered in the Proposed Project EIS/EIR include those that (1) could accomplish most of the basic objectives of the Proposed Project and (2) could avoid or substantially lessen one or more of the significant effects of the Proposed Project. Additionally, the No Project Alternative (referred to as the No Action Alternative in the EIS/EIR), which is required under CEQA 15126.6(e), was examined. Because the EIS/EIR was a joint NEPA/CEQA document, the alternatives were analyzed at a coequal level. The proposed project was identified as Alternative 3.

All of the alternatives, except for the No Action Alternative, would meet both of the Proposed Project goals (develop a range of aquatic habitats that will support fish and wildlife species dependent on the Salton Sea and develop and refine information needed to successfully manage the SCH Project habitat through an adaptive management process), along with the accompanying objectives. Impacts are generally comparable between alternatives. The primary differences are that those alternatives requiring a brackish water pipeline leading from the rivers (Alternatives 1 and 4) would result in less than significant impacts from the permanent conversion of Important Farmland and significant impacts from the potential conversion of land under Williamson Act contracts for use as a sedimentation basin. More subtle differences result from the acreage that would be restored under each alternative. In general, those alternatives with greater acreage would have greater benefits to resources such as biological resources, aesthetics, recreation, and socioeconomics, but also would result in greater impacts on air emissions, energy demand, transportation impacts, and demand for public services.

Alternative 1 – New River, Gravity Diversion + Cascading Ponds

Alternative 1 would be located at the New River and would use independent and cascading pond units totaling approximately 3,130 acres. A gravity diversion would be used to provide river water to the ponds and would be located approximately 2 miles upstream of the SCH ponds. Alternative 1 would use the large bay to the northeast of the New River (East New) and the shoreline to the southwest (West New).

Finding

As discussed above and in Section 3 of the Draft EIS/EIR, Alternative 3, the proposed project, would result in significant impacts that could be mitigated to less than significant on biological resources, cultural resources, hazards and hazardous materials, and paleontological resources. It would result in significant and unavoidable impacts on air quality during construction. All other impacts would be less than significant or beneficial. Alternative 1 would result in the same impacts as Alternative 3, but it also would require a brackish water pipeline leading from the New River, resulting in a less-than-significant impact from the permanent conversion of Important Farmland and a significant impact from the potential conversion of land under Williamson Act contracts for use as a sedimentation basin.

Alternative 2 – New River, Pumped Diversion

Alternative 2 would be located at the New River and would use independent pond units totaling approximately 2,670 acres. The river diversion would be a pumped diversion located at the SCH site. Alternative 2 would use the large bay to the northeast of the New River (East New), the shoreline to the southwest (West New), and the shoreline continuing west (Far West New).

Finding

As discussed above and in Section 3 of the Draft EIS/EIR, Alternative 3, the proposed project, would result in significant impacts that could be mitigated to less than significant on biological resources, cultural resources, hazards and hazardous materials, and paleontological resources. It would result in significant and unavoidable impacts on air quality during construction. All other impacts would be less than significant or beneficial. Alternative 2 would result in the same impacts as Alternative 3.

Alternative 4 – Alamo River, Gravity Diversion + Cascading Pond

Alternative 4 would be located at the Alamo River and would use independent ponds and a cascading pond unit totaling approximately 2,290 acres. The river diversion would be a gravity diversion located approximately 3.5 miles upstream of the SCH ponds. Alternative 4 would use Morton Bay.

Finding

As discussed above and in Section 3 of the Draft EIS/EIR, Alternative 3, the proposed project, would result in significant impacts that could be mitigated to less than significant on biological resources, cultural resources, hazards and hazardous materials, and paleontological resources. It would result in significant and unavoidable impacts on air quality during construction. All other impacts would be less than significant or beneficial.

Alternative 4 would result in the same types of impacts as Alternative 3, but it also would require a brackish water pipeline leading from the Alamo River, resulting in a less-than-significant impact from the permanent conversion of Important Farmland and a significant impact from the potential conversion of land under Williamson Act contracts for use as a sedimentation basin. It also would result in significant, but mitigable, impacts on aesthetics and noise. All other impacts would be less than significant or beneficial. Alamo River water includes higher levels of selenium than that of the New River. Although impacts from selenium would be less than significant, selenium would have adverse effects on wildlife, and lower levels would be preferable within the SCH ponds. Similarly, the Alamo River area is more geologically active than the New River area (mud pots are present adjacent to and within the Proposed Project area east of the Alamo River in Morton Bay), which could lead to an increased risk of berm failure. Although this impact is not considered significant, it would not be desirable and would result in temporary, but adverse impacts on SCH pond operation. The Alamo River area also is in a Known Geothermal Resource Area and known geothermal resources diminish west of the New River. Although the SCH Project would not preclude geothermal development, the New River area is considered preferable because the potential for conflicts with geothermal development companies would be minimized.

Alternative 5 – Alamo River, Pumped Diversion

Alternative 5 would be located at the Alamo River, would use independent pond units, and would consist of approximately 2,080 acres. The river diversion would be a low-lift pumped diversion located at the SCH pond site. Alternative 5 would use Morton Bay to the northeast of the Alamo River.

Finding

As discussed above and in Section 3 of the Draft EIS/EIR, Alternative 3, the proposed project, would result in significant impacts that could be mitigated to less than significant on biological resources, cultural resources, hazards and hazardous materials, and paleontological resources. It would result in significant and unavoidable impacts on air quality during construction. All other impacts would be less than significant or beneficial.

Alternative 5 would result in the same types of impacts as Alternative 3, but it also would result in significant, but mitigable, impacts on aesthetics and noise. All other impacts would be less than significant or beneficial. Alamo River water includes higher levels of selenium than that of the New River. Although impacts from selenium would be less than significant, selenium would have adverse effects on wildlife, and lower levels would be preferable within the SCH ponds. Similarly, the Alamo River area is more geologically active than the New River area (mud pots are present adjacent to and within the Proposed Project area east of the Alamo River in Morton Bay), which could lead to an increased risk of berm failure. Although this impact is not considered significant, it would not be desirable and would result in temporary, but adverse impacts on SCH pond operation. The Alamo River area also is in a Known Geothermal Resource Area and known geothermal resources diminish west of the New River. Although the Proposed Project would not preclude geothermal development, the New River area is considered preferable because the potential for conflicts with geothermal development companies would be minimized.

Alternative 6 – Alamo River, Pumped Diversion + Cascading Ponds

Alternative 6 would be located at the Alamo River, would use independent and cascading pond units, and would consist of approximately 2,940 acres. The river diversion would be a low-lift pumped diversion located at the SCH pond site. Alternative 6 would use Morton Bay to the northeast of the Alamo River and Wister Beach.

Finding

Alternative 6 would result in the same types of impacts as Alternative 3, but it also would result in significant, but mitigable, impacts on aesthetics and noise. All other impacts would be less than significant or beneficial. Alamo River water includes higher levels of selenium than that of the New River. Although impacts from selenium would be less than significant, selenium would have adverse effects on wildlife, and lower levels would be preferable within the SCH ponds. Similarly, the Alamo River area is more geologically active than the New River area (mud pots are present adjacent to and within the Proposed Project area east of the Alamo River in Morton Bay), which could lead to an increased risk of berm failure. Although this impact is not considered significant, it would not be desirable and would result in temporary, but adverse impacts on SCH pond operation. The Alamo River area also is in a Known Geothermal Resource Area and known geothermal resources diminish west of the New River. Although the Proposed Project would not preclude geothermal development, the New River area is considered preferable because the potential for conflicts with geothermal development companies would be minimized.

No Action Alternative

Under the No Action Alternative, the Corps would not issue a permit for the Proposed Project, and no components of the Proposed Project would be constructed. Other activities are expected to occur that would affect the Salton Sea ecosystem, however, including a variety of actions that could affect inflows to the Salton Sea, such as:

- IID Water Conservation and Transfer Project (and associated required mitigation measures);
- Colorado River Basin Salinity Control Program;
- Mexicali wastewater improvements;
- Mexicali power production;
- Total Maximum Daily Loads implementation;
- Coachella Valley Water Management Plan; and
- Other Quantification Settlement Agreement (QSA) related projects (refer to Section 1 for a discussion of the QSA).

QSA implementation and the related IID Water Conservation and Transfer Project would require several actions affecting the Salton Sea, including air quality management on the playa that would be exposed due to QSA implementation, protection of desert pupfish at the Salton Sea to mitigate QSA impacts, and modification of recreational facilities at the Salton Sea to mitigate QSA impacts.

Finding

The No Action Alternative would not meet either of the Proposed Project goals or any of the objectives. As discussed above and in Section 3 of the Draft EIS/EIR, Alternative 3, the proposed project, would result in significant impacts that could be mitigated to less than significant on biological resources, cultural resources, hazards and hazardous materials, and paleontological resources. It would result in significant and unavoidable impacts on air quality during construction. Other impacts would be less than significant.

The No Action Alternative would avoid all of the significant and less than significant impacts of the proposed project, but it also would avoid all of the beneficial impacts. Declining inflows in future years from various factors will result in collapse of the Salton Sea ecosystem due to increasing salinity and other water quality issues, such as temperature, eutrophication, and related anoxia and algal productivity, resulting in adverse impacts on aesthetics, air quality, biological resources, and recreation.

Summary of Overriding Considerations

Section 15093 of the CEQA Guidelines establishes the following requirements for a Statement of Overriding Considerations:

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological or other benefits including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological or other benefits including region-wide or statewide environmental benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects that are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination.

. . .

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, the Natural Resources Agency adopts and makes the following Statement of Overriding Considerations regarding the remaining unavoidable impacts of the proposed project and the anticipated economic, legal, social, technological, environmental, and other benefits of the proposed project.

In considering the proposed project, the Natural Resources Agency has weighed the benefits of the proposed project against the adverse impacts identified in the Final EIS/EIR, including the significant impacts that cannot be avoided or substantially lessened through mitigation to less than significant levels. The Natural Resources Agency hereby determines that the benefits of the proposed project outweigh any adverse impacts that cannot be mitigated to less than significant levels, and that the proposed project should be approved. The Natural Resources Agency also finds that to the extent that the identified significant or potentially significant adverse impacts cannot be avoided or substantially lessened, there are specific economic, legal, social, technological, or other considerations, which support approval of the Proposed Project.

Benefits of the Proposed Project

The proposed project would result in beneficial impacts on aesthetics, air quality (long-term reduction in fugitive dust emissions by covering exposed playa), biological resources, and recreation.

Aesthetics

The SCH ponds would enhance the scenic quality and character of the site and surrounding areas. The SCH ponds would be constructed in areas that are currently or were recently submerged. The ponds and nesting islands are considered a more aesthetically pleasing setting than the exposed playa that would be present when construction began. The SCH ponds are intended to provide habitat for birds, which also would contribute to the area's scenic qualities.

Air Quality

The SCH ponds would reduce fugitive dust emissions around the Salton Sea by covering otherwise exposed playa with water. Due to the water that would be diverted to the SCH ponds instead of flowing directly to the Salton Sea and the differential evaporation rates between the Salton Sea and the SCH ponds, by 2077, the Proposed Project would reduce the Salton Sea's depth by 5.1 percent, and its water surface elevation would be about 1.0 foot lower as a result of the SCH diversions. Nonetheless, by 2077, the SCH ponds would cover 1,150 more acres of playa than would be exposed as a result of the Proposed Project.

Biological Resources

The Salton Sea currently supports a wide variety of bird species and a limited aquatic community. Without restoration, however, declining inflows in future years will result in the Sea's ecosystem collapse due to increasing salinity (expected to exceed 60 ppt by 2018, which is too saline to support fish) and other water quality stresses, such as temperature extremes, eutrophication, and related anoxia due to algal productivity. The proposed project would restore up to 3,770 acres of shallow water habitat, and thus would benefit fish and wildlife dependent on the Salton Sea by providing suitable habitat, including appropriate water quality parameters and features such as shallow water and constructed islands that would provide predator protection for resting and nesting, and food sources, including fish and aquatic invertebrates.

The Salton Sea is projected to become unsuitable for desert pupfish (*Cyprinodon macularius*), a federally and state-listed endangered species, when salinity reaches about 90,000 mg/L. The SCH ponds would provide additional habitat for desert pupfish after the Salton Sea exceeds their

water quality tolerances. Isolated populations would remain where the drains and tributaries (rivers and several streams) enter the Salton Sea, but the ponds would provide approximately 3,770 acres of habitat with suitable water quality. In addition, the population in the drains entering the interception ditches would be permanently connected.

The proposed project may result in changes to the invertebrate food base for species that rely on invertebrate food. If that occurs, it would be a beneficial impact for such species by providing foraging opportunities that may not exist under future conditions. The proposed project would replace that temporary loss with equal or greater shoreline and provide a food source that may not exist in the future. For piscivorous birds, the proposed project would provide fish as a food source as conditions in the Salton Sea degrade to a point where fish populations cannot be sustained except in small areas at the drain and river outflows. The amount of fish provided, however, would be considerably less than that currently in the Salton Sea and would support a smaller number of piscivorous birds. Consequently, after the Salton Sea's salinity exceeds the tolerance of the fish species used by the birds, the proposed project would be the primary source of forage fish at the Salton Sea, and the piscivorous bird populations would likely decline to match the more limited availability of food sources.

Although construction of berms and other facilities would result in a small loss of Waters of the U.S. (approximately 24 acres), an overall increase of 1,986 acres would occur under the proposed project, along with improved quality of Waters of the U.S. (this acreage takes into consideration the temporary disturbance of Waters of the U.S. that would occur during construction [approximately 1,760 acres]).

The SCH ponds are specifically designed to attract American white pelican (*Pelecanus erythrorhynchos*), Caspian tern (*Hydroprogne caspia*), double-crested cormorant, (Phalacrocorax auritus), black skimmer (*Rynchops niger*), and gull-billed tern (*Gelochelidon nilotica*), of which gull-billed tern and black skimmer are special-status species. The SCH ponds also would benefit other bird species, such as the eared grebe (*Podiceps nigricollis*), western snowy plover (*Charadrius alexandrinus nivosus*), ruddy duck (*Oxyura jamaicensis*), black tern (*Chlidonias niger*), and California brown pelican (*Pelecanus occidentalis*). The habitat provided would include the shallow water they require for foraging, a food source, and constructed islands that would provide predator protection for nesting upon completion of construction, which would increase the amount of habitat for these species. The addition of islands protected from predators and a food source for piscivorous birds is a beneficial impact of the proposed project.

The proposed project would benefit fish and aquatic invertebrates by restoring habitat that is more stable than the Salton Sea's and with salinity near that of seawater.

Recreation

The Proposed Project would create recreational opportunities at the pond sites (beneficial impact). The Proposed Project is not specifically designed to accommodate recreation because the provision of recreational opportunities is not a Proposed Project goal. Nevertheless, some recreational activities would be available to the extent that they are compatible with the management of the SCH ponds as habitat for piscivorous (fish-eating) birds dependent on the Salton Sea.

Public access would be allowed to facilitate day use, hiking, bird-watching, and non-motorized watercraft use. However, management plans may require that certain areas be seasonally closed to human activities to avoid disturbance of sensitive birds. When bird nesting was observed by SCH managers, human approach would be limited by posted signs. Hours of public access could be restricted to early morning during hot weather when nesting birds are present.

Fish would not be intentionally stocked for the purpose of providing angling opportunities. Nevertheless, such opportunities may be provided at the SCH ponds, in particular for tilapia. Fish populations would be monitored as a metric of the Proposed Project's success. If populations became well established and appeared to provide fish in excess of what birds were consuming, angling would be allowed.

Waterfowl hunting would be allowed consistent with the protection of other avian resources. This would not be substantially different than the conditions that currently exist, and would be better than what would occur in the future.

Adoption of Overriding Considerations

The Natural Resources Agency specifically adopts this Statement of Overriding Considerations and finds that: (a) as part of the approval provisions, the proposed project has eliminated or substantially lessened all significant effects on the environment where feasible, and (b) the remaining unavoidable impacts of the proposed project are acceptable in light of the environmental and other considerations set forth herein, because the benefits of the proposed project outweigh the significant and adverse impacts of the proposed project, as noted below.

The Final EIS/EIR concludes that the proposed project would result in the following significant and unavoidable impacts as summarized below:

1. The proposed project would contribute incrementally to violations of Federal and state ozone (O_3,), and particulate matter less than 10 and 2.5 microns in diameter (PM_{10}, and PM_2.) standards, and exceed ICAPCD's NO_X and PM_{10} thresholds during construction.

The Final EIS/EIR concludes that the proposed project would result in the following cumulatively significant and unavoidable impacts as summarized below:

2. Project construction would result in a cumulatively considerable/significant net increase in emissions.

The proposed project cannot be implemented in a way that accomplishes the basic Proposed Project objectives without resulting in direct construction impacts on air emissions. As discussed in Findings, above, all significant impacts have mitigation measures associated with them. For all but two of these issues, the mitigation measures will reduce the impacts to less than significant. The Natural Resources Agency finds that the overall benefit of the proposed project to biological resources, long-term air quality, aesthetics, and recreation outweighs these environmental impacts. These benefits, as described above, are overriding considerations warranting approval of the proposed project. These matters are supported by substantial evidence in the record which will be maintained at the Office of the Secretary: Heather Baugh, Assistant General Counsel, California Natural Resources Agency, 1416 9th Street, Suite 1311 Sacramento CA 95814.

I adopt the Statement of Overriding Considerations.

John Laird 8/5/13

John Laird, Secretary for Natural Resources — Date

California Natural Resources Agency

Adoption of CEQA Findings

I adopt the Statement of Findings. To the extent that these findings conclude that various mitigation measures are feasible and within the Natural Resources Agency's responsibility and jurisdiction, I have directed Department of Fish and Wildlife to implement these measures, thereby incorporating them as part of the Proposed Project.

John Laird 8/5/13

John Laird, Secretary for Natural Resources — Date

California Natural Resources Agency

EXHIBIT C

Mitigation Monitoring and Reporting Program

ATTACHMENT 4

MITIGATION MONITORING AND REPORTING PROGRAM

1.1 INTRODUCTION

Both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) require the implementation of a monitoring program to ensure that mitigation measures included in an Environmental Impact Statement (EIS) or Environmental Impact Report (EIR) are being implemented as described in their respective documents. Under NEPA, the regulations require that "a monitoring and enforcement program shall be adopted...where applicable for mitigation" (40 CFR section 1505.2(c). In addition, the regulations state that agencies may "provide for monitoring to assure that their decisions are carried out and should do so in important cases" (40 CFR section 1505.3). Monitoring plans and programs should be described or incorporated by reference in the agency decision documents. Under CEQA, a public agency is required to adopt a program for monitoring or reporting on the changes to a project that it has required and the measures it has imposed to mitigate or avoid significant environmental impacts (CEQA Guidelines section 15097; refer also to CEQA Guidelines section 15091(d) and section 21081.6 of the California Public Resources Code).

This Mitigation Monitoring and Reporting Program (MMRP), which is included as part of the Final EIS/EIR for the Salton Sea Species Conservation Habitat Project (SCH Project), includes a list of mitigation measures that would be implemented if the preferred alternative were approved and implemented and describes the process whereby the mitigation measures would be monitored.

1.2 OVERVIEW OF THE CORPS' PREFERRED ALTERNATIVE / CALIFORNIA NATURAL RESOURCES AGENCY'S PROPOSED PROJECT

The preferred alternative/least environmentally damaging practicable alternative/proposed project (Alternative 3 in the Draft EIS/EIR) would create approximately 3,770 acres of shallow ponds, contained within low berms, on either side of the New River at elevations less than -228 feet mean sea level. The ponds would be supplied with a combination of brackish and saline water. This water would be pumped from the New River and Salton Sea, respectively, and blended to maintain an appropriate salinity range. The SCH Project is designed as a "proof-of-concept" project in which several Project features, characteristics, and operations could be tested under an adaptive management framework. The proof-of-concept period would last for approximately 10 years after completion of construction. By that time, managers would have had time to identify those management practices that best meet the Project goals. After the proof-of-concept period, the Project would be operated until the end of the 75-year period covered by the Quantification Settlement Agreement (2078) or until funding were no longer available. The SCH ponds would be constructed and operated by the California Department of Fish and Wildlife (DFW), on behalf of the California Natural Resources Agency, who would be responsible for ensuring that mitigation measures are implemented prior to, during, and after construction of the Project. If another alternative is selected by the decision makers, or if Alternative 3 is modified as part of the approval process, this MMRP will be updated to ensure that all applicable mitigation measures are implemented.

1.3 MITIGATION MONITORING AND REPORTING PROGRAM

The categories identified in the MMRP are described below:

- **Mitigation Measure.** This column provides the text of the mitigation measures identified in the Draft EIS/EIR.

- **Timing/Schedule.** This column lists the time frame in which the mitigation would take place.
- **Implementation/Monitoring Method.** This column identifies the methods that would be used to ensure that the mitigation measure is implemented correctly.
- **Responsible Entity.** This column identifies the entity or entities responsible for complying with the requirements of the mitigation measure.
- **Check-Off.** This column is for verifying compliance and is to be dated and initialed by the responsible entity.

SCH Project Mitigation Monitoring and Reporting Program

Mitigation Measure	Timing/Schedule	Implementation/ Monitoring Method	Responsible Entity	Check-Off
Air Quality				
Mitigation Measure AQ-1: Implement fugitive PM_{10} control measures. The following measures will be incorporated into the construction contract specifications in order to reduce PM_{10} emissions from fugitive dust: ▪ Water exposed soil so that visible dust emissions would be limited to 20 percent opacity for dust emissions at all times (as indicated by soil and air conditions). ▪ Replace ground cover in disturbed areas as quickly as possible. ▪ Limit vehicle speed for all construction vehicles to 15 miles per hour on any unpaved surface at the construction site. ▪ Develop a trip reduction plan to achieve a 1.5 average vehicle ridership for construction employees.	Prior to and during construction.	DFW shall confirm measures are incorporated into the contract specifications; DFW or designated monitor shall confirm compliance by monitoring during construction.	DFW Project Manager and/or designated monitor.	Initials: Date:
Mitigation Measure AQ-2: Implement diesel control measures. The following measures will be incorporated into the construction contract specifications in order to reduce PM_{10} and NO_x emissions from diesel engines: ▪ A schedule of low-emissions tune-ups will be developed and such tune-ups will be performed on all equipment, particularly for haul and delivery trucks. ▪ Ultra-low-sulfur (≤ 15 ppmw S) fuels will be used in all stationary and mobile equipment. ▪ Curtail construction during periods of high ambient pollutant concentrations as directed by the ICAPCD. ▪ Reschedule activities to reduce short-term impacts to the extent feasible.	Prior to and during construction.	DFW shall confirm measures are incorporated into the contract specifications; DFW or designated monitor shall confirm compliance by monitoring during construction.	DFW Project Manager and/or designated monitor.	Initials: Date:
Biological Resources				
Mitigation Measure BIO-1: Prepare and implement a desert pupfish protection and relocation plan. This plan is applies primarily to construction and maintenance of the drain interception ditches but will also apply to pond construction and maintenance activities as noted and will provide:	Prior to and during construction and maintenance.	DFW shall confirm preparation of the plan. DFW or designated monitor shall confirm compliance by monitoring during construction and maintenance.	DFW Project Manager and/or designated monitor.	Initials: Date:

1. Protocols for preconstruction or premaintenance surveys to assess species presence and spawning within or immediately adjacent to work areas (e.g., in the drains/drain channels, along the shoreline if construction is in the "wet," and around the pond margins for maintenance); 2. Capture (e.g., trapping in the drains for construction and maintenance; or trapping, dip netting, and seining in the ponds if drained or if the water level is dropped) and transport methods to minimize handling and stress as well as exposure to heat, low DO, and crowding; 3. Identification of locations for release of captured desert pupfish; 4. Timing windows when construction or maintenance in shallow shoreline areas and in the drain mouths/channels may be conducted with minimal effects on desert pupfish spawning; 5. Protocols for maintenance activities in the drain interception ditches, such as a rotating schedule to ensure only a portion of the channel is maintained at one time, clearing only part of the vegetation at one time, and timing of maintenance to avoid peak spawning; 6. Maintenance protocol for the 1/8-inch mesh screen on the saline water intake until salinity reaches 68 ppt; and 7. Adaptive management procedures that include assessment of mitigation measure effectiveness, development of revised measures to improve effectiveness, and similar assessment of revised measures to verify effectiveness. All desert pupfish mitigation measures will be in conformance with the Biological Opinion from USFWS for the Project.				
Mitigation Measure BIO-2: Prepare and implement a preconstruction/maintenance survey plan for bird species. The plan will include preparation of suitable habitat maps that are updated periodically to focus survey locations as well as survey methods consistent with current science and regulations. Adaptive management measures will also be included in the plan.	Prior to and during construction and maintenance.	DFW shall confirm preparation of the plan. DFW or designated monitor shall confirm implementation of plan prior to construction and maintenance.	DFW Project Manager and/or designated monitor.	Initials: Date:
Mitigation Measure BIO-3: Conduct noise calculations/measurements and implement noise attenuation measures, if needed. Based on equipment specifications, calculate or measure the distance from equipment where noise would be greater than or equal to 60 A-weighted decibels (dBA) equivalent sound level (L_{eq}). This would also include multiple noise sources, if applicable. Then, use that distance to determine	Prior to and during construction and maintenance.	DFW shall confirm noise measurements and work schedule. DFW or designated monitor shall confirm compliance by monitoring during construction and maintenance.	DFW Project Manager and/or designated monitor.	Initials: Date:

where noise could exceed 60 dBA L_{eq} within known or potential nesting habitat adjacent to the Project footprint. If any such overlaps occur, schedule work to avoid the breeding season in those areas. If construction must occur during the breeding season at those sites, monitor nesting activity to determine if any effects are occurring. If effects are observed, implement noise attenuation measures such as noise walls and hay bales. Monitor the noise and bird behavior to verify that attenuation measures are successful. Develop and implement additional protection measures if monitoring shows that impacts are still occurring. If noise would be less than 60 dBA L_{eq}, no additional measures are required. (Note: The threshold of 60 dBA L_{eq} used here to protect bird nesting is a conservative estimate of the level above which adverse effects could occur. The actual threshold varies by species and type of noise.)				
Mitigation Measure BIO-4: Design interception ditches to avoid alteration of water levels in adjacent marshes. Design of the interception ditches will balance local surface and subsurface water movement so that the amount of water in adjacent marshes is not affected. Implementation of MM BIO-4 would avoid impacts on adjacent marsh habitat for nesting birds.	During Project design.	DFW shall confirm design; specifications shall be included in final construction plans.	DFW Project Manager.	Initials: Date:
Mitigation Measure BIO-5: Prepare and implement a Habitat Protection, Mitigation, and Restoration Program. Plan preparation will be complete prior to commencement of construction. The restoration program will address the following considerations: 1. Avoidance of sensitive and riparian habitats to the greatest extent feasible, including avoidance of disturbances in or near these habitats during the bird breeding season. 2. Quantifying maximum area of naturally occurring plant communities that could be temporarily and permanently removed for construction of Project facilities, by plant community. 3. Restoration at a minimum rate of 1:1 for nonnative plant communities (i.e., tamarisk woodland or scrub) and 3:1 for native plant communities temporarily removed during Project construction, or as required in Project permits. Habitats restored at 1:1 will be preferentially restored where they were removed, unless it is infeasible or a more desirable off-site location is identified. Species to be used in restoration may include either those that were removed or native species that occur or occurred naturally in the Project area and are suitable	Prior to construction.	DFW shall confirm preparation of the plan. DFW or designated monitor to confirm implementation of plan and that performance criteria are met.	DFW Project Manager and/or designated monitor.	Initials: Date:

to the site. If native species are used to replace nonnative species, mitigation ratios can be reduced. For restoration of tamarisk temporarily removed, natural colonization of the disturbed area is likely to occur and no planting may be needed. The area would still be monitored to document restoration. Permanently removed riparian habitat within the pond area would be replaced by aquatic habitat of equal surface area with a similar or greater ecological value. 4. Identification of locations for on- and off-site restoration, including funding for land purchases and/or easements and agreements with property owners to complete the restoration. 5. Use of only local native seed (or propagule) sources for native species used in restoration. 6. Details on propagation, planting/seeding, irrigation, maintenance (including weed control for species that could interfere with restoration), site access, remedial measures, monitoring, reporting, and photo-documentation. These details will be specific to each site if more than one planting area or type is addressed in the plan. 7. Performance criteria to be met for each habitat type being restored. 8. Monitoring, with a funding source, until performance criteria are met, which may be for a minimum of 5 years.				
Mitigation Measure BIO-6: Clean equipment prior to site delivery. Specifications for ensuring that all equipment, personal gear, and materials brought to the site are clean and free of invasive plants (including seeds) and animals will be included in all construction and maintenance contracts. Equipment, gear, and other materials will be inspected to verify that it is clean.	Prior to and during construction, operation, and maintenance.	Specification shall be included in all construction and maintenance contracts. DFW or designated monitor shall confirm compliance by monitoring during construction, operations, and maintenance.	DFW Project Manager and/or designated monitor.	Initials: Date:
Cultural Resources				
Mitigation Measure CR-1: Prepare and implement a survey plan and an inadvertent discovery plan. A plan for the survey of Project areas not previously surveyed would be prepared to facilitate identification of cultural resources prior to initiation of ground-disturbing activities. A plan for the inadvertent discovery of cultural resources and human remains also would be prepared and would provide protocols for addressing the discovery of cultural resources and human remains including, but not limited to, monitoring; immediately halting all construction in the vicinity of a discovery; investigation of the discovery by an archaeologist that meets the	Prior to and during construction.	DFW shall confirm preparation of the plan. DFW or designated monitor shall confirm compliance by monitoring during ground-disturbing activities.	DFW Project Manager and/or designated monitor.	Initials: Date:

Secretary of the Interior's Standards and Guidelines for Professional Qualifications in order to evaluate the eligibility of the resources pursuant to CRHR and NRHP criteria; and implementation of California Health and Safety Code section 7050.5, CCR section 15064.5(d) and (e), and, if applicable, 36 CFR part 800.13. Resources considered significant would be avoided or subject to a data recovery program. The data recovery program would be designed in consultation with appropriate state (i.e., Office of Historic Preservation) and Federal agencies and include excavation of an archaeological site to recover any buried artifacts or other data.				
Hazards and Hazardous Materials				
Mitigation Measure HAZ-1: Worker training will be provided to workers who may be exposed to air-borne diseases during excavation activities. Training will include recognizing symptoms and use of personal protective equipment.	Prior to and during construction.	DFW shall confirm the preparation of the plan. DFW or designated monitor shall confirm prior to and during construction.	DFW Project Manager and/or designated monitor.	Initials: Date:
Paleontological Resources				
Mitigation Measure PALEO-1: Prepare and implement a survey plan and a paleontological monitoring plan. A plan for the survey of Project areas will be prepared to facilitate identification of paleontological resources prior to initiation of ground-disturbing activities. Additionally, prior to construction, a certified paleontologist retained by the lead agencies will supervise monitoring of construction excavations and produce a Paleontological Resource Management Recovery Plan. Paleontological monitoring will include inspection of exposed rock units and microscopic examination of matrix to determine if fossils are present. The monitor will have authority to temporarily divert grading away from exposed fossils to recover the fossil specimens. Monitoring will take place on a full-time basis when construction occurs at depths greater than 5 feet, part-time (4 hours a day) when excavations exceed 2 feet, and on a spot-check basis on excavations less than 2 feet. The paleontologist will document interim results of the construction monitoring program with monthly progress reports. Additionally, at each fossil locality, field data forms will record that locality, stratigraphic columns will be measured, and appropriate scientific samples will be submitted for analysis.	Prior to and during construction.	DFW shall confirm preparation of the plan. DFW or designated monitor shall confirm compliance by monitoring during ground-disturbing activities.	DFW Project Manager and/or designated monitor.	Initials: Date:
Mitigation Measure PALEO -2: Conduct worker training. Construction supervisors and crew will receive training by a certified paleontologist in the procedures for identifying and protecting paleontological resources, as well as procedures to be	Prior to construction.	DFW or designated monitor shall confirm compliance by verifying worker training.	FW Project Manager and/or designated monitor.	Initials: Date:

implemented in the event fossil remains are encountered during ground-disturbing activities.				
Mitigation Measure PALEO -3: Prepare and implement a paleontological resource data recovery plan. If fossils are encountered during construction, construction activities will be temporarily diverted from the discovery, and the monitor will notify all concerned parties and collect matrix for testing and processing as directed by the Project paleontologist. To expedite removal of fossil-bearing matrix, the monitor will be empowered to request heavy machinery to assist in moving large quantities of matrix out of the path of construction to designated stockpile areas. Construction will resume at the discovery location once all the necessary matrix is stockpiled, as determined by the paleontological monitor. Testing of stockpiles will consist of screen washing small samples to determine if important fossils are present. If such fossils are present, the additional matrix from the stockpiles will be water screened to ensure recovery of a scientifically significant sample. Samples collected will be limited to a maximum of 6,000 pounds per locality. The Project paleontologist will direct identification, laboratory processing, cataloguing, analysis, and documentation of the fossil collections. When appropriate, splits of rock or sediment samples will be submitted to commercial laboratories for microfossil, pollen, or radiometric dating analysis. Prior to construction, the lead agencies will enter into a formal agreement with a recognized museum repository and will curate the fossil collections, appropriate field and laboratory documentation, and the final Paleontological Resource Recovery Report in a timely manner following construction. A final technical report will be prepared to summarize construction monitoring and present the results of the fossil recovery program. The report will be prepared in accordance with SVP guidelines and lead agency requirements. The final report will be submitted to the lead agency and the curation repository.	Prior to and during construction.	DFW shall confirm preparation of the plan. DFW or designated monitor shall confirm compliance by monitoring during ground-disturbing activities.	DFW Project Manager and/or designated monitor.	Initials: Date: