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These Findings of Facts (Findings) apply to the Order as amended and include Construction Packages (CPs) 1a, 1b, 1c and 1d. Since these CPs cover both the Merced to Fresno and the Fresno to Bakersfield Project sections, the environmental documents and other supporting materials prepared for both are considered in Part C below.

A. Environmental Review

On May 3, 2012, the California High Speed Rail Authority (HSRA), as lead agency, certified a Final Environmental Impact Report (FEIR) (State Clearinghouse (SCH) No. 2009091125)) for the Merced to Fresno section of the California High Speed Train Project, and filed a Notice of Determination (NOD) at the SCH on May 3, 2012.

On May 8, 2014, the HSRA, as lead agency, certified a Final Environmental Impact Report (FEIR) (State Clearinghouse (SCH) No. 2009091125)) for the Fresno to Bakersfield section of the California High Speed Train Project and filed a Notice of Determination (NOD) at the SCH on May 3, 2012.

The State Water Board is a responsible agency under CEQA (Pub. Resources Code, § 21069) and in making its determinations and findings, must presume that HSRA's certified environmental documents comport with the requirements of CEQA and are valid. (Pub. Resources Code, § 21167.3). The State Water Board has reviewed and considered these environmental documents prepared by HSRA and finds that the documents address the Project's water resource impacts for CP 1a, 1b, 1c and 1d. (Cal. Code Regs., tit. 14, § 15096, subd. (f).) The environmental documents include the mitigation monitoring and reporting programs (MMRP) developed by HSRA for all mitigation measures that have been adopted for these CPs for the Project to reduce potential significant impacts. (Pub. Resources Code, § 21081.6, subd. (a)(1); Cal. Code Regs., tit. 14, § 15091, subd. (d).)

B. Incorporation by Reference

Pursuant to CEQA, these Findings support the issuance of this Order as amended based on the Project FEIRs cited above, the applications and other supporting materials submitted for this Order.

For the Merced to Fresno section of the Project (CP 1a, CP 1b, and CP 1d) all CEQA project impacts and mitigation measures, including those discussed below, are analyzed in greater detail in the Project Final EIR (M-F FEIR/FEIS), which is incorporated herein by reference. The M-F FEIR/FEIS is available at:

http://www.hsr.ca.gov/Programs/Environmental_Planning/final_merced_fresno.html

Project mitigation measures and reporting responsibilities are summarized in the Merced to Fresno Mitigation Monitoring and Reporting Plan (MMRP) (see section F below).

For the Fresno to Bakersfield CP1c section of the Project, all CEQA project impacts and mitigation measures, including those discussed below, are analyzed in greater detail in the Project Final EIR (F-B FEIR/FEIS), which is incorporated herein by reference. The F-B FEIR/FEIS is available at:

http://www.hsr.ca.gov/Programs/Environmental_Planning/final_fresno_bakersfield.html

Project mitigation measures and reporting responsibilities are summarized in the Fresno to Bakersfield Mitigation Monitoring and Reporting Plan (MMRP) dated May, 2014.

The Program EIR, which includes analyses of broad statewide HST impacts and serves as a first tier document for the M-F FEIR/FEIS and the F-B FEIR/FEIS, is available at:
http://www.hsr.ca.gov/docs/programs/eir-eis/brdmtg1105_item7_8mitigation.pdf

Also incorporated by reference into these Findings is High Speed Rail Authority's (HSRA) applications for this Order as amended with all attachments, which include detailed project maps, a detailed project descriptions, copies of information provided to other resource agencies, compensatory mitigation ratio-setting methodologies, and other supporting information. Supporting information includes the following technical reports:

Merced - Fresno Section

All documents listed below for Merced to Fresno may be found at:

http://www.hsr.ca.gov/Programs/Environmental_Planning/final_merced_fresno.html

Biological Assessment, November 2011.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_Biological_Assess.pdf

Biological Resources and Wetlands Technical Report, April 2012.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_Biological_Wetlands.pdf

U.S. Fish & Wildlife Service Biological Resources and Wetlands Technical Report Appendices A – F, June 2011.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_Biological_WetlandsA-F.pdf

San Joaquin River Crossing Design Refinement – Merced to Fresno Section, December 2011.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_SanJoaq_CrossMemo.pdf

Stormwater Management Plan, April 2012.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_Stormwater_Plan.pdf

Wetlands Delineation Report, April 2012.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_Wetland_Deliniate.pdf

Wetland Delineation Report-Appendices A – K, November 2010.

http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_TR_WetlndDelin_ApnA-K.pdf

Fresno – Bakersfield Section

All documents listed below for Merced to Fresno may be found at:

http://www.hsr.ca.gov/Programs/Environmental_Planning/final_fresno_bakersfield.html

U.S. Fish and Wildlife Service Biological Opinion, April 2014.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USFWS_Biological_Opinion.pdf

Biological Resources and Wetlands Technical Report, July 2012.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_BiologicalResources.pdf

Hydrology and Water Resources Technical Report, July 2012.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_Hydrology.pdf

USACE Preliminary Jurisdiction Determination (2013) Part 1 of 5, February 2013¹

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USACE_Prelim_Jurisdictional_Determination_Part1of5.pdf

USACE Preliminary Jurisdiction Determination (2013) Part 2 of 5, February 2013.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USACE_Prelim_Jurisdictional_Determination_Part2of5.pdf

USACE Preliminary Jurisdiction Determination (2013) Part 3 of 5, February 2013.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USACE_Prelim_Jurisdictional_Determination_Part3of5.pdf

USACE Preliminary Jurisdiction Determination (2013) Part 4 of 5, February 2013.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USACE_Prelim_Jurisdictional_Determination_Part4of5.pdf

USACE Preliminary Jurisdiction Determination (2013) Part 5 of 5, February 2013.

http://www.hsr.ca.gov/docs/programs/fresno-baker-eir/final_ERIS_FresBaker_Tech_USACE_Prelim_Jurisdictional_Determination_Part5of5.pdf

Requirements under the purview of the State Water Board in the MMRP are incorporated herein by reference.

¹ All five parts of the jurisdictional determination reports prepared by URS, HMM, Arup Joint Venture.

C. Findings

The M-F and F-B FEIR/FEISs cited above describe the potential significant environmental effects to water resources. In the following discussion, similar impacts occurring in both M-F and F-B project sections are considered together. Having considered the whole of the record, the State Water Board makes the following findings:

1. Findings regarding impacts that will be mitigated to a less than significant level. (Pub. Resources Code, § 21081, subd. (a)(1); Cal. Code Regs., tit. 14, § 15091, subd. (a)(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 FEIR.

a.i. Potential Significant Impact: M-F BIO IMPACT #1, Introduction of Noxious Weeds, and F-B BIO IMPACT #1, Construction Impacts on Special Status Plant Species .

M-F BIO IMPACT #1. The M-F FEIR/FEIS concludes that ground disturbance associated with grading and construction Project may result in introduction of noxious weeds, or invasive or non-native plant species (“weeds”). In addition, movement of personnel, equipment and materials can spread weed propagules. According to the M-F FEIR/FEIS, introduction of weeds is a significant impact under CEQA. Weed dispersal or establishment in any part of the Project area would potentially affect watershed function and lead to colonization by weed populations in waters of the state.

F-B- BIO IMPACT #1. The F-B FEIR/FEIS concludes that Indirect impacts on special-status plant species and native plant species would potentially include erosion, siltation, and runoff into natural and constructed watercourses; soil and water contamination from construction equipment leaks; construction dust affecting plants by reducing their photosynthetic capability (especially during flowering periods); and an increased risk of fire. These impacts are minimal for CP1c due to the highly developed urban and suburban setting of that portion of the project area.

a.ii. Facts in Support of Finding: Mitigation measures M-F Bio-MM#4 and 5 for noxious weeds as described in the M-F FEIR/FEIS, and mitigation measures F-B BIO-MM 1-17 and 53 for special status and native plant species, as described in the F-B FEIR/FEIS, are proposed to address these impacts. These measures require implementation of various BMPs that are widely accepted as the feasible and effective for weed control and management, and for protection of special status plant species.

M-F FEIR/FEIS Measures for noxious weeds include:

- BIO-MM#4. Prepare and Implement a Weed Control Plan
- BIO-MM#5. Prepare and Implement Biological Resources Management Plan

F-B FEIR/FEIS Measures for special status and native plant species include:

- BIO-MM#1. Designate Project Biologist(s), Regulatory Specialist (Waters), Project Botanist, and Project Biological Monitor(s).
- BIO-MM#2. Regulatory Agency Access.
- BIO-MM#3. Prepare and Implement a Worker Environmental Awareness Program.
- BIO-MM#4. Prepare and Implement a Weed Control Plan and Annual Vegetation Management Plan.

- BIO-MM#5. Prepare and Implement a Biological Resources Management Plan.
- BIO-MM#6. Prepare and Implement a Restoration and Revegetation Plan.
- BIO-MM#7. Delineate Environmentally Sensitive Areas and Environmentally Restricted Areas (on plans and in-field).
- BIO-MM#9. Equipment Staging Areas.
- BIO-MM#11. Vehicle Traffic.
- BIO-MM#13. Work Stoppage.
- BIO-MM#14. Take Notification and Reporting.
- BIO-MM#15. Post-Construction Compliance Reports.
- BIO-MM#16. Conduct Preconstruction Surveys for Special-Status Plant Species and Special-Status Plant Communities.
- BIO-MM#17. Prepare and Implement Plan for Salvage, Relocation, and/or Propagation of Special-Status Plant Species.
- BIO-MM#53. Compensate for Impacts on Special-Status Plant Species.

These measures are consistent with good construction management and ecological restoration practice and are likely to result in eventual restoration of sites disturbed by Project activity. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4 and 5, are adequate to reduce impacts due to noxious weed dispersal and colonization to a less than significant level.

As concluded in the HSRA's findings for the F-B EIR, implementation of the proposed mitigation measures BIO-MM-#1 - 17 will reduce impacts to special status plants to less than significant. These mitigation measures, as presented in the M-F and F-B MMRPs, are incorporated by reference in the Order.

b.i. Potential Significant Impact: M-F BIO IMPACT #2, Disturbance of Great Valley Mixed Riparian Forest and Other Riparian Habitat

Construction of the Project would disturb Great Valley mixed riparian forest and other riparian habitat. The M-F FEIR/FEIS concludes that riparian communities would be impacted by the Project, including over 39 acres of Great Valley mixed riparian forest, Central Coast arroyo willow riparian forest, Great Valley riparian scrub, and Great Valley oak riparian forest. Riparian forests and habitats support water quality and the beneficial uses of waters of the state. According to the M-F FEIR/FEIS, disturbance of these areas, even temporarily, significantly affect a wide range of aquatic resource functions and beneficial uses such as rare species (RARE).

b.ii. Facts in Support of Finding: The M-F FEIR/FEIS and MMRP describe six mitigation measures which would reduce the level of this impact: Bio-MM-#4, 5, 6, 8 10 and 15 (described in Section H, Table A). These measures constitute common and accepted avoidance and minimization measures, and will provide for adequate restoration of unavoidable temporary impacts to aquatic resources when implemented. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 5, 6, 8, 10, and 15 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

c.i. Potential Significant Impact: M-F BIO IMPACT #4, Disturbance of Potential Vernal Pool Branchiopod Habitat

Construction of the Project would disturb suitable habitat that has potential to support vernal pool branchiopods. The M-F FEIR/FEIS concludes that construction of the Project would affect potentially suitable habitat for vernal pool branchiopods including the federally listed vernal pool fairy shrimp, vernal pool tadpole shrimp, and Conservancy fairy shrimp. Activities causing impacts to these habitats would be in violation of water quality standards in that the designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)). The Project would directly impact up to 15.7 acres and indirectly impact up to 11.57 acres of potentially suitable habitat for these and other vernal pool branchiopods. According to the M-F FEIR/FEIS, impacts to vernal pool communities that provide potential habitat for vernal pool branchiopods are a significant impact under CEQA.

c.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 4, 5, 6, 7, 8 and 10, Bio-MM#20 requires a seasonal work restriction that would help to avoid and minimize impacts to vernal pool branchiopods and Mitigation Bio-MM#12 provides for work stoppage if Project Biologists or Biological Monitors determine that take of protected vernal pool branchiopods could occur. Bio-MM#45 also requires monitoring of construction activities within jurisdictional waters. These measures are consistent with good construction management and ecological restoration practice and are adequate for the timely restoration of sites disturbed by Project activity, when implemented along with the conditions of this Order. As concluded in the FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 4, 5, 6, 7, 8, 10, 12, 20, and 45 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

d.i. Potential Significant Impact: M-F BIO IMPACT #5, Disturbance of Potential Valley Elderberry Longhorn Beetle Habitat

Construction of the Project would disturb suitable habitat that has potential to support the valley elderberry longhorn beetle. The M-F FEIR/FEIS concludes that the Project would impact populations of Mexican elderberry shrubs, specifically along the San Joaquin River area. The Project would also affect habitat communities that potentially contain elderberry shrubs. Populations of the valley elderberry longhorn beetle are protected under the federal Endangered Species Act, and the loss of elderberry shrubs could impair the survival of self-sustaining populations. Consequently, the M-F FEIR/FEIS concludes that the potential impact on suitable habitat for valley elderberry longhorn beetles is significant under CEQA. Because these habitats are typically associated with riparian areas, activities causing impacts to those habitats would be in violation of water quality standards in that the designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

d.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 4, 5, 6, 7, 8 and 10, 12, 13 and 14 (as previously described), and conditions of this Order, Bio-MM#11 will require entrapment protection measures and Bio-MM#22 will require adherence to the *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (USFWS 1999a) and will require various avoidance measures around individual elderberry plants. These measures are consistent with good construction management and ecological restoration practice and are likely to result in timely restoration of sites disturbed by Project activity, when implemented along with the conditions of this Order. As concluded in the FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, and 22 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

e.i. Potential Significant Impact: M-F BIO IMPACT #6, Disturbance of California Tiger Salamander Habitat

Construction of the Project would disturb California tiger salamander (CTS) habitat. The M-F FEIR/FEIS concludes that project construction would potentially disturb suitable breeding and upland habitat for California tiger salamanders. All suitable vernal pool and other seasonal wetland habitat with associated upland areas are assumed to be occupied by California tiger salamanders. According to the M-F FEIR/FEIS, the potential impact on suitable habitat for California tiger salamanders would be significant under CEQA. Activities causing impacts to these habitats would be in violation of water quality standards in that the designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

e.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 20, 44, and 45 (as previously described), and conditions of this Order, species specific measures are also required. Bio-MM#9 prohibits the use of monofilament netting in erosion control materials. Bio-MM#11 requires entrapment prevention. Bio-MM#23 specifies translocation requirements for CTS found in areas where construction activity is about to start. Bio-MM#24 requires erection of amphibian exclusion fencing around work areas. These measures are consistent with good construction management and ecological restoration practice and are likely to result in timely restoration of sites disturbed by Project activity, when implemented along with the conditions of this Order. As concluded in the FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 24, 40, and 45 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

f.i. Potential Significant Impact: M-F BIO IMPACT #7, Disturbance of Western Spadefoot Toad Habitat

Construction of the Project would disturb western spadefoot toad habitat. The M-F FEIR/FEIS concludes that project construction would potentially disturb suitable breeding habitat for western spadefoot toads. The loss of suitable breeding habitat could impair the survival of self-sustaining populations. According to the M-F FEIR/FEIS, the potential impact on suitable habitat for western spadefoot toads would be significant under CEQA. Activities causing impacts to these habitats would be in violation of water quality standards

in that the designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

f.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 24, and 45, , Bio-MM#25 requires emergence and larval surveys for western spadefoot toads. These measures, along with the conditions of this Order, are adequate to reduce this impact to aquatic resources to a less than significant level.

The HSRA's findings for this impact have a typographical error, referencing Bio-MM#46, which requires installation of "free-ranging mammal-proof fencing." According to discussions with HSRA (and as evidenced in HSRA's MMRP), installation of amphibian exclusion fencing, as would be required under Bio-MM#24 is intended as mitigation for Project impacts to spadefoot toad.

These measures, as shown in the MMRP, are generally consistent with good construction management and ecological restoration practice and are likely to result in protection of western spadefoot toads and their aquatic habitats. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 24, 25, and 45 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

g.i. Potential Significant Impact: M-F BIO IMPACT #8, Disturbance of Western Pond Turtle Habitat

Construction of the Project would disturb habitat that supports the western pond turtle. The M-F FEIR/FEIS concludes that project construction would disturb suitable habitat for populations of western pond turtles. According to the M-F FEIR/FEIS, the potential impact on suitable habitat for western pond turtles would be significant under CEQA. To the extent that habitats for western pond turtles are typically associated aquatic and riparian habitats, impacts to those habitats would be in violation of water quality standards in that a designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

g.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 44, and 45 (described above), and the conditions of this Order, Bio-MM#26, 27 and 28 require implementation of species-specific measures including western pond turtle surveys, monitoring, avoidance and relocation measures. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 44, and 45 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

h.i. Potential Significant Impact: M-F BIO IMPACT #17, Indirect Impacts on Jurisdictional Waters

Construction of the Project would have indirect impacts on waters of the state. The M-F FEIR/FEIS concludes that indirect impacts on waters of the state resulting from Project construction would potentially include: erosion, siltation, and runoff into natural and

constructed watercourses, and soil and water contamination from construction equipment leaks. According to the M-F FEIR/FEIS, these impacts would be significant under CEQA. The potential indirect impacts listed are those most likely to occur, but that this list should not be considered a complete list of all possible indirect impacts.

h.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#3, 4, 5, 7, 8, 10, 15, 19, 20, 21, 44, and 45 (described above), HSRA has proposed compensatory mitigation for indirect impacts. These proposals are described in the application and supporting documents submitted for this Order, and in the PRMP. These measures are consistent with good construction management and ecological restoration practice. As concluded in the FEIR/FEIS, implementation of the approach specified in Bio-MM#3, 4, 5, 7, 8, 10, 15, 19, 20, 21, and 44 are adequate to reduce impacts to a less than significant level. These measures, as presented in the M-F MMRP, are incorporated by reference in the Order. No critical habitat, public lands, conservation easements or banks occur in the F-B CP1c project area. However, general wildlife impacts may occur. The F-B MMRP proposes mitigation measures to address these impacts in the CP1c Project area. In addition to BIO-MM # 1-3, 5, and 7-17 (discussed above) the following additional mitigation measures are proposed.

- BIO-MM#47. Restore Temporary Riparian Impacts.
- BIO-MM#48. Restore Temporary Impacts on Jurisdictional Waters.
- BIO-MM#49. Monitor Construction Activities within Jurisdictional Waters.
- BIO-MM#50. Mitigation and Monitoring of Protected Trees.
- BIO-MM#61. Compensate for Permanent Riparian Impacts.
- BIO-MM#62. Prepare and Implement a Site-Specific Comprehensive Mitigation and Monitoring Plan.
- BIO-MM#63. Compensate for Permanent and Temporary Impacts on Jurisdictional Waters.
- BIO-MM#64. Compensate for Impacts to Protected Trees.
- BIO-MM#65. Offsite Habitat Restoration, Enhancement and Preservation.

i.i. Potential Significant Impact: F-B BIO IMPACT #3, Construction Impacts on Habitats of Concern

Construction of the CP1c section of the Project could cause impacts to “Habitats of Concern” including wetlands. Direct construction impacts include removal or disruption of vegetation, placement of temporary or permanent fill in natural and constructed waters, and potential erosion and sedimentation. Indirect impacts include release of contaminants to areas outside the Project area, dust effects on plant photosynthesis, and increased fire risk.

i.ii. Facts in Support of Finding: As reported in the F-B MMRP, impacts on habitats of concern from construction activities will be avoided and minimized where feasible. General avoidance/minimization measures will be implemented in order to track mitigation success and provide assurance that measures are implemented correctly and fully. These mitigation measures are standard procedures, commonly used on large infrastructure projects. The measures are the same as the general mitigation measures described in F-B

BIO Impact #1, and have the same or similar ability to reduce impacts on habitats of concern.

j.i. Potential Significant Impact: M-F BIO IMPACT #21, Disturbance of Camp Pashayan

Construction of the Project would disturb Camp Pashayan (San Joaquin River Ecological Reserve). The M-F FEIR/FEIS concludes that a portion of Camp Pashayan (within the San Joaquin River Ecological Reserve) is within and adjacent to the construction footprint of the Hybrid Alternative and therefore would be affected by construction of the Project. Bio Impact #21 would include loss of riparian and aquatic habitats in Camp Pashayan that are subject to the State Water Board's authority (additional consideration of impacts to water based recreation is provided in the discussion of PK Impact # 4 and #7). According to the M-F FEIR/FEIS, these impacts on Camp Pashayan would be significant under CEQA, and may directly or indirectly affect designated beneficial uses of waters (i.e. rare species habitats (RARE)) and contact and non-contact water-based recreation (REC-1 and REC-2).

j.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#15, 18, 19, 20, 21, 44 and 45, Bio-MM#17 will require that pre-construction surveys identify special status plant species and implement avoidance measures or, if avoidance is not feasible, incorporate the species into the relocation/compensation program defined in Bio-MM#48(Compensate for Impacts on Special-Status Plant Species). PK-MM#4 would also provide for minimization and avoidance of impacts in the park, and would provide In-Lieu Fee contributions for property impacts associated with pier installation. These measures are consistent with good construction management and ecological restoration practice and are likely to result in timely restoration of sites disturbed by Project activity. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 15, 17, 18, 19, 20, 21, 44, 45, and 48 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

k.i. Potential Significant Impact: M-F BIO IMPACT #22, Permanent Conversion of Great Valley Mixed Riparian Forest and Other Riparian Habitat

Project period impacts would permanently convert Great Valley mixed riparian forest and other riparian habitat (Coastal and Valley Freshwater Marsh and vernal pools addressed in BIO IMPACT #16). The M-F FEIR/FEIS concludes that the Project would directly and permanently convert up to 4.96 acres of Great Valley mixed riparian forest and up to 1.23 acres of other riparian vegetation communities. According to the M-F FEIR/FEIS, these impacts would be significant under CEQA. Riparian forests and habitats support water quality and the beneficial uses of waters of the state, such as RARE. Permanent loss of these habitats can be a significant impact affecting a wide range of aquatic resource functions and beneficial uses.

k.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact: Bio-MM#4, 14, 49, 57, 58, and 59. These measures are consistent with good construction management and ecological restoration practice. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 14, 49, 57,

58, and 59 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

l.i. Potential Significant Impact: M-F BIO IMPACT #25, Permanent Conversion of Valley Elderberry Longhorn Beetle Habitat

Project period impacts from the Project would permanently convert suitable habitat that has the potential to support valley elderberry longhorn beetle. The M-F FEIR/FEIS concludes that the Project would displace populations of Mexican elderberry shrubs, specifically along the San Joaquin River area. Up to 1.31 acres of habitat that potentially contains elderberry shrubs would be directly impacted. According to the M-F FEIR/FEIS, this impact would be significant under CEQA. To the extent that valley elderberry longhorn beetle habitats may occur in waters of the state, impacts to those habitats would be in violation of water quality standards in that a designated beneficial use waters would be affected (i.e. rare species habitats (RARE)).

l.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures Bio-MM#4, 14, 51, and 60 to address this impact, along with concurrent implementation of project-wide measures Bio-MM#57 58, & 59. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 14, 51, 57, 58, 59, and 60 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the.

m.i. Potential Significant Impact: M-F BIO IMPACT #26, Permanent Conversion of California Tiger Salamander Habitat

Project period impacts from the Project would permanently convert suitable habitat that has the potential to support California tiger salamander (CTS). The M-F FEIR/FEIS concludes that the Project would displace potentially suitable breeding habitat for California tiger salamanders. Up to 15.57 acres of potentially suitable aquatic breeding habitat would be directly impacted. According to the M-F FEIR/FEIS, this impact would be significant under CEQA. To the extent that some seasonal CTS habitats are typically in or closely associated with waters of the state, impacts to those habitats would be in violation of water quality standards in that a designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

m.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact: Bio-MM#4, 14, 25, and 52 (Which incorporates Bio-MM#57, 58, 59, and 60). As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 14, 25, 52, 57, 58, 59, and 60 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

n.i. Potential Significant Impact: M-F BIO IMPACT #27, Permanent Conversion of Western Spadefoot Toad Habitat

Project period impacts from the Project would permanently convert suitable habitat that has the potential to support western spadefoot toad. The M-F FEIR/FEIS concludes that

the Project would displace potentially suitable aquatic breeding and upland habitat for western spadefoot toad. The loss of suitable breeding and upland habitat could impair the survival of self-sustaining populations. According to the M-F FEIR/FEIS, the conversion of suitable habitat for western spadefoot toad would be significant under CEQA. To the extent that these habitats are typically in or closely associated with waters of the state, impacts to those habitats would be in violation of water quality standards in that a designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

n.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#4, 14, and 25, Bio-MM#52 (which incorporates Bio-MM#57, 58, 59, and 60) is also proposed. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 14, 25, 52, 57, 58, 59, and 60 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

o.i. Potential Significant Impact: M-F BIO IMPACT #28, Impacts to Western Pond Turtle Habitat

M-F BIO IMPACT #28. Project period impacts from the Project would permanently convert suitable habitat that has the potential to support western pond turtle. The M-F FEIR/FEIS concludes that the Project footprint contains potentially suitable habitat for populations of western pond turtles. All suitable aquatic habitats are assumed to be occupied by western pond turtles. The loss of suitable habitat could impair the survival of self-sustaining populations and, according to the M-F FEIR/FEIS, would be significant under CEQA. To the extent that western pond turtle habitats occur in waters of the state, impacts to those habitats would be in violation of water quality standards in that a designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)).

o.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact.

- Bio-MM#58: Prepare and Implement a Habitat Mitigation and Monitoring Plan (Described Above).
- Bio-MM#60: Offsite Habitat Restoration, Enhancement, and Preservation (Described Above).

As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#58 and 60 are adequate to reduce direct impacts to a less than significant level (note, however, that as discussed for cumulative effects in Section D above, these measures are sufficient to minimize impacts, but not to a level that is less than significant). These measures, as presented in the MMRP, are incorporated by reference in the Order.

p.i. M-F BIO IMPACT #37, Permanent Conversion of Jurisdictional Waters

Project period impacts from the Project would permanently convert jurisdictional waters. The M-F FEIR/FEIS concludes that construction of the Project would “displace” (i.e. permanently fill or otherwise irreversibly impact) “wetlands and jurisdictional waters regulated by [CDFW], the USFWS, and the ACOE”. According to the M-F FEIR/FEIS, this impact would be significant under CEQA.

p.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation Measures to address this impact.

- Bio-MM#4: Prepare and Implement a Weed Control Plan (Described Above)
- Bio-MM#14: Post-Construction Compliance Reports (Described Above).
- Bio-MM#57: Conduct Delineation of Jurisdictional Waters and State Streambeds (Described Above).
- Bio-MM#59: Compensate for Permanent Impacts on Jurisdictional Waters (Described Above).

These measures are consistent with good construction management and ecological restoration practice and are likely to result in protection of jurisdictional waters and beneficial uses of waters of the state when implemented along with the conditions of this Certification. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 14, 57, and 59 are adequate to reduce direct impacts to a less than significant level (note, however, that as discussed for cumulative effects in Section D above, these measures are sufficient to minimize impacts, but not to a level that is less than significant). These measures, as presented in the MMRP, are incorporated by reference in the Order.

q.i. Potential Significant Impact: M-F PK Impact #7, Acquisition of Camp Pashayan Park Property.

The M-F FEIR/FEIS concludes that construction of the Project would displace vegetation within Camp Pashayan (within the San Joaquin River Ecological Reserve), and would thereby also impact recreational use of the park. According to the M-F FEIR/FEIS, this impact would be significant under CEQA.

q.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address these impacts. Mitigation Measure PK-MM#1 requires compensation for lost recreational opportunities through various park management actions and ecological restoration practices. PK-MM #4 will include in-lieu fee payments for property impacts associated with pier installation as well as revegetation of disturbed areas with native plantings. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#1 and 4 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

r.i. Potential Significant Impact: M-F Bio Impact #21, Construction of the HST would disturb Camp Pashayan (San Joaquin River Ecological Reserve). Acquisition of Camp Pashayan Park Property.

The M-F FEIR/FEIS concludes that construction of the Project would cause the permanent loss of use of part of Camp Pashayan (within the San Joaquin River Ecological Reserve) as a result of acquisition of 0.6 acre of park lands for the High Speed Train alignment and footprint. This may reduce the opportunities for park and trail use, including access to

water based recreational opportunities. According to the M-F FEIR/FEIS, this impact would be significant under CEQA.

r.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. Mitigation Measure PK-MM#1 requires compensation for lost recreational opportunities through various park management actions and ecological restoration practices. PK-MM #4 will include in-lieu fee payments for property impacts associated with pier installation as well as revegetation of disturbed areas with native plantings. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in PK-MM#1 and 4 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Order.

2. Findings regarding mitigation measures which are the responsibility of another agency. (Pub. Resources Code, § 21081, subd. (a)(2); Cal. Code Regs., tit. 14, § 15091, subd. (a)(2)).

There are changes or alterations that are within the responsibility and jurisdiction of another public agency and not the jurisdiction of the State Water Board. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

a.i. Potential Significant Impact: M-F BIO IMPACT #16, Conversion of Special Status Plant Communities

Construction of the Project would temporarily convert special-status plant communities (e.g., Great Valley mixed riparian forest, coastal and valley freshwater marsh, vernal pools). The M-F FEIR/FEIS concludes that project construction would temporarily impact up to 4.07 acres of Great Valley mixed riparian forest, up to 0.22 acre of other riparian vegetation communities, and 1.64 acres of Fremont Cottonwood forested wetlands. According to the M-F FEIR/FEIS, impacts to these special-status plant communities are a significant impact under CEQA. Activities causing impacts to these habitats would be in violation of water quality standards in that a designated beneficial use of waters would be affected (i.e. rare species habitats (RARE)). However, primary responsibility for regulation of these upland habitats lies with the Department of Fish and Wildlife.

a.ii. Facts in Support of Finding: The M-F FEIR/FEIS proposes mitigation measures to address this impact. In addition to Bio-MM#4, 5, 6, 7, 8, 10, 44 and 45, measures specific to vernal pools are also required. As described above, Bio-MM#19 requires pre-construction sampling and assessment of vernal pool fauna; Bio-MM#20 provides season restrictions on operations in vernal pools; and Bio-MM#21 which specifies measures to be implemented to avoid and minimize direct project impacts to vernal pools. These measures are consistent with good construction management and ecological restoration practice and are likely to result in timely restoration of sites disturbed by Project activity, when implemented along with the conditions of this Certification. As concluded in the M-F FEIR/FEIS, implementation of the approach specified in Bio-MM#4, 5, 6, 7, 8, 10, 19, 20, 21, 44, and 45 are adequate to reduce impacts to a less than significant level. These measures, as presented in the MMRP, are incorporated by reference in the Certification.

3. Findings regarding significant water quality or supply impacts being authorized due to specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers that cannot feasibly be mitigated to a less than significant level. (Pub. Resources Code, § 21081, subd. (a)(3); Cal. Code Regs., tit. 14, § 15091, subd. (a)(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 FEIR.

a.i. Significant Effects: M-F PK IMPACT #4, Restricted Use at Camp Pashayan (City of Fresno).

Construction of the Project would displace park users during construction for two to four years. The M-F FEIR/FEIS states that although mitigation is available to minimize the impact, there remains a residual significant impact that is unavoidable; no feasible mitigation is available to avoid or substantially lessen the impact to a less than significant level.

a.ii. Facts in Support of Finding: The remaining unavoidable and irreversible impacts of the project are acceptable in light of economic, legal, social, technological, and other considerations set forth herein because the benefits of the project (as described in Section D) outweigh any significant and unavoidable or irreversible environmental impact of the project

Although the area of the park that would be affected does not include recreational facilities for activities that require the use of equipment or designated facilities, courses, or fields, the area that would be affected is an area that can currently be actively used and would be completely closed to visitor use for a period of approximately 2 to 4 years while construction take place in the vicinity of the park. Preventing the use of an established or planned park, recreation, or open space is considered a significant impact under CEQA. The construction activities located at the southern end of Camp Pashayan and the duration of the construction activities would restrict the recreational use of this area for safety purposes, including some water based recreational uses, and therefore would be a significant impact under CEQA.

Two beneficial uses of water associated with recreation are designated in Central Valley Regional Water Quality Control Board's Basin Plan for the San Joaquin River which flows through Camp Pashayan. These are "Water Contact Recreation (REC-1) for activities which involve body contact with water, and "Non-Contact Recreation" (REC-2) for activities involving proximity to water, but where there is generally no body contact with water. These beneficial uses would be unavoidably subject to Project impacts that cannot be mitigated; i.e., temporary loss of some recreational uses of Camp Pashayan (within the San Joaquin River Ecological Reserve). Construction of the Project would displace park users during construction for two to four years.

The proposed mitigation measure compensating for staging in park property (PK-MM #1) would reduce, the impact, but not to a level that is less than significant. No additional feasible or practicable mitigation measures or Certification conditions would further reduce this impact. A statement of overriding considerations for this impact is presented in Section D below.

b.i. Potential Significant Impact: M-F. Cumulative Impacts to Biological Resources

The M-F FEIR/FEIS reports that cumulative effects to wetlands are significant and unavoidable, and that these impacts cannot be mitigated to a less than significant level. The M-F FEIR states: *“Wetlands may be affected by the project and other foreseeable projects. Potential wetland losses would be small relative to the quantity of existing wetland habitat in the study area but would contribute to the net loss of wetland habitat within the California Central Valley. Avoidance, minimization, and mitigation measures would minimize impacts on wetlands. Nevertheless, cumulative impacts would likely have substantial intensity under NEPA and be cumulatively considerable under CEQA (FEIR/FEIS, Sec. 3.19.3.6).”*

The HSRA’s CEQA Findings of Fact and Statement of Overriding Considerations (May 2012) (CEQA Findings of Fact) state: *“Wetlands may be affected by the project and other foreseeable projects. Potential wetland losses would be small relative to the quantity of existing wetland habitat in the study area but would contribute to the net loss of wetland habitat within the California Central Valley. Avoidance, minimization, and mitigation measures would minimize impacts on wetlands, but would be cumulatively considerable under CEQA (section 4.4, p. 4-2).”*

And in section 7, Statement of Overriding Considerations, it is stated that: *The overall amount of land that would be converted to urban and transportation uses under the cumulative condition and buildout of the HST System, would result in cumulatively considerable impacts on wetlands.”*

The M-F FEIR/FEIS also states that *“The HST Project would implement biological resources [including wetlands] mitigation measures provided in Section 3.7.7. No additional mitigation is needed to address the project’s contribution to cumulative biological impacts. Biological impacts resulting from projects proposed by others would be mitigated in accordance with the requirements under permits obtained for those projects, as necessary.”* This potential significant impact is reported only for CP1 a and b.

b.ii. Facts in Support of Finding: Various mitigation measures are proposed in the M-F FEIR/FEIS to mitigate Project impacts to waters of the state, including wetlands. Mitigation measures incorporated into the project requiring compensatory mitigation for loss of jurisdictional waters, when implemented along with the conditions of this Certification, are adequate to minimize these cumulative impacts, but not to a level that is less than significant. No feasible mitigation measures are available to reduce this cumulative impact to a less-than-significant level. A statement of overriding considerations for this impact is presented in section H below.

D. Statement of Overriding Considerations

The HSRA’s FEIR identifies certain significant impacts to the environment that cannot be avoided or substantially lessened with the application of feasible mitigation measures or feasible alternatives. Because there are significant and unavoidable impacts the State Water Board provides this Statement of Overriding Considerations in compliance with CEQA. (Pub. Resources Code, § 21081, subd (b); Cal. Code Regs., tit. 14, § 15093.)

The significant and unavoidable impacts and the benefits related to implementing the Project are disclosed in the HSRA's FEIR, CEQA Findings of Fact, and Statement of Overriding Considerations. The unavoidable impacts to water resources are discussed in subsection C above.

The State Water Board has considered the economic, legal, social, technological, and other benefits of the Project against its significant unavoidable impacts to water resources and finds that the specific economic, legal, social, and technological benefits of implementing the Project outweigh the significant and unavoidable impacts to water resources.

E. Determination

The State Water Board has reviewed and considered the environmental document and supplemental information provided by the HSRA, and has reached its own conclusion to approve this Project. The State Water Board will file a NOD with the SCH within five (5) working days from the issuance of this Order. (Cal. Code Regs., tit. 14, § 15096.)