

September 17, 2009

Dear Sir/Madam:

On behalf of Chemical Waste Management, Inc. (CWMI) and the 80 employees of the Kettleman Hills Facility (KHF), I would like to inform you of the upcoming Kings County Planning Commission public hearing for the Final Subsequent Environmental Impact Report (SEIR) for the proposed B-18/B-20 Hazardous Waste Disposal Project at KHF. Please find attached the Kings County Community Development Agency Notice of Availability/Notice of Public Hearing and a copy of the Final SEIR Chapter 2.0 – Clarifications and Corrections in both English and Spanish for your information.

The Final SEIR is available for review at the following locations:

- Kings County Community Development Agency
1400 West Lacey Boulevard
Government Center, Building No. 6
Hanford, California
- Chemical Waste Management, Inc.
Kettleman Hills Facility
35251 Old Skyline Boulevard
Kettleman City, California
- Kings County Library Branches
Hanford Branch Library
401 North Douty Street
Hanford, California
- Kettleman City Branch Library
104 Becky Pease Street
Kettleman City, California
- Avenal Branch Library
501 East King Street
Avenal, California

The Kings County Planning Commission public hearing will hold a public hearing to consider the Final SEIR. The Planning Commission public hearing will begin at 2 p.m. on October 5, 2009, at the Kings County Fairgrounds, located at 801 S. 10th Avenue, Hanford, California. The public hearing will be held in Marketplace Building No. 5. Attached to the Notice of Availability/Notice of Public Hearing is the summary of the rules for the public hearing.

I encourage you to participate in the hearing process and hope to see you at the public hearing.

Sincerely,

Robert G. Henry
Senior Director of Operations
CHEMICAL WASTE MANAGEMENT, INC.

2.0 Clarifications and Corrections

This chapter provides clarifications and corrections to the Draft Subsequent Environmental Impact Report (SEIR), Revised Project Description and Analysis, and Recirculated Portions of the Draft SEIR for the B-18/B-20 Hazardous Waste Disposal Project. These clarifications and corrections are provided in response to public and agency comments on the Draft SEIR, Revised Project Description and Analysis, and Recirculated Portions of the Draft SEIR. When clarifications or corrections are made to text from the Draft SEIR, Revised Project Description, or the Recirculated Portions of the Draft SEIR, these revisions are shown in a double-underline format. Deletions of text are shown in a strike through (e.g., ~~strike through~~) format.

The information provided in this chapter does not represent significant new information (as set forth in California Public Resources Code [PRC] Section 21092.1 or as defined in the California Environmental Quality Act [CEQA] Guidelines Section 15088.5). The clarifications and corrections do not change the significance of any of the environmental impact conclusions within the Draft SEIR, Revised Project Description and Analysis, and the Recirculated Portions of the Draft SEIR. These clarifications and corrections also do not identify a new significant adverse environmental effect of the proposed Project, or new potentially significant effect from new mitigation measure proposed to be implemented. Accordingly, the clarifications and corrections provided in this chapter do not alter the findings or conclusions of the Draft SEIR, the Revised Project Description and Analysis, or the Recirculated Portions of the Draft SEIR and do not require additional recirculation of all or any part of the Draft SEIR.

Global Revision

Kings County Community Development Agency

As of October 14, 2008, Kings County Planning Agency changed its name to “Kings County Community Development Agency.” This change is reflected throughout the Final SEIR, as appropriate.

Draft SEIR Section 1.0 Introduction

Nonhazardous, Nonputrescible, Industrial Solid Waste Registration Permit

Based on a comment received from the County of Kings Department of Public Health on the Draft SEIR (see Chapter 3.0, Letter 13, Comment 13/1 of this Final SEIR), the permits and the responsible agencies listed in Section 1.8.1 of the Draft SEIR have been revised. The

comment notes that the County of Kings Department of Public Health, as the Local Enforcement Agency (LEA), is the agency that will issue a Nonhazardous, Nonputrescible Industrial Solid Waste Registration Permit rather than the California Integrated Waste Management Board (CIWMB).

California Department of Fish and Game (CDFG) and United States Fish and Wildlife Service (USFWS) Regulatory Requirements

CDFG, (see Chapter 3.0; Letter 06; Comment 06/1 of this Final SEIR), requested that USFWS, as the federal permitting agency under the Federal Endangered Species Act (FESA), and CDFG, as a Responsible and Trustee agency are added to the list of permitting and responsible agencies in Section 1.8.1 of the Draft SEIR. CDFG will be acting as a CEQA Trustee Agency by exercising their permitting authority under the California Endangered Species Act (CESA). Please note the specific regulatory and permitting roles of the USFWS and CDFG are discussed in Sections 1.8.2.6.1 and 1.8.2.6.2 of the Draft SEIR, and in Sections 3.4.1.1 and 3.4.1.3 of the Draft SEIR.

Based on the above the following double-underlined revisions have been made:

- Kings County Community Development Agency: Issue a new conditional use permit (CUP) (No. 05-10) to accommodate the proposed B-18 Landfill expansion and new B-20 Landfill, and increase the Kettleman Hills Facility (KHF) operations area by approximately 221.5 acres.
- California Department of Toxic Substances Control (DTSC): Modify the existing hazardous waste facility permit (HWFP) (No. 02-SAC-03) pursuant to California Health & Safety Code (HSC) Section 25200.
- County of Kings Department of Public Health – as the local enforcement agency:
 - Revise Nonhazardous, Nonputrescible Industrial Solid Waste Registration Permit for the B-18 Landfill expansion (California Code of Regulations [CCR] Title 14, Section 17369) – Registration Tier Permit.
 - Issue Nonhazardous, Nonputrescible Industrial Solid Waste Registration Permit for the new B-20 Landfill (CCR Title 14, Section 17369) – Registration Tier Permit.
- United States Environmental Protection Agency (USEPA) (Toxic Substances Control Act [TSCA] Group): Modify TSCA Permit for the B-18 Landfill expansion and new B-20 Landfill (Code of Federal Regulations [CFR] Title 40 Part 761).
- California Regional Water Control Board – Central Valley Region (RWQCB): Modify the Waste Discharge Requirements (WDRs) to include construction, operation, and closure

of the B-18 Landfill expansion and construction, operation, and closure of the new B-20 Landfill.

- San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD): Revise the existing Title V permit to expand the B-18 Landfill and construct the B-20 Landfill.
- California Department of Fish and Game (CDFG): California Environmental Quality Act (CEQA)/Responsible Agency exercising its authority under the California Endangered Species Act (CESA).
- United States Fish and Wildlife Service (USFWS): Federal permitting agency under the Federal Endangered Species Act (FESA).

These corrections do not alter the findings or conclusions of the Draft SEIR.

Draft SEIR Section 2.0 Project Description

Definition of Nonhazardous, Nonputrescible, Industrial Solid Waste

Based on a comment from County of Kings Department of Public Health, (see Chapter 3.0, Letter 13, Comment 13/2 of this Final SEIR) the definition of nonhazardous, nonputrescible, industrial solid waste is added to the description of wastes currently accepted at the B-18 Landfill and to the description of wastes that will be accepted at the expanded B-18 Landfill and at the new B-20 Landfill in Sections 2.4.4 and 2.6.1.3 of the Draft SEIR as follows:

CCR Title 14, Section 17368(h) defines "Nonhazardous, Nonputrescible, Industrial Solid Waste" as a solid waste (as defined in PRC Section 40191) which also meets all of the following criteria:

- Nonputrescible: Solid wastes which are not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions. For example, wastes that are putrescible, and do not qualify as nonputrescible, include without limitation food wastes, offal, and dead animals.
- Liquid Content: Solid wastes that contain no free liquid, whether such wastes are in bulk or in containers. The absence of free liquid shall be determined by the method specified in Title 22 CCR Section 66264.314(b).
- Nonhazardous, Nonputrescible, Industrial Solid Waste expressly excludes:
 - Household waste as defined in CCR Title 27 Section 20164.
 - Wastes which are prohibited at any hazardous waste disposal facility by applicable statutes or regulations of any governmental body having jurisdiction.

- With respect to a specific hazardous waste disposal facility, wastes which are prohibited at that particular hazardous waste disposal facility by the terms and conditions of any permit or entitlement to use issued by a governmental body.

This clarification for the continued acceptance of nonhazardous, nonputrescible, industrial solid waste at the B-18 Landfill and at the new B-20 Landfill does not alter the analysis, findings, or conclusions of the Draft SEIR, and does not require any new mitigation measures.

Environmental Control Systems

RWQCB noted in its comment letter (see Chapter 3.0, Letter 09, Comment 09/5 of this Final SEIR) that the Draft SEIR has an incorrect reference to the environmental control systems discussion. The reference has been revised to read as follows (new language is shown in double-underline, and deleted language shown in ~~strike through~~): “These environmental control systems are discussed in Section ~~2.7.4~~ 2.10.3.”

This correction does not alter the findings or conclusions of the Draft SEIR or the Recirculated Portions of the Draft SEIR.

Design and Operational Features

RWQCB noted in its comment letter (see Chapter 3.0, Letter 09, Comment 09/7 of this Final SEIR) that the Draft SEIR has several incorrect items regarding the design and operational features. The new language is shown in double-underline and deleted language is shown in ~~strike through~~.

- **Liner System:** The Project will include a liner system per CCR Title 23, Section 2542, which provides the liner system requirements for Class I landfills. See Section ~~2.7.4~~ 2.10.1 (page 2-27) for description of the liner system.
- **Final Cover System:** Proposed to close the B-18 Landfill expansion and the B-20 Landfill in accordance with CCR Title 22 Section 66264.228, CCR Title 23, Section 2580, and RCRA Subtitle C. See Section ~~2.7.2.2~~ 2.10.2.2 (page 2-29) for description of final cover.
- **Leachate Collection and Recovery System (LCRS):** The Project will include a LCRS per CCR Title 23, Section 2543, which provides the leachate management systems requirements for Class I landfills. See Section ~~2.7.3~~ 2.10.3 (page 2-31) for description of the LCRS.

These corrections do not alter the findings and conclusions of the Draft SEIR or the Recirculated Portions of the Draft SEIR.

Maintain and Monitor Vadose Zone

Based on a comment received from the RWQCB (see Chapter 3.0, Letter 09, Comment 09/2 of this Final SEIR), a new bullet shown in double-underlined text for maintenance and monitor of the vadose zone as been added to the items listed on page 2-37 of the Draft SEIR (see below).

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The owner or operator must:

- Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events.
- Continue to operate the LCRS until leachate is no longer detected.
- Maintain and monitor the groundwater monitoring system.
- Prevent run-on and run-off from eroding or otherwise damaging the final cover.
- Protect and maintain surveyed benchmarks.
- Maintain and monitor the LDS.
- Maintain and monitor the vadose zone monitoring system.

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This revision does not alter the findings or conclusions of the Draft SEIR.

Revised Project Description and Analysis Section 2.0 Project Description

Revised Table 2-1 Footnote

DTSC noted in its comment letter (see Chapter 3.0, Letter 08, Comment 08/7 of this Final SEIR) that Revised Table 2-1 in the Revised Project Description and Analysis incorrectly included two footnote identified as footnote 1. The second footnote (1) has been revised to be footnote (2). The revised table is show below (correction is shown in double-underline, and deletion is shown in ~~strike through~~). This correction does not alter the findings or conclusions of the Revised Project Description and Analysis.

Revised Table 2-1

Project Description Summary Data: B-18 Landfill Expansion

Landfill Characteristics	Currently Permitted B-18 Landfill	Conceptual Design B-18 Landfill Expansion	Refined Detailed Design B-18 Landfill Expansion
Landfill Footprint	53 acres	64 acres	67 acres
Total Area of Disturbance ⁽¹⁾	69 acres	87 acres ⁽³⁾	79 acres ⁽⁴⁾
– Existing Storm Water Retention Basin	2.4 acres ⁽²⁾	-- ⁽⁵⁾	2.4 acres ⁽⁵⁾
Relocated Storm Water Basin at Realigned Entrance Road	--	6.2 acres ⁽⁶⁾	--
New B-18 Landfill South Storm Water Retention Basin	--	3.4 acres ⁽⁷⁾	3.4 acres ⁽⁷⁾
Increased Acres of Disturbance	--	18 acres	10 acres
Cubic Yards of Gross Airspace	10.7 million cy	4.6 million cy	4.9 million cy
Total Cubic Yards of Gross Airspace	10.7 million cy	15.3 million cy	15.6 million cy
Earthworks Volume Cut/Fill Cubic Yards ⁽⁸⁾	--	77,000/735,000 cy	147,000/345,000 cy
Final Elevation		1,018 feet above msl ⁽⁹⁾	1,018 feet above msl ⁽⁹⁾
Years of Capacity	2 years ⁽¹⁰⁾	8 years ⁽¹⁰⁾	8 to 9 years ⁽¹⁰⁾

⁽¹⁾ = Includes landfill footprint, soil buttresses, cut-slope, storm water retention basins, perimeter road.

⁽²⁾ = Existing B-18 Storm Water Retention Basin. The 2.4 acres is part of the 69 acres of disturbed areas.

⁽³⁾ = As part of the March 2008 Conceptual Design, the existing B-18 Storm Water Basin will be relocated and a portion of the existing onsite entrance road to KHF will be realigned, and these are included in the 87 acres of total area of disturbance.

⁽⁴⁾ = As part of the May 2008 Refined Detailed Design, the existing B-18 Storm Water Retention Basin and existing onsite entrance road to KHF will be left in place thereby avoiding disturbance of 8 acres.

⁽⁵⁾ = The B-18 Landfill Refined Detailed Design retains the existing B-18 Storm Water Retention Basin. The 2.4 acres is part of the 79 acres of disturbed area.

⁽⁶⁾ = Included in total area of disturbance.

⁽⁷⁾ = Included in total area of disturbance.

⁽⁸⁾ = Rounded

⁽⁹⁾ = mean sea level

⁽¹⁰⁾ = Estimate - will vary based on actual rate of waste disposal.

Draft SEIR Section 3.3 Air Quality

The following text and revisions are added to the Air Quality analysis in the Draft SEIR, Section 3.3.7.1 (page 3.3-31) to provide the basis for a revision to mitigation measure AQ-MM.2 as part of this Final SEIR.

In 2004, the USEPA signed the final rule introducing Tier 4 engine emission standards for nonroad diesel equipment. These standards are to be phased in over a period of time, 2008-2015. (See 69 FR 38957-39273). The Tier 4 standards require that emissions of particulate

matter (PM) and nitrogen oxide (NOx) be further reduced, from Tier 1-3 standards, by about 90%. Such emission reductions can be achieved through the use of control technologies.

On July 26, 2007, the California Air Resources Board (CARB) approved a regulation to reduce emissions from existing off-road diesel vehicles used in construction, mining and other industries. (See CCR Title 13, Section 2449 et seq). The regulation applies to any person, business or governmental entity who operates self-propelled diesel-fueled vehicles, with a maximum power of 25 horsepower (hp) or greater, that are unable to be driven on-road. The regulation establishes fleet average emission rates for PM and NOx that decline over time. It does not apply to stationary equipment or portable equipment. The regulation requires, for example, fleets to apply exhaust retrofits and to accelerate turnover of fleets to newer, cleaner engines. Large and medium fleets are required each year to meet fleet average emission rate targets for NOx or to turn over a certain percentage of their horsepower (8% in early years and 10% in later years). This means repowering with a cleaner engine, rebuilding the engine, retiring a vehicle, replacing a vehicle with a new or used piece or designating a dirty vehicle as a low use vehicle.

Some vehicles are exempt from turnover requirements, including:

- Vehicles less than 10 years old;
- Engines equipped with the best available PM exhaust retrofit, installed within the past six years;
- Engines meeting the Tier 4 or interim Tier 4 standards.

Other vehicles are also exempt from exhaust retrofit requirements, including:

- Engines in vehicles less than five years old;
- New engines that come with a diesel particulate filter; and
- Engines already retrofit with the best available PM exhaust retrofit that achieves at least 50% PM reduction at the time of installation; and
- Engines retrofit with an experimental diesel emission control system approved by ARB.

The regulation is expected to significantly reduce emissions of NOx and PM. In total, the regulation is expected to reduce 187,000 tons of NOx emissions and 33,000 tons of PM emissions between 2009 and 2030. (www.arb.ca.gov.) The regulation is expected to achieve the 2020 goal of reducing PM by 85% from 2000 baseline levels set forth in ARB's 2000 Diesel Risk Reduction Plan. It is also projected to reduce emissions 37% from the 2000 baseline by 2010, and 92% by 2020. NOx is expected to be reduced by approximately 13% in 2015. By 2020, NOx emissions would be 32% lower than would occur absent the regulation. (www.arb.ca.gov).

Air quality mitigation measure AQ-MM.2 in the Draft SEIR has been revised as follows to clarify that the primary heavy duty, diesel powered landfill equipment (dozer) at the B-18 Landfill expansion and the B-20 Landfill will meet Tier 4 emission standards for off-highway, heavy duty diesel equipment if such equipment is commercially available by 2014; or that alternatively, CWMI may retrofit this equipment rather than purchase new equipment, if retrofit kits are commercially available. This revision was made because if such new equipment or retrofit kits are not commercially available in 2014, it will be infeasible for CWMI to purchase such equipment or retrofits. In this event, CWMI shall comply with this mitigation measure by purchasing such equipment or retrofit kit when it becomes commercially available in California.

Based on the above, AQ-MM.2 from the Draft SEIR is revised in this Final SEIR to read as follows (new language shown in double-underline, and deleted language shown in ~~strike through~~):

AQ-MM.2

~~The primary heavy duty, diesel powered landfill equipment (dozers) at the B-18 Landfill expansion and the B-20 Landfill shall meet the 2014 California emissions standards for off-highway, heavy duty diesel equipment through either the purchase of new equipment or through the retrofit of existing equipment.~~

For the purchase of primary heavy duty, diesel powered landfill equipment (dozer) at the B-18 Landfill expansion and the B-20 Landfill, if equipment meeting Tier 4 emission standards for off-highway, heavy duty diesel equipment is commercially available prior to 2014, CWMI shall purchase such equipment. Alternatively, rather than purchase new equipment, CWMI may: retrofit its existing primary heavy duty, diesel powered landfill equipment (dozer) at the B-18 Landfill, implement the use of low emission diesel products, alternative fuels, advanced exhaust gas after-treatment products and/or implement other options, or combinations thereof, as they become available to achieve early compliance.

This revision to AQ-MM.2 is also included in Table 1-1- Summary of Impacts and Mitigation Measures of this Final SEIR, and in Appendix A: Mitigation Monitoring Plan of this Final SEIR. This revision of AQ-MM.2 does not alter the findings or conclusions of the Draft SEIR.

DTSC Role in Ambient Air Monitoring Program

Based on a comment received from DTSC (see Chapter 3.0, Letter 08, Comment 08/2), Sections ES.5.2.3.1 (Page ES-16), Section 1.7.1.1 (page 1-18), Section 1.8.2.2, Section 3.3.1.1 (page 3.3-3) and Section 3.3 (page 3.3-1) of the Draft SEIR have been revised to incorporate the following information: "Under the HSC, DTSC is responsible for adopting standards and

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regulations for the management of hazardous wastes to protect against hazards to public health. DTSC also has authority under Resource Conservation and Recovery Act (RCRA) to issue and enforce hazardous waste permits that are needed for facilities which treat, store or dispose of hazardous waste."

CCR Title 22, Chapter 14, Article 17 Section 66264.700 – 66264.708 addresses DTSC's role in environmental monitoring and response programs for air, soil, and soil-pore gas for permitted facilities. These sections of CCR Title 22 applies to owners and operators of permitted facilities that treat, store, recycle or dispose of hazardous wastes and require monitoring and response programs in accordance with the conditions of the regulations. The role of DTSC in these regulations is to specify in the facility permits, the specific elements of the monitoring and response program that are necessary to protect human health or the environment and the circumstances under which each of the programs will be required."

In addition to the Air Quality Technical Analysis and Health Risk Analysis (HRA) prepared by Shaw Environmental, Inc. for inclusion in the Draft SEIR, an additional HRA was prepared in April 2008 by Earth Tech, Inc. for DTSC as part of the RCRA Part B permit and Ambient Air Monitoring Program (AAMP) (April 2008). That analysis incorporated ambient air monitoring data collected at KHF. A copy of this HRA is included as Appendix A to the Revised Project Description and Analyses. The results of this analysis have been reported to DTSC. The HRA was prepared using actual ambient air monitoring data collected by CWMI at KHF from the first five quarters of AAMP monitoring (4Q06 through 4Q07), and in accordance with a work plan developed in conjunction with DTSC and CARB.

This revision does not alter the findings or conclusions of the Draft SEIR.

Draft SEIR Section 3.4 Biological Resources

San Joaquin Kit Fox

Based on the ongoing discussions with the USFWS and CDFG to clarify the role of the "Trained Biologist" at KHF, biological mitigation measure BR-MM.4 is revised to read as follows (new language shown in double-underline, and deleted language shown in ~~strike through~~):

BR-MM.4

Any planned Project Disturbance in areas outside the existing 474-acre operational area shall be subject to a pre-construction survey. The survey, conducted by a Trained Qualified ~~Trained~~ Biologist, shall occur no more than 30 days prior to the beginning of ground disturbance and/or construction activities. A record of such construction or disturbance event, and the results of the pre-construction surveys, shall be submitted to the USFWS, CDFG, and Kings

County annually, or at other frequency approved by the two wildlife agencies. Methods employed during these surveys shall follow the USFWS and CDFG approved techniques:

- Surveys shall evaluate use by kit fox and, if possible, assess potential impacts to the kit fox by the proposed activity. The status of active/inactive dens shall be determined and recorded.

For the purpose of these mitigation measures, a “Trained Biologist” is a person who is either a direct employee of the project proponent or a person retained by the project proponent who is very familiar with the wildlife in the area and who has been trained by a Qualified Biologist Professional Biologist. CWMI shall submit the names, credentials and contact information of the Qualified Biologist that will conduct preconstruction protocol surveys and/or construction monitoring to the USFWS and CDFG. A Trained Biologist may conduct future routine surveys, monitoring and reporting consistent with the final biological analysis completed for the Project under Section 7.

BR-MM.5

Based on a comment received from the USFWS (see Chapter 3.0, Letter 04, Comment 04/3 of this Final SEIR), USFWS noted that the statement in Bullet 3 of Mitigation Measure BR-MM.5 in the Draft SEIR did not preclude CWMI from the agency notification requirements set forth in the 1999 USFWS Protocols for Kit Fox. Namely, if during construction potential dens thought not to be occupied do, in fact, show evidence of occupation, destruction of the den(s) shall cease and USFWS shall be notified immediately. The statement in the Draft SEIR was not read as intended. CWMI intends to conduct surveys and den destruction in a manner consistent with the June 1999 Protocols (USFWS (June 1999), p. 7). If a den thought to be unoccupied is subsequently thought to be occupied, den destruction will cease and may only continue as described in Bullet 5 of Mitigation Measure BR-MM.5 under the direction of a Qualified Biologist. The intended focus of the statement in Bullet 3 of BR-MM.5 was not that notification would not be done, but that the den destruction could continue in this situation after notification of and authorization from the USFWS and CDFG.

Based on the above and ongoing discussions with USFWS and CDFG, BR-MM.5 is revised to delete the remainder of phrase after the word “immediately” and to clarify the roles of the “Trained Biologist” and “Qualified Biologist: at KHF.

BR-MM.5 now reads as follows (new language shown in double-underline, and deleted language shown in ~~strike through~~):

Limited destruction of unoccupied San Joaquin kit fox dens and potential kit fox dens may be allowed if avoidance is infeasible provided the following procedures are observed:

- A Trained Biologist shall monitor the den for a minimum of three (3) days prior to disturbance to determine if the den is actually being used by kit fox. After the first three (3) days of monitoring, the den shall be partially filled a minimum of three (3) additional days to allow the animal to move to another den during its normal activities.
- After the den is determined to be unoccupied (i.e., no kit fox are inside), it can be destroyed by careful excavation. The den shall be fully excavated, filled with dirt, and compacted to ensure that San Joaquin kit fox cannot use the den during the construction period. USFWS and CDFG encourage hand excavation, but realize that soil conditions may necessitate the use of excavating equipment. Excavation and compaction efforts shall be conducted or overseen by a Trained Biologist.
- If at any point, a kit fox is thought to be using the den, the plugging or excavation activity shall stop and USFWS and CDFG shall be contacted immediately. ~~unless the wildlife agencies have agreed to a professional biologist overseeing den destruction.~~
- Natal or pupping dens that are occupied shall not be destroyed until the pups and adults have vacated, and then only after consultation with the USFWS and CDFG. Therefore, Project activities at some dens sites shall be postponed in the dens are occupied.
- If excavation of a den thought to be active (but not a natal or pupping den) is unavoidable, the ~~Project Proponent (Qualified Biologist) (Professional Biologist)~~ shall notify USFWS and CDFG in writing, before plugging or excavation activities may begin, of the intent to destroy subject dens and of the reasons why alternative courses of action are not possible. If given permission by these agencies, excavation plans may proceed as outline below under the direct supervision of the ~~Qualified Biologist Professional Biologist~~. If the animal does not change dens, excavation of the den may have to occur when it is temporarily vacant (e.g., at night). Plugging and excavation activities shall be avoided to the extent feasible during the breeding season (January 15 through June 1), when most active dens are being used as reproduction or pupping dens.
 - The den shall be monitored for a least five (5) consecutive days in addition to the three (3) initial observation times. This time period will allow any resident animals to move to another den during its normal activities. This monitoring shall be conducted by a Trained Biologist.
 - Use of the den can be discouraged during this five-day period by partially plugging it entrance(s) with soil in such a manner that any resident animals can escape easily. This monitoring and plugging shall be conducted by a Trained Biologist.

- When signs of activities at the den cease and the USFWS and CDFG (or a Qualified Biologist ~~Professional Biologist~~) deem it safe to do so, the den can be dug out by hand tools to a point where it is certain no kit fox is using the den. The den shall be fully excavated and then filled with dirt and compacted to ensure that the kit fox cannot reenter the den during the construction period. USFWS and CDFG encourage hand excavation, but realize that soil conditions may necessitate the use of excavating equipment. This den destruction shall be conducted or overseen by a Trained Biologist. CWMI shall submit the names, credentials and contact information of the Qualified Biologist that will conduct preconstruction protocol surveys and/or construction monitoring to the USFWS and CDFG. A Trained Biologist may conduct future routine surveys, monitoring and reporting consistent with the final biological analysis completed for the Project under Section 7.
- A Trained Biologist shall document and report den monitoring and plugging activities in writing to the USFWS, CDFG and Kings County annually or at other frequency approved by the two wildlife agencies.
- If a take authorization/permit has been obtained from the USFWS and CDFG, active den destruction may proceed consistent with the terms of the incidental take permit. If no take authorization/permit has been issued, the potential dens shall be monitored in accordance with the procedures included in this mitigation measure.

In addition, based of the ongoing discussions with the USFWS and CDFG and based on Responses 04/2 and 04/3, biological mitigation measure BR-MM.8 is revised to read as follows (new language shown in double-underline, and deleted language shown in ~~strike through~~):

BR-MM.8

Construction pipes, culverts, or similar structures with a diameter of four (4) inches or greater that are stored at a construction site at less than two feet aboveground, and that are located outside a chain-link fence for one or more overnight periods, shall be thoroughly inspected for San Joaquin kit fox before the pipe is subsequently buried, capped, or otherwise used or move in any way. If a San Joaquin kit fox is discovered inside a pipe, that section of pipe shall not be moved until the USFWS or CDFG has been consulted, or the animal has fled. If necessary, and under the direct supervision of a Qualified Biologist ~~Professional Biologist~~, the pipe may be moved once to remove it from the path of construction activities, where it shall remain until the fox has escaped. CWMI shall submit the names, credentials and contact information of the Qualified Biologist that will conduct preconstruction protocol surveys and/or construction monitoring to the USFWS and CDFG.

A Trained Biologist may conduct future routine surveys, monitoring and reporting consistent with the final biological analysis completed for the Project under Section 7.

These clarifications to BR-MM.4, BR-MM.5, and BR-MM.8 do not alter the findings or conclusions of the Draft SEIR. These clarifications are also included in Table 1-1 of this Final SEIR and in the Mitigation Monitoring Program provided as Appendix A of this Final SEIR.

Rodent Control

The USFWS expressed concern regarding the wording of BR-MM.9 (see Chapter 3.0, Letter 04, Comment 04/4 of this Final SEIR). BR-MM.9 is therefore revised as follows (new language shown in double-underline and deleted language shown in ~~strike through~~):

Use of rodenticides and herbicides in Project areas shall be restricted to those included on a list of acceptable rodenticides and herbicides provided by the USFWS. Use of such compounds shall observe label and other restrictions mandated by the USEPA, California Department of Food and Agriculture (CDFA), and other state and federal legislation, as well as additional Project-related restrictions deemed necessary by USFWS or CDFG. If rodent control must be conducted, zinc phosphide, or other rodenticide ~~that may be approved in the future~~ by the USFWS and CDFG at that time, may ~~can~~ be used because of proven lower risk to San Joaquin kit fox (USFWS, 1999).

Trained Biologist

Based on a comment received from CDFG (see Chapter 3.0; Letter 06; Comment 06/6 of this Final SEIR), Measures BR-MM.4 and BR-MM.5 in the Draft SEIR warranted clarification regarding "Trained Biologist" in their implementation. Measure BR-MM.8 includes direct supervision by a "Professional Biologist" and clarification of this term is warranted as well. The concept of "Trained Biologist" was established in the 1991 Mitigation and Monitoring Plan for KHF, previously approved by the USFWS and CDFG. Since the early 1990s, CWMI has used in-house "trained biologists" in accordance with the 1991 Mitigation and Monitoring Program for pre-disturbance surveys for construction, operation and maintenance needs (e.g., repair of broken water line or installation of a new groundwater well). "Trained Biologist" is a term used by CWMI for a CWMI employee (or a KHF contractor employee) with a four-year college degree in biology, zoology, wildlife management, or a related field and who has completed an appropriate training session by a qualified biologist in order to implement and monitor some of the management practices for the KHF endangered species protection program.

Based on discussions with the USFWS, "Qualified Biologist" is the term CWMI should use for a professional biologist employed to conduct protocol surveys and other monitoring measures, as called for in the Draft SEIR. The biological mitigation measures for the

proposed Project have been revised as part of this Final SEIR to use the term "Qualified Biologist" in lieu of "professional biologist." (See Table 1-1 of the Final SEIR for this revision). The June 1999 *USFWS Standardized Recommendations for the Protection of the San Joaquin Kit Fox* (Recommendations) define a "Qualified Biologist" as any person who has completed at least four years of university training in wildlife biology or a related science and/or has demonstrated field experience in the identification and life history of the kit fox. (Emphasis added.) This change to the biological mitigation measures does not alter the findings or conclusions of the Draft SEIR.

CWMI, in its ongoing discussions with the USFWS and CDFG, has agreed to submit the names, credentials, and contact information of the Qualified Biologists that will conduct protocol surveys and other professional biological work as needed. With respect to the trained biologists, CWMI will submit documentation to USFWS and CDFG that a Qualified Biologist has provided the appropriate training to the in-house Trained Biologists.

Handling of Listed Species

Based on a comment received from CDFG (see Chapter 3.0, Letter 06, Comment 06/8 of this Final SEIR), only Qualified Biologists will handle listed species on-site. The "Trained Biologist" will only observe. Section 3.4.5 of the Draft SEIR, page 3.4-18 is revised to add the following:

"Listed species shall only be handled by Qualified Biologists who have experience handling these species, have extensive experience with their biology, and are authorized by CDFG and the USFWS."

This revision does not alter the findings or conclusions of the Draft SEIR.

Draft SEIR Section 3.7 Cultural and Paleontological Resources

Mitigation Measure CR-MM.4 in the Draft SEIR has been updated to clarify the training requirements. The new is language shown in double-underline.

CR-MM.4

CWMI shall provide up to 4 hours of training to equipment operators and field engineers on the identification of paleontological remains. The training shall be provided before the commencement of excavation activities in undisturbed areas and shall be conducted at the excavation site by a qualified paleontologist.

Draft SEIR Section 3.6 Geology and Soils

RWQCB noted in its comment letter (see Chapter 3.0, Letter 09, Comment 09/4 of this Final SEIR) that the Draft SEIR has an incorrect reference to biological resources. The following

sentence, “This section provides an evaluation of cumulative impacts to biological resources.” has been revised to read as follows (new language is shown in double-underline and deleted language shown in ~~strike through~~):

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“This section provides an evaluation of cumulative impacts to biological geological resources.”

This correction does not alter the findings or conclusions of the Draft SEIR.

Draft SEIR Section 3.7 Hazards and Hazardous Materials

DTSC noted in its comment letter (see Chapter 3.0, Letter 08, Comment 08/4 of this Final SEIR), that a discussion regarding the types of hazardous waste that are not accepted at KHF was missing from the Draft SEIR. The double-underline text below has been added to Draft SEIR Section 2.6.1.1 (page 2-9) and Section 3.7.2.2.1 (page 3.7-6).

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“Radioactive material that is not exempt from regulation and licensing or is not expressly authorized for disposal under the Radiation Control Law, Chapter 8 (commencing with Section 114960) of part 9 of division 104 of the Health and Safety Code, or any successor statute that may replace the Radiation Control Law; or is prohibited from disposal under article 1 (commencing with Section 114705) of chapter 5 of part 9 of division 104 of the Health and Safety Code or any successor statute that may replace article 1; or is prohibited from disposal by any governmental agency.”

This correction does not alter the findings or conclusions of the Draft SEIR.

Reference for Lab-packed Cyanides or Sulfides.

DTSC noted in its comment letter (see Chapter 3.0, Letter 08, Comment 08/5 of this Final SEIR), that the Draft SEIR has an incorrect reference for lab-packed cyanides or sulfides in Section 2.6.1.1 (page 2-9) and Section 3.7.2.2.1 (page 3.7-6). The correct reference is CCR Title 22, Section 66264.316(9).

This correction does not alter the findings or conclusions of the Draft SEIR.

Recirculated Portions of the Draft SEIR Section 3.11 Transportation and Traffic

In its comment letter on the Recirculated Portions of the Draft SEIR (see Chapter 4.0, Letter 31 of this Final SEIR), Caltrans concurred with the methodology and conclusions of the supplemental traffic analysis, and concurred with the additional traffic mitigation measures TT-MM.3A through TT-MM.3D in the Recirculated Portions of the Draft SEIR for specific improvements on the I-5 on- and off-ramps and at the SR-41 intersections with I-5.

Based on Caltrans comments on the Recirculated Portions of the Draft SEIR (see Chapter 4.0, Letter 31, Comment 31/5 of this Final SEIR) the County agrees with the deletion of the last sentence of the Timing portion of mitigation measures TT-MM.1 and TT-MM.3A to 3D. The sentence to be deleted reads as:

“If Caltrans does not identify the above improvements as being necessary prior to completion of the proposed Project’s operations, no mitigation will be required.”

Based on this comment, the timing section of mitigation measures TT-MM.1 and TT-MM.3A to 3D is revised to read as follows (deleted language shown in ~~strike through~~):

Timing: After issuance of CUP, CWMI shall enter into an agreement with Caltrans to identify the specific amount of pro rata fair share fees to be paid as required by this SEIR for the identified improvements. The agreement shall specify the pro rata fair share fee amounts to be paid by CWMI and ensure that the improvements will be incorporated into Caltrans’ improvement plan so that they are constructed when needed. ~~If Caltrans does not identify the above improvements as being necessary prior to completion of the proposed Project’s operations, no mitigation will be required.~~

This revision is included in Table 1-1 Summary of Impacts and Mitigations in this Final SEIR and in the Mitigation Monitoring Plan included in Appendix A of this Final SEIR.