



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

March 29, 2021
Sent via email

Mar 29 2021

STATE CLEARINGHOUSE

Mr. Wesley E. Coleman, Jr., Chief
U.S. Army Corps of Engineers, Los Angeles District
Office of Water Project Review
915 Wilshire Boulevard
Los Angeles, CA 90017-3401

Subject: Prado Basin Ecosystem Restoration and Water Conservation Integrated Feasibility Study Environmental Impact Statement/Environmental Impact Report - State Clearinghouse No. 2016041002

Dear Mr. Coleman:

The California Department of Fish and Wildlife (CDFW) received the Final Integrated Feasibility Report (IFR) Environment Impact Statement (EIS)/Environmental Impact Report (EIR) for the Prado Basin Ecosystem Restoration and Water Conservation Project (Project), with the United States Army Corps of Engineers (ACOE; Corps) being the Lead Agency under National Environmental Policy Act (NEPA), and the Orange County Water District (OCWD) being the non-Federal sponsor (NFS) and the Lead Agency for the California Environmental Quality Act (CEQA). Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife.

PROJECT DESCRIPTION

The Project encompasses much of the Prado Basin, with approximately 4,500 acres of aquatic and associated riparian habitat occurring immediately upstream and extending along the Santa Ana River for 7 miles downstream of Prado Dam. The Project includes permanent changes to the Water Control Plan for Prado Dam, including water conservation operations up to 505 feet water service elevation (WSE) on a year-round basis, sediment management, and ecological restoration.

CDFW ROLE

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

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

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

For purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW offers the comments and recommendations below to assist in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENTS AND RECOMMENDATIONS

CDFW recognizes that under NEPA, a federal agency may use a completed CEQA review when it has participated in the preparation of the CEQA review and this evaluation meets the NEPA requirements; however, the ACOE and OCWD should be aware that CEQA guidelines recommend that Lead Agencies rely on an EIS "whenever possible so long as the EIS satisfies the requirements of CEQA (Cal. Pub. Resources Code, § 21083.7). In order to promote efficient and effective environmental reviews, the Council on Environmental Quality (CEQ) and the California Governor's Office of Planning and Research (OPR) jointly issued a Handbook for Integrating California State and Federal environmental reviews for public review and comment. After reviewing the CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy, (40 CFR Parts 1500-1508) and the IFR EIS/EIR, CDFW strongly recommends that ACOE and OCWD consider the Project's a) cumulative impacts, b) significance impacts on biological resources, and c) compensatory mitigation.

CDFW is providing below: the original CDFW comments (March 25, 2019) to the Draft IFR/Supplemental EIS/EIR (February 2019); the corresponding ACOE/OCWD response (in italics); along with follow up comments as provided in this letter (in bold). To reduce redundancy, certain previous comments and responses are grouped together, with the follow-up concerns combined into a single comment.

A. Cumulative Impacts (Incremental Physical Changes Caused by the Project (Id., § 15382.))

CDFW 4-c Comment: The DEIR/EIS needs to provide documentation to support the methodology used to determine the proposed mitigation obligation of OCWD. Additionally, it is unclear whether the Corps will be mitigating for loss of habitat due to inundation for flood control purposes.

ACOE/OCWD 4-c Response: This document analyzes a series of ecosystem restoration and water conservation alternatives but is not intended to address the ongoing operation of Prado Dam for flood risk management purposes.

CDFW-4 Follow-Up Concerns: The CEQA Guidelines and the CEQ NEPA regulations, handbook, and guidance spell out similar cumulative impact analysis procedures, with the analysis addressing possible cumulative effects in regard to: past, present, and reasonably foreseeable/probable future projects that could combine with the impacts of the proposal at hand; the geographic and temporal scopes for each affected resource that covers the reasonably foreseeable effects; and a focused analysis on severe impacts. Therefore, CDFW strongly recommends that the Project, along with other activities that could incrementally impact Prado Basin, its tributaries, or the watershed, be addressed in the IFR EIS/EIR (Cumulative Impacts Section 5.15), including, but not limited to: flood control and/or known maintenance activities, the Chino Basin Watermaster Optimum Basin Management Program (State Clearinghouse No. 2020020183) and the accompanying programmatic EIR (PEIR; July 2000), the Corona Reclaimed Water Master Plan Project (State Clearinghouse No. 2020050497); as well as, any relevant recent waste water change petitions (e.g., Wastewater Change Petition #WW0067 for the reduction of discharge quantity by the Western Riverside County Regional Wastewater Authority).

- B. Significance (Analysis and the Applied Threshold (Id., §§ 15064, 15064.7, 15065, 15126.2.))

CDFW-1 Comment: CDFW is concerned regarding the organization of the DEIR/EIS. It is unclear whether portions of the Project included in the DEIR/EIS are intended to be mitigation measures. Many of the "Ecosystem Restoration" portions of the project have significant impacts to the environment, particularly biological resources and may not have been adequately analyzed within the document. CDFW recommends the lead agency re-evaluate the project impacts regarding species and habitat information. CDFW is concerned regarding the adequacy of the mitigation measures proposed within Appendix F Mitigation Monitoring and Reporting Program of the DEIR/DEIS to avoid potentially significant impacts, including cumulative impacts and the ability of the project proponents to mitigate project impacts.

CDFW 3c Comment: The DEIR/EIS does not propose mitigation measures within the document nor the Mitigation Monitoring and Reporting Program to mitigate the loss of the habitat removed during the construction of the transition channel, fill areas, access roads, OCWD wetland channel, including the acres of least Bell's vireo habitat removed and number territories lost. CDFW is concerned that without this information, the DEIR/EIS analysis is incomplete and the significance of these impacts cannot be determined as required under CEQA. Furthermore, there are no proposed mitigation measures included in the DEIR/EIS to mitigate for loss of least Bell's vireo habitat or nesting territories.

ACOE/OCWD-1 Response: No measures included in the array of alternatives are intended to be mitigation. The IFR analyzes direct, indirect, and cumulative effects of the final array of alternatives. The alternatives include water conservation and ecosystem restoration plans. As described in the IFR, environmental commitments have been incorporated into the alternatives to avoid and reduce impacts. No significant impacts to biological resources, or any resources

other than air quality/GHG under CEQA, were identified in the IFR, which evaluated impacts in accordance with identified significance thresholds.

The IFR determined that mitigation for the loss of habitat or vegetation would not be required due to the beneficial nature of the ecosystem restoration component of the Project which would result in a net benefit to habitat and vegetation within the Project site, as well as a net gain in habitat acreage. Relevant information specifically related to endangered and threatened species and their habitats is provided in Appendix G (Biological Assessment), which includes a summary of acreage impacts vs. expected benefits from the implementation of the Recommended Plan (Table 7). In addition, the CHAP evaluates the total changes in the habitat acreages and suitability for the habitats and can be found in Appendix D within the Final EIR/EIS. More detailed discussion of vegetation impacts of construction for the recommended plan as they related to habitat of endangered and threatened species are included in Appendix G.

ACOE/OCWD-3c Response: The potential for impacts to habitat as a result of the implementation of the proposed project were thoroughly evaluated in Section 5.6 of the IFR. This evaluation determined that no significant impacts to biological resources would occur, which includes impacts to least Bell's vireo and their habitat. In addition, the analyses contained in the IFR and associated appendices, most notably the CHAP Appendix and Biological Assessment, indicate an anticipated increase in habitat quantity and quality for least Bell's vireo as the result of the project. Therefore, the Corps has determined that no mitigation for least Bell's vireo habitat or nesting territories is warranted.

CDFW-1 Follow-Up Concerns: Federal agencies are required to determine whether their actions may affect listed or proposed species and designated and proposed critical habitat. A written analysis, or Biological Assessment (BA), is prepared for the United States Fish and Wildlife to address potential impacts to a federally listed species. Within the Project, some species (e.g., southwestern willow flycatcher, least Bell's vireo, yellow-billed cuckoo) are both federally and state listed, while others, such as the tricolored blackbird and western pond turtle, have only state protection. The IFR EIS/EIR provides a more thorough review of federally listed species and provides little to no analysis for state resources. For example, the IFR EIS/EIR omits important details, such as the acreage of vegetation communities associated with each state sensitive species that will be lost (e.g., tricolored blackbird cattail marsh, open areas, etc.), the impact to wintering grounds and foraging areas for year-round residents (e.g., burrowing owls, tricolored blackbirds, raptors), suitable adjacent refugia or lands needed for seasonal movement or reproduction (e.g., western pond turtle for egg-laying, hibernation, or response to drying of local bodies of water).

NEPA and CEQA define significance in different terms; thus, as the Lead Agencies, ACOE and OCWD need to ensure that the CEQA and NEPA practices can be aligned by explaining which significance determinations are being made and setting forth specific significance determinations. The lack of, or insufficient, analysis to facilitate informed public decision can lead to a failure to proceed in the manner required by law, as a matter of de novo judicial review (Sierra Club v. County of Fresno (2018) 6 Cal). The California Supreme Court held in this context in Sierra Club v. County of Fresno, that an EIR will pass muster in the independent judgment of the court where the analysis provides sufficient detail "to enable those who did not participate in its preparation to

understand and to consider meaningfully the issues raised by the proposed project.” The court also cited other case law, including *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal. 5th 497, and said, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.” Please see the following cases for more details:

- **Gray v. County of Madera (2008) 167 Cal. App. 4th 1099 (Madera Quarry Project).**
- **Save Panoche Valley v. County of San Benito (2013) Cal. App. 4th 503 (Panoche Solar Project)**
- **Save Agoura Cornell Knoll v. City of Agoura Hills (2020) 46 Cal. App. 5th 665 (Cornerstone Mixed Use Project).**

CDFW-2a Comment: Within the NOP comments, CDFW recommended an assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW also recommended a floristic, alliance- and/or association-based mapping and assessment be completed following *A Manual of California Vegetation*, second edition (Sawyer et al. 2009). The DEIR/EIS did not use the accepted vegetation classification, which is the National Vegetation Classification Standard.

ACOE/OCWD-2a Response: The classifications used in the document are in keeping with those commonly used in environmental analyses throughout the State of California. Moreover, there are no requirements under either CEQA or NEPA for the use of the classifications specified in the Manual of California Vegetation. No specific deficiencies in the environmental analysis due to the use of the classifications identified in the DEIR/EIS were identified. Moreover, the DEIR/EIS provides adequate descriptions of the vegetation communities that would be affected by the proposed Project to appropriately evaluate the physical environmental effects of the Project.

CDFW-2a Follow-Up Concerns: While there may be ‘no requirements under either CEQA or NEPA for the use of the classifications specified in the Manual of California Vegetation,’ CDFW believes that the detailed environmental information provided in the recommended vegetation mapping (e.g., association, alliance) allows for analyses and monitoring of ecological processes and vegetation change, includes a wide variety of detailed biological and environmental data that can be used to model and map wildlife habitat, and is better suited for focused conservation efforts. Also, while it may be true that ‘the classifications used in the document are in keeping with those commonly used in environmental analyses throughout the State of California’, please be aware that to date, approximately 42 percent of the state has been mapped to the Survey of California vegetation standards.

The western Riverside Multispecies Habitat Conservation Plan (MSHCP) states that “Sensitive species and their Habitats are public resources; the benefits of protecting these resources accrue broadly to the citizens of the state and the nation. The federal and state governments have acknowledged their role in Conservation and agree to assist in creating an MSHCP Conservation Area that reduces or avoids the need to list additional species and contributes to the recovery of Covered Species. Through the MSHCP and its Implementing Agreement with the participating jurisdictions and special

districts, the federal and state governments have agreed to partner with the participating local jurisdictions and the private sector in assembling, managing, and monitoring the MSHCP Conservation Area (Section 4.4. The Role of Federal and State Governments in the Reserve Assembly)”.

The MSHCP will provide conservation to over 500,000 acres of reserve land, with the core area providing the conservation/preservation of different habitat types across 347,000 acres of public land (Riverside County Integrated Project, 2003), including Prado Basin (Existing Core A). These reserves were identified using a general habitat and vegetation map (Pacific Southwest Biological Services and KTU+A 1995). The existing vegetation map was not able to represent ecological changes in western Riverside County and characterized vegetation very broadly and anecdotally, without reliably differentiating the main plant communities (Allen et al. 2005; RCIP 2003). Thus, the CDFW Resource Assessment Program funded a pilot study that included a fine-scale vegetation inventory and mapping effort within the MSHCP to develop consistent and reliable monitoring strategies and to include reliable vegetation mapping substantiated by field data and map accuracy assessment. Knowing that the products and outcomes of this effort would provide a new standard for future Natural Community Conservation Plans, CDFW partnered with other entities that had already developed standardized techniques for vegetation inventorying and mapping, including National Vegetation Classification System (Grossman et al. 1998) and A Manual of California Vegetation (Sawyer et al. 2009). CDFW would like to continue to work in a collaborative effort with its federal and local public agency partners by using the best, most efficient methods to achieve common goals of creating, maintaining, and conserving state sensitive resources within the Prado Basin.

CDFW-2b Comment: CDFW's NOP comment included the need for a complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish and Game Code § 3511). The inventory should address seasonal variations in use of the project area and should not be limited to resident species. Focused species-specific surveys required through the Western Riverside County Multiple Species Habitat Conservation Plan should be completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable.

Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if the project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

CDFW-3d Comment: The DEIR/EIS does not evaluate the potential impacts and loss of habitat to tricolored blackbirds, a State listed threatened species. Tricolored blackbirds have been found in several areas surrounding the project site, and suitable habitat exists in areas proposed for disturbance. CDFW requests protocol surveys be completed to adequately analyze project impacts to the species. Without this additional data, the DEIR/EIS analysis is incomplete and the significance of these impacts cannot be determined as required under CEQA. Furthermore,

there are no proposed mitigation measures included in the DEIR/EIS to mitigate for loss of tricolored black bird habitat.

ACOE/OCWD-2b Response: Existing survey data on protected biological resources that could potentially be impacted by the proposed project is sufficient to support the analyses and conclusions contained in the IFR. OCWD founded the Santa Ana Watershed Association (SAWA) whose employees include the biological monitoring staffs of the Western Riverside MSHCP. Staff from OCWD and SAWA partner together to gather current information and conduct surveys for the species included in Tables 4-13 and 4-14 of the IFR on a regular schedule dictated by the overall MSHCP Monitoring Schedule, which is on a 1-3 year rotation depending upon the species. Additionally, OCWD conducts special investigations on those sensitive species that are known to occur in order to develop better ecological data and management strategies, such as the California Red-sided Garter Snake. The data produced by SAWA and OCWD staff is current, and the determinations of potential occurrences of protected biological resources summarized in Tables 4-13 and 4-14 of the IFR are up to date. As a result, updated surveys for sensitive taxa are not currently warranted. As the project progresses, the data resulting from ongoing and future monitoring efforts described above with regards to sensitive taxa will continue to be utilized.

ACOE/OCWD-3d Response: The IFR does evaluate potential impacts to tricolored blackbird. Each component of the biological impact analyses in Section 5.6 contains a sub-section entitled State Listed and Sensitive Bird Species, with reference to the list of species in Table 5-28, which includes the tricolored blackbird. Given the lengthy list of birds covered by this analysis, each species is not called out by name routinely, but rather referenced as included in the analyses as found in Table 5-28. Tricolored blackbirds are among the species surveyed by Prado biologists during the bird breeding season (see Table 4-14), and no breeding has been documented in the project area in recent times. The ongoing surveys exceed protocol survey requirements, and thus the inclusion of additional protocol surveys is not necessary and would not provide additional information relevant to the impact analyses. While the Prado Wetlands represent a significant potential breeding site of 450 acres for this species, no nesting attempts have ever been documented in spite of routine monitoring. Furthermore, this potential habitat will be unaffected by the proposed action and therefore no adverse effects area anticipated.

CDFW-2b and 3d Follow-Up Concerns: CDFW does not dispute the knowledge of the staff conducting the surveys, but rather, would like an opportunity to review and evaluate the information provided by surveys that have been conducted on state sensitive resources. Given the large area within the Project and the changing habitat dynamics within Prado Basin, the rate of detection may be limited or change. In such cases, habitat- and species-based modeling, along with field verification is often used. Nonetheless, simply stating that protocol surveys were performed in the comments and not the IFR EIS/EIR, particularly when there are no protocol surveys for many state listed species (e.g. tricolored blackbirds), with no details, such as the location, type of habitat (e.g., nesting, foraging, etc.), methodology (e.g., every year/3rd year, transects/point, counts/meandering, and use of call back tapes), and/or findings, makes it impossible to assess the Project impacts and their significance to those species and their habitat.

CDFW-2c Comment: The DEIR/EIS does not provide documentation that recent burrowing owl surveys, rare plant surveys, small mammal studies or fish surveys were completed within the Project site. Several rare, threatened, endangered and other sensitive species are known to be

within and surrounding the Project area. CDFW recommends the Project proponents fully analyze potential impacts to all special status species and include avoidance, minimization and mitigation measures to reduce project impacts. Without this additional information and analysis, it is unclear whether the Project could result in significant impacts to these resources.

ACOE/OCWD-2c Response: There are no CDFW sensitive plants, burrowing owls, native fishes, or small mammals in the area that would be affected by the proposed project due to the lack of suitable habitat. While burrowing owls are occasionally reported within the Prado Basin, these sightings are limited to upland areas outside of the proposed project work areas.

CDFW-2c Follow-Up Concerns: CDFW believes that suitable burrowing owl habitat may exist in the Project and immediately surrounding area. The Prado Basin is made up of different habitat alliances, including those used for agricultural purposes and/or have low-lying or open vegetation cover (e.g., red brome/Mediterranean grass grasslands). Further, CDFW disagrees that the Project does not contain ‘upland’ areas (see proposed stockpile location(s)). Regardless, CDFW is aware of burrowing owl occurrences within portions that may periodically inundate, as well as more upland areas of the Prado Basin. It should also be noted that both the Cities of Chino and Ontario have each identified and proposed 300 acres of conserved lands within the Prado Basin to compensate for impacts to burrowing owls from their large master community development projects, the Preserve and Ontario Ranch.

CDFW-6a Comment: CDFW recognizes the construction of the new channel will have direct impacts to riparian habitat, particularly seasonally occupied least Bell's vireo habitat as well as potential tricolored black bird habitat. It is understood the areas will be re-vegetated, there will still be a temporary and permanent loss of habitat which should be identified, analyzed and mitigated. CDFW is concerned that without this information, the DEIR/EIS analysis is incomplete and the significance of these impacts cannot be determined as required under CEQA.

ACOE/OCWD-6a Response: A temporary loss of habitat will occur during construction. However, no permanent net loss of habitat has been identified. Habitat in some areas will be converted from one habitat type to another. In addition, while specific locations may have existing habitat removed to facilitate construction of features or long-term maintenance, the overall outcome of the Chino Creek restoration will be a net gain in habitat acres and habitat quality. With regards to the Chino Creek channel feature, an initial loss of 5.3 acres of existing riparian habitat would be replaced by an additional 112 acres of native vegetation following construction completion, which includes the conversion of existing poor quality or fragmented habitat areas into high quality habitat. Pursuant to Corps policy contained in ER 1105-2-100 (Section 3.5-b(3)), the Corps formulates and designs ecosystem restoration projects to avoid any requirements for compensatory mitigation. In the case of the Chino Creek feature, this includes an anticipated increase in the quality and quantity of habitat for least Bell's vireo as described above and further detailed in the project's biological assessment.

Within the Chino Creek channel restoration area, there is currently no suitable habitat for tricolored blackbird. This has been clarified in the IFR in Section 5.6.4.1. This area is predominantly made up of invasive forb and pepperweed fields interspersed with clumps of trees, and a narrow riparian strip along the current creek alignment. Since no suitable habitat for

tricolored blackbird occurs within the Chino Creek area, no impacts to tricolored blackbird habitat would occur as the result of this feature.

CDFW-6a Follow-Up Concerns: The tricolored blackbird's basic requirements for selecting breeding sites are: 1) a protected nesting substrate in flooded, thorny, or spiny vegetation; 2) an open accessible source of water for drinking and bathing; and 3) a suitable foraging space providing insect prey (Beedy and Hamilton 1999, Beedy 2008, Cook and Toft 2005, Meese 2014). Ideal breeding habitats consist of a suitable nesting substrate surrounded by foraging habitats that produce large numbers of grasshoppers, dragonflies, and other large insects, with a source of surface water nearby (Beedy and Hamilton 1999, Meese 2014). Wintering tricolored blackbirds often congregate in large, mixed-species flocks that forage in grasslands and agricultural fields with low-growing vegetation and at dairies and feedlots, segregating into pure tricolored blackbird flocks in early February to find adjacent suitable nesting substrate (Beedy and Hamilton 1999, Beedy 2008). Breeding colonies are found in a variety of nesting substrates, including freshwater marshes dominated by cattails (*Typha latifolia*), bulrushes (*Schoenoplectus californicus*), or introduced Himalayan blackberry (*Rubus armeniacus*).

Although vegetation alliances (e.g., hardstem and California bulrush marshes, marsh cattail, etc.) were not mapped, one can infer that there may be suitable foraging or nesting substrate, including nonnative habitat (e.g., perennial pepper weed patches, upland mustards or star-thistle fields, etc.) that will be removed. Sightings of tricolored blackbirds have occurred within dairy lots, agricultural fields, wetlands, and various other habitat in the Project area, including Prado Basin (1997, 2001, 2012, 2015), at the confluence of Prado Basin and Mill Creek (2014, 2018, 2020), near Chino Creek (2018), and Prado Regional Park (2004, 2014, 2016, 2020). Given the importance of the unique juxtaposition nesting and foraging habitat requirements; the occurrences documented in, and around, Prado Basin; and its state and local decline, CDFW recommends wintering, foraging, and nesting tricolored blackbird habitat be identified, surveyed, monitored, and if appropriate, mitigated for.

CDFW-7 Comment: Riparian edge management is proposed to restore transitional habitat and support wildlife mobility. Riparian edge management would occur around the perimeters of all the sediment management features and the maintenance access roads in the Chino Creek area. The total area of the riparian edge would be 44.49 acres. The entire area for the riparian edge management would be cleared, grubbed, and regarded and then replanted with a combination of seeding, pole staking and container plants.

CDFW is concerned that riparian edge management is expected to be included to offset the project impacts. CDFW disagrees with the statement that the riparian edge management provides restored transition habitat and supports wildlife mobility. Edge effects and the consequential habitat fragmentation are major causes of biodiversity loss. Lee et al. (2004) concluded that narrow buffer (15.1 -29.0 meters) are associated with greater variability in effect sizes of both large positive and large negative effects. The United States Department of Agriculture guidelines recommend a buffer width of at least 30 meters to maintain aquatic habitat functions and biodiversity. It is unclear whether a 25- foot Riparian Edge Management area along maintenance roadways and channel would be effective in reducing or mitigating impacts to riparian and/or wetland habitats and may not be a worthwhile mitigation effort. CDFW is concerned that without an additional analysis of

indirect and direct impacts, the DEIR/EIS analysis is incomplete, and the significance of these impacts cannot be determined as required under CEQA.

ACOE/OCWD-7 Response: The Riparian Edge Management measure referenced is not included in the recommended plan. Since the Riparian Edge Management feature is spatially and functionally tied to the large-scale sediment management feature, it is only a component of alternatives that include the large-scale sediment management feature.

As described in the IFR in Section 3.1.4.8, the intent of the riparian edge management feature is to take advantage of the open water habitat that the large-scale sediment management feature would have created. The intent of this feature is not to reduce or mitigate for impacts as suggested in the comment. The Corps disagrees that this habitat measure would not provide valuable habitat as included in Alternatives 2 and 4. Within the Prado Basin, existing native riparian habitat currently grows in discontinuous patches amongst some portions of the basin, and these habitat patches provide habitat value. While continuous habitat may provide a greater value to wildlife than narrow corridors or habitat patches, this does not mean that habitat patches or strips provide no value, and in the context of Prado Basin, entirely continuous habitat is not feasible in all areas.

While the comment references concern regarding a need for additional analyses of direct and indirect impacts to riparian and/or wetland habitat, it is not clear what project measures these potentially unquantified impacts are associated with. Section 5.6 of the IFR contains discussions and analyses regarding the potential impact of all alternatives on biological resources, including potential impacts to riparian and wetland habitat. Appendix B contains further analyses regarding potential impacts to wetlands as required by section 404b1 of the Clean Water Act. Appendix B has been further refined to more clearly describe potential short-term impacts to wetland and riparian habitats. These analyses are sufficient.

CDFW 7 Follow-Up Concerns: The Riparian Edge Management is identified in the preferred Alternative 3. According to the IFR EIS/EIR (3.2.2.1 Water Conservation with Small Scale Sediment Removal for Water Conservation no Ecosystem Restoration Sediment Management System and Figure 3-13), “The proposed sediment removal trap would be constructed outside of the nesting season (after August 15 and before March 1) near the discernable end of the SAR, within the southeast portion of Prado Basin near elevation 505 ft. The sediment removal trap would consist of approximately 14.3 acres and would have a maximum depth of 12 ft. A 30-foot-wide project access road would be constructed from the sediment removal trap to the sediment storage site and around the perimeter of the sediment removal trap. The access road around the perimeter of the sediment removal trap would provide a buffer between the sediment removal activities and adjacent habitat”.

CDFW believes that an access road is not a beneficial buffer, but rather, an impact that would result in additional edge effects and necessitate its own riparian edge management buffer. Once a riparian edge management buffer is established around the entire sediment management footprint, including the trap and access road, similar measures as proposed for the Santa Ana River Mainstem Upstream Focal Area (Alternative 2 3.1.4.8 Riparian Edge Management) should be performed (i.e., occurring outside the main nesting bird season (September and March), monitoring and adaptive

management upon completion of construction, and monitoring and adaptive management would be conducted until success criteria are met).

C. Mitigation (Considering Potentially Feasible Mitigation Measures and Alternatives (Id., §§ 15126.4, 15126.6.))

CDFW - 2d, 2f, 2g Comments: There are no proposed mitigation measures included in the DEIR/EIS to mitigate for loss of habitat and vegetation. CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR/EIS should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail.

(CDFW-2f) If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DEIR/EIS. CEQA Guidelines §15126.4, subdivision (a) (1) (8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigatable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

(CDFW-2g) CDFW recommends that the DEIR/EIS specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a) (4) (B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

ACOE/OCWD - 2d, 2f, 2g Response: The analysis of this future inundation of these lands as detailed in the IFR (Section 5.6), did not identify any significant impacts requiring mitigation with regards to habitat or vegetation. Associated with water conservation in the recommended plan is an incidental sediment management feature. This feature is proposed in an area currently being utilized for a similar purpose within the basin. In addition, the IFR contains commitments to revegetate any temporarily disturbed areas resulting from incidental sediment management, which is expected to increase the quantity of native vegetation at this location compared to the existing condition (see Section 5.6.4.3 of the IFR). As a result, no impacts to vegetation or habitat resulting from water conservation requiring mitigation resulting from any of the analyzed alternatives would occur.

CDFW - 2d, 2f, 2g Follow-Up Concerns: The IFR EIS/EIR (Section 5.6.4 Biological Resource Impacts Direct Impacts - Potential Inundation of Occupied Nests or Spawning Grounds State Listed and Sensitive Bird Species) concludes that, "Because the Water Conservation Plan would be implemented outside of nesting season, no impacts to active or inactive nests for any of the State listed or sensitive species summarized in

Table 5-28 would occur”. Conversely, the next section of the IFR EIS/EIR (Direct Impacts - Effects from Increased Days of Inundation During Nesting Season) specifies “There is the potential that water stored in the buffer pool could overlap into the beginning of nesting season and could submerge some trees that are used by migratory birds for nesting, causing them to relocate to higher elevations for nesting sites. The potential that nesting migratory birds could need to relocate to higher elevations would be an adverse impact. However, because the number of trees that could be potentially submerged would be relatively small compared to the overall amounts of trees that would be available in the Prado Basin and that the distribution of birds to higher elevations would not reduce populations of migratory birds nesting in the Prado Basin, these adverse effects are not considered to be substantial”.

The CEQ guidelines require an agency to consider three types of alternatives in NEPA: no action alternative, other reasonable courses of action, and mitigation measures that are not an element of the proposed action (40 CFR § 1508.25(b)(1)-(3)). There are two major differences related to mitigation between NEPA and CEQA - CEQA requires that any feasible mitigation measures that can reduce a significant impact be adopted, whereas NEPA does not (as long as the Lead Agency justifies its decision not to adopt feasible measures). In addition, CEQA mitigation requirements apply only to adverse environmental impacts found to be significant, while NEPA’s regulations apply to any adverse impact, even if it is not significant.

CDFW reiterates that the adverse Project-related impacts, including restoration, to sensitive species and habitats could be significant to both local and regional ecosystems and recommends that the IFR EIS/EIR include mitigation measures for adverse Project-related impacts to these resources. The Lead Agencies should make sure they are clear with each other and with the public about who is proposing mitigation measure(s), that the measures are feasible and not deferred into the future (CEQA Guidelines section 15126.4, subdivision (a)(1)(8)), and who will monitor and enforce the adopted measures. Where similar habitat to that being impacted is not available, offsite lands, either through a mitigation bank, acquisition, or fee title transfer, should be considered for mitigation, and the anticipated monitoring, management, and mechanism for preservation/conservation discussed.

CDFW-2e Comment: The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include proposed land dedications including conservation easements, endowments to ensure long-term monitoring and management programs, restrictions on access, and control of illegal dumping, water pollution, increased human intrusion, etc.

ACOE/OCWD-2e Response: Section 1161 of the Water Resources and Development Act of 2016 limits the period of time that the federal government require maintenance of non- structural ecosystem restoration features to ten years following the achievement of successful restoration. For structural features, maintenance requirements necessary to maintain these features are required in perpetuity. For water conservation, required maintenance activities would continue as long as water conservation operations continue. While the federal government cannot require maintenance of non-structural ecosystem restoration measures beyond the specified ten-year

*window, OCWD has committed **to voluntarily (emphasis added)** performing maintenance of these features, **as practicable (emphasis added)**, in accordance with their ongoing stewardship activities in the Prado basin for the life of the project. OCWD's environmental commitment in the Santa Ana River Watershed includes a **well-established partnership (emphasis added)** with SAWA in the control of thousands of acres of *Arundo donax*, the virtual recovery of neotropical nesting migrant birds including the endangered least Bell's vireo, and the successful restoration of a side-stream for spawning threatened Santa Ana suckers in the watershed. No land dedications have been identified nor are necessary to carry out the perpetual protection of habitat within OCWD-owned land. OCWD **has committed (emphasis added)** to managing the land to maintain the habitat. Lands required to be provided for the ecosystem restoration project must be maintained in public ownership in perpetuity.*

CDFW-2e Follow-Up Concerns: CDFW appreciates and acknowledges OCWD environmental stewardship and understands that the Prado basin will be maintained in public ownership in perpetuity. However, remaining in public ownership does not necessarily equate to management and conservation for sensitive resources. CDFW suggests that voluntary, unenforceable commitments (see emphasis above) be replaced with legal assurances (e.g., endowments, conservation easements) and actions (long-term adaptive management plan), guaranteeing in-perpetuity management and protections.

CDFW-4b Comment: Impacts to riparian habitat caused by prolonged inundation, whether the inundation is a result of water conservation or other efforts, should be identified, analyzed and addressed with an appropriate mitigation proposal within the DEIR/EIS. CDFW recommends the revised document identify adverse project-related impacts and propose measures to avoid, reduce and for unavoidable impacts, and mitigate. CDFW recommends project impacts be roughly proportional to the level of impacts, including temporal and cumulative impacts in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15064, 15065, and 15355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

CDFW-4c Comment: MM EC-BIO-1 states, "If the Habitat Monitoring Program indicates substantial and prolonged degradation of vegetation between 498 ft. and 505 ft., the degraded habitat would be replaced at a 1:1 ratio on OCWD property (Water Conservation Measure only)." Additionally, the EIR/EIS discusses the Habitat Monitoring Plan to be prepared by OCWD in coordination with the Corps, USGS, and USFWS and will include a statistically robust sampling method to measure and analyze effects of inundation on riparian vegetation. The vegetation will be monitored annually for signs of degradation. If the habitat monitoring program indicated substantial changes (>30 percent loss of foliage) and prolonged degradation of vegetation between 498 and 505 ft, the degraded habitat will be restored within the same area if possible, within two years after the 30% degradation trigger is detected. Restoration can either occur through natural recruitment, non-native removal, active planting, or some combination. If the degraded habitat does not recover within that 2-year timeframe, OCWD will plant and/or restore the same amount of vegetation (equal in size to the degraded area) on OCWD property that has been identified and is currently being treated to prevent the reestablishment of *Arundo donax*, and they will continue to maintain this area for a 5-year period. A 10-acre treatment area has been identified for any off-site mitigation that may be required.

CDFW-4d Comment: CDFW is concerned that the loss of riparian habitat, monitored for two years is not adequately mitigated for by a 1:1 ratio. Within those two years, there may be a significant loss of nesting and foraging habitat, as well as the compounding reproductive loss of those two years. The temporal loss of habitat, nesting and foraging sites may affect not only least Bell's vireo but also yellow warbler, yellow breasted chat and other state Species of Special Concern. CDFW is concerned that without a thorough impact analysis for riparian habitat within the basin, it is not possible to make a significance determination for impacts as required by CEQA.

ACOE/OCWD-4b and 4c Response: The analyses contained in the IFR are limited to the potential impacts associated with the final array of alternatives, which includes the specified water conservation activities. The proposed Water Conservation Plan is the only plan or measure within the final array of alternatives that would result in additional days of inundation during the flood season. An analysis of potential impacts to sensitive natural communities including riparian habitat from inundation is included in Section 5.6.4.2, IMPACT BIO-2. As described in Section 5.6.4.2, to ensure the Water Conservation Plan would not significantly degrade or destroy existing sensitive natural communities, a habitat monitoring program would be implemented between elevations 498 ft. and 505 ft. The monitoring program would document the condition of riparian vegetation between elevation 498 ft. and 505 ft. before and after inundation occurs. In the event the monitoring program indicates that sensitive natural communities are significantly degraded, the degraded areas would be replaced on OCWD property at a 1:1 ratio. Additional details of the habitat monitoring activities and habitat replacement program are provided under IMPACT-BIO-1. Any other inundation that would occur outside of water conservation activities contained in the analyzed alternatives (associated with flood risk management, for example) is not the result of one of the analyzed alternatives in this document and therefore has not been analyzed as a direct or indirect impact. The past or ongoing activities associated with the routine operation of Prado Dam for flood risk management are not "adverse project-related effects", as the commenter suggests. [IFR analyses does include analysis of inundation, etc].

ACOE/OCWD-4d Response: As summarized in Table 4-14, potential impacts to yellow warbler and yellow breasted chat, as well as other state Species of Special Concern, have been considered in the analyses contained in the IFR. As described in the IFR, the proposed water conservation activities common to all alternatives would be implemented outside of the bird nesting season.

Based on significant past experience with water management in the basin, water conservation activities outside of the bird nesting season are not expected to result in significant impacts to existing habitat. Dry conditions in the lower portion of the base are typical most years, and the lower basin has historically returned to productive nesting and foraging habitat after inundation. There is no evidence that inundation in the past has resulted in significant habitat loss in the lower basin, and no reason to believe similar inundation in the future would result in significant habitat loss. When combined with the commitment to restore any habitat potentially impacted by water conservation activities that may occur between 498-505 feet, no effects to nesting birds from water conservation activities are anticipated. Given the low potential for impacts to nesting bird habitat resulting from water conservation, a 1:1 ratio of mitigation as proposed is sufficient to ensure no significant impacts occur.

Aquatic (Open Water)	1.8	0.5	0	0.17	2.01	0.07	1.77
Willow/Cottonwood	1.6	431.9	0				
Mixed Riparian	0.0	0.2	7.10				
Coastal Sage Scrub	0.0	0					
Coastal sage Scrub/Non-native Weeds	0.54	0					
Non-Native Weeds	20.2	54.7	76.32				
Eucalyptus	0.57	17.5					
Arundo	15.0	8.3	0.87				
Disturbed Urban	0.0	1.3					
Urban	0.0	0					
Wetland			17.17	0.08	5.1	3.6	13.78
Constructed Wetlands	-	166.7					
Agriculture	-	1.7					
Recreation	-	11.9					
Total (Acres)	39.70	694.7	101.46	0.25	7.11	3.67	15.55

Similarly, within the Water Conservation Plan (Elevation 505 Feet Year-Round with Incidental Sediment Removal) State Listed and Sensitive Bird Species Indirect Impacts, the IFR EIS/EIR concludes that, “implementation of the Water Conservation Plan under Alternative 3 could potentially cause *bird species* (italics added) to temporarily relocate and nest at higher elevations. Because there would be suitable alternative native nesting areas in proximity, the temporary adverse indirect effect would not be substantial and therefore not significant”.

The IFR EIS/EIR concluded that there is moderate/high potential for state sensitive bird species to occupy areas of inundation. The conclusion that ‘*bird species*’ can move up to higher elevations is ambiguous and lacks the detail to determine if impacts will be significant on specific sensitive resources. Whereas certain species may place their nest

in higher strata (e.g., yellow breasted chats and yellow warblers) and/or within habitat that may be able to sustain inundation for longer periods (e.g., cottonwood forests), other species (e.g., tricolored blackbirds) may nest in areas that will become completely covered in water during periods when they would typically be nesting. CDFW suggests that at a minimum, the IFR EIS/EIR should include an evaluation and illustration of the vegetation communities/potential suitable habitat acreage within the inundation footprint, as well as the availability of similar habitat within a reasonably defined area (e.g., supports X territories) outside the inundation.

Other Issues

CDFW-3g Comment: Based on review of materials submitted with the EIR/EIS, OCWD will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those episodic (i.e. those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the floodplain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

ACOE/OCWD-3g Response: Ongoing OCWD maintenance activities in the Prado Wetlands are covered under existing Regional General Permit (RGP) No. 93 and a Streambed Alteration Agreement through 2022. OCWD anticipates that all required maintenance activities associated with this project can be conducted under the existing RGP and Streambed Alteration Agreement.

CDFW-3g Follow-Up Concerns: According to the IFR EIS/EIR (5.15.1.1 Prado Basin Area Activities Orange County Water District Prado Wetlands Regional Maintenance Permits), “OCWD has permit approval from United States Fish and Wildlife Service (FWS-WRIV-11B0269-12F0166), United States Army Corps of Engineers (SPL-2012-00084-CLD), California Department Fish and Wildlife (1600-2011-0148-R-6) and Regional Water Quality Control Board (30-2011-12) to conduct routine maintenance activities to maintain the Prado Wetlands, which includes up to 35,000 cubic yards of sediment allowed to be

removed annually from the wetland's conveyance and diversion channels and from the SAR. As a condition of the permit, OCWD is required to restore 24 acres of habitat".

CDFW is aware of three Lake and Streambed Alteration Agreements in the vicinity of the Project:

- **Lake and Streambed Alteration Agreement - Construction of Wetlands Project (# 1600-2011-0148-R6): Reconstruction, maintenance, and operation of the Permittee's Prado Constructed Wetlands (PCW). The expiration date of this agreement is August 10, 2023.**
- **Lake and Streambed Alteration Agreement - Prado Sediment Management Demonstration Project (#1600-2014-0095-R6): The construction and operation of sediment and vegetation removal within Prado Basin. This agreement expired on December 1, 2019.**
- **Lake and Streambed Alteration Agreement - One Year Planned Deviation from Prado Dam Water Control Plan Project (#1600-2015-0240-R6): The temporary increase in surface water elevation of the conservation buffer pool from 498 to 505 feet and implementation of sediment data collection and habitat monitoring programs. This agreement expired in March 2016.**

CDFW encourages OCWD to review their current Lake and Streambed Alteration Agreement(s) against the Project, as described in the DEIR/EIS. If any of the proposed Project activities are not covered under a current Agreement, CDFW recommends a new Notification be submitted for authorization of those activities. In addition, if any activities carried out by OCWD have to potential to impact State-listed species, CDFW recommends applying for authorization under the California Endangered Species Act.

FURTHER COORDINATION

The CDFW appreciates the opportunity to comment on the Final Integrated Feasibility Report (IFR) Environment Impact Statement/Environmental Impact Report for the Prado Basin Ecosystem Restoration and Water Conservation Project. If you should have any questions pertaining to the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Kim Romich at (760) 937-1380 or at kimberly.romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Richard Zembal, Orange County Water District

ec: HCPB CEQA Coordinator