



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



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Governor's Office of Planning & Research

June 23, 2020

**Jun 23 2020**

## STATE CLEARINGHOUSE

Ms. Jennifer Harriger  
Environmental Planning Section  
The Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, California 90054-0153  
[EP@mwdh2o.com](mailto:EP@mwdh2o.com)

**Subject: Western San Bernardino County Distribution System Infrastructure Protection Program Project Draft Program Environmental Impact Report (DPEIR), SCH # 2014111071, San Bernardino County**

Dear Ms. Harriger:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Western San Bernardino County Distribution System Infrastructure Protection Program Project (WSBC DSIPP or Project). The Draft Program Environmental Impact Report (DPEIR's) supporting documentation includes *Biological Resource Reports (BRR)*, including: *Vegetation Mapping Report; Botanical Survey Report; Coastal California Gnatcatcher Survey Report; Least Bell's Vireo Survey Report; San Bernardino Kangaroo Rat Survey Report; Additional Protocol Survey Reports; Biological Resources Mapbook; Special-Status Plant Species Potential to Occur; Special-Status Wildlife Species Potential to Occur; Jurisdictional Wetlands; Special-Status Species Modeled Habitat; Special-Status Species Modeled Habitat Impacts; and Vegetation Communities Impacts.*

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW's 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, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 activities that have the potential to adversely affect state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise

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regulatory authority as provided by the Fish and Game Code, including 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.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

## **Project Description and Summary**

**Project Description:** The Project is split into three distinctive parts each addressing construction, rehabilitation, repair, and operations and maintenance (O&M) of existing pipelines, access roads, and appurtenant structures. Project components include:

1) Capital Investment Projects (CIP). CIP infrastructure projects generally consist of repair, upgrade, and/or relocation of existing structures, or the installation of permanent structures to address access or infrastructure problems. Examples of CIP infrastructure projects include patrol road upgrades (e.g., paving); installation of engineered erosion control structures (e.g., grouted riprap or channel lining); and slope stabilization measures.

2) Single-occurrence O&M activities. Single-occurrence O&M activities are conducted on a one-time basis and would include repair, rehabilitation, or replacement of existing structures to support the continued maintenance of existing pipelines and appurtenant pipeline structures. Examples of single-occurrence O&M activities include patrol road structural repairs including the installation of low water crossings (Arizona crossings, culverts, and/or bridges).

3) Routine O&M activities. Routine O&M activities are preventive in nature and include, on a regular basis, standard practices that detect and correct minor issues that may eventually lead to damage or loss of surface infrastructure. Types of routine O&M activities include regular patrols and visual inspections of patrol roads and aboveground appurtenant structures; maintenance of patrol roads (e.g., grading, vegetation maintenance, low water crossing and culvert maintenance); routine facility maintenance, repair, and replacement (e.g., cleaning of equipment and structures, graffiti removal, coating of structures, vegetation maintenance, repair/installation of security fencing/signage); pipeline shutdowns and dewatering; and emergency procedures.

The Project only includes those activities that could be identified from visual inspection of the surface or accessed from manholes at the surface. The Project and does not include projects related to the rehabilitation or replacement of subsurface pipelines.

**Objective:** The proposed Project objectives include:

Maintain access to pipelines and appurtenant structures to conduct necessary maintenance to ensure reliability of the water supply conveyance and distribution system.

Address associated infrastructure issues that threaten the reliability and/or security of the conveyance and distribution system and water supply to Metropolitan Water District of Southern California’s (Metropolitan’s) service area by implementing proposed infrastructure protection projects.

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Provide a systematic and scheduled approach to ongoing routine maintenance activities.

Obtain regional permits that provide long-term permitting approval and streamline environmental clearance processes for maintenance projects in regulated waters.

Streamline environmental clearances and enable Metropolitan Water District of Southern California (Metropolitan) to implement proposed CIP projects and critical O&M activities in a timely manner, especially for those projects in environmentally sensitive or regulated areas.

**Location:** The Project encompasses Metropolitan's Western San Bernardino County Operating Region. The region includes 74 miles of pipeline, 392 pipeline structures, and approximately 50 miles of patrol roads. Pipelines to be included in Project activities include the Inland Feeder Pipeline (cities of San Bernardino, Highland, Redlands, and unincorporated area in San Bernardino County); Etiwanda Pipeline (cities of Fontana and Rancho Cucamonga); Rialto Pipeline (cities of Upland, Rancho Cucamonga, Fontana, Rialto, San Bernardino; unincorporated area in San Bernardino County); Upper Feeder (cities of Montclair, Ontario, Rancho Cucamonga, Fontana, unincorporated area in San Bernardino County, and Jurupa Valley); Yorba Linda Feeder (city of Chino Hills)

### **Comments and Recommendations**

CDFW offers the comments and recommendations below to assist Metropolitan in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

#### **Comment #1: Natural Communities and Sensitive Plants**

**Issue #1:** The DPEIR describes the process used to identify sensitive habitat through desktop review and modeling. The description of identifying suitable habitat for rare plants or sensitive vegetation communities does not include discussions with Metropolitan staff who routinely work in the field. Site visits, conducted outside plant blooming season, were used to confirm presence of habitat able to support rare plants. However, to confirm model accuracy, site visits should be conducted in areas assumed to be negative for sensitive plants.

**Issue #2:** Riversidean alluvial fan sage scrub is a natural community addressed in the DPEIR. Page 20 of Volume II Appendix F-1 Vegetation Community and Land Cover Mapping Report indicates that sensitive natural communities were mapped at a minimum mapping unit of 1.0 acre.

**Issue #3:** Page 4.3-47 of the DPEIR states, "Potential short-term indirect impacts to sensitive vegetation communities in the proposed program area from proposed patrol road improvements and paving would include generation of fugitive dust, chemical pollutants (herbicides and pesticides), and increased human activity. Dust and applications for fugitive dust control can impact vegetation surrounding the limits of grading, resulting in changes in the community structure and function. However, these disturbances would not result in significant impacts with

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implementation of APM-BIO-2, APM-BIO-3, and APM-AQ-2 (see Section 4.3.5); other internal construction guidelines and BMPs, as discussed in Chapter 3; and MM-BIO-4. There would be no long-term indirect impacts to sensitive vegetation communities associated with patrol road improvements and paving. All impacts relating to O&M activities following construction of CIP projects would be considered under the O&M impacts described in Section 4.3.6.5. Impacts would be less than significant.”

**Issue #4:** Evaluation of impacts to sensitive plants was restricted. Page 4.3-1 of the DPEIR states “Metropolitan considered the following special-status biological resources for the CEQA analysis:

“**Plants** – species listed as threatened or endangered under the federal and state Endangered Species Acts (ESAs) and species with a California Rare Plant Rank (CRPR) of 1 or 2 as defined by CDFW (CDFW 2020).”

**Issue #5:** Page 4.3-1 identifies areas analyzed for evaluation including acreage comprised of “proposed Capital Investment Plan (CIP) project locations, single-occurrence Operations and Maintenance (O&M) activity locations (which overlap with CIP projects), and existing pipeline alignments/rights-of-way and patrol roads plus a 500-foot buffer (proposed program area).” Routine maintenance sites do not appear to be included in the analysis of existing baseline conditions even though the project includes routine maintenance activities. The O&M Plan included in Appendix A identifies several routine maintenance activities that will not be reviewed by Metropolitan Environmental staff. However, those activities have the potential to significantly impact sensitive plants and CDFW Species of Special Concern (SSC).

**Specific impacts:** CDFW is concerned the document does not properly evaluate routine maintenance activities as components of the Project. Routine maintenance has the potential to have long term impacts that are separate from one-time construction.

CDFW is concerned about the accuracy of the DPEIR’s methodology for mapping sensitive plant communities. Field visits were not randomized to include areas assumed to be modeled accurately. The lack of quality control measures to confirm field conditions could result in sensitive communities being missed; therefore, not properly evaluated for the purposes of the environmental document.

The DPEIR does not adequately address impacts to vegetation communities as a result of routine maintenance, road improvements, and on-going use of the road through sensitive natural communities, including streams. Habitat degradation due to the invasion of non-native plants and invasive aquatic species spread by vehicle traffic, heavy equipment, hand tools, and boots is a potential project impact.

According to the CDFW’s Survey of California Vegetation Classification and Mapping Standards (2019), minimum mapping units for wetlands and other special types of vegetated communities is ¼ acre. This concern is further amplified because many of the project’s impacts are linear access roads that would result in wetland and riparian vegetation or sensitive natural communities (i.e., scalebroom scrub) being missed during evaluation.

Without proper evaluation of Sensitive Natural Communities from Project related impacts Project implementation may result in impacts to rare or endangered plants or plant communities.

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Plant communities, alliances, and associations with a state-wide ranking of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level. The DPEIR does not evaluate impacts to several of these rankings. Without proper evaluation Project implementation may result in significant impacts to rare or endangered plants or plant communities that have been recorded within the Project footprint and adjacent to the Project vicinity.

**Evidence impact would be significant:** The DPEIR determined that project impacts are less than significant, and no mitigation measures are required. However, quality control measures were not employed to assure habitat that supports sensitive communities and plants were included. Without proper surveys an accurate determination of impacts cannot be reached.

For the permanent and indirect impacts to scalebroom scrub, or Riversidean alluvial fan sage scrub, Metropolitan determined impacts were not significant because the habitat is small in size (0.17 acres) compared to the surrounding community. CDFW disagrees with the conclusions made in the DPEIR and believes that all impacts to this sensitive natural community should be considered significant and would likely warrant mitigation.

CDFW is concerned regarding the lack of adequate assessment in the DPEIR's indirect impact analysis. Without adequate analysis indirect impacts could result in ongoing habitat degradation resulting in significant impacts not addressed, avoided, or mitigated for resulting in ongoing loss of sensitive natural communities.

CDFW considers potential impacts to CDFW sensitive plant communities and species, and locally important vegetation communities and plants, were not considered during analysis of impacts. CDFW believes without adequate analysis impacts to these communities and plants would result in significant impacts and should be mitigated.

Ongoing routine maintenance work occurs annually and can occur several times a year. Routine maintenance has the potential to create permanent impacts, however the DPEIR did not include routine maintenance sites, outside road grading, in its vegetation and special status plant surveys.

Mitigation at a 1:1 ratio does not account for temporal impacts and is insufficient to reduce impacts to a less than significant level.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Recommendation #1:** CDFW strongly encourages Metropolitan to include clearly defined quality control measures during modeling and mapping activities to ensure all habitats with the ability to support sensitive natural communities and special status plants were included in surveys. The final environmental document should include a discussion on quality control measures and identify increased field visits to support findings all habitat was properly evaluated.

**Recommendation #2:** CDFW recommends the final environmental document include analysis of impacts caused by ongoing routine maintenance activities. Metropolitan should include effective mitigation, including avoidance and conservation, to reduce impacts to less than significant.

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**Mitigation Measure #1:** The final environmental document should provide feasible mitigation that will compensate for loss of a sensitive natural community through the conservation of similar or higher-quality habitat at a minimum 3:1 (replacement-to-impact) ratio for permanent loss and the on-site restoration of all scalebroom scrub or other sensitive natural communities for temporal loss.

**Mitigation Measure #2:** CDFW recommends a finer scale mapping unit to accurately map these resources and ensure they are not lost because of the large mapping units.

**Mitigation Measure #3:** CDFW recommends the final environmental document include evaluation of impacts on vegetation communities, alliances, and associations with a statewide ranking of S1, S2, S3, and some S4. Because these rankings are considered sensitive and declining at the local and regional level (Sawyer et al. 2008), CDFW considers impacts to these as significant under CEQA and would require mitigation. An S3 ranking indicates there are 21 to 80 occurrences of this community in existence in California, S2 has 6 to 20 occurrences, and S1 has less than 6 occurrences.

**Mitigation Measure #4:** CDFW recommends any revegetation plan proposed for mitigation for special status plant communities be submitted to CDFW for review and approval. The mitigation for unavoidable impacts to special status plant communities should strive to develop a more superior habitat quality and quantity than that which was impacted by any development project. The mitigation to offset the temporal loss of several growing seasons that would likely occur while achieving any revegetation success criteria. This could include higher mitigation ratios of areas occupied by targeted special status plant communities and increased level of protection of revegetated areas to prohibit human-caused degradation.

## **Comment #2: Special Status Plants**

**Issue #1:** CDFW is concerned regarding the determination stated on page 4.3-41 of the DPEIR. "As described in Section 4.3.2.2, Special-Status Plants, focused surveys for special-status plants were conducted during the appropriate seasons for the patrol road improvements and paving (CIP Activity Code No. 1) locations during an above-average rainfall year and no special-status species were observed in these CIP project areas. Permanent and temporary direct impacts to individual special status plants are not anticipated and thus would be less than significant."

**Issue #2:** According to Appendix F-2 Botanical Survey Report, "Access to modeled habitat within Survey Area S3 and S4 via the Tribal Lands was granted for June 26, 2017; however, surveyors were restricted to remaining within access roads allowing only visual observation via binoculars. Access to modeled habitat within Survey Area O4 was limited due to areas being enclosed by fencing, allowing only visual observation via binoculars. Therefore, there was limited visibility to detect special-status plants within these survey areas. Small, inconspicuous annual or perennial herbs may not have been detectable".

**Specific impacts:** There are several CESA-listed endangered species known to occupy areas within the project areas, including Santa Ana River woollystar (*Eriastrum densifolium*), slender horned spineflower (*Dodecahema leptoceras*) and thread leaved Brodiaea (*Brodiaea filifolia*). According to page 10 of Appendix F-A, 181 Santa Ana River woollystar were found during surveys.

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Surveys that do not allow for 100% visual coverage do not provide enough information to make a thorough assessment and cannot be used to reach a less than significant determination.

**Evidence impact would be significant:** Metropolitan's methodology included in the DPEIR for surveying Special Status Plants and use of the methodology to address project specific impacts is not adequate. Of particular importance Survey Areas S3 and S4 have high potential for thread-leaved Brodiaea, and Survey Area O4 has potential for slender-horned spineflower, and Santa Ana River woollystar.

The DPEIR determined that project impacts are less than significant, and no mitigation measures are required. Reaching a finding of less than significant based on incomplete survey results could lead to direct take of CESA-listed species. Take of CESA-listed species is significant under CEQA. Take of CESA-listed species without a mitigation and minimization plan could result in local extinction or significant and unmitigated impacts to the species.

### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** CDFW recommends the DPEIR and Metropolitan identify they will obtain Incidental Take Permits to authorize the take of CESA-listed plant species during project impacts.

**Mitigation Measure #2:** The final PEIR should include a full analysis of impacts to CESA-listed species. CDFW recommends avoiding any CESA-listed species found on the Project. If avoidance is not feasible, CDFW recommends mitigating at a ratio of no less than 5:1. This ratio may increase based on acreage, the individual plants, environmental factors that influence regrowth, and how removal effects each unique community. All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by USFWS and CDFW prior to any project related ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).

### **Comment #3: Nesting Birds**

**Issue:** The DPEIR states "For all proposed program activities, grading or vegetation clearing, cutting, and removal shall be scheduled to occur during the non-breeding season for birds (September 1 through January 31). If grading or vegetation clearing, cutting, or removal are required during the breeding season (February 1 through August 31), then a qualified biologist shall survey all potential nesting vegetation within 100 feet of the grading limits for nesting birds prior to grading activities, as property access allows." Throughout the DPEIR buffers around nesting birds and special status species is limited to 100 feet. Mitigation for loss of nesting birds and nesting bird habitat is not included in the environmental document.

**Specific impacts:** Project activities during the breeding season of nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment in trees and structures directly adjacent to the project footprint. Project activities could also lead to the

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loss of foraging habitat for sensitive bird species. Nesting bird surveys could miss active nests and increase predation on located nests by crows, ravens, and other wildlife.

**Why impact would occur:** Impacts to nesting birds could result from potential ground disturbing or vegetation removal activities, construction activities, staging, dewatering, equipment transport, and increased human activity. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. Project activity during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

**Evidence impact would be significant:** The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

Fully protected status precludes CDFW from authorizing any amount of incidental take or intentional take to meet any project mitigation requirement. When projects show the potential to cause take of fully protected species, CDFW advises on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures should meet very high standards of effectiveness, substantially greater than the measures to minimize take required under Incidental Take Permits.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** To protect nesting birds that may occur on site or adjacent to a development project boundary, CDFW recommends that no construction should occur from February 15 (January 1 for raptors) through August 31.

**Mitigation Measure #2:** If avoidance is not feasible, a qualified biologist should complete a survey for nesting bird activity within a 500-foot radius of the project footprint. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. Surveys should occur at times when foraging is occurring to easily identify nest locations without needing to encroach on nesting sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any project-related activity likely to impact raptors and migratory songbirds, for the entire project site. Project activities include site preparation, staging of equipment, testing of equipment, as well as specific construction and maintenance activities. If project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.

These buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Buffers should be monitored and may need to be increased to protect active nests.

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**Mitigation Measure #3:** CDFW recommends surveying the entire project footprint including a 500-foot radius to determine the potential distribution of fully protected species and assure that “take” will be avoided during Project activities. The environmental document should also include measures to preclude “take” during operations and from increased construction traffic and maintenance related to single-occurrence O&M and CIP activities. The environmental document should analyze the potential “take” as a result of habitat modification. If modification of occupied habitat causes mortality of individuals, then the Project will be considered the cause of the take. Therefore, to avoid take, construction and operation activities should avoid all raptors by a distance of no less than the distance that the specific species are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data.

**Mitigation Measure #4:** Metropolitan should develop a Nesting Bird Mitigation Plan to mitigate impacts to and loss of nesting birds. Impacts to nesting birds should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. CDFW recommends that Metropolitan require mitigation plan for impacted species be submitted to CDFW for review and comment prior to Project implementation

#### **Comment #4: Special Status Birds**

##### **Issue #1: Burrowing Owl**

The DPEIR does not appear to fully address project impacts to burrowing owl (*Athene cunicularia*).

##### **Issue #2: Least Bell’s Vireo**

The DPEIR evaluated least Bell’s vireo (*Vireo bellii pusillus*) impacts based on eight protocol level presence/absence surveys conducted during focused riparian bird surveys from May 8, 2017 through July 29, 2017. According to the Appendix F-4 Least Bell’s Vireo Report “The survey area focused on approximately 12 proposed Capital Investment Project (CIP) footprints and single-occurrence operation and maintenance (O&M) locations, plus a 500-foot buffer, that will be implemented in 2017.” Impacts to routine maintenance sites were not included in the evaluation.

Proposed mitigation includes surveys prior to the start of work; however, surveys would only be conducted within 100 feet of grading limits.

Proposed mitigation for temporary and permanent impacts is set at a 1:1 ratio.

Routine maintenance activities do not appear to be included in impact analysis.

##### **Issue #3: California Gnatcatcher**

Proposed mitigation includes surveys prior to the start of work; however, surveys would only be conducted within 100 feet of grading limits. Surveys conducted for California gnatcatcher were conducted long project footprints with 300-foot buffer. However, no discussion of type of work or site specifics was offered to justify the 300-foot buffer. A 500-foot buffer is recommended especially if surveying for special status species.

Proposed mitigation for temporary and permanent impacts is set at a 1:1 ratio.

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Routine maintenance activities do not appear to be included in impact analysis. Some routine maintenance activities that can impact wildlife include use of rodenticides, noise from increased activity, vibrations from graffiti remove and sand blasting. These activities can have impacts not assessed in the DPEIR.

**Issue #4: Southwestern Willow Flycatcher**

Due to lack of surveys, the information needed to address impacts to Southwestern willow flycatcher were not adequately evaluated for the DPEIR. Metropolitan did not conduct protocol level surveys for Southwestern willow flycatcher even though incidental observations occurred during other surveys. Surveys could have been adjusted to encompass requirements for Southwestern willow flycatcher, or additional days could have been added to the schedule to allow Metropolitan to gather information of the species.

**Specific impacts:** Current known occurrences of the burrowing owls, a state species of concern, have been documented recently within the immediate project area. CEQA requires public agencies in California to analyze and disclose potential environmental impacts associated with a project that the agency will carry out, fund, or approve. Based on burrowing owl(s) being observed immediately adjacent to the project site, focused surveys should have been completed per the Staff Report on Burrowing Owl Mitigation (CDFW, March 2012) within the project and appropriate buffer.

Without full analysis of all Project activities it is impossible to accurately determine if significant impacts will occur. CDFW would consider the omission of maintenance activities in the analysis to indicate Metropolitan has not fulfill the responsibilities of the Lead Agency under CEQA. An examples of routine maintenance activity that could have a significant impact on burrowing owls is rodent control through use of bait stations that is described in the O&M manual.

**Why impact would occur:** While the DPEIR provides an impact assessment, which estimates the potential impacts to burrowing owls and their habitat,(directly or indirectly) the DPEIR fails to identify how it proposed to mitigate the loss of burrowing owl nesting and foraging habitat.

Without thorough surveys an accurate inventory of wildlife will not be available to assist in avoidance of impacts. Proper avoidance and mitigation measure will not be implemented leading to direct impacts to listed species or SSC. Inadequate avoidance, minimization, and mitigation measures for impacts to these species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect.

Mitigation ratios of 1:1 fail to consider immediate impacts to wildlife using the area as nesting or forging habitat. Changes in habitat can lead to impacts that continue beyond work activities. Changes in vegetation can require several seasons to rebound to pre-project conditions. Mitigation ratios need to consider direct impacts to species occupying the area and the time it takes for an area to return to pre-project conditions. Permanent impacts need to be mitigated at a higher rate to account for complete loss of habitat and forcing wildlife to move to new areas, which could lead to increased competition on reduced fitness.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** CDFW recommends that Metropolitan follow the recommendations and

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guidelines provided in the Staff Report on Burrowing Owl Mitigation (2012), including surveys to provide the information needed to determine the potential effects of the proposed project and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5.

**Mitigation Measure #2:** Project use of rodenticides that could result in direct or secondary poisoning to burrowing owl should be avoided.

**Mitigation Measure #3:** The final environmental document should include routine maintenance activities in the impact analysis. CDFW recommends the type of routine maintenance activity should not be the only aspect considered when determining impacts. The activity location and time of year should be considered when assessing potential impacts to biological resources.

**Mitigation Measure #4:** The final environmental document should provide specific mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). Mitigation measures should be effective, specific, enforceable, and feasible actions that will improve environmental conditions. Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, and dispersal. This often includes the presence of burrows, burrow surrogates, fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow. Reevaluation of mitigation of least Bell's vireo and California gnatcatcher impacts should employ the same logic and should be based on specific habitat requirements of the species impacted, species life history information, habitat sensitivity, and time required to restore the area to pre-project conditions.

**Mitigation Measure #5:** CDFW recommends the final environmental document include surveys for Southwestern willow flycatcher conducted as outlined in the United States Fish and Wildlife Service (USFWS) *Southwestern Willow Flycatcher Protocol Revision 2000*.

#### **Comment #5: San Bernardino Kangaroo Rat**

**Issue:** Page 4.3-42 of the DPEIR states Any impacts to individual San Bernardino kangaroo rat (*Dipodomys merriami parvus*) would be considered "take" under the ESA. Therefore, impacts to individual San Bernardino kangaroo rat would be potentially significant absent mitigation. However, implementation of MM-BIO-3 and MM-BIO-4 would ensure that any individuals or burrows would be detected prior to initiation of project activities and that impacts to individuals would be avoided.

**Specific impacts:** CDFW is concerned regarding this determination of avoidance and mitigation of impacts. MM-BIO-3 identifies Pre-Construction Biological Surveys and MM-BIO-4 identifies Biological Monitoring. Neither, Pre-Construction Biological Surveys nor Biological Monitoring would be able to confirm that the Project would not result in impacts to San Bernardino kangaroo rat or potential "take" of this species.

**Why impact would occur:** Only protocol level small mammal trapping would be able to adequately determine presence or absence in the Project locations.

A petition (Petition) was submitted to the Fish and Game Commission (Commission) to list San

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Bernardino kangaroo rat as endangered pursuant to the California Endangered Species Act (CESA), Fish and Game Code Section 2050 et seq. On August 7, 2019, the Commission accepted the Petition for consideration and San Bernardino kangaroo rat was designated as a candidate species. On August 23, 2019, publication of the Commission's acceptance of the Petition for consideration and designation of the San Bernardino kangaroo rat as a candidate species was posted; therefore, take of San Bernardino kangaroo rat will be prohibited unless authorization pursuant to CESA is obtained.

Surveys conducted for the DPEIR were done during winter and, although temperatures were within protocol level survey requirements, they were done at a time of year San Bernardino kangaroo rat activity is known to slow down. Even with the late survey activity presence of San Bernardino kangaroo rat was recorded within the Project footprint. Without protocol level surveys done prior to Project activities "take" of San Bernardino kangaroo rat is likely.

#### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** As protocol trapping has found presences of San Bernardino kangaroo rat in several of the Project locations, CDFW strongly recommends that MWD obtain an Incidental Take Permits to authorize project impacts.

**Mitigation Measure #2:** To avoid impacts to San Bernardino kangaroo rat, a CESA-Candidate Species, Metropolitan should conduct protocol level surveys prior to the start of Project activities.

**Mitigation Measure #3:** CDFW strongly recommends Metropolitan develop and submit a Species Avoidance and Mitigation Plan to CDFW for review and comment. Metropolitan should address all comments to CDFW's satisfaction prior to the start of Project activities.

#### **Comment #6: Impacts to Candidate Endangered Species – Crotch's Bumble Bee**

**Issue:** Appendix F-9 of the BRR disregards the need for focused surveys for Crotch's bumble bee (*Bombus crotchii*) due to the "Low potential to occur. Food plants are present in the program area, but the species has no records within 75 years." The report neglected to identify the lack of current records is likely due to an absence of focused surveys. Until recently focused surveys for Crotch's bumble bee were not required for projects.

**Specific Impact:** Project ground disturbing activities such as grading and grubbing may result in crushing or filling of active bee colonies, causing the death or injury of adults, eggs, and larvae. The Project may remove bee habitat by eliminating native vegetation that may support essential foraging habitat.

**Why Impact would occur:** Impacts to Crotch's bumble bee could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to hibernating bees, as well as temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of bees could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

**Evidence Impact would be significant:** On June 12, 2019, CDFW accepted a petition for Crotch's bumble bee as a candidate species for listing under CESA. As a CESA candidate, the

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species is granted full protection of a threatened or endangered species under CESA. The Project's potential to substantially reduce and adversely modify habitat for Crotch's bumble bee, reduce and potentially seriously impair the viability of populations of Crotch's bumble bee, and reduce the number and range of the species while taking into account the likelihood that special status species on adjacent and nearby natural lands rely upon the habitat that occurs on the proposed Project site.

### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure:** Due to suitable habitat within the Project site, within one year prior to vegetation removal and/or grading, a qualified entomologist familiar with the species behavior and life history should conduct surveys to determine the presence/absence of Crotch's bumble bee. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). Survey results including negative findings should be submitted to CDFW prior to initiation of Project activities. If "take" or adverse impacts to Crotch's bumble bee cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit may be required (pursuant to Fish & Game Code, § 2080 et seq.).

### **Comment #7: Impacts to California Species of Special Concern**

**Issue:** Nine mammal species, including western mastiff bat (*Eumops perotis californicus*), western yellow bat (*Lasiurus xanthinus*), San Diego black-tailed jackrabbit (*Lepus californicus bennettii*), San Diego desert woodrat (*Neotoma lepida intermedia*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), American badger (*Taxidea taxus*) were identified in the DPEIR as having moderate to high possibility to occur onsite; six reptile species including include the California legless lizard (*Anniella pulchra*), California glossy snake (*Arizona elegans occidentalis*), red diamondback rattlesnake (*Crotalus ruber*), coast patch-nosed snake (*Salvadora hexalepis virgulata*), two-striped gartersnake (*Thamnophis hammondi*), and Blainville's horned lizard (*Phrynosoma blainvillii*) had a moderate to high potential to occur on site; and one amphibian, western spadefoot (*Spea hammondi*) was trapped during San Bernardino kangaroo rat surveys. The DPEIR determined impact to all these species would be less than significant and no mitigation was required. Routine maintenance activities were not included in the impact analysis for the Project.

**Specific impact:** Project ground disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. Work near bat maternity roosts could cause abandonment of roost resulting in direct take for young too young to fly. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

**Why impact would occur:** Project implementation includes grading, vegetation clearing, and other activities that may result in direct mortality, population declines, or local extirpation of Special Status amphibian, reptile, and mammal species.

**Evidence impact would be significant:** CEQA provides protection not only for CESA- and ESA-listed species, but for any species including but not limited to SSC that can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened or

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endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance by the Lead Agency, (CEQA Guidelines, § 15065).

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, qualified biologists familiar with the amphibian, reptile and mammal species behavior and life history should conduct specialized surveys to determine the presence/absence of SSC. Surveys should be conducted during active season when the reptiles are most likely to be detected. Survey results, including negative findings, should be submitted to CDFW for review 2 weeks prior to initiation of Project activities.

**Mitigation Measure #2:** CDFW recommends bat surveys be conducted by a qualified bat specialist to determine baseline conditions within the Project and within a 500-foot buffer. In addition, an analysis of the potential significant effects of the proposed Project on the species (CEQA Guidelines §15125). CDFW recommends the final environmental documents include the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. The final document should detail the presence of any bats and include species specific mitigation measures to reduce impacts to below a level of significance

**Mitigation Measure #3:** Permanent impacts to occupied habitat should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. CDFW recommends that Metropolitan require mitigation plan for impacted species be submitted to CDFW for review and comment prior to Project implementation.

**Mitigation Measure #4:** For proposed preservation and/or restoration, the final environmental document should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. An appropriate non-wasting endowment should be provided for the long-term monitoring and management of mitigation lands.

**Mitigation Measure #5:** CDFW disagrees with the conclusion of the DPEIR that no western spadefoot breeding pools would be impacted by the Project. A juvenile western spadefoot toad was captured during surveys. Metropolitan is aware impacts to surrounding areas during routine maintenance activities can impact wildlife beyond a 300-foot buffer. CDFW recommends survey buffers be increased to 500 feet. The final environmental document should reevaluate impacts with the larger buffer and include routine maintenance activities.

**Comment #8: Impacts to Aquatic Species**

**Issue #1:** The Project description included the institution of grouted rip rap, the use of concrete base for road improvement, and the installation of Arizona crossings. Each of these has the potential to impact aquatic species. The DPEIR did not adequately evaluate impacts to aquatic species from these Project activities.

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**Specific impact:** Grouted rip rap and road base with cement ingredients typically erode over time; causing concrete debris to travel downstream. Arizona crossings typically change hydrology within the stream channel and impacting sediment transport in the aquatic system.

**Why impact would occur:** Debris from upstream stabilization projects pollute downstream waters potentially causing changes in stream flows and obstructing passage of downstream aquatic and semi aquatic species; changes in hydrology and sediment transport can impact downstream spawning habitat and soil needed by sensitive plants in downstream areas.

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** Metropolitan should redesign slope stabilization and road maintenance activities to exclude the use of grout and road base containing concrete.

**Mitigation Measure #2:** The evaluation of impacts from Arizona crossings should include current hydrology reports that consider fish passage needed by the stream systems and sediment transport requirements of the watershed.

**Comment #9: General Comments**

**Relying on future plans not adequate:** CEQA Guidelines §15070 and §15071 require the document to analyze if the Program may have a significant effect on the environment as well as review if the Program will 'avoid the effect or mitigate to a point where clearly no significant effects would occur'. Relying on future surveys, the preparation of future management plans, or mitigating by obtaining permits are considered deferred mitigation under CEQA. To analyze if the Program may have a significant effect on the environment, the Program related impacts, including survey results for species that occur in the entire Program area need to be disclosed during the public comment period. This information is necessary to allow CDFW to comment on alternatives to avoid impacts, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

**Additional Recommendations:**

CDFW recommends the following Metropolitan proposed mitigation measure be modified to incorporate the underlined additions or remove the strike out language.

MM-BIO-2: Compensation for Impacts to Federally and State-Listed Species Habitat. Incidental Take Permits shall be obtained prior to the start of any proposed CIP, single-occurrence O&M activity or routine maintenance activity where there is potential for take of a Federally and State-Listed Species. Direct temporary and permanent impacts to suitable habitat for federally or state-listed species within proposed CIP project and single-occurrence O&M activity areas shall be mitigated through on-site or off-site measures. Mitigation for temporary and permanent impacts to listed species habitat shall consider, and may overlap with, jurisdictional waters and wetlands (MM-BIO-5). Temporary Impacts. Mitigation for direct temporary impacts to suitable habitat for federally or state-listed species shall be implemented through ~~on-site rehabilitation at a 1:1 mitigation ratio~~ compensation through the conservation of similar or higher-quality habitat at a minimum 3:1 (replacement-to-impact) ratio. Areas temporarily impacted shall be returned to similar conditions to those that existed prior to grading and/or ground-disturbing activities. For proposed CIP projects and single-occurrence O&M activity temporary impact areas outside

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routinely maintained areas, the proposed rehabilitation of impact areas may include, at a minimum, a feasible implementation structure, salvage/seeding details, invasive species eradication methods, a monitoring schedule, performance standards of success, estimated costs, and identification of responsible entities.

Permanent Impacts. Metropolitan shall purchase land or fund a mitigation bank or in-lieu fee program to compensate for all permanent loss of suitable habitat for federally or state-listed species (including critical habitat), ~~if available, at a 1:1 ratio~~ minimum 3:1 ratio. This ratio may increase based on acreage, the individual plants, environmental factors that influence regrowth, and how removal effects each unique community. Direct impacts to federally listed species' occupied habitat shall be addressed through either the Section 7 or Section 10(a)(1)(B) process under the federal Endangered Species Act (ESA) of 1973, as amended. Additionally, direct impacts to federally designated critical habitat that cannot be avoided shall be addressed through either the ESA Section 7 or Section 10(a)(1)(B) process. Direct impacts to state-listed species shall be addressed through the California Fish and Game Code Section 2081(b) incidental take permit process. The two processes may require additional mitigation beyond what is being proposed under this CEQA analysis.

MM-BIO-3: Pre-Construction Biological Surveys. Prior to the start of ground-disturbing construction or vegetation removal associated with Capital Investment Plan (CIP) projects and single-occurrence Operations and Maintenance (O&M) activities, pre-construction surveys for special-status plant or wildlife species shall be conducted in areas of suitable habitat within ~~300~~ 500 feet of ground disturbing activities, as property access allows. If special-status plant or wildlife species are located during the focused surveys, then their locations shall be mapped and monitored for avoidance (MM-BIO-4). If avoidance is not feasible, the project activities will not begin until an Incidental Take Permit is obtained from CDFW and/or USFWS authorizing the "take" of the species.

MM-BIO-4: Biological Monitoring. Should special-status plants or wildlife be identified during MM-BIO-3 or APM-BIO-1, a qualified biologist shall monitor ground-disturbing activities within areas where special-status plant and wildlife species, sensitive vegetation communities, or jurisdictional waters/wetlands are present during CIP projects and single-occurrence O&M activities. The qualified biologist shall look for special-status species that may be located within or immediately adjacent to work areas. If special-status species are found, the biological monitor shall identify their location for avoidance or flush/move them out of harm's way to avoid direct impacts to these species. The qualified biologist, in coordination with Metropolitan, shall determine when monitoring shall cease. CDFW shall be notified at least three days before monitoring ends, or within 24 hours, whichever is longer.

### **Filing Fees**

The Program as proposed, could have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

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## Conclusion

We appreciate the opportunity to comment on the Project to assist Metropolitan in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that Metropolitan has to our comments and to receive notification of any forthcoming hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Megan Evans, Senior Environmental Scientist, at [Megan.Evans@wildlife.ca.gov](mailto:Megan.Evans@wildlife.ca.gov) or (805) 320-4417.

Sincerely,

DocuSigned by:  
  
DC7324F4C5BB489...

Erinn Wilson  
Environmental Program Manager I

ec: CDFW

Victoria Tang – Los Alamitos  
Felicia Silva – Los Alamitos  
Andrew Valand – Los Alamitos  
Malinda Santonil – Los Alamitos  
Susan Howell – San Diego  
Kim Freeburn- Ontario  
Brandy Wood- Ontario  
CEQA Program Coordinator - Sacramento

State Clearinghouse

## References:

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