

CEQA RESPONSIBLE AGENCY MEMO TO FILE

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
STREAMBED ALTERATION AGREEMENT
1600-2018-0136-06

San Bernardino County Flood Control District

Desert Knolls Wash Phase III Flood Control Improvement Project

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared this file memo to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). CDFW is a Responsible Agency under CEQA with respect to the Desert Knolls Wash Phase III Flood Control Improvement Project (Project) because of its authority to issue a Lake or Streambed Alteration Agreement (LSA Agreement) for the Project (Fish & G. Code, § 1600 et seq.; see generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; Cal. Code Regs., tit. 14, § 15381¹). CDFW has prepared this file memo under CEQA (Cal. Code Regs., tit. 14, § 15096, subd. (f).) as part of its discretionary decision to authorize San Bernardino County (Permittee) to conduct the following activities: grading the streambed to a 2:1 slope, bank stabilization with grouted and un-grouted rock slope protection, construction of splash pads downstream, a grouted rock stilling basin and an access road at the southern side of the streambed (Covered Activities) during implementation of the Project (see generally Fish & G. Code, § 1602.).

CDFW is a Responsible Agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the Lead Agency, San Bernardino County (see generally Pub. Resources Code, § 21067; Cal. Code Regs., tit. 14, § 15367.). San Bernardino County analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2017021004) and approved the Project on July 25, 2017. In doing so, San Bernardino County imposed various measures to address Project-related impacts as conditions of approval and concluded that such impacts could be substantially lessened to below a level of significance with implementation of the measures.

As approved by San Bernardino County, the Project involves bank and invert stabilization improvements within an approximate 0.6-mile segment of Desert Knolls Wash, which includes the Covered Activities listed above. As determined by CDFW, Covered Activities within the Project site include the substantial diversion of the natural flow of a stream and could substantially adversely affect an existing fish or wildlife resource (Fish & G. Code, § 1602.). These activities fall within CDFW's permitting authority pursuant to Fish and Game Code section 1600 et seq.

¹ California Code of Regulations, title 14, commencing with section 15000 that implements CEQA is also referred to as "CEQA Guidelines".

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As a Responsible Agency, CDFW's CEQA obligations are more limited than those of the Lead Agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the Lead Agency's environmental document, CDFW has a responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); Cal. Code Regs., tit. 14, §§ 15041, subd. (b), 15096, subds. (f)-(g)). Accordingly, because CDFW's exercise of discretion is limited to issuance of a LSA Agreement for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under Fish and Game Code section 1600 et seq. (see generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941; *Center for Biological Diversity v. CDFW* (2015) 62 Cal. 4th 204, 214.). Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Lead Agency's environmental document fully complies with CEQA (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also Cal. Code Regs., tit. 14, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.).

CDFW has considered the Mitigated Negative Declaration adopted by San Bernardino County as the Lead Agency for the Project. CDFW determines that issuance of the LSA Agreement will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the Lead Agency.

CDFW concludes that the mitigation measures imposed as conditions of Project approval by San Bernardino County, along with the measures in CDFW's LSA Agreement for the Project, will ensure that all impacts related to Covered Activities are mitigated to below a level of significance under CEQA. Furthermore, CDFW concludes that the LSA Agreement for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff when the Mitigation Reporting or Monitoring Plan is adopted.

CDFW recognizes the public trust requirements for fish and wildlife resources and has considered the state's public interest in the matter and taken the public trust into account. CDFW concludes that: Project approval will not impair the public trust or substantially interfere with trust resources, uses, or values. CDFW has duly exercised its responsibility

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as the state's designated trustee for fish and wildlife, and in consideration of its public trust obligations generally; that the Project will not interfere with the public trust use of fish and wildlife; and that Project approval does not and will not violate the public trust doctrine.

The Project is approved.

10/10/2022

Date: _____

By: _____
DocuSigned by:
Alisa Ellsworth
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Alisa Ellsworth, Environmental Program Manager
Inland Deserts Region
California Department of Fish and Wildlife