



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region (Region 6)
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 19, 2019

Governor's Office of Planning & Research

JULY 22 2019

Nadia Parker
Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, CA 90012

STATE CLEARINGHOUSE

Subject: Copper Sulfate Application Project (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2019069081

Dear Ms. Parker:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Los Angeles Department of Water and Power (LADWP; Lead Agency) for the Copper Sulfate Application Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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 activities that have the potential to adversely affect fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Los Angeles Department of Water and Power (LADWP)

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.

Objective: The proposed Project would use copper sulfates to treat harmful aquatic vascular plants and algae at Alabama Gates, Merritt Cut, the North and South Haiwee Reservoirs, and other possible areas along concrete-lined areas of the Los Angeles Aqueduct (LAA), as necessary, to protect drinking water supplies and its water distribution system from harmful toxic algae blooms.

Location: The Project will occur within concrete-lined areas along the LAA (particularly at Alabama Gates and Merritt Cut) and two reservoir locations (North and South Haiwee Reservoirs) in Inyo County, California. The Alabama Gates is located on the LAA approximately five miles north of Lone Pine, in the Owens Valley. North and South Haiwee Reservoirs are located approximately 28 miles south of Lone Pine, and Merritt Cut is located between the two reservoirs.

COMMENTS AND RECOMMENDATIONS

CDFW believes the project described in the MND may require additional analysis to fully comply with the requirements of CEQA.

CEQA requires that an MND or EIR identify fully enforceable mitigation measures for all significant environmental impacts. CEQA mandates the adoption and implementation of mitigation measures, regardless of whether the impact is on-site or off-site, unless the agency finds, on the basis of substantial evidence in the record that mitigation is infeasible (*City of Marina, et al. v. Board of Trustees of the California State University* (2006) 39 Cal. 4th 341). An EIR is required in those situations where the potential significant impact cannot be reduced below the level of significance.

The MND does not provide enough detail for CDFW to assess whether it will reduce impacts to a less than significant level, and the potential for cumulative and persisting impacts requires additional environmental review. CDFW is concerned because there is no description or monitoring effort of existing impacts to fish and wildlife resources resulting from previous copper sulfate applications.

The MND does not address future impacts to fish and wildlife resources from newly proposed copper sulfate application. The MND does not address the potential for substantial cumulative impacts resulting from continued accumulation of copper within the sediment and water column of Haiwee Reservoir. Haiwee Reservoir has a documented history of excessively high copper and mercury levels and is included as an impaired waterway under section 303(d) of the Clean Water Act because of the existing copper and mercury concentrations. The cumulative effect of this continued accumulation should be analyzed under CEQA.

In addition, CDFW offers the comments and recommendations below to assist LADWP in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Copper sulfate is a pesticide which reduces ecosystem productivity by inhibiting plant growth and leaves long-term active residuals. It is labelled by the Environmental Protection Agency (EPA) for control of taste and odor problems resulting from certain algal species. It has also been shown to result in reduced ecosystem productivity, may impact resident and migratory birds, fish, and other wildlife. The application of copper sulfate, and subsequent algal mortality that occurs will likely adversely impact dissolved oxygen levels in Haiwee Reservoir.

CDFW requests that the environmental document include appropriate avoidance, minimization, mitigation and monitoring measures to document and mitigate for impacts to fish and wildlife resources within and adjacent to Haiwee Reservoir. Specifically, CDFW recommends:

- Previous copper sulfate treatments have resulted in documented fish stress (CDFW 2014), likely from hypoxia. The environmental document should include a plan to monitor dissolved oxygen levels in the water column of Haiwee Reservoir for 72 hours after the application of copper sulfate and include a mitigation strategy should dissolved oxygen levels be impacted. This will ensure that the water quality standards in the existing Basin Plan are not violated (CEQA Checklist Section VII(a)).
- Copper toxicity can dramatically alter behavior in teleost fishes and the migratory behavior of birds. The potential for persisting impacts to fish and birds should be evaluated by implementing an appropriate monitoring regime to fulfill the obligations identified in the CEQA Checklist IV(d). The environmental document should include appropriate minimization and mitigation measures if impacts are observed.

The environmental document should also include an alternative analysis: Municipal water supply taste and odor problems are currently remediated at the Los Angeles Aqueduct Filtration Plant (LAAFP). Continued treatment of municipal water at the LAAFP is likely a feasible alternative under CEQA. The need to treat with copper sulfate at the Alabama Gates, miles upstream from Haiwee, should be discussed and justified. The environmental document should evaluate the need for both continuous application of copper sulfate at multiple locations upstream of Haiwee Reservoir, and aerial application in the reservoirs themselves.

The environmental document should include a monitoring and reporting plan for copper sulfate application, a justification for the application amount, and should address how

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the project will affect the inclusion of Haiwee Reservoir on the Clean Water Act 303(d) list for copper contamination.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would 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 in order 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist LADWP in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Patricia Moyer, Habitat Conservation Supervisor, at (760) 872-1129 or patricia.moyer@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager
Inland Deserts Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Trisha Moyer, CDFW