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August 30, 2019

Governor's Office of Planning & Research

AUG 30 2019

STATE CLEARINGHOUSE

Ms. Jo Ann Corey
Irvine Ranch Water District
Water Resources and Policy Department
15600 Sand Canyon Avenue
Irvine, CA 92618

Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Syphon Reservoir Improvement Project (SCH # 2019080009)

Dear Ms. Corey:

The Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Syphon Reservoir Improvement Project, located in the unincorporated County of Orange, California. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 et seq.) and Fish and Game Code section 1600 et seq. The Department also administers the Natural Community Conservation Planning (NCCP) program. The Irvine Ranch Water District (IRWD) participates in the NCCP program through its role as a Participating Landowner under the County of Orange Central and Coastal Subregion NCCP/HCP (NCCP/HCP).

The proposed project would be built within the IRWD service area at the site of the existing Syphon Reservoir, located on the northeast side of Portola Parkway between Bee Canyon Access Road and State Route 133. The project would expand the reservoir's recycled water storage capacity from its current 500 acre-feet capacity to approximately 5,000 acre-feet by replacing the current 59-foot-high earthen engineered dam with a 136-foot-high dam of similar construction. The resulting increased recycled water storage capacity is expected to allow IRWD to meet the projected seasonal recycled water demands within its service area and decrease its dependence on imported water. Approximately 82 acres of upland and wetland vegetation communities would be inundated by the reservoir's expanded footprint. A large portion (precise acreage still to be determined) of the expansion area is located within the Habitat Reserve System (Reserve) established by the NCCP/HCP and/or protected by use restrictions in the January 4, 2010, Grant Deed that originally conveyed the property to IRWD (IRWD Doc. D0204).

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In advance of the proposed project, IRWD will conduct a geotechnical investigation to characterize the geologic and geotechnical baseline conditions of the site. The Department and the U.S. Fish and Wildlife Service (collectively the Wildlife Agencies) submitted comments on the Mitigated Negative Declaration that was completed for the geotechnical investigations project, and IRWD worked closely with the Wildlife Agencies to address concerns regarding impacts to biological resources protected by the Grant Deed and the Reserve. We anticipate similar close coordination among our agencies during the evaluation and review of this current project.

In order to assist IRWD in avoiding and minimizing potential project impacts on biological resources and maintaining consistency with the NCCP/HCP, the Department offers the following comments and recommendations based on its review of the NOP, its past project discussions with IRWD, and its knowledge of the habitat and resources present on site.

1. Recent surveys conducted between April 10 and July 8, 2019, documented that the habitat within and surrounding the proposed project area was occupied by up to 16 individual least Bell's vireo (*Vireo bellii pusillus*), a state and federally endangered species. In addition, the federally threatened coastal California gnatcatcher (*Poliioptila californica californica*; gnatcatcher) has been historically documented breeding on site and were detected during the 2019 surveys, as were two California Species of Special Concern, the yellow breasted chat (*Icteria virens*) and the yellow warbler (*Setophaga petechia*). IRWD has initiated early discussions with the Wildlife Agencies to begin the process of identifying appropriate mitigation for potential impacts to sensitive species and their habitats that would ensure the proposed project is consistent with the NCCP/HCP and accounts for any past restoration and protection commitments associated with the Grant Deed. It is anticipated that discussions between our agencies will continue in advance of the finalization of the DEIR and that the final mitigation plan may involve (but is not limited to) some combination of off-site conservation and/or restoration of habitat as well as the utilization of take credits established through the NCCP/HCP. We look forward to these continued discussions and working with IRWD to develop an agreeable mitigation plan that is consistent with the requirements of the NCCP/HCP and minimizes impacts to sensitive biological resources within the project area. We recommend having a draft mitigation plan in place prior to the release of the DEIR to allow for public input during the review process. The Department is available to assist in facilitating any necessary meetings to achieve this outcome.
2. The NOP indicates the DEIR will evaluate the potential for compatible recreational opportunities to be implemented as a component of the proposed project. During past coordination meetings, the Department has agreed it is appropriate to evaluate potential recreational opportunities within the project site provided that they are consistent with the NCCP/HCP and the allowable uses in the Reserve. We recommend that any review of potential recreational

opportunities examine the impact the proposed uses could have on sensitive species and important biological resources on site, including gnatcatcher and least Bell's vireo, as well as evaluate the compatibility of recreation with the use restrictions in the Grant Deed. The restrictions currently stipulate that the land conveyed by the Grant Deed shall be used for (i) the protection of threatened and endangered species, (ii) preservation, restoration, and enhancement of the habitat for these species, and (iii) open space preservation and other related environmental purposes compatible with the uses described in (i) and (ii), and for no other purpose whatsoever beyond the specified use exceptions. These exceptions allow for the installation and maintenance of infrastructure, continuation of existing operations and maintenance activities, and the potential for reservoir improvements described by the NOP with appropriate approvals.

While not expressly prohibited, recreational use is not currently described as acceptable use of the Grant Deed property. Given the sensitive nature of the biological resources present and the conservation-based objectives of the overlying Grant Deed, the Department recommends limiting consideration of recreational opportunities to passive uses such as hiking and nature viewing (NCCP/HCP Section 5.3, pp. II-294). If, following thorough evaluation of the potential impacts to sensitive biological resources, it is determined that limited passive recreational use could be compatible and would not interfere with the conservation purposes of the property, it is the Department's understanding that an amendment to the Grant Deed language would be required to establish the recreation activity as an excepted and allowable use. This would require consent of the Foothill/Eastern Transportation Corridor Agency and the U.S. Fish and Wildlife Service in accordance with Section 7.2 of the Grant Deed. Any impacts incurred from trail creation or other impacts associated with recreational activity would also require appropriate mitigation and would need to account for the past restoration efforts and adequately replace any lost habitat that is protected by the Grant Deed.

3. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Mitigation measures to compensate for impacts to riparian habitat should be included in the DEIR to compensate for the loss of function and value of the impacted habitat.
 - a. The Department also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written

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notification to the Department pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the Lead Agency's Environmental Impact Report for the project. To minimize additional requirements by the Department pursuant to section 1600 et seq. and/or under CEQA, the document should fully identify the potential impacts to riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSAA. The Department recommends including this information as a component of the overall mitigation plan to be developed for this project (see Comment 1 above).

The Department appreciates the opportunity to comment on the NOP and IRWD's ongoing communication during this process. We look forward to our continued relationship and the development of an agreeable mitigation plan that appropriately addresses project impacts and ensures project consistency with the NCCP/HCP. If you have any questions or comments regarding this letter, please contact Kyle Rice at (858) 467-4250, or kyle.rice@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

ec: State Clearinghouse
Jonathan Snyder, U.S. Fish and Wildlife Service