



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE

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



Governor's Office of Planning & Research

**May 18 2021**

May 18, 2021

## STATE CLEARINGHOUSE

Jo Ann Corey  
Environmental Compliance Specialist  
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**Subject: Comments on the Draft Environmental Impact Report for the Syphon Reservoir Improvement Project (SCH #2019080009)**

Dear Ms. Corey:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) for the Syphon Reservoir Improvement Project (Project), located in the County of Orange, California. The following statements and comments have been prepared pursuant to CDFW's authority as a 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.* CDFW 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 Natural Community Conservation Plan/Habitat Conservation Plan (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. Project implementation will result in permanent impacts to 115.56 acres of natural habitat and temporary impacts to 2.27 acres of natural habitat as described in Table 3.3-3 of the DEIR. This includes permanent impacts to 12.28 acres of riparian and freshwater marsh habitat, up to 57.33 acres of upland communities characterized by a dominance or sub-dominance of coastal sage scrub (CSS) or that include CSS understory, 32.02 acres of habitat dominated by non-native vegetation, and 13.93 acres of open water. The majority of these impacts will occur within the habitat Reserve (Reserve) established by the NCCP/HCP and the area is additionally protected by use restrictions described in the January 4, 2010, Grant Deed that originally conveyed the property to IRWD (IRWD Doc. D0204). Exact acreages of in-Reserve impacts and Grant Deed impacts are not provided in the DEIR. Sensitive plants and wildlife species that were detected during surveys or have a moderate to high potential to occur on site and may be impacted by the Project include: Catalina mariposa lily (*Calochortus catalinae*), the state and federally endangered least Bell's vireo (*Vireo bellii pusillus*), the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher), the California fully

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protected white-tailed kite (*Elanus leucurus*) and American peregrine falcon (*Falco peregrinus anatum*), and seven California Species of Special Concern (SSC) including yellow warbler (*Setophaga petechia*), yellow-breasted chat (*Icteria virens*), grasshopper sparrow (*Ammodramus savannarum*), Vaux's swift (*Chaetura vauxi*), northern harrier (*Circus hudsonius*), coastal whiptail (*Aspidoscelis tigris stejnegeri*), and San Diego desert woodrat (*Neotoma lepida intermedia*).

CDFW submitted comments on the Notice of Preparation (NOP) of a DEIR for the Project in a letter dated August 30, 2019. Comments included: 1) a reference to the ongoing discussions between IRWD, CDFW, and the U.S. Fish and Wildlife Service to develop an agreeable mitigation strategy to offset the anticipated Project impacts to biological resources; 2) a recommendation to limit any potential recreational use of the site to hiking and nature viewing due to the sensitive nature of the biological resources on site; and 3) a recommendation to provide written notification to CDFW for any impacts to rivers, streams, or lakes and to include adequate avoidance, mitigation, and monitoring commitments for impacts to riparian habitats in the final mitigation package for the Project. At the time of the NOP comment submittal, it was anticipated that our agencies would be able to develop an agreeable mitigation strategy in time for inclusion in the DEIR. While we continue to have ongoing meetings and discussions, an agreeable strategy has not been finalized at this time. The recommendations regarding recreational use have been incorporated into the DEIR.

As described in the 2019 comment letter and the DEIR, we anticipate the final mitigation strategy to ultimately include a combination of use of in-Reserve take credits that were allocated to IRWD as part of their contributions to the development of the NCCP/HCP as a Participating Landowner, off-site acquisition and permanent conservation and management, as well as possible on-site or off-site restoration with long-term funding for management, and restoration of any temporary impacts. CDFW recognizes the progress that IRWD has made in addressing our concerns with the Project's impacts to habitat that was previously used as mitigation for the Transportation Corridor Agencies (TCA) Eastern Transportation Corridor Project and to sensitive species on-site. We appreciate the continued coordination and anticipate reaching an agreeable holistic solution to mitigate Project impacts that includes off-site acquisition and conservation and will ensure the Project remains consistent with the requirements of the NCCP/HCP. Once finalized, we recommend that the details of the final mitigation package, including those components that will minimize and mitigate impacts to any river, stream, or lake, be included in the Final EIR for public review before final certification and Project approval.

In addition to the above recommendation and our continued participation in discussions to develop an agreeable mitigation strategy for Project impacts, CDFW offers the following comments for IRWD's consideration in Project planning and to help avoid and minimize potential project impacts to biological resources.

1. Two species that have been previously observed using the site, American peregrine falcon and white-tailed kite, are listed as fully protected species under Fish and Game Code Section 3511. Given the status of both species, we recommend designing and implementing the Project to ensure complete avoidance if either is detected on-site. While it is unlikely either species will utilize the site for nesting, if any nesting individuals are detected during pre-construction surveys or at any time during Project implementation, we recommend immediately notifying CDFW to determine whether additional avoidance measures, beyond what is required in Mitigation Measure BIO-3, are necessary and appropriate. This may include but are not limited to, expansion of the

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avoidance buffer beyond 500 feet and/or the rescheduling of construction activities to prioritize low disturbance activities during the nesting period.

2. Section 2.5 of the DEIR indicates most construction activities would be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday, and 9:00 am to 6:00 p.m. on Saturday; however, construction outside of these hours may occur if a waiver from the appropriate entity can be secured. Nighttime construction activity requires the use of high intensity lighting, can produce noise levels well beyond the ambient conditions, requires additional human presence on site, and may lead to a decrease in the effectiveness of minimization and avoidance measures due to an inability to detect and avoid wildlife. These disturbances can cause short-term and long-term responses to wildlife including a disruption in foraging behavior and increased predation risk (Beier 2006), disorientation and altered reproduction (Longcore and Rich 2004), spatial displacement and avoidance (George and Crooks 2006, Patten and Burger 2018), and mortality via roadkill and vehicle collisions (Beier 2006). In addition, when the disturbance activity has been ongoing throughout the day and continues into the night, the opportunity for any form of temporal avoidance of the disturbance by wildlife is reduced, increasing the likelihood of a negative response. Given the sensitive nature of the biological resources on site, including those species that are not covered under the NCCP/HCP (e.g., yellow warbler, yellow-breasted chat, grasshopper sparrow, white tailed kite, and Vaux's swift), and the potential negative impacts that nighttime construction activities may have on these species, we recommend adhering to the proposed construction hours and avoiding any late night or overnight activities (i.e., activities between the hours of 07:00 p.m. to 07:00 a.m.). Activities conducted during the twilight hours immediately before or after sunset should also be limited to those activities that produce minimal noise (i.e., less than 60 decibels) and that do not require heavy reliance on artificial lighting to minimize the potential for impacts during these hours.
3. As referenced above, it is CDFW's understanding that the final agreed upon mitigation strategy for the Project may include on-site or off-site restoration and long-term management. In consideration of the Project site's burn history and the historic observations of cactus wren prior to the 2007 Santiago Fire (DEIR Section 3.3.1 pp. 3.3-22), should on-site restoration be included, we recommend the final restoration plan include targeted augmentation of the few remaining cactus patches left on site as well as additional creation of cacti-dominated vegetation. The restoration, enhancement, and establishment of suitable nesting habitat continues to be recognized as a priority management action for the recovery of cactus wren within the NCCP/HCP Plan Area (Leatherman 2018) and such efforts may encourage future recolonization of the site by the species. In addition to targeted restoration of cactus scrub vegetation, CDFW recommends any understory seeding of forb species within any on-site restoration include Catalina mariposa lily, when appropriate based on soil types. Although impacts to the species are covered under the NCCP/HCP, its inclusion in a restoration seed mix requires minimal additional effort and has the potential to expand the existing population of a species with a California Rare Plant Rank of 4.2 and one that is considered "fairly threatened in California" as determined by the California Native Plant Society.
4. Section 2.4.1 of the DEIR indicates the downstream slope of the earthen dam will consist of grass to provide for erosion protection during rainfall events. If seeding of the downstream slope is necessary to achieve the desired vegetative cover for erosion protection purposes, then CDFW recommends IRWD consider use of a native forb and

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grassland seed mix to provide foraging benefits to sensitive species that utilize the conserved open space surrounding the Project area. Future operations and maintenance of the dam would be covered under the Infrastructure Policies (NCCP/HCP Section 5.9) and would not require further mitigation beyond reseeding of temporary impact areas, as would be necessary absent native vegetation. The use of a native grassland and forb mix is also not expected to increase the potential for nesting by listed species as compared to an annual grassland dominated landscape, nor is it likely to increase the risk of nesting by grassland specialists since many of these species readily nest in habitat dominated by annual grasslands.

We appreciate the opportunity to comment on the DEIR and look forward to 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](mailto:Kyle.Rice@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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