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



Governor's Office of Planning & Research

Jan 25 2021

## STATE CLEARINGHOUSE

January 25, 2021

Ms. Jane Hauptman  
Los Angeles Department of Water and Power  
111 North Hope Street, Room 1044  
Los Angeles, CA 90012  
[Jane.Hauptman@ladwp.com](mailto:Jane.Hauptman@ladwp.com)

**Subject: Mitigated Negative Declaration for the Haynes Generating Station Intake Channel Infill Project, City of Long Beach, Los Angeles County**

Dear Ms. Hauptman:

The California Department of Fish and Wildlife (CDFW) has reviewed the recirculated Mitigated Negative Declaration (MND), dated December 2020, from the City of Los Angeles Department of Water and Power (LADWP; Lead Agency) for the Haynes Generating Station Intake Channel Infill Project (Project). 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 & Game 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 regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 *et seq.*), or State-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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## Project Description and Summary

**Objective:** The Project includes filling in approximately 2,150 feet of the Intake Channel with engineered fill and leaving a flat, paved surface. The proposal to fill in the 2,150 feet of the Haynes Generating Station (HnGS) Intake Channel would provide space for a future energy project on the HnGS site. At this time, that future project is undecided.

The proposed Project would occur over two phases: Phase I would consist of filling the northern 475 feet of the Intake Channel, and Phase II would consist of filling the Intake Channel to approximately 2 feet south of the 2<sup>nd</sup> Street/Westminster Boulevard bridge. The duration of Phase I construction activities would be approximately 15 months, with proposed construction scheduled to begin in late 2021 and end in 2023. The duration of Phase II construction activities would be approximately 20 months, beginning no later than 2030 and ending in late 2031.

The recirculated MND, dated December 2020, has been recirculated after comments were submitted for the previous IS/MND in January 2020. The recirculated MND contains updated surveys, mitigation measures, and updated language related to eelgrass habitat, benthic soft-bottom habitat, and shallow open water habitats.

**Location:** The Project site is located within the Haynes Generating Station (HnGS) property at 6801 East 2nd Street in the City of Long Beach. The HnGS is located inland from the Pacific Ocean and is bound by SR-22 (Garden Grove Freeway) to the north, East 2nd Street to the south, the San Gabriel River channel to the west, and an Orange County flood control channel to the east. The Intake Channel bisects the HnGS property, with energy generating Units 1 through 6 to the west and fuel storage tanks to the east.

## Comments and Recommendations

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

### Comment #1: Impacts to Streams

**Issue:** According to the Initial Study/Mitigated Negative Declaration (IS/MND), "[t]he project would occur over two phases: Phase I would consist of filling the northern 475 feet of the Intake Channel, and Phase II would consist of filling the Intake Channel to approximately 2 feet south of the 2<sup>nd</sup> Street/Westminster Boulevard bridge, for a total length of approximately 2,150 feet."

The recirculated MND, dated December 2020, does not include a mitigation measure indicating that LADWP will submit a notification for a Lake and Streambed Alteration (LSA) Agreement, as recommended by CDFW in January 2020. *Section 2.6: Discretionary Approvals Required for the Project* on Page 33 of the MND lists the permits and approvals that may be necessary for the Project but does not include CDFW as a State Agency or the LSA Notification as needed.

**Specific impacts:** With significant Project activities involving filling the HnGS Intake Channel, CDFW has concerns about loss of aquatic habitat and Project runoff. In addition, the Project site is located 0.83 miles upstream from the confluence of the San Gabriel River. Therefore, Project

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impacts occurring in the HnGS Intake Channel would likely result in downstream impacts to the San Gabriel River.

**Why impacts would occur:** Ground disturbing activities from grading and filling, water diversions and dewatering would physically remove or otherwise alter existing streams or their function and associated riparian habitat on the Project site. Downstream streams and associated biological resources beyond the Project development footprint may also be impacted by Project related releases of sediment and altered watershed effects resulting from Project activities.

**Evidence impacts would be significant:** Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or
- Deposit or dispose of material into any river, stream, or lake.

The Project will deposit fill and change the bed, bank, and channel of the HnGS Intake Channel.

Because water flows freely between the HnGS Intake Channel and the San Gabriel River, the Project site is likely to be in brackish waters that are heavily influenced by freshwater flows coming from the San Gabriel River. Located adjacently downstream of the Project site, Los Cerritos Wetlands and portions of the surrounding channels are an overwintering site for a great diversity of birds. An endangered bird species, the Belding's Savannah Sparrow, may nest there and an area adjacent to the wetlands is a historic least tern colony site (LARWQCB 2014). Los Cerritos Wetlands relies upon surface and subsurface flows of fresh and saltwater. The proposed Project may substantially adversely affect the existing stream pattern of the Project site through the alteration or diversion of a stream, which absent specific mitigation, could result in substantial changes in water quality and temperatures on-site or off-site of the Project.

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

**Mitigation Measure #1:** CDFW has concluded that the Project may result in the alteration of streams. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. A notification package for an LSA may be obtained by accessing CDFW's web site at [www.wildlife.ca.gov/habcon/1600](http://www.wildlife.ca.gov/habcon/1600).

CDFW's issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. However, the MND does not meet CDFW's standards for the habitat mitigation measures and monitoring needed to meet the no net loss of aquatic habitats. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the CEQA document should fully identify the potential

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impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA Agreement.

Any LSA permit issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA Agreement may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.

## **Comment #2: Impacts Eelgrass Habitat**

**Issue:** The Project proposes to fill in the HnGS Intake Channel that has approximately 2.19 acres of vegetated and unvegetated eelgrass habitat, based on the December 2020 Marine Biological Resources Report (MBRR). CDFW appreciates LADWP's recognition of the Project's anticipated impacts to eelgrass (*Zostera marina*) and its commitment in the MND to in-kind mitigation of these impacts and adherence to the California Eelgrass Mitigation Policy. While LADWP has expressed preference to replace eelgrass habitat within the southern section of the HnGS Intake Channel south of the 2nd Street Bridge, CDFW is concerned that this may not be a successful mitigation site. CDFW is also concerned that the Project may cause additional and substantial indirect impacts to eelgrass habitat that the MBRR has not accounted for.

**Specific impacts:** The MND and MBRR indicate that the Project would directly impact eelgrass within the channel by permanently removing or burying approximately 2.19 acres of eelgrass habitat. In addition, the MBRR states that Project construction could also result in indirect impacts to the eelgrass beds from increased turbidity south of the 2nd Street Bridge. These indirect impacts suggest that the southern section of the HnGS Intake Channel is not an optimal eelgrass mitigation site. Furthermore, reduced water flow resulting from cofferdam installation and retirement of once-through cooling intakes may permanently impair water quality throughout the entire channel and cause declines in downstream eelgrass habitat. This would not only render the site infeasible for eelgrass mitigation but would result in additional indirect impacts to eelgrass that have not been considered in the MBRR or MND.

**Why impacts would occur:** Direct filling of the Project area with earthen fill would permanently bury all eelgrass, causing significant lost areas of fish nursery grounds and bird foraging habitat. Indirect impacts to eelgrass habitat south of the 2nd Street Bridge could occur from impaired water quality resulting from Project construction and decreased water flow. Specifically, decreased flow may increase algal growth, turbidity, and contaminants within the channel, all of which would adversely affect eelgrass. According to the MBRR, the current average flow rate of the HnGS Intake Channel is 3.2 feet per second. CDFW expects that this value will be reduced once Phase II of the Project is underway.

**Evidence impacts would be significant:** Eelgrass habitat can be considered rare under CEQA (CEQA Guidelines, § 15380). Eelgrass beds are recognized by other State and federal statutes as both highly valuable and sensitive habitats. Eelgrass has been designated as Essential Fish Habitat (EFH) and a Habitat Area of Particular Concern (HAPC) for various fish species and Fishery Management Plans (FMPs) under the Magnuson-Stevens Act. The HAPC distinction identifies eelgrass beds as rare, especially vulnerable to human impacts, particularly

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important ecologically, and/or located in environmentally stressed areas. For example, eelgrass beds are important fish nursery grounds for important sport and commercial species.

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

**Mitigation Measure #1:** CDFW appreciates LADWP's commitment in the MND to prepare and implement an Eelgrass Mitigation and Monitoring Plan (Mitigation Plan) in consultation with CDFW and the National Marine Fisheries Service (NMFS) and in accordance with the [California Eelgrass Mitigation Policy](#) (MM-BIO-1 in MND). CDFW also recommends consulting with the California Coastal Commission, Regional Water Quality Control Board, and U.S. Army Corps of Engineers on the Mitigation Plan.

**Mitigation Measure #2:** In collaboration with CDFW's LSA process, the Mitigation Plan should propose feasible compensatory mitigation for impacts to eelgrass habitat due to the Project. The Mitigation Plan should account for all possible direct and indirect impacts to eelgrass, both within the immediate Project area and within the southern section of the HnGS Intake Channel south of the 2nd Street Bridge. Therefore, the Mitigation Plan should include plans for pre- and post-construction monitoring of eelgrass beds within the entire channel. CDFW recommends conducting hydrodynamic modeling well before Project construction begins to determine how the Project will affect water flow within the channel.

**Mitigation Measure #3:** CDFW considers the southern section of the channel to be infeasible for eelgrass mitigation and recommends that LADWP consider other locations for in-kind mitigation. CDFW recommends that the final mitigation site be identified in coordination with CDFW and other resource and permitting agencies. CDFW also recommends that the final mitigation be constructed prior to any operational changes or in-water construction to avoid temporal habitat losses.

**Mitigation Measure #4:** For eelgrass collection and transplanting, LADWP must obtain a [Scientific Collecting Permit \(SCP\)](#) from CDFW (CDFW 2021b). The SCP may include conditions such as donor bed surveys, limits on number and density of eelgrass turions collected, methods for collection and transplanting, notification of activities, and monitoring and reporting requirements.

### **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 for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

### **Conclusion**

We appreciate the opportunity to comment on the Project to assist the City of Los Angeles Department of Water and Power in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that LADWP has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines; § 15073(e)]. If you have any questions or comments

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regarding this letter, please contact either Andrew Valand, Environmental Scientist, at [Andrew.Valand@wildlife.ca.gov](mailto:Andrew.Valand@wildlife.ca.gov) or (562) 342-2142, or Amanda Canepa, Marine Environmental Scientist at [Amanda.Canepa@wildlife.ca.gov](mailto:Amanda.Canepa@wildlife.ca.gov) (831) 649-2813.

Sincerely,

DocuSigned by:  
*Erinn Wilson-Olgin*  
B6E58CFE24724F5...

Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

ec: CDFW

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## References

- [CDFW 2021a] California Department of Fish and Wildlife. 2021. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.
- [CDFW 2021b] California Department of Fish and Wildlife. 2021. Scientific Collecting Permit. Available from: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.
- [LARWQCB] Los Angeles Regional Water Quality Control Board. 2014. Los Angeles Regional Basin Plan. Available from: [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/](https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/).
- National Marine Fisheries Services (NMFS). 2014. California Eelgrass Mitigation Policy and Implementation Guidelines. Available from: [https://archive.fisheries.noaa.gov/wcr/publications/habitat/california\\_eelgrass\\_mitigation/Final%20CEMP%20October%202014/cemp\\_oct\\_2014\\_final.pdf](https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf).



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CDFW recommends the following language to be incorporated into a future environmental document for the Project.

<b>Biological Resources</b>			
	<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<b>MM-BIO-1 – Lake and Streambed Alteration Notification</b>	The Project may result in the alteration of streams. For any such activities, the Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 <i>et seq.</i> of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a LSA Agreement with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW’s website at <a href="http://www.wildlife.ca.gov/habcon/1600">www.wildlife.ca.gov/habcon/1600</a> .	Prior to construction	Los Angeles Department of Water and Power
<b>MM-BIO-2 – Eelgrass Mitigation and Monitoring Plan</b>	In consultation with CDFW and the National Marine Fisheries Service (NMFS) and in accordance with the <a href="#">California Eelgrass Mitigation Policy</a> (MM-BIO-1 in MND), an Eelgrass Mitigation and Monitoring Plan (Mitigation Plan) shall be prepared and implemented. CDFW also recommends consulting with the California Coastal Commission, Regional Water Quality Control Board, and U.S. Army Corps of Engineers on the Mitigation Plan.	Prior to construction	Los Angeles Department of Water and Power
<b>MM-BIO-3 – Mitigation Plan Components</b>	In collaboration with CDFW’s LSA process, the Mitigation Plan shall propose feasible compensatory mitigation for impacts to eelgrass habitat due to the Project. The Mitigation Plan shall account for all possible direct and indirect impacts to eelgrass, both within the immediate Project area and within the southern section of the HnGS Intake Channel south of the 2nd Street Bridge. Therefore, the Mitigation Plan shall include plans for pre- and post-construction monitoring of eelgrass beds within the entire channel. CDFW recommends conducting hydrodynamic modeling well before Project construction begins to determine how the Project will affect water flow within the channel.	Prior to construction	Los Angeles Department of Water and Power

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<b>MM-BIO-4 – Mitigation Site</b>	The final mitigation site shall be identified in coordination with CDFW and other resource and permitting agencies. The final mitigation shall be constructed prior to any operational changes or in-water construction to avoid temporal habitat losses.	Prior to construction	Los Angeles Department of Water and Power
<b>MM-BIO-5 – Scientific Collecting Permit</b>	For eelgrass collection and transplanting, LADWP must obtain a <a href="#">Scientific Collecting Permit (SCP)</a> from CDFW. The SCP may include conditions such as donor bed surveys, limits on number and density of eelgrass turions collected, methods for collection and transplanting, notification of activities, and monitoring and reporting requirements.	Prior to construction	Los Angeles Department of Water and Power