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January 23, 2020
 Sent via email

Governor's Office of Planning & Research

JAN 24 2020

STATE CLEARINGHOUSE

Ms. Amanda Coker
 Principal Engineer
 City of Chino
 13220 Central Avenue
 Chino, CA 91710

Subject: Mitigated Negative Declaration for Eastside Water Treatment Facility
 Expansion and Brine Pipeline Project
 State Clearinghouse No. 2019120606

Dear Ms. Coker:

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) from the City of Chino (City) for Eastside Water Treatment Facility Expansion and Brine Pipeline Project (Project) [State Clearinghouse No. 2019120606]. 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

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.

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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. 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 & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The proposed Project consists of the expansion of the treatment capacity at the Eastside Water Treatment Facility (EWTF) from 3,500 gallons per minute (gpm) to 7,000 gpm, and construction and operation of an approximately 3.5 mile dual 6-inch diameter brine pipeline to convey brine waste. The brine pipeline would follow Kimball Avenue east from the Chino I Desalter Facility, Euclid Avenue north, Merrill Avenue east, Bon View Avenue north, and Schaefer Avenue west to the Eastside Water Treatment Facility within the City of Chino, San Bernardino County, California.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned regarding the sufficiency and completeness of the MND in its analysis of the entirety of the Project, impacts to fish and wildlife resources, and identification of adequate mitigation measures. CDFW's comments and recommendations are presented below.

Project Description

The MND should include a complete Project description, including reasonably foreseeable future phases of the proposed Project, which contains sufficient information to evaluate and review the Project's environmental effects. For CDFW to evaluate the Project's effects on biological resources, the MND should include all Project activities that may result in a potentially significant effect. CDFW is concerned the City has not identified, analyzed, and disclosed future phases of the Project that would likely have a significant impact on the environment.

The MND explains, "Expanding the treatment capacity at the EWTF will allow the City to maximize use of available groundwater supply, to serve anticipated/planned new

development in Chino.” Though the MND offers several potential sources of the additional water needed to supply the proposed expansion of the treatment facility and capacity to treat water, the MND notes, “...the use of any of these additional water sources is not part of the Project evaluated in this initial study.” CDFW argues that the use of additional groundwater is a foreseeable part of the Project, and therefore should be evaluated for its potential effects to the environment, including fish and wildlife resources. CDFW suggests the City analyze the use of the additional water needed to utilize the expanded treatment capacity, determine whether the effects have the potential to be significant, and either recirculate the MND with this information, or prepare an environmental impact report if the Project is found to have a potentially significant effect on the environment.

Assessment of Impacts to Biological Resources

Birds

The MND identifies four sensitive bird species that have the potential to utilize the Project site for foraging during winter: white-faced ibis, long-eared owl, Swainson’s hawk, and merlin. The MND recognizes the potential occurrences but does not address the potential impacts to these species, presumably because the birds would not nest at the Project site. Under CEQA, all potential impacts should be addressed. CDFW suggests language be added to the MND prior to adoption to identify whether impacts to these wintering species have the potential to be significant, and if so, create suitable mitigation measures to ensure the impacts would be less than significant.

Seven additional bird species have the potential to nest within or adjacent to the Project area: burrowing owl, least Bell’s vireo, tricolored blackbird, yellow warbler, California horned lark, loggerhead shrike, and Cooper’s hawk. The MND offers Mitigation Measure (MM) BIO 2 to avoid impacts to these and other more common nesting birds. CDFW appreciates the establishment of MM BIO 2, but suggests the City incorporate a few changes to ensure the measure is effective at avoiding impacts.

Within southern California, avian species (e.g. raptors, hummingbirds, owls, etc.) may nest year-round or outside the typical ‘breeding season’, therefore limiting surveys to a discreet period may limit nesting detections and result in unintended impacts. Furthermore, nest building and egg laying can occur within a short time interval, potentially resulting in impacts were surveys to be completed weeks in advance of Project initiation. Finally, as described in the MND, avoidance buffers should be determined based on the individual species’ tolerance to disturbance and can range from 100 to 500 feet. Given the known potential need for an expanded buffer, the survey limits should be expanded to ensure sensitive species within these distances will be identified and properly avoided. To address these issues, CDFW recommends that Mitigation Measure BIO 2 be revised as follows:

Mitigation Measure BIO 2: Preconstruction Nesting Bird Survey. *To avoid direct and indirect impacts to nesting birds, if construction takes place between February 1 and August 31, a qualified biologist (the "Project Biologist") retained by the City of Chino Public Works Department, shall conduct preconstruction nesting bird survey(s) no sooner than 44 3 days prior to initiation of ground disturbing activities, **Project activities that could directly or indirectly impact an active nest**, to document the presence or absence of nesting birds within or directly adjacent to (within 400 500 feet)-of the construction zone.*

The MND states that, "Three potential burrowing owl burrows, but no owls, were present in the EWTF area during the focused surveys." However, the Biological Resources Assessment identified at least six (6) burrowing owls adjacent to the Project area. Though MM BIO 4 attempts to address direct impacts to owls, it does not address the potential indirect impacts, nor does the measures offer a mitigation for the loss of suitable burrowing owl habitat. In addition, MM BIO 4 provides for surveys only when vegetation or soil disturbance would occur, neglecting potentially suitable manmade structures. CDFW recommends MM BIO 4 be revised as follows:

Mitigation Measure BIO 4: *Preconstruction Burrowing Owl Surveys. To avoid direct and **indirect** impacts to burrowing owls the Project Biologist shall conduct take avoidance surveys prior to any ~~vegetation removal or soil disturbance~~ **ground disturbing activities within areas suitable to support burrowing owl (e.g., bare ground, areas of low shrub cover, under broken/buckled concrete or asphalt, abandoned pipes, culverts, etc.) at within and adjacent to the EWTF and those portions of the Brine Pipeline Alignment with suitable habitat. The first survey shall take place no sooner than 14 days prior to initiating ground disturbance and a second survey shall take place within 24 hours prior to ground disturbance. If burrowing owls are present, the Project Biologist shall consult with the California Department of Fish and Wildlife to determine if a Habitat Loss Mitigation and Relocation Program is warranted. Based on the location of the owls and if avoidance of the area is not feasible, **avoidance and mitigation options may range from include passive relocation to and habitat replacement.*****

Please also be aware that CDFW does not recommend the exclusion of owls using passive relocation unless there are suitable burrows available within 100 meters of the closed burrows (Trulio 1995, CDFG 2012) and the relocation area is protected through a long-term conservation mechanism (e.g., conservation easement). CDFW recommends that the City notify CDFW if owls are found to be present onsite and develop a conservation strategy such as described in CDFW's *Staff Report on Burrowing Owl Mitigation*.

In addition to the recommended revisions to MM BIO 4, CDFW recommends the MND specify mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). Proposed mitigation should be specific, enforceable, and feasible actions that will improve environmental conditions. Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.

Reptiles

According to the Biological Resources Assessment, "Only two special status reptile species, (Belding's) orange-throated whiptail (*Aspidoscelis hyperythra*), and coast (San Diego) horned lizard (*Phrynosoma blainvillii*) are known from the BSA." Based on CDFW's local biological knowledge of the area, CDFW also believes that the Project has potential to support western pond turtle (*Actinemys marmorata*), a California Species of Special Concern. Pond turtles are habitat generalists and can occupy a wide range of aquatic habitats. In a telemetry study (State Wildlife Grant No. T-14-1) final report, western pond turtles were observed to be quite flexible with regard to aquatic habitats, using ponds of various sizes including cattle ponds, main-channel creeks, and back- or side-channel waters, flowing or stagnant water. The Project site contains irrigation ditches and a large stock pond that is approximately 450 feet in length, 100 feet wide, and 10 feet deep. As such, the CDFW recommends that the City analyze, prior to the adoption of the MND, the potential for western pond turtle to occur within the Project. If western pond turtle is found to occur within or adjacent to the Project, CDFW suggests language be added to the MND prior to adoption to identify whether impacts to these species have the potential to be significant, and if so, create suitable mitigation measures to ensure the impacts would be less than significant.

Analysis of Direct, Indirect, and Cumulative Effects to Biological Resources

The MND should provide a thorough discussion of the direct, indirect, and cumulative effects expected to adversely affect biological resources as a result of the Project. More specifically, general and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar wildlife habitats. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on biological resources that are rare or unique to the region (CEQA Guidelines § 15125[c]) should be analyzed. While the Project is located just adjacent to the approximately 6,245 acres in the City of Chino's Sphere of Influence Subarea 1 and Subarea 2, or what is now known as 'the Preserve', numerous documents (i.e., Resource Management Plan (January 2003); Master Plan/Specific Plan and certified Environmental Impact Report, EIR (March 25, 2003); and General

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Plan Updated and Certified EIR (May 2010)) should be included to analyze the cumulative impacts to the burrowing owl and its habitat that has, and continues to be, removed within the City of Chino.

Mitigation Measures for Project Impacts to Biological Resources

The MND should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

FURTHER COORDINATION

CDFW appreciates the opportunity to comment on the MND for the Eastside Water Treatment Facility Expansion and Brine Pipeline Project (State Clearinghouse No. 2019120606) and recommends that the City of Chino address the CDFW's comments and concerns.

If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Kim Romich at (909) 980-3818 or at kimberly.romich@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
ec: HCPB CEQA Coordinator

LITERATURE CITED

California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nonqame/survev_monitor.html

Wright, D.H.; Nguyen, C., and C. Ball. 2007. Western Pond Turtle (*Actinemys marmorata*) Telemetry Study (State Wildlife Grant No. T-14-1) Final report Resource Assessment Program California CDFW of Fish and Game, North-Central Region 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670