



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 28, 2020  
*Sent via email*

Governor's Office of Planning & Research

**MAY 29 2020**

## STATE CLEARINGHOUSE

Ed Muzik  
General Manager  
Hi-Desert Water District  
55439 29 Palms Hwy  
Yucca Valley, CA 92284

Phase II and Phase III Sewer Collection System Project (Project)  
Mitigated Negative Declaration (MND)  
SCH# 2020049072

Dear Mr. Muzik:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt an MND from the Hi-Desert Water District for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

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.

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

<sup>1</sup> 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.

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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**

**Proponent:** Hi-Desert Water District

**Objective:** The objective of the Project is to construct approximately 64 miles of polyvinyl chloride sewer pipeline that includes installing 1,300 manholes and 3 lift stations. The sewer pipelines will be generally located within established roadways and easements.

**Location:** Residential areas located outside of the core, contiguous area of Yucca Valley, San Bernardino County.

**Timeframe:** 10 years

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the Hi-Desert Water District in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project’s avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment 1, CDFW concludes that an MND is appropriate for the Project.

### **I. Mitigation Measure and Related Impact Shortcoming**

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

**COMMENT 1:** BIO-3, Desert Tortoise

#### **Section IV, Page 54**

**Issue:** CDFW appreciates the Hi-Desert Water District’s inclusion of a mitigation measure to avoid potentially significant impacts to desert tortoise, a threatened species. However, BIO-3 lacks specificity on who will perform the survey, what type of survey will be performed, and what actions will be taken should desert tortoise presence be confirmed during the survey. Additionally, the measure does not

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address avoidance, minimization, or mitigation measures should desert tortoise enter the Project site during the life of the Project.

**Specific impact:** Project activities have the potential to take desert tortoise, a CESA-listed species.

**Why impact would occur:** The measure as written does not ensure a qualified biologist, experienced in locating desert tortoise individuals in all life stages and their sign, will complete the survey following CDFW approved protocols. Additionally, should desert tortoise presence be confirmed, the measure lacks avoidance, minimization and mitigation to avoid take.

**Evidence impact would be significant:** Desert tortoise is a CESA-listed species. Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085).

**Mitigation Measure:**

**To minimize significant impacts:** If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an incidental take permit (ITP). CDFW recommends modifying BIO-3 to the following measure:

**MM BIO-3: Desert Tortoise Surveys.** A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in *U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual*. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.

**COMMENT 2:** BIO-3, Burrowing Owl

**Issue:** CDFW appreciates the Hi-Desert Water District's inclusion of a mitigation measure to avoid potentially significant impacts to burrowing owls, a Species of Special Concern. CDFW has concerns BIO-3 also lacks specificity on who will perform the burrowing owl survey, what type of survey will be performed, and what actions will be taken should burrowing owl presence be confirmed during the survey.

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Additionally, the measure does not address avoidance, minimization, or mitigation measures.

**Specific impact:** Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat.

**Why impact would occur:** Potentially significant impacts to burrowing owls are not mitigated to the extent feasible.

**Evidence impact would be significant:** Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code Section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFG, 2012). Eviction of burrowing owls is a potentially significant impact under CEQA

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

**Mitigation Measure:**

**To minimize significant impacts:** CDFW recommends separating burrowing owls from BIO-3, and including the following new measure in the environmental document:

**MM BIO-X:** Pre-construction Burrowing Owl Survey. Burrowing owl surveys shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the *Staff Report on Burrowing Owl Mitigation* (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300-foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory

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mitigation consistent with the recommendations in the *Staff Report on Burrowing Owl Mitigation* such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

**Comment 3:** BIO-4, Special Status Plant Species

**Issue:** The *Biological Resources Assessment and Jurisdictional Delineation* prepared by Jericho Systems, Inc. in September of 2019 states a focused botany survey was performed. The assessment lacks explanation of the methodology of the survey and the results of the survey within the document are unclear. The assessment included literature research to identify which special status plants have been mapped in the area, and the results were used to identify which species and habitats would be expected to occur in the field. CDFW would like to note California Natural Diversity Database (CNDDDB) is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends CNDDDB be used as a starting point in gathering information about the potential presence of species within the general area of the Project site, and surveys should not be restricted or limited to generated lists.

**Specific impact:** It is unclear if a botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was performed. Additionally, BIO-4 only recommends the preconstruction botanical surveys for certain species. Therefore, the mitigation measure lacks enforceability and if the survey is performed, it limits the surveyor to just identifying Latimer's woodland-gilia, San Bernardino milk-vetch, Little San Bernardino Mtns. Linanthus, and Robison's monardella.

**Why impact would occur:** Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity (CDFW, 2018). Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment (CDFW, 2018).

**Evidence impact would be significant:** Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Fish and Game Code Sections 1900–1913 includes provisions that

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prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners.

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

#### **Mitigation Measure:**

**To minimize significant impacts:** To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends the Hi-Desert Water District require a thorough floristic-based assessment of special status plants and natural communities. Note that CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. CDFW recommends modifying BIO-4 to the following mitigation measure:

**MM BIO-4: Special Status Plant Species.** Pre-construction botanical surveys shall be conducted at the appropriate time of year by a qualified biologist following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, March 2018) or most recent version. Should Latimer's woodland-gilia, San Bernardino milk-vetch, Little San Bernardino Mtns. Linanthus, Robison's monardella or other special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population. Should any CESA-listed plant species be present at the Project site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities.

## **II. Editorial Comments and/or Suggestions**

CDFW would like to note the Fish and Game Commission has received a petition to list Western Joshua Tree (*Yucca brevifolia*) as a threatened species under CESA. A decision will be made in June 2020. CDFW recommends Hi-Desert Water District reviews the listing status prior to finalizing the MND as it may affect the legality of BIO-6. If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

*CDFW notes Table 7 Summary of Sensitive Species with Moderate Potential to Occur* on page 50 of the Initial Study erroneously lists desert tortoise as a mammal.

CDFW also recommends Hi-Desert Water District include the following mitigation measures should pipes and trenches be exposed to prevent potential impacts to biological resources:

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**MM BIO- X:** Check for Wildlife in Pipes /Construction Materials. Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in the trench and attached together, or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

**MM BIO- X:** Escape Ramp in Trench. At the end of each work day, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degree.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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](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](mailto: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](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 the Hi-Desert Water District in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Ashley Rosales, Environmental Scientist at 760-219-9452 or [Ashley.Rosales@Wildlife.ca.gov](mailto:Ashley.Rosales@Wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
B99F76172E234E6...  
*for*

Scott Wilson  
Environmental Program Manager

Attachment 1: Draft Mitigation Monitoring and Reporting Program for CDFW-proposed Mitigation Measures.

ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator  
Habitat Conservation Planning Branch

## RESOURCES

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>)

California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Website  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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## ATTACHMENT 1

### MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

#### PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

#### TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p><b>MM BIO-3</b> <u>Desert Tortoise Surveys</u>. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in <i>U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual</i>. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities.</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>
<p><b>MM BIO-X:</b> <u>Pre-construction Burrowing Owl Surveys</u>. Burrowing owl surveys shall be</p>	<p>Before commencing</p>	<p>Project Proponent</p>

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<p>conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300- foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the <i>Staff Report on Burrowing Owl Mitigation</i> such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).</p>	<p>ground- or vegetation-disturbing activities/Entire Project</p>	
<p><b>MM BIO-4: <u>Special Status Plant Species.</u></b> Pre-construction botanical surveys shall be conducted at the appropriate time of year by a qualified biologist following CDFW's <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities</i> (CDFW, March 2018) or most recent version. Should Latimer's woodland-gilia, San Bernardino milk-vetch, Little San Bernardino Mtns. Linanthus, Robison's monardella or other special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance,</p>	<p>Before commencing ground- or vegetation-disturbing activities/Entire Project</p>	<p>Project Proponent</p>

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<p>minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population. Should any CESA-listed plant species be present at the Project site, the Project Proponent shall obtain an incidental take permit for those species prior to the start of Project activities.</p>		
<p><b>MM BIO- X: <u>Check for Wildlife in Pipes /Construction Materials.</u></b> Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in the trench and attached together, or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.</p>	<p>Entire Project</p>	<p>Project Proponent</p>
<p><b>MM BIO- X: <u>Escape Ramp in Trench.</u></b> At the end of each work day, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degree.</p>	<p>Entire Project</p>	<p>Project Proponent</p>