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September 1, 2020

Governor's Office of Planning & Research

Sep 02 2020

STATE CLEARINGHOUSE

Mr. Nick Lyuber
Valley Center Municipal Water District
29300 Valley Center Road
Valley Center, CA 92082
Nlyuber@vcmwd.org

Subject: Comments on the Draft Mitigated Negative Declaration for Valley Center Municipal Water District, Pipeline Replacement Program 2020, San Diego County (SCH #2020079025)

Dear Mr. Lyuber:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Mitigated Negative Declaration (DMND) for Valley Center Municipal Water District (District) Pipeline Replacement Program 2020 (Project). The Project's supporting documentation includes a Biological Technical Report (BTR) (Tierra Data 2020). 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 2020).

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 & 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 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.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION AND SUMMARY

Proponent: Valley Center Municipal Water District (VCMWD)

Location and Objective: The VCMWD District (District) includes a 100-square mile service area and supplies nearly 100% of the area's water via 43 enclosed reservoirs, 121 pumps, and 301 miles of water lines (VCMWD 2019). According to the BTR (Tierra Data 2020) and project biologist (Derek Langsford 2020), an unpublished 2018 District Draft Water Management Plan (WMP) outlines a program and timeline for infrastructure upgrades across the District. This includes replacement of high-risk water pipeline sections, reservoir coatings, pump stations, and other pipelines over the next 20 years. Projects from the Draft WMP to be initiated within the next five years can receive environmental reporting now to expedite the projects when they occur. The Project consists of the following 10 individual project numbers and high priority pipeline segments spread throughout the VCMWD service area.

1. WSo15b - Old Castle Road Pipeline Replacement
2. MWO15a - Oat Hill Pump Station Discharge Pipeline North
3. DW001 - Gordon Hill Road Pipeline Replacement
4. CV018a - Cougar Pass/Alps Way Culvert Crossing Pipeline Replacement
5. SG022 - Lilac Pala Pump Station Discharge Pipeline
6. CV011 - Cole Grade Road Pipeline Replacement
7. CV017a - Rock Hill Ranch Road Intertie
8. CV012 - Fruitvale Road Pipeline Replacement
9. PD016 - Hell Hole Creek Pipe Joint Repair
10. CV050 - Lilac Road Pipeline Upsize

The work would require excavation/trenching down to the existing pipe, removal of old pipe followed by replacement with new pipe, and soil backfill and restoration of the surface. In some cases, a new alignment is proposed to avoid environmental impacts associated with removing existing pipeline. In these cases, new pipeline would be installed elsewhere, and existing pipeline would be abandoned in place. The Project would involve a reported 51,680 linear feet of pipeline. Project sites along with a 300-foot buffer area was assessed to identify resources in the immediate vicinity which could be potentially affected by construction activities.

Timeframe: The current Project was budgeted and planned to take place between 2018 and 2023. Additional District batched upgrades are being planned for the next 20 years with 5-year implementing schedules.

Biological Setting: The Project jurisdiction lies within the northern portion of San Diego County (County) and appears wholly within the Draft North County Multiple Species Conservation Program (Draft NC MSCP) Planning Area. The District is not party to the Draft NC MSCP and is acting as the CEQA lead agency.

The BTR reports that locations and alignments are within VCMWD easements or in road rights-of-way (ROWs) with many segments being in pavement (e.g. Old Castle Road, Cole Grade Road, Fruitvale Road) or disturbed habitat (DH) on the road shoulders (e.g. Cougar Pass/Alps Way, Lilac Road). Other Project segments run along a mixture of paved or unpaved roads adjacent to sensitive habitat (e.g. Gordon Hill Road, Oat Hill, Hell Hole Creek Road), and others have easements through habitat that has extended over the VCMWD easements (e.g. Lilac

Pala). Sensitive habitats that would be impacted include coastal sage scrub (CSS), southern mixed chaparral (SMC), and coast live oak woodland (CLOW). Other types that could be affected include various riparian habitats such as southern coast live oak riparian forest (SCLORF), southern arroyo willow riparian forest (SAWRF), and southern sycamore-alder riparian woodland (SSARW).

The BTR explains that no federal or state-listed animal species were identified during surveys or are expected to occur within the alignment but notes that indirect effects could occur to least Bell's vireo (*Vireo belli pusillus*, LBVI) at the Old Castle Road (at Moosa Creek) and South Fork Moosa Creek segments, or to California gnatcatcher (*Polioptila californica*, CAGN) at the Gordon Hill north of Welk View Drive segment, if Project implementation occurs during either species' respective breeding seasons (CAGN - February 15 through August 31, LBVI - March 15 through September 15).

Indirect effects on four California species of special concern (SSC) may occur to Blainville's horned lizard (*Phrynosoma blainvillii*), orange-throated whiptail (*Aspidoscelis hyperythra*), Bell's sage sparrow (*Artemisiospiza belli*), and southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*). The BTR and EIR stated such impacts are "not expected to substantially reduce the number, or restrict the range, of these species to a level affecting the species' population stability in the region" and that "no mitigation is required."

One sensitive plant species, the Engelmann oak (*Quercus engelmannii*) (California Rare Plant Rank (CRPR) of 4.2) was detected in, or immediately adjacent to, the alignments at Lilac Road). The BTR identifies that impacts to native tree branches or roots would occur but would only be allowed after consultation with a Certified Arborist and implementation of recommendations to minimize effects on the trees.

Potential state and/or federal jurisdictional drainages occur at several pipeline alignments with most being channeled through corrugated metal pipes (CMPs) beneath the pipelines in roads or easements. Moosa Creek, however, is bridged by Old Castle Road, and an open channel of a perched drainage crosses the alignment at the Lilac Pala pump station (PS) pipeline alignment. Since existing water pipelines are separated from surface water conveyance/drainage pipelines, impacts are expected to be avoided. The BTR also states any project that cannot avoid impacts to drainages would be required to be evaluated for jurisdiction, and if U.S. Army Corp of Engineers (USACE) and/or CDFW streambeds would be impacted, a Clean Water Act (CWA) 404 permit from the USACE, a CWA 401 Certification from the State Regional Water Quality Control Board (RWQCB), and a CDFW 1602 Streambed Alteration Agreement may be needed.

The BTR states that five of the ten Project alignments are within wildlife linkages and corridors (Old Castle, Gordon Hill, Oat Hill, Cougar Pass/Alps Way, and Hell Creek Road) but due to the underground nature of the pipeline Project, it is unlikely that the Project would cause any permanent impacts to their function (Section 3.8, page 40, Tierra Data 2020). Furthermore, the BTR and MND propose all work to be monitored by a qualified biologist and that direct and indirect impacts to habitat and sensitive species be avoided to the maximum extent feasible, and minimized and mitigated, if not avoided.

The BTR and MND state that mitigation should be in the form of restoration of habitat through implementation of a restoration plan or purchase of credits from a mitigation bank; however, a specific mitigation measure to that effect is not provided currently. Due to the presence of CSS

and riparian habitat and documented occurrences of CAGN and LBVI and the potential for them and four SSC to occur (Figure 3, Tierra Data 2020) in or near the project proximity, CDFW believes both direct and indirect significant impacts to sensitive species and habitats could occur with project implementation and offers the following comments and recommendations below.

RECOMMENDATIONS

CDFW concurs with the BTR biological analysis that the proposed Project could be implemented without significant effects on biological resources provided impacts are avoided, minimized, and/or mitigated per CEQA Section 15126.4(a)(2) which requires that "mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments." CDFW provides the following recommendations to assist the District in adequately identifying, avoiding, and/or mitigating the Project's potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

The Project lies within a significant portion of the Draft NC MSCP Planning Area. CDFW estimates that the approximately 100-square mile District (64,000 acres) is 18% of the Draft NC MSCP Planning area of 344,523 acres. Additional District projects are scheduled to occur over the area for the next 20 years which could affect the functional outcome of the Draft NC MSCP Plan. For this Project, and future projects, CDFW recommends the District coordinate measures and avoid any permanent impact areas to existing preserved areas or areas of regional conservation value where feasible.

To this end, CDFW recommends that:

- 1) non-native grasslands (NNGL) be assigned a mitigation ratio of 0.5:1 to ensure raptor foraging opportunities are supported;
- 2) direct impacts to sensitive habitat that are unavoidable at final design or during construction be mitigated with a 5-year restoration plan which covers installation, appropriate success criteria, and potential remediation if needed or;
- 3) mitigation with an appropriate bank, fund or off-site location.

CDFW further recommends restructuring the current biological mitigation measures BIO 1-4 and incorporating the 20 indirect BMPs within them to ensure enforcement as follows:

BIO-1 -To avoid and minimize impacts to habitat types listed in Table 5, and each project alignment listed in Table 6 of the BTR, sites shall be accessed via pre-existing access routes where available, staging equipment shall be placed outside of wetlands and sensitive habitats to the greatest extent possible, work areas and sensitive habitat shall be delimited by fencing and/or through active construction monitoring by the qualified project biologist, and on-site personal shall be provided resource avoidance and bio-hygiene training.

BIO-2 - Impacts to sensitive habitat types listed in Table 5, for project alignment listed in Table 6 shall be mitigated by one or a combination of the following: 1) on-site habitat restoration

following an approved restoration plan; or 2) off-site mitigation via payment into an approved bank or fund or purchase of suitable land.

BIO-3 - Impacts to native nesting birds (including those covered by the federal MBTA and CFG Code 3503), will be avoided by scheduling construction work outside of the general bird breeding season (typically between February 1st and September 15th). If work must occur during the general breeding season and/or if sensitive nesting birds are located during pre-construction or construction monitoring/surveying by the qualified biologist, an avian protection plan should be developed by a qualified biologist to ensure active nests are not adversely affected by construction activities.

BIO-4 - Where project alignments cross potential jurisdictional drainages, wetlands, and/or waters of the US, a delineation shall be performed prior to construction and required permits/direction from the state and/or federal agencies shall be obtained. Where jurisdictional impacts are avoided, required buffers shall be identified and protected during construction.

BIO-5 - Project landscaping/restoration/revegetation materials shall be obtained from known reputable or certified suppliers, and not include: plants identified as an invasive species by the California Invasive Plant Council at <http://www.cal-ipc.org/paf/> or similar organizations; pest species in landscape soil or material, including but not limited to Argentine and fire ants, oak borers, etc.; diseased specimens; or biologically harmful materials such as non-biodegradable plastics or unintended biocidal chemicals, as determined by the qualified biologist or restoration ecologist.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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/bioqeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/bioqeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, could 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

We appreciate the opportunity to comment on the Project to assist the District in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an

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opportunity to review and comment on any response that the District has to our comments and to receive notification of any forthcoming documents and hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Holly Smit Kicklighter, Senior Environmental Scientist (Specialist), at Holly.Smitkicklighter@wildlife.ca.gov or (858) 637-7188.

Sincerely,



David Mayer
Environmental Program Manager

cc: CDFW, Susan Howell, San Diego
State Clearinghouse
Susan Wynn, U.S. Fish and Wildlife Service, Carlsbad Field Office

REFERENCES

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California Native Plant Society (CNPS). 2011. Fremontia, Vol 39 No. 2, May 2011 and Vol. 39. No. 3, September 2011.

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