



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 11, 2020

Governor's Office of Planning & Research

Sep 11 2020

STATE CLEARINGHOUSE

Judy Vazquez
Operations Manager
Pajaro/Sunny Mesa Community Services District
136 San Juan Road
Royal Oaks, California 95076

**Subject: Springfield Water System Improvements Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2020080200**

Dear Ms. Vazquez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Pajaro/Sunny Mesa Community Services District for the Project pursuant to 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 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.

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.

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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 may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Pajaro/Sunny Mesa Community Services District

Objective: The objective of the Project is to provide potable water from an existing test well at Moss Landing Middle School to Moss Landing Mobile Home Park, and new and existing connections along Springfield Road and Struve Road. The Project work will mainly be within existing road rights-of-ways of dirt roads. Primary Project activities include approximately two miles of new eight-inch water lines, approximately 3,600 feet of replacement line, water storage, treatment, and pumping facilities.

Location: Cross Streets: Struve Road, Springfield Road, and State Route 1. The Project starts at Moss Landing Middle School (1815 CA-1, Moss Landing, CA 95039), then West along Springfield Road, then South along Springfield-Struve Intertie on to Struve Road connecting to Moss Landing Mobile Home Park along the way.

Timeframe: Anticipated to begin Spring 2022

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Pajaro/Sunny Mesa Community Services 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.

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Based on the information provided in the MND, CDFW is concerned regarding potential impacts to the State candidate-listed as endangered Western bumble bee (*Bombus occidentalis*), and the State species of special concern burrowing owl (*Athene cunicularia*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

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 The United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Western Bumble Bee (WBB)

Issue: On June 28, 2019, the Fish and Game Commission published findings of its decision to advance WBB to candidacy as endangered. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of WBB, pursuant to CESA, is warranted. During the candidacy period, consistent with CEQA Guidelines section 15380, the status of the WBB as an endangered candidate species under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to import into California, export out of California, or take, possess, purchase, or sell within California, WBB and any part or product thereof, or attempt any of those acts, except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt pursue, catch, capture, or kill. Consequently, take of WBB during the status review period may be prohibited unless appropriate authorization pursuant to CESA is obtained.

WBB have the potential to occur within and near the Project site. Suitable WBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. WBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014). Overwintering sites utilized by WBB mated queens include soft, disturbed soil

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(Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local WBB populations.

Specific impact: Without appropriate avoidance and minimization measures for WBB, potentially significant impacts associated with ground- and vegetation-disturbing activities associated with construction of the Project include loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code.

Evidence impact is potentially significant: WBB was once common throughout most of California; WBB populations are now largely restricted to high elevation sites in the Sierra Nevada and scattered observations along the California coast (Xerces Society 2018). Analyses by the Xerces Society (2018) suggest there have been sharp declines in relative abundance by 84%.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to WBB, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the MND prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: WBB Surveys

CDFW recommends that a qualified biologist determine if suitable habitat is present within the Project site. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with the Project.

Recommended Mitigation Measure 2: WBB Take Avoidance

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid and minimize take and potentially significant impacts any detection of WBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take, or if take cannot be avoided, what take authorization may be necessary to comply with CESA.

COMMENT 2: Burrowing Owl (BUOW)

Issue: BUOW may occur near the Project site, due to their species range (CDFW 2020). BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for

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nesting and cover. The MND states that there are mammal burrows present throughout the Project area. Review of aerial imagery indicates that some of the Project site is bordered by potential fallow agricultural fields and may be present within the Project site.

Specific impact: Potentially significant direct impacts associated with subsequent activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW (Gervais et al. 2008). Subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the Early Consultation prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 3: BUOW Surveys

CDFW recommends that a qualified biologist assess if suitable BUOW habitat features are present within or adjacent to the Project site (e.g., burrows). If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

Recommended Mitigation Measure 4: BUOW Avoidance

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive

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methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 5: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

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/biogeodata/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/biogeodata/cnddb/plants_and_animals.asp.

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FILING FEES

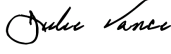
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 Pajaro/Sunny Mesa Community Services District in identifying and mitigating Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at (559) 243-4014 x243 or aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachments

A. MMRP for CDFW Recommended Mitigation Measures

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

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REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
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- Williams, P. H., R. W. Thorp, L. L. Richardson, and S .R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of california fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Springfield Water System Improvements Project

SCH No.: 2020080200

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: WBB Surveys	
Mitigation Measure 3: BUOW Surveys	
Mitigation Measure 5: BUOW Passive Relocation and Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: WBB Take Avoidance	
Mitigation Measure 4: BUOW Avoidance	