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March 18, 2021

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STATE CLEARINGHOUSE

Subject: Ranch Water Filtration Plant Project (PROJECT), Mitigated Negative Declaration (MND), SCH #2021020296

Dear Mr. Bunts:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Santa Margarita Water District for the Project 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 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.

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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PROJECT DESCRIPTION SUMMARY

Proponent: Santa Margarita Water District (SMWD)

Objective: The objective of the Project is to reduce the region's dependence on imported water by increasing local groundwater supplies. Primary Project activities include construction of a new water filtration plant (WFP), construction of two 2,000-foot pipelines to connect the WFP to the existing water transmission main, and refurbishment of the existing conveyance pipeline. Construction will include grading, excavation, clearing, treatment plant construction, paving, trenching, revegetation, and site restoration. Installation of the pipe will involve conventional cut-and-cover trenching techniques.

Twelve Rancho Mission Viejo Mutual Water Company (RMV) wells were historically used to generate water for agricultural operation. In 2011, an *Agreement for Lease of Supplemental Water and Provision of Service* was executed, which allowed for lease of up to 2,500 AFY from RMV to SMWD. Rancho Mission Viejo (the Ranch) was subsequently redeveloped for residential use, and agricultural demand for water decreased as a result. In 2011, a MND was adopted to cover the lease of water from RMV for non-domestic water uses such as common area irrigation (SCH# 2011091018), for which CDFW provided comments (Pert, 2011). The MND indicates that SMWD will approve an amendment to the 2011 *Agreement for Lease of Supplemental Water and Provision of Service* to allow water leased from RMV to be treated at the new WFP and distributed as potable or non-potable water to the Ranch.

The Project anticipates that 800-1,000 acre-feet per year (AFY) will be generated initially, and that will incrementally increase by 2,500 AFY during future Project phases, such as stormwater capture and recycled water recharge, expanding the yield to 3,380 AFY (Page 73). Treated water will be pumped back into SMWD's water transmission main. Waste byproduct generated by the water treatment process will be treated at the adjacent Chiquita Water Reclamation Plant (CWRP) prior to disposal.

Location: The Project site is located at 29793 Ortega Highway, adjacent to Chiquita Canyon in unincorporated southern Orange County. The Project site is bounded by undeveloped open space to the west and east, residential uses to the south and CWRP to the north. SMWD is a permittee under the County of Orange Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan (NCCP/MsAA/HCP); however, the Project site is surrounded by, but excluded from, the NCCP/MsAA/HCP plan area. The proposed WFP and conveyance facility are outside of the plan area.

Biological Setting: The MND indicates that a Biological Resources Assessment of the Project footprint and 300-foot buffer, as well as a literature review, were conducted by ESA in August of 2020. Special-status plant species that were observed during the Biological Resources Assessment or determined through analysis of the California Natural Diversity Database (CNDDDB) to have a high potential to occur in the study area include: paniculate tarplant (*Deinandra paniculata*; California Native Plant Society (CNPS) rarity ranking 4.2), many-stemmed dudleya (*Dudleya multicaulis*; CNPS rarity ranking 1B.2), thread-leaved brodiaea (*Brodiaea filifolia*; California Endangered Species Act (CESA) listed Endangered and federal Endangered Species Act (ESA) listed threatened), intermediate mariposa lily (*Calochortus weedii* var. *intermedius*; CNPS rank 1B.2), Catalina mariposa lily (*Calochortus catalinae*; CNPS rank 4.2), Plummer's mariposa lily (*Calochortus plummerae*; CNPS rank 4.2), and hybrid intermediate mariposa lily.

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Special-status wildlife species that were observed during the Biological Resources Assessment or determined to have at least a moderate potential to occur in the study area include: yellow-breasted chat (*Icteria virens*; CDFW Species of Special concern (SSC)), yellow warbler (*Setophaga petechia*; SSC), least Bell's vireo (*Vireo bellii pusillus*; CESA and ESA listed endangered), coastal California gnatcatcher (*Poliophtila californica californica*; ESA listed threatened, SSC), and San Diego desert woodrat (*Neotoma lepida intermedia*; SSC). Additional species of high conservation value that have a moderate potential to occur include: Crotch's bumble bee (*Bombus crotchii*; CESA candidate species), Cooper's hawk (*Accipiter cooperii*; CDFW watchlist), and southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; CDFW watchlist).

Natural vegetation communities within the grading footprint of the Project and BSA were documented in the MND as follows:

TABLE 1
 NATURAL COMMUNITIES

Alliance Name	Alliance Common Name	Within Grading Limits of RWFP and Proposed Conveyance Facility (acres)	Outside Grading Limits but within BSA (acres)	Total Within BSA (acres)
<i>Acmispon glaber</i> Shrubland Alliance	Deer Weed Scrub	0.21	1.88	2.09
<i>Ambrosia psilostachya</i> Provisional Herbaceous Alliance	Western Ragweed Meadows	0.47	0.52	0.99
<i>Artemisia californica</i> - <i>Eriogonum fasciculatum</i> Shrubland Alliance	California sagebrush – California Buckwheat Scrub		1.14	1.14
<i>Artemisia californica</i> Shrubland Alliance	California Sagebrush Scrub	0.40	4.40	4.80
<i>Baccharis pilularis</i> - <i>Artemisia californica</i> Shrubland Alliance	Coyote Brush – California Sagebrush Scrub	0.21	0.62	0.83
<i>Baccharis pilularis</i> Shrubland Alliance	Coyote Brush Scrub	0.13	1.02	1.15
<i>Baccharis salicifolia</i> Shrubland Alliance	Mulefat Thickets	0.01	0.12	0.13
<i>Quercus agrifolia</i> Woodland Alliance	Coast Live Oak Woodland	0.03	0.13	0.16
<i>Cynara cardunculus</i> Herbaceous Semi-natural Alliance	Artichoke Thistle Shrubland	1.56	7.32	8.88
<i>Isocoma menziesii</i> Shrubland Alliance	Menzies's Golden Bush Scrub	0.12	1.50	1.62
<i>Populus fremontii</i> - <i>Salix laevigata</i> – <i>Salix goodingii</i> Forest and Woodland Alliance	Fremont Cottonwood – Red Willow – Gooding's black willow Forest		2.67	2.67
<i>Rhus integrifolia</i> Shrubland Alliance	Lemonade Berry Scrub	0.04	1.74	1.78
<i>Avena</i> spp. - <i>Bromus</i> spp. Herbaceous Semi-Natural Alliance	Wild Oats and annual brome grasslands		0.52	0.52
Agriculture	Agriculture		3.95	3.95
Ruderal	Ruderal	0.02	1.26	1.28
Disturbed	Disturbed	0.04	0.47	0.51
Developed	Developed	0.15	15.61	15.76
TOTAL		3.36	44.89	48.25

SOURCE: ESA 2021

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SMWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on

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fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Hydrological changes and downstream impacts

Section 1.3, Page 5 and Section 3.1, Page 71

Issue: Downstream impacts to biological resources in the San Juan Creek Watershed due to altered hydrology are not sufficiently analyzed in the MND. CDFW is unable to assess the Project's impact significance or need for mitigation based on the limited information provided.

Specific impact: Diversion of water from increased use of the historic RMV wells and diversion of stormwater and urban runoff may have downstream impacts in San Juan Creek, and possibly elsewhere in the watershed, as the diverted water will no longer infiltrate or runoff downstream. Changes in hydrology and water flow may impact sensitive species as a result. The MND does not provide thorough biological impact analysis of downstream resources impacts resulting from increased pressure on the 12 existing RMV wells, diversion of storm water and urban runoff, or additional cumulative impacts.

Why impact would occur: As discussed in the MND, San Juan Groundwater Basin is recharged by streambed infiltration in the San Juan Creek and its tributaries. The extraction wells are located in the upstream portion of the San Juan Groundwater Basin.

The Hydrology and Water Quality section (Page 71) indicates that the First Amendment to the *Agreement for Lease of Supplemental Water and Provision of Service* will restrict water taken in any given year to 2,500 AFY. The MND anticipates that new stormwater recharge facilities would increase the quantity of groundwater available for the Project, and that future phases of the Project could increase the yield to 3,380 AFY. According to the MND, "[t]he proposed project will capture, treat and reuse storm water and urban runoff to increase water supply and improve water quality in the San Juan Creek Watershed." Evidence of how the water quality in the San Juan Creek Watershed would be improved is not provided.

The MND does not thoroughly analyze the potential significance of water diversion in varying seasons or in below-normal water years. During the dry season, typically April through September in California, the San Juan Creek Watershed is largely recharged through urban runoff (Army Corps of Engineers, 2002). Diverting water could be significant, particularly during the dry season or below-normal rainfall years, and may significantly decrease flow in the San Juan Creek or result in complete loss of water flow.

Evidence impact would be significant: San Juan Creek is a historic California southern steelhead (*Oncorhynchus mykiss*) stream. Steelhead decline in the watershed since the late 1940's has been attributed to disturbances such as urban development, migration barriers, degraded stream habitat, and decreased stream flow from withdrawals (Katagi, Johnson, and Sutherland, 2008). The MND does not consider effects to critical habitat for steelhead.

As in our previous comments in response to Project SCH# 2011091018 (Pert, 2011), CDFW understands based on the water years 1987 to 2002 the mean flow of San Juan Creek is 16,000 AFY (Ranch Plan EIR). The diversion of 22% **or more** of the annual flow of San Juan Creek could cause significant impacts depending on frequency, duration, season, and instantaneous rate of

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diversion, and none of these topics are disclosed or summarized from previous analysis in the MND. Streams with migratory salmonids can experience seasonal or temporal fish migration barrier effects due to stream diversions. Generally, fish migration barrier occurs when stream flow over barriers is less than 0.7 feet. Effects of water diversion could lower water surface levels, create new barriers, or cause additional effects at existing barriers. These effects are not addressed in the MND.

CDFW does not have enough information based on the analysis provided to comment on potential impacts. There is not sufficient discussion of how altering existing hydrology at the Project site will affect the San Juan Creek watershed downstream, or the associated biological resources such as steelhead or other species. Based on the information provided, CDFW cannot determine if additional direct, indirect, or cumulative impacts will result from altered hydrology.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Recommendation #1:

To reduce impacts to less than significant: The MND should be amended to include a thorough analysis of direct, indirect, and cumulative impacts of altered hydrology on the San Juan Creek Watershed downstream of the Project area and the associated biological resources therein, including but not limited to southern steelhead, CESA-listed species, and existing mitigation sites. Mitigation measures should be included in the MND as appropriate in order to bring these impacts below significance thresholds.

Comment #2: Additional hydrological impacts

The MND identifies a potentially jurisdictional two-foot-wide erosional feature within the grading limits of the WFP but states that, “[j]urisdiction for this feature could not be determined, but was likely created as a result of the modifications to the landscape upslope, and does not appear to support the adequate wetland plants, soils or hydrology needed to delineate appropriately” (page 36). Two additional features were identified within the BSA; however, impacts to those features are not anticipated. The MND goes on to state that, “...no jurisdictional habitat has been identified within the BSA that will be impacted by construction of the WFP or the proposed conveyance facility” (page 36).

The MND does not provide evidence that hydrologic features will not be impacted as a result of this Project, because a jurisdictional delineation report was not completed. CDFW has responsibility for wetland and riparian habitats. It is the policy of CDFW to strongly discourage development in wetlands or conversion of wetlands to uplands. CDFW opposes any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, Project mitigation assures there will be “no net loss” of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks that preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations. Mitigation measures to compensate for impacts to mature riparian corridors must be included in the MND and must compensate for the loss of function and value of a wildlife corridor.

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CDFW also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. 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 Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW’s issuance of a LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA.

Recommendation #2: The MND should include an analysis of the Project’s direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 *et seq.* If impacts to the bed, bank, or channel of a stream - constrained or otherwise - may occur, a LSA Notification package should be submitted to CDFW. Notifications are now being processed via the online Environmental Permit Information Management System (EPIMS). More information can be found on CDFW’s web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #3: Mitigation for thread-leaved brodiaea

Section 3.4, Page 32

Issue: Mitigation Measure BIO-1 (MM BIO-1) addresses mitigation for impacts to special-status plant species. Proposed mitigation includes focused rare plant surveys during the bloom period for each special-status species; a biological monitor during ground disturbing, clearing, or grubbing activities outside of the bloom period; as well as on-site translocation and/or seeding for any special-status plants identified within the impact area. MM BIO-1 does not adequately mitigate for potential impacts to thread-leaved brodiaea, a CESA listed Endangered and ESA listed threatened species.

Specific impact: Thread-leaved brodiaea is a perennial herb (bulb) that is native to California, and endemic (limited) to California (Calflora 2021). Only 23 “presumed extant” occurrences are recorded in Orange County (CNDDDB 2021). Per the MND, thread-leaved brodiaea have a high potential to occur within the BSA and have been observed 0.20 mile south of the Project site.

MM BIO-1, as written, is outlined below:

“Prior to any ground disturbing activities, a focused rare plant survey during the suitable bloom period for each species should be conducted to document the existence and quantity of any rare plants within the BSA. If clearing and grubbing occurs prior to the suitable bloom period for special-status plants, a full-time biological monitor shall be present on-site for any ground disturbing or clearing and grubbing activities, and any special-status plant species shall be flagged for avoidance.

If special-status plants are found within the impact area, the special-status plant species shall be mitigated through on-site translocation and/or seed collection and on-site seeding

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onto a suitable location such as the preserved portions of the property owned by SMWD in areas that currently exhibit lesser plant density if possible. The translocations shall result in a minimum 50% survivorship which will be verified by the monitoring biologist. If survivorship is less than 50% SMWD shall consult with CDFW to conduct additional on-site plantings sufficient to replace the impacted individuals.”

Why impact would occur: Impacts to thread-leaved brodiaea may occur from direct removal or disturbance during grading, trenching, clearing, and grubbing, or from crushing by construction equipment or trampling from increased foot traffic.

Evidence impact would be significant: CDFW considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085).

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

Mitigation Measure #1:

To minimize significant impacts: If the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation, monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation, monitoring, and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

We recommend that MM BIO-1 be amended with the following language, to adequately mitigate for potential impacts to thread-leaved brodiaea (changes shown in bold):

*“Prior to any ground disturbing activities, a focused rare plant survey during the suitable bloom period for each species **shall** be conducted to document the existence and quantity of any rare plants within the BSA. If clearing and grubbing occurs prior to the suitable bloom period for special-status plants, a full-time biological monitor shall be present on-site for any ground disturbing or clearing and grubbing activities, and any **non CESA-listed** special-status plant species shall be flagged for avoidance.*

*If **non CESA-listed** special-status plants are found within the impact area, the special-status plant species shall be mitigated through on-site translocation and/or seed collection and on-site seeding onto a suitable location such as the preserved portions of the property owned by SMWD in areas that currently exhibit lesser plant density if possible. The translocations shall result in a minimum 50% survivorship which will be verified by the monitoring biologist. If survivorship is less than 50%, SMWD shall consult with CDFW to*

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*conduct additional on-site plantings sufficient to replace the impacted individuals. **Translocation and on-site seeding for impacted species shall be documented and reports shall be made available to CDFW upon request.***

Impacts to CESA-listed plants including thread-leaved brodiaea (*Brodiaea filifolia*) shall be avoided. If individuals are identified within the direct impact area or construction staging areas, Project activities shall halt, and no take of the species shall occur until authorization is obtained from CDFW. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination (Fish and G. Code §§ 2080.1, 2081, subds. (b), (c)). Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation, monitoring, and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

COMMENT #4: Mitigation for least Bell's vireo

Section 3.4, Page 34

Issue: Least Bell's vireo (vireo) have a moderate potential to occur within the BSA. Mitigation Measure BIO-2 (MM BIO-2) and Mitigation Measure BIO-3 (MM BIO-3) do not adequately mitigate potential impacts. Vireo is CESA-listed; therefore, if impacts to vireo cannot be avoided, an Incidental Take Permit (ITP) needs to be secured from CDFW prior to Project activities. A Scientific Collection Permit does not authorize take of vireo.

Specific impact: Page 27 of Appendix B: Biological Resources Memorandum identifies least Bell's vireo as having a moderate potential to occur less than 100' from the Project site, within the adjacent riparian habitat of Cañada Chiquita creek (mapped as Fremont cottonwood – Red willow – Gooding's black willow Forest). The MND notes that if nests are discovered during preconstruction surveys, associated buffers may overlap the proposed conveyance facility. The Biological Resources section of the MND indicates that, "[n]o impacts are proposed within this community. These species should be identified during the preconstruction nesting bird surveys and pursuant to Mitigation Measures BIO-2 and BIO-3, a qualified biologist(s) with a CDFW Scientific Collection Permit will relocate this species to suitable habitats within surrounding open space areas that would remain undisturbed. Impacts would be less than significant with the incorporation of Mitigation Measures BIO-2 and BIO-3.

Additionally, MM BIO-3 indicates that suitable habitats for bird nesting will be surveyed prior to vegetation clearing conducted during bird nesting season. Preconstruction surveys of occupied vireo habitat during vireo nesting season, in the absence of protocol-level surveys, are not sufficient to make Project impacts to this species less than significant.

Why impact would occur: As described in the MND, the Project may result in take of CESA-listed species and/or their habitat. Suitable nesting habitat for vireo exists immediately adjacent to the Project site, less than 100' from the western boundary of the proposed conveyance. A search of the California Natural Diversity Database identified recorded occurrences of vireo 0.6 mile to the east of the Project site (CNDDDB 2021). Construction noise, vibration, dust, or human disturbance could result in temporary or long-term loss of suitable nesting and foraging habitats on or adjacent

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to the Project site. Implementation of MM BIO-2 and -3 also may result in take if physical relocation occurs.

Evidence impact would be significant: As indicated in our prior comment in regard to CESA listed species, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation, monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation, monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

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

Mitigation Measure #2:

To reduce impacts to less than significant: CDFW recommends complete avoidance of occupied vireo habitat and a 100-foot buffer during nesting season to avoid take of vireo under CESA. Any adverse impacts to vireo are considered significant without sufficient mitigation. If ground disturbance, construction activities, or vegetation clearing occur during vireo nesting season, CDFW recommends a species-specific survey, focusing on potential nesting sites within and adjacent to the Project area. If vireo or nests are identified, further consultation with CDFW is necessary and an ITP or consistency determination may be needed. CDFW also encourages SMWD to consult as soon as possible with the United States Fish and Wildlife Service (USFWS), as informal or formal consultation may be appropriate to address impacts to vireo.

CDFW recommends adding an additional vireo-specific mitigation measure that states:

“Vegetation clearing and construction activities shall occur outside of least Bell’s vireo (Vireo bellii pusillus; vireo) nesting season (March 15th through July 31st) to avoid impacts to vireo. Prior to initiation of construction within 100’ of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell’s vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.”

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COMMENT #5: Nesting Bird Mitigation

Section 3.4, Page 34

Issue: MM BIO-3 does not adequately avoid or minimize impacts to nesting birds.

Specific Impact: MM BIO-3 indicates that nesting bird surveys will be conducted by a qualified biologist if vegetation clearing for construction and fuel modification cannot occur outside of breeding bird season; however, no timeline is indicated. Pre-construction surveys should occur as close to the time of potential disruption as possible to minimize the Project's impacts to nesting birds. To adequately identify nesting bird presence in the Project area, surveys should be conducted no more than 3 days prior to ground disturbance, vegetation removal, or construction activities.

Why impact would occur: Suitable habitat for nesting and migratory birds on the Project site includes grassland, scrub, chaparral, and woodland communities. Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

Evidence impact would be significant: California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of fertile eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

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

Mitigation Measure #3:

To reduce impacts to less than significant: To avoid potential direct and indirect impacts to nesting birds in conformance with the California Fish and Game Code and Migratory Bird Treaty Act, the MND should require that clearing of vegetation and construction activities occur outside of the peak avian breeding season, which generally runs from February 1st through September 1st (as early as January 1st for some raptors). If Project activities cannot occur outside of the bird nesting season, CDFW recommends that nesting bird surveys be conducted no more than three days prior to construction-related activities including clearing of vegetation, grubbing, or grading. If active nests or breeding behavior are observed within the Project area during the survey, a buffer zone with a minimum width of 100 feet (300 feet for CESA-listed passerines and 500 feet for raptors) should be established around the nest and a qualified biologist should be on-site to monitor activity daily during vegetation clearing and grading. Buffer zones should be delineated by temporary fencing and remain in effect as long as construction is occurring or until the nest is no longer active.

We recommend that the MM BIO-3 incorporate the following language (changes indicated in **bold**):

*"All vegetation clearing for construction and fuel modification shall occur outside of the breeding bird season (**generally February 1st through September 1st, as early as January 1st for some raptors**), to ensure that no active nests would be disturbed. If clearing and/or grading activities cannot be avoided during the nesting season, all suitable habitats shall be thoroughly surveyed **no more than three days prior to activities** for the presence of nesting birds by a qualified biologist prior to removal. Suitable nesting habitat on the Project site includes grassland, scrub, chaparral, and woodland communities. If any*

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active nests are detected, the area shall be flagged, along with a 100–500-foot buffer (or appropriate buffer as determined by the monitoring biologist), and shall be avoided until the nesting cycle is complete or it is determined by the monitoring biologist that the nest is no longer active.”

COMMENT #6: Habitat restoration plan and mitigation ratios

Section 3.4, Page 35

Issue: Mitigation Measure BIO-4 (MM BIO-4) requires further rationale and detail to adequately mitigate for impacts to sensitive natural communities.

Specific impact: The MND indicates that 0.03 acre of lemonade berry scrub and 0.48 acre of California sagebrush scrub (coastal sage scrub) will be removed within the grading footprint for the Project. MM BIO-4 proposes mitigation through on-site restoration/enhancement at a ratio of at least 1:1. A habitat restoration plan (HRP) is also proposed; however, specific details of the plan are not available for review.

As identified in the MND’s mitigation Measure MM BIO-4, SMWD is required to prepare and implement a HRP prior to any ground disturbance. MM BIO-4 indicates:

“The plan shall include adaptive management practices to achieve the specified ratio for restoration/enhancement. At a minimum, the plan shall include a description of the existing conditions of the receiver site(s), goals and timeline, installation methods, monitoring procedures, plant spacing, adaptive management strategies, and maintenance requirements which will be reviewed and approved by the monitoring biologist to ensure the sensitive communities referred to above are reestablished successfully at the ratios set forth above.”

Why impact would occur: Pursuant to the MND, the HRP is a required Project component to mitigate for sensitive natural communities that will be removed during Project grading. However, the MND does not include analysis of the ecological value of impacted communities or a draft HRP for public review and comment. Absent its inclusion, the MND’s requirement to prepare and implement the HRP does not benefit from public review and analysis.

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

Mitigation Measure #4:

To reduce impacts to less than significant: CDFW recommends that the MND specify how the HRP will be implemented, who the responsible party for overseeing the HRP’s implementation is, when the HRP will be approved, as well as define the specific measures that the HRP will utilize to minimize potential impacts to sensitive natural communities and associated biological resources. The MND should provide rationale on use of a 1:1 ratio for impacts to the 0.03 acre of lemonade berry scrub and 0.48 acre of California sagebrush scrub. CDFW recommends a ratio of at least 2:1 for impacts to coastal sage scrub; if habitat being removed supports sensitive species such as California gnatcatcher, a ratio of at least 3:1 may be appropriate. The HRP should be made available for review by CDFW and USFWS (collectively the Wildlife Agencies) prior to final approval and implementation. We recommend that the MM BIO-4 be amended with the following language (changes in **bold**):

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*“Impacts to lemonade berry scrub located on the site shall be mitigated through on-site restoration/enhancement at a ratio of at least 1:1. **Coastal sage scrub shall be mitigated at a ratio of at least 2:1. An analysis of sensitive species supported by the impacted California sagebrush scrub and lemonade berry scrub shall be discussed in a detailed habitat restoration plan. If sensitive species such as California gnatcatcher are identified in the impacted vegetation, a ratio of at least 3:1 will be used in on-site restoration/enhancement. SMWD shall provide analysis of the ecological value of the impacted habitat used to determine mitigation ratios.***

*A habitat restoration plan shall be prepared prior to any ground disturbance. The plan shall include adaptive management practices to achieve the specified ratio for restoration/enhancement. At a minimum, the plan shall include a description of the existing conditions of the receiver site(s), goals and timeline, installation methods, monitoring procedures, plant spacing, adaptive management strategies, and maintenance requirements which will be reviewed and approved by the monitoring biologist to ensure the sensitive communities referred to above are reestablished successfully at the ratios set forth above. **The plan will also include information on the responsible party for implementation of the mitigation. The habitat restoration plan will be made available to the Wildlife Agencies for review and approval prior to implementation.**”*

III. Editorial Comments and/or Suggestions

Comment #7: Incorporation by reference and use of tiering

The MND discusses previous environmental documents and incorporates them by reference. For example, the MND indicates that potable water supplies will be developed in accordance with SMWD’s 2019 Fiscal Year IRP and the District’s 2015 UWMP. The MND also references SMWD participation in the Adaptive Pumping Management (APM) Plan that regulates groundwater well pumping allocations. However, when relying on the incorporated documents, the MND provides inadequate general summaries in relation to biological impact analysis. When the MND conducts analysis and relies upon incorporated documents they must be briefly summarized pursuant to CEQA guidelines section 15150(c). Additionally, the MND should provide specific reference (e.g., page or section) to the location in the incorporated document(s) where the underlying analysis can be found.

Additionally, as written, the MND does not explicitly state that it was prepared using tiering. If analysis of biological impacts in the downstream San Juan Creek watershed are assumed covered under prior plans, the MND should state that it is being tiered with the previous environmental documents. Specific references from the tiered documents should also be included in the MND to illustrate significant avoidance and minimization of downstream impacts to biological resources in the San Juan Creek Watershed. As written, the MND appears to be using the broader analysis in previous MND(s) and Plans to narrow the scope of review of the current Project, to only focus on issues specific to the Project, and does not explicitly disclose the use of tiering in the text of the MND. (CEQA guidelines §15152)

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

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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.

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 Santa Margarita Water District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist at Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager I
South Coast Region

Attachments

- A. CDFW Comments and Recommendations

ec: CDFW

Susan Howell, San Diego – Susan.Howell@wildlife.ca.gov
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State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov
CEQA Program Coordinator, Sacramento – CEQACommentLetters@wildlife.ca.gov

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REFERENCES

Army Corps of Engineers. 2002. San Juan Creek Watershed Management Study. Orange County, CA. (http://www.ocwatersheds.com/watersheds/pdfs/San_Juan_Creek_F5_Report_August_2002.pdf)

Calflora: Information on California plants for education, research and conservation, with data contributed by public and private institutions and individuals, including the Consortium of California Herbaria. [web application]. 2021. Berkeley, California: The Calflora Database [a non-profit organization]. Available: <https://www.calflora.org/> [accessed 9 March 2021].

California Native Plant Society, Rare Plant Program. 2021. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 9 March 2021].

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Katagi, W., T. Johnson, and G. Sutherland. 2008. Steelhead Recovery in the San Juan and Trabuco Creeks Watershed. In *World Environmental and Water Resources Congress 2008: Ahupua'A* (pp. 1-10).

Pert, Edmund. 2011. California Department of Fish and Wildlife. Comments on the Mitigated Negative Declaration for the Supplemental Water Lease Project, Orange County, CA (SCH# 2011091018).

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Attachment A:

CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

	Mitigation Measures	Timing	Responsible Party
Mitigation Measure #1	<p>Prior to any ground disturbing activities, a focused rare plant survey during the suitable bloom period for each species shall be conducted to document the existence and quantity of any rare plants within the BSA. If clearing and grubbing occurs prior to the suitable bloom period for special-status plants, a full-time biological monitor shall be present on-site for any ground disturbing or clearing and grubbing activities, and any non CESA-listed special-status plant species shall be flagged for avoidance.</p> <p>If non CESA-listed special-status plants are found within the impact area, the special-status plant species shall be mitigated through on-site translocation and/or seed collection and on-site seeding onto a suitable location such as the preserved portions of the property owned by SMWD in areas that currently exhibit lesser plant density if possible. The translocations shall result in a minimum 50% survivorship which will be verified by the monitoring biologist. If survivorship is less than 50%, SMWD shall consult with CDFW to conduct additional on-site plantings sufficient to replace the impacted individuals. Translocation and on-site seeding for impacted species shall be documented and reports shall be made available to CDFW upon request.</p> <p>Impacts to CESA listed plants including thread-leaved brodiaea (<i>Brodiaea filifolia</i>) shall be avoided. If individuals are identified within the direct impact area or construction staging areas, Project activities shall halt, and no take of the species shall occur until authorization is obtained from CDFW. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Revisions to the Fish and Game Code,</p>	Prior to construction activities	SMWD

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	<p>effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation, monitoring, and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.</p>		
Mitigation Measure #2	<p>Vegetation clearing and construction activities shall occur outside of least Bell's vireo (<i>Vireo bellii pusillus</i>; vireo) nesting season (March 15th through July 31st) to avoid impacts to vireo. Prior to initiation of construction within 100' of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell's vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.</p>	Prior to construction activities	SMWD
Mitigation Measure #3	<p>All vegetation clearing for construction and fuel modification shall occur outside of the breeding bird season (generally February 1st through September 1st, as early as January 1st for some raptors), to ensure that no active nests would be disturbed. If clearing and/or grading activities cannot be avoided during the nesting season, all suitable habitats shall be thoroughly surveyed no more than three days prior to activities for the presence of nesting birds by a qualified biologist prior to removal. Suitable nesting habitat on the Project site includes grassland, scrub, chaparral, and woodland communities. If any active nests are detected, the area shall be flagged, along with a 100-500-foot buffer (as determined by the</p>	Prior to construction activities	SMWD

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	<p>monitoring biologist), and shall be avoided until the nesting cycle is complete or it is determined by the monitoring biologist that the nest is no longer active.</p>		
<p>Mitigation Measure #4</p>	<p>Impacts to lemonade berry scrub located on the site shall be mitigated through on-site restoration/enhancement at a ratio of at least 1:1. Coastal sage scrub shall be mitigated at a ratio of at least 2:1. An analysis of sensitive species supported by the impacted California sagebrush scrub and lemonade berry scrub shall be discussed in a detailed habitat restoration plan. If sensitive species such as California gnatcatcher are identified in the impacted vegetation, a ratio of at least 3:1 will be used in on-site restoration/enhancement. SMWD shall provide analysis of the ecological value of the impacted habitat used to determine mitigation ratios.</p> <p>A habitat restoration plan shall be prepared prior to any ground disturbance. The plan shall include adaptive management practices to achieve the specified ratio for restoration/enhancement. At a minimum, the plan shall include a description of the existing conditions of the receiver site(s), goals and timeline, installation methods, monitoring procedures, plant spacing, adaptive management strategies, and maintenance requirements which will be reviewed and approved by the monitoring biologist to ensure the sensitive communities referred to above are reestablished successfully at the ratios set forth above. The plan will also include information on the responsible party for implementation of the mitigation. The habitat restoration plan will be made available to the Wildlife Agencies for review and approval prior to implementation.</p>	<p>Prior to approval of final MND</p>	<p>SMWD</p>
<p>Recommendation #1</p>	<p>The MND should be amended to include a thorough analysis of direct, indirect, and cumulative impacts of altered hydrology on the San Juan Creek Watershed downstream of the Project area and the associated biological resources therein, including but not limited to southern steelhead, CESA-listed species, and existing mitigation sites. Mitigation measures should be included in the</p>	<p>Prior to approval of final MND</p>	<p>SMWD</p>

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	MND as appropriate in order to bring these impacts below significance thresholds.		
Recommendation #2	The MND should include an analysis of the Project's direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 <i>et seq.</i> If impacts to the bed, bank, or channel of a stream - constrained or otherwise - may occur, a LSA Notification package should be submitted to CDFW. Notifications are now being processed via the online Environmental Permit Information Management System (EPIMS). More information can be found on CDFW's web site at http://www.wildlife.ca.gov/Conservation/LSA .	Prior to approval of final MND	SMWD