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 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

March 23, 2021

Mar 23 2021

Jonathan Sanks
 City of Anaheim, Public Utilities Department
 201 S. Anaheim Blvd, Suite 1101
 Anaheim, CA 92805
JSanks@anaheim.net

STATE CLEARINGHOUSE

Subject: Groundwater Treatment at La Palma, Linda Vista, Boysen Park, and Energy Field Sites (PROJECT), Mitigated Negative Declaration (MND), SCH #2021020376

Dear Mr. Sanks:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Anaheim 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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Anaheim (City)

Objective: The Project will construct additional ion exchange water treatment facilities at four separate Project sites. Primary Project activities include grading, vegetation removal, installation of concrete foundation, excavation for pipe installation, installation of a new groundwater well, rehabilitation of existing wells, and installation of new water treatment systems.

Location: All four Project sites are in located in the City, within Orange County. The addresses of the Project sites are listed below:

La Palma Site: 1015 N. West St., Anaheim, CA
 Linda Vista Site: 1411 Tustin Ave., Anaheim, CA
 Boysen Park Site: 973 S. State College Blvd., Anaheim, CA
 Energy Field Site: 1665 9th St., Anaheim, CA

Biological Setting: The MND indicates that the four Project sites are significantly developed or disturbed, and do not contain any special-status plant species or native habitat. The Linda Vista

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.

Mr. Jonathan Sanks
 City of Anaheim
 March 23, 2021
 Page 2 of 5

site is immediately adjacent to Anaheim Lake; a habitat assessment of the Linda Vista site was conducted by a permitted fairy shrimp biologist and it was determined that there is no suitable habitat for listed fairy shrimp species. The MND identified two special-status wildlife species that may occur in the moderate quality aquatic and upland habitat of Anaheim Lake: osprey (*Pandion haliaetus*; CDFW Species of Special concern (SSC)) and coast horned lizard (*Phrynosoma blainvillii*; SSC).

The Linda Vista Project site is within a concrete-lined basin adjacent that is connected to Anaheim Lake. Construction of an outfall structure within the inlet basin is proposed as part of the Project description. Mitigation Measure BIO-3 (MM BIO-3) in the MND indicates that a formal jurisdictional delineation will be conducted to determine potential regulatory agency jurisdiction, and acknowledges that a Section 1600 Lake and Streambed Alteration Agreement or a 401 Certification may be required.

Timeframe: Construction will begin September 2021 and is expected to be completed by May 2023.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Mitigation Measure BIO-1 (MM BIO-1)

Section 3.4.1, Page 34

Issue: MM BIO-1 does not adequately avoid or minimize impacts to coast horned lizards or other terrestrial wildlife that may occur on the Project site.

Specific impact: MM BIO-1 proposes that a pre-construction clearance survey be conducted within three days prior to the start of construction activities to avoid impacts to coast horned lizards. MM BIO-1 indicates that additional measures may be taken if coast horned lizards are identified, such as buffer establishment around active nests, on-site biological monitoring, or relocation of individuals to off-site areas. A timeframe of three days for wildlife clearance surveys is inadequate to ensure that coast horned lizards or other common wildlife species are not present in active areas of the Project site. Clearance surveys should be conducted on the same day prior to the commencement of construction activities to ensure that no wildlife is present within the Project footprint. Additionally, if any wildlife will be handled or relocated, a Scientific Collecting Permit is required, and a Species Relocation Plan should be provided to CDFW for review and approval prior to construction.

Why impact would occur: Coast horned lizards or other wildlife may get trapped in trenches, holes, or pipes on the project site, or crushed by construction equipment.

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

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends that a wildlife pre-construction survey be conducted on the day that construction activities, including grading activities and trenching, occur within the Project site where suitable habitat is present. Construction personnel should conduct daily inspection of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspection of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day.

On site biologists should be required to obtain, as applicable, Scientific Collecting Permits (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the Project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.

Mr. Jonathan Sanks
 City of Anaheim
 March 23, 2021
 Page 3 of 5

We recommend that the MM BIO-1 be amended with the following language (changes in **bold**):

*"In order to avoid potential impacts to coast horned lizards within the Linda Vista site, a biologist shall conduct a pre-construction clearance survey **on the day that construction activities, including demolition and grading activities, occur within the Project site where suitable habitat is present. Construction personnel shall conduct daily inspection of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspection of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day.** If this species is observed during the pre-construction survey, the project biologist shall require additional measures to reduce potential impacts such as establishing an appropriate buffer around an active nest, on-site construction monitoring by a qualified biological monitor, and/or moving individuals to off-site areas out of harm's way.*

On site biologists shall be required to obtain, as applicable, Scientific Collecting Permits (SCP) if wildlife will be handled or relocated. A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required."

II. Project Description and Related Impact Shortcoming

COMMENT #2: California least tern impacts

Issue: A search of the California Natural Diversity Data Base (CNDDDB) indicates that there is a historic occurrence of California least tern (*Sternula antillarum browni*; California Endangered Species Act (CESA) listed Endangered and federal Endangered Species Act (ESA) listed Endangered; CDFW Fully Protected Species) at Anaheim Lake within the Linda Vista Project site. It is not clear from the MND that impacts to this species will be fully avoided.

Why impact would occur: If suitable nesting habitat for California least tern exists within or adjacent to the project site, construction activities during nesting season (April-September) could result in direct or indirect impacts to the nesting terns. Vibration, noise, dust, and increased human activity can all lead to nest abandonment. Adult abandonment of active nests may lead to starvation or increased predation of chicks, a decline in breeding success, and an overall population decline.

Evidence impact would be significant: In addition to being both CESA and ESA listed Endangered, California least tern are also Fully Protected under FGC section 3511(b)(6). A Fully Protected species may not be taken at any time and any impacts to California least tern would be considered significant.

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

Recommendation #1:

To reduce impacts to less than significant: CDFW recommends that the MND include analysis of any suitable California least tern nesting or foraging habitat on the Linda Vista Project site, associated Project impacts, and proposed mitigation that avoids any take of the species. If there is any potential California least tern nesting habitat on or within 500' of the Project site, all construction related activities should occur outside of the breeding season (April-September).

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. 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.

Mr. Jonathan Sanks
City of Anaheim
March 23, 2021
Page 4 of 5

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 City 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
Jennifer Ludovissy, San Diego – Jennifer.Ludovissy@wildlife.ca.gov
CEQA Program Coordinator, Sacramento – CEQACommentLetters@wildlife.ca.gov
State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov

Mr. Jonathan Sanks
 City of Anaheim
 March 23, 2021
 Page 5 of 5

Attachment A:

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

	Mitigation Measures	Timing	Responsible Party
Mitigation Measure #1	<p>In order to avoid potential impacts to coast horned lizards within the Linda Vista site, a biologist shall conduct a pre-construction clearance survey on the day that construction activities, including demolition and grading activities, occur within the Project site where suitable habitat is present. Construction personnel shall conduct daily inspection of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspection of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day. If this species is observed during the pre-construction survey, the Project biologist shall require additional measures to reduce potential impacts such as establishing an appropriate buffer around an active nest, on-site construction monitoring by a qualified biological monitor, and/or moving individuals to off-site areas out of harm's way.</p> <p>On site biologists shall be required to obtain, as applicable, Scientific Collecting Permits (SCP) if wildlife will be handled or relocated. A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the Project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.</p>	Prior to construction	City of Anaheim
Recommendation #1	<p>CDFW recommends that the MND include analysis of any suitable California least tern nesting or foraging habitat on the Linda Vista Project site, associated Project impacts, and proposed mitigation that avoids any take of the species. If there is any potential California least tern nesting habitat on or within 500' of the Project site, all construction related activities should occur outside of breeding season (April-September).</p>	Prior to construction	City of Anaheim