



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Apr 22 2021

STATE CLEARINGHOUSE

April 21, 2021

Ms. Elise Latedjou-Durand
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686
EDurand@valleywater.org

Subject: Purified Water Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021030519, Santa Clara County

Dear Ms. Latedjou-Durand:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the Santa Clara Valley Water District (Valley Water) for the Purified Water Project (Project) pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., § 15000 et seq.; hereafter CEQA Guidelines).

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility pursuant to CEQA for commenting on projects that could directly or indirectly impact biological resources. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). As a Trustee Agency, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from Project activities (CEQA Guidelines, § 15386; Fish and Game Code, § 1802).

CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. CDFW will act as a Responsible Agency because it anticipates issuing an LSA Agreement for Project activities that impact a stream (Fish and Game Code, §§ 1600 – 1616), specifically Alamos Creek, Guadalupe Creek, and Guadalupe River. CDFW may also act as a Responsible Agency in issuing a CESA Incidental Take

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Permit (ITP) if Project activities result in “take” of any species listed as candidate, threatened, or endangered pursuant to CESA (Fish and Game Code, § 2050 et seq.).

PROJECT DESCRIPTION SUMMARY

Proponent: Valley Water

Objective: The purpose of the proposed Project is to establish greater water supply reliability for Santa Clara County and to help ensure continued groundwater sustainability. The Project proposes to construct a new advanced water purification facility (AWPF), water conveyance pipelines, lateral pipelines, and additional supporting facilities in Santa Clara County.

Valley Water’s preferred Project site for the AWPF is proposed to be immediately adjacent to the existing Silicon Valley Advanced Water Purification Center owned by the City of San Jose. The approximately 18-mile pipeline for Valley Water’s preferred alternative project would begin at the AWPF and be constructed along existing roadways to convey water to the existing Los Gatos Recharge System complex located in the city of Campbell.

Location: Santa Clara County, CA

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Valley Water in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Impacts to Special-Status Species and Nesting Birds

CDFW is concerned regarding potential impacts to special-status species that may be present within the Project location, including, but not limited to, those listed below:

- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered
- California black rail (*Laterallus jamaicensis coturniculus*) - State Threatened and Fully Protected
- White-tailed kite (*Elanus leucurus*) - State Fully Protected
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened
- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) - California Rare Plant Rank 1B.2

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- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) - State Species of Special Concern
- Western burrowing owl (*Athene cunicularia*) - State Species of Special Concern
- Western pond turtle (*Emmys marmorata*) - State Species of Special Concern
- Alkali milk-vetch (*Astragalus tener* var. *tener*) - California Rare Plant Rank 1B.2
- Alameda song sparrow (*Melospiza melodia pusillula*) - State Species of Special Concern
- California yellow rail (*Coturnicops noveboracensis*) - State Species of Special Concern

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) if the Project will impact federally listed species. Consultation with the USFWS and NMFS in order to comply with ESA is advised well in advance of Project implementation.

Due to the limited information provided in the NOP, CDFW is providing the general comments below. For those species that are not covered under the Santa Clara Valley Habitat Plan (SCVHP), comments and mitigation measures are provided to offset any unavoidable impacts. Species covered under the SCVHP include tricolored blackbird, most beautiful jewelflower, western burrowing owl, and western pond turtle.

Project Description

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the draft EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 and 15378). Please include a complete description of the following Project components in the project description:

- Footprints and descriptions of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Descriptions of permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence; and
- Plans and dimensions for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.

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- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

The draft EIR should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less-than-significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species should be considered cumulatively considerable.

Special-Status Species

Issue: State fully protected species, State threatened or endangered species, State Species of Special Concern, and rare plants may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific Impacts: Without appropriate avoidance measures for special-status species, potentially significant impacts associated with Project activities may include reduced reproductive success; reduced health and vigor; nest abandonment; loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young); burrow/den collapse; crushing as a result of burrow collapse; inadvertent entrapment or entrainment; impingement; habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native species; and direct mortality. Unauthorized take of species listed as threatened or endangered pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact native species.

Recommended Potentially Feasible Mitigation Measures:

1. **Habitat Assessment:** A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for special-status species. For species in which habitat corridors are crucial, the habitat assessment should include review of habitat available within the specific Project location and adjacent habitats. If the Project may result in fragmentation of habitat, Project design should be altered to prevent

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this fragmentation. If fragmentation cannot be avoided, structures should be designed to allow wildlife movement.

2. **Special-Status Plant Surveys:** The Project area should be surveyed for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements, available at: <https://wildlife.ca.gov/Conservation/Plants>.
3. **Special-Status Wildlife Species Surveys and Bird Nest Surveys:** The Project location should be surveyed for special-status wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, focused surveys for special-status wildlife species presence, nests, or indicators of presence (e.g., bat guano and acoustic surveys) should be conducted. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>. If Project activities are to take place during the avian nesting season, two pre-Project activity surveys for active nests should be conducted by a qualified biologist, with the first survey conducted no more than seven days prior to the start of Project activities, and the second survey conducted 48 hours prior to the start of Project activities.
4. **Special-Status Plant Avoidance:** Special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.
5. **Special-Status Wildlife Species and Nesting Bird Avoidance:** If special-status wildlife species such as small mammals are found, work activities should stop, and the individual should be allowed to leave the site through its own volition. If Species of Special Concern wildlife species or active bird nests are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. For nesting birds, the qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged.

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6. State-listed Species Take Authorization: If State-listed species are identified during surveys and full avoidance of take is not feasible, take authorization through CDFW issuance of an ITP) would be required.

Impacts to Lake and Riparian Habitat

CDFW is concerned regarding potential impacts to wetlands and/or streams within the Project area. It is unclear which streams, if any, will be impacted due to Project activities. Due to the limited information provided in the NOP, CDFW is providing comments below with regards to potential impacts and mitigation measures for wetlands and streams.

Issue: The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. Project activities could result in temporary and permanent impacts to these features.

Specific impact: Work within freshwater marsh, wetland, and riparian features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water features causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: Construction activities have the potential to impact downstream waters and to significantly impact freshwater marsh, wetland, and riparian communities.

Recommended Potentially Feasible Mitigation Measures:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to ponds, creeks or streams, and drainages.
2. Notification of Lake and Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

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ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist Valley Water in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Ms. Mayra Molina, Environmental Scientist, at (707) 428-2067 or Mayra.Molina@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse SCH# 2021030519

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