State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

July 12, 2021

Mr. Adam Kanold
Assistant General Manager/Engineering Manager
Montecito Water District
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Santa Barbara, CA 93108
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Subject: Comments on the Draft Mitigated Negative Declaration (DMND) for the Reservoir Retrofit and Replacement Project; SCH #2021060200; Santa Barbara County

Mr. Kanold:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Availability of a Draft Mitigated Negative Declaration (DMND) for the Reservoir Retrofit and Replacement Project (Project). The Montecito Water District (District) is the lead agency preparing a DMND pursuant to the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et. seq.) with the purpose of informing decision-makers and the public regarding potential environmental effects related to the Project. 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's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. [Fish & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 et seq.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish and Game Code §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Project Description and Summary

Objective: The Project involves seismic retrofits, repairs, and replacements at eight of the District's nine existing water storage reservoirs: Doulton, Romero, Terminal, Bella Vista, Park Lane, Cold Springs, Hot Springs, and Buena Vista. The project would bring all eight reservoirs into compliance with seismic design codes and regulations. No retrofit or replacement would expand the water storage capacity of an existing reservoir.

Location: The Project consists of eight reservoirs in the communities of Montecito, Summerland, and Santa Barbara County. Specifically, the reservoirs are located at: Doulton (1075 Toro Canyon Road), Romero (intersection of Bella Vista Drive and Romero Canyon Road), Terminal (intersection of East Mountain Drive and Cold Springs Road), Bella Vista (2750 Bella Vista Drive), Park Lane (intersection of Park Hill Lane and East Mountain Drive), Cold Springs (intersection of East Mountain Drive and Cold Springs Road), Hot Springs (intersection of Hot Springs Road and Hot Springs Lane), and Buena Vista (915 Park Lane).

Comments and Recommendations

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

Project Description and Related Impact Shortcoming

Comment #1: Impacts to Riparian Resources

Issue: CDFW has determined that streams subject to Fish and Game Code, section 1600 et seq. may be impacted by the proposed Project.

Specific Impact: The DMND states the Project could result in impacts to jurisdictional resources. Potentially jurisdictional streams (Hot Springs Creek and an unnamed drainage) occur within 100 feet of the Hot Springs and Park Lane sites. The DMND states indirect impacts from construction material run-off could adversely affect water quality (e.g., increased turbidity, addition of pollutants) particularly during storm events.

Why impact would occur: Degradation of water quality due to construction runoff may impact fish, amphibians, and riparian dependent species such as birds and bats. Runoff with high total suspended solids and total dissolved solids, has been shown to be high in nutrients, as well as other contaminants. Drilling fluid can be toxic to aquatic organisms.

Evidence impact would be significant: The Project may substantially adversely affect the existing water quality and geomorphologic processes through the alteration of the channel.

Mitigation Measure #1: CDFW has concluded that the Project may result in the alteration of streams. For any such activities, the Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 et seq. 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. Please visit CDFW's Lake and Streambed Alteration Program webpage to for information about LSAA notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2020d).

CDFW's issuance of an LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code, section 1600 et seq. and/or under CEQA, the CEQA 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 LSA.

Any LSAA permit issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project site. The LSAA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to aquatic resources, additional mitigation conditioned in any LSAA may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.

Mitigation Measure #2: A weed management plan should be developed for the Project area and implemented both during construction and for the life of the Project. Soil disturbance such as maintenance including mowing or clearing vegetation around the reservoirs, promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established both during and after construction, to control the local spread of invasive plants. The Project area should be monitored via mapping for new introductions and expansions of non-native weeds. Annual threshold limits, eradication targets, and monitoring should be included in this plan. Monitoring for spread of invasive weeds to adjacent lands should also be included. CDFW requests annual reports of weed monitoring be submitted for review.

Mitigation Measure #3: A non-toxic, water-based drilling fluid should be used to reduce the risk to aquatic life.

Comment #2: Survey and Assessment Methodology – Preconstruction Surveys as Mitigation

Issue: The DMND relies on pre-construction surveys for the detection of CEQA-rare, threatened, and endangered species.

Specific impacts: Direct impacts include Project activities that result in vegetation crushing, trimming or removal, burial, human intrusion, and the erosion, crushing and compaction or excavation of soil. Indirect effects include the spread of invasive, non-native weeds, which impact adjacent habitat as well as vibration and construction noise and lighting.

Why impact would occur: The Project may result in impacts to CEQA-rare plant and animal species without including any specific disclosure or analysis in the DMND. Deferring impact assessment and disclosure to pre-construction botanical and animal surveys does not allow adequate disclosure of impacts during the CEQA review period. Surveys should be conducted during the appropriate times, following established protocols to determine what, if any, sensitive species occur in the Project footprint. This information should be included in the DMND, including location (map), population/occurrence size estimates, and an assessment of specific impacts with avoidance and minimization measures. CDFW does not consider translocation of CEQA-rare species as adequate mitigation under CEQA.

CDFW is concerned the DMND does not contain sufficient information regarding existing, known biological resources on the proposed Project to allow for a meaningful discussion of impacts and alternatives analysis. The DNMD is based on a reconnaissance biological assessment, which does not equate to actual surveys for the presence or absence of any species.

CEQA Guidelines §15070 and §15071 require the document to analyze if the Project may have a significant effect on the environment as well as review if the Project will 'avoid the effect or mitigate to a point where clearly no significant effects would occur'. Relying on future surveys, the preparation of future management plans, moving out of harm's way, or mitigating by obtaining permits from CDFW are considered deferred mitigation under CEQA.

Evidence impact would be significant: Impacts to CEQA-rare plant and animal species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to these sensitive species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative 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 United States Fish and Wildlife Service.

CDFW is unable to determine the extent of impacts based on the biological analysis conducted for the DMND. Absent survey data, CDFW is unable to provide meaningful avoidance, minimization, or mitigation measures related to special status plant resources.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: In order to analyze if a project may have a significant effect on the environment, the Project related impacts, including survey results for species that occur in the entire Project footprint, need to be disclosed during the public comment period. This information is necessary to allow CDFW to comment on alternatives to avoid impacts, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

Appropriate surveys, including protocol botanical and animal surveys, should be conducted at the appropriate time of year to document the presence/absence of CEQA-rare species prior to finalizing the DMND. Based on the survey results, the final CEQA document should propose avoidance and specific mitigation for Project impacts to CEQA-rare species. Surveys should be timed during the appropriate season for maximum detection of sensitive species. For botanical species, CDFW's Updated protocols (CDFW, 2018) should be utilized.

Comment 3: Mitigation for Sensitive Vegetation Communities

Issue #1: The DMND states CDFW sensitive vegetation community habitats would be impacted and proposes topsoil salvage as mitigation. CDFW is concerned topsoil salvage for temporary or permanent impacts is not adequate.

Issue #2: Acreages of impacts by vegetation community are not listed.

Specific Impact: Inadequate avoidance, minimization, and mitigation measures for impacts to these CEQA-rare vegetation communities will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative 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 USFWS.

Why Impact Would Occur: Project implementation includes grading, vegetation clearing, trail/road construction, soil compaction, utilities construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of vegetation communities.

Evidence Impact would be significant: Sensitive vegetation communities are a defined by their dominant plant species, such as *Adenostoma fasciculatum* – (Ceanothus megacarpus) Association (S3). The DMND states two alliances (Rhus integrifolia shrubland alliance (S3) and Quercus agrifolia woodland alliance (S4) are considered sensitive by CDFW, but does not define the California Sagebrush Scrub or Bigpod ceanothus as specific alliances. The Bigpod ceanothus chaparral alliance is ranked S4, and there are many different alliances and associations with “California sagebrush” in the name ranging from the S2-ranked *Artemisia californica – Eriogonum fasciculatum – Opuntia littoralis / Dudleya (edulis)* alliance to the many S3 and S4-ranked alliances and associations such as the *Artemisia californica – Eriogonum fasciculatum – Salvia leucophylla* alliance.

CDFW does not recommend topsoil salvage or transplantation as viable mitigation options. Several studies have documented topsoil salvage had no effect on the recolonization of the target plant species (Hinshaw, 1998, Dixon, 2018). Based on the scientific literature available, relying on topsoil salvage alone to mitigate impacts to CEQA-rare, sensitive vegetation communities does not appear to provide any value to mitigate impacts to the plants.

CEQA Guidelines sections 15070 and 15071 require the DEIR to analyze if the Project may have a significant effect on the environment as well as review if the Project will “avoid the effect or mitigate to a point where clearly no significant effects would occur.”

In order to analyze if a project may have a significant effect on the environment, the location, species composition, and success criteria of proposed mitigation information is necessary to allow the Department to comment on alternatives to avoid impacts, as well assess the adequacy of the mitigation proposed.

Removing a plant from the ground is a permanent impact resulting in its death, replacing it is considered mitigation. All impacts that remove plants from the ground should be considered under the same lens whether the restoration occurs in the same area as the impacts or in new areas. Both scenarios may or may not produce successful new individuals or the targeted

vegetation community assemblage. Both scenarios result in: 1) the loss of established individuals; and, 2) the replacement planting of new individuals. Both scenarios incur temporal losses as well as intensive management to ensure the desired habitat is re-created. Both are at risk for failure and are a community of same-aged individuals lacking the age stratification and complexity of the original habitat.

Mitigation Measure #1: CDFW recommends avoiding any sensitive natural communities found on the Project. If avoidance is not feasible, the Project proponent should mitigate at a ratio sufficient to achieve a no-net loss for impacts to special status plant species and their associated habitat. CDFW recommends all impacts to the S3 sensitive vegetation communities (*Rhus integrifolia* shrubland alliance) (unknown-acres) should be mitigated at a 4:1 ratio and impacts to the S4 and S5 communities (Mountain Mahogany chaparral, *Quercus agrifolia* woodland, Bigpod ceanothus (unknown-acres) be mitigate at a 2:1 ratio due to the overall decline of coastal scrub habitats region wide.

All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and a funding mechanism for long-term management. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).

Mitigation Measure #2: Success criteria should be based on the specific composition of the vegetation communities being impacted. Success should not be determined until the site has been irrigation-free for at least 5 years and the metrics for success have remained stable (no negative trend for richness/diversity/abundance/cover and no positive trend for invasive/non-native cover for each vegetation layer) for at least 5 years. In the revegetation plan, the success criteria should be compared against an appropriate reference site, with the same vegetation alliance, with as good or better-quality habitat. The success criteria shall include percent cover (both basal and vegetative), species diversity, density, abundance, and any other measures of success deemed appropriate by CDFW. Success criteria shall be separated into vegetative layers (tree, shrub, grass, and forb) for each alliance being mitigated, and each layer shall be compared to the success criteria of the reference site, as well as the alliance criteria in MCV2, ensuring one species or layer does not disproportionally dominate a site but conditions mimic the reference site and meets the alliance membership requirements.

Mitigation Measure #3: A weed management plan should be developed for the Project area and implemented both during construction and for the life of the Project. Soil disturbance such as maintenance including mowing or clearing vegetation around the reservoirs, promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established both during and after construction, to control the local spread of invasive plants. The Project area should be monitored via mapping for new introductions and expansions of non-native weeds. Annual threshold limits, eradication targets, and monitoring should be included in this plan. Monitoring for spread of invasive weeds to adjacent lands should also be included. CDFW requests annual reports of weed monitoring be submitted for review.

Filing Fees

The Project, as proposed, would have an impact on fish and/or wildlife resources, 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. (California Code of Regulations, tit. 14, § 753.5; Fish and Game Code, § 711.4; Public Resources Code, § 21089).

Conclusion

We appreciate the opportunity to comment on the project to assist Montecito Water District in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the District has to our comments and to receive notification of any forthcoming hearing date(s) for the project. Questions regarding this letter and further coordination on these issues should be directed to Kelly Schmoker-Stanphill, Senior Environmental Scientist (Specialist), at (626) 335-9092 or Kelly.Schmoker@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erinn Wilson-Olgin
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Erinn Wilson-Olgin
Environmental Program Manager I
South Coast Region

Attachments: Attachment A: Draft Mitigation and Monitoring Reporting Plan

ec: CDFW
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Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project's final on and/or off-site mitigation plans.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		**Timing**	**Responsible Party**
MM-BIO-1-Impacts to Riparian Resources	CDFW has concluded that the Project may result in the alteration of streams. For any such activities, the Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 et seq. 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. Please visit CDFW's Lake and Streambed Alteration Program webpage to for information about LSAA notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2020d). CDFW's issuance of an LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW	Prior to/After Project construction and activities	Lead Agency/ Applicant

	pursuant to Fish and Game Code, section 1600 et seq. and/or under CEQA, the CEQA 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 LSA. Any LSAA permit issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project site. The LSAA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to aquatic resources, additional mitigation conditioned in any LSAA may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.		
MM-BIO-2-Impacts to Riparian Resources	A weed management plan should be developed for the Project area and implemented both during construction and for the life of the Project. Soil disturbance such as maintenance including mowing or clearing vegetation around the reservoirs, promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established both during and after construction, to control the local spread of invasive plants. The Project area should be monitored via mapping for new introductions and expansions of non-native weeds. Annual threshold limits, eradication targets, and monitoring should be included in this plan. Monitoring for spread of invasive weeds to adjacent lands should also be included. CDFW requests annual reports of weed monitoring be submitted for review.	During Project construciton activities	Lead Agency/ Applicant

MM-BIO-3-Impacts to Riparian Resources	A non-toxic, water-based drilling fluid should be used to reduce the risk to aquatic life.	Prior to Project construction and activities	Lead Agency/ Applicant
MM-BIO-4-Survey and Assessment Methodology	Appropriate surveys, including protocol botanical and animal surveys, should be conducted at the appropriate time of year to document the presence/absence of CEQA-rare species prior to finalizing the DMND. Based on the survey results, the final CEQA document should propose avoidance and specific mitigation for Project impacts to CEQA-rare species. Surveys should be timed during the appropriate season for maximum detection of sensitive species. For botanical species, CDFW's Updated protocols (CDFW, 2018) should be utilized.	Prior to Project construction and activities	Lead Agency/ Applicant
MM-BIO-5-Impacts to Sensitive Vegetation Communities	CDFW recommends avoiding any sensitive natural communities found on the Project. If avoidance is not feasible, the Project proponent should mitigate at a ratio sufficient to achieve a no-net loss for impacts to special status plant species and their associated habitat. CDFW recommends all impacts to the S3 sensitive vegetation communities (Rhus integrifolia shrubland alliance) (unknown-acres) should be mitigated at a 4:1 ratio and impacts to the S4 and S5 communities (Mountain Mahogany Chaparral, Quercus agrifolia woodland, Bigpod ceanothus (unknown-acres) be mitigate at a 2:1 ratio due to the overall decline of coastal scrub habitats region wide. All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring	Prior to Project construction and activities	Lead Agency/ Applicant

	methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and a funding mechanism for long-term management. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).		
MM-BIO-6-Impacts to Sensitive Vegetation Communities	Success criteria should be based on the specific composition of the vegetation communities being impacted. Success should not be determined until the site has been irrigation-free for at least 5 years and the metrics for success have remained stable (no negative trend for richness/diversity/abundance/cover and no positive trend for invasive/non-native cover for each vegetation layer) for at least 5 years. In the revegetation plan, the success criteria should be compared against an appropriate reference site, with the same vegetation alliance, with as good or better-quality habitat. The success criteria shall include percent cover (both basal and vegetative), species diversity, density, abundance, and any other measures of success deemed appropriate by CDFW. Success criteria shall be separated into vegetative layers (tree, shrub, grass, and forb) for each alliance being mitigated, and each layer shall be compared to the success criteria of the reference site, as well as the alliance criteria in MCV2, ensuring one species or layer does not disproportionally dominate a site but conditions mimic the reference site and meets the alliance membership requirements.	Prior to Project construction and activities	Lead Agency/ Applicant

MM-BIO-7-Impacts to Impacts to Sensitive Vegetation Communities	A weed management plan should be developed for the Project area and implemented both during construction and for the life of the Project. Soil disturbance such as maintenance including mowing or clearing vegetation around the reservoirs, promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established both during and after construction, to control the local spread of invasive plants. The Project area should be monitored via mapping for new introductions and expansions of non-native weeds. Annual threshold limits, eradication targets, and monitoring should be included in this plan. Monitoring for spread of invasive weeds to adjacent lands should also be included. CDFW requests annual reports of weed monitoring be submitted for review.		During Project construciton activities