



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



October 8, 2021

Joe Broadhead
 Eastern Municipal Water District
 2270 Trumble Road PO Box 8300
 Sacramento, CA 95822

Governor's Office of Planning & Research

Oct 08 2021

STATE CLEARINGHOUSE

Subject: Well 56 Wellhead Treatment Project
 SCH# 2021090132

Dear Joe Broadhead:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) from the Eastern Municipal Water District (District; the CEQA lead agency) for Well 56 Wellhead Treatment Project (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.

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.

PROJECT DESCRIPTION SUMMARY

The District proposes to implement the Project to address per- and poly-fluoroalkyl substances concentrations in the groundwater pumped at the District's existing Well 56, taken offline in February 2019. The District proposes to acquire real property to provide a suitable location for the wellhead treatment facility and has identified a total of five potential sites (Proposed Project and Options 1-4). The preferred option (hereafter referred to as "Proposed Project") consists of constructing a 1.4-acre blow-off basin and appurtenant facilities on the 5.4-acre parcel southeast of the existing Well 56. The options include: Option 1 is located at the Northwest Corner of Indian Avenue and Perry Street Intersection (5.8 acres), Option 2 is located at the Northeast Corner of Indian Avenue and Ramona Expressway Intersection (15.1 acres), Option 3 is located at the Well 59 Facility, Northwest Corner of Indian Avenue and Nance Street Intersection (0.6 acres), and Option 4 is located on the South Side of Perry Street and immediately North of Option 2 site (6.3 acres) all within the City of Perris. The project includes development of a treatment facility, pipeline, storm drain connection, and potential pond storage.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW agrees that an MND could be appropriate for the Project with the addition and implementation of specific and enforceable avoidance and minimization measures and compensatory mitigation strategies, including those CDFW recommends within the body of this letter. CEQA requires public agencies in California to analyze and disclose potential environmental impacts associated with a project that the public agency will carry out, fund, or approve. Following review of MND, CDFW offers the recommendations presented below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The recommendations are also offered to enable the District to update the MND to adequately disclose impacts and measures for CDFW and the public to review and comment on the proposed Project with respect to the Project's compliance with Fish and Game Code sections 1600, 3503, 3503.5, and 3513. CDFW recommends that each of these be addressed prior to finalization of the Mitigated Negative Declaration.

Project Options

If the District chooses to no longer use the preferred Project location, CDFW recommends not selecting Option 2 to minimize potential impacts to stream and wetland habitat located at or adjacent to the Option 2 build site. After review of historic aerial data, CDFW identified ephemeral stream and seasonal wetland habitat adjacent to the

Option 2 site. Development at Option 2 may lead to changes in the existing drainage area for the stream and impact sensitive stream and wetland habitat.

Nesting Birds

CDFW appreciates the inclusion of recommendation to include a biological measure to address nesting birds (page 133 of the MND). It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey such as Fish and Game Code sections 3503, 3503.5, and 3513. Birds have been documented nesting outside of the nesting bird period identified (February 1 to August 31) in the draft MND. For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, CDFW recommends the completion of nesting bird surveys regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame (February 1 to August 31) due to recent changes in timing of avian breeding activity.

CDFW requests the following revisions and additions be made to the nesting bird recommendation and the inclusion of the following mitigation measure before the District adopts the MND (additions in **bold** and deletions in ~~strikethrough~~) to ensure the surveys conducted follow established protocols and protect nesting birds anytime nesting is occurring:

Applicant shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. The Applicant shall designate a qualified biologist experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology (such as CDFW-accepted species-specific survey protocols, available here: <https://www.wildlife.ca.gov/conservation/survey-protocols>); nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. To avoid impacts on nesting birds and raptors, ~~initiation of construction should be scheduled between September 1 and January 31, which is outside the peak nesting season. If construction and/or vegetation removal must occur during the peak nesting season (i.e., February 1 to August 31),~~ a pre-construction nesting bird survey should be conducted by a qualified Biologist within ~~three~~4 days prior to **construction activities, including ground disturbance and** vegetation removal activities.

Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors).

If the Biologist finds an active nest within or adjacent to the construction area, the Biologist shall will identify an appropriate protective buffer zone around the nest depending on the sensitivity of the species, the nature of the construction activity, and the amount of existing disturbance in the vicinity. If excluding work activities from any established buffers is not feasible, the qualified biologist may establish a modified buffer exclusion utilizing specific biological and/or ecological attributes of the project location and avian species. The active nest shall be monitored by the biologist for the duration of the construction until the young have fledged, or nest is no longer active. If the Biologist determines nesting activities could fail as a result of work activities, all work shall cease within the buffer exclusion, and no entry into the buffer will occur. In general, the Biologist should designate a buffer of 50 to 200 feet for common nesting birds and 200 to 500 feet for special status nesting birds and nesting raptors. No construction activities shall be allowed within the buffer until nesting activity has ended to ensure protection of nesting birds.

Burrowing Owl

The MND identifies that the Preferred Project site is a burrowing owl survey area for the western Riverside County Multiple Species Habitat Conservation Plan and could support burrowing owls. Burrowing owls are commonly found in disturbed areas surrounded by anthropogenic development and could be present on the site. CDFW requests the District include the following mitigation measure:

BIO-XX: Applicant shall designate a burrowing owl biologist (Designated Biologist) that is knowledgeable about the burrowing owl, including its natural history, habitat requirements, seasonal movements, and range, to survey and monitor for burrowing owls prior to project activities. The Designated Biologist shall complete necessary surveys, impact assessments, and associated reports following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation

(Department of Fish and Game, March 2012) or similar approach. The survey(s) shall encompass the entire project site and a 150-meter buffer surrounding it, and it shall occur at a time of the day when most burrowing owls are active. Pre-construction burrowing owl surveys shall also be conducted by the Designated Biologist 3 days prior to the start of project activities. If breeding season or pre-construction surveys confirm occupied burrowing owl habitat in or adjoining areas subject to project activities, the Applicant shall contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities, to assist in the development of avoidance, minimization, and mitigation measures. Mitigation may include acquisition and in-perpetuity conservation of occupied burrowing owl habitat. To avoid direct take of owls, the Designated Biologist shall establish a conservative avoidance buffer and monitoring shall occur, if deemed necessary, based on identified activities. If relocation/passive exclusion is deemed necessary Applicant shall prepare a Burrowing Owl Exclusion Plan for CDFW review, in accordance with Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012).

Please be aware that CDFW does not recommend the exclusion of owls using passive relocation unless there are suitable burrows available within 50-100 meters of the closed burrows, a distance generally within a pair's territory (Trulio 1995, CDFG 2012), and the relocation area is protected through a long-term conservation mechanism (e.g., conservation easement). Burrow exclusion should only be conducted during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance, camera, and/or scoping. CDFW's *Staff Report on Burrowing Owl Mitigation* also includes that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until:

- A Burrowing Owl Exclusion Plan (Appendix E in the Staff Report) is developed and approved by the applicable local CDFW office;
- Permanent loss of occupied burrow(s) and habitat and temporary exclusion is mitigated in accordance with guidelines provided in the Staff Report;
- Site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided.
- Young of the year have fledged, as confirmed by daily monitoring for one week, if the exclusion will occur immediately after the end of the breeding season.
- Excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight).

CDFW 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.

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 Eastern Municipal Water District in identifying and mitigating Project impacts on biological resources. CDFW recommends that the County address CDFW's comments and concerns prior to adoption of the MND to avoid, minimize, or mitigate Project impacts on biological resources.

Questions regarding this letter or further coordination please contact John Dempsey at 909-549-8245 or by email at John.Dempsey@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

Joe Broadhead
Eastern Municipal Water District
October 8, 2021
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ec: Office of Planning and Research, State Clearinghouse, Sacramento

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

John Dempsey, Environmental Scientist, CDFW Inland Deserts Region
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REFERENCES

- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. (https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)
- Trulio, L.A. (1995) Passive relocation: a method to preserve burrowing owls on disturbed sites. *Journal of Field Ornithology*, 66, 99-106.