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October 14, 2021

Sent via email

Governor's Office of Planning & Research

Oct 14 2021

Ms. Sylvie Lee, P.E.
Inland Empire Utilities Agency
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STATE CLEARINGHOUSE

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Chino Basin Program (State Clearinghouse Number: 2021090310)

Dear Ms. Lee:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from the Inland Empire Utilities Agency (IEUA) for the Chino Basin Program (Program) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those projects and activities involved in the Program that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Program 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.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW will need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Program 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 Program 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 Program proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The California Water Commission (Commission) is administering the Water Storage Investment Program (WSIP) to fund the public benefits associated with water storage. Through a rigorous selection process, the Commission made maximum conditional eligibility determinations (MCEDs), which is the amount of Proposition 1 funding available to be given to a project or program, that collectively would boost California's water storage capacity by 2.77 million acre-feet. Of the seven MCEDs, the Program was chosen for its public benefits, which consisted of ecosystem improvements, water quality improvements, and emergency response.

The proposed Program is designed to deliver public benefits including a reliable, dedicated environmental water supply to benefit Bay-Delta instream flows, as well as enhance water supply reliability and improve water quality for water users in Southern California. The Program would increase additional available groundwater supplies in the Chino Basin through increased water recycling that would result from operation of a new advanced water purification facility (AWPF) and through groundwater storage by operation of new injection wells. The Program would then dedicate a commensurate amount of water generated by the AWPF for Chino Basin use to provide for an exchange of State Water Project supplies in Lake Oroville in northern California that would otherwise be delivered to southern California. The additional Lake Oroville water would subsequently be released in the form of pulse flows in the Feather River to improve habitat conditions for native salmonids and achieve environmental benefits.

To date, a MCED has been issued for the Program, also referred to as the Chino Basin Conjunctive Use Environmental Water Storage/Exchange Program (CBEWP), for \$206.9M. Proposition 1 includes a statutory deadline of January 1, 2022, by which a feasibility study, draft environmental documentation, and commitments for at least 75 percent of the non-public benefit cost share must be completed.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist IEUA in adequately identifying and/or mitigating the Program's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recognizes that a

programmatic EIR need not be as detailed as CEQA documents prepared for specific projects that may follow (CEQA Guidelines § 15146). CDFW also recognizes that the level of detail should be reflective of the level contained in the Program or Program element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). However, please note that IEUA cannot defer the analysis of significant effects of the EIR to later-tiered CEQA documents (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182).

CDFW recommends that the forthcoming EIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project/program is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Program, the EIR should include a complete assessment of the flora and fauna within and adjacent to the any projects or activities within the Program, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the EIR specifically include:

1. An assessment of the various habitat types, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species within, as well as any offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those

which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects may warrant periodic updated surveys for certain sensitive taxa, particularly if any projects or activities are proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

CDFW recognizes the importance of boosting California's water storage and providing ecological benefits to the State Water Project. CDFW would like to understand the impacts to the Chino Basin and the mitigation that will occur to offset these impacts to the local Santa Ana River Watershed.

The jurisdiction of the Chino Basin spans approximately 2,800 square miles and encompasses much of Orange County, a sliver of Los Angeles County, and the major population centers of western Riverside and southwestern San Bernardino Counties. Production and storage rights in the Chino Basin are defined in a Stipulated Judgment (Judgment), issued in 1978 (Chino Basin Municipal Water District vs. the City of Chino et al. [SBSC Case No. RCV 51010]). Since that time, the basin has been managed, as required by the Judgment, under the direction of a court appointed Chino Basin Watermaster (CBWM). A fundamental premise of the Judgment is that all Chino Basin water users are allowed to pump sufficient water from the basin to meet their requirements. To the extent that pumping by a party exceeds its share of the safe yield, assessments are levied by CBWM to replace overproduction. The Judgment recognizes that there exists a substantial amount of available unused groundwater storage capacity space in the Chino Basin that can be utilized for storage and the conjunctive use of supplemental and basin waters, makes utilization of this storage subject to CBWM control and regulation, and provides that any person or public entity, whether or not a party to the Judgment, may make reasonable beneficial use of the available storage, provided that no such use shall be made except pursuant to a written storage agreement with CBWM.

Groundwater adjudication is fundamentally not about the sustainable management of a groundwater basin; rather, it is about the court addressing a controversy between parties about a "problem" in the basin and designating who should be responsible for providing a solution. Controversies can include whether the basin is in overdraft; who has a right to water in the basin; how much water can actually be withdrawn by the parties- - individually and collectively; who should be responsible for providing or paying for sufficient water for

future growth; and how overdraft and safe yield should be defined and calculated (https://www.waterboards.ca.gov/water_issues/programs/gmp/docs/resources/swrcb_012816.pdf). As acknowledged in Senate Bill 226 and Assembly Bill 1390 (2015), adjudication is rarely about the full spectrum of requirements for sustainable management over the long term. Also, because withdrawal rights are often determined relative to a previous base period of pumping, there may be a disproportionate reliance on imported water, and imported water is generally included in determinations of allowable extractions. For this reason, CDFW strongly encourages that future climate or demographic changes that will affect the sustainable management of a groundwater basin, as well as environmental uses and the hydrologic links between surface and groundwater be incorporated.

There are dozens of groundwater basins in the Santa Ana River watershed that play a pivotal role, and each requires careful planning and monitoring. CBWM developed an Optimum Basin Management Program (OBMP) with an accompanying Programmatic EIR (PEIR; July 2000) that described the physical state of the groundwater basin and defined a set of management goals and actions. Agreements to implement the OBMP (termed 'Peace I Agreement' and 'Peace II Agreement'), and their associated CEQA analysis (Peace II SEIR, 2010; SEIR amendment, 2017) were also approved. The management activities, and associated objectives and tasks defined in the OBMP, have been retained in an updated Optimum Basin Management Program Update Draft Subsequent Environmental Impact Report (OBMPU SEIR March 2020; State Clearinghouse No. 200041047). In the OBMPU SEIR comments, CDFW tried to elaborate on the idea that indirect, direct, and cumulative impacts should be addressed not only for the construction and maintenance of those facilities, but rather, for the effects associated with surface-water interconnections, groundwater sustainable ecosystems, and other potential deleterious effects throughout the entire Chino Basin. For CDFW comments and the IEUA response to the OMMPU SEIR, please refer to the attached exhibit.

Most of the responses to CDFW's concerns focused on the lack of known details regarding specific projects, and that second-tier CEQA evaluations would occur. Further, the response comments clarified that:

"A second-tier CEQA evaluation, which will enable further collaboration with CDFW and other agencies where a specific project is being proposed, such that tangible mitigation and adaptive management can be developed. As such proposals are developed, more detailed analyses will be able to incorporate the data from the Upper Santa Ana Watershed HCP and other studies conducted specifically for proposed diversions, enabling a greater range of data from which to develop adaptive management strategies...."

In addition, MM BIO-25 commits Watermaster to continuing the Prado Basin Habitat Sustainability Program (PBHSP) and requires use of that dataset to evaluate potential impacts to Prado Basin habitat that may be caused by proposed diversion projects. At this time, no specific diversions in the Chino Basin have been proposed, and

proposals being considered in other portions of the Upper Santa Ana River Watershed have not yet been collectively identified. Based on communications with Valley District, the HCP EIR should be available in the near future, and the published data can then be used in conjunction with any future proposal in the Chino Basin to divert surface water, unless they are already included in the Santa Ana River HCP EIR”.

As the Lead Agency, IEUA should be aware that cumulative impacts must reflect the severity of the impacts and the likelihood of their occurrence; however, the discussion need not be as detailed as the discussion of project-specific impacts (CEQA Guidelines section 15130(b)). Further, CEQA Guidelines section 15130(b) presents two approaches for identifying the relevant cumulative projects to include in the cumulative analysis in an EIR: (1) A list of past, present, and probable future projects producing related or cumulative impacts, including those projects outside the control of the lead agency; or (2) A summary of projections contained in an adopted local, regional, or Statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect. CDFW recommends that the EIR utilize a hybrid approach, with a list of past, present, and probable future projects/activities being considered in combination with baseline conditions, projections, and adopted planning documents.

Pursuant to the Mitigation Measure 4.4-3 of the Peace II Subsequent Environmental Impact Report (SEIR), CBWM and IEUA must implement an Adaptive Management Plan (AMP) as a contingency measure to ensure that the riparian habitat in the Prado Basin will not incur significant adverse impacts. Specifically, Mitigation Measure 4.4-3 states: *“IEUA, Watermaster [CBWM], OCWD and individual stakeholders, that choose to participate, will jointly fund and develop an adaptive management program that will include, but not be limited to: monitoring riparian habitat quality and extent; investigating and identifying essential factors to long-term sustainability of Prado Basin riparian habitat; identification of specific parameters that can be monitored to measure potential effects of Peace II Agreement implementation effects on Prado Basin; and identification of water management options to minimize the Peace II Agreement effects on Prado Basin. This adaptive management program will be prepared as a contingency to define available management actions by Prado Basin stakeholders to address unforeseeable significant adverse impacts, as well as to contribute to the long-term sustainability of the Prado Basin riparian habitat.”*

To achieve this, there has been ongoing collection of data within the Chino and surrounding basins. Since 2015, annual data analysis and reporting has occurred as identified in the PBHSP AMP (Wildermuth Environmental Technical Memorandum, February 25, 2020) that includes the following below.

For groundwater:

- Water-level measurements every 15 minutes at sixteen monitoring wells, plus monitoring wells HCMP-5/1 and RP3-MW3, using integrated pressure-transducers/data-loggers.
- Quarterly groundwater samples (2015-2018) from the 18 PBHSP monitoring wells and analyzed groundwater-level data, model-generated groundwater-flow directions, and surface-water quality and flow data to help characterize groundwater/surface-water interactions in the Prado Basin.
- Monitoring high-frequency data (2018/19) at four monitoring wells at two locations along Chino Creek (PB-7 and PB-8).

For surface-water discharge:

- Data from the Santa Ana River and the tributaries that cross Prado Basin to characterize the influence of surface-water discharge on the riparian habitat utilizing publicly-available data sets : the USGS daily discharge measurements at six sites along the Santa Ana River and its tributaries; daily discharge and water-quality data from Publicly-Owned Treatment Works (POTWs) that are tributary to Prado Basin; US Army Corps of Engineers (ACOE) daily measurements of reservoir elevation and releases from the reservoir at Prado Dam; and CBWM quarterly surface-water-quality monitoring at two sites along the Santa Ana River.

For riparian habitat:

- Mapping and analysis of the riparian habitat using (i) air photos and (ii) the normalized distribution vegetation index (NDVI) derived from the Landsat remote-sensing program.
- Site-specific monitoring of the riparian habitat consisting of periodic field surveys of the riparian vegetation at selected locations (once every three years).

In response to CDFW comments on the OBMPU SEIR, it was argued that *“as of this time, no adverse effects have been identified through monitoring within the PBHS, and as such, no adaptive management actions have been taken as a result. IEUA and Watermaster [CBWM] are open to discuss “adaptive management” options on a watershed-wide basis with the commenter and any other interested parties under the supervision of the Prado Basin Habitat Sustainability Committee in a collaborative manner”*. However, as was pointed out in the CDFW OMBPU comments, and inaccurately characterized in the IEUA response, the PBHS has produced a time series of data and information on the extent and quality of the riparian habitat in the Prado Basin over a historical period that includes both regional mapping using multi-spectral remote-sensing data and air photos. In particular, the 2017 Annual Report determined that: 1) discharge in the Santa Ana River and its tributaries has declined since 2005; 2) decreases in the normalized difference

vegetation index (NDVI) observed from 2015-2017 at several areas occurred during the growing-season for both Chino Creek and Mill Creek; and 3) northern reaches above the Mill Creek and the Santa Ana River confluence are “losing reaches” characterized by streambed recharge, while most other areas along Chino Creek and Mill Creek are “gaining reaches” characterized by groundwater discharge. CDFW again urges that this, along with other available data, be used to analyze the potential cumulative impacts of the Program.

CDFW is aware of several plans and documents that have been generated to provide for a more sustainable watershed. In 2005, agencies successfully formed the USARW Integrated Regional Water Management Region (IRWM Region or Region) and developed an integrated plan for managing water resources in the Region. The Chino Creek Integrated Plan (CCIP), updated in September 2006, was prepared for the IEUA and Orange County Water District (OCWD) under a grant from the State Water Resource Control Board and identifies key problem areas in the lower Chino Creek watershed, recommends projects and measures that will improve water quality, flood control, and water conservation, and addresses the need for stormwater management (i.e., advising that RP-2 be converted to a stormwater treatment facility). The general function of the CCIP focused on planning attention on the lower Chino Creek area of the Prado Basin in a process of preserving and restoring the Prado Basin and to maximize its value to the community, which resulted in the USARW Integrated Regional Water Management Plan (IRWM Plan) being created. The 2014 IRWM Plan incorporates information describing the Region, goals and objectives, evaluates strategies, and develops a process for future implementation.

The USARW Region contains extraordinary natural resources, including the Santa Ana River and its tributaries, that provide habitat to riparian and aquatic species, and provide connectivity to upland habitats. The importance of the Region’s habitats is underscored by the multiple environmental and ecological management plans currently in place, including the Western Riverside County Multispecies Habitat Conservation Plan, Upper Santa Ana Wash Land Management and Habitat Conservation Plan, and Upper Santa Ana River Habitat Conservation Plan. Recognizing the vast ecological value, the agencies in the Region created the Basin Technical Advisory Committee (BTAC) to facilitate implementation of the IRWM Plan. The BTAC evaluated the vulnerability of the IRWM Region’s resources to climate change impacts and identified several vulnerabilities associated with these impacts, including additional imported water supply uncertainty, additional potential challenges to capturing stormwater during more intense storms, water quality impacts due to more frequent and intense wildfires, degraded water quality and aquatic habitat impacts due to higher temperatures, flood system impacts due to more intense storms, and increased irrigation demand due to higher temperatures. CDFW recommends that IEUA utilize the BTAC findings and continue to collaborate to ensure groundwater and surface water impacts are adequately evaluated and considered.

Finally, the Santa Ana Watershed Project Authority (SAWPA), which was formed in 1968 as a joint power authority under California law, is composed of a five-agency membership: IEUA, OCWD, San Bernardino Valley Municipal Water District (SBVMWD), Eastern Municipal Water District (EMWD), and Western Municipal Water District (WMWD). SAWPA recognized the need for a common method of measuring progress on meeting the goals and objectives, as well as the health of the Santa Ana River Watershed, by focusing on a broad range of water resource issues (water supply reliability, water quality improvement, recycled water, wastewater treatment, groundwater management, and brine disposal). SAWPA works closely with several sub-regional IRWM planning efforts and supports watershed sustainability through the One Water One Watershed (OWOW) Program, which is part of the DWR's IRWP. Some notable goals, objectives, and performance monitoring are included in an attachment (refer to table). CDFW asks that IEUA keep these in mind when preparing the EIR.

Alternatives Analysis

CDFW recommends the EIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would “feasibly attain most of the basic objectives of the Project,” and would avoid or substantially lessen any of the Project’s significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a “no project” alternative (CEQA Guidelines § 15126.6[e]). The no Project alternative should evaluate how the changing environment, such as climate change and drought, may affect the community if a new or revised general plan were not adopted.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. IEUA should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Program and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. The EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to any project or activity within the Program. CDFW also recommends that the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.
2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should

be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The EIR should include measures to fully avoid and otherwise protect sensitive plant communities from direct and indirect impacts.

3. *California Species of Special Concern* (CSSC): CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process.
4. *Mitigation*: CDFW considers adverse impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include mitigation measures for these adverse impacts. Mitigation measures should emphasize avoidance and reduction of impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.

The EIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted, CDFW recommends the inclusion of specific mitigation in the EIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after each project/activity approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the EIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project.

Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the area to be disturbed and/or the nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

CDFW recommends that the EIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The SEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the EIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

7. *Moving out of Harm's Way*: To avoid direct mortality, CDFW recommends that the lead agency condition the EIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.
8. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the project. CESA identifies it is the policy of the state to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. CDFW must comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the SEIR addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the SEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts, and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <http://saveourwater.com/what-you-can-do/tips/landscaping/>

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). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 NOP of a EIR for the Chino Basin Program and recommends that IEUA address the CDFW's comments and concerns in the forthcoming EIR. If you should have any questions pertaining to the comments provided in this letter, please contact Kim Romich, Senior Environmental Scientist, Specialist, at (760) 937-1380 or at kimberly.romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

Attachments:

Table 1 The goals, objectives, and performance monitoring contained within the Santa Ana Watershed Project Authority One Water One Watershed Program

Exhibit 1 CDFW Comment Letter (May 2020) for the OBMPU SEIR

ec: Kim Freeburn, Senior Environmental Scientist, Supervisor
Inland Deserts Region
kim.freeburn@wildlife.ca.gov

Sylvie Lee, P.E.
Inland Empire Utilities Agency
October 14, 2021
Page 15 of 18

HCPB CEQA Coordinator
Habitat Conservation Planning Branch

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Table 1

The goals, objectives, and performance monitoring contained within the Santa Ana Watershed Project Authority One Water One Watershed Program.

	Goal	Objectives	Performance Criteria (2010-2035)
Water Supply	Approximately 70% of the supply is of local origin coming from local groundwater, local precipitation and surface flows, and recycled water. Maintain reliable and resilient water supplies and reduce dependency on imported water.	<ul style="list-style-type: none"> • Decrease water demand • Increase water-use efficiency • Increase use of rainfall and snowpack as a resource • Increase use of recycled water • Sustainably develop local water resources • Maintain sufficient storage to overcome multi-year (3 year) drought over a ten year hydrologic cycle 	<ul style="list-style-type: none"> • Conserve an additional 256,500 AFY of water through water use efficiency and conservation measures • Create 58,000 AFY using a combination of additional wells, treatment, conjunctive use storage and desalination of brackish groundwater • Increase production of recycled water by 157,000 AFY • Increase both centralized and distributed stormwater capture and recharge by 132,000 AFY • Develop 54,000 AFY of ocean water desalination
Hydrology	Manage at the watershed scale for preservation and enhancement of the natural hydrology to benefit human and natural communities.	<ul style="list-style-type: none"> • Preserve and restore hydrologic function of forested and other lands • Preserve and restore hydrogeomorphic function of streams and water bodies • Safely co-manage flood protection and water conservation • Include ecosystem function in new development planning and construction 	<ul style="list-style-type: none"> Reduce flood risk in 700 acres using integrated flood management approaches • Remove 500,000 cubic yards of sediment from debris basins and reservoirs
Open Space	Preserve and enhance the ecosystem services provided by open space and habitat within the watershed.	<ul style="list-style-type: none"> • Increase the capacity of open space to provide recreational opportunities without degrading its quality or increasing its consumption of water and energy • Protect existing and restore native habitats • Protect and maintain healthy forests • Manage aquatic and riparian invasive species 	<ul style="list-style-type: none"> • Preserve or restore 3,500 acres of terrestrial aquatic habitat • Construct 39.5 miles of additional Santa Ana River Trail and Parkway

		<ul style="list-style-type: none">• Protect estuarine and marine near-shore habitats• Reduce ornamental irrigated landscapes• Improve management support for landscaping that utilizes native and drought tolerant vegetation• Protect and Restore wildlife corridors• Protect endangered and threatened species and species of special concern through improved habitat	
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Exhibit 1
CDFW Comment Letter (May 2020) for the OBMPU SEIR



State of California – Natural Resources Agency

CDFW OF FISH AND WILDLIFE

Inland Deserts Region

3602 Inland Empire Boulevard, Suite C-220

Ontario, CA 91764

www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Comment Letter #2

May 8, 2020
Sent via email

Ms. Sylvie Lee, P.E.
Inland Empire Utilities Agency
6075 Kimball Avenue, Chino, CA 91708
Slee@ieua.org

Subject: Chino Basin Watermaster, Optimum Basin Management Program Update Draft
Subsequent Environmental Impact Report - State Clearinghouse No.
2020020183

Dear Ms. Lee:

2-1

The California Department of Fish and Wildlife (CDFW) received the Subsequent Environmental Impact Report (SEIR) from the Inland Empire Utilities Agency (IEUA; the CEQA lead agency) for the Optimum Basin Management Program Update (OBMPU; 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 OBMPU that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the OBMPU 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

2-2

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.

2-3

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. For example, 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.

**RESPONSE TO COMMENT
LETTER #2
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION**

- 2-1 The comment is noted and will be made available to the IEUA decision-makers as part of the Final EIR package prior to a decision on the proposed project. IEUA acknowledges the role of the California Department of Fish and Wildlife's (CDFW) as a commenter on this Project.

- 2-2 IEUA acknowledges the CDFW's role as a Trustee Agency under CEQA for this Project, and understands that authorization as provided by the Fish and Game Code for several Project-related activities may be required.

- 2-3 IEUA acknowledges the CDFW's role as a Responsible Agency under CEQA for this Project, and understands that authorization as provided by the Fish and Game Code for several Project-related activities may be required.

Ms. Sylvie Lee
 Optimum Basin Management Program Update (SCH 2020020183)
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PROJECT DESCRIPTION

2-4 The OBMPU covers the Chino Basin which includes approximately 235 square miles in the Upper Santa Ana River Watershed and lies within portions of San Bernardino, Riverside, and Los Angeles counties. The Chino Basin is mapped within the USGS – Corona North, Cucamonga Peak, Devore, Fontana, Guasti, Mount Baldy, Ontario, Prado Dam, Riverside West and San Dimas Quadrangles, 7.5 Minute Series topographic maps. The center of the Chino Basin is located near the intersection of Haven Avenue and Mission Boulevard at Longitude 34.038040N, and Latitude 117.575954W.

The Chino Basin Watermaster (Watermaster) developed a regional water resources and groundwater management program for the Chino Basin (Optimum Basin Management Program; OBMP). The update to the OBMP is intended to address possible program activities and projects at a programmatic level over the next 30 years. The current draft SEIR (herein referred to as 'OBMPU SEIR') addresses the current environmental setting, assesses the impacts related to the construction and operation of the regional program, and provides information to support required permitting process.

PROJECT BACKGROUND

2-5 The original OBMP and the accompanying Programmatic EIR (PEIR; July 2000) described the physical state of the groundwater basin and defined a set of management goals and actions. Agreements to implement the OBMP (termed 'Peace I Agreement' and 'Peace II Agreement'), and their associated CEQA analysis (Peace II SEIR, 2010; SEIR amendment, 2017) were also approved. The OBMP identified and described several management activities that, if implemented, could achieve the OBMP goals. These activities, and associated objectives and tasks defined in the 2000 OBMP, have been retained for the OBMPU. The OBMPU Implementation Plan Update is a revision of the implementation plans included in the Peace I and Peace II Agreements and incorporates the proposed activities and facilities identified in the 2020 OBMPU and ongoing activities from the 2000 OBMP.

COMMENTS AND RECOMMENDATIONS

2-6 CDFW is concerned about the adequacy of the OBMPU SEIR in identifying potentially significant impacts and establishing adequate and enforceable mitigation measures. CDFW's comments and recommendations are presented below.

Impact Analysis

2-7 The SEIR describes the intent of the document as follows: "*This document assesses the impacts, including unavoidable adverse impacts and cumulative impacts, related to the construction and operation of the proposed Project. This Program (Draft) SEIR is also intended to support the permitting process of all agencies from which discretionary approvals must be obtained for particular elements of this Project.*" (SEIR, p. 1-2). Such analysis would allow CDFW to provide specific input on the adequacy of the analysis, and whether that analysis was sufficient for use in future discretionary actions, such as Fish and Game Code section 1602 Lake and Streambed Alteration Agreements or Fish and Game Code section 2081 Incidental Take Permits. However, the SEIR does not identify or assess any impacts to biological resources, and in most cases, defers this analysis to some future action. In the case of direct

- 2-4 The comment is noted and will be made available to the IEUA decision-makers as part of the Final EIR package prior to a decision on the proposed project.
- 2-5 The comment is noted and will be made available to the IEUA decision-makers as part of the Final EIR package prior to a decision on the proposed project.
- 2-6 As demonstrated below, the IEUA believes that the potentially significant impacts and extensive mitigation measures, specifically those meant to minimize biological resource impacts, are adequate; thus, IEUA disagrees with CDFW's assertion made in this comment.
- 2-7 The IEUA does not agree with the commenter's statement that the DSEIR does not identify or assess impacts to biological resources. The OBMPU proposes projects that fit into four Project Categories outlined under Section 3.5 of Chapter 3, Project Description, of the DSEIR (pages 3-42 and 3-43). The specific locations for the majority of the facilities outlined in the OBMPU are unknown, and furthermore, where a specific location is proposed (CIM, Jurupa Basin, Chino Desalters, etc.), specific proposals containing design or proposed improvements thereof have not yet been defined. Therefore, analysis of site specific biological resource impacts can only occur once a site is identified and a project has been defined. IEUA prepared the OBMPU as a Subsequent EIR, and CEQA states the following for a subsequent tier of a CEQA document: *Where a lead agency is using the tiering process in connection with an EIR for a large scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepare a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.* IEUA would like to point out that the original OBMP was implemented under similar circumstances for projects such as Chino Desalters, recycled water programs, hydraulic control, and other facilities/programs. Regardless, the Chino Basin stakeholders have worked closely with CDFW over the past 20 years to minimize impacts to important biological resources from direct ground disturbance and the Watermaster's Prado Basin Habitat Sustainability Program (PBHSP) was developed to provide sufficient information to manage Prado Basin's important resources from indirect impacts to from groundwater production. Please refer to the response to comment 2-8, below for a continued discussion of the concerns raised in this comment.

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2-7
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impacts to biological resources, the OBMPU SEIR defers this analysis to future CEQA analysis, stating, *"Because it is difficult to determine the number or extent of these kinds of impacts, direct impacts on special-status wildlife species will be addressed in subsequent, project specific environmental reviews once a specific component of the OBMPU has been defined for design and implementation."* (SEIR, p. 4-62). In the case of indirect impacts to biological resources, the OBMPU SEIR conceded that *"potential indirect impacts associated with future OBMP facilities include alteration of jurisdictional water hydrology, host plant stress, destruction of native vegetation, habitat fragmentation, and noise and light pollution"*, but concluded that it would be *"difficult to quantify and measure these kinds of impacts, indirect impacts on special-status wildlife species are described qualitatively and will be quantitatively addressed in project specific second tier environmental evaluations"*. (SEIR, p. 4-62). Similarly, for ongoing operations or maintenance activities requiring ground disturbance, clearing, and grubbing, the OBMPU SEIR concluded that these actions *"could cause erosion and sedimentation or could indirectly affect the hydrology of nearby jurisdictional waters and the species that depend on these resources."* However, the OBMPU SEIR determined that *"maintenance activities that would have potential impacts on special-status wildlife species are limited to the program right-of-way areas that are currently in service or that will be added to normal program operations and maintenance through separate design, environmental review and construction of such facilities at a later date"* (SEIR, p. 4-62).

2-8

While CDFW recognizes the programmatic nature of the SEIR, some level of analysis could be completed at this time based on the data and information collected within the previous 20 years of OBMP implementation, information gathered in biological surveys for proposed Project areas, and the foreseeable impacts associated with future, contemplated projects. If the SEIR will defer biological analysis to future, second tier environmental analysis, the SEIR should specify the threshold that will be relied on for requiring additional environmental review, and which of the projects contemplated will be required to complete additional environmental review. If the threshold for triggering additional environmental review is low, or if additional environmental reviewed is not anticipated, CDFW requests that the lead agency recirculate this SEIR and include the results of an appropriate level of analysis for which CDFW may rely on for future discretionary actions. Regardless of the lead agency's approach for analyzing specific biological impacts, the SEIR must address the 'whole of the action', as it is inappropriate under CEQA review to divide a project into smaller, separate projects. The SEIR must address the cumulative effects of the Project as a whole.

2-9

The SEIR claims that, *"To the extent feasible, this document utilizes conservative (worst case) assumptions in making impact forecasts based on the assumption that, if impacts cannot be absolutely quantified, the impact forecasts should over-predict consequences rather than under-predict them."* CDFW disagrees that the SEIR provides conservative assumptions in forecasting impacts and argues that potential impacts may have been underestimated. According to the OBMPU SEIR (Section 4.3 Biological), direct impacts from construction of any facility should *"only result in mostly minimal impacts on special-status wildlife species, because only a limited amount of marginal habitat for special-status wildlife species would be impacted by construction activities. All facilities would impact barren, urban, or agricultural areas, and thus construction would potentially impact only the special-status wildlife species that use mostly urban areas (e.g., special-status bird species, special-status mammal species, special-status bat species or species present in wetland or streambed habitats)*. Adjacency to urban areas does not necessarily determine habitat value or the use of these areas by special-status species. CDFW is concerned that the SEIR has trivialized the significance of the Project's potential impacts on

2-8 Please refer to responses to comments 1-35 and 1-40. The scope of the OBMPU is such that many projects could be developed within a diverse range of areas within the Chino Basin, which is a vast area within which to identify specific biological resources impacts that would result from the proposed Program. As required in Section 15152 of the State CEQA Guidelines, specific findings were made for each biology issue based on sensitivity of known resources in the Chino Basin, and specific mitigation measures were identified to address specific types of impacts. The suggested approach in this comment was actually used in evaluating the potential for direct impacts from construction of storage basins in the Mill Creek area (found to be a potentially significant impact to biological resources) and initially the same conclusion was envisioned for the indirect effects of future water diversion projects. Refer to response to comment 5-7 which addresses the direct and indirect effects of diverting surface water (stormwater flows, recycled water flows, and urban dry-weather flows). Due to the lack of data on how such a diversion program could be implemented in the future, however, this topic was deferred to second-tier CEQA evaluations.

The DSEIR identified the specific steps that would determine the level of significance for a given OBMPU facility on page 4-64, and acknowledges that there are many areas within the Chino Basin that may support candidate, sensitive, or special status species. As such, it is not possible, as the commenter suggests, to provide site-specific impacts related to future OBMPU Projects, as the level of specificity for OBMPU Projects required to make such findings has yet to be determined. Further, where facilities have some locational flexibility the primary mitigation is to avoid by relocating to a site without significant biological resources.

The commenter suggests that the DSEIR should “specify the threshold that will be relied on for requiring additional environmental review, and which of the projects contemplated will be required to complete additional environmental review.” CEQA Guidelines sections 15162, 15163, and 15164 provide standards for when subsequent environmental analysis is required, and if required, what type of CEQA document should be prepared. Further, the bullet points outlined on page 4-64 of the DSEIR clearly outline the manner in which thresholds for future Projects would be used to determine the level of significance for a given OBMPU facility.

1. For each new project, biological resources and supporting habitat will be reviewed for presence or absence.
2. Impacts will be determined using a habitat-based approach utilizing a combination of background review, habitat mapping during field surveys, and aerial photograph interpretation.
3. Impacts to critical habitat will be determined based on the location of such habitat to a given project footprint and the presence of primary constituent elements.
4. Construction and operational impacts will be considered temporary if they can be fully restored to pre-disturbance conditions following construction.
5. Impacts will be considered permanent when they have lasting effects beyond the project construction period, or cannot be fully restored following construction.
6. Impacts on wetlands/jurisdictional waters will be considered permanent where these features cannot be restored to their pre-project condition due to the permanent loss of jurisdictional features caused by new infrastructure.

For a detailed discussion of the biological resource mitigation measures and performance standards thereof, please refer to response to comment 1-37, which

demonstrates the that the OBMPU DSEIR does not defer mitigation, and is committed to adhere to stringent performance standards.

IEAU disagrees that the DSEIR fails to analyze the “whole of the action.” The DSEIR analyzes direct, indirect, and cumulative impacts associated with the OBMPU, as required by CEQA. For example, cumulative impacts related to biological resources are discussed on page 4-74 of the DSEIR. The DSEIR determined that, there are certain areas, such as the Mills Wetlands and Prado Basin within the overall project area of potential impact where the resource impacts from constructing new infrastructure may cause unavoidable significant adverse impacts on biological resources. Because a specific proposal to develop a project within these and other areas of the Basin known to contain sensitive resources has not been submitted to the Watermaster, there is a potential that an individual OBMPU facility may be developed and have operations within an area containing biological resources that cannot be avoided, even at the design level. Consequently, a finding that the OBMPU could cause an unavoidable significant adverse or cumulatively considerable impact on biological resources was reached in the DSEIR. However, this is a prospective impact forecast because the specific location of facilities is at present unknown and analysis of site specific biological resource impacts can only occur once a site is identified. As such, the IEUA believes that the DSEIR has fully addressed the cumulative effects of the project as a whole.

- 2-9 CDFW appears to assume that, based on this quote, the OBMPU assumes that special status species do not utilize urban areas. However, within the quote abstracted from the DSEIR, the DSEIR states that “construction would potentially impact only the special-status wildlife species that use mostly urban areas,” which acknowledges that future OBMPU Projects may impact special status species and habitat. IEUA would like to amend that, the suggestion that construction of OBMPU facilities would occur within barren, urban, or agricultural areas, does not negate the fact that special status species, critical habitat, and habitat supporting special status species exists within the Chino Basin. Furthermore, IEUA has amended MM **BIO-1** in the FSEIR to expand the requirement for site surveys to encompass various types of OBMPU project sites, not just undeveloped land to ensure that impacts that may occur within all valuable habitat—in urban areas, or otherwise—are mitigated completely as part of the FSEIR (see underline, strikeout changes, below):

BIO-1 *All future OBMPU Projects shall be required to consult with a qualified professional to determine the need for site-specific biological surveys. Where a site has been determined to require a site-specific survey by a qualified professional, in any case in which a future OBMPU project* ~~*Where future project-related impacts will affect undeveloped land, or in which the Implementing Agency seeks State Funding,*~~ *site surveys shall be conducted by a qualified biologist/ecologist. If sensitive species are identified as a result of the survey for which mitigation/compensation must be provided in accordance with regulatory requirements, the following subsequent mitigation actions will be taken:*

- a. *The project proponent shall provide compensation for sensitive habitat acreage lost by acquiring and protecting in perpetuity (through property or mitigation bank credit acquisition) habitat for the sensitive species at a ratio of not less than 1:1 for habitat lost. The property acquisition shall include the presence of at least one animal or plant per animal or plant lost at the development site to compensate for the loss of individual sensitive species.*
- b. *The final mitigation may differ from the above values based on negotiations between the project proponent and USFWS and CDFW for any incidental take permits for listed species. The project proponent shall retain a copy of the incidental take permit as verification that the mitigation of significant biological*

resource impacts at a project site with sensitive biological resources has been accomplished.

- c. Preconstruction botanical surveys for special-status plant communities and special-status plant species will be conducted. in areas that were not previously surveyed because of access or timing issues or project design changes, preconstruction surveys for special-status plant communities and special-status plant species will be conducted before the start of ground-disturbing activities during the appropriate blooming period(s) for the species.*

Additionally, IEUA has amended MM **BIO-6** in the FSEIR to expand the requirement for burrowing owl surveys to various types of OBMPU project sites, not just undeveloped land to ensure that potential impacts to burrowing owl at all potential areas containing burrowing owl habitat—within urban areas, or otherwise—are addressed and mitigated completely as part of the FSEIR (see underline, strikeout changes, below):

BIO-6 *All future OBMPU Projects shall be required to consult with a qualified professional to determine the need for site-specific protocol burrowing owl surveys. Prior to commencement of construction activity where a site has been determined to require a protocol burrowing owl surveys survey by a qualified professional, or in locations that are not fully developed, protocol burrowing owl survey will be conducted using the 2012 survey protocol methodology identified in the “Staff Report on Burrowing Owl Mitigation, State of California, Natural Resources Agency, Department of Fish and Game, March 7, 2012”, or the most recent CDFW survey protocol available. Protocol surveys shall be conducted by a qualified biologist to determine if any burrowing owl burrows are located within the potential area of impact. If occupied burrows may be impacted, an impact minimization plan shall be developed and approved by CDFW that will protect the burrow in place or provide for passive relocation to an alternate burrow within the vicinity but outside of the project footprint in accordance with current CDFW guidelines. Active nests must be avoided with a 250-foot buffer until all nestlings have fledged.*

The intent of these modifications is to broaden the scope of analysis for site specific impacts to include all potential OBMPU project sites. IEUA believes that, with the above changes to MMs **BIO-1** and **BIO-6**, potential impacts to any special status species within a future OBMPU project sites will be mitigated to the greatest extent feasible. These responses to comments demonstrate that the DSEIR has not underestimated potential biological resource impacts.

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2-9
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special-status species that could use such areas. Many special-status species, including burrowing owl (*Athene cunicularia*) and tricolored blackbirds (*Agelaius tricolor*) use disturbed areas, such as agricultural fields and manmade structures (burrowing owls) that could be indirectly and/or directly impacted by the Project. Impacts to special-status species, regardless of habitat quality or location, must be identified, evaluated and mitigated to a level below significance.

Analysis of Cumulative Effects to Biological Resources

2-10

The Watermaster prepared and circulated a Notice of Preparation (NOP) for the OBMPU. As part of the review process, Orange County Water District (OCWD) requested that the OBMPU SEIR evaluate within Prado Basin the following:

- 1) The groundwater levels (e.g., groundwater pumping, groundwater storage, or groundwater overdraft) and the distribution of groundwater dependent ecosystem, such as riparian vegetation and wetlands;
- 2) Any changes or effects to surface flow rates in Chino Creek, Mill Creek, and the Santa Ana River;
- 3) The potential impacts of increased fire risk, riparian habitat loss, and riparian habitat conversion to non-native plant species; and
- 4) A quantitative analysis of impacts on Santa Ana River flows.

According to the OBMPU SEIR, impacts to biological resources have been assessed in the Biological Resources Subchapter 4.3 and in the Biological Resources Assessment (Volume 2 of the SEIR), with mitigation being identified “*where applicable to address impacts of OBMPU Projects on groundwater levels and potential related habitat impacts*”.

The comments below are separated to reflect the distinction between the entire watershed within the Chino Basin and the ‘Prado Basin’.

Prado Basin

2-11

Under Section 4.3.6(a).1 Prado Basin Habitat, it was concluded that: “**a reasonable assumption of the volume of water consumed by Prado Basin wetland/riparian habitat is about 18,000 AFY (emphasis added)**. *The IEUA and Western Municipal Water District (WMWD) are responsible for an average annual flow of 42,000 afy at Prado. However, when their cumulative credits exceed 30,000 afy (which they currently do and will continue to do so for the foreseeable future), they are responsible for a minimum annual flow of 34,000 afy. IEUA and WMWD split this responsibility 50/50, thus each agency is responsible for 17,000 afy of flow at Prado. The OBMPU is not anticipated to result in the inability of either IEUA or WMWD to meet this obligation, and is therefore not anticipated to result in a significant impact to the health of the habitat supported at Prado Basin (emphasis added)*”.

CDFW is concerned that “reasonable assumptions”, rather than data and detailed analyses, were used to determine whether significant impacts to habitat are anticipated to occur. The Watermaster, on behalf of the Chino Basin stakeholders and parties, is to maintain habitat in the Prado Basin as defined in the Peace II SEIR. Specifically, within the Peace II SEIR (Section 4.3.8 Cumulative Impacts), it states that “*the proposed OBMPU may result in a reduction in surface flows into Prado Basin. In addition, Low Impact Development ordinances, local policies,*

- 2-10 The comment is noted and will be made available to the IEUA decision-makers as part of the Final EIR package prior to a decision on the proposed project.
- 2-11 IEUA and Watermaster are unaware of any higher “assumptions” for the volume of water required to meet the evapotranspiration demands of the Prado Basin habitat. Since water diversion evaluations are deferred to a second-tier CEQA evaluation, detailed analyses will be able to incorporate the data from the Upper Santa Ana Watershed Habitat Conservation Plan (HCP) and other studies conducted specifically for proposed diversions. IEUA and Watermaster have partnered with CDFW in the development of the HCP, and are working towards the same goal, which is to protect sufficient habitat to support species of concern in the HCP. As noted in the DSEIR, the potential impact of any diversion will depend on specific content of the diversion proposal. As indicated in the DSEIR a proposal to install diversion facilities to capture periodic excess stormwater runoff flows may have minimal impact, while continuous diversions during drought years may have greater impact. The commenter is correct that a monitoring process is in place to evaluate the effects of diversions by all water agencies in the Upper Santa Ana River Watershed. Further, based on communications with Valley District, the HCP EIR should be available in the near future, and the published data can then be used in conjunction with any future proposal in the Chino Basin to divert surface water, unless they are already included in the Santa Ana River HCP EIR.

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2-11
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*and municipal storm water detention regulations will encourage water conservation and flow detention, resulting in a cumulative reduction in surface flows reaching Prado Basin. **These cumulative flow reductions may result in reduced acreage of healthy riparian forest that supports special-status species such as least Bell's vireo as well as aquatic species such as Santa Ana sucker and Southern California arroyo chub** (emphasis added). To mitigate the effects of the cumulative diversions on habitat values and conservation objectives, regional organizations such as the Santa Ana Watershed Project Authority (SAWPA) and San Bernardino Valley Water District have developed local programs and partnerships to address cumulative impacts to habitat within Prado Basin.* Pursuant to the OBMP Implementation Plan, long-term plans for monitoring groundwater production, groundwater level, groundwater quality, ground level (including remote sensing), surface water, and well construction/destruction have been developed and implemented to not only meet the OBMP requirements, but to also meet other regulatory requirements and Watermaster obligations under agreements, Court orders, and CEQA.

2-12

For example, the Prado Basin Habitat Sustainability Program (PBHS) has produced a time series of data and information on the extent and quality of the riparian habitat in the Prado Basin over a historical period that includes both regional mapping using multi-spectral remote-sensing data and air photos. In particular, the 2017 Annual Report determined that: 1) discharge in the Santa Ana River and its tributaries has declined since 2005; 2) decreases in the normalized difference vegetation index (NDVI) observed from 2015-2017 at several areas occurred during the growing-season for both Chino Creek and Mill Creek; and 3) northern reaches above the Mill Creek and the Santa Ana River confluence are "losing reaches" characterized by streambed recharge, while most other areas along Chino Creek and Mill Creek are "gaining reaches" characterized by groundwater discharge. This and other available data should be used in analyzing the potential cumulative impacts of the Project. CDFW realizes that the full extent of OBMPU may not be known at this time, but maintains that in order to determine significant environmental impacts and feasible mitigation measures, meaningful analyses need to be conducted and disclosed prior to Project approval.

2-13

While the results of the PBHS were not included in the OMBPU SEIR, it did clarify that *"the monitoring within the PBHS itself is not considered mitigation, but the commitment of Watermaster to initiate adaptive management programs to prevent significant loss of habitat (due to hydraulic control) serves as the mitigation to offset such damage or loss of Prado Basin Habitat"*. As this monitoring program is intended to prevent impacts to habitat, it would be beneficial to discuss the monitoring results, adaptive management actions taken as a result of adverse effects identified, and strategies to mitigate potential future impacts that may occur from this proposed Project. To be effective, CDFW recommends that adaptive management should include: (1) objectives describing the desired condition; (2) management that is designed to meet the objectives; (3) monitoring to determine if the objectives are, or have been, met; and (4) management that is adapted if the objectives are not reached. To avoid irreversible change, detection of smaller changes may be important while they are still relatively minor. CDFW is available to assist the IEUA to identify 'adverse impacts to the riparian habitat or special-status species' and coordinate with all parties on future adaptive management action(s) that may need to be implemented.

2-14

Burrowing owl
 The OBMPU SEIR discusses the need and availability of water to sustain certain vegetation communities and the species that depend on these habitats. The SEIR should also address

- 2-12 Please refer to response to comment 2-11. In addition, MM **BIO-25** commits Watermaster to continuing the Prado Basin Habitat Sustainability Program (PBHSP), and requires use of that dataset to evaluate potential impacts to Prado Basin habitat that may be caused by proposed diversion projects. At this time, no specific diversions in the Chino Basin have been proposed, and proposals being considered in other portions of the Upper Santa Ana River Watershed have not yet been collectively identified. Based on communications with Valley District, the HCP EIR should be available in the near future, and the published data can then be used in conjunction with any future proposal in the Chino Basin to divert surface water, unless they are already included in the Santa Ana River HCP EIR.
- 2-13 Please refer to response to comment 2-12, referencing MM **BIO-25**, and a similar comment and response, 5-4, from OCWD. As indicated in response to comment 2-12, Mitigation BIO-25 incorporates the PBHSP and requires use of that dataset to evaluate potential impacts caused by proposed diversion projects.

The commenter notes that it would be beneficial to discuss the results of monitoring within the PBHS, adaptive management actions taken as a result of adverse effects identified, and strategies to mitigate potential future impacts. IEUA and Watermaster previously agreed to implement MM 4.4-3 as part of the 2010 Peace II EIR, which stated *“IEUA, Watermaster, OCWD and individual stakeholders, that choose to participate, will jointly fund and develop an adaptive management program that will include, but not be limited to: monitoring riparian habitat quality and extent; investigating and identifying essential factors to long-term sustainability of Prado Basin riparian habitat; identification of specific parameters that can be monitored to measure potential effects of Peace II Agreement implementation effects on Prado Basin; and identification of water management options to minimize the Peace II Agreement effects on Prado Basin. This adaptive management program will be prepared as a contingency to define available management actions by Prado Basin stakeholders to address unforeseeable significant adverse impacts, as well as to contribute to the long-term sustainability of the Prado Basin riparian habitat.”* MM 4.4-3 is being implemented under the supervision of the Prado Basin Habitat Sustainability Committee. As of this time, no adverse effects have been identified through monitoring within the PBHS, and as such, no adaptive management actions have been taken as a result. IEUA and Watermaster are open to discuss “adaptive management” options on a watershed-wide basis with the commenter and any other interested parties under the supervision of the Prado Basin Habitat Sustainability Committee in a collaborative manner. The framework is in place to do so through MM 4.4-3 of the 2010 Peace II EIR. Furthermore, as stated throughout these responses to comments, water diversion evaluations are deferred to a second-tier CEQA evaluation, which will enable further collaboration with CDFW and other agencies where a specific project is being proposed, such that tangible mitigation and adaptive management can be developed. As such proposals are developed, more detailed analyses will be able to incorporate the data from the Upper Santa Ana Watershed HCP and other studies conducted specifically for proposed diversions, enabling a greater range of data from which to develop adaptive management strategies.

- 2-14 This and the following comment summarize activities related to the operations of the Prado Dam that may adversely impact burrowing owl (BUOW) habitat in the Chino Basin. While the OBMPU may affect the amount of water that flows into Prado Dam, the OBMPU as defined does not anticipate capturing additional water behind Prado Dam and raising the reservoir’s water level. Accordingly, the DSEIR does not analyze the

impacts of potential inundation behind Prado Dam on BUOW habitat because that is not part of the OBMPU project. With the exception of the proposed storage basins in the OBMPU, the majority of projects will cause minimal disturbance within undeveloped land in the southern portion of the Chino Basin. This does not mean the proposed OBMPU projects will not encounter BUOW, but with implementation of MM **BIO-6** direct adverse impacts to BUOW can be fully mitigated. In order to address cumulative or indirect impacts to BUOW, CDFW may need to assess distribution and constituent elements so that habitat loss affecting this species may also be offset.

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2-14
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areas where flooding and water inundation is not preferred. The primary purpose of Prado Reservoir is flood control for the Santa Ana River Watershed, with water conservation being secondary. CDFW is aware that an agreement between OCWD, the United States Army Corps of Engineers (USACE) and the United States Fish and Wildlife Service was reached in 1993 that allowed for increased water conservation from March through September each year to store up to 26,000 acre-feet of water at elevation 505 feet. In 2006, a subsequent agreement was made to capture additional water behind Prado Dam to store more water from October through February each year by increasing the conservation pool for recharge of groundwater from elevation 494 feet to 498 feet. It is CDFW's understanding that a deviation to the Prado Dam Water Control Plan to increase the flood season water surface elevation of the pool behind Prado Dam from an elevation 498 feet to 505 feet for a period of five years has occurred. More water storage, particularly during winter, may increase the extent of areas subject to inundation, including burrowing owl occupied and/or suitable breeding and wintering habitat.

2-15

Much of the land contained below the 566-foot inundation line behind Prado Dam is intended to accommodate natural open space, wildlife preserves, and crop farming. Within the area previously known as the 'Dairy Preserve', large housing and industrial developments, including the Preserve (City of Chino), as well as, the Ontario Ranch (City of Ontario) have collected development fees over the last two decades to offset impacts to burrowing owls. The CEQA documents for these large planning developments proposed the creation, enhancement, and/or expansion of 300 acres (600 acres total) of high-quality wildlife habitat located generally below the Prado Dam 566-foot inundation line. While CDFW is unclear whether the proposed increase of water storage will affect habitat suitable for burrowing owl, given the past increases of storage to meet stakeholders demands, CDFW would like to have a better understanding of how burrowing owls and their habitat will be monitored and mitigated for over the next 30 years.

Watershed

2-16

Within the OBMPU SEIR Section 4.3 Biological Resources, the "*potential impacts on jurisdictional waters, special-status plant communities, protected trees, special-status plant, and wildlife species (including critical habitat) will be analyzed for each facility as site-specific design has been established. Once a particular facility area of potential effect (APE) is established, a **detailed second-tier evaluation to assure resource impacts are quantified, and site-specific measures are identified. Where none of the biological resource impacts occur in Prado Basin will occur, no further biological resource impact analysis may be necessary (emphasis added).***" Furthermore, Section 4.3.6(a).1 Prado Basin Habitat concluded that for any future surface water diversions, "*mitigation is required to continue the monitoring program and to conduct detailed environmental reviews of future diversion impacts on **Prado Basin habitat prior to approval of such projects (emphasis added).** Thus, no specific diversion project can be implemented until an appropriate second-tier, public CEQA review is completed*".

CDFW is concerned that potential impacts will only be addressed if those impacts will occur within the Prado Basin, even though the project covers the entirety of the Chino Basin. Under Section 15355 of the CEQA Guidelines, cumulative effects refers to "*two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts*". Physical changes caused by a project can contribute incrementally to cumulative effects that are significant, even if individual changes resulting from a project are limited. The Lead Agency must determine whether the cumulative impact is significant, as well as whether an individual effect is 'cumulatively considerable'. This means "*the incremental*

2-15 Please refer to response to comment 2-14.

2-16 The commenter misquotes language found on page 4-62 of the DSEIR. The omitted portions of the segment quoted in comment 2-16 are indicated in underline: “Once a particular facility area of potential effect (APE) is established, the following steps will be taken during a detailed second-tier evaluation to assure resource impacts are quantified, and site specific measures are identified: Where none of the biological resource impacts discussed under the 4.3.6(a).1 Conclusion below, will occur, no further biological resource impact analysis may be necessary; Where potentially significant impacts may occur, but specific mitigation outlined under 4.3.7 Avoidance, Minimization, and Mitigation Measures, below, can reduce such impacts to a less than significant level.” This discussion is not intended to indicate that only biological resource impacts in the Prado Basin are analyzed and mitigated by the DSEIR. In fact, the impact conclusion at the end of the section states, “Ultimately, because the Chino Basin contains many areas that may support candidate, sensitive, or special status species, and the specific sites in which future OBMPU facilities will be developed is presently unknown, a significant impact may occur.”

Nevertheless, MM **BIO-25** in the FSEIR has been revised, as follows, to remove any doubt that it should apply to affected sensitive habitat:

BIO-25 Permanent Water Diversion Projects: The Watermaster shall continue to prepare the annual Prado Basin Habitat Sustainability Monitoring Program. A second-tier CEQA evaluation shall be conducted for proposed water diversion projects associated with the OBMPU. The potential impacts to Prado Basin and sensitive habitat (for example riparian, wetland, or critical habitat) from implementation of such diversion projects shall receive public review, including pertinent wildlife management agencies and interested parties.

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effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (Guidelines Section 15064(h)(1)).

2-16
cont'd

The OBMPU SEIR includes storage basin projects that would divert flows that ultimately reach Prado Basin (Project Category 3). Also, groundwater pumping can alter how water moves between an aquifer and a stream, lake, or pond by either intercepting groundwater flow that discharges into the surface-water body under natural conditions, or by increasing the rate of water movement from the surface-water body into an aquifer (e.g., draw down, cone of depression, etc.). Finally, diversion of surface water, recycling of water, and other water manipulation can alter and affect biological resources throughout the watershed. Thus, CDFW strongly encourages IEUA to consider the entire watershed and how the OBMPU will affect vegetation communities and the species that depend on those habitats.

Mitigation

2-17

The SEIR states, “*if the regulatory agencies determine an alternative, equivalent mitigation program during acquisition of regulatory permits, such measure shall be deemed equivalent to the avoidance and minimization measures listed in SEIR Section 4.3.7... no additional environmental documentation shall be required to implement a measure different than the listed avoidance measures*”. CEQA requires environmental review of discretionary projects at the earliest *meaningful* stage to analyze and plan for the reduction and/or avoidance of environmental impacts *before* deciding to approve the project(s). While there are often discrepancies between CEQA’s mandate for *early* review and its requirement of *detailed* discussions of impacts and mitigation measures, postponing the analysis of impacts to a future date is not appropriate. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after project approval. Courts have also repeatedly not supported conclusions that impacts are mitigatable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrietta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777). Therefore, CDFW strongly suggests the SEIR incorporate sufficient, specific, and current biological information on the existing habitat and species at the Project site; measures to minimize and avoid sensitive biological resources; and mitigation measures to offset the loss of native flora and fauna and State waters. The CEQA document should not defer impact analysis and mitigation measures to future regulatory discretionary actions, such as a Lake or Streambed Alteration Agreement.

FURTHER COORDINATION

2-18

The CDFW appreciates the opportunity to comment on the SEIR for the OBMPU (State Clearinghouse No. 2020020183) and recommends that the IEUA address the CDFW’s comments and concerns.

If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Kim Romich at (909) 980-3818 or at kimberly.romich@wildlife.ca.gov.

- 2-17 Please refer to response to comment 2-8 above. Additionally, this comment appears to suggest that the DSEIR defers mitigation and does not commit to enforceable performance standards. The following responses are provided to demonstrate lack of deferral and commitment to performance standards. Response to comment 1-37 demonstrates that the OBMPU DSEIR does not defer mitigation, and is committed to adhere to stringent performance standards. Furthermore, the specific location of OBMPU facilities is presently unknown and analysis of site specific biological resource impacts can only occur once a site is identified. As such, no one given project has been defined that would require a Lake or Streambed Alteration Agreement (LSAA) at this time; once a proposal for a given project is defined, an analysis as to whether a second-tier environmental document would be required. If a LSAA is required, that second-tier environmental document would be used to satisfy the environmental review necessary for the LSAA.
- 2-18 The comment is noted and will be made available to the IEUA decision-makers as part of the Final EIR package prior to a decision on the proposed project. The contact information provided in this comment will be retained in the project file.