



State of California – Natural Resources Agency
DEPARTMENT 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



Governor's Office of Planning & Research

December 6, 2021
Sent via email

Dec 06 2021

STATE CLEARINGHOUSE

Joe Broadhead
Eastern Municipal Water District
2270 Tumble Road
Perris, California 92572
broadheadj@emwd.org

Subject: Mitigated Negative Declaration
Dunlap Drive Recycled Pipeline Replacement Project
State Clearinghouse No. 2021110121

Dear Mr. Broadhead:

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) on November 5, 2021, from the Eastern Municipal Water District (EMWD) for the Dunlap Drive Recycled Pipeline Replacement Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Project Location

The proposed Project is located parallel to the existing pipeline and Dunlap Drive, at the cross streets of Ellis Avenue and Vector Road in the City of Perris, Riverside County (APN 310-220-056, 310-260-027). The Project alignment is located within the Township CA T4S, Range R3W, Sections 33.

Project Description

The Project proposes the construction and operation of the Dunlap drive replacement pipeline for conveyance of recycled water through the District's Recycled Water Pipeline System crossing the San Jacinto River. The project will replace approximately 2,000 lf of existing pipeline with 36- to 42-inch-diameter cement mortar lined and coated steel pipeline, involving open-cut-trenching in all areas except the San Jacinto crossing, where jack-and-bore would be used.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned about the adequacy of the impact analysis proposed in the MND and the ability of the Project to mitigate the significant, or potentially significant, direct and indirect impacts to native habitats and species that rely on these habitats. Following review of MND, CDFW offers the comments and recommendations presented below to assist the EMWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends that each of these be addressed prior to finalization of the Mitigated Negative Declaration.

Lake and Streambed Alteration Program

Based on review of material submitted with the MND and review of aerial photography the Project has the potential to impact the San Jacinto River. Depending on how the

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Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the MND include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 *et seq.* resources may occur within the proposed Project alignment. 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 the 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 MND 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>.

CDFW recommends the inclusion of the following new measure in the MND:

MM BIO-[X]: Prior to start of Project-related activities the Project Applicant shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) confirming that CDFW has either executed a Streambed Alteration Agreement (Agreement), or informed the Project Applicant that an Agreement is not needed.

Nesting Birds

CDFW has documented occurrences of bird nesting outside of the nesting bird period time frame (February 1 to September 1) in the MND. For example, owls nesting in January, hummingbirds nesting in January and February, and red-tailed hawks nesting

in January and February. Given these documented nesting occurrences that vary from the time frame in the MND, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame (February 1 to September 1) due to recent changes in timing of avian breeding activity.

CDFW recommends the addition of the following mitigation measure:

MM BIO-[X]: Pre-Construction Nesting Bird Survey. Prior to vegetation removal or ground disturbance a focused survey for active nests shall be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) no more than three days prior to the beginning of Project-related activities (including but not limited to equipment mobilization and staging, clearing, grubbing, vegetation removal, and grading). Surveys shall be conducted in proposed work areas, staging and storage areas, and soil, equipment, and material stockpile areas. For passerines and small raptors, surveys shall be conducted within a 200-foot radius surrounding the work area (in areas where access is feasible). For larger raptors, the survey area shall encompass a 500- foot radius. Surveys shall be conducted during weather conditions suited to maximize the observation of possible nests and shall concentrate on areas of suitable habitat. If a lapse in Project-related work of three days or longer occurs, an additional nest survey shall be required before work can be reinitiated. If nests are encountered during any preconstruction survey, a qualified biologist shall determine if it may be feasible for construction to continue as planned without impacting the success of the nest, depending on conditions specific to each nest and the relative location and rate of construction activities. If the qualified biologist determines construction activities have potential to adversely affect a nest, the biologist shall immediately inform the construction manager to halt construction activities within minimum exclusion buffer of 50 feet for songbird nests, and 200 to 500 feet for raptor nests, depending on species and location. Active nest(s) within the Project site shall be monitored by a qualified biologist during construction if work is occurring directly adjacent to the established no-work buffer. Construction activities within the no-work buffer may proceed after a qualified biologist determines the nest is no longer active due to natural causes (e.g., young have fledged, predation, or other non-human causes of nest failure).

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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 MND for the Dunlap Drive Recycled Pipeline Replacement Project, proposed by the EMWD (SCH#2021110121) and recommends that EMWD address CDFW's comments and concerns prior to adoption of the MND. If you should have any questions pertaining to the comments provided in this letter, please contact John Dempsey, environmental scientist, at 909-549-8245 or john.dempsey@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

ec: Heather Pert, CDFW
Senior Environmental Scientist Supervisor

Attachment 1

ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>Prior to start of Project-related activities the Project Applicant shall obtainwritten correspondence from the California Department of Fish and Wildlife (CDFW) confirming that CDFW has either executed a Streambed Alteration Agreement (Agreement), or informed the Project that an Agreement is not needed.</p>	<p>Prior to start of Project-related activities</p>	<p>EMWD</p>
<p>Pre-Construction Nesting Bird Survey. If vegetation removal or ground disturbance is scheduled during the nesting season, then a focused survey for active nests shall be conducted by a qualified biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) no more than 3 days prior to the beginning of Project-related activities (including but not limited to equipment mobilization and</p>	<p>When nesting birds may be present.</p>	<p>Prior to start of Project-related activities</p>

<p>staging, clearing, grubbing, vegetation removal, and grading). Surveys shall be conducted in proposed work areas, staging and storage areas, and soil, equipment, and material stockpile areas. For passerines and small raptors, surveys shall be conducted within a 200-foot radius surrounding the work area (in areas where access is feasible). For larger raptors, the survey area shall encompass a 500-foot radius. Surveys shall be conducted during weather conditions suited to maximize the observation of possible nests and shall concentrate on areas of suitable habitat. If a lapse in Project-related work of 3 days or longer occurs, an additional nest survey shall be required before work can be reinitiated. If nests are encountered during any preconstruction survey, a qualified biologist shall determine if it may be feasible for construction to continue as planned without impacting the success of the nest, depending on conditions specific to each nest and the relative location and rate of construction activities. If the qualified biologist determines construction activities have potential to adversely affect a nest, the biologist shall immediately inform the construction manager to halt construction activities within minimum exclusion buffer of 50 feet for songbird nests, and 200 to 500 feet for raptor nests, depending on species and location. Active nest(s) within the Project site shall be monitored by a qualified biologist during construction if work is occurring directly adjacent to the established no-work buffer. Construction activities within the no-work buffer may proceed after a qualified biologist determines</p>		
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<p>the nest is no longer active due to natural causes (e.g., young have fledged, predation, or other non-human causes of nest failure).</p>		
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