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Governor's Office of Planning & Research

Apr 21 2022

April 20, 2022

STATE CLEARINGHOUSE

Scott Johnson, Senior Planner
City of Sacramento Community Development Department
300 Richards Boulevard, Third Floor
Sacramento, CA 95811
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Subject: GROUNDWATER MASTER PLAN WELL REPLACEMENT PROGRAM
SCH# 2022030709

Dear Mr. Johnson:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) and Initial Study (IS) from the City of Sacramento for the Groundwater Master Plan Well Replacement Program (Project) in Sacramento County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. 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 provides, 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 may also act 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 (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

The proposed Project is the replacement of 38 groundwater wells throughout the City of Sacramento. The replacement well locations are at sites within residential, commercial, and industrial areas, schools, parks, and existing public facilities (such as existing City well sites, water storage facilities, and water treatment facilities). The Well Replacement Program involves the long-term (up to 15 years or potentially longer) replacement of up to 38 municipal groundwater wells that are at or near the end of their useful life. The program is an outgrowth of the City's Groundwater Master Plan and identifies where, when, and how certain municipal production wells should be replaced, given current economic, regulatory and water quality constraints as well as variations in hydrologic and climate conditions affecting reliability of the City's surface water supply.

Replacement wells are located within the City's water service area, which overlies the North American and South American Subbasins of the Sacramento Valley Groundwater Basin. Replacement planning was found to be necessary because many of the current well locations are too small to accommodate same-site well replacement, and groundwater quality concerns may affect the ability to use many of the City's existing wells. As such, new locations are required for most replacement wells. The proposed Project includes the construction, operation, and long-term maintenance of 38 wells, including above-ground wellhead facilities, such as pumps and a chlorination/fluoridation system housed within a one-story concrete block wall structure, as well as below ground sanitary sewer and drinking water distribution system connections. Replacement wells would be constructed to produce approximately 1,250 gallons per minute of groundwater when in full operation. Wells in areas with groundwater quality concerns would require the construction and operation of necessary treatment systems. The Project also includes destruction of the 38 existing City wells and would take place after the replacement well is fully operational.

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the

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basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the City of Sacramento in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. 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 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 Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends the EIR specifically include:

1. An assessment of all habitat types located within the Project footprint, 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 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 by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the webpage for information on how to access the database 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, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms

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can be obtained and submitted at:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

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 of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

3. A complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § § 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. The EIR should include the results of 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. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends the City of Sacramento rely on survey and monitoring protocols and guidelines available at: www.wildlife.ca.gov/Conservation/Survey-Protocols. Alternative survey protocols may be warranted; justification should be provided to substantiate why an alternative protocol is necessary. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought or deluge.
4. A thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see www.wildlife.ca.gov/Conservation/Plants).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

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

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed and it must permit the significant effects of the Project to be considered in the full environmental context.
2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The EIR should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

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Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

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.

2. *Nesting Birds*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-

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prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR.

CDFW recommends the EIR include specific avoidance and minimization measures to ensure that impacts to nesting birds or their nests 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 EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g. Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey 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 earlier.

The EIR should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the EIR should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the EIR should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

Groundwater Management

Development and implementation of Groundwater Sustainability Plans (GSPs) under the Sustainable Groundwater Management Act represents a new era of California groundwater management. CDFW has an interest in the sustainable management of groundwater, as many sensitive ecosystems, species, and public trust resources depend on groundwater and interconnected surface waters (ISWs).

SGMA and its implementing regulations afford ecosystems and species specific statutory and regulatory consideration, including the following as pertinent to GSPs:

1. GSPs must **consider impacts to groundwater dependent ecosystems** (GDEs) (Water Code § 10727.4(l); see also 23 CCR § 354.16(g));

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2. GSPs must consider the interests of all beneficial uses and users of groundwater, including environmental users of groundwater (Water Code § 10723.2) and GSPs must **identify and consider potential effects on all beneficial uses and users of groundwater** (23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3));
3. GSPs must **establish sustainable management criteria that avoid undesirable results** within 20 years of the applicable statutory deadline, including **depletions of ISW that have significant and unreasonable adverse impacts on beneficial uses of the surface water** (23 CCR § 354.22 *et seq.* and Water Code §§ 10721(x)(6) and 10727.2(b)) and describe monitoring networks that can identify adverse impacts to beneficial uses of ISWs (23 CCR § 354.34(c)(6)(D)); and,
4. GSPs must **account for groundwater extraction for all water use sectors**, including managed wetlands, managed recharge, and native vegetation (23 CCR §§ 351(a) and 354.18(b)(3)).

In the context of SGMA statutes and regulations, and Public Trust Doctrine considerations, groundwater planning should carefully consider and protect environmental beneficial uses and users of groundwater, including fish and wildlife and their habitats, GDEs, and ISWs.

Furthermore, the Public Trust Doctrine imposes a related but distinct obligation to consider how groundwater management affects public trust resources, including navigable surface waters and fisheries. Groundwater hydrologically connected to surface waters is also subject to the Public Trust Doctrine to the extent that groundwater extractions or diversions affect or may affect public trust uses. (*Environmental Law Foundation v. State Water Resources Control Board* (2018), 26 Cal. App. 5th 844; *National Audubon Society v. Superior Court* (1983), 33 Cal. 3d 419). The City of Sacramento has “an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” (*National Audubon Society, supra*, 33 Cal. 3d at 446). Accordingly, the EIR should consider potential impacts to and appropriate protections for ISWs and their tributaries, and ISWs that support fisheries, including the level of groundwater contribution to those waters.

Provided the above SGMA and Public Trust Doctrine considerations, CDFW requests the consideration and/or analysis of each of the following in the EIR:

1. **Consistency with North and South American Subbasin GSP Sustainable Management Criteria**

The IS currently notes the City of Sacramento’s intent to coordinate with both subbasins to be consistent with their respective GSP sustainability goals (IS 3-49). The IS then states both that the planned extraction under the GWMP may

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exceed sustainable yield in the South American Subbasin (IS 3-50), and that no groundwater goals or thresholds have been established to date (IS 3-51). Both the North and South American Subbasins have adopted final GSPs which establish groundwater goals and thresholds. Accordingly, the EIR should analyze impacts of GWMP implementation under the lens of established groundwater basin thresholds for each subbasin.

2. Impacts on Groundwater Dependent Ecosystems and Interconnected Surface Waters

Consistent with SGMA and its implementing regulations, the EIR should analyze the potential impacts of a range of projected extraction scenarios (e.g., different pumping volume and timing by water year type) on proximate GDEs and ISW. Where the IS defaults to a 100-foot buffer for many Project impacts analyses, the potential hydrologic influence of a well is specific to each well and subsurface hydrology but may extend well past 100 feet when connectivity exists between the production aquifer and shallower aquifers supporting GDEs or ISW.

A complete overhaul of the City's groundwater infrastructure has the potential to dramatically increase hydraulic interaction between subsurface aquifers, and between aquifers and surface waters. The EIR should model projected Project effects on aquifer dynamics and surface waters under a range of extraction scenarios and should specifically include an analysis of streamflow depletion and impacts to shallow groundwaters that support potential GDEs. The EIR should also identify mitigation measures that include identification and/or installation of monitoring wells to substantiate modeled projections for aquifer interactions during and after Project implementation so as to identify when wells, individually or collectively, may be depleting shallow groundwater resources.

3. Baseline extraction capacity and volumes versus project extraction capacity and volumes

CDFW recommends a tabular comparison of current groundwater extraction capacity (e.g., gallons per minute) and volume (e.g., total volume extracted by water year type), versus anticipated groundwater extraction capacity and volume under the replaced groundwater well regime. This will better enable stakeholders to understand the change in extraction potential between baseline and the updated well infrastructure.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

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<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and 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

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the NOP of the EIR for the Groundwater Master Plan Well Replacement Program and recommends that the City of Sacramento address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Dylan Wood, Environmental Scientist, at (916) 358-2384 or by email at dylan.wood@wildlife.ca.gov.

Sincerely,

DocuSigned by:


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Kelley Barker

Environmental Program Manager

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Literature Cited

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