



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



Governor's Office of Planning & Research

**Jun 15 2022**

June 15, 2022

## STATE CLEARINGHOUSE

Taryn Kjolsing  
 Engineering Manager  
 South Coast Water District  
 31592 West Street  
 Laguna Beach, CA 92651  
[TKjolsing@scwd.org](mailto:TKjolsing@scwd.org)

**Subject: Reservoir 2B Replacement Project (PROJECT), Mitigated Negative Declaration (MND), SCH #2022050294**

Dear Ms. Kjolsing:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the South Coast Water District (SCWD) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

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.), related authorization as provided by the Fish and Game Code will be required.

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<sup>1</sup> 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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## PROJECT DESCRIPTION SUMMARY

**Proponent:** South Coast Water District (SCWD)

**Objective:** The objective of the Project is to provide additional capacity for and contribute to providing an additional 0.1 million gallons (MG) of operational, fire, and emergency storage for this zone. Primary Project activities include demolition of the existing aboveground Reservoir 2B, site preparation (including slope stabilization and pad expansion), grading, installation of two new aboveground 0.1 MG aboveground steel reservoirs, installation of electrical and piping infrastructure, testing and disinfection activities, and site restoration. Project construction would also include installing a new drain line from both reservoirs to tie into the existing drain line on the Project site, a retaining wall around the perimeter of the replacement reservoir footprints, a tank inlet/outlet pipe vault, an altitude valve, a manifold, new electrical service, new antenna, and a power and control interface.

**Location:** The Project site is in the city of Laguna Beach in southwestern Orange County at coordinates 33°30'31.2"N 117°44'42.8"W. Access to Reservoir 2B is provided by a steep, winding, unpaved road off Ceanothus Drive, which is also used by members of the public as a connector trail between Ceanothus Drive and Toovet Trail.

**Biological Setting:** The survey area for the Project is located on a south-facing slope at and around the existing water tank facility and its associated dirt access road. The surrounding area consists primarily of undeveloped land composed of coastal sage scrub (CSS) and chaparral habitats. Surrounding conditions include residential development on hillsides to the south and west, with open habitat areas along the hills that ascend to the east. The area surrounding the Project footprint is co-dominated by moderate quality California sagebrush (*Artemisia californica*) and California buckwheat (*Eriogonum fasciculatum*).

**Timeframe:** The proposed Project would be constructed over the course of approximately ten months during 2022 and 2023.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SCWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

### COMMENT #1: Nesting Bird Surveys and Avoidance

Per California Fish and Game Code sections 3503, 3503.5, and 3513 the proposed Project is required to avoid the incidental loss of fertile eggs or nestlings, or activities that lead to nest abandonment. To avoid impacts to nesting birds, CDFW recommends the following changes (**in bold** and ~~strikethrough~~) to Mitigation Measure BIO-1:

Project-related activities shall occur outside of the bird breeding season (February 1 to August 31) to the extent practicable. If construction must occur within the bird breeding season, **then no more than 3 days prior** to initiation of ground disturbance and/or vegetation removal, a nesting bird preconstruction survey shall be conducted by a qualified biologist within the disturbance footprint plus a 300-foot buffer, where feasible. **A qualified biological monitor shall be present for the**

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**duration of construction.** If the proposed project is phased or construction activities stop for more than two weeks during the bird breeding season, a subsequent pre-construction nesting bird survey shall be completed **within 3 days prior to each phase of construction.**

If nests are found, their locations shall be flagged to facilitate avoidance. An appropriate avoidance buffer of **100 feet for passerines, 300 feet for listed bird species, and 500 feet for raptors,** should be established by a qualified biologist and demarcated with bright orange construction fencing or other suitable flagging. Active nests shall be monitored at a minimum of once per week until it has been determined that the nest is no longer being used by either the young or adults. No ground disturbance shall occur within this buffer until the qualified biologist confirms the breeding/nesting is completed and all the young have fledged. ~~If project activities must occur within the buffer, they shall be conducted at the discretion of the qualified biologist.~~ If no nesting birds are observed during pre-construction survey, no further action would be necessary.

### **COMMENT #2: Potential Impacts to Native Vegetation**

Figure 2 of the MND appears to show native vegetation including CSS within the yellow lines depicting the boundary of the Project site. Thus, CSS could be impacted by Project activities, including, but not limited to, road construction and paving. CSS is a sensitive habitat type that supports a great diversity of wildlife and is covered in the County of Orange Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP). The City of Laguna Beach is not a participating jurisdiction in the NCCP/HCP and thus has no programmatic involvement in the conservation of CSS. Therefore, if the Project will result in CSS habitat loss, CDFW recommends mitigating the loss in kind at a 3:1 ratio within close proximity to the Project site.

### **COMMENT 3: Hydrological Impacts**

According to the MND, a potentially jurisdictional unnamed ephemeral drainage is located within the Study Area.

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. Whether a LSAA is required to satisfy requirements of FCG section 1600 *et seq.* can only be determined at the time a formal notification package is submitted to CDFW.

If Project activities will affect the hydrological features of such drainages, an LSAA notification may be appropriate. We encourage SCWD to consult further with CDFW regarding the possible submittal of an LSA Notification package.

### **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

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Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Training-Survey>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the SCWD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Troeller, Environmental Scientist, at [Alexandra.Troeller@wildlife.ca.gov](mailto:Alexandra.Troeller@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
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David Mayer  
Environmental Program Manager  
South Coast Region

cc: CDFW

David Mayer, San Diego – [David.Mayer@wildlife.ca.gov](mailto:David.Mayer@wildlife.ca.gov)  
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## REFERENCES

California Department of Fish and Wildlife. 2021. California Natural Diversity Database (CNDDDB) – Plants and Animals. Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2021. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.

South Coast Water District. 2022. Reservoir 2B Replacement Project Draft Initial Study – Mitigated Negative Declaration. Available from: <https://files.ceganet.opr.ca.gov/278574-1/attachment/E7tZJO010CifzxLhAPySuAO7dp7z-A3-HLL7hRanMRdlsw2d0ffq-i4Qy8zpXBEv9B8mNI56BqtWgc60>