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February 2, 2023

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Subject: City of San Diego Dam Maintenance Program (PROJECT), Mitigated Negative Declaration (MND), SCH #2022120663

Dear Mr. Szymanski:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of San Diego for the 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.

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.) CDFW also oversees implementation of the Natural Community Conservation Planning (NCCP) program. The City of San Diego participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP). This affords the City "take" of MSCP covered species, some of which are listed under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). If any CESA-listed species may be impacted by the Project that are not covered by the MSCP, the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Diego Public Utilities Department (City)

Objective: The objective of the Project is to conduct long-term maintenance of City-owned dams and infrastructure, the Dulzura Conduit, and spillways. The facilities are subject to the regulatory jurisdiction of the Division of Safety of Dams (DSOD), part of the California Department of Water Resources.

Location: The Project involves long-term routine maintenance of 13 dams and associated infrastructure throughout San Diego County, as well as the 13-mile Dulzura Conduit. The locations are detailed below:

1. **Barrett Dam:** Barrett Dam is located in at the outlet of Barret Reservoir in eastern unincorporated San Diego County, in the community of Dulzura.

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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2. *Black Mountain Dam*: Black Mountain Dam is located in the northern San Diego, within the Black Mountain Ranch community. The study area is within the City's Black Mountain Open Space Park, within the boundaries of the MSCP SAP and within the Multi-Habitat Planning Area (MHPA).
3. *Chollas Dam*: Chollas Dam is located at the outlet of Chollas Reservoir in central San Diego. Chollas Dam is within the MSCP SAP and the northeastern portion of the study area occurs within the MHPA.
4. *El Capitan Dam*: El Capitan Dam is located at the outlet of El Capitan Reservoir in eastern San Diego County, in the unincorporated community of Lakeside.
5. *Hodges Dam*: Hodges Dam is located at the outlet of Hodges Reservoir in northern San Diego, at the outlet of Hodges Reservoir, within the boundaries of the MSCP SAP, within the MHPA.
6. *Miramar Dam*: Miramar Dam is located at the outlet of Miramar Reservoir in northern San Diego, within the boundaries of the MSCP SAP. A majority of the study area occurs within the MHPA.
7. *Morena Dam*: Morena Dam is located at the outlet of Morena Reservoir, in the unincorporated community of Lake Morena, within the County's Lake Morena Regional Park and Cleveland National forest.
8. *Murray Dam*: Murray Dam is located at the outlet of Murray Reservoir in eastern San Diego, within the MSCP. A majority of the study area is within the MHPA.
9. *Rancho Bernardo Dam*: Rancho Bernardo Dam is located in the northern portion of San Diego within the community of Rancho Bernardo. It is within the MSCP SAP, but outside of the MHPA.
10. *San Vicente Dam*: San Vicente Dam is located at the outlet of San Vicente Reservoir, in the unincorporated community of Lakeside. The Dam is within the MSCP SAP, within the MHPA.
11. *Savage Dam*: Savage Dam is located at the outlet of Lower Otay Reservoir, in the unincorporated community of Otay in south San Diego. The study area occurs within the City's Otay Lakes Recreation Area, within the boundaries of the MSCP SAP, and is mostly within the MHPA.
12. *Sutherland Dam*: Sutherland Dam is located at the outlet of Sutherland Reservoir, in the unincorporated community of Ramona in northern San Diego County.
13. *Upper Otay Dam*: Upper Otay Dam is located at the outlet of Upper Otay Reservoir, in the unincorporated community of Otay in southern San Diego County. The dam is within the boundaries of the MSCP SAP, with the majority of the study area occurring within the MHPA.
14. *Dulzura Conduit*: The 13-mile Dulzura Conduit is located in eastern San Diego County, in the unincorporated community of Dulzura. The northern terminus is located at Barrett Dam, and the Southern terminus is located at the confluence with Dulzura Creek.

Project Activities:

- Vegetation removal at all of the Project sites, including clearing of all vegetation within five feet of Dulzura Conduit and within 10 feet of all dams and associated infrastructure; clearing of marsh habitat within 10 feet of all dams; removal of trees within 10 feet of dams, saddle dams, parapet walls, and spillways; and clearing and maintaining of all vegetation within 10 feet of weirs, headwalls, valves, pipes, and discharge paths.
- Maintenance of access roads, pedestrian footpaths, staging areas, and materials storage areas along current path alignments at all Project sites.
- Mechanical and/or hydraulic dredging of accumulated lake bottom sediment covering dam infrastructure, within a 50-foot radius of the outlet/intake tower base at Barrett, Chollas, El Capitan, Miramar, Morena, Murray, San Vicente, and Savage Dams, and within a 50-foot radius at the low-level outlet intake at Barrett, Hodges, and San Vicente dams.
- Routing maintenance and repairs to the outlet/intake towers at all dams.
- Clearing and maintenance of trash racks.

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- Spillway clearing.
- Maintenance of the earthen dams (Chollas, El Capitan, Miramar, and Morena dams), including filling of voids, gullies, and rills caused by erosion, minor grading, and regular compaction of the dam face and toe of the dam.
- Maintenance of concrete dams (Barrett, Hodges, Murray, San Vicente, Savage, Sutherland, and Upper Otay dams) and concrete reservoirs (Black Mountain and Rancho Bernardo), including sealing of joints and cracks, repairing degraded concrete, spalls and boulder impact areas, and smoothing vertically displaced joints on concrete surfaces.
- Routine maintenance of Dulzura Conduit, including removal of landslide debris, rocks, boulders, and vegetation, and repair of damaged or deteriorating sections of the conduit with in-kind materials.
- Geotechnical investigations of the dams, foundations, and associated infrastructure.

Biological Setting:

The Project site contains suitable habitat to support a variety of sensitive wildlife species, including those covered under the MSCP, CESA-listed species, federal Endangered Species Act (ESA)-listed species; and designations of State Fully Protected (FP), California Species of Special Concern (SSC), and CDFW Watch List Species (WL). A total of 36 vegetation communities were recorded within the Project area.

Special-Status Plants: No ESA- and/or CESA-listed plant species were documented within the Project area. Sixteen other special-status plants were documented within the Project area during biological surveys including: California adolphia (*Adolphia californica*; California Rare Plant Rank (CRPR) 2B.1), San Diego bur-sage (*Ambrosia chenopodiifolia*; CRPR 2B.1), San Diego sagewort (*Artemisia palmeri*; CRPR 4.2), Dean's milkvetch (*Astragalus deanei*; CRPR 1B.1), San Diego goldenstar (*Bloomeria clevelandii*; CRPR 1B.1), wart-stemmed ceanothus (*Ceanothus verrucosus*; CRPR 2B.2), delicate clarkia (*Clarkia delicata*; CRPR 1B.2), San Diego barrel cactus (*Ferocactus viridescens*; CRPR 2B.1), San Diego marsh-elder (*Iva hayesiana*; CRPR 2B.2), pride of California (*Lathyrus splendens*; CRPR 4.3), golden-rayed pentachaeta (*Pentachaeta aurea ssp. aurea*; CRPR 4.2), chaparral rein orchid (*Piperia cooperi*; CRPR 4.2), Engelmann oak (*Quercus engelmannii*; CRPR 4.2), Munz's sage (*Salvia munzii*; CRPR 2B.2), ashy spike-moss (*Selaginella cinerascens*; CRPR 4.1), and rush-like bristleweed (*Xanthisma junceum*; CRPR 4.3).

Special-status animals: The following 34 special status animal species have been documented within Project's study area:

- **Invertebrates (2):** monarch (*Danaus plexippus*; ESA-candidate species), Quino checkerspot butterfly (*Euphydryas editha quino*; ESA-endangered)
- **Amphibians (2):** arroyo toad (*Anaxyrus californicus*; ESA-endangered, SSC), western spadefoot (*Spea hammondi*; SSC)
- **Reptiles (6):** Belding's orange-throated whiptail (*Aspidoscelis hyperythra beldingi*; WL), San Diegan tiger whiptail (*Aspidoscelis tigris stejnegeri*; SSC), San Diego banded gecko (*Coleonyx variegatus abbotti*; SSC), northern red diamond rattlesnake (*Crotalus ruber ruber*; SSC), Blainville's horned lizard (*Phrynosoma blainvillii*; SSC), two-striped gartersnake (*Thamnophis hammondi*; SSC)
- **Birds (18):** Cooper's hawk (*Accipiter cooperii*; WL), sharp-shinned hawk (*Accipiter striatus*; WL), southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; WL), redhead (*Aythya americana*; SSC), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*; SSC), olive-sided flycatcher (*Contopus cooperi*; SSC), white-tailed kite (*Elanus leucurus*; FP), willow flycatcher (*Empidonax traillii*; ESA-endangered, CESA-endangered), peregrine falcon (*Falco peregrinus*; FP), bald eagle (*Haliaeetus leucocephalus*; CESA-endangered, FP), yellow breasted chat (*Icteria virens*; SSC), California gull (*Larus californicus*; WL), osprey (*Pandion haliaetus*; WL), American white pelican (*Pelecanus erythrorhynchos*; SSC), double-crested cormorant (*Phalacrocorax auritus*; WL), coastal California gnatcatcher (*Polioptila californica californica*; ESA-threatened, SSC), yellow warbler (*Setophaga petechia*; SSC), least Bell's vireo (*Vireo bellii pusillus*; ESA-endangered, CESA-endangered)

Critical Habitat: The Project area contains several areas of United States Fish and Wildlife Service (USFWS) designated critical habitat for Quino checkerspot butterfly, arroyo toad, Hermes copper butterfly (*Lycaena hermes*; ESA-threatened), and coastal California gnatcatcher.

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Wetlands: Lake, streambed, and riparian habitats within the Project area are detailed below:

Table 5
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE JURIDICTIONAL AREAS

Jurisdictional Resource	Program Component ¹ (acres) ²												Total
	BM	CH	EC	HOD	MIR	MOR	MUR	SNV	SAV	SUT	UPO	DC	
Riparian Habitat													
Southern Riparian Forest	1.05	-	7.30	1.34	-	0.09	-	-	-	0.05	-	0.17	10.00
Southern Coast Live Oak Riparian Forest	0.89	-	-	-	-	-	-	-	-	-	-	-	0.89
Coast Live Oak Woodland	0.27	-	-	-	-	-	-	-	-	-	-	-	0.27
Riparian Woodland	-	0.10	-	-	-	<0.01	-	0.05	-	-	-	-	0.15
Southern Willow Scrub	-	-	-	-	-	-	-	-	0.14	-	-	-	0.14
Mule Fat Scrub	-	-	-	0.03	-	-	-	0.25	-	-	-	-	0.28
Arrowweed Scrub	0.39	-	-	-	-	-	-	-	-	-	-	-	0.39
Freshwater Marsh	-	0.05	-	0.05	0.96	-	0.21	0.03	0.07	-	0.04	-	1.41
Disturbed Wetland	-	-	-	-	-	-	-	-	-	-	-	0.02	0.02
Non-Native Riparian	-	-	-	-	-	-	0.17	-	-	-	-	-	0.17
Arundo-dominated Riparian	-	-	-	-	-	-	-	-	-	-	-	0.09	0.09
Subtotal	2.60	0.15	7.30	1.42	0.96	0.09	0.38	0.33	0.21	0.05	0.04	0.28	13.81
CDFW Lake/Streambed													
Perennial Stream	-	-	-	<0.01	-	-	-	-	-	-	-	-	<0.01
Intermittent Stream	0.07	-	-	-	-	-	-	0.18	-	-	-	0.02	0.27
Ephemeral Stream	-	0.06	-	-	-	-	-	-	-	-	0.05	-	0.11
Concrete-lined Stream	-	-	-	-	-	-	-	-	-	-	-	0.01	0.01

Jurisdictional Resource	Program Component ¹ (acres) ²												Total
	BM	CH	EC	HOD	MIR	MOR	MUR	SNV	SAV	SUT	UPO	DC	
Grouted Riprap Spillway	-	-	-	-	-	-	-	0.28	-	-	-	-	0.28
Open Water/Lake	0.58	0.79	4.80	0.87	2.01	0.95	1.00	2.14	1.47	0.82	0.18	- ³	15.61
Subtotal	0.65	0.85	4.80	0.87	2.01	0.95	1.00	2.60	1.47	0.82	0.23	0.03	16.28
TOTAL	3.25	1.00	12.10	2.29	2.97	1.04	1.38	2.93	1.68	0.87	0.27	0.31	30.09

¹ Program Component abbreviations refer to the study areas as follows: BAR = Barrett Dam; BM = Black Mountain Dam; CHO = Chollas Dam; EC = El Capitan Dam; HOD = Hodges Dam; MIR = Miramar Dam; MOR = Morena Dam; MUR = Murray Dam; RB = Rancho Bernardo Dam; SNV = San Vicente Dam; SAV = Savage Dam; SUT = Sutherland Dam; UPO = Upper Otay Dam; DC = Dulzura Conduit.

² Acres rounded to the nearest hundredth.

³ Open water/lake habitat at northern portion of Dulzura Conduit overlaps with the Barrett Dam study area and is included within that Program component to avoid double counting.

Vegetation Impacts: The Project will impact 95.40 acres of habitat, including: 10.90 acres of wetlands and non-wetland resources, 19.90 acres of sensitive upland habitats, and 64.60 acres of non-sensitive uplands and developed land. Impacts that occur within the MHPA include: 4.87 acres of wetland impacts, 5.20 acres of sensitive upland impacts, and 13.70 acres of non-sensitive upland impacts.

Mitigation: The City’s Biology Guidelines require that any impacts to wetlands must be mitigated “in-kind” and achieve a “no-net loss” of wetland function and values, except as provided for in Section 3B of the Biology Guidelines (Economic Viability Option). Wetland mitigation ratios are summarized in Tables 2A and 2B of the Biology Guidelines. Significant impact to upland habitat requires mitigation based on rarity of upland resources, as characterized by one of four Habitat Tiers; mitigation ratios are summarized in Table 3 of the City’s Biology Guidelines (City of San Diego 2018).

Timeframe: The Project involves long-term routine maintenance of the City’s dams and Dulzura conduit, with no specified timeframe.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. General Comments

COMMENT #1: Invertebrates

Issue: Quino checkerspot butterfly was previously petitioned to CDFW for State listing but a Fish and Game Commission decision was not taken at that time due to an ongoing legal review concerning CDFW’s authority to list invertebrates. Since that time, CDFW’s authority to list

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invertebrate species has been legally upheld; therefore, if the petition is resubmitted it is reasonably foreseeable that Quino could become either a candidate species or listed under CESA during the lifetime of the Dam Maintenance Program. Quino is not a covered species under the MSCP and there are no efforts underway to add it as such at this time. It is also possible that other invertebrates, such as the Hermes copper butterfly could be petitioned for protection under CESA in the near future as well (Fish and Game Code § 2050, *et seq.*, and § 670.1, Title 14, California Code of Regulations). Considering that the timeline of City dam maintenance activities extends indefinitely into the future, it is possible that permitting will be required under CESA at some point for “take” of State-listed invertebrate species, if impacts cannot be completely avoided. In this context, the term “take” is defined by Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Specific Impact:

Quino checkerspot butterfly: The MND indicates that the Project will result in direct impacts to Quino checkerspot butterfly through removal of 0.76 acre of potentially occupied habitat at Savage Dam, and 3.80 acres of potentially occupied habitat at Dulzura Conduit. The Project would also result in impacts to 2.90 acres of USFWS-designated critical habitat at Savage Dam; the MND indicates that 0.90 acre of the designated critical habitat contains physical or biological features essential for Quino checkerspot butterfly. Indirect impacts may also occur through disturbance of host plant patches during maintenance activities. Quino checkerspot butterfly avoidance measures in the Mitigation, Monitoring, and Reporting Program (MMRP) BIO-4 include:

1. flagging and mapping host plants;
2. monitoring by a Qualified Biologist during vegetation clearing;
3. environmental awareness training for maintenance personnel;
4. maintenance of access roads, trails, and footpaths will be conducted outside of Quino checkerspot butterfly flight season, or be monitored by a Qualified Biologist; and,
5. observations shall be reported to the City and USFWS within 24 hours.

Mitigation for 4.56 acres of Quino checkerspot butterfly occupied habitat is proposed in the MND at a 1.5:1 ratio, through habitat restoration and/or off-site acquisition/ preservation of occupied habitat. The City will create a Habitat Restoration Plan for review by USFWS. Funding for long-term management would be provided through the City’s annual fiscal budget.

Hermes copper butterfly: The MND indicates that Hermes copper butterfly has a high potential to occur at Barrett Dam and Dulzura Conduit, based on the presence of the species’ larval host plant, previous observations, and presence of USFWS-designated critical habitat in the study area. USFWS-designated critical habitat occurs along the northern portion of the Barrett Dam access road; because activities are limited to the existing road right-of-way that does not contain physical or biological features essential to the species, implementation of the Project would not result in direct impacts to critical habitat with the potential to support the species. The MND states that the City will obtain take coverage from USFWS for impacts to Hermes copper butterfly and potentially occupied habitat. In addition to USFWS consultation, avoidance measures included in the Mitigation, Monitoring, and Reporting Program BIO-5 are described below:

1. pre-construction survey by a Qualified Biologist for Hermes copper butterfly and suitable habitat, within one week prior to commencement of activities. If host plants are found, they will be flagged and avoided;
2. monitoring by a Qualified Biologist during vegetation clearing;
3. environmental awareness training for maintenance personnel;
4. maintenance of access roads, trails, and footpaths will be conducted outside of Hermes copper butterfly flight season, or be monitored by a Qualified Biologist; and,
5. observations shall be reported to the City and USFWS within 24 hours.

Why impact would occur: Direct impacts to Quino checkerspot butterfly could occur from removal of potentially occupied habitat at Savage Dam and Dulzura Conduit. Indirect impacts could occur from disturbance of occupied host plants. Direct and indirect impacts to Hermes copper butterfly habitat could occur from maintenance activities along the access road at Barrett Dam.

Evidence impact would be significant: CDFW considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant without mitigation. Should Quino checkerspot butterfly or Hermes copper butterfly become candidate species or listed under CESA, the City would need to consider the listing status in relation to the Project and ongoing dam maintenance activities. Take of any endangered, threatened, or candidate

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species that results from the project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if the Project or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination (CD) in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #1: Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species, and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP. Should a CESA ITP or CD be required, impacts of the authorized take shall be minimized and fully mitigated to the extent of the impact of the authorized taking on the species. The applicant must also ensure adequate dedicated funding (*e.g.*, a non-wasting endowment) to implement and monitor the success criteria of the measures (Fish and G. Code § 2081).

Given the impacts to possible future CESA-listed species, the Project may result in significant impacts even with mitigation, and in such an instance an MND would not be the appropriate environmental document for the Project (CEQA Guidelines § 15064). CDFW therefore recommends rather than an MND, that a complete draft Programmatic Environmental Impact Report (PEIR) be circulated for public review and comment. The additional information and analyses identified in this letter should be included in the draft PEIR.

COMMENT #2: State Fully Protected Species

Issue: Impacts to species designated as State Fully Protected must be fully avoided.

Specific Impact: The MND identifies several State Fully Protected bird species that have a high potential to occur within the Project areas, or that were detected during surveys, including: bald eagle, golden eagle, white-tailed kite, and peregrine falcon.

Bald eagle: Bald eagle is a Fully Protected species, in addition to an MSCP-covered and CESA-endangered species. The BTR informs that bald eagles were detected within the Morena Dam, San Vicente Dam, and Sutherland Dam study areas. An active nest was detected at Morena Reservoir in 2021 through news reports. The BTR states that most individuals are likely to occur as wintering visitors, and are unlikely to represent breeding pairs, which are generally rare and well documented. There are no conditions for coverage under the MSCP. The BTR indicates that, although the Project would impact wetland habitat, wetland mitigation in accordance with the City's Bio Guidelines would be subject to no net loss of function and values, and would be consistent with the MSCP.

Golden eagle: Golden eagle is a Fully Protected species, in addition to a WL and MSCP-covered species. The BTR indicates that golden eagle has a high potential to occur at Barrett Dam, El Capitan Dam, Morena Dam, Savage Dam, Sutherland Dam, Upper Otay Dam, and Dulzura Conduit based on the presence of suitable foraging habitat, geographic location, and reported occurrences. Active golden eagle nest sites are not publicly disclosed; however, previous nesting records are documented in several of those areas. Area specific management directives are incorporated into the BTR (6.7 Conditions of Coverage for Covered Species), which include establishing a 4,000-foot disturbance avoidance buffer around active nests within preserve lands, in conjunction with monitoring of nest sites and coordination with the USFWS and CDFW (collectively, the Wildlife Agencies).

Peregrine falcon: Peregrine falcon is a Fully Protected species, in addition to a MSCP-covered species. The BTR indicates that peregrine falcon was detected in Barrett Dam, San Vicente Dam, and Sutherland Dam study areas. At San Vicente Dam, a pair was observed with an active nest on the dam itself. Peregrine falcon also have a high potential to occur at El Capitan Dam, Hodges Dam, Morena Dam, Murray Dam, Savage Dam, Upper Otay Dam, and Dulzura Conduit, based on the presence of suitable habitat and documented occurrences in the surrounding area. Peregrine falcon may use the Project areas for foraging, or breed within the surrounding hillsides or on the dams. There are no conditions for coverage under the MSCP. The BTR indicates that the Project would mitigate for impacts to sensitive vegetation communities and be consistent with the MSCP.

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White-tailed kite: White-tailed kite is a Fully Protected species. The BTR indicates that white-tailed kite was detected within the Savage Dam and Upper Otay Dam study areas. A pair with at least three fledglings was observed to the north of Savage Dam. The species also has a high potential to occur at El Capitan Dam, Hodges Dam, Morena Dam, and Sutherland Dam based on the presence of suitable habitat and documented occurrences in the surrounding area. The BTR and MND do not specifically address project impacts to white-tailed kite or avoidance measures.

Why impact would occur: BIO-9 in the MMRP addresses protection requirements for avian species identified as listed, candidate, sensitive, or special status species in the City's MSCP, including but not limited to southwestern willow flycatcher, coastal cactus wren, Cooper's hawk, and northern harrier. Requirements include: pre-construction surveys within 7 days of vegetation clearing during breeding season (January 1 to July 15 for raptors; February 1 to September 15 for other avian species); a mitigation plan subject to review and approval by the City, per the City's Biology Guidelines and applicable state and federal laws; and appropriate avoidance setbacks.

Although BIO-9 identifies protection requirements specific to avian species identified as listed, candidate, sensitive, or special status species in the City's MSCP, it may incidentally provide some benefit to white-tailed kite, peregrine falcon, bald eagle, and golden eagle; however, there is not sufficient analysis in the MND to ensure that impacts to Fully Protected species will be completely avoided.

Evidence impact would be significant: Per Fish & Game Code § 3511, a Fully Protected bird may not be taken or possessed at any time. "Given that Fully Protected species are afforded protections beyond state or federal listing status, minimization of significant impacts is not sufficient for Fully Protected species, and impacts must be fully avoided to avoid take of any individuals.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #2: Project activities should include measures to fully avoid impacts to species designated by the State of California as Fully Protected. CDFW recommends that specific avoidance measures for Fully Protected Species be thoroughly discussed in the environmental document and incorporated into the MMRP.

COMMENT #3: Ongoing Diversions and FGC section 1602

Issue: Water diversion and/or transfer of water between facilities may present a substantial change to the channels between facilities, and therefore significantly impact biological resources described in the MND.

Specific Impact: Water diversion and transfer of water has the potential, either directly or cumulatively, to significantly reduce the instream flow of channels, rivers, and streams between City facilities. These activities could be categorized as Operations and Maintenance activities, and as such it is possible that the biological resources in the MND (i.e., wetland, riverine, riparian, and aquatic habitats, as well as the wildlife that depend upon such habitats) will be significantly adversely impacted when diversions or transfers occur. Specific impacts associated with the activities include but is not limited to impacts of unseasonable watering and controlled velocities on riparian habitats, scour which may impact herpetofauna such as arroyo toad, and changes in reservoir levels which could affect nesting activity and/or result in nest abandonment.

Why impact would occur: CDFW and the City have preliminarily discussed permitting water diversions and transfers between City facilities under the CDFW Lake and Streambed Alteration Program. Previous discussions resulted during concerns about nest abandonment by Western and Clark's grebes (*Aechmophorus occidentalis* and *Aechmophorus clarkii*, respectively) at Hodges Reservoir (2021). At the time the effects on grebe nesting was viewed as necessary due to the need to perform emergency activities; CDFW recommends pursuing the discussion further in order for potential triggers and responses to avoid take of nesting birds can be anticipated. To date, the City has not submitted a notification to CDFW nor obtained a lake or streambed alteration (LSA) agreement for its diversion/transfer activities between facilities.

Evidence impact would be significant: FGC section 1602 requires a person to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it

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may pass into a river, stream, or lake. CDFW's understanding is that the City's ongoing water diversions and transfers may not be in compliance with FGC section 1602. This concept is not unique to the City of San Diego situation, as FGC 1602 is under discussion with water providers elsewhere in California.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #3: Given the possible significant impacts of these activities on the biological resources in the MND, and that such activities generally fall within the scope of Operations and Maintenance activities for City facilities, CDFW recommends that water transfers and diversions between facilities be included in the Project Description and subsequently analyzed in a recirculated environmental document. This analysis should include a discussion of compliance with FGC 1602 *et seq.* CDFW looks forward to continuing this conversation with the City.

II. Specific Comments

COMMENT #3: Rare Plant Avoidance and Mitigation

No CESA- or ESA- listed plants were observed within the program area; however, 17 special status plant species were documented, of which 3 are covered under the MSCP: San Diego golden star, wart-stemmed ceanothus, and San Diego barrel cactus. None of the documented species are designated as MSCP narrow endemics.

BIO-3 in the MMRP indicates that a Qualified Biologist will conduct a pre-construction survey for special-status plant species prior to vegetation clearing. Individuals will be flagged, and the Project will avoid impacts to special-status plants to the extent feasible. BIO-3 also states that if impacts cannot be avoided, then efforts will be made to limit trimming to the minimum amount necessary, avoiding root disturbance. Per the MND, no mitigation will be required if root disturbance is avoided. If root disturbance cannot be avoided and removal of a CESA/ESA-listed or City Narrow Endemic plant is required, impacts will be mitigated at a 1:1 ratio through transplantation (when feasible) of individuals to suitable habitat areas outside of the maintenance footprint; installation of plantings within suitable habitat in the MHPA; and/or enhancement of suitable habitat outside of the maintenance footprint that supports the species through supplemental seeding.

Although the City's Biology Guidelines have some provisions for transplantation, more generally CDFW does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful; however, there are some species for which translocation has proven successful. Additionally, the BTR states that a species-specific Restoration or Revegetation Plan will be prepared for mitigation which involves relocation, planting, or enhancement of special status plant species, to establish a 1:1 replacement for individuals impacted.

Recommendation #3: CDFW requests to be closely involved and participate in discussions for Restoration or Revegetation Plans addressing covered or otherwise sensitive plant species.

COMMENT #4: Agency Review and Approval for Mitigation Plans

Wetland Habitat Mitigation: MM BIO-1 in the MMRP indicates that impacts to wetland habitats shall be mitigated at ratios provided in Table 2A of the City's Biology Guidelines through one or a combination of: habitat creation; restoration and/or enhancement; or acquisition and preservation of specific land; and that wetland mitigation must be "in-kind" and achieve a "no-net loss" of wetland function and values. Impacts to 1.49 acres of southern riparian forest and 0.08 acre of riparian woodland will be provided at a 3:1 mitigation ratio, totaling 4.71 acres. Impacts to 0.27 acre of southern willow scrub, 1.05 acres of freshwater marsh, 0.02 acre of disturbed wetland, 0.06 acre of non-native riparian, 0.49 acre of unvegetated habitat/lakeshore fringe, and 0.06 acre of non-vegetated channel will be provided at a 2:1 ratio, for an anticipated combined mitigation obligation of 3.90 acres. Mitigation for wetland impacts will include a minimum of 1:1 creation (establishment) or restoration (re-establishment) component to ensure no-net loss of wetlands.

The MND states that if mitigation is to occur through habitat creation, restoration, and/or enhancement, a Wetland Mitigation Plan shall be prepared in accordance with the City's Biological Guidelines, and parameters are discussed.

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Recommendation #4: CDFW requests that the Wetland Mitigation Plan be submitted to the Wildlife Agencies for review and approval prior to implementation, and in support of the City's 1602 Lake and Streambed Alteration Agreement notification.

Upland Habitat Mitigation: MM BIO-2 in the MMRP indicates that impacts to upland habitat will be mitigated at ratios provided in Table 3 of the City's Biology Guidelines through one or a combination of: habitat creation, restoration and/or enhancement; acquisition and preservation of specific land; purchase of mitigation credits at an approved mitigation bank; and/or allocation of available mitigation credits at an existing City Public Utilities Department mitigation site. Impacts to 0.20 acre of Tier I habitat including coast live oak woodland and scrub oak chaparral will be mitigated at a mitigation obligation of 0.20 acre. Impacts to 9.1 acres of Tier II habitat, including Diegan coastal sage scrub and coastal sage-chaparral scrub, will be mitigated at a mitigation obligation of 9.1 acres. Impacts to 3.8 acres of Tier IIIA habitat, including southern mixed chaparral, granitic southern mixed chaparral, granitic northern mixed chaparral, and chamise chaparral, will be mitigated at a mitigation obligation of 2.0 acres. Impacts to 6.8 acres of Tier IIIB habitat, non-native grassland, will be mitigated at a mitigation obligation of 4.7 acres.

The MND indicates that if mitigation is to occur through habitat creation, restoration, and/or enhancement, an Upland Mitigation Plan shall be prepared in accordance with the City's Biology Guidelines.

Recommendation #5: CDFW requests that the Upland Mitigation Plan be submitted to the Wildlife Agencies for review and approval prior to implementation.

COMMENT #5: Lake and Streambed Alteration Agreement: Routine Maintenance

The Biological Technical Report (BTR) and MND indicate that a Section 1602 lake or streambed Alteration Agreement (LSA) will be obtained from CDFW. We look forward to receiving the City's notification for wetland impact activities described in Table 5, including the wetland mitigation plan, prior to grading of wetland areas.

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

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Attachments

A. CDFW Comments and Recommendations

REFERENCES

California Code of Regulations 15000-15387

California Natural Diversity Database (CNDDDB). 2022. RareFind 5 [Internet]. California Department of Fish and Wildlife, Government Version.

City of San Diego, Land Development Code Biology Guidelines, 2018.

City of San Diego, Multiple Species Conservation Program (MSCP), Subarea Plan, 1997.

LexisNexis Matthew Bender. (2021). *California Fish and Game Code*.

Public Resources Code Sections 21000-21177 and State CEQA Guidelines 14

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**Attachment A:
CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations**

Recommendation	Mitigation Measures	Timing	Responsible Party
Rec. 1	CDFW recommends that a draft Environmental Impact Report (EIR) or Programmatic Environmental Impact Report (PEIR) be circulated for public review and comment, rather than rely on an MND for the proposed project.	Before Impacts	City of San Diego
Rec. 2	CDFW recommends that specific avoidance measures for Fully Protected Species be thoroughly discussed in the CEQA document, and incorporated into the MMRP.	Before Impacts	City of San Diego
Rec. 3	CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Additionally, CDFW requests that each Restoration or Revegetation Plan be submitted to the Wildlife Agencies for review and approval prior to implementation.	Before Impacts	City of San Diego
Rec. 4	CDFW requests that the Wetland Mitigation Plan be submitted to the Wildlife Agencies for review and approval prior to implementation, and in support of the City's 1602 Lake and Streambed Alteration Agreement notification.	Before Impacts	City of San Diego
Rec. 5	CDFW requests that the Upland Mitigation Plan be submitted to the Wildlife Agencies for review and approval prior to implementation.	Before Impacts	City of San Diego