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Date: November 9, 2023

To: Wai Lan Lee, PE, Engineer

Governor's Office of Planning & Research

Project: Honby Tanks Pipeline Project

Dec 08 2023

From: Aileen Mahoney

STATE CLEARINGHOUSE

E-mail: wlee@scvwa.org

cc:

Re: Response to California Department of Fish and Wildlife Letter Received on the Draft IS-MND for the Honby Tanks Pipeline Project

The commenter states the California Department of Fish and Wildlife's (CDFW) role as a responsible and trustee agency under California Environmental Quality Act (CEQA). The commenter provides a summary of the project description and location. The commenter states they are offering comments and recommendations to assist SCV Water in avoiding and/or mitigating project impacts on biological resources and recommends their suggested measures be included in the project's Mitigation Monitoring and Reporting Program. The commenter also notes that environmental document filing fees will be required upon filing of the Notice of Determination.

Comment #1: Impacts to Arroyo Toad and Western Spadefoot

Summarized Comment

The commenter suggests significant impacts to special status species could result from inadequate avoidance, minimization, and mitigation measures for special status species. Significant impacts from the project could result from substantial adverse direct, indirect, and cumulative effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status

species by CDFW or United States Fish and Wildlife Service (USFWS). The commenter suggests if the project may result in potential take, consultation occur with CDFW/USFWS in advance of any ground disturbing activities and/or vegetation removal that may impact arroyo toad. The commenter also recommends the inclusion of arroyo toad and western spadefoot focused surveys for the project. The commenter recommends SCV Water meet with CDFW/USFWS to identify measures such as the use of silt fencing to prevent access into the construction area by either arroyo or spadefoot toads. USFWS will need to determine whether formal or informal consultation is necessary regarding arroyo toads. The commenter recommends the presence of a qualified biologist with appropriate handling permits to capture, temporarily possess, and relocate wildlife be retained to avoid harm or mortality in connection with project construction and activities. If any arroyo toad and/or western spadefoot is harmed during relocation, or if a dead or injured animal is found, the commenter recommends work in the immediate area stop immediately, a qualified biologist be notified, and the dead or injured wildlife be documented. The commenter recommends a report be sent to CDFW/USFWS within three calendar days of the incident or finding.

Response

As described in Environmental Checklist Section 4, *Biological Resources*, of the IS-MND, the project's use of open cut trenching to replace the existing line across the Santa Clara River has the potential to directly impact special status species, including arroyo toad and western spadefoot. Field surveys of the project area were conducted on April 30, 2021, and August 10, 2022, and these species were not observed; nevertheless, the project's Biological Resources Assessment (Appendix B of the IS-MND) indicated there is a moderate potential for them to occur.

Implementation of Mitigation Measures BIO-1, BIO-6, BIO-7, and BIO-10 would require worker environmental awareness training, pre-activity surveys for special status wildlife species, construction monitoring, and habitat rehabilitation and revegetation.

Mitigation Measure BIO-6 requires the pre-activity surveys incorporate methods to detect the special status wildlife species that could potentially occur at the site. As described in the measure, special status species would be avoided to the extent feasible; however, if avoidance is not possible, a qualified biologist, operating under a project-specific incidental take authorization would capture and relocate the individual to an appropriate habitat and location on-site where it would not be harmed by project activities. To clarify and address potentially aestivating arroyo toads, Mitigation Measure BIO-6 has been revised to require arroyo toad focused surveys and the preparation of a Species Protection Plan, if warranted. The arroyo toad survey will also address the presence/absence of aestivating western spadefoot toads.

BIO-6 Pre-Activity Survey

Prior to commencement of ground or vegetation disturbing activities at the project site, a qualified biologist should conduct two surveys for special status wildlife species. The first survey should be conducted no more than fourteen (14) days prior to commencement of project activities and the second survey should be conducted no more than three (3) days prior to the commencement of project activities. The pre-activity survey should incorporate methods to detect the special status wildlife species that could potentially occur at the site. In addition, prior to commencement of project activities, a qualified biologist shall be retained to conduct focused surveys according to the USFWS Survey Protocol for the Arroyo Toad (USFWS 1999).

~~To the extent feasible, special status species should be avoided. If avoidance is not feasible, the species should be captured and transferred to an appropriate habitat and location on-site where it would not be harmed by project activities.~~

If special status species are observed within the project site during pre-activity surveys, a qualified biologist shall draft a "Species Protection Plan" prior to the initiation of construction. At a minimum, the plan shall include avoidance and minimization measures for each observed species. These measures may include, but are not limited to:

- Species-specific Worker Environmental Awareness Program materials;
- Relocation methods including planned relocation areas for the protection of special status species; and,
- Reporting requirements.

~~The biologist should hold the requisite permits for the capture and handling of the species, if applicable. Prior to commencement of the proposed activity, the methods and results of the surveys and, if a special status species is found, the measures to be employed to avoid impacts to the species should be presented in a letter report to SCV Water.~~

CDFW suggested the project may result in the loss of arroyo toad and western spadefoot foraging, burrows, or breeding habitat. Mitigation Measure BIO-10 requires the development of a Habitat Revegetation, Restoration, and Monitoring Program for implementation in all native habitat areas directly affected by construction activities. The Program would detail plans and specifications for replanting areas disturbed by the project with native species propagated from locally collected seed or cuttings, and, if applicable, seed of sensitive species that would be impacted during construction activities.

CDFW also noted the need to coordinate with CDFW/USFWS ahead of project activities. California Fish and Game Code section 1602 states that it is unlawful for any person to "substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake" without first notifying CDFW of that activity. As outlined in Initial Study Section 8, *Other Public Agencies Whose Approval is Required*, of the IS-MND, the project is anticipated to require a Lake and Streambed Alteration Agreement (SAA) from CDFW, a Water Quality Certification under Clean Water Act Section 401 from the Los Angeles RWQCB, and verification from the United States Army Corps of Engineers (USACE) under Nationwide Permit 58. SCV Water will solicit input related to Best Management Practices (BMPs) during the permitting process.

CDFW also recommends a qualified biologist with appropriate handling permits capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with project construction activities. Mitigation Measure BIO-7 requires a qualified biologist, which implies the biologist will have the appropriate handling permits or authorization to capture special status species. Nevertheless, in response to this comment and to provide additional clarity, Mitigation Measure BIO-7 has been revised as follows:

BIO-7 Qualified Biological Monitor

A qualified biological monitor familiar with special status species with potential to occur in the project site will be present during initial ground disturbance or vegetation removal activities. The biological monitor should have the authority to temporarily stop work if one

or more special status amphibian, reptile, or mammals are observed; the monitor will then relocate these individuals to suitable undisturbed habitat, outside the areas directly and indirectly affected by ground disturbance activities. The biologist shall hold the requisite incidental take permits or authorizations for the capture and handling of the species, if applicable. ~~Relocation of a federally or state-listed species may require incidental take authorization from CDFW and/or USFWS.~~

The monitor will recommend measures to ensure compliance with all avoidance and minimization measures, applicable permit conditions, and any conditions required by SCV Water. When the biological monitor is present on site, they will be responsible for:

- Ensuring procedures for verifying compliance with environmental mitigation are followed;
- Lines of communication and reporting methods;
- Daily and weekly reporting of compliance;
- Construction crew WEAP training;
- Authority to stop work; and
- Action to be taken in the event of non-compliance.

Finally, CDFW requests if any arroyo toad and/or western spadefoot are harmed during relocation, or a dead or injured animal is found, work in the immediate area stop immediately, the qualified biologist be notified, the dead or injured wildlife be documented, and a report be filed. This comment was addressed under Mitigation Measure BIO-1, which states the following:

“While encounters with special status species are not anticipated, any worker who inadvertently injures or kills a special status species or finds one dead, injured, or entrapped shall immediately report the incident to the construction foreman or biological monitor. The construction foreman or biological monitor should immediately notify SCV Water. SCV Water should follow up with written notification to USFWS and/or CDFW within five working days of the incident. All observations of federally listed species should be recorded on CNDDDB field sheets and sent to CDFW by SCV Water or the biological monitor.”

With implementation of Mitigation Measures BIO-1, BIO-6, BIO-7, and BIO-10, the project’s potential direct, indirect, and cumulative impacts to arroyo toad and western spadefoot and their potential foraging and estivation habitat in the upland areas are addressed.

Comment #2: Impacts on Special Status Plant Species

Summarized Comment

The commenter suggests Mitigation Measure BIO-4, as currently written, would not provide sufficient mitigation for loss of special status plants. The commenter disagrees a 1:1 ratio is sufficient mitigation to offset the loss of special status plants.

Response

Environmental Checklist Section 4, *Biological Resources*, of the Draft IS-MND states Catalina mariposa lily, Plummer’s mariposa lily, and slender mariposa lily were not observed within the project site during reconnaissance surveys. Both Plummer’s and Catalina mariposa lilies have a moderate potential to occur

whereas slender mariposa lily has a high potential to occur. The analysis acknowledges the proposed open cut trenching construction method could remove, damage or disturb individuals of these species if present. As stated in the Draft IS-MND, impacts to these species would be potentially significant, but mitigable through implementation of BMPs, a worker education program, pre-project botanical surveys, avoidance measures, and compensatory mitigation requirements (if applicable) as prescribed under Mitigation Measures BIO-1 through BIO-5.

CDFW provided recommendations to revise Mitigation Measure BIO-4 to increase the minimum offset restoration ratio for on-site compensation from 1:1 to 2:1 and off-site preservation from 1:1 to 3:1. As outlined in Mitigation Measure BIO-4, on-site compensation for direct impacts to mariposa lily would include a combination of bulb and seed salvage. On-site compensation would include the salvage and translocation of bulbs and seed from within the disturbance area to an appropriate receptor site within the study area where they can be preserved. A compensation ratio of 1:1 was previously accepted by the CDFW for the Vista Canyon Project located upstream of the proposed project. Because there would be no net loss of bulbs and the area would be restored to a pre-project condition, a 1:1 ratio as currently proposed is reasonable and consistent with other projects along the Santa Clara River (e.g., Vista Canyon Project). Off-site preservation does not include direct replacement of bulbs; therefore, a ratio of 2:1 is reasonable, especially given the lack of observance of non-flowering lilies and the relatively low sensitivity of the species. As such, in response to this comment, Mitigation Measure BIO-4 has been revised as follows:

BIO-4 Special Status Plant Avoidance Measures

If special status plants are detected during special status plant surveys, avoidance of the special status plants shall occur where feasible and vegetation clearing within 50 feet of any identified rare plant will be conducted by hand, if practicable. Any rare plant ~~occurrences~~ occurrence shall have bright orange protective fencing installed at least 50 feet beyond ~~their~~ its extent, or other distance as approved by a qualified biologist, to protect ~~them~~ it from harm.

If avoidance is not feasible, SCV Water shall offset the proposed loss of individual plants at a minimum 1:1 ratio by on-site restoration (salvage, replanting, and propagation). The open scrub and grassland habitats in the Survey Area would be a suitable location for on-site restoration.

Compensation for impacts to these species may also be accomplished by preservation of an on-site populations or off-site populations in the vicinity of the site at a minimum of a ~~1:1~~ 2:1 ratio if present.

Comment #3: Impacts on Nesting Birds and Raptors

Summarized Comment

The commenter recommends SCV Water revise Mitigation Measure BIO-9 by increasing the survey buffer from 25 to 50 feet for passerines to 100 feet and from 300 feet to 500 feet for raptors.

Response

As described in the project's Biological Resources Assessment (Appendix B of the IS-MND), the Survey Area contains habitat that can support nesting birds, including raptors, protected under California Fish and Game Code (CFG) § 3503 and the federal Migratory Bird Treaty Act (MBTA) (16 United States Code §§ 703–712). Potential nesting locations for raptors were limited with the most suitable locations being

native and mature trees located within and outside of the Survey Area. No nests or birds exhibiting nesting behaviors were observed during the field survey.

The project has potential to result in direct and indirect impacts to nesting birds, including Species of Special Concern such as southern California rufous-crowned sparrow, Bell's sage sparrow, and Cooper's hawk, and species protected under the MBTA and CFGC 3503, if they are nesting within the project site and/or immediate vicinity during construction activities. Mitigation Measure BIO-9 states that if project-related activities occur during the breeding bird season, then no more than three days prior to initiation of ground disturbance and/or vegetation removal, a nesting bird pre-construction survey would be conducted and if nests are found, their locations shall be flagged and an appropriate avoidance buffer be determined and demarcated. CDFW recommends SCV Water revise Mitigation Measure BIO-9 by increasing the nest buffer for passerines to 100 feet and to 500 feet for raptors. Based on the proposed project's narrow footprint, construction methodology, and similar measures implemented for other SCV Water projects in the area, the proposed nest buffers are sufficient to avoid or minimize direct and indirect impacts to nesting birds by project construction. No modification to the IS-MND is required.

References

[USFWS] United States Fish and Wildlife Service. 1999. Survey Protocol for the Arroyo Toad. Available at: <https://www.fws.gov/sites/default/files/documents/surveyprotocol-for-arroyo-toad.pdf>.