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December 15, 2023

Mr. David McNair
Scotts Valley Water District
2 Civic Center Drive
Scotts Valley, CA 95066
DMcnair@svwd.org

Subject: Grace Way Well Project, Mitigated Negative Declaration, SCH No. 2023110536, City of Scotts Valley, Santa Cruz County

Dear Mr. McNair:

The California Department of Fish and Wildlife (CDFW) has received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the Scotts Valley Water District (District) for the Grace Way Well Project (Project), located in Santa Cruz County, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW submits these comments on the IS/MND to inform the District, as the CEQA Lead Agency, of potentially significant impacts to biological resources associated with the Project.

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 these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and

[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.

Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). If the Project will impact CESA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any such Project modifications and mitigation measures must be incorporated into the IS/MND's analysis, discussion, and mitigation monitoring and reporting program.

CEQA requires a mandatory finding of significance if a Project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes, streams, rivers, or associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements**.** Therefore, any impact to the mainstems, tributaries, or

floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final IS/MND and complied with its responsibilities as a responsible agency under CEQA.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: Scotts Valley Water District

Objective: The Project consists of the construction and operation of a new groundwater extraction well on Scotts Valley Water District-owned property in the City of Scotts Valley. The well would extract groundwater from the Lompico and Butano aquifers of the Santa Margarita Groundwater Basin (SMGB). The District relies solely on groundwater extraction to supply water through their service area. The Project would allow for increased extraction and redundancy as older wells are taken out of service in order to meet potential demand. The well would have a design capacity of 600 gallons per minute and could be operated for short intervals or continuously. The Project includes construction of a new groundwater well, a concrete block for pump controls, utility connections, and other site improvements. The Project would demolish the existing buildings on the site but keep the asphalt parking lot.

Timeframe: Construction of the Project is expected to begin in spring 2024 and would continue for approximately 10 months. Construction is expected to occur in two phases, the first would begin with mobilization and site preparation, demolition of the existing buildings and well drilling. The second phase includes construction of the aboveground facilities. Well drilling would require a continuous 24 hour per day, 7 day per week schedule over a total of 36 days.

ENVIRONMENTAL SETTING AND LOCATION

The Project is located at 5297 Scotts Valley Drive, in the City of Scotts Valley, on an approximately 0.33-acre parcel (APN 022-031-13). The site is surrounded by service commercial land uses to the northeast and southwest and rural residential and high-density residential to the northwest. The southwestern half of the Project is developed

with a 2,000-square-foot commercial building, a smaller ancillary building, a parking lot and driveway. The northwestern half of the Project site is undeveloped and consists of ruderal grassland vegetation. Large coast live oak (*Quercus agrifolia*) trees and redwood forest is present to the north and west. There are no trees on the Project site and there will be no tree removals associated with the Project. Carbonera Creek is located southeast of the Project site, across Scotts Valley Drive. No riparian habitat is present on the property.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

COMMENT 1: Groundwater Extraction Evaluation and Environmental Beneficial Use Protection

Issue: The Project has potential to significantly negatively impact groundwater elevation and groundwater dependent ecosystems (GDE) associated with the SMGB. The Project relies on minimum threshold groundwater elevations identified in the SMGA Groundwater Sustainability Plan (GSP) that CDFW does not consider protective of fish and wildlife resources (as previously commented on in CDFW's March 2022 comment letter on the GSP).

In addition, the connection between groundwater pumping and interconnected surface water flows is not largely understood throughout the Santa Margarita basin. Most analysis is based on models and not actual data.

Evidence the impact would be significant: Section 2.2.4.4.2 of the Santa Margarita Groundwater Agency's GSP describes the Lompico Aquifer stating, "The restricted exposure of the Lompico Sandstone at the surface, at the northern and northeast margin of the Basin, limits the amount of surficial recharge by precipitation…. The limited exposure of the Lompico Sandstone at the surface and the confined to semi-confined nature of the aquifer makes it relatively slow to respond to rainfall-driven recharge events. The Lompico aquifer discharges to the San Lorenzo River at several locations where it is exposed in the riverbed, see cross section B-B' (Figure 2-20)" (Santa Margarita Groundwater Agency, 2021, pg. 84). Sufficient surface flows are necessary to conserve the ecosystem upon which listed and special-status species within the San Lorenzo River watershed depend.

The Public Trust Doctrine imposes an obligation to consider how groundwater management and projects affect 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). Groundwater managers have "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, groundwater managers should consider potential impacts to and appropriate protections for interconnected surface waters (ISW) and their tributaries, and ISWs that support fisheries, including the level of groundwater contribution to those waters.

Recommendation: The Project MND should provide a more robust analysis of potential impacts to surface flow in the San Lorenzo River and other surface waters particularly during low flow periods. The analysis should disclose any changes to hydrology over time across multiple water year types and consider all life stages of coho salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss*) and other aquatic species potentially present within affected surface waters. Specifically, the Lompico aquifer's limited recharge capability as well as the Project's potential to impact to the aquifer's discharge contribution into the San Lorenzo River should be considered and evaluated as part of the environmental review for this Project. An operational plan that clearly articulates the triggers for a redistribution of pumping should be developed for this Project. These triggers for redistribution of pumping should go into effect prior to the monitoring wells indicating that levels have hit minimum thresholds and instead should be implemented when a trend indicating levels are approaching minimum thresholds is occurring.

CDFW suggests the District consider implementing groundwater recharge projects that facilitate floodplain inundation. These projects offer multiple benefits including downstream flood attenuation, groundwater recharge, and ecosystem restoration. Managed floodplain inundation can recharge floodplain aquifers, which in turn slowly release stored water back to the stream during summer months. These projects also reconnect the stream channel with floodplain habitat, which can benefit juvenile salmonids by creating off-channel habitat characterized by slow water velocities, ample cover in the form of submerged vegetation, and high food availability.

CDFW strongly encourages proceeding with an environmentally conservative and protective interim approach when developing groundwater extraction projects. The District should carefully consider and protect environmental beneficial uses and users of groundwater, including fish and wildlife and their habitats, GDEs, and ISWs.

COMMENT 2: Temporary Construction Lighting during Night Work

Issue: The IS/MND states that continuous drilling for 24 hours per day, 7 days a week for up to 36 days may be required to complete the Project. While the IS/MND states that

a temporary barrier would be installed to reduce light and noise from the Project site, the Project has potential to increase impacts to light sensitive species in the area.

Occurrences: The IS/MND states that there is low potential for pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), Santa Cruz black salamander (*Aneides niger*), and California giant salamander (*Dicamptodon ensatus*) to occur on the Project site. CDFW designates these species as California Species of Special Concern (SSC). A purpose of the SSC designation is to promote increased protections before the species require listing under CESA.

Evidence the impact would be significant: Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Amphibians such as frogs and salamanders are particularly susceptible to artificial light pollution. Light pollution may affect physiology, behavior, ecology, and evolution of frog and salamander populations (Wise, 2007). For example, artificial light levels and timing influences melatonin production in salamanders. Melatonin regulates hormones, reproductive development and behavior, skin coloration, an animal's ability to regulate body temperature, and night vision (Gern, 1986). Due to the potential for migratory birds, songbirds, amphibians and mammals, including nocturnally active special-status species, to occur within the Project limits, CDFW recommends additional measures for permanent and temporary lighting are included in the IS/MND to avoid potentially significant impacts.

Recommendation: CDFW recommends eliminating all non-essential artificial lighting. If artificial lighting is necessary, CDFW recommends avoiding or limiting the use of artificial lights during the hours of dawn and dusk, when many wildlife species are most active. CDFW also recommends that outdoor lighting be shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at http://darksky.org/).

Recommended Mitigation Measure 1: All temporary Project lighting associated with construction staging areas, access routes, and construction sites in and near undeveloped lands shall be shut down upon completion of work each day. Temporary Project lighting shall be cast downward and shall not be directed into natural areas outside of the Project area to prevent additional light pollution and disruption to nocturnal wildlife activity. Baffles and shielding devices shall be installed on all temporary lighting systems within the Project limits. Where safely possible, lights shall

be low to the ground and use longer wavelengths with minimal ultraviolet to blue light wavelengths. Where white lighting is required, neutral to warmer color temperatures with an output temperature of 2,700 kelvin or less shall be used.

COMMENT 3: Nesting Bird Surveys and Protection

Issue: The IS/MND proposes to implement mitigation measure MM BIO-1: Pre-Activity Surveys for Nesting Birds to mitigate for impacts to nesting birds. The measure does not define the nesting bird season, provide a large enough survey radius for raptor species, or state that baseline data will be collected if active nests are discovered.

Recommended Mitigation Measure 2 – Nesting Bird Surveys. If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day and during appropriate nesting times.

Recommended Mitigation Measure 3 – Active Nest Protections. If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, a species appropriate buffer between the nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist shall have the authority to cease all construction work in the area until the young have fledged, and the nest is no longer active.

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 CNDDB. The CNDDB online field

survey form and other methods for submitting data can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plantsand-Animals.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CONCLUSION

Thank you for the opportunity to comment on the Project's IS/MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or Serena.Stumpf@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023110536)
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