



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 17, 2020

Governor's Office of Planning & Research

JAN 17 2020

STATE CLEARINGHOUSE

Karin Cleary-Rose
United States Fish and Wildlife Service
Palm Springs Fish and Wildlife Service Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262

Proposed Habitat Conservation Plan and Section 10 Permit for the Upper Santa Ana River Wash Plan (Project) SCH# 2015031022

Dear Ms. Cleary-Rose,

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Statement/Supplemental Environmental Impact Report from United States Fish and Wildlife Service (USFWS) and San Bernardino Valley Water Conservation District (Conservation District) for the Project pursuant 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

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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The USFWS is proposing to issue incidental take permits for 30 years consistent with the Upper Santa Ana River Wash Plan Habitat Conservation Plan (HCP) for the following species: federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*, SBKR), Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*, woolly-star), slender-horned spineflower (*Dodecahema leptoceras*, spineflower); federally threatened coastal California gnatcatcher (*Polioptila californica californica*); and cactus wren (*Campylorhynchus brunneicapillus*).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist the USFWS and the Conservation District in adequately identifying and mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

California Endangered Species Act (CESA)

The Upper Santa Ana River Wash Habitat Conservation Plan (HCP) is a federal document that will support the USFWS's issuance of take coverage for federally listed threatened or endangered species. The HCP does not provide authorization for the take of CESA listed threatened or endangered species. There are several State of California listed endangered species known to occupy areas within the HCP boundaries, including Santa Ana River woollystar (*Eriastrum densifolium*) and slender horned spineflower (*Dodecahema leptoceras*). Additionally, a petition (Petition) was submitted to the Fish and Game Commission (Commission) to list San Bernardino kangaroo rat (*Dipodomys merriami parvus*) (SBKR) as endangered pursuant to the CESA, Fish and Game Code Section 2050 et seq. On August 7, 2019, the Commission accepted the Petition for consideration and SBKR was designated as a candidate species. On August 23, 2019, publication of the Commission's acceptance of the Petition for consideration and designation of the SBKR as a candidate species was posted; therefore, take of SBKR will be prohibited unless authorization pursuant to CESA is obtained.

The Conservation District has not applied for an Incidental Take Permit (ITP) for covered activities listed under the HCP and does not have authorization to "take" CESA-listed species. CESA authorizes CDFW to issue ITPs only when the impacts of the authorized take associated with the activity will be minimized and fully mitigated, and

when the project permittee has ensured adequate funding to carry out all mitigation, compliance, and effectiveness monitoring. Additionally, CDFW is prohibited from issuing an ITP if in doing so, the activities would jeopardize the continued existence of the species. Documentation for an ITP application and required measures in an ITP may differ from federal documentation and authorizations. CDFW encourages the Conservation District to apply for an ITP to ensure coverage and compliance with the CESA.

Slender-horned Spineflower

Page 4.4-10 discusses the contingency parcel, "an island of habitat (for slender-horned spineflower) surrounded by existing and future aggregate mining operations." The footnote at the bottom of page 4.4-10 states "The contingency parcel, while initially conserved, could be mined in the future contingent upon the successful establishment of spineflower elsewhere in the HCP Preserve." Though CDFW appreciates the Conservation District's attempts to preserve the spineflower population while, and until, new populations of spineflower can be established, the Conservation District should consider the isolation of the population on the "island of habitat" as an impact, itself. Were attempts to establish new populations of spineflower unsuccessful, the isolation of the existing population could be detrimental to the continued existence of the species, and should therefore be considered an impact, and mitigated appropriately.

Additional Comments

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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 Draft Environmental Impact Statement/Supplemental Environmental Impact Report to assist United States Fish and Wildlife Service and San Bernardino Valley Water Conservation District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brandy Wood, Environmental Scientist at 909-483-6319 or Brandy.Wood@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Daniel Cozad, General Manager, San Bernardino Valley Water Conservation District

ec: HCPB CEQA Coordinator