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CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
South Coast Region
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In Reply Refer To:
FWS/CDFW-FWS-OR-13B0091-19CPA0129

Governor's Office of Planning & Research

MAR 11 2019

March 11, 2019
Sent by Email

Jo Ann Corey
Environmental Compliance Specialist
Irvine Ranch Water District - Water Resources and Policy Department
15600 Sand Canyon Avenue
Irvine, California 92618

STATE CLEARINGHOUSE

Subject: Comments on the Notice of Intent to adopt a Mitigated Negative Declaration for the Syphon Reservoir Geotechnical Investigations Project (SCH#2019029041)

Dear Ms. Corey:

The U.S Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the above-referenced Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) for the Syphon Reservoir Geotechnical Investigations Project (Project; SCH#2019029041) dated February 2019. The Wildlife Agencies have identified potential effects of this project on wildlife and sensitive habitats. The Project details provided herein are based on the information provided in the NOI and associated documents.

The primary concern and mandate of the Service is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including habitat conservation plans (HCPs) developed under section 10(a)(1)(B) of the Act. The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§ 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The Irvine Ranch Water District (IRWD) is a Participating Landowner under the County of Orange Central and Coastal Subregion NCCP/HCP (NCCP/HCP; Plan). As a Participating Landowner, IRWD is permitted take of covered species under the NCCP/HCP provided that the activity is consistent with the Plan.

The proposed Project would include geotechnical investigations that are intended to provide details about the geologic and geotechnical baseline conditions at Syphon Reservoir. Syphon Reservoir is an existing recycled water storage reservoir located in the County of Orange (County), and the majority of the proposed Project would occur in the habitat Reserve System (Reserve) established by the

NCCP/HCP. This work is necessary in order to inform the design of a potential future Reservoir Improvement Project, which would include enlargement of the Syphon Reservoir to help IRWD meet recycled water seasonal demands. The current Project would use a combination of exploratory test pits, borings, and geophysical surveys to characterize the subsurface conditions of the soil at each exploration location. Test work at the majority of borings, sample pits, and seismic trenches would be completed within 1 working day and open holes and trenches would be filled on the same day. A few of the longer seismic trenches may be required to remain open for more than 1 day, in which case plywood or metal plates would be used to cover the open trench. Access to the test locations would be through existing access roads as feasible or through temporary access roads that are created by either driving over existing vegetation (drive and crush method) or by grading a 12-foot wide path using a bulldozer. The Project is scheduled to begin in fall 2019 and is expected to take up to 7 months to complete.

Habitat impacts associated with the Project would include 6.42 acres of temporary impacts to natural communities, including 4.05 acres of temporary impacts to sensitive natural communities (0.02 acre of black willow thicket, 2.02 acres of California sagebrush scrub, and 2.01 acres of nonnative herbaceous cover/California sagebrush scrub). Temporary impacts to sensitive natural communities are expected to recover via natural recruitment or through the implementation of a revegetation plan that includes performance standards, success criteria, maintenance, and future monitoring. Special-status plant species observed within the Project area during 2018 focused surveys include Catalina mariposa lily (*Calochortus catalinae*) and San Diego County viguiera (*Bahiopsis laciniata*). Special-status wildlife species observed within the study area include the federally threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher), the federally and state endangered least Bell's vireo (*Vireo bellii pusillus*), and yellow warbler (*Setophaga petechia*), a state species of special concern. An additional 10 special-status wildlife species have the potential to occur or have been previously detected within the study area but were not detected during 2018 surveys.

We offer the following comments and recommendations regarding Project-related biological impacts based on our review of the draft MND, associated appendices, and on-going discussions with IRWD during Project development to ensure the Project is consistent with ongoing regional habitat planning efforts:

1. A large portion the current Project and future Reservoir Improvement Project overlap with habitat that was previously restored as mitigation for impacts associated with the development of the Eastern Transportation Corridor and is subject to the use restrictions identified in Section 4.2 of the Grant Deed that was recorded January 4, 2010 (IRWD Doc. D0204). It is our understanding that the current Project as well as the future Reservoir Improvement Project are not currently approved activities under the Grant Deed, and it is unclear in the MND if IRWD has addressed this issue. Prior to any activity associated with the current Project or future project occurring, IRWD should demonstrate that it has received the necessary approvals from applicable government agencies in accordance with 4.2(c) of the Grant Deed. The remaining comments provided herein apply if the necessary approvals for the current Project and future Reservoir Improvement Project are received.
2. The MND suggests that the impacts from the current Project and future Reservoir Improvement Project are already mitigated through IRWD's participation in the NCCP/HCP. However,

while the future Reservoir Improvement Project is a permitted use in the Reserve, IRWD did not seek specific take authorization for this project at the time of NCCP/HCP completion because no decision had been made to build a new storage reservoir. Instead, it was anticipated that "at the time such a facility [was] needed, IRWD [would] review the plans with appropriate agencies and propose a specific mitigation plan or pay fees adequate to mitigate the incidental take associated with the reservoir" (NCCP/HCP page II-361). Therefore, take of covered species, including gnatcatcher and least Bell's vireo, is not authorized until a mitigation plan is developed in coordination with the Wildlife Agencies.

Through early coordination meetings, the Wildlife Agencies and IRWD have agreed that it is appropriate to delay implementation of such a mitigation plan for impacts associated with the current geotechnical investigations, if the impact area overlaps with the potential future Reservoir Improvement Project. We recommend the language in the MND regarding impacts to special-status species be updated to reflect this and clearly state that impacts will be mitigated in accordance with a mitigation plan developed for the future Reservoir Improvement Project or, in the event the future project does not move forward, in accordance with a mitigation plan developed for the current Project. The mitigation plan for the current Project should be finalized prior to impacts occurring and implemented within 1 year of Project completion if the future project does not move forward. As described in the mitigation measures, the mitigation plan could involve a combination of use of IRWD's incidental take credits for impacts to coastal sage scrub habitat and/or on-/off-site land acquisition preservation, creation, restoration, and/or enhancement containing natural communities suitable for special-status species or comparable activities, as determined acceptable by the Wildlife Agencies. This would enable the Wildlife Agencies to provide the necessary take authorizations to allow the proposed Project to move forward under the NCCP/HCP.

3. Any mitigation plan(s) described above for both the future and current Project would need to account for the past restoration efforts and adequately replace the lost habitat that was protected by the Grant Deed. For permanent impacts, the Wildlife Agencies typically recommend mitigating for any current project impacts, in addition to past project impacts through increased ratios or protection of habitat that is of higher quality and value to the Reserve. For temporary impacts, the Wildlife Agencies recommend that areas should be restored immediately following project completion and additional mitigation should be provided for the temporal loss of habitat that was otherwise expected to provide benefits to previously impacted species. Currently, the Grant Deed is only briefly mentioned in the Biological Resources Technical Report (Appendix BIO), and there is no reference of the Grant Deed in the MND or additional mitigation to account for the proposed impacts to these areas. We recommend including a discussion of the Grant Deed in the MND. This discussion should include a figure that clearly depicts where the current Project overlaps with the habitat protected by the Grant Deed. For areas that fall outside of the future Reservoir Improvement Project footprint but within the Grant Deed, a mitigation plan that accounts for the temporal loss of covered species habitat should be developed and implemented immediately following Project impacts. The mitigation plan could include a combination of revegetation of temporary impacts and additional restoration or conservation of habitat to benefit impacted species and should be developed in coordination with the Wildlife Agencies. For habitat impacts within the footprint of the future Reservoir Improvement Project, we agree that implementation of

such a mitigation plan may be delayed until it is determined if the future Reservoir Improvement Project will move forward as described in Comment 2 above. However, the mitigation plan should be finalized and approved by the Wildlife Agencies prior to impacts occurring. In the interim, we would expect these areas to be allowed to naturally recover as described in BIO-1, BIO-3, BIO-4, and BIO-5.

4. Part of the Project will include the temporary draining of the reservoir to allow the soil to dry prior to boring and excavation activities. Although draining of the reservoir currently occurs as part of the ongoing operations of the reservoir, it is unclear if the draining associated with the current Project would be of the same scope (i.e., timing and duration) as the draining associated with ongoing operations. Draining the reservoir during the avian breeding season (February 15 to August 31) has the potential to disturb nesting patterns for least Bell's vireo and other sensitive avian species that are present within the Project footprint. We recommend any draining to be done outside the nesting season and for the MND to be updated to clarify the timing and extent of the draining activity and whether it is consistent with current practices. In addition, excavation and boring activities that must occur within those portions of the reservoir that become inundated during the wet season should be prioritized and targeted for completion during the fall dry season to allow the regular hydrological conditions to return as quickly as possible and to limit the amount of time the riparian habitat could be impacted.
5. Mitigation measures BIO-1, BIO-3, BIO-4, and BIO-5 propose to allow areas that were temporarily impacted during Project implementation to passively recover following its conclusion and to be monitored for a 3-year period, or until a qualified biologist determines that the impact site has returned to pre-Project conditions. For areas that do not reestablish naturally following Project completion, a revegetation plan would be prepared to re-seed/re-plant the area with local species, and would include performance standards, success criteria, maintenance, and future monitoring. Although this approach may be appropriate for access roads impacted by the drive and crush method, it is unlikely to be appropriate for areas that were graded or excavated due to the level of soil disturbance associated with these activities. We recommend the Project proponent anticipate needing to actively revegetate graded and excavated areas following Project completion and including a revegetation component in the mitigation plan that is developed as described above. For those areas that lie outside of the footprint of the future Reservoir Improvement Project, implementation of the Wildlife Agency approved mitigation plan should begin immediately following Project completion.
6. The MND indicates that the majority of boring and sample pit sites will be filled on the same day, as will the shorter seismic trenches. However, a few of the longer seismic trenches may remain open for a few days and would be required to be covered with plywood or metal plates to secure the trench at the end of each work day. In addition to the plywood or metal plate, we recommend covering the trench with a layer of plastic and lining the edges with sandbags to prevent small mammals and/or herpetofauna from entering the trench during off hours. The plywood or metal plates should then be placed on top of the plastic. We also recommend that the monitoring biologist referenced in mitigation measure BIO-6 be experienced in small mammal/herpetofauna trapping and be present on-site during the work day while the trenches are open in order to effectively trap and remove any species that fall into the trench.

7. The Project is expected to temporarily impact a total of 6.42 acres of habitat, including 4.05 acres that are classified as sensitive natural communities. The MND lists black willow thicket, California sagebrush scrub, and nonnative herbaceous cover/California sagebrush scrub as sensitive natural communities that occur on-site. However, it fails to include freshwater marsh habitat as a sensitive natural community. The California Native Plant Society's Manual of California Vegetation ranks the *Schoenoplectus (acutus, californicus)* Herbaceous Alliance as S3, which is considered a sensitive natural community. Given that the MND utilized the same classification manual for identifying sensitive natural communities, it is unclear if the community was simply misidentified as non-sensitive, or if there is additional reasoning to not include it as a sensitive natural community. We recommended either providing more information as to why freshwater marsh was not considered a sensitive natural community or to update the MND to include it as such. This would also entail updating any acreages of impacted habitats.

We appreciate IRWD's early coordination on this Project and the opportunity to comment on this MND. We are confident that through continued coordination between IRWD and the Wildlife Agencies, we can ensure the protection necessary for the biological resources that would be affected by this Project. If you have questions or comments regarding this letter, please contact Colleen Draguesku of the Service at (760) 431-9440 extension 241, or Kyle Rice of the Department at (858) 467-4250.

Sincerely,

**JONATHAN
SNYDER**

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for Karen A. Goebel
Assistant Field Supervisor
U.S. Fish and Wildlife Service



Gail K. Sevens
Environmental Program Manager
California Department of Fish and Wildlife

cc:
State Clearinghouse