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Governor's Office of Planning & Research

APR 05 2019

STATE CLEARINGHOUSE

April 5, 2019

Mr. Todd Dmytryshyn
Moulton Niguel Water District
26161 Gordon Road
Laguna Hills, CA 92653
TDmytryshyn@mnwd.com

Subject: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Regional Lift Station Force Main Replacement Project, Laguna Niguel, CA (SCH# 2019039032)

Dear Mr. Dmytryshyn:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Regional Lift Station Force Main Replacement Project Mitigated Negative Declaration (MND), dated March 2019. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA], Guidelines §15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of 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 program. The Department is providing comments by April 5, 2019 pursuant to the City's Notice of Intent to Adopt a Mitigated Negative Declaration for the Regional Lift Station Force Main Replacement Project¹.

The MND describes the replacement of 8,500 linear feet of dual sewage force mains in a new alignment, between the Regional Lift Station (operated by the Moulton Niguel Water District; MNWD) and the Joint Regional Treatment Plant (operated by the South Orange County Wastewater Authority), in the City of Laguna Niguel. The new alignment will first follow the main access road for Laguna Niguel Regional Park, then follow the access road on the east side of the Sulphur Creek Reservoir. A combination of open trenching and trenchless installation will be employed over approximately 550 calendar days. In order to accommodate trenching and equipment, tree trimming and/or removal is anticipated. Restoration of impacted areas to pre-project conditions is discussed in the MND.

Habitats within the 54.99-acre linear project area are described as a mosaic of coast live oak woodland (0.20 acre), mulefat thicket (0.59 acre), freshwater marsh (1.26

¹ https://www.mnwd.com/app/uploads/2019/03/TTI-07_NOI_final.pdf

acres), coyote brush scrub (2.35 acres), arroyo willow thicket (3.12 acres), eucalyptus groves (6.53 acres), non-native herbaceous cover (6.71 acres), open water/developed/disturbed areas (16.51 acres), and ornamental/parkland (17.72 acres). Two occurrences of San Diego marsh elder (*Iva hayesiana*; California Rare Plant Rank 2b.2) were observed during rare plant surveys. Least Bell's vireo (*Vireo bellii pusillus*; CESA- and Endangered Species Act-listed endangered) and yellow warbler (*Setophaga petechia*; SSC) were observed on site. Pre-construction surveys for burrowing owl (*Athene cunicularia*; SCC), western pond turtle (*Actinemys marmorata*; SCC), and two-striped garter snake (*Thamnophis hammondi*; SCC) are proposed.

Our primary concerns regarding the proposed project are potential impacts to observed sensitive species. We offer the following comments and recommendations to assist the MNWD in avoiding or minimizing potential project impacts on CESA-listed and sensitive biological resources.

1. Because of the project's potential to result in take (Fish and G. Code § 86) of tricolor blackbird (*Agelaius tricolor*; CESA-listed threatened), the Department does not concur that mitigation measure BIO-3, which allows for work to take place within 300 feet of an active tricolor blackbird nest under certain conditions, brings potential impacts to this species below a significant level. The Department has similar concerns with regard to mitigation measure BIO-5, which allows for work to take place within 500 feet of an active least Bell's vireo nest. This is of particular concern given the detection of least Bell's vireo during focused surveys within the project area. Focused biological surveys detected least Bell's vireo within the project survey limits and tricolor blackbird are known to be present within the project area. Therefore, it is inappropriate to condition the full application of BIO-3 and/or BIO-5 on subsequent presence/absence surveys. Furthermore, the presence/absence surveys proposed to be utilized for either least Bell's vireo or tricolor blackbird do not follow established or recommended survey protocols² thereby artificially reducing the re-detection probability of either species. The Department would not consider the results of these surveys to be conclusive or a valid indication of the absence of either species.

As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085); therefore, we recommend that mitigation measures BIO-3 and BIO-5 be amended such that no work will occur within 500 feet of an active tricolor blackbird or least Bell's vireo nest.

The MND should analyze project alternatives that completely or significantly reduce

² See <http://www.fws.gov/pacific/ecoservices/endangered/recovery/documents/LBVireo.2001.protocol.pdf> for least Bell's vireo surveys and <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline> for tricolor blackbird survey guidelines.

impacts to CESA-listed species. If project needs are such that work within a delineated buffer of an active tricolor blackbird or least Bell's vireo nest cannot be avoided, the Department recommends that an incidental take permit pursuant to CESA be sought. Appropriate authorization from the Department may include an incidental take permit or a consistency determination (in certain circumstances) among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b),(c)). The Department further recommends that the final MND analyze the project's effect on each CESA-listed species with regard to their locations relative to the project, timing of construction, and impacts to habitat necessary for nesting, foraging, and breeding territories. The MND should also include a specific and detailed analysis of the project's potential to indirectly impact each species, including but not limited to: type of equipment, visual and aural disruptions, and the potential to introduce invasive plant and animal species.

2. Additionally, the MND recognizes tricolor blackbird as a "state-listed candidate species." On March 18, 2019, the California Fish and Game Commission determined tricolor blackbird to be threatened per California Code of Regulations Title 14, §670.5 (b) 5 (H). The final MND should be updated to reflect this change in status.
3. Mitigation measure BIO-6 describes minimization measures that would be included with a Streambed Alteration Agreement (SAA; Fish and Game Code § 1600 et seq.). The Department would also recommend the following elements of the project addressed in the SAA notification, through minimization measures or in a detailed project description:
 - a. trenchless technology best management practices that are referenced in the MND should be included or incorporated by reference;
 - b. with regard to restoration of disturbed areas, disturbed soils should be reseeded and/or replanted as soon as possible;
 - c. a clear description of how boreholes and trenches will be backfilled;
 - d. loose sediment should be stored such that it does not impact water quality;
 - e. a discussion of whether any portion of Sulphur Creek Reservoir within the project area was set aside for mitigation in the past by MNWD or any other jurisdiction; and,
 - f. a discussion of the water table, and if MNWD expects to need to pump water out of trenches during construction.
4. On March 13, 2019, the Department and National Marine Fisheries (Agencies) observed potential juvenile southern steelhead in Aliso Creek (the receiving water body of Sulfur Creek) directly downstream of the I-5 bridge at Aliso Creek. The

Agencies also observed suitable, restorable steelhead habitat upstream and downstream of the I-5 Aliso Creek bridge. This is consistent with historic anecdotal evidence that previously identified steelhead presence downstream of the project area (Larson, personal communication, February 22, 2019). The Department is working to validate steelhead presence and gather additional evidence of suitable habitat within and adjacent to the project area. Due to the historic record, existence of suitable habitat, and potential presence of steelhead downstream, the project should analyze the potential to directly or indirectly impact steelhead passage.

5. The Polyphagous and Kuroshio shot hole borers (ISHBs) are invasive ambrosia beetles that introduce fungi and other pathogens into host trees. The adult female (1.8-2.5 mm long) tunnels galleries into the cambium of a wide variety of host trees, where it lays its eggs and propagates the *Fusarium* fungi species for the express purpose of feeding its young. These fungi cause *Fusarium* dieback disease, which interrupts the transport of water and nutrients in at least 58 reproductive host tree species, with impacts to other host tree species as well. With documented occurrences throughout Southern California, including the east side of Sulphur Creek Reservoir, the spread of invasive shot hole borers (ISHBs) could have significant impacts in local ecosystems. Therefore, with regard to ISHBs, we recommend the final MND include the following:
 - a. a thorough discussion of the direct, indirect, and cumulative impacts that could occur from the potential spread of ISHBs as a result of proposed activities in the final MND;
 - b. an analysis of the likelihood of the spread of ISHBs as a result of the invasive species' proximity to above referenced activities;
 - c. figures that depict potentially sensitive or susceptible vegetation communities within the project area, the known occurrences of ISHB within the project area (if any), and ISHB's proximity to above referenced activities; and,
 - d. a mitigation measure or measure(s) within the final MND that describe Best Management Practices (BMPs) that bring impacts of the project on the spread of ISHB below a level of significance. Examples of such BMPs include:
 - i. education of on-site workers regarding ISHB and its spread;
 - ii. reporting sign of ISHB infestation, including sugary exudate ("weeping") on trunks or branches and ISHB entry/exit-holes (about the size of the tip of a ballpoint pen), to the Department and UCR's Eskalen Lab;
 - iii. equipment disinfection;
 - iv. pruning infected limbs in infested areas where project activities may occur;

Mr. Todd Dmytryshyn
Moulton Niguel Water District
April 5, 2019
Page 5 of 5

- v. avoidance and minimization of transport of potential host tree materials;
- vi. chipping potential host materials to less than 1 inch and solarization, prior to delivering to a landfill;
- vii. chipping potential host materials to less than 1 inch, and solarization, prior to composting on-site;
- viii. solarization of cut logs; and/or
- ix. burning of potential host tree materials.

Please refer to UCR's Eskalen lab website for more information regarding ISHBs:
<http://eskalenlab.ucr.edu/pshb.html>.

We appreciate the opportunity to comment on the MND for this project and to assist the City in further minimizing and mitigating project impacts to biological resources. The Department requests an opportunity to review and comment on any response that the MNWD has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines; §15073(e)). If you have any questions or comments regarding this letter, please contact Jennifer Turner, Environmental Scientist, at (858) 467-2717 or via email at jennifer.turner@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager

ec: Christine Medak (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

Reference

Larson, Mary. 2019. California Department of Fish and Wildlife. Dated February 22, 2019. Personal communication regarding steelhead history in Aliso Creek. On file, California Department of Fish and Wildlife R5 Office.

