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Governor's Office of Planning & Research

January 23, 2019

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STATE CLEARINGHOUSE

Ms. Jane Hauptman
Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, CA 90012
Jane.Hauptman@ladwp.com

2019129043

**Subject: Mitigated Negative Declaration for the Haynes Generating Station Intake
Channel Infill Project, City of Long Beach, Los Angeles County**

Dear Ms. Hauptman:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Mitigated Negative Declaration (MND) for the Haynes Generating Station Intake Channel Infill Project (Project). 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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 *et seq.*), or State-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, § 1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Project Description and Summary

Objective: The Project includes filling in approximately 2,150 feet of the Intake Channel with engineered fill and leaving a flat, paved surface. The proposal to fill in the 2,150 feet of the Haynes Generating Station (HnGS) Intake Channel would provide space for a future energy project on the HnGS site. At this time, that future project is undecided.

The proposed Project would occur over two phases: Phase I would consist of filling the northern 475 feet of the Intake Channel, and Phase II would consist of filling the Intake Channel to approximately 2 feet south of the 2nd Street/Westminster Boulevard bridge. The duration of Phase I construction activities would be approximately 15 months, with proposed construction scheduled to begin in late 2021 and end in 2023. The duration of Phase II construction activities would be approximately 20 months, beginning no later than 2030 and ending in late 2031.

Location: The Project site is located within the Haynes Generating Station (HnGS) property at 6801 East 2nd Street in the City of Long Beach. The HnGS is located inland from the Pacific Ocean and is bound by SR-22 (Garden Grove Freeway) to the north, East 2nd Street to the south, the San Gabriel River channel to the west, and an Orange County flood control channel to the east. The Intake Channel bisects the HnGS property, with energy generating Units 1 through 6 to the west and fuel storage tanks to the east.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City of Los Angeles Department of Water and Power (LADWP) in adequately identifying, avoiding and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment #1: Impacts to Streams

Issue: CDFW is concerned that the Project location supports streams subject to notification under Fish and Game Code section 1600 *et seq.* According to the Initial Study/Mitigated Negative Declaration (IS/MND), "[t]he project would occur over two phases: Phase I would consist of filling the northern 475 feet of the Intake Channel, and Phase II would consist of filling the Intake Channel to approximately 2 feet south of the 2nd Street/Westminster Boulevard bridge, for a total length of approximately 2,150 feet."

Issue: Based on the location of the Project site near the confluence with the San Gabriel River, along with daily tidal influence, impacts occurring on the Project site would result in impacts to the San Gabriel River. With significant Project activities involving filling the HnGS Intake Channel, CDFW has concerns about loss of aquatic habitat and Project runoff affecting water quality in the immediate area.

Specific impacts: The Project may result in the loss of streams and associated watershed function and biological diversity. Grading and construction activities will likely alter the topography, and thus the hydrology, of the Project site.

Why impacts would occur: Ground disturbing activities from grading and filling, water diversions and dewatering would physically remove or otherwise alter existing streams or their

function and associated riparian habitat on the Project site. Downstream streams and associated biological resources beyond the Project development footprint may also be impacted by Project related releases of sediment and altered watershed effects resulting from Project activities.

Evidence impacts would be significant: The Project may substantially adversely affect the existing stream pattern of the Project site through the alteration or diversion of a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW has concluded that the Project may result in the alteration of streams. For any such activities, the Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW’s web site at www.wildlife.ca.gov/habcon/1600.

CDFW’s issuance of an LSA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. However, the MND does not meet CDFW’s standards for the habitat mitigation measures and monitoring needed to meet the no net loss of aquatic habitats. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.

Mitigation Measure #2: Any LSA permit issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.

Comment #2: Impacts to 1. Eelgrass Habitat, (Vegetated or Potential Unvegetated Eelgrass Habitat); 2. Soft Bottom Benthic Habitat; and 3. Shallow Marine Water Habitat

Issue: The Project proposes to fill in the Haynes Generating Station Intake Channel that has approximately 6.25 acres of eelgrass habitat with a 5-meter buffer, based on the November 2018 Marine Biological Resources Report (MBRR). Eelgrass (*Zostera marina*) is growing in patches and strips parallel to shore within the proposed fill area.

Issue: The fill area also includes permanent losses to unvegetated substrate (shallow benthic habitat), and shallow open water habitat (water column). These permanent habitat losses were not included in the MBRR or the MND. Although the MND does state a mitigation ratio in MM BIO 5 for Eelgrass habitat losses (loss of bed area and a buffer), it does not include other

marine habitat losses or any further details that would be needed in a tentative habitat mitigation and monitoring plan.

Specific impacts: The MND and the MBRR indicated that the Project would substantially and adversely affect the existing habitats and associated benthic organisms by completely burying 8.14 acres of shallow water and benthic habitat, and 6.26 acres of eelgrass habitat within the channel. In addition, the MBRR indicated that additional eelgrass beds are downstream that will need mitigation measures to protect this off-site resource from poor water quality generated by in water construction activities.

Direct impacts from the Project fill area will result in the total and permanent loss of significant areas of eelgrass habitat (vegetated), eelgrass potential habitat (unvegetated), unvegetated benthic habitat, shallow open water habitat used by local marine fish, invertebrates, sea turtles, and birds. This is an unavoidable and significant adverse impact to important marine habitats, fish, and wildlife.

Why impacts would occur: Direct filling of open shallow marine water with earthen fill would permanently bury all habitats, eelgrass, slow moving and benthic organisms causing significant lost areas of fish nursery grounds and bird foraging habitat.

Evidence impacts would be significant: Eelgrass habitat (or vegetated shallows) can be considered rare under CEQA (State CEQA Guidelines, § 15380). Eelgrass beds are recognized by other state and federal statutes as both highly valuable and sensitive habitats. Eelgrass has been designated as Essential Fish Habitat (EFH) and a Habitat Area of Particular Concern (HAPC) for various fish species and Fishery Management Plans (FMPs) under the Magnuson-Stevens Act. The HAPC distinction identifies eelgrass beds as rare, especially vulnerable to human impacts, particularly important ecologically, and/or located in environmentally stressed areas. For example, eelgrass beds are important fish nursery grounds for important sport and commercial species such as the California halibut (*Paralichthys californicus*). In addition, eelgrass in the intake channel potentially helps to support local populations of federally and/or state endangered species.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends that all marine habitats be included in the final MND for habitat areas that require compensatory mitigation, and that they be fully addressed in a tentative mitigation and monitoring plan along with the eelgrass habitat mitigation.

Mitigation Measure #2: CDFW recommends that all permits for the Project (at a minimum), use the California Eelgrass Mitigation Policy (CEMP) for developing a mitigation and monitoring plan for eelgrass habitat impacts. A tentative habitat mitigation and monitoring plan proposal should include, but not limited to, the following:

- In collaboration with the CDFW's LSA process, propose feasible compensatory mitigation (e.g. off-site like-kind habitat creation, or restoration of areas that can compensate losses to eelgrass, soft bottom and shallow water with mitigation areas held in perpetuity, or combination of like-kind and out of kind mitigation, and obtain credits from off-site mitigation banks, or other acceptable mitigation;
- Develop a detailed and tentative eelgrass and marine habitat mitigation and monitoring

plan in compliance with the CEMP, as well as state agency permits and CEQA guidance. At a minimum, provide tentative proposals to:

- Identify feasible mitigation strategies that will be used to either avoid or minimize adverse and temporal habitat losses. If a habitat mitigation site is chosen for the unavoidable habitat losses, then we would prefer that the final site be identified and constructed prior to any operational changes, in-water construction, and fill that would damage the eelgrass beds in order to avoid temporal habitat losses during and after construction;
- Add mitigation plan details for each habitat area of impact and tentative mitigation strategy. This should include summary tables, maps and diagrams of impacted habitats, tentative mitigation strategy and mitigation site locations.
- Mitigation plans should include potential salvage of healthy eelgrass shoots within the fill footprint if feasible, and include several other appropriate donor sites with healthy eelgrass that can be used for transplantation;
- Include plans for pre- and post-construction monitoring of downstream eelgrass beds that may be impacted during or after construction, and conduct pre- and post-transplant surveys of each proposed eelgrass donor site; and,
- Include plans for a post-construction habitat evaluation, and a mitigation contingency plan once final impacts to eelgrass and other marine habitats have been determined.

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 for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

Conclusion

We appreciate the opportunity to comment on the Project to assist the City of Los Angeles Department of Water and Power in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that LADWP has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines; § 15073(e)]. If you have any questions or comments regarding this letter, please contact either Andrew Valand, Environmental Scientist, at Andrew.Valand@wildlife.ca.gov or (562) 342-2142, or Loni Adams, Marine Environmental Scientist at Loni.Adams@wildlife.ca.gov (858) 627-3985.

Sincerely,



Erinn Wilson
Environmental Program Manager I

Ms. Jane Hauptman
Los Angeles Department of Water and Power
January 23, 2020
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