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DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



January 13, 2020

Governor's Office of Planning & Research

**JAN 13 2020**

## **STATE CLEARINGHOUSE**

Mr. Chris Potter  
Senior Civil Engineer  
East Bay Municipal Utility District  
375 11<sup>th</sup> Street  
Oakland, CA 94607

Subject: Mokelumne Aqueduct System Routine Maintenance Project, Mitigated Negative Declaration, SCH #2019129046, Counties of Alameda, Calaveras, Contra Costa and San Joaquin

Dear Mr. Potter:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from East Bay Municipal Utility District (EBMUD) for the Mokelumne Aqueduct System Routine Maintenance Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency if a project requires discretionary approval, such permits issued under the California Endangered Species Act (CESA) and the Native Plant Protection Act, Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### **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. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is

<sup>1</sup> 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.

encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

#### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and 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, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** East Bay Municipal Utility District

**Objective:** The Project involves the routine maintenance of aqueduct system facilities at access road and stream crossing locations. Proposed maintenance activities include: sediment and debris removal; vegetation management; repair and replacement of culverts, roads and other structures; erosion protection; and bank and levee repair.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations below to assist EBMUD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

#### *Sediment and Debris Disposal*

The Project description indicates that sediment and debris will be disposed on-site in a location where it cannot reenter state waters, typically in surrounding upland areas. Upland areas adjacent to waterways can serve as valuable habitat for wildlife, including the California tiger salamander, burrowing owl, giant garter snake, and Alameda whipsnake. Disposing of sediment and debris in occupied upland habitat can result in potentially significant impacts, up to and including take of special-status species. CDFW recommends addressing these impacts in a mitigation measure that requires sediment and debris disposal sites to be approved by a qualified biologist in consultation with CDFW.



#### *Beaver Dam Removal*

Beaver dam removal is included in the Project description as an infrequent maintenance activity (page 2-17). Beaver dams provide valuable in-stream habitat for multiple species, including juvenile steelhead (Bouwes et al. 2016). Removal of such habitat could result in potentially significant impacts to aquatic and wildlife resources. CDFW recommends addressing these impacts in a mitigation measure that clearly indicates triggers necessitating dam removal, methods for deconstruction, and measures to minimize impacts to beavers, native fish, and amphibians.

In addition, CDFW recommends the following mitigation measure be incorporated in the MND: Only when it has been determined that alternatives such as water flow devices (e.g. Clemson beaver pond levelers) are infeasible will EBMUD modify beaver dams. Dams shall be incrementally removed with oversight of a qualified biologist and in a manner that minimizes exposure of beavers to injury allowing the animals to abandon the dam of their own volition. The initial dam material removal shall be limited to a shallow breach in the center section up to one foot below the water surface elevation. EBMUD shall then wait until the next significant rain event for further dam materials to be removed as necessary to relieve backwatering for flood control purposes.

#### *Burrowing Owl*

Mitigation measure BIO-13 calls for pre-construction avoidance surveys for burrowing owl prior to the initiation of maintenance-related ground disturbance activities in or near grassland habitats. If suitable burrowing owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

Burrowing owl surveys should be conducted by a CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

### **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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or emailed to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto:cnddb@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Mr. Chris Potter  
East Bay Municipal Utility District  
January 13, 2020  
Page 4

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist EBMUD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH# 2019129046)  
Ms. Billie Wilson, CDFW Region 2 – [Billie.Wilson@wildlife.ca.gov](mailto:Billie.Wilson@wildlife.ca.gov)

## References

Bouwes, N., N. Weber, C.E. Jordan, W.C. Saunders, I.A. Tattam, C. Volk, J.M. Wheaton, and M.M. Pollock. 2016. Ecosystem experiment reveals benefits of natural and simulated beaver dams to a threatened population of steelhead (*Oncorhynchus mykiss*). *Scientific Reports* 6:28581.