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**GAVIN NEWSOM, Governor**  
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May 8, 2020  
*Sent via email*

Governor's Office of Planning & Research

**MAY 11 2020**

Ms. Sylvie Lee, P.E.  
Inland Empire Utilities Agency  
6075 Kimball Avenue, Chino, CA 91708  
Slee@ieua.org

## STATE CLEARINGHOUSE

Subject: Chino Basin Watermaster, Optimum Basin Management Program Update Draft  
Subsequent Environmental Impact Report - State Clearinghouse No.  
2020020183

Dear Ms. Lee:

The California Department of Fish and Wildlife (CDFW) received the Subsequent Environmental Impact Report (SEIR) from the Inland Empire Utilities Agency (IEUA; the CEQA lead agency) for the Optimum Basin Management Program Update (OBMPU; 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 OBMPU that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the OBMPU 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 need to exercise regulatory authority as provided by the Fish and Game Code. For example, 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.

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<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.

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 2 of 8

## **PROJECT DESCRIPTION**

The OBMPU covers the Chino Basin which includes approximately 235 square miles in the Upper Santa Ana River Watershed and lies within portions of San Bernardino, Riverside, and Los Angeles counties. The Chino Basin is mapped within the USGS – Corona North, Cucamonga Peak, Devore, Fontana, Guasti, Mount Baldy, Ontario, Prado Dam, Riverside West and San Dimas Quadrangles, 7.5 Minute Series topographic maps. The center of the Chino Basin is located near the intersection of Haven Avenue and Mission Boulevard at Longitude 34.038040N, and Latitude 117.575954W.

The Chino Basin Watermaster (Watermaster) developed a regional water resources and groundwater management program for the Chino Basin (Optimum Basin Management Program; OBMP). The update to the OBMP is intended to address possible program activities and projects at a programmatic level over the next 30 years. The current draft SEIR (herein referred to as 'OBMPU SEIR') addresses the current environmental setting, assesses the impacts related to the construction and operation of the regional program, and provides information to support required permitting process.

## **PROJECT BACKGROUND**

The original OBMP and the accompanying Programmatic EIR (PEIR; July 2000) described the physical state of the groundwater basin and defined a set of management goals and actions. Agreements to implement the OBMP (termed 'Peace I Agreement' and 'Peace II Agreement'), and their associated CEQA analysis (Peace II SEIR, 2010; SEIR amendment, 2017) were also approved. The OBMP identified and described several management activities that, if implemented, could achieve the OBMP goals. These activities, and associated objectives and tasks defined in the 2000 OBMP, have been retained for the OBMPU. The OBMPU Implementation Plan Update is a revision of the implementation plans included in the Peace I and Peace II Agreements and incorporates the proposed activities and facilities identified in the 2020 OBMPU and ongoing activities from the 2000 OBMP.

## **COMMENTS AND RECOMMENDATIONS**

CDFW is concerned about the adequacy of the OBMPU SEIR in identifying potentially significant impacts and establishing adequate and enforceable mitigation measures. CDFW's comments and recommendations are presented below.

### Impact Analysis

The SEIR describes the intent of the document as follows: "*This document assesses the impacts, including unavoidable adverse impacts and cumulative impacts, related to the construction and operation of the proposed Project. This Program (Draft) SEIR is also intended to support the permitting process of all agencies from which discretionary approvals must be obtained for particular elements of this Project.*" (SEIR, p. 1-2). Such analysis would allow CDFW to provide specific input on the adequacy of the analysis, and whether that analysis was sufficient for use in future discretionary actions, such as Fish and Game Code section 1602 Lake and Streambed Alteration Agreements or Fish and Game Code section 2081 Incidental Take Permits. However, the SEIR does not identify or assess any impacts to biological resources, and in most cases, defers this analysis to some future action. In the case of direct

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 3 of 8

impacts to biological resources, the OBMPU SEIR defers this analysis to future CEQA analysis, stating, *“Because it is difficult to determine the number or extent of these kinds of impacts, direct impacts on special-status wildlife species will be addressed in subsequent, project specific environmental reviews once a specific component of the OBMPU has been defined for design and implementation.”* (SEIR, p. 4-62). In the case of indirect impacts to biological resources, the OBMPU SEIR conceded that *“potential indirect impacts associated with future OBMP facilities include alteration of jurisdictional water hydrology, host plant stress, destruction of native vegetation, habitat fragmentation, and noise and light pollution”*, but concluded that it would be *“difficult to quantify and measure these kinds of impacts, indirect impacts on special-status wildlife species are described qualitatively and will be quantitatively addressed in project specific second tier environmental evaluations”*. (SEIR, p. 4-62). Similarly, for ongoing operations or maintenance activities requiring ground disturbance, clearing, and grubbing, the OBMPU SEIR concluded that these actions *“could cause erosion and sedimentation or could indirectly affect the hydrology of nearby jurisdictional waters and the species that depend on these resources.”* However, the OBMPU SEIR determined that *“maintenance activities that would have potential impacts on special-status wildlife species are limited to the program right-of-way areas that are currently in service or that will be added to normal program operations and maintenance through separate design, environmental review and construction of such facilities at a later date”* (SEIR, p. 4-62).

While CDFW recognizes the programmatic nature of the SEIR, some level of analysis could be completed at this time based on the data and information collected within the previous 20 years of OBMP implementation, information gathered in biological surveys for proposed Project areas, and the foreseeable impacts associated with future, contemplated projects. If the SEIR will defer biological analysis to future, second tier environmental analysis, the SEIR should specify the threshold that will be relied on for requiring additional environmental review, and which of the projects contemplated will be required to complete additional environmental review. If the threshold for triggering additional environmental review is low, or if additional environmental reviewed is not anticipated, CDFW requests that the lead agency recirculate this SEIR and include the results of an appropriate level of analysis for which CDFW may rely on for future discretionary actions. Regardless of the lead agency’s approach for analyzing specific biological impacts, the SEIR must address the ‘whole of the action’, as it is inappropriate under CEQA review to divide a project into smaller, separate projects. The SEIR must address the cumulative effects of the Project as a whole.

The SEIR claims that, *“To the extent feasible, this document utilizes conservative (worst case) assumptions in making impact forecasts based on the assumption that, if impacts cannot be absolutely quantified, the impact forecasts should over-predict consequences rather than under-predict them.”* CDFW disagrees that the SEIR provides conservative assumptions in forecasting impacts and argues that potential impacts may have been underestimated. According to the OBMPU SEIR (Section 4.3 Biological), direct impacts from construction of any facility should *“only result in mostly minimal impacts on special-status wildlife species, because only a limited amount of marginal habitat for special-status wildlife species would be impacted by construction activities. All facilities would impact barren, urban, or agricultural areas, and thus construction would potentially impact only the special-status wildlife species that use mostly urban areas (e.g., special-status bird species, special-status mammal species, special-status bat species or species present in wetland or streambed habitats).* Adjacency to urban areas does not necessarily determine habitat value or the use of these areas by special-status species. CDFW is concerned that the SEIR has trivialized the significance of the Project’s potential impacts on

Ms. Sylvie Lee  
 Optimum Basin Management Program Update (SCH 2020020183)  
 Inland Empire Utilities Agency  
 Page 4 of 8

special-status species that could use such areas. Many special-status species, including burrowing owl (*Athene cunicularia*) and tricolored blackbirds (*Agelaius tricolor*) use disturbed areas, such as agricultural fields and manmade structures (burrowing owls) that could be indirectly and/or directly impacted by the Project. Impacts to special-status species, regardless of habitat quality or location, must be identified, evaluated and mitigated to a level below significance.

### Analysis of Cumulative Effects to Biological Resources

The Watermaster prepared and circulated a Notice of Preparation (NOP) for the OBMPU. As part of the review process, Orange County Water District (OCWD) requested that the OBMPU SEIR evaluate within Prado Basin the following:

- 1) The groundwater levels (e.g., groundwater pumping, groundwater storage, or groundwater overdraft) and the distribution of groundwater dependent ecosystem, such as riparian vegetation and wetlands;
- 2) Any changes or effects to surface flow rates in Chino Creek, Mill Creek, and the Santa Ana River;
- 3) The potential impacts of increased fire risk, riparian habitat loss, and riparian habitat conversion to non-native plant species; and
- 4) A quantitative analysis of impacts on Santa Ana River flows.

According to the OBMPU SEIR, impacts to biological resources have been assessed in the Biological Resources Subchapter 4.3 and in the Biological Resources Assessment (Volume 2 of the SEIR), with mitigation being identified “*where applicable to address impacts of OBMPU Projects on groundwater levels and potential related habitat impacts*”.

The comments below are separated to reflect the distinction between the entire watershed within the Chino Basin and the ‘Prado Basin’.

#### *Prado Basin*

Under Section 4.3.6(a).1 Prado Basin Habitat, it was concluded that: “***a reasonable assumption of the volume of water consumed by Prado Basin wetland/riparian habitat is about 18,000 AFY (emphasis added). The IEUA and Western Municipal Water District (WMWD) are responsible for an average annual flow of 42,000 afy at Prado. However, when their cumulative credits exceed 30,000 afy (which they currently do and will continue to do so for the foreseeable future), they are responsible for a minimum annual flow of 34,000 afy. IEUA and WMWD split this responsibility 50/50, thus each agency is responsible for 17,000 afy of flow at Prado. The OBMPU is not anticipated to result in the inability of either IEUA or WMWD to meet this obligation, and is therefore not anticipated to result in a significant impact to the health of the habitat supported at Prado Basin (emphasis added)***”.

CDFW is concerned that “reasonable assumptions”, rather than data and detailed analyses, were used to determine whether significant impacts to habitat are anticipated to occur. The Watermaster, on behalf of the Chino Basin stakeholders and parties, is to maintain habitat in the Prado Basin as defined in the Peace II SEIR. Specifically, within the Peace II SEIR (Section 4.3.8 Cumulative Impacts), it states that “*the proposed OBMPU may result in a reduction in surface flows into Prado Basin. In addition, Low Impact Development ordinances, local policies,*

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 5 of 8

*and municipal storm water detention regulations will encourage water conservation and flow detention, resulting in a cumulative reduction in surface flows reaching Prado Basin. **These cumulative flow reductions may result in reduced acreage of healthy riparian forest that supports special-status species such as least Bell's vireo as well as aquatic species such as Santa Ana sucker and Southern California arroyo chub** (emphasis added). To mitigate the effects of the cumulative diversions on habitat values and conservation objectives, regional organizations such as the Santa Ana Watershed Project Authority (SAWPA) and San Bernardino Valley Water District have developed local programs and partnerships to address cumulative impacts to habitat within Prado Basin.*" Pursuant to the OBMP Implementation Plan, long-term plans for monitoring groundwater production, groundwater level, groundwater quality, ground level (including remote sensing), surface water, and well construction/destruction have been developed and implemented to not only meet the OBMP requirements, but to also meet other regulatory requirements and Watermaster obligations under agreements, Court orders, and CEQA.

For example, the Prado Basin Habitat Sustainability Program (PBHS) has produced a time series of data and information on the extent and quality of the riparian habitat in the Prado Basin over a historical period that includes both regional mapping using multi-spectral remote-sensing data and air photos. In particular, the 2017 Annual Report determined that: 1) discharge in the Santa Ana River and its tributaries has declined since 2005; 2) decreases in the normalized difference vegetation index (NDVI) observed from 2015-2017 at several areas occurred during the growing-season for both Chino Creek and Mill Creek; and 3) northern reaches above the Mill Creek and the Santa Ana River confluence are "losing reaches" characterized by streambed recharge, while most other areas along Chino Creek and Mill Creek are "gaining reaches" characterized by groundwater discharge. This and other available data should be used in analyzing the potential cumulative impacts of the Project. CDFW realizes that the full extent of OBMPU may not be known at this time, but maintains that in order to determine significant environmental impacts and feasible mitigation measures, meaningful analyses need to be conducted and disclosed prior to Project approval.

While the results of the PBHS were not included in the OMBPU SEIR, it did clarify that "*the monitoring within the PBHS itself is not considered mitigation, but the commitment of Watermaster to initiate adaptive management programs to prevent significant loss of habitat (due to hydraulic control) serves as the mitigation to offset such damage or loss of Prado Basin Habitat*". As this monitoring program is intended to prevent impacts to habitat, it would be beneficial to discuss the monitoring results, adaptive management actions taken as a result of adverse effects identified, and strategies to mitigate potential future impacts that may occur from this proposed Project. To be effective, CDFW recommends that adaptive management should include: (1) objectives describing the desired condition; (2) management that is designed to meet the objectives; (3) monitoring to determine if the objectives are, or have been, met; and (4) management that is adapted if the objectives are not reached. To avoid irreversible change, detection of smaller changes may be important while they are still relatively minor. CDFW is available to assist the IEUA to identify 'adverse impacts to the riparian habitat or special-status species' and coordinate with all parties on future adaptive management action(s) that may need to be implemented.

#### *Burrowing owl*

The OBMPU SEIR discusses the need and availability of water to sustain certain vegetation communities and the species that depend on these habitats. The SEIR should also address

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 6 of 8

areas where flooding and water inundation is not preferred. The primary purpose of Prado Reservoir is flood control for the Santa Ana River Watershed, with water conservation being secondary. CDFW is aware that an agreement between OCWD, the United States Army Corps of Engineers (USACE) and the United States Fish and Wildlife Service was reached in 1993 that allowed for increased water conservation from March through September each year to store up to 26,000 acre-feet of water at elevation 505 feet. In 2006, a subsequent agreement was made to capture additional water behind Prado Dam to store more water from October through February each year by increasing the conservation pool for recharge of groundwater from elevation 494 feet to 498 feet. It is CDFW's understanding that a deviation to the Prado Dam Water Control Plan to increase the flood season water surface elevation of the pool behind Prado Dam from an elevation 498 feet to 505 feet for a period of five years has occurred. More water storage, particularly during winter, may increase the extent of areas subject to inundation, including burrowing owl occupied and/or suitable breeding and wintering habitat.

Much of the land contained below the 566-foot inundation line behind Prado Dam is intended to accommodate natural open space, wildlife preserves, and crop farming. Within the area previously known as the 'Dairy Preserve', large housing and industrial developments, including the Preserve (City of Chino), as well as, the Ontario Ranch (City of Ontario) have collected development fees over the last two decades to offset impacts to burrowing owls. The CEQA documents for these large planning developments proposed the creation, enhancement, and/or expansion of 300 acres (600 acres total) of high-quality wildlife habitat located generally below the Prado Dam 566-foot inundation line. While CDFW is unclear whether the proposed increase of water storage will affect habitat suitable for burrowing owl, given the past increases of storage to meet stakeholders demands, CDFW would like to have a better understanding of how burrowing owls and their habitat will be monitored and mitigated for over the next 30 years.

### *Watershed*

Within the OBMPU SEIR Section 4.3 Biological Resources, the "*potential impacts on jurisdictional waters, special-status plant communities, protected trees, special-status plant, and wildlife species (including critical habitat) will be analyzed for each facility as site-specific design has been established. Once a particular facility area of potential effect (APE) is established, a **detailed second-tier evaluation to assure resource impacts are quantified, and site-specific measures are identified. Where none of the biological resource impacts occur in Prado Basin will occur, no further biological resource impact analysis may be necessary (emphasis added).***" Furthermore, Section 4.3.6(a).1 Prado Basin Habitat concluded that for any future surface water diversions, "*mitigation is required to continue the monitoring program and to conduct detailed environmental reviews of future diversion impacts on **Prado Basin habitat prior to approval of such projects (emphasis added).** Thus, no specific diversion project can be implemented until an appropriate second-tier, public CEQA review is completed*".

CDFW is concerned that potential impacts will only be addressed if those impacts will occur within the Prado Basin, even though the project covers the entirety of the Chino Basin. Under Section 15355 of the CEQA Guidelines, cumulative effects refers to "*two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts*". Physical changes caused by a project can contribute incrementally to cumulative effects that are significant, even if individual changes resulting from a project are limited. The Lead Agency must determine whether the cumulative impact is significant, as well as whether an individual effect is 'cumulatively considerable'. This means "*the incremental*

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 7 of 8

*effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects”* (Guidelines Section 15064(h)(1)).

The OBMPU SEIR includes storage basin projects that would divert flows that ultimately reach Prado Basin (Project Category 3). Also, groundwater pumping can alter how water moves between an aquifer and a stream, lake, or pond by either intercepting groundwater flow that discharges into the surface-water body under natural conditions, or by increasing the rate of water movement from the surface-water body into an aquifer (e.g., draw down, cone of depression, etc.). Finally, diversion of surface water, recycling of water, and other water manipulation can alter and affect biological resources throughout the watershed. Thus, CDFW strongly encourages IEUA to consider the entire watershed and how the OBMPU will affect vegetation communities and the species that depend on those habitats.

### Mitigation

The SEIR states, *“if the regulatory agencies determine an alternative, equivalent mitigation program during acquisition of regulatory permits, such measure shall be deemed equivalent to the avoidance and minimization measures listed in SEIR Section 4.3.7... no additional environmental documentation shall be required to implement a measure different than the listed avoidance measures”*. CEQA requires environmental review of discretionary projects at the earliest *meaningful* stage to analyze and plan for the reduction and/or avoidance of environmental impacts *before* deciding to approve the project(s). While there are often discrepancies between CEQA’s mandate for *early* review and its requirement of *detailed* discussions of impacts and mitigation measures, postponing the analysis of impacts to a future date is not appropriate. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after project approval. Courts have also repeatedly not supported conclusions that impacts are mitigatable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrietta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777). Therefore, CDFW strongly suggests the SEIR incorporate sufficient, specific, and current biological information on the existing habitat and species at the Project site; measures to minimize and avoid sensitive biological resources; and mitigation measures to offset the loss of native flora and fauna and State waters. The CEQA document should not defer impact analysis and mitigation measures to future regulatory discretionary actions, such as a Lake or Streambed Alteration Agreement.

### **FURTHER COORDINATION**

The CDFW appreciates the opportunity to comment on the SEIR for the OBMPU (State Clearinghouse No. 2020020183) and recommends that the IEUA address the CDFW’s comments and concerns.

If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Kim Romich at (909) 980-3818 or at [kimberly.romich@wildlife.ca.gov](mailto:kimberly.romich@wildlife.ca.gov).

Ms. Sylvie Lee  
Optimum Basin Management Program Update (SCH 2020020183)  
Inland Empire Utilities Agency  
Page 8 of 8

Sincerely,  
DocuSigned by:

*Patricia Moyer*

Patricia Moyer

~~Scott Wilson~~

Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento  
ec: HCPB CEQA Coordinator