

WATER ISSUES COMMITTEE MEETING REVISED SUBMITAL

ITEM #4

CONTRACT NO. SC-2020-2 SMITH BASIN REHABILITATION – ADOPT MITIGATED NEGATIVE DECLARATION AND AUTHORIZE NOTICE INVITING BIDS

Staff Note:

Staff has prepared a revised submittal for Item 4 for the April 8, 2020 Water Issues Committee meeting. The revisions to the agenda submittal are additions to provide responses to comments to two comment letters received on the Draft Mitigated Negative Declaration for the Smith Basin Rehabilitation Project.

The comment letters on the Draft Mitigated Negative Declaration were received on April 6, 2020, after the agenda packet was posted to the website last week.

The revised agenda submittal includes two new attachments:

- Response to Comments on the Mitigated Negative Declaration
- Mitigation, Monitoring, and Reporting Program

The Final Mitigated Negative Declaration consists of these two attachments and the draft Mitigated Negative Declaration.

REVISED
AGENDA ITEM SUBMITTAL

Meeting Date: April 8, 2020

To: Water Issues Committee
Board of Directors

From: Mike Markus

Staff Contact: C. Olsen /R. Bouley

Budgeted: Yes

Proposed Budget: \$3M

Cost Estimate: \$3M

Funding Source: R&R

Program/Line Item No.: R17026

General Counsel Approval: N/A

Engineers/Feasibility Report: N/A

CEQA Compliance: MND

**Subject: CONTRACT NO. SC-2020-2 SMITH BASIN REHABILITATION – ADOPT
MITIGATED NEGATIVE DECLARATION AND AUTHORIZE NOTICE
INVITING BIDS**

SUMMARY

Huitt-Zollars, Inc has completed Construction Documents for the Smith Basin Rehabilitation Project. In addition, staff has completed the California Environmental Quality Act (CEQA) Mitigated Negative Declaration (MND) for the project. Staff recommends adopting the MND and authorizing publication of the Notice Inviting Bids (NIB) for Contract No. SC-2020-2 Smith Basin Rehabilitation Project.

Attachments:

Mitigated Negative Declaration (posted separately to District web site)
Resolution of Board of Directors

[Response to Comments on the Mitigated Negative Declaration
Mitigation, Monitoring, and Reporting Program](#)

RECOMMENDATION

Agendize for April 15 Board meeting: Adopt the attached resolution, which includes the following actions:

1. Adopt the Mitigated Negative Declaration (MND) for the Smith Basin Rehabilitation Project in compliance with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. The Board of Directors, having approval authority as the Lead Agency considers the Final MND, along with the accompanying Response to Comments, to be complete and adequate; and
2. Authorize publication of Notice Inviting Bids for Contract No. SC-2020-2 Smith Basin Rehabilitation Project.
3. Authorize the filing of the Notice of Determination.

BACKGROUND/ANALYSIS

Smith Basin is located north of the Santiago Basins. Santiago Creek flows through Smith Basin and into Santiago Basins through a twenty-one-foot diameter culvert under Villa Park Road. Smith Basin is empty most of the year, and only fills partially during

the rainy season when the Santiago Basins are nearly full. The location of Smith Basin and the damaged slope areas are shown in Figure 1, below:

Figure 1 – Smith Basin Rehabilitation Project Location



Staff noted that large vertical scarps, measuring thirty to fifty feet tall, have formed in the slopes along the southerly and easterly slopes of Smith Basin as the path of Santiago Creek has moved southward over the last thirty to forty years. In April of 2018, the Board authorized an agreement with Huitt-Zollars to prepare Construction Bid Documents for the Smith Basin Rehabilitation Project. Staff has worked with Huitt-Zollars to finalize these construction documents.

Environmental Analysis and Documentation

Staff has also completed the California Environmental Quality Act (CEQA) Mitigated Negative Declaration (MND) necessary to perform repairs to the Saddle. The draft MND evaluated the potential short-term construction impacts and long-term operational impacts associated with the implementation of the Project. The draft MND was circulated for a 30-day public review on March 6, 2020 and the review period concludes on April 6, 2020. An addendum to this agenda item submittal will be prepared to provide information regarding any comments received prior to the close of the public comment period.

[Staff received comments letters on the Draft MND on April 6, 2020 from the California Department of Fish and Wildlife \(CDFW\) and the California Department of Transportation \(Caltrans\). CDFW provided suggested revisions to two mitigation measures related to nesting bird and raptor species. Additionally, CDFW suggested the inclusion of a new mitigation measure that would require a Habitat Restoration and Monitoring Plan to be implemented during the revegetation component of the project. The mitigation measures have been revised to incorporate revisions suggested by CDFW, the changes are documented in the Response to Comments document as well as the Project Mitigation Monitoring Program. The CALTRANS comment letter expressed concerns that State right-of-way and/or bicycle facilities along Villa Park Road could be impacted by the project requiring detouring; however, no roadway construction is proposed that would impact any bicycle facilities or State right-of-way.](#)

In accordance with Section 15132 of the CEQA Guidelines, staff will prepare the Final MND for the Project prior to Board consideration, which includes the Draft MND, comments received on the Draft MND, OCWD responses to comments on the Draft MND and the Project Mitigation Monitoring Program.

SCHEDULE

The Smith Basin Rehabilitation Project must be completed within a tight timeframe – after the nesting season ends in August and before the rainy season begins, typically in December. Table 2 shows the current schedule for this project. Staff anticipates construction for this project will start in the summer of 2020:

Table 2 – Smith Basin Rehabilitation Project Schedule

Description	Date
Design Complete	March 2020
Bid Construction	April 2020
Begin Construction	August 2020
Complete Construction	December 2020

Currently, the CEQA documentation is ready for consideration by the Board of Directors. The project Construction Documents are also complete. Since the allowable construction timeframe is so tight, and since OCWD has prepared CEQA documentation in accordance with all CEQA requirements, staff recommends the Board adopt the Final Mitigated Negative Declaration at this time. Staff also recommends the Board authorize the Notice Inviting Bids so that the project will be ready to construct this fall.

PRIOR RELEVANT BOARD ACTION(S)

5/23/18, R18-5-59 - Approving Agreement with Huitt-Zollars for design of Smith Basin Rehabilitation Project

12/20/2017, M17-171: Authorize issuance of a Request for Proposals for Smith Basin Rehabilitation Project Design Services

DIRECTORS

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ORANGE COUNTY WATER DISTRICT
ORANGE COUNTY'S GROUNDWATER AUTHORITY

OFFICERS

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Second Vice President
STEPHEN R. SHELDON

General Manager
MICHAEL R. MARKUS, P.E., D.WRE

April 7, 2020

Subject: Comments on the Mitigated Negative Declaration for the Smith Basin Rehabilitation Project

The Orange County Water District (OCWD) completed a Draft Mitigated Negative Declaration (MND) for the Smith Basin Rehabilitation in March 2020. The MND was circulated for a 30-day public review period between March 6, 2020 and April 6, 2020. OCWD received a comment letter from the California Department of Fish and Wildlife (CDFW) and from the California Department of Transportation (CALTRANS). Each of the two comment letters are summarized below along with a discussion of any applicable revisions to the MND. The comment letters are included as attachments to this document.

California Department of Fish and Wildlife (CDFW)

CDFW provided suggested revisions to mitigation measures BIO-1 and BIO-2 that were identified in the MND to address potential impacts to nesting migratory birds and nesting raptors. Additionally, CDFW recommended the inclusion of a new mitigation measure (BIO-5) that would require the revegetation activities following construction to be conducted in accordance with a Habitat Restoration and Monitoring Plan (HRMP).

In response to the comments provided by CDFW, OCWD has provided the following revised mitigation measures associated with potential impacts to biological resources:

MM BIO-1	In order to avoid take of sensitive and migratory avian species, prior to the start of vegetation clearing activities, the OCWD Project Manager shall ensure that vegetation clearing and ground disturbing activities occur outside of the migratory bird nesting season (February 15 to September 15). If any vegetation clearing or ground disturbing activities occur prior to the completion of the migratory bird nesting season, vegetation clearing or ground disturbing activities shall only take place after the OCWD Project Biologist has conducted a nesting bird survey within three (3) days prior to the start of construction to determine that all nesting has been completed for the season.
MM BIO-2	Tree removal activities which may impact active raptor nests will be removed outside of the raptor nesting season (January 15 –September 15). If any tree removal activities occur prior to the completion of the raptor nesting season, tree removal activities shall only take place after the OCWD Project Biologist has conducted a nesting bird survey within three (3) days prior to the start of construction to determine that all raptor nesting has been completed for the season and no active raptor nests remain in trees that would be

	removed. Removal, relocation, or destruction of active raptor nests will not be undertaken in association with Project activities.
MM BIO-5	<p>The actions described in MM BIO-3 and MM BIO-4 shall be described and carried out in accordance with a Habitat Restoration and Monitoring Plan (HRMP). A draft HRMP shall be provided to the Wildlife Agencies for review and approval prior to the start of construction.</p> <p>Plans for restoration and revegetation will should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each The HRMP shall plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.</p>

California Department of Transportation (CALTRANS)

CALTRANS provided a comment indicating permit requirements for projects that occur within the vicinity of a State right-of-way and expressed concern for the potential need for detouring associated with any impacts to bicycle lanes along Villa Park Road. The Project is not located in the vicinity of a State right-of-way and would not affect bicycle routes along Villa Park Road as no roadway construction is proposed. Accordingly, no revisions to the MND are required.

Attachments: CDFW Comment Letter, CALTRANS Comment Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 6, 2020

Shawn Nevill
Principal Planner
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Subject: Smith Basin Improvement Project (PROJECT) Mitigated Negative Declaration (MND) SCH# 2018061058

Dear Mr. Nevill:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Orange County Water District for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR), in a letter dated July 24, 2018.

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 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Orange County Water District (OCWD)

Objective: The objective of the Project is to improve the geotechnical stability of the Smith Basin embankment slopes. The MND indicates that the proposed Project evaluated represents a substantial reduction in the overall improvements in comparison to the components identified in the 2018 NOP, which involved improvements along embankment slopes in six areas under the first alternative. The second alternative included reestablishing Santiago Creek along the toe of the slopes in its current alignment and protecting the width and depth in place with riprap. The MND

¹ 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.

indicates that the proposed Project was revised; limits were placed on improvements, the proposed stabilization areas were reduced from six to three, and the Santiago Creek will be realigned to its prior alignment instead of being stabilized in its current location. Current Project activities also include re-establishing the historical access road on the north side, regrading the bottom of Smith Basin to restore Santiago Creek in its former alignment nearer the middle of the basin, repairing and reconstructing the slopes in the basin, construction six groins to slow water flow along the southern slope, and restoration of removed vegetation.

Location: The project area is located in the City of Orange, north of Villa Park Road, between Lemon Street and Santiago Boulevard. Native riparian and coastal sage scrub communities persist within the project area, and the MND notes that least Bell's vireo (*Vireo bellii pusillus*; CESA and federal Endangered Species Act (ESA) listed- endangered), and coastal California gnatcatcher (*Poliioptila californica californica*; ESA listed- threatened) have been observed during on-site biological surveys. White-tailed kite (*Elanus leucurus*; a state Fully Protected species) has been observed flying above Santiago Basin.

Timeframe: The MND indicates that construction activities would take approximately two months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist OCWD 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.

I. CDFW Prior Project and Mitigation Comments

In 2018, CDFW issued a letter in response to the NOP of a DEIR for the Smith Basin Improvement Project. The original NOP described two alternatives for erosion repair and prevention in Smith Basin: Alternative 1 would realign Santiago Creek to its original pre-1980 alignment, while Alternative 2 would reinforce the existing alignment with additional fill and riprap at the toe of the slope. CDFW supported adoption of Alternative 1, which would require fewer structural reinforcements to prevent additional erosion, provide a more natural aesthetic, and potentially foster a higher quality of riparian and upland habitats. CDFW supports the revised Project presented in the MND with the reduction to three stabilization areas and historical realignment of Santiago Creek instead of stabilizing it in its current location.

The MND indicates that a CDFW Section 1600 Streambed Alteration Agreement will be obtained. We look forward to receiving OCWD's notification for the above-referenced wetland impact activities. More information about the Department's Lake and Streambed Alteration Program can be found on CDFW's website at <https://wildlife.ca.gov/Conservation/LSA>.

II. Special Status Species

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT #1: Least Bell's vireo

MND, P. 54

Issue: The MND notes that least Bell's vireos were observed during on-site biological surveys in 2019.

Specific impact: The MND describes Project impacts to 7.56 acres of least Bell's vireo habitat. Mitigation Measure BIO-1 requires that vegetation removal and clearing activities shall be conducted outside of bird nesting season. The MND indicates that in the event avoidance of the nesting season is not feasible, the project site would be required to be surveyed by a qualified biologist prior to vegetation removal activities to ensure no vireos are present. In the event the species is present, the qualified biologist shall establish suitable buffers around the nests to be avoided by construction personnel until the qualified biologist determines that no nests are occupied and that any juvenile birds can survive independently from the nest.

Preconstruction surveys of occupied vireo habitat during vireo nesting season are not sufficient to make Project impacts to this species less than significant. CDFW recommends complete avoidance of occupied vireo habitat during nesting season in order to avoid take of vireo under CESA. Any adverse impacts to least Bell's vireo, for the purposes of CEQA, are considered significant without sufficient mitigation. 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). Consequently, if the project, project construction, or any project-related activity during the life of the project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

CDFW also encourages OCWD to consult as soon as possible with the United States Fish and Wildlife Service (Service), as informal or formal consultation may be appropriate in order to address impacts to least Bell's vireo.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding least Bell's vireo)

Mitigation Measure #1:

To minimize significant impacts:

To avoid and minimize impacts to least Bell's vireo, CDFW recommends that MM BIO-1 be amended to the following:

“In order to avoid take of sensitive and migratory avian species, prior to the start of vegetation clearing activities, the OCWD Project Manager shall ensure that vegetation clearing and ground disturbing activities occur outside of the migratory bird nesting season (February 15 to September 15).”

COMMENT #2: Coastal California gnatcatcher

MND, P. 54

Issue: The MND notes that coastal California gnatcatcher have been observed during on-site biological surveys.

Specific impact: The MND indicates that there is potential for direct and indirect impacts to nearby gnatcatcher due to construction noise. Mitigation Measure BIO-1 requires that vegetation removal and clearing activities shall be conducted outside of bird nesting season. In the event avoidance of the nesting season is not feasible, the project site would be required to be surveyed by a qualified biologist prior to vegetation removal activities to ensure no gnatcatchers are present. In the event the species is present, the qualified biologist shall establish suitable buffers around the nests to be avoided by construction personnel until the qualified biologist determines that no nests are occupied and that any juvenile birds can survive independently from the nest.

CDFW also encourages OCWD to consult as soon as possible with the Service, as informal or formal consultation may be appropriate in order to address impacts to coastal California gnatcatcher.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding coastal California gnatcatcher)

Mitigation Measure #1:

To minimize significant impacts: To avoid and minimize impacts to coastal California gnatcatcher, CDFW recommends that MM BIO-1 be amended to the following:

“In order to avoid take of sensitive and migratory avian species, prior to the start of vegetation clearing activities, the OCWD Project Manager shall ensure that vegetation clearing and ground disturbing activities occur outside of the migratory bird nesting season (February 15 to September 15).”

COMMENT #3: White-tailed kite

MND, P. 54

Issue: The MND indicates that white-tailed kites have been observed flying over the Santiago Basin, and the Project site has suitable white-tailed kite habitat.

Specific impact: White-tailed kite are classified by the state as Fully Protected species. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and

relocation of the bird species for the protection of livestock (Fish & G. Code § 3511 (a)(1)(b)(12)).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding white-tailed kite)

Mitigation Measure #2:

To minimize significant impacts: To avoid impacts to white-tailed kite, CDFW recommends that Conservation Measure BIO-2 be amended to read as follows:

“Tree removal activities which may impact raptor nests will be removed outside of the raptor nesting season (January 15 – September 15). Removal, relocation, or destruction of raptor nests will not be undertaken in association with Project activities.”

III. Conservation Measure BIO-2: Nesting Raptors

COMMENT #4:

MND, Appendix C, Page 39

Issue: Mitigation Measure BIO-2 indicates that, “Prior to tree removal activities, specimen native trees that are planned for removal from the project site shall be inspected by the OCWD Project Biologist to determine if raptor nests are present. If nests are encountered, the nests shall either be relocated outside of the area of disturbance. If relocation is not feasible, the Project Biologist shall create a new substitute nesting site located outside of the construction activity impact area.”

Specific impact: CDFW does not support removal, relocation, or destruction of raptor nests as, “[i]t is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. (FGC § 3503.5)” Actions carried out as described in MM BIO-2 would be a violation of the FGC.

Recommended Potentially Feasible Mitigation Measure (Regarding nesting raptors)

Mitigation Measure #2:

To minimize significant impacts: To avoid or minimize impacts to nesting raptors, CDFW recommends that Conservation Measure BIO-2 be amended to read as follows:

“Tree removal activities which may impact raptor nests will be conducted outside of the raptor nesting season (January 15 – September 15). Removal, relocation, or destruction of raptor nests will not be undertaken in association with Project activities.”

IV. Conservation Measures BIO-3 and BIO-4: Revegetation

COMMENT #5:

Appendix C, P. 31

Issue: Conservation Measure MM BIO-3 describes hydro-seeding and planting of native vegetation on slope areas disturbed by the Project and monitoring to ensure that non-native vegetation does not re-establish. MM BIO-3 indicates that 4.2 acres of upland California Coastal Sage habitat shall be planted. MM BIO-4 describes planting riparian habitat at the edge of the ordinary high-water mark within areas disturbed by grading activities and ongoing monitoring for non-native vegetation. MM BIO-4 indicates that 4.8 acres of riparian habitat shall be planted within the Project site and an additional 9.0 acres of bottom acres shall be managed to recruit using flood irrigation from annual inundation events and additional planting if needed.

Recommended Potentially Feasible Mitigation Measure (Regarding Revegetation)

Mitigation Measure #5:

To minimize significant impacts: We recommend that revegetation efforts be conducted in accordance with a Habitat Restoration and Monitoring Plan (HRMP). CDFW requests that we, as well as the Service (collectively referred to as the Wildlife Agencies), have the opportunity to review and approve the plan prior to it being finalized. This should be codified in an additional Mitigation Measure:

“The actions described in MM BIO-3 and MM BIO-4 shall be described and carried out in accordance with a Habitat Restoration and Monitoring Plan (HRMP). A draft HRMP shall be provided to the Wildlife Agencies for review and approval prior to the start of construction.

Plans for restoration and revegetation will be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. The HRMP shall include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.”

Per CEQA Guidelines Section 21081.6(a)(1), CDFW has provided OCWD with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

Shawn Nevill
Orange County Water District
April 6, 2020
Page 7 of 9

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

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist at (858) 636-3159 or Jessie.Lane@wildlife.ca.gov.

Sincerely,



David Mayer
Environmental Program Manager

Attachments

- A. Draft MMRP (CDFW 2020)

ec: Christine Medak, U.S. Fish and Wildlife Service, Carlsbad
Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

California Department of Fish and Wildlife. 2018. Comments on the Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Smith Basin Improvement Project, Orange, CA SCH# 2018061058.

Attachment A:

CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
MM BIO-1	In order to avoid take of sensitive and migratory avian species, prior to the start of vegetation clearing activities, the OCWD Project Manager shall ensure that vegetation clearing and ground disturbing activities occur outside of the migratory bird nesting season (February 15 to September 15).	During construction	OCWD
MM BIO-2	Tree removal activities which may impact raptor nests will be removed outside of the raptor nesting season (January 15 – September 15). Removal, relocation, or destruction of raptor nests will not be undertaken in association with Project activities.	During Construction	OCWD
MM BIO-3	Immediately after reconfiguring the slope areas, OCWD shall hydro-seed and plant riparian habitat at the edge of the ordinary high-water mark within the disturbance area. The Project Biologist shall manage the area to ensure that non-native vegetation does not re-establish. In total, 4.2 acres of upland California Coastal Sage habitat shall be planted. See Figure 9 for location of upland mitigation planting.	Post Construction	OCWD
MM BIO-4	Following the completion of grading activities, OCWD's Project Biologist shall plant riparian habitat at the edge of the ordinary high-water mark within the disturbance area. The Project Biologist shall manage the area to ensure that non-native vegetation does not re-establish. In total, 4.8 acres of riparian habitat shall be planted within the Project Site, and an additional 9.0 acres of bottom acres shall be managed to recruit using flood irrigation from annual inundation events and additional planting if	Post Construction	OCWD

	<p>needed per the determination of the Project Biologist. See Figure 9 for location of riparian mitigation planting.</p>		
<p>MM BIO-5</p>	<p>The actions described in MM BIO-3 and MM BIO-4 shall be described and carried out in accordance with a Habitat Restoration and Monitoring Plan (HRMP). A draft HRMP shall be provided to the Wildlife Agencies for review and approval prior to the start of construction.</p> <p>Plans for restoration and revegetation will should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each The HRMP shall plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.</p>	<p>Prior and Post Construction</p>	<p>OCWD</p>

**DEPARTMENT OF TRANSPORTATION
DISTRICT 12**

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*Making Conservation
a California Way of Life.*

April 6, 2020

Shawn Nevill
OC Water District
18700 Ward Street
Fountain Valley, CA. 92708

File: IGR/CEQA
SCH: #2018061058
12-ORA-2020-01353
SR 55; PM 15.262

Dear Mr. Nevill,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Mitigated Negative Declaration (MND) for the proposed Smith Basin Improvement Project. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

The purpose of the Proposed Project is to: (1) Reconstruct failure slopes to: (a) Alleviate safety concerns; and (b) Reduce risk of future slope failure that would harm or destroy riparian vegetation and environmental resources. (2) Regrade the bottom of Smith Basin to restore Santiago Creek in its original alignment to reduce erosion and slope failure. The Proposed Project activities includes re-establishing the historical access road on the north; re-grading the bottom of Smith Basin to restore Santiago Creek in its former alignment nearer the middle of the basin; repairing and reconstructing the slopes in the basin; constructing six (6) groins to slow water flow along the southern slope; and restoration of removed vegetation.

The proposed improvement activities would occur within the area of Smith Basin, in the Cities of Orange and Villa Park, and portion of unincorporated county land in Orange County. The Smith Basin is bounded by Lemon Street to the west, Cannon Street to the east, Villa Park Road to the south and Santiago Boulevard to the north. The Project Site can be regionally accessed by State Route 55 via the Chapman Avenue exit. The Smith Basin is located downstream of Villa Park Dam and Santiago Reservoir and receive incoming flows from Santiago Creek, which drains into and out of the basin. State Route 55 is overseen by Caltrans. Caltrans is the responsible agency and has the following comments:

System Planning:

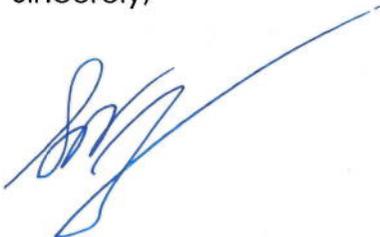
1. According to Figure 5 of the MND, it appears that the repair area along Villa Park Road may impact the existing bicycle facilities located along this roadway. Therefore, during construction, please ensure that appropriate detours are in place for Active Transportation users.

Permits:

1. Any project work proposed in the vicinity of the State right of way will require an encroachment permit, and all environmental concerns must be adequately addressed. Please coordinate with Caltrans in order to meet the requirements for any work within or near State Right-of-Way. A fee may apply. If the cost of work within the State right of way is below one Million Dollars, the Encroachment Permit process will be handled by our Permits Branch; otherwise the permit should be authorized through the Caltrans's Project Development Department. When applying for Encroachment Permit, please incorporate all Environmental Documentation, SWPPP/ WPCP, NPDES, Hydraulic Calculations, R/W certification and all relevant design details including design exception approvals. For specific details for Encroachment Permits procedure, please refer to the Caltrans's Encroachment Permits Manual. The latest edition of the Manual is available on the web site: <http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Please continue to coordinate with Caltrans for any future developments that could potentially impact State transportation facilities. If you have any questions, please do not hesitate to contact Julie Lugaro at 657-328-6368 or Julie.lugaro@dot.ca.gov.

Sincerely,



SCOTT SHELLEY
Branch Chief, Regional-IGR-Transit Planning
District 12

**Orange County Water District
Smith Basin Improvement Project**

Mitigation Monitoring and Reporting Program

**Prepared by:
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April 2020



Smith Basin Improvement Project Mitigation Monitoring and Reporting Program

Project Name: Smith Basin Improvement Project

Project Location: The proposed improvement activities would occur within the area of Smith Basin, in the Cities of Orange and Villa Park, and portion of unincorporated county land in Orange County. The Smith Basin is bounded by Lemon Street to the west, Cannon Street to the east, Villa Park Road to the south and Santiago Boulevard to the north. The Project Site can be regionally accessed by State Route 55 via the Chapman Avenue exit. The Smith Basin is located downstream of Villa Park Dam and Santiago Reservoir and receive incoming flows from Santiago Creek, which drains into and out of the basin. The Project Site is located at Township T4 South, Range R9 West on U.S.G.S. Quad Map for Orange.

Project Description: The proposed project under the previous scoping (June 2018 NOP Proposed Project) involved two (2) project alternatives. Alternative 1 involved improvement to increase geotechnical stability of the Smith Basin embankment slopes in six (6) areas. Under Alternative 2, all improvements under Alternative I would be included, except that under Alternative 2, Santiago Creek would be reestablished along the toe of the slopes in its current alignment and would maintain its current width and depth and would be protected in place with rip rap.

In August 2018, the OCWD reevaluated the NOP Proposed Project and began the revision process to the scope of work. Limits were placed on the proposed improvements, reducing the number of areas proposed for stabilization from six (6) to three (3) and realigning the Santiago Creek to its prior alignment instead of stabilizing it in its current location.

The Proposed Project activities includes re-establishing the historical access road on the north; re-grading the bottom of Smith Basin to restore Santiago Creek in its former alignment nearer the middle of the basin; repairing and reconstructing the slopes in the basin; constructing six (6) groins to slow water flow along the southern slope; and restoration of removed vegetation.



Smith Basin Improvement Project Mitigation Monitoring and Reporting Program

Terms and Definitions:

1. **Property Owner/Developer** – Orange County Water District.
2. **Environmental Equivalent/Timing** – Any mitigation measure and timing thereof, subject to the approval of the OCWD, which will have the same or superior result and will have the same or superior effect on the environment. The OCWD staff, in conjunction with any appropriate agencies, shall determine the adequacy of any proposed "environmental equivalent/timing" and, if determined necessary, may refer said determination to the OCWD Board of Directors.
3. **Timing** – This is the point where a mitigation measure must be monitored for compliance. In the case where multiple action items are indicated, it is the first point where compliance associated with the mitigation measure must be monitored. Once the initial action item has been complied with, no additional monitoring pursuant to the Mitigation Monitoring and Reporting Plan will occur, as routine OCWD practices and procedures will ensure that the intent of the measure has been complied with.
4. **Responsibility for Monitoring** – Shall mean that compliance with the subject mitigation measure(s) shall be reviewed and determined adequate by all departments listed for each mitigation measure. Outside public agency review is limited to those public agencies specified in the Mitigation Monitoring and Reporting Plan which have permit authority in conjunction with the mitigation measure.
5. **Ongoing Mitigation Measures** – The mitigation measures that are designated to occur on an ongoing basis as part of this Mitigation Monitoring and Reporting Plan will be monitored in the form of an annual letter from the property owner/developer in January of each year demonstrating how compliance with the subject measure(s) has been achieved. When compliance with a measure has been demonstrated for a period of one year, monitoring of the measure will be deemed to be satisfied and no further monitoring will occur. For measures that are to be monitored "Ongoing During Construction", the annual letter will review those measures only while construction is occurring; monitoring will be discontinued after construction is complete. A final annual letter will be provided at the close of construction.



**Smith Basin Improvement Project
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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR MONITORING	COMPLETION
MM AIR-1	Prior to the start of construction and throughout the construction period	Prior to the start of construction and throughout the construction period, the OCWD Project Manager shall ensure that all off-road diesel-powered equipment utilized for the Proposed Project shall be registered with the California Air Resources Board (CARB) and be labelled detailing that the equipment meets or exceeds Tier 3 emissions standards.	OCWD Project Manager	
MM BIO-1	Prior to the start of vegetation clearing activities	In order to avoid take of sensitive and migratory avian species, prior to the start of vegetation clearing activities, the OCWD Project Manager shall ensure that vegetation clearing and ground disturbing activities occur outside of the migratory bird nesting season (February 15 to September 15). If any vegetation clearing or ground disturbing activities occur prior to the completion of the migratory bird nesting season, vegetation clearing or ground disturbing activities shall only take place after the OCWD Project Biologist has conducted a nesting bird survey within three (3) days prior to the start of construction to determine that all nesting has been completed for the season.	OCWD Project Manager	



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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR MONITORING	COMPLETION
MM BIO-2	Prior to tree removal activities	Tree removal activities which may impact active raptor nests will be removed outside of the raptor nesting season (January 15 – September 15). If any tree removal activities occur prior to the completion of the raptor nesting season, tree removal activities shall only take place after the OCWD Project Biologist has conducted a nesting bird survey within three (3) days prior to the start of construction to determine that all raptor nesting has been completed for the season and no active raptor nests remain in trees that would be removed. Removal, relocation, or destruction of active raptor nests will not be undertaken in association with Project activities.	OCWD Project Manager	
MM BIO-3	Immediately after reconfiguring the slope areas	Immediately after reconfiguring the slope areas, OCWD shall hydro-seed and plant native vegetation on areas disturbed by the project and the Project Biologist and/or their designee shall manage the area to ensure that non-native vegetation does not re-establish. In total, 4.2 acres of upland California Coastal Sage habitat shall be planted.	OCWD Project Manager	
MM BIO-4	Following the completion of grading activities	Following the completion of grading activities, OCWD’s Project Biologist shall plant riparian habitat at the edge of the ordinary high-water mark within the disturbance area. The Project Biologist shall manage the area to ensure that non-native vegetation does not re-establish. In total, 4.8 acres of riparian habitat shall be planted within the Project site, and an additional 9.0 acres of bottom acres shall be managed to recruit using flood irrigation from annual inundation events and additional planting if needed per the determination of the Project Biologist. See	OCWD Project Manager	



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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR MONITORING	COMPLETION
		Figure 9 for location of riparian mitigation planting.		
MM BIO-5	Prior to the start of construction	<p>The actions described in MM BIO-3 and MM BIO-4 shall be described and carried out in accordance with a Habitat Restoration and Monitoring Plan (HRMP). A draft HRMP shall be provided to the Wildlife Agencies for review and approval prior to the start of construction.</p> <p>Plans for restoration and revegetation will should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each The HRMP shall plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.</p>	OCWD Project Manager	
MM GEO-1	Prior to the commencement of ground disturbing activities	<p>Prior to the commencement of ground disturbing activities, the OCWD Project Manager shall provide written evidence to the County of Orange Manager, Building and Safety, that OCWD has retained a County certified paleontologist to observe grading activities and salvage and catalogue fossils, if discovered during the course of grading activities and as necessary. The paleontologist shall be present at the pre-grade conference, shall</p>	OCWD Project Manager	



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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR MONITORING	COMPLETION
		<p>establish procedures for paleontological resource surveillance, and shall establish, in cooperation with the OCWD Project Manager, procedures for temporarily halting or redirecting work to permit sampling, identification, and evaluation of the fossils. If the paleontological resources are found to be significant, the paleontologist shall determine appropriate actions, in cooperation with the OCWD Project Manager, to ensure proper exploration and/or salvage.</p>		
MM GEO-2	<p>Following the completion of grading activities,</p>	<p>Following the completion of grading activities, the OCWD Project Manager shall submit the paleontologist’s follow up report for approval by the County of Orange Manager, Building and Safety. The report shall include the period of inspection, a catalogue and analysis of any fossils found, and the present repository of the fossils. The OCWD Project Manager shall prepare excavated material to the point of identification and offer excavated finds for curatorial purposes to the County of Orange, or its designee, on a first refusal basis. These actions, as well as final mitigation and disposition of the resources, shall be subject to approval by the County of Orange Manager, Building and Safety. OCWD shall pay curatorial fees if an applicable fee program has been adopted by the Board of Supervisors, and such fee program is in effect at the time of presentation of the materials to the County of Orange or its designee, all in a manner meeting the approval of the County of Orange Manager, Building and Safety.</p>	<p>OCWD Project Manager</p>	



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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR MONITORING	COMPLETION
MM TCR-1	Prior to commencement of ground disturbing activities	Prior to commencement of ground disturbing activities, the OCWD Project Manager shall retain and compensate for the services of a Tribal Monitor/Consultant who is both approved by the Gabrieleño Band of Mission Indians-Kizh Nation Tribal Government and is listed under the NAHC’s Tribal Contact list for the area of the Project Site. The Tribal Monitor/Consultant would only be present on-site during the construction phases that involves grading activities. The Tribal Monitor/Consultant would complete daily monitoring logs describing the day’s activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when grading activities on the Project Site are completed, or when the Tribal Representatives and Tribal Monitor/Consultant have determined that the Project Site has a low potential for impacts to Tribal Cultural Resources.	OCWD Project Manager	
MM TCR-2	Upon discovery of any archaeological resources	Upon discovery of any archaeological resources, the OCWD Project Manager shall instruct the construction crew to cease construction activities in the immediate vicinity of the find until it can be assessed by a qualified archaeologist and Tribal Monitor/Consultant approved by the Gabrieleño Band of Mission Indians-Kizh Nation. If the resources are Native American in origin, the Gabrieleño Band of Mission Indians-Kizh Nation shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the Tribe will request reburial or preservation for educational purposes. Work may continue on other parts of the Project Site while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 15064.5 [f]). If a	OCWD Project Manager	



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MITIGATION NUMBER	TIMING	MEASURE	RESPONSIBLE FOR	
			MONITORING	COMPLETION
		<p>resource is determined by the qualified archaeologist to constitute a “historical resource” or “unique archaeological resource”, time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation, must be available. The treatment plan established for the resources shall be in accordance with CEQA Guidelines Section 15064.5(f) for historical resources and Public Resources Code Sections 21083.2(b) for unique archaeological resources. Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees to accept the material. If no institution accepts the archaeological material, they shall be offered to a local school or historical society in the area for educational purposes.</p>		