

CHAPTER 10.0

RESPONSE TO COMMENTS

INTRODUCTION TO THE RESPONSE TO COMMENTS

According to CEQA Guidelines Section 15088(a), “the lead agency shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare a written response.” This chapter provides response to written environmental comments received during the public comment period.

This section contains responses to comment letters that were received during the 45-day public review period for the Draft EIR starting October 4, 2016, and ending November 17, 2016. Based on a request from USFWS and CDFW, the City agreed to extend the Draft EIR public review period to December 1, 2016. Two comment letters were received during the review period. In the pages that follow, each comment letter is reproduced and corresponding responses to individual comments are placed alongside to the right. Each of the individual comments within these comment letters is assigned an alphanumeric number; and each response is labeled with the corresponding alphanumeric code. All of the comment letters received are listed in Table 10-1, which includes the names of the public agencies that commented during the public review period. For each comment letter, the date of the letter, the identity of the commenter, and the letter designation assigned to each comment letter are also included in Table 10-1.

Table 10-1
List of Commenting Agencies, Organizations, Individuals, and Tribes

<u>No.</u>	<u>Date of Letter</u>	<u>Commenter</u>	<u>Letter Code</u>	<u>Page No. of Response</u>
<u>Federal and State Agencies</u>				
1	12/1/2016	U.S. Fish and Wildlife Service and California Department of Fish and Wildlife	CDFW-1	10-2
<u>Special Interest/Organizations</u>				
2	11/9/2016	San Diego County Archaeological Society, Inc.	SDCAS-1	10-8

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RESPONSE



U.S. Fish and Wildlife Service
 Carlsbad Fish and Wildlife Office
 2177 Salk Avenue, Suite 250
 Carlsbad, California 92008
 760-431-9440
 FAX 760-431-9624



California Department of Fish and Wildlife
 South Coast Region
 3883 Ruffin Road
 San Diego, California 92123
 858-467-4201
 FAX 858-467-4299

U.S. Fish and Wildlife Service and California Department of Fish and Wildlife (December 1, 2016)

In Reply Refer To:
 FWS/CDFW-14B0406-17CPA0013

December 1, 2016
Sent by Email

Mr. Bill Martin
 Director of Community Development
 City of Escondido
 201 North Broadway
 Escondido, California 92025

Subject: Notice of Availability of a Draft Environmental Impact Report for the Lake Wohlford Dam Replacement Project (SCH #2015041091)

Dear Mr. Martin:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the above referenced draft Environmental Impact Report (EIR), dated October 2016, for the City of Escondido's (City) Lake Wohlford Dam Replacement Project. The public review period for this draft EIR ended on November 17, 2016. The Wildlife Agencies appreciate the time extension until December 1, 2016, granted by the City for providing comments on the draft EIR. The Wildlife Agencies have identified potential effects of this project on wildlife and sensitive habitats. The project information provided herein is based on the draft EIR, while the comments and recommendations provided are based on our knowledge of sensitive and declining vegetation communities in the San Diego area and our participation in regional conservation planning efforts.

CDFW-1

CDFW-1 Acknowledged. The comment provides introductory statements and does not raise a specific issue related to the adequacy of the EIR. Therefore, no specific response is provided.

The primary concern and mandate of the Service is the protection of fish and wildlife resources and their habitats. The Service has the legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), including habitat conservation plans (HCP) developed under section 10(a)(1)(B) of the Act. The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the State's biological resources, including rare, threatened, and endangered plant and animal species pursuant to the California Endangered Species Act (CESA; Fish and Game Code §2050 *et seq.*) and other sections of the Fish and Game Code. The Department also administers the Natural Community Conservation Planning (NCCP) program (Fish and Game Code 2800, *et seq.*), a California regional habitat conservation planning program.

CDFW-2

CDFW-2 Acknowledged. The comment provides introductory statements and does not raise a specific issue related to the adequacy of the EIR. Therefore, no specific response is provided.

Lake Wohlford is a human-made reservoir that was first formed in 1895 and later expanded in 1924. The project site is located approximately 5 miles east of downtown Escondido, but lies 0.5 mile

CDFW-3

CDFW-3 Acknowledged. This is an accurate description of the project, as stated in the EIR. No specific response is required.

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Mr. Bill Martin (FWS/CDFW- 14B0406-17CPA0013)

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outside of the City’s incorporated limits. The majority of the land immediately around Lake Wohlford is within unincorporated San Diego County, but is owned by the City. Lake Wohlford is surrounded by private, City, and Tribal lands to the north, and by Bureau of Land Management, private, and City lands to the south. A variety of vegetative communities exist on site, including, but not limited to, oak woodlands, emergent wetlands, freshwater marsh, southern willow scrub, southern mixed chaparral, coastal sage scrub, and non-native grassland. Due to seismic safety concerns, since 2007 water levels within the reservoir have been restricted by the Federal Energy Regulatory Commission (FERC) to a maximum of 1,460 feet above mean sea level (AMSL), or 20 feet below the prior spillway crest elevation.

CDFW-3
cont.

The project proposes the construction of a replacement dam immediately downstream (west) of the existing Lake Wohlford Dam and the partial deconstruction of the existing dam. The proposed project would also include the improvement and extension of an existing unpaved access road located northeast of the existing dam, and realignment of the portion of Oakvale Road near the dam’s southern abutment. The replacement dam would be constructed so that the resultant storage capacity and maximum reservoir level would be equal to the capacity and elevation of the existing dam, prior to the implementation of the 2007 water restriction, at 6,500 acre-feet and 1,480 feet AMSL, respectively. After the replacement dam is built, the project also proposes to lower the water level within the lake to 1,440 feet AMSL to facilitate the removal of a portion of the existing dam and to improve water flow within the lake. Once the existing structure is partially demolished, the water levels would be returned to pre-2007 levels.

CDFW-4

We offer the following comments and recommendations to assist the City in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that the project is consistent with ongoing regional habitat conservation planning efforts. Our comments address the following issues: (1) adequacy of proposed mitigation ratios; (2) mitigation for existing habitats that will be lost following modifications in water levels; (3) updated protocol-level species surveys for federally and State listed species with potential to occur in the project area; and (4) other conservation opportunities presented by this project.

CDFW-5

1. The majority of the proposed project area lies within the boundaries of San Diego County’s Multiple Habitat Conservation Program (MHCP) March 2003 Final Plan, while a small portion of the proposed project area lies within lands subject to the draft North County Multiple Species Conservation Plan (NCMSCP). Lake Wohlford falls within the Escondido Focused Planning Area (FPA) of the MHCP and is designated as a softline preserve area under that plan. The Wildlife Agencies recommend the final EIR follow the mitigation ratios outlined in Table 4-6 of the MHCP. Accordingly, we recommend that impacts to rare upland habitats such as Engelmann Oak Woodlands and Coast Live Oak Woodlands be mitigated at a minimum of a 3:1 ratio and that Diegan Coastal Sage Scrub be mitigated at a minimum 2:1 ratio.

CDFW-6

2. In the 13 years since the water levels of the lake were lowered, a variety of wetland habitats have developed in the previously inundated area, including 27.16 acres of southern willow scrub, 13.75 acres of freshwater marsh, and 4.13 acres of emergent wetland. After the proposed project is completed, water levels could increase and impact these

CDFW-7

CDFW-4 Acknowledged. This is an accurate description of the project, as stated in the EIR. No specific response is required.

CDFW-5 Acknowledged. This comment provides a summary of the detailed comments that follow. Please see below for detailed responses to the comments summarized here.

CDFW-6 The agencies note that most of the project area is within the boundaries of San Diego County’s Multiple Habitat Conservation Program (MHCP) March 2003 Final Plan, while a small portion of the proposed project area lies within lands subject to the draft North County Multiple Species Conservation Plan (NCMSCP). As discussed on page 3.3-1 of the Draft EIR, the City applied mitigation ratios specified by the County of San Diego’s Biological Mitigation Ordinance (BMO) because the project is located outside the City’s municipal boundaries and the BMO represents the County’s adopted standard for applying habitat-based mitigation.

As the agencies acknowledge later in the letter, the City is not pursuing incidental take coverage via the 10a permit issued pursuant to the MHCP. Such coverage is not required, as general wildlife surveys and protocol surveys conducted as part of the existing conditions assessment for the project did not result in the detection of listed species within the project study area such that the project would require take authorization. Absence this need for incidental take, and a corresponding need to conform to the mitigation requirements of the MHCP, the City feels this use of the County BMO is appropriate and is within the City’s authority as lead agency under the California Environmental Quality Act (CEQA).

In response to the comment later in this letter, the City performed another round of protocol level surveys for listed bird species in spring 2017 (see subsequent response to comment CDFW-8). The City acknowledges

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Mr. Bill Martin (FWS/CDFW- 14B0406-17CPA0013)

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habitats. The final EIR should analyze these impacts as well as impacts to vegetation that could develop in the drawdown area during project construction. The final EIR should also discuss the estimated time necessary to complete the project, including the length of the drawdown, as well as the proposed project's effects on downstream habitats through the modification of water outflow volumes during project construction, reservoir drawdown, refilling, and operation. We also recommend that any habitat impacts be fully mitigated according to the guidelines referenced above.

CDFW-7
cont.

3. Biological field studies, including Service protocol-level surveys for coastal California gnatcatcher (*Poliopitila californica californica*; gnatcatcher), least Bell's vireo (*Vireo bellii pusillus*; vireo), and southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher), were completed for this project in 2013. The Wildlife Agencies recommend that the protocol surveys be updated and included in the analysis for potential impacts to these species in the final EIR. The Wildlife Agencies typically consider the results of biological surveys to be current for up to 1 year. Any suitable habitats downstream of the dam should also be surveyed, if they will be impacted by alteration of stream flows during the proposed project. Because the City is not pursuing NCCP/HCP incidental take coverage for gnatcatcher, areas within the City's FPA are not eligible to use modified protocol surveys, thus a minimum of six surveys, completed at least 1 week apart, from March 15 through June 30, are required to determine presence/absence of gnatcatchers. Impacts to federally listed species should be addressed through section 7 of the Act with FERC as the lead federal agency. Any impacts to state listed species would need to be addressed with the Department.

CDFW-8

4. This project may also provide opportunities to improve the habitat available at Lake Wohlford through more active management. During the biological assessment of the project area, brown-headed cowbirds (*Molothrus ater*), a nest parasite, were detected during both vireo and flycatcher surveys. The presence of this species negatively influences the breeding success of these sensitive species (Service 2006, 2014). Additionally, southwestern pond turtles (*Actinemys marmorata pallida*) were historically found at this location. The Wildlife Agencies recommend that active management activities be included as mitigation in the final EIR. Examples of the recommended active management activities include control of brown-headed cowbirds in the riparian areas surrounding the lake, and, while water levels are lowered, removal of non-native aquatic vertebrates, such as red-eared sliders (*Trachemys scripta elegans*) and bullfrogs (*Lithobates catesbeianus*), which prey on young turtles. Such activities have been demonstrated to improve the quality of habitat available to sensitive, rare, and listed species and would help protect the populations and habitats of trust resources (Whitfield *et al.* 1997; Service 2002; Spinks *et al.* 2003).

CDFW-9

Thank you for the opportunity to comment on the draft EIR for this Project. We would appreciate if you would confirm by e-mail your receipt of our comments and provide notification of the final EIR. We are hopeful that further consultation among all parties will ensure the protection we find necessary for the biological resources that would be affected by this project.

CDFW-10

additional discussion with the wildlife agencies regarding mitigation ratios may occur during the project's permitting process.

CDFW-7

The EIR does include discussion of the project's impact on vegetation within the inundation area (see page 3.3-24). The City feels the discussion in the EIR is sufficient for purposes of disclosing impacts pursuant to CEQA. The referenced comment compares interim conditions to the pre-drawdown condition of the project site, which are not directly applicable to the analysis of the project's impact. It is inappropriate to apply acreage-based mitigation obligations as a result of the inundation, as is applied to the project's manual removal of habitat during construction and replacement with permanent infrastructure.

As described in Section 2.1 of the EIR, the drawdown was implemented in 2007 as a result of a federal mandate issued by the Federal Energy Regulatory Commission. It was always intended as an interim condition that would last until such time as the dam was replaced and prior water levels restored. After dam replacement, water levels will return to pre-2007 conditions, and water levels will fluctuate seasonally and temporally between approximately 1,455 and 1,480 feet above mean sea level as was the case prior to the mandatory drawdown. As the reservoir gradually fills after dam completion, habitat on the reservoir periphery will be inundated and then exposed again cyclically. Habitats along the reservoir periphery will evolve over time, but the ultimate habitat conversion along the periphery is a complicated process and cannot be accurately predicted. Ultimately, habitat distribution along the reservoir periphery should emulate conditions prior to the mandatory drawdown, with the inundation of some riparian areas and the expansion of riparian vegetation into other areas that have changed during the drawdown. Therefore, the City feels it is not appropriate to assign acreage-based impacts and mitigation obligations for the project-related reinundation of habitat at the fringe of reservoir.

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Mr. Bill Martin (FWS/CDFW- 14B0406-17CPA0013)

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CDFW-7
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CDFW-8

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CDFW-9

Thank you for the opportunity to comment on the draft EIR for this Project. We would appreciate if you would confirm by e-mail your receipt of our comments and provide notification of the final EIR. We are hopeful that further consultation among all parties will ensure the protection we find necessary for the biological resources that would be affected by this project.

CDFW-10

This comment also raises a concern regarding potential impacts to downstream habitats resulting from modifications to reservoir outflow. There is currently neither an outflow from the reservoir, nor anticipated outflow during construction or future operation. The only exception to this condition would be, as is the case now, in the rare instance where reservoir levels overtop the dam spillway or during a dam safety event in which case the emergency outlet would be utilized to release flow from the reservoir. This is not a change in existing conditions resulting from this project.

CDFW-8

In response to this request by the agencies, the City performed updated protocol-level surveys for coastal California gnatcatcher (CAGN), least Bell's vireo (LBV), and southwestern willow flycatcher (SWFL) in the 2017 survey season. The 45-day report covering all the surveys has been included as Appendix C-1 of the Final EIR and discussion of the results has been incorporated into Section 3.3. No CAGN or SWFL were detected in the survey area during the 2017 protocol surveys. One pair of LBV was detected during three of the early surveys, but was no longer detected after May 21, 2017. The pair was observed shifting locations during this period, apparently investigating areas to determine an ideal nesting site, but no nests were observed. Once the pair could no longer be found in subsequent surveys, it was reasonably concluded that they had moved outside the survey area to nest. Furthermore, AECOM concluded that the habitat in the survey area is generally too open to be ideal LBV breeding habitat. AECOM also observed many brown-headed cowbirds during multiple survey visits for LBV and SWFL, indicating a significant presence of this nest parasite, similar to observations made during the prior surveys in 2013. An updated habitat assessment for arroyo toad was also conducted in response to this comment. As in the 2013 survey, AECOM concluded that the survey area is not suitable for arroyo toad breeding or dispersal.

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CDFW-9 The agencies recommend management activities to improve the value of habitat at the reservoir. Specifically, the agencies recommend brown-headed cowbird trapping

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Mr. Bill Martin (FWS/CDFW- 14B0406-17CPA0013)

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If you have any questions, or want to schedule a meeting, please contact Eric Hollenbeck of the Department at eric.hollenbeck@wildlife.ca.gov or (858) 467-2720, or Janet Stuckrath of the Service at janet_stuckrath@fws.gov or (760) 431-9440, extension 270.

CDFW-10
cont.

Sincerely,

KAREN
GOEBEL
Digitally signed by
KAREN GOEBEL
Date: 2016.12.01
16:28:59 -0800
Karen A. Goebel
Assistant Field Supervisor
U.S. Fish and Wildlife Service


Gail K. Sevens
Environmental Program Manager
California Department of Fish and Wildlife

cc:

David Mayer, California Department of Fish and Wildlife, David.Mayer@wildlife.ca.gov
David Zoutendyk, U.S. Fish and Wildlife Service, david_zoutendyk@fws.gov

LITERATURE CITED:

- Spinks, P.Q., G.B. Pauly, J.J. Crayon, and H.B. Shaffer. 2003. Survival of the western pond turtle (*Emys marmorata*) in an urban California environment. *Biological Conservation*, 113(2), 257-267.
- (Service) U.S. Fish and Wildlife Service. 2002. Southwestern Willow Flycatcher Recovery Plan, Region 2, Albuquerque, NM.
- (Service) U.S. Fish and Wildlife Service. 2006. 5-Year review for the Least Bell's Vireo. Carlsbad Fish and Wildlife Office. 27 pp.
- (Service) U.S. Fish and Wildlife Service. 2014. 5-Year review for the Southwestern Willow Flycatcher. Carlsbad Fish and Wildlife Office. 104 pp.
- Whitfield, M.J., K.M. Enos, and S.P. Rowe. 1997. Is Brown-headed Cowbird trapping effective for managing populations of the endangered Southwestern Willow Flycatcher? *Studies in Avian Biology*, 18, 260-266.

and eradication, and removal of non-native aquatic invertebrates, such as red-eared sliders and bullfrogs, to allow reintroduction of western pond turtles, which occurred historically in the lake. The City is willing to implement the above-recommended management activities, and looks forward to continued discussions with the agencies on these issues during the project's permitting process. Because these management measures are not necessary as a result of project-related impacts, they have not been incorporated into the Final EIR as mitigation measures.

CDFW-10 This comment provides concluding information and does not raise a specific issue related to the adequacy of the EIR. Therefore, no specific response is required.

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San Diego County Archaeological Society, Inc.
(November 9, 2016)



San Diego County Archaeological Society, Inc.

Environmental Review Committee

9 November 2016

To: Mr. Bill Martin, AICP
Director of Community Development
City of Escondido
201 North Broadway
Escondido, California 92025

Subject: Draft Environmental Impact Report
Lake Wohlford Dam Replacement Project
Env 13-0005

Dear Mr. Martin:

I have reviewed the cultural resources aspects of the subject DEIR on behalf of this committee of the San Diego County Archaeological Society.

Based on the information contained in the DEIR and its Appendices E and F, we agree with the detailed mitigation program specified in Mitigation Measures CR-1.1 through CR-1.10 and CR-2.1, with the following exception:

- 1. Mitigation Measure CR-1.9 conflicts with the U.S. Army Corps of Engineers' requirements in 36CFR79 for curation of all recovered cultural material, with the exception of repatriation of any material meeting the criteria in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). The material to be repatriated is basically human remains and associated grave goods. Requirement for any Corps permits will trigger the need to comply with 36CFR79. Note that the curation institution specified in CR-1.9, the San Diego Archaeological Center, meets the 36CFR79 standards.

SDCAS-1

SDCAS-1 Comment acknowledged. During the Draft EIR public review period, which ended on November 17, 2016 and extended to December 1, 2016, the U.S. Army Corps of Engineers did not provide any comments on the Draft EIR. The City acknowledges that the project will require a permit from the Army Corps and, if needed, will resolve any potential conflict with that agency's guidelines during the permitting process.

SDCAS appreciates the opportunity to participate in the public review of this Draft EIR.

Sincerely,

James W. Royle, Jr., Chairperson
Environmental Review Committee

cc: AECOM
SDCAS President
File

P.O. Box 81106 San Diego, CA 92138-1106 (858) 538-0935