

Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project

Mitigated Negative Declaration

Response to Comments
SCH# 2012091055

Report No. 1411



February 2013

COMMENTS AND RESPONSES

A proposed Initial Study-Mitigated Negative Declaration (MND) for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project (Metropolitan Report No. 1411) was circulated for a 30-day public review period beginning on September 21, 2012, and ending on October 22, 2012. Eight letters were received, five of which were from public agencies.

LIST OF COMMENTERS

The public agencies and other groups who submitted comments on the draft MND are listed below (arranged by date of correspondence):

No.	Organization/Name	Name	Date
1	Native American Heritage Commission	Dave Singleton	10/03/12
2	Soboba Band of Luiseño Indians	Joseph Ontiveros	10/03/12
3	Rincon Band of Luiseno Indians	Rose Duro	10/03/12
4	California Department of Fish and Game	Jeff Brandt	10/22/12
5	Riverside County Regional Park and Open Space District	Marc Brewer	10/22/12
6	Santa Ana Regional Water Quality Control Board	Glenn S. Robertson	10/22/12
7	OPR State Clearinghouse and Planning Unit	Scott Morgan	10/23/12
8	OPR State Clearinghouse and Planning Unit	Scott Morgan	10/25/12

Comment Letter 1

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
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ds_nahc@pacbell.net



Letter 1

October 3, 2012

Ms. Brenda S. Marines, Project Planner

The Metropolitan Water District of Southern California

700 North Alameda Street
Los Angeles, CA 90012

Re: SCH#2012091055; CEQA Notice of Completion; draft Environmental Impact Report (DEIR); for the "Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project" located in the City of Riverside; Riverside County, California

Dear Ms. Marines:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC recommends that the lead agency request that the NAHC do a Sacred Lands File search as part of the careful planning for the proposed project.

1.1

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural

1.2

Comment Letter 1

significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.

1.2

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

1.3

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

1.4

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

1.5

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

1.6

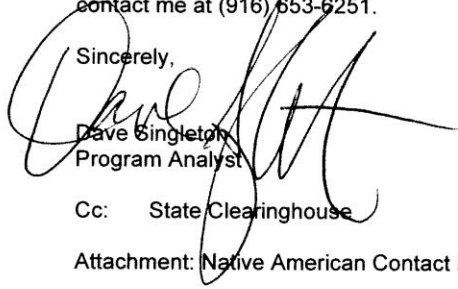
Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

1.7

Comment Letter 1

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

Comment Letter 1

**Native American Contacts
Riverside County
October 3, 2012**

Pala Band of Mission Indians
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PMB 50
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Rincon Band of Mission Indians
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Valley Center, CA 92082
twolfe@rincontribe.org
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(760) 297-2639 Fax

Pauma & Yuima Reservation
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Pauma Valley CA 92061
paumareservation@aol.com
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(760) 742-3422 Fax

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(909) 864-3724 - FAX
(909) 864-3370 Fax

Pechanga Band of Mission Indians
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Gabrieleno/Tongva San Gabriel Band of Mission
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Santa Rosa Band of Mission Indians
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This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2012091055; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Santa Ana Bridge Seismic Retrofit and Routine Maintenance Project; located in the City of Riverside; Riverside County, California.

Comment Letter 1

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October 3, 2012**

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Serrano

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Comment Letter 1

**Native American Contacts
Riverside County
October 3, 2012**

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ahoover@pechanga-nsn.gov
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(951) 654-5544, ext 4137

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This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2012091055; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the Santa Ana Bridge Seismic Retrofit and Routine Maintenance Project; located in the City of Riverside; Riverside County, California.

Response to the October 3, 2012, Comment Letter from the Native American Heritage Commission

Response to Comment 1-1

The commenter recommends that the lead agency request that the NAHC do a Sacred Lands File (SLF) search for the proposed project.

As indicated in the NAHC letter dated June 19, 2012 responding to a request for Sacred Lands File (SLF) search for the Area of Potential Effects (APE) for the proposed project, the NAHC previously conducted a SLF search within the proposed project's APE and Native American cultural resources were not identified. The referenced NAHC letter is appended at the end of the response to Letter 1.

Response to Comment 1-2

The commenter suggests consultation with a list of Native American contacts (provided with the comment letter) to see if the proposed project might impact Native American cultural resources.

With regard to consultation, for the purposes of the California Environmental Quality Act (CEQA), scoping letters for the MND were sent to Native American individuals or tribal organizations on June 20, 2012. The list of Native American individuals or tribal organizations contacted was sourced from the NAHC letter dated June 19, 2012.

Response to Comment 1-3

The commenter notes several requirements that would apply if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (NEPA).

With regard to federal jurisdiction and regulations, a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps) will be required for the project. Therefore, Native American consultation in accordance with Section 106 of the National Historic Preservation Act is anticipated for this project.

Response to Comment 1-4

The commenter notes the importance of considering confidentiality of historic properties of religious and cultural significance.

With regard to confidentiality of resources, in the unlikely event that resources of religious or cultural significance should be discovered within the project area, the locations of these areas will remain confidential. Detailed information regarding the location of any previously undiscovered resources will only be available to project personnel who have a legitimate "need to know".

Response to Comment 1-5

The commenter notes that in the event that human remains are discovered at the site the requirements of Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code 7050.5 would apply.

No known burial sites have been identified within the project area or in the vicinity. In the unlikely event that human remains are discovered at the site, the provisions of the government codes referenced above would be implemented, including the requirement in California Health and Safety Code Section 7050.5, that all construction or excavation must be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the County coroner or medical examiner can determine whether the remains are those of a Native American. It should also be noted that Section 7052 of the Health and Safety Code states that molestation or disinterment of human remains is a felony.

In addition, Mitigation Measure CUL-2 has been included in the EIR to address the low potential for construction activity to result in the unanticipated discovery of human remains.

Response to Comment 1-6

As discussed in response to Comment 1-2, scoping letters for the MND were sent to Native American individuals or tribal organizations on June 20, 2012. The list of Native American individuals or tribal organizations contacted was sourced from the NAHC letter dated June 19, 2012. Also, as noted in Response to Comment 1-3, a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps) will be required for the project. Therefore, further Native American consultation in accordance with Section 106 of the National Historic Preservation Act is anticipated for this project.

Response to Comment 1-7

The commenter notes that when Native American sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends “avoidance” of the site.

As stated previously, no known burial sites have been identified within the project area or in the vicinity. In addition, the NAHC previously conducted a SLF search for the proposed project and did not identify any Native American sites in the project vicinity. Consultation with other Native American individuals or tribal organizations also did not identify any Native American sites in the project area.

It should also be noted that the areas of proposed ground disturbance, i.e. the northern access road and the northern bank of the Santa Ana River, are both unlikely to contain previously undiscovered archaeological resources given the extent of ground disturbance that has occurred previously. The northern access road has been previously graded and repeatedly maintained, while the river bank sediments within the proposed project area have been heavily disturbed by the construction and ongoing maintenance of the Santa Ana River Bridge as well as by the repeated scouring and deposition along the banks of the Santa Ana River.

Finally, Mitigation Measure CUL-1 on page 44 of the MND has been included to reduce potential impacts should construction activity unearth yet to be discovered archaeological resources by detailing the process to be followed to protect or mitigate impacts to such resources if encountered during grading.

06/20/2012 09:16 FAX 916 657 5390

NAHC

001/006

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

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June 19, 2012

Mr. Kevin Hunt, Senior Cultural Resources Consultant

Rincon Consultants, Inc.

5135 Avenida Encinas, Suite A
Carlsbad, CA 92008

Sent by FAX to: 760-918-9449

No. of Pages: 5

Re: Sacred Lands File Search and Native American Contacts list for the proposed
**"Santa Ana River Bridge Crossing Seismic Upgrade and Routine Maintenance
Project"** located in the Riverside area in Riverside County, California

Dear Mr. Hunt:

The Native American Heritage Commission (NAHC) conducted a Sacred Lands File searches of the 'area of potential effect,' (APE) based on the USGS coordinates provided and **Native American cultural resources were not identified** in the project area of potential effect (e.g. APE): you specified. Also, please note; the NAHC Sacred Lands Inventory is not exhaustive and does not preclude the discovery of cultural resources during any project groundbreaking activity.

California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to, California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction.

In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

The California Environmental Quality Act (CEQA – CA Public Resources Code §§ 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. CA Government Code §65040.12(e) defines "environmental justice" provisions and is applicable to the environmental review processes.

06/20/2012 09:16 FAX 916 657 5390

NAHC

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Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Local Native Americans may have knowledge of the religious and cultural significance of the historic properties of the proposed project for the area (e.g. APE). Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). We urge consultation with those tribes and interested Native Americans on the list that the NAHC has provided in order to see if your proposed project might impact Native American cultural resources. Lead agencies should consider avoidance as defined in §15370 of the CEQA Guidelines when significant cultural resources as defined by the CEQA Guidelines §15064.5 (b)(c)(f) may be affected by a proposed project. If so, Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "substantial," and Section 2183.2 which requires documentation, data recovery of cultural resources.

The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Partnering with local tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 4(f), Section 110 and (k) of the federal NHPA (16 U.S.C. 470 *et seq.*), Section 4(f) of the Department of Transportation Act of 1966 (23 CFR 774); 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C. 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The NAHC remains concerned about the limitations and methods employed for NHPA Section 106 Consultation.

Also, California Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery', another important reason to have Native American Monitors on board with the project.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. An excellent way to reinforce the relationship between a project and local tribes is to employ Native American Monitors in all phases of proposed projects including the planning phases.

Confidentiality of "historic properties of religious and cultural significance" may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision

2

08/20/2012 09:16 FAX 916 657 5390

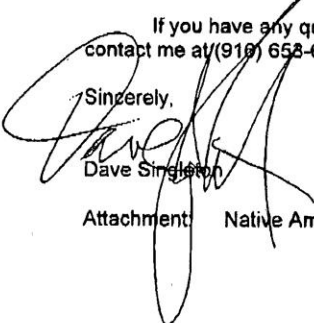
NAHC

003/008

on whether or not to disclose items of religious and/or cultural significance identified in or near the APE and possibility threatened by proposed project activity.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 658-6251.

Sincerely,



Dave Singleton

Attachment: Native American Contact List

06/20/2012 09:16 FAX 916 657 5390

NAHC

004/008

Native American Contacts
Riverside County
June 19, 2012

Pala Band of Mission Indians
Tribal Historic Preservation Office/Shasta Gaugher
35008 Pala Temecula Road, PMB Luiseno
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Pala, CA 92059
(760) 891-3515
sgaughen@palatribe.com
(760) 742-3189 Fax

Rincon Band of Mission Indians
Vincent Whipple, Tribal Historic Preservation Officer
P.O. Box 68 Luiseno
Valley Center, CA 92082
twolfe@rincontribe.org
(760) 297-2635
(760) 297-2639 Fax

Pauma & Yuima Reservation
Randall Majel, Chairperson
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San Manuel Band of Mission Indians
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Pechanga Band of Mission Indians
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Soboba Band of Mission Indians
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Ramona Band of Cahuilla Mission Indians
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This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed Santa Ana River Bridge Crossing Seismic Upgrade and Routine Maintenance Project; located in Riverside County supporting the California Upper Feeder Water Pipeline of the Metropolitan Water District of Southern California, near the City of Riverside.

06/20/2012 09:17 FAX 916 657 5390

NAHC

005/006

Native American Contacts
Riverside County
June 19, 2012

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This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed Santa Ana River Bridge Crossing Seismic Upgrade and Routine Maintenance Project; located in Riverside County supporting the California Upper Feeder Water Pipeline of the Metropolitan Water District of Southern California, near the City of Riverside.

06/20/2012 09:17 FAX 916 657 5390

NAHC

008/008

Native American Contacts
Riverside County
June 19, 2012

Cahuilla Band of Indians
Chairperson
PO Box 391760 Cahuilla
Anza , CA 92539
tribalcouncil@cahuilla.net
915-763-5549

Pechanga Cultural Resources Department
Anna Hoover, Cultural Analyst
P.O. Box 2183 Luisefio
Temecula , CA 92593
ahoover@pechanga-nsn.gov
951-770-8104
(951) 694-0446 - FAX

Ernest H. Siva
Morongo Band of Mission Indians Tribal Elder
9570 Mias Canyon Road Serrano
Banning , CA 92220 Cahuilla
siva@dishmail.net
(951) 849-4676

SOBOBA BAND OF LUISEÑO INDIANS
Joseph Ontiveros, Cultural Resource Department
P.O. BOX 487 Luiseno
San Jacinto , CA 92581
jontiveros@soboba-nsn.gov
(951) 663-5279
(951) 654-5544, ext 4137

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed Santa Ana River Bridge Crossing Seismic Upgrade and Routine Maintenance Project; located in Riverside County supporting the California Upper Feeder Water Pipeline of the Metropolitan Water District of Southern California, near the City of Riverside.

Comment Letter 2

October 3, 2012

Letter 2

Attn: Benda Marines
The Metropolitan Water District of Southern California
Environmental Planning Team
P.O. Box 54153
Los Angeles, CA 90054-0153



Re: Notice of Availability/Notice of Intent to Adopt a Proposed Mitigated Negative Declaration for the Santa Ana Bridge Retrofit and Routine Maintenance Project

The Soboba Band of Luiseño Indians appreciates your observance of Tribal Cultural Resources and their preservation in your project. The information provided to us on said project has been assessed through our Cultural Resource Department, where it was concluded that although it is outside the existing reservation, the project area does fall within the bounds of our Tribal Traditional Use Areas. This project location is in close proximity to known village sites and is a shared use area that was used in ongoing trade between the Luiseno and Cahuilla tribes. Therefore it is regarded as highly sensitive to the people of Soboba.

2.1

Soboba Band of Luiseño Indians is requesting the following:

1. To initiate a consultation with the Project Developer and Land owner.
2. The transfer of information to the Soboba Band of Luiseno Indians regarding the progress of this project should be done as soon as new developments occur.
3. Soboba Band of Luiseño Indians continues to act as a consulting tribal entity for this project.
4. Working in and around traditional use areas intensifies the possibility of encountering cultural resources during the construction/excavation phase. For this reason the Soboba Band of Luiseño Indians requests that a Native American monitoring component be included as a mitigation measure for the negative declaration. The Tribe is requesting that a Treatment and Dispositions Agreement between the developer and The Soboba Band be provided to the Metropolitan Water District of Southern California prior to the issuance of a grading permit and before conducting any additional archaeological fieldwork.
5. Request that proper procedures be taken and requests of the tribe be honored (Please see the attachment)

2.2


2.3

2.4

The Soboba Band of Luiseno Indians is requesting a face-to-face meeting between the Metropolitan Water District of Southern California and the Soboba Cultural Resource Department. Please contact me at your earliest convenience either by email or phone in order to make arrangements.

2.5

Sincerely,


Joseph Ontiveros
Soboba Cultural Resource Department
P.O. Box 487
San Jacinto, CA 92581
Phone (951) 654-5544 ext. 4137
Cell (951) 663-5279
jontiveros@soboba-nsn.gov

Cultural Items (Artifacts). Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer should agree to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. When appropriate and agreed upon in advance, the Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

The Developer should waive any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. Upon completion of authorized and mandatory archeological analysis, the Developer should return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties and not to exceed (30) days from the initial recovery of the items.

Treatment and Disposition of Remains.

A. The Soboba Band shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.

B. The Soboba Band, as MLD, shall complete its inspection within twenty-four (24) hours of receiving notification from either the Developer or the NAHC, as required by California Public Resources Code § 5097.98 (a). The Parties agree to discuss in good faith what constitutes "appropriate dignity" as that term is used in the applicable statutes.

C. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The Soboba Band, as the MLD in consultation with the Developer, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains.

D. All parties are aware that the Soboba Band may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The Developer should accommodate on-site reburial in a location mutually agreed upon by the Parties.

E. The term "human remains" encompasses more than human bones because the Soboba Band's traditions periodically necessitated the ceremonial burning of human remains. Grave goods are those artifacts associated with any human remains. These items, and other funerary remnants and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact.

Comment Letter 2

Coordination with County Coroner's Office. The Lead Agencies and the Developer should immediately contact both the Coroner and the Soboba Band in the event that any human remains are discovered during implementation of the Project. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four (24) hours of the determination, as required by California Health and Safety Code § 7050.5 (c).

Non-Disclosure of Location Reburials. It is understood by all parties that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, parties, and Lead Agencies, will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r). Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer agrees to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

Response to the October 3, 2012, Comment Letter from the Soboba Band of Luiseño Indians

Response to Comment 2-1

The commenter remarks that though the project area is located outside the existing reservation, it does fall within the bounds of the Tribal Traditional Use Areas of the Soboba Band of Luiseno Indians and is in close proximity to known village sites.

Routine maintenance and operation has been occurring within and around the Santa Ana River Bridge since its construction in the late 1930s. During that time no evidence of archaeological resources has been identified within the project area. In addition, the records search and field survey of the project site did not identify the presence of any archaeological resources, including evidence of village sites or other Native American sites within the project area.

The only areas that would experience ground disturbance as part of the proposed project are the northern access road and the northern bank of the Santa Ana River. The northern access road has been previously graded and repeatedly maintained, while the river bank sediments within the proposed project area have been heavily disturbed by the construction and ongoing maintenance of the Santa Ana River Bridge as well as by the repeated scouring and deposition along the banks of the Santa Ana River. Given the previous disturbance of these areas, discoveries of Native American artifacts during continued operation and maintenance are not anticipated. However, should an unanticipated discovery of archaeological resources, including Native American resources, occur during project construction, the provisions put forth in Mitigation Measures CUL-1 and CUL-2 on page 44 of the MND would apply.

Response to Comment 2-2

The commenter requests ongoing consultation with the Soboba Band of Luiseño Indians throughout the proposed project.

Consultation with the Soboba Band of Luiseño Indians on the proposed project commenced during scoping of the MND as the tribe was contacted via a scoping letter following receipt of the NAHC contact list of Native American individuals or tribal organizations. Based on the previous disturbance at the site and the lack of evidence of archaeological resources in the project area, it is unlikely that the site possesses sufficient potential for Native American resources to be present to warrant monitoring during grading activities. However, should an unanticipated discovery of archaeological resources, including Native American resources, occur during project construction, the provisions put forth in Mitigation Measures CUL-1 and CUL-2 on page 44 of the MND would apply.

In addition, a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps) is required for the project. Therefore, a Native American consultation in accordance with Section 106 of the National Historic Preservation Act is anticipated for this project.

Response to Comment 2-3

The commenter requests that a Native American monitoring component be included as a mitigation measure for the MND and that a Treatment and Dispositions Agreement between the Developer and the Soboba Band be provided to Metropolitan prior to

issuance of a grading permit and before conducting any additional archaeological fieldwork.

The only areas that would experience ground disturbance as part of the proposed project are the northern access road and the northern bank of the Santa Ana River. The northern access road has been previously graded and repeatedly maintained, while the river bank sediments within the proposed project area have been heavily disturbed by the construction and ongoing maintenance of the Santa Ana River Bridge as well as by the repeated scouring and deposition along the banks of the Santa Ana River. Given the previous disturbance of these areas, discoveries of archaeological resources, including Native American artifacts, during project implementation are not anticipated. Should an unanticipated discovery of archaeological resources, including Native American resources, occur during project construction, the provisions put forth in Mitigation Measures CUL-1 and CUL-2 on page 44 of the MND would apply.

Response to Comment 2-4

The commenter requests that the proper procedures be taken and the requests of the tribe be honored in accordance with the attachments provided with the comment letter.

As discussed in the response to Comment 2-3, the potential for archaeological resources to be discovered at the site is considered low. Should an unanticipated discovery of archaeological resources, including Native American resources, occur during project construction, the provisions put forth in Mitigation Measures CUL-1 and CUL-2 on page 44 of the MND would apply.

Response to Comment 2-5

A Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers (Corps) is required for the project. Therefore, a Native American consultation in accordance with Section 106 of the National Historic Preservation Act is anticipated for this project.

RINCON BAND OF LUISEÑO INDIANS
Culture Committee

Post Office Box 68 · Valley Center, California 92082 ·
(760) 297-2622 or (760) 297-2635 & Fax:(760) 297-2639



October 3, 2012

Letter 3

Metropolitan Water District of Southern California
PO Box 54153
Los Angeles, CA 90054-0153

Re: Notice of Availability/Notice of Intent to Adopt a Proposed Mitigated Negative Declaration
for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project

Dear Ms. Brenda S. Marines,

Thank you for inviting us to submit comments on the Santa Ana River Bridge Seismic Retrofit
and Routine Maintenance Project. This letter is written on behalf of the Rincon Band of Luiseño
Indians. Rincon is submitting these comments concerning your Project's potential impact on
Luiseño cultural resources.

The Rincon Band has concerns for impacts to historic and cultural resources and findings of
significant cultural value that could be disturbed or destroyed and are considered culturally
significant to the Luiseño people. This is to inform you, your identified location is within the
Aboriginal Territory of the Luiseno people, but is not within Rincon's Historic boundaries. We
refer you to Pechanga Band of Luiseño Indians or Soboba Band of Luiseño Indians who are
closer to your project area. In addition, we recommend a Native American Monitor be present
during any and all ground disturbances.

3.1

Also, please contact the Native American Heritage Commission and they will assist with a
referral to other tribes in the project area. We request you update your contact information for
Rincon and send any future letters and correspondence to the Rincon Tribal Chairman and the
Tribal Historic Preservation Office in the Cultural Resource Department, Post Office Box 68,
Valley Center, CA 92082 (760) 297 2635.

3.2

Thank you for this opportunity to protect and preserve our cultural assets.

Sincerely,


Rose Duro
Rincon Culture Committee Chairwoman

Bo Mazzetti
Tribal Chairman

Stephanie Spencer
Vice Chairwoman

Charlie Kolb
Council Member

Steve Stallings
Council Member

Laurie E. Gonzalez
Council Member

Response to the October 3, 2012, Comment Letter from the Rincon Band of Luiseño Indians

Response to Comment 3-1

The comment states that project area is within the Aboriginal Territory of the Luiseño people, but is not within the Rincon Band's historic boundaries. The commenter refers Metropolitan to the Pechanga Band and Soboba Band of Luiseño Indians. In addition, the comment recommends a Native American monitor be present during any and all ground disturbances.

Metropolitan acknowledges the referral to the Pechanga Band and Soboba Band of Luiseño Indians. During the scoping phase of the MND, letters were sent to multiple Native American individuals or tribal organizations, including the Pechanga Band and the Soboba Band of Luiseño Indians. Responses were received from both bands in response to the scoping letters and are included in Appendix C of the MND. In addition, comments on the MND were received from the Soboba Band of Luiseno Indians in response to the Notice of Availability/Notice of Intent to Adopt a Proposed Mitigated Negative Declaration.

With regard to provision of a Native American monitor during ground disturbing activities, the only areas that would experience ground disturbance as part of the proposed project are the northern access road and the northern bank of the Santa Ana River. The northern access road has been previously graded and repeatedly maintained, while the river bank sediments within the proposed project area have been heavily disturbed by the construction and ongoing maintenance of the Santa Ana River Bridge as well as by the repeated scouring and deposition along the banks of the Santa Ana River. Given the previous disturbance of these areas, discoveries of any Native American artifacts during continued operation and maintenance are not anticipated. However, should an unanticipated discovery of archaeological resources, including Native American resources, occur during project construction, the provisions put forth in Mitigation Measures CUL-1 and CUL-2 on page 44 of the MND would apply.

Response to Comment 3-2

The commenter recommends that the Native American Heritage Commission (NAHC) be contacted for assistance with referral to other tribes in the area. In addition, the commenter provides updated contact details for the Rincon Band of Luiseño Indians.

The NAHC was contacted during the scoping phase of the MND and was also sent the Notice of Availability/Notice of Intent to Adopt a proposed Mitigated Negative Declaration. A scoping letter (dated June 19, 2012) was received from the NAHC and is appended at the end of the response to Letter 1 (dated October 3, 2012) containing comments on the draft MND from the NAHC.

Comment Letter 4



State of California -The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
(909) 484-0459
<http://www.dfg.ca.gov>

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



Letter 4

October 22, 2012

Ms. Brenda S. Marines
Metropolitan Water District
700 N. Alameda Street
Los Angeles, CA 90012

Re: Mitigated Negative Declaration for the Santa Ana River Bridge Seismic
Retrofit and Routine Maintenance Project
State Clearinghouse Number (SCH) 2012091055

Dear Ms. Marines:

The Department of Fish and Game (Department) appreciates this opportunity to comment on the Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project, SCH Number 2012091055. The Department is responding as a Trustee Agency for fish and wildlife resources [Fish and Game Code sections 711.7 and 1802 and the California Environmental Quality Act Guidelines (CEQA) section 15386] and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines section 15381), such as a Lake and Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Fish and Game Code Sections 2080 and 2080.1).

4.1

Project Description

The Proposed Project consists of the seismic retrofit and routine maintenance of the Metropolitan Water District's (MWD) Santa Ana River Bridge Crossing for the Upper Feeder pipeline. The bridge is 1,030 feet long, 9 feet 8 inches wide and crosses the Santa Ana River, which is 500 feet wide at the project site. The bridge was first built in the 1930's and upgraded in the 1980s. It has three 180-foot long steel trusses supported by four concrete piers, with an additional eight concrete piers on both sides of the River. The bridge trusses are 18 feet wide by 22 feet 6 inches tall. The concrete piers supporting the trusses are 43 feet tall and are anchored in 32 foot by 17 foot concrete caissons embedded in bedrock.

4.2

The Bridge is located north of Jurupa Avenue, south of Limonite Avenue and the 60 Freeway, west of Union Pacific Railroad tracks, and east of Van Buren Boulevard in unincorporated Riverside County. Access to the bridge is provided by a dirt road on the north side of the bridge and on the south side of the bridge.

The most recent seismic risk study shows that the bridge needs additional retrofit work. The proposed retrofit consists of the reinforcement of interior pier caissons with embedded reinforcing

Conserving California's Wildlife Since 1870

Comment Letter 4

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
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bars drilled into existing caissons, strengthening the truss elements, modifying the expansion joints to minimize leakage and conducting vegetation management beneath and adjacent to the bridge crossing and the north access road. Two options are proposed.

↑ 4.2

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the CESA, and administers the Natural Community Conservation Plan Program (NCCP Program). On June 22, 2004, the Department issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) per Section 2800, et seq., of the California Fish and Game Code. The MSHCP establishes a multiple species conservation program to minimize and mitigate for habitat loss and the incidental take of covered species in association with activities covered under the permit.

The proposed Project occurs within the MSHCP area in unincorporated Riverside County. MWD is the lead agency and is not a signatory to the implementing agreement of the MSHCP. MWD has the option of processing the Project through the MSHCP. Should MWD choose not to process through the MSHCP, then the project shall be subject to the Federal Endangered Species Act and/or the California Endangered Species Act (CESA) for impacts to threatened and endangered species.

4.3

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

In this instance, MWD has chosen not to process the Project through the MSHCP. Nevertheless, the resource protection policies of the MSHCP still provide guidance as to biological objectives and conservation of biological resources. The Project is located within MSHCP Criteria Cell 617 of the Jurupa Area Plan. This Project is the retrofit of an existing structure and therefore it does not interfere with the assembly of Existing Core A (Santa Ana River).

Analysis of the Potential Project-Related Impacts on Biological Resources

The proposed project crosses approximately 510 feet of the Santa Ana River floodplain. At the time biological surveys were conducted the active river was 115 feet wide. Habitats at the site include coastal and valley freshwater marsh (0.7 acres), disturbed/developed (0.68 acres), open water (0.14 acres), and southern willow/cottonwood woodland (0.54 acres).

A General Reconnaissance Survey was conducted on November 8, 2011. A Habitat Assessment, Vegetation Mapping, and Jurisdictional Delineation (JD) were conducted on February 22, 2012. A total of 27 animal species have the potential to occur on-site including the Federal Threatened Santa Ana sucker (SAS), the State and Federal Endangered least Bell's vireo (LBV), the State and Federal Endangered southwestern willow flycatcher (SWWF) and the western yellow-billed cuckoo (WYBC). The site occurs within designated critical habitat for the LBV, SWWF, and SAS. Focused surveys for and the other threatened

4.4

Comment Letter 4

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
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and endangered species were not conducted. The MND assumes the presence of SAS, LBV and SWWF, but does not assume that the site is occupied by the WYBC. State Species of Special Concern (SSC), include: arroyo chub, Santa Ana speckled dace, red diamondback rattlesnake, coast horned lizard, tricolored blackbird, yellow warbler, yellow-breasted chat, and loggerhead shrike. No impact analysis or mitigation was provided for these species in the MND. No special status plants were observed.



4.4

Proposed mitigation

The MND includes mitigation measures for two options. Option one involves removal of vegetation around the piers. The Project area is designated by the United States Fish and Wildlife Service (FWS) as critical habitat for the SAS, SWWF, and LBV.

Option two involves clearing the entire construction footprint, including an additional maintenance area 26 feet from the centerline of the bridge.

Following implementation of either Option 1 or Option 2 a long-term vegetation and access road maintenance program would be implemented to prevent regrowth within the bridge crossing and access road. Vegetation within 26 feet of the centerline of the bridge would be cleared by hand and collected for disposal off-site. Additionally vegetation would be trimmed back to the edge of the access road. The finished road width would be 15 feet.

4.5

Proposed Project Measures

1. Installation of a fish barrier around Piers 7 and 8 if deemed necessary by a qualified biologist;
2. A qualified biologist would be available to relocate any aquatic species found adjacent to Piers 7 and 8;
3. Payment of an in-lieu mitigation fee to the Santa Ana Watershed Authority or other suitable mitigation bank, preservation of equivalent habitat, removal of non-native vegetation, and habitat restoration; and,
4. Vegetation removed from the site outside of the rainy season would be stockpiled and disposed of at an approved landfill

Department Concerns

Because the applicant chose not to process the Project through the MSHCP, the Project is subject to FESA and/or CESA for threatened and endangered species. A CESA Permit must be obtained if the project has the potential to result in "take" of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance, and restore State-listed threatened or endangered species and their habitats. The Department's CESA Incidental Take Permit states that a project must fully minimize and mitigate impacts to State-listed resources. MWD is assuming that the Project site is occupied by SWWF, LBV, and SAS. The Department recommends the following:

4.6

1. Focused surveys need to be undertaken for LBV, SAS, WYBC and SWWF. Additionally, should flowing water be present within the Project area, then surveys should be conducted for the arroyo chub, speckled dace and other sensitive aquatic organisms ;

4.7

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
Page 4 of 5

- | | | |
|----|---|------|
| 2. | The MND should propose adequate mitigation measures to offset the loss of critical habitat for the aforementioned species within the project area; | 4.8 |
| 3. | The applicant should submit a 1600 Lake and Streambed Alteration Agreement notification for potential impacts to State jurisdictional waters; | 4.9 |
| 4. | If it is determined that impacts to State-listed species will occur, then the applicant should submit a CESA Incidental Take Permit ; | 4.10 |
| 5. | Surveys for nesting birds should be performed within and adjacent to the project footprint as per current standards; | 4.11 |
| 6. | Measures to minimize the impact of lighting on the surrounding area should be implemented; | 4.12 |
| 7. | A fish exclusionary plan should be proposed and implemented, and, | 4.13 |
| 8. | Surveys to determine if bats are present on the bridge should be conducted. Additional avoidance, minimization, and/or mitigation measures should be implemented if bats are present on the bridge. | 4.14 |

Lake and Streambed Alteration Agreement

The JD states that the maximum footprint of the Project comprises 1.43 acres. The Department's jurisdiction on-site is 0.75 acres, of which 0.61 acres are comprised of riparian vegetation. There are two options. Option number one involves impacting 0.06 acres of vegetated streambed. Construction under option one involves the removal of riparian habitat, displacement of water and sediment during drilling activities at the pier (piers 7 and 8) bases and removal of six feet of vegetation along the entire width of the bridge. Construction will only occur when the riverbed around the piers is dry. Option number two involves impacts to 0.61 acres of vegetated streambed.

Vegetation clearance (Exhibit 7C) for long term maintenance will take place between concrete pier number 5, concrete pier number 10 and the northern access road. Long term maintenance will occur along the northern access road and 26 feet from the centerline of the entire bridge between concrete piers five and ten. The Department views the removal of vegetation within 26 feet of the centerline of the bridge as a permanent impact. The project will require a 1600 Agreement for construction, as well as a 1600 Long Term Maintenance Agreement for the maintenance activities disclosed in the MND. Upon filing of the 1600 Agreement Notification the Department will determine whether any changes need to be made regarding the State's jurisdiction.

The Department recommends submitting a notification early on, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Streambed Alteration Agreement notification package, please go to <http://www.dfg.ca.gov/habcon/1600/forms.html>.

The CEQA documents do not fully identify potential impacts to endangered and threatened species, lakes, streams, and associated resources, nor do they provide an adequate description of avoidance, mitigation and monitoring measures, funding sources, habitat management plans and reporting commitments. Therefore, additional CEQA documentation will be required prior to execution (signing) of the Agreement. In order to avoid delays or repetition of the CEQA process, potential impacts to a stream or lake, as well as avoidance and mitigation measures need to be discussed within this CEQA document. Permit negotiations conducted after and outside of the CEQA process are not CEQA-compliant because they deprive the public and agencies of their right to know what project impacts are and how they are being mitigated (CEQA Section 15002).

Comment Letter 4

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
Page 5 of 5

The Department opposes the elimination of ephemeral, intermittent and perennial stream channels, lakes and their associated habitats. The Department recommends avoiding the stream and riparian habitat to the greatest extent possible. Any unavoidable impacts need to be compensated for with the creation and/or restoration of in-kind habitat either on-site or off-site at a minimum 3:1 replacement-to-impact ratio, depending on the impacts and proposed mitigation. Additional mitigation requirements through the Department's Streambed Alteration Agreement process may be required depending on the quality of habitat impacted, proposed mitigation, project design, and other factors.

4.17

The following information will be required for the processing of a Streambed Alteration Agreement and the Department recommends incorporating this information to avoid subsequent CEQA documentation and project delays:

- 1) Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
- 2) Discussion of avoidance measures to reduce project impacts; and,
- 3) Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance.

4.18

Please refer to section 15370 of the CEQA guidelines for the definition of mitigation.

In the absence of specific mitigation measures in the CEQA documents, the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Permit negotiations conducted after and outside of the CEQA process deprive the public of its rights to know what project impacts are and how they are being mitigated in violation of CEQA Section 15002. Also, because mitigation to offset the impacts was not identified in the CEQA document, the Department does not believe that the Lead Agency can make the determination that impacts to jurisdictional drainages and/or riparian habitat are "less than significant" without knowing what the specific impacts and mitigation measures are that will reduce those impacts.

4.19

In summary, we believe the MND is inadequate in describing project related impacts, demonstrating consistency with the MSHCP, and identifying appropriate mitigation for purposes of CEQA. We recommend that the MND be revised to address the Department's concerns. We appreciate the opportunity to comment on the referenced MND. If you should have any questions pertaining to these comments, please contact Robin Maloney-Rames at (909) 980-3818.

4.20

Sincerely,



Jeff Brandt
Senior Environmental Scientist

Response to the October 22, 2012, Comment Letter from the California Department of Fish and Game

Response to Comment 4-1

Metropolitan acknowledges the Department of Fish and Game (CDFG) will act as a Trustee Agency and a Responsible Agency under CEQA regarding future discretionary approvals by CDFG pursuant to the State CEQA Guidelines (Sections 15381 and 15386) including issuance of a Lake and Streambed Alteration Agreement for the project. Because the project is designed to avoid impacts to state and federally listed species with the potential to occur on site, no California Endangered Species Act (CESA) Incidental Take Permit (Fish and Game Code Sections 2080 and 2080.1) is anticipated. Potential take of any federally listed endangered species would be subject to the federal Endangered Species Act (ESA) pursuant to Section 7 during the regulatory permitting process (see response to comment 4-3 below). Direct and indirect impacts to listed species associated with habitat modification would be addressed during the Section 7 process and through applicable State procedures.

Response to Comment 4-2

The comment incorrectly describes the existing Santa Ana River Bridge Crossing of the Upper Feeder Pipeline. At the project location, the Upper Feeder pipe has an internal diameter of 9 feet 8 inches. The bridge itself widens from top to bottom: the width of the bridge at the top as measured from the outer sides of the trusses is approximately 20 feet and the width of the subsurface caissons is 32 feet. The steel trusses are supported by four concrete piers with eight additional supporting concrete piers, for a total of twelve piers. The concrete piers support the trusses and are 43 feet tall. Each pier is supported by a concrete caisson. The caissons are 32 feet wide by 17 feet long and are embedded in bedrock.

The comment also incorrectly summarizes the project description. The reinforcing bars would be drilled into piers 7 and 8 only. Only one expansion joint would be modified to minimize leakage. Two options for construction methodology (not two project options) are proposed to accomplish these seismic improvements. The bridge crossing will not be enlarged as part of this project.

Response to Comment 4-3

The comment correctly states that Metropolitan is not a signatory to the implementing agreement of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). Metropolitan has determined not to process this project through the MSHCP because this process would be duplicative of the mitigation required as part of the impending regulatory permitting process and Metropolitan does not want to mitigate twice. The project is designed to avoid take of state- and federally-listed species pursuant to the CESA and ESA. All vegetation clearing, access road grading and construction activities would be conducted between mid-September and mid-March, outside of the avian breeding season, in order to avoid direct impacts to breeding birds, including the state and federally endangered least Bell's vireo and southwestern willow flycatcher and the state endangered western yellow-billed cuckoo. Potential take of any federally listed endangered species would be subject to the ESA pursuant to Section 7 during the regulatory permitting process. Direct and indirect impacts to listed species associated with habitat modification would be addressed during the Section 7 process and through applicable State procedures.

Section 15125(d) of the State CEQA Guidelines requires that an Environmental Impact Report (not a negative declaration) discuss any inconsistencies between the proposed project and applicable habitat conservation plans and applicable natural community conservation plans. Appendix G of the State CEQA Guidelines includes a question in Section IV regarding the proposed project's potential to conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local regional or state habitat conservation plan. The MND provides an analysis of the reasonably foreseeable environmental impacts that could result from the proposed project's potential to conflict with the provisions of the MSHCP on pages 41 and 42.

The comment also notes that the proposed project is located within MSHCP Criteria Cell 617 of the Jurupa Area Plan and as a retrofit of an existing structure does not interfere with the assembly of Existing Core A (Santa Ana River). Furthermore, the proposed project would not conflict with the provisions of the MSHCP for the following reasons: (1) removal of above-ground vegetation within the riverbed would be temporary since roots would not be removed and vegetation would be allowed to grow back prior to subsequent clearing, so there would be no permanent removal of habitat; (2) no herbicides would be used on cut vegetation within or adjacent to the river in conformity with the provisions of the MSHCP; (3) all proposed project components would be implemented between mid-September and mid-March, outside of bird breeding season and peak reproductive season for the Santa Ana sucker in order to avoid and minimize impacts to fish and riparian birds; (4) it is not anticipated that proposed seismic retrofit work would occur within flowing water, however in the unlikely event that flowing water were to enter work areas, fish exclusion barriers would be installed to ensure that the Santa Ana sucker is excluded from the work area according to mitigation measure BIO-1; (5) long-term vegetation maintenance would occur entirely outside of areas with flowing water; and, (6) the proposed project and mitigation would not preclude or prohibit acquisition of any conservation land pursuant to the MSHCP. Mitigation measure BIO-2 would provide for compensatory mitigation for temporary riparian and wetland habitat loss subject to approval by applicable regulatory agencies. Because it is anticipated that compensatory mitigation would occur within the Santa Ana River drainage system, such mitigation would meet the biological goal of the MSHCP to conserve covered species and their habitats in the MSHCP plan area and could contribute to the assembly of Existing Core A.

In addition, the proposed project components would not conflict with the covered activities in the MSHCP. The proposed project includes maintaining an existing access road on the north bank of the Santa Ana River which would involve limited grading and weed removal. Section 7.2.1 of the MSHCP states that covered Maintenance Activities for roadways include grading as necessary to restore a smooth driving surface, maintain existing graded shoulders within the existing rights-of-way, and essential weed abatement, excluding the application of any herbicides. Furthermore, the MSHCP states that necessary operation and maintenance activities conducted for safety purposes would be permitted within Public/Quasi-Public Lands. The seismic retrofit and maintenance of the bridge crossing of a major drinking water pipeline is being conducted for safety purposes to improve the seismic stability of the existing bridge crossing.

Response to Comment 4-4

The comment errs in characterizing the extent of coastal and valley freshwater marsh at the site. The comment indicates that the site includes 0.7 acres of coastal and valley freshwater marsh. Only 0.07 acres of this habitat type occurs within the proposed project footprint.

The comment also includes a reference that, “Focused surveys for and the other threatened and endangered species were not conducted.” Although this sentence is not complete, its intent appears to be correct in that focused surveys for least Bell’s vireo and southwestern willow flycatcher were not conducted. Rather, the MND assumes the presence of the least Bell’s vireo and the southwestern willow flycatcher and the project is designed to avoid direct impacts to these species since all work would be conducted outside of the avian breeding season (mid-March through mid-September).

In addition, focused surveys for the western yellow-billed cuckoo were not conducted. The MND indicates that there is a low probability of western yellow-billed cuckoo occurrence at the project site. No western yellow-billed cuckoos were found near the proposed project site during the 2012 breeding season (Unpublished survey report entitled “Least Bell’s Vireos and Southwestern Willow Flycatchers in Prado Basin of the Santa Ana River Watershed, CA” documenting biological surveys conducted for the Orange County Water District in 2012). A single western yellow-billed cuckoo was detected in 2011 in the Prado Basin on one day only, the first time this species was seen at this location in 10 years and a previous one-day sighting of this species occurred in 2010 just upriver of the Prado Basin (Unpublished survey report entitled “Least Bell’s Vireos and Southwestern Willow Flycatchers in Prado Basin of the Santa Ana River Watershed, CA” documenting biological surveys conducted for the Orange County Water District in 2011). The Orange County Water District and Santa Ana Watershed Association biologists survey the Santa Ana River for sensitive riparian birds every day during the breeding season and no additional birds have been detected at or near the project location in many years (Richard Zembal, personal communication, November 2012; Western Riverside County Multiple Species Habitat Conservation Plan, 2004, Volume 2, Species Accounts, Birds). Furthermore, in the unlikely event that western yellow-billed cuckoos were to occur at the project site, direct impacts to this bird would be avoided since this species usually arrives from South American wintering areas in June and departs by late August or early September (Western Riverside County Multiple Species Habitat Conservation Plan, 2004, Volume 2, Species Accounts, Birds). The proposed project is designed to avoid direct impacts to sensitive bird species since all work would be conducted outside of the avian breeding season.

The comment incorrectly states that no impact analysis was provided in the MND for State Species of Special Concern, including the arroyo chub, Santa Ana speckled dace, red diamondback rattlesnake, coast horned lizard, tricolored blackbird, yellow-breasted chat and loggerhead shrike. No State Species of Special Concern were observed on the proposed project site during the course of the biological surveys conducted in early November, 2011. Nevertheless, the MND lists these species and notes the potential for their occurrence. The impact analysis for these species is discussed on pages 35-40 of the MND. Potential impacts to these species resulting from implementation of this project are expected to be less than significant.

Response to Comment 4-5

The comment correctly mentions that each of the two construction methodologies (options) involves differing vegetation removal strategies and that the proposed project site is located within critical habitat for the Santa Ana sucker and the least Bell’s vireo. The comment incorrectly states that the project area is designated as critical habitat for the southwestern willow flycatcher (78 Fed. Reg. 344 (January 3, 2013)). The comment incorrectly characterizes the amount of vegetation to be removed under Option 2. Under Option 2, all vegetation within 26 feet from the centerline along the longitudinal axis of the bridge on either side would be trimmed using hand tools and/or a brush chipper along the entire span of the bridge. This area, together with the northern access road comprises the entire construction footprint.

The intent of the long-term vegetation and access road maintenance program is to preclude vegetation from growing up into the bridge structure. Vegetation would not be permanently removed from beneath the bridge structure, rather the roots would be left in place and the vegetation would be allowed to re-grow until the canopy approaches the height of the bridge crossing.

The comment summarizing the proposed mitigation does not adequately capture the possible options and combinations of compensatory mitigation described in mitigation measure BIO-2 on page 38 of the MND and incorporated here by reference. The MND discloses that regulatory permits will be required prior to project construction on page 8 and within mitigation measure BIO-2 itself on page 38 and that mitigation must be developed during the course of obtaining these permits. Therefore, the MND discloses a menu of potential feasible mitigation options to compensate for temporary impacts resulting from the proposed project, with the caveat that this mitigation must be approved by the applicable regulatory agencies. In this way, the MND discloses to the public the range of feasible mitigation measures that would be accomplished for the proposed project prior to construction. Examples of feasible options that Metropolitan would consider as part of a comprehensive strategy to avoid, minimize or mitigate impacts to riparian habitat and associated sensitive species in addition to working outside of the breeding season include pre-construction biological monitoring to ensure that no sensitive bird species are unexpectedly nesting outside of the breeding season (see also response 4-11 below), restoration of degraded sites within the drainage where feasible, and funding cowbird trapping on-site.

Response to Comment 4-6

See responses 4-1 and 4-3 regarding Metropolitan's regulatory obligations pursuant to the state and federal endangered species acts. With respect to CESA, Section 2080 of the Fish and Game Code prohibits "take" of any species that the California Fish and Game Commission determines to be an endangered species or a threatened species. Take is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Potential take of any federally listed endangered species would be subject to the ESA pursuant to Section 7 during the regulatory permitting process (see response to comment 4-3 above). Direct and indirect impacts to listed species associated with habitat modification would be addressed during the Section 7 process and through applicable State procedures.

Response to Comment 4-7

All vegetation clearing, access road grading and construction activities would be conducted between mid-September and mid-March, outside of the avian breeding season, in order to avoid direct impacts to breeding birds, including the state and federally endangered least Bell's vireo and southwestern willow flycatcher and the state endangered western yellow-billed cuckoo. These birds are not anticipated to be present on the Santa Ana River outside of their breeding seasons, so no mortality of these species would occur as a result of construction or long-term vegetation maintenance beneath the bridge crossing or on the north access road. Any indirect impacts to listed species associated with habitat modification would be addressed during the Section 7 process and through applicable State procedures. Therefore, since Metropolitan has already assumed the presence of state and federally listed bird species, and has designed the project to avoid potential impacts to them, no additional focused surveys are necessary to determine presence or absence of these species.

With respect to fish species, mitigation measure BIO-1 states that a qualified biologist will conduct fish surveys in the event that flowing water should be present within the

work area during the seismic retrofit project activities. The fish exclusion barrier would ensure that all sensitive fish species would be excluded from the work area. Mitigation measure BIO-1 states, “if an exclusion barrier must be erected, a qualified biologist with the appropriate incidental take permits from the U.S. Fish and Wildlife Service (USFWS) and Memorandum of Understanding from the California Department of Fish and Game (CDFG) would survey the area within the exclusion barrier footprint around Piers 7 and 8 immediately prior to work activity. In the event that fish are present, the biologist would relocate animals within the exclusion barrier footprint to a location outside of the work area.” Therefore, focused surveys for the Santa Ana sucker would be conducted as necessary. The mitigation measure also states that all fish species found within the exclusion barrier footprint would be relocated outside of the work area by a qualified biologist. In the event that other sensitive aquatic organisms were found during the course of these surveys, they too would be relocated outside of the work area and out of harm’s way.

Response to Comment 4-8

The comment recommends that adequate mitigation measures should be proposed to offset the loss of critical habitat for applicable federally listed riparian bird species. Critical habitat would not be lost as a result of the proposed project. Removal of above-ground vegetation in the riverbed would be temporary and vegetation would be allowed to re-grow beneath the Santa Ana River bridge crossing until the canopy height nears the bridge crossing. Moreover, critical habitat is a term defined and used in the federal Endangered Species Act (ESA). The MND includes adequate mitigation measures to offset potential modifications to critical habitat for the least Bell’s vireo, resulting from the proposed project (see mitigation measures BIO-2 and BIO-3 and responses 4-5 and 4-11). No adverse modification to critical habitat for the Santa Ana sucker would occur as a result of the proposed project. Federal agencies are required to consult with U.S. Fish and Wildlife Service on actions they carry out, fund or authorize to ensure that their actions will not destroy or adversely modify critical habitat. Additional compensatory mitigation to offset any potential adverse modification to critical habitat as a result of the proposed project would be subject to U.S. Fish and Wildlife Service discretion pursuant to Section 7 of the ESA during the course of acquiring a Section 404 permit from the U.S. Army Corps of Engineers (Corps) prior to implementation of the proposed project.

Response to Comment 4-9

The comment notes that Metropolitan should submit a 1600 Lake and Streambed Alteration Agreement notification for potential impacts to state jurisdictional waters; the jurisdictional delineation contained in Appendix B of the MND indicates such potential impacts and Metropolitan anticipates submitting a notification following adoption of the MND and prior to conducting work within California Department of Fish and Game (Department) jurisdiction.

Response to Comment 4-10

The comment indicates the need for an incidental take permit pursuant to CESA if take of state-listed species would occur. The proposed project would avoid potential impacts to state-listed species as discussed in response 4-4. In addition, no take as defined by Section 86 of the California Fish and Game Code would occur as a result of the proposed project; therefore, no incidental take permit pursuant to CESA is anticipated to be required. As discussed in responses 4-1 and 4-3, potential take of any federally listed endangered species would be subject to the ESA pursuant to Section 7 during the regulatory permitting process. Direct and indirect impacts to listed species associated

with habitat modification would be addressed during the Section 7 process and through applicable State procedures.

Response to Comment 4-11

The comment indicates that surveys for nesting birds should be performed as per current standards; however, all proposed seismic retrofit construction activities and routine vegetation and access road maintenance activities would occur outside of avian breeding season (see response 4-4). Therefore, no nesting birds are anticipated to be present. To ensure that no listed birds are unexpectedly nesting outside of the bird breeding season within the project footprint, a qualified biologist will monitor for listed birds within and adjacent to the project footprint within one week prior to vegetation clearance. In the unlikely event that any listed birds are found to be nesting, then vegetation clearance within 20 feet of the nest will be delayed until after the young have fledged.

Response to Comment 4-12

The comment states that measures to minimize the impact of lighting on the surrounding area should be implemented. The project does not include any new lighting and no construction activity would occur during nighttime hours, so the proposed project would have no impacts resulting from lighting. Therefore, no mitigation to minimize lighting impacts resulting from the proposed project is necessary.

Response to Comment 4-13

The comment suggests that a fish exclusionary plan should be proposed and implemented. Mitigation measure BIO-1 proposes a fish exclusionary process in the event that flowing water enters the work area and if it is determined to be necessary by a qualified biologist.

Response to Comment 4-14

The comment suggests that surveys to determine the presence of bats on the Santa Ana River Bridge should be conducted. In response to this comment, daytime and nighttime bat surveys were conducted at the project site by Rincon Consultants, Inc. on December 5, 2012. Bat detection involved visual observations as well as the use of an acoustical detector and auto recording device to detect inaudible ultrasonic calls of bats active within the area. No sensitive or protected bat species were detected during the course of this survey. No bats were observed roosting on the bridge or trees within the project area, and no accumulation of guano was found. Therefore, no additional avoidance, minimization and/or mitigation measures are necessary to compensate for impacts to bats since bats were not found to be present on the bridge.

Response to Comment 4-15

The comment correctly summarizes the acreage of Department jurisdiction. The comment also notes that, “the Department views the removal of vegetation within 26 feet of the centerline of the bridge as a permanent impact.” As discussed in responses 4-3 and 4-8, removal of above-ground vegetation in the riverbed would be temporary and vegetation would be allowed to re-grow beneath the Santa Ana River bridge crossing until the canopy height nears the bridge crossing. Metropolitan understands from discussions with the Department that the Department views the repeated vegetation cutting as a permanent modification or degradation of habitat potential with respect to certain listed species. Nevertheless, because the vegetation would not be permanently removed and would be allowed to re-grow, Metropolitan considers this intermittent

vegetation clearing as a temporary impact that does not completely and permanently remove habitat functions from the project footprint. As stated previously, direct and indirect impacts to listed species associated with habitat modification would be addressed during the Section 7 process and through applicable State procedures.

In addition, the comment notes that the project will require a 1600 Lake and Streambed Alteration Agreement for construction within Department jurisdiction and a 1600 Long-Term Maintenance Agreement for the routine vegetation and road maintenance program. The jurisdictional delineation prepared for the proposed project indicates Department jurisdiction within the project footprint and Metropolitan anticipates submitting a notification following adoption of the MND and prior to conducting work in areas that are within Department jurisdiction.

Response to Comment 4-16

Metropolitan disagrees that the MND does not fully identify potential impacts to endangered and threatened species, riverine habitats potentially affected by the proposed project and associated resources. Metropolitan's project description and the analysis presented in the responses to the environmental checklist form provided in Appendix G of the State CEQA Guidelines discloses potential impacts to state and federal endangered species, fully describes how the proposed project avoids impacts to these species, and provides additional mitigation measures, including compensatory mitigation. Metropolitan has prepared a mitigation monitoring plan based on these mitigation measures in compliance with Section 15097 of the State CEQA Guidelines, and where applicable, habitat management plans and reporting commitments. As lead agency and project proponent, Metropolitan will provide the funding for the proposed project through its Capital Improvement Program. Therefore, no further environmental documentation pursuant to CEQA is necessary. Metropolitan has fully disclosed the impacts of the proposed project and how they would be mitigated in accordance with the general concepts listed in Section 15002 of the State CEQA Guidelines.

Response to Comment 4-17

The comment states that the Department opposes the elimination of ephemeral, intermittent and perennial stream channels, lakes and their associated habitats. The Department recommends avoiding the stream and riparian habitat to the greatest extent possible, and that any unavoidable impacts need to be compensated with the creation and/or restoration of in-kind habitat, either on-site or off-site at a minimum 3:1 replacement-to-impact ratio. Additional mitigation requirements through the Department's Streambed Alteration Agreement process may be required, depending on the quality of habitat impacted, proposed mitigation, project design, and other factors. This comment is noted. Please see the previous responses to comments above, which disclose the intent to provide compensatory mitigation subject to the approval of the Department and other applicable regulatory agencies and which acknowledge the necessity to obtain a Streambed Alteration Agreement for the proposed project.

Response to Comment 4-18

Metropolitan appreciates the list of information the Department has provided to facilitate the processing of a Streambed Alteration Agreement. As described in the above responses, the jurisdictional delineation, avoidance measures to reduce project impacts, and discussion of potential mitigation measures required to reduce project impacts to below a level of significance were included and discussed in the MND and have been clarified in these responses. Section 15370 of the State CEQA Guidelines states that "Mitigation" includes the following:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action. The MND describes how the proposed project design avoids impacts to sensitive riparian birds by conducting all activities outside of the avian breeding season when these birds are not present. Responses 4-5 and 4-11 commit to additional biological monitoring to ensure that no listed birds are unexpectedly nesting outside of the bird breeding season.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. The MND discusses two potential options to implement the proposed project. Option 1 minimizes impacts to the Santa Ana River by carrying out work from the Santa Ana River bridge, rather than from within the riverbed. In the event that Option 1 is determined to be feasible during final design of the proposed project, it will be implemented to the extent practicable.
- (e) Compensating for the impact by replacing or providing substitute resources or environments. Mitigation measure BIO-2 provides a menu of compensatory mitigation options that Metropolitan will implement, and response 4-5 provides potential specific options or examples of compensatory mitigation that could be undertaken, subject to the approval of the applicable regulatory agencies.

Response to Comment 4-19

The comment states that in the absence of specific mitigation measures in the CEQA documents, the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Impacts resulting from the proposed project were fully described in the MND and mitigation to offset those impacts pursuant to Section 15370 of the State CEQA Guidelines was also included in the MND and is discussed in the responses above. The proposed mitigation identified in the MND would reduce impacts to jurisdictional resources to a less than significant level, complies with Section 15370 of CEQA and is thoroughly disclosed in the MND and these responses. Therefore, the public has not been deprived of any knowledge regarding the specific project impacts and how they are being mitigated. It is noteworthy that the Section 1602 Streambed Alteration Notification process does not result in the issuance of a “permit,” therefore, permit negotiations with the Department do not occur. Rather the Department and the applicant negotiate a Streambed Alteration Agreement. The mitigation described in the MND and clarified in these responses allows the Department to work with the applicant to set impact to mitigation ratios in accordance with Department policy and to choose one or more of the mitigation methodologies described in the MND pursuant to the provisions of CEQA. In this way, full disclosure of the mitigation required by the Department has been included in the MND.

Response to Comment 4-20

As discussed in the previous responses, Metropolitan disagrees with the Department’s summary conclusion that the MND is inadequate in describing project-related impacts, demonstrating consistency with the MSHCP, and identifying appropriate mitigation for purposes of CEQA.

Ashley Myers

From: Brewer, Marc <MBrewer@rivcoparks.org>
Sent: Monday, October 22, 2012 4:17 PM
To: Marines, Brenda S
Subject: Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project

Letter 5

Ms. Marines:

The Riverside County Regional Park and Open-Space District thanks MWD for the opportunity to review the above project and offers the following comments:

- 5.1 | • The District accepts and understands the need for the project.
 - The Riverside County Regional Park and Open-Space District is the regional recreation provider for Riverside County.
 - As such the District manages the Santa Ana River Trail within the county and that portion of the trail within the work zone for the identified project
- 5.2 | • The Santa Ana River Trail is a National Recreation Trail. It begins at the head waters of the Santa Ana Mountains and follows the river west to its end point at the Pacific Ocean in Huntington Beach
 - As stated above short segment of the trail will be potentially impacted by the proposed project.
 - The trail is 12 feet in width and runs the length of the work zone from north to south. It is located on the eastern (Riverside) side of the Santa Ana River.
 - The trail is a 4 inch overlay of asphalt on 6 inches compacted base material over compacted subgrade.
- 5.3 | • The District will require that MWD protect that portion of the trail within the project area.
 - The District equally understands although protected damage may occur to the trail. In the event damage occurs, MWD will repair or replace the trail in a like manner of construction.
- 5.4 | • Should the trail need to be removed. MWD will submit plans for the replacement construction of the trail to the District for review and approval. Replacement construction should be with like materials and manner.
 - The District also knows that the Santa Ana River Trail is a very popular trail within the County's biking community. The District will require MWD keep the trail open as much as possible during the week but have the trail open on weeks.
 - The District will also require that MWD provide Public Service Announcements notifying the public of the closure and any possible detours.

The District recognizes the need for the MWD project but MWD must also recognize the importance of this trail to the citizens of Riverside and surrounding counties as a recreational amenity.

Thank you

Marc Brewer

Marc R. Brewer | Senior Park Planner | 951.955.4316 | mbrewer@rivcoparks.org | mbrewer@rctlma.org |

Riverside County Regional Park and Open-Space District (RivCoParks)
4600 Crestmore, Riverside, CA 92509 | 951.955.4310 | FAX: 951.955.1383
| www.rivcoparks.org | [FaceBook](#) | [Twitter](#) | [UpComing Events](#)

Response to the October 22, 2012, Comment Letter from the Riverside County Regional Park and Open Space District

Response to Comment 5-1

The commenter states that the District accepts and understands the need for the Project.

This comment is noted.

Response to Comment 5-2

The commenter provides information regarding the District and the design and location of the Santa Ana River Trail in relation to the proposed project.

This comment is noted.

Response to Comment 5-3

The commenter requests that Metropolitan protect the portion of the trail within the project area and requests that Metropolitan repair or replace the trail in a like manner of construction if damage to the trail occurs. The commenter also requests that if project construction requires removal of the trail then Metropolitan submit plans for replacement of the trail to the District.

No removal of the portion of the Santa Ana River Trail within the project boundary is required to accommodate construction activities. It is not anticipated that the Santa Ana River Trail would be damaged, however in the event that damage were to occur, Metropolitan will repair or replace the trail as necessary.

Response to Comment 5-4

The commenter requests that Metropolitan keep the trail open as much as possible during construction activities. The commenter also requests that public service announcements notifying the public of closure and any possible detours be provided.

Traffic control measures would be implemented during construction activities to ensure that the Santa Ana River Trail remains open for use by the public. However, in the unlikely event that temporary closure of the trail would be required to accommodate construction activities, then Metropolitan would work with the District to ensure appropriate public notification is provided.

Comment Letter 6

Ashley Myers

From: Robertson, Glenn@Waterboards <Glenn.Robertson@waterboards.ca.gov>
Sent: Monday, October 22, 2012 6:19 PM
To: Marines, Brenda S
Cc: Adelson, Mark@Waterboards; Brown, Marc@Waterboards; 'Rmaloney@dfg.ca.gov'
Subject: MWD Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project MND, SCH# 2012091055

To Brenda S. Marines, Environmental Planning Team
The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Letter 6

Regarding Notice of Intent to Adopt a Mitigated Negative Declaration, Santa Ana River Bridge Seismic Retrofit /Routine Maintenance Project, City of Riverside at Santa Ana River located East of Van Buren Ave, SCH# 2012091055

Dear Ms. Marines:

This electronic mail constitutes Regional Board staff comments on the above-referenced MND, due today. Two options are explored (MND p.8, 36-50) for riverbed access to reinforce the caissons around Piers 7 and 8 of the MWD pipe bridge in order to conduct seismic upgrade, among other maintenance measures (Project). Each option, still under discussion, will pose temporary and/or permanent impacts to varying acreages of waters of the U.S. and for a larger area, waters of the State. We support the option, or combination of actions, that provide the most minimal impact to the beneficial uses of the Santa Ana River, Reach 3*, as supported by these waters, in accordance with the Regional Board's Water Quality Control Plan for the Santa Ana River Basin (Basin Plan).

6.1

Mitigation measures under CEQA for eventual impacted acreages (and impacts to the beneficial uses) are listed on p.84. In particular, BIO-2 suggests off-site riparian restoration. We prefer that such mitigation be conducted onsite and benefit the riparian area adjacent to the bridge and its piers.

6.2

No specific permit is committed to at this time. If the U.S. Army Corps of Engineers (USACE) exercises its jurisdiction for those waters of the U.S. noted through the Jurisdictional Delineation (p.39-40), then the above-referenced mitigation may be conducted under a Clean Water Act (CWA) Section 401 Water Quality Standards Certification issued by the Regional Board. We suggest that it may be possible that a Nationwide Permit, representing the CWA Section 404 Permit, might apply in this case of one-time retrofit. However, if the USACE does not exercise its jurisdiction, and all waters to be impacted will be considered to be waters of the State (including those regulated by the California Department of Fish and Game), then the Regional Board will exercise its jurisdiction anyway and require that a Report of Waste Discharge be submitted to our office, for consideration of issuance of Waste Discharge Requirements (WDRs). We thank you for incorporating these comments into the Project MND.

6.3

*These listed beneficial uses are Agricultural Supply (AGR), Groundwater Recharge (GWR), Water Contact Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).

Glenn S. Robertson, PG, M.S.
Engineering Geologist (CEQA Coordinator)
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501
Phone: 951-782-3259
FAX: 951-781-6288
Email: Glenn.Robertson@waterboards.ca.gov

Response to the October 22, 2012, Comment Letter from Santa Ana Regional Water Quality Control Board

Response to Comment 6-1

The commenter states support for the project option, or combination of actions, that provide the most minimal impact to the beneficial uses of the Santa Ana River, Reach 3, as supported by these waters, in accordance with the Regional Board's Water Quality Control Plan for the Santa Ana River Basin.

This comment is noted.

Response to Comment 6-2

The commenter suggests a preference that the habitat restoration required under BIO-2 be provided on-site rather than at an offsite location.

Prior to commencement of the proposed project, Metropolitan will obtain all required permits. Mitigation measure BIO-2 provides potential compensatory mitigation, including on-site habitat restoration, subject to applicable regulatory approvals.

Response to Comment 6-3

The commenter suggests a number of different alternative permit processes that may be suitable for the proposed project, including a Section 401 and/or Section 404 permit, and notes that the Regional Water Quality Control Board will exercise its jurisdiction whether or not the U.S. Army Corps of Engineers claims jurisdiction.

The comment is noted. Prior to commencement of the proposed project, Metropolitan will obtain all required permits.

Comment Letter 7



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

Letter 7

October 23, 2012

Brenda S. Marines
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Subject: Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project
SCH#: 2012091055

Dear Brenda S. Marines:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on October 22, 2012, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

Comment Letter 7

**Document Details Report
 State Clearinghouse Data Base**

SCH# 2012091055
Project Title Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project
Lead Agency Metropolitan Water District of Southern California

Type MND Mitigated Negative Declaration
Description The Project proposes to provide seismic retrofit upgrades to the Santa Ana River bridge crossing to accommodate lateral displacement in the transverse direction of the bridge. In addition, a long-term vegetation management program will be implemented to prevent vegetation re-growth into the bridge crossing and access road leading to the bridge crossing to facilitate ongoing maintenance of the facility.

Lead Agency Contact

Name Brenda S. Marines
Agency Metropolitan Water District of Southern California
Phone 213 217 7902 **Fax**
email
Address 700 N. Alameda Street
City Los Angeles **State** CA **Zip** 90012

Project Location

County Riverside
City Riverside
Region
Lat / Long 33° 55' 5" N / 117° 26' 53" W
Cross Streets near the intersection Wilderness and Jurupa Avenue, east of Van Buren Avenue
Parcel No. 1400-29-11, 15, 25, 5, 21
Township 2S **Range** 5W **Section** 30 **Base**

Proximity to:

Highways Hwy 91, I-60
Airports Riverside Municipal, Flabob
Railways UPRR
Waterways Santa Ana River
Schools Indian Hill, Pedley, Stone
Land Use Open Space-Water

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Geologic/Seismic; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Wetland/Riparian; Landuse; Other Issues

Reviewing Agencies Resources Agency; Department of Boating and Waterways; Department of Conservation; Department of Fish and Game, Region 6; Department of Parks and Recreation; Department of Water Resources; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 8; Air Resources Board, Transportation Projects; Regional Water Quality Control Board, Region 8; Native American Heritage Commission; Public Utilities Commission; State Lands Commission

Date Received 09/21/2012 **Start of Review** 09/21/2012 **End of Review** 10/22/2012

Comment Letter 7

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net

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OCT 08 2012

October 3, 2012

STATE CLEARING HOUSE

Ms. Brenda S. Marines, Project Planner

The Metropolitan Water District of Southern California

700 North Alameda Street
Los Angeles, CA 90012

Re: SCH#2012091055; CEQA Notice of Completion; draft Environmental Impact Report (DEIR); for the "Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project" located in the City of Riverside; Riverside County, California

Dear Ms. Marines:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC recommends that the lead agency request that the NAHC do a Sacred Lands File search as part of the careful planning for the proposed project.

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural

Comment Letter 7

significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097:95, the NAHC requests that pertinent project information be provided consulting tribal parties, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

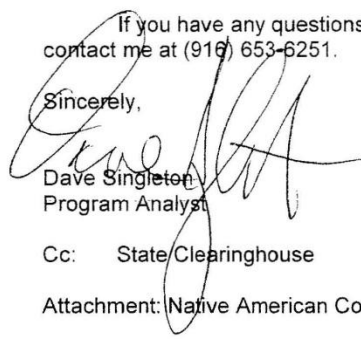
Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

2

Comment Letter 7

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton
Program Analyst

Cc: State/Clearinghouse

Attachment: Native American Contact List

Response to the October 23, 2012, Comment Letter from OPR State Clearinghouse and Planning Unit

Response to Comment 7

The commenter acknowledges that Metropolitan has complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act and encloses a comment letter from the Native American Heritage Commission (NAHC) dated October 3, 2012.

The comment is noted. The NAHC letter provided is the same as Letter 1. Please refer to Response to Comments 1-1 to 1-7.



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX
DIRECTOR

October 25, 2012

Letter 8

Brenda S. Marines
Metropolitan Water District of Southern California
700 N. Alameda Street
Los Angeles, CA 90012

Subject: Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project
SCH#: 2012091055

Dear Brenda S. Marines:

The enclosed comment (s) on your Mitigated Negative Declaration was (were) received by the State Clearinghouse after the end of the state review period, which closed on October 22, 2012. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2012091055) when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov



State of California - The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
(909) 484-0459
<http://www.dfg.ca.gov>

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



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OCT 23 2012

October 22, 2012

STATE CLEARING HOUSE

Ms. Brenda S. Marines
Metropolitan Water District
700 N. Alameda Street
Los Angeles, CA 90012

Re: Mitigated Negative Declaration for the Santa Ana River Bridge Seismic
Retrofit and Routine Maintenance Project
State Clearinghouse Number (SCH) 2012091055

Dear Ms. Marines:

The Department of Fish and Game (Department) appreciates this opportunity to comment on the Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project, SCH Number 2012091055. The Department is responding as a Trustee Agency for fish and wildlife resources [Fish and Game Code sections 711.7 and 1802 and the California Environmental Quality Act Guidelines (CEQA) section 15386] and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines section 15381), such as a Lake and Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Fish and Game Code Sections 2080 and 2080.1).

Project Description

The Proposed Project consists of the seismic retrofit and routine maintenance of the Metropolitan Water District's (MWD) Santa Ana River Bridge Crossing for the Upper Feeder pipeline. The bridge is 1,030 feet long, 9 feet 8 inches wide and crosses the Santa Ana River, which is 500 feet wide at the project site. The bridge was first built in the 1930's and upgraded in the 1980s. It has three 180-foot long steel trusses supported by four concrete piers, with an additional eight concrete piers on both sides of the River. The bridge trusses are 18 feet wide by 22 feet 6 inches tall. The concrete piers supporting the trusses are 43 feet tall and are anchored in 32 foot by 17 foot concrete caissons embedded in bedrock.

The Bridge is located north of Jurupa Avenue, south of Limonite Avenue and the 60 Freeway, west of Union Pacific Railroad tracks, and east of Van Buren Boulevard in unincorporated Riverside County. Access to the bridge is provided by a dirt road on the north side of the bridge and on the south side of the bridge.

The most recent seismic risk study shows that the bridge needs additional retrofit work. The proposed retrofit consists of the reinforcement of interior pier caissons with embedded reinforcing

Conserving California's Wildlife Since 1870

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
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bars drilled into existing caissons, strengthening the truss elements, modifying the expansion joints to minimize leakage and conducting vegetation management beneath and adjacent to the bridge crossing and the north access road. Two options are proposed.

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including rare, threatened, and endangered plant and animal species, pursuant to the CESA, and administers the Natural Community Conservation Plan Program (NCCP Program). On June 22, 2004, the Department issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) per Section 2800, et seq., of the California Fish and Game Code. The MSHCP establishes a multiple species conservation program to minimize and mitigate for habitat loss and the incidental take of covered species in association with activities covered under the permit.

The proposed Project occurs within the MSHCP area in unincorporated Riverside County. MWD is the lead agency and is not a signatory to the implementing agreement of the MSHCP. MWD has the option of processing the Project through the MSHCP. Should MWD choose not to process through the MSHCP, then the project shall be subject to the Federal Endangered Species Act and/or the California Endangered Species Act (CESA) for impacts to threatened and endangered species.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

In this instance, MWD has chosen not to process the Project through the MSHCP. Nevertheless, the resource protection policies of the MSHCP still provide guidance as to biological objectives and conservation of biological resources. The Project is located within MSHCP Criteria Cell 617 of the Jurupa Area Plan. This Project is the retrofit of an existing structure and therefore it does not interfere with the assembly of Existing Core A (Santa Ana River).

Analysis of the Potential Project-Related Impacts on Biological Resources

The proposed project crosses approximately 510 feet of the Santa Ana River floodplain. At the time biological surveys were conducted the active river was 115 feet wide. Habitats at the site include coastal and valley freshwater marsh (0.7 acres), disturbed/developed (0.68 acres), open water (0.14 acres), and southern willow/cottonwood woodland (0.54 acres).

A General Reconnaissance Survey was conducted on November 8, 2011. A Habitat Assessment, Vegetation Mapping, and Jurisdictional Delineation (JD) were conducted on February 22, 2012. A total of 27 animal species have the potential to occur on-site including the Federal Threatened Santa Ana sucker (SAS), the State and Federal Endangered least Bell's vireo (LBV), the State and Federal Endangered southwestern willow flycatcher (SWWF) and the western yellow-billed cuckoo (WYBC). The site occurs within designated critical habitat for the LBV, SWWF, and SAS. Focused surveys for and the other threatened

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
Page 3 of 5

and endangered species were not conducted. The MND assumes the presence of SAS, LBV and SWWF, but does not assume that the site is occupied by the WYBC. State Species of Special Concern (SSC), include: arroyo chub, Santa Ana speckled dace, red diamondback rattlesnake, coast horned lizard, tricolored blackbird, yellow warbler, yellow-breasted chat, and loggerhead shrike. No impact analysis or mitigation was provided for these species in the MND. No special status plants were observed.

Proposed mitigation

The MND includes mitigation measures for two options. Option one involves removal of vegetation around the piers. The Project area is designated by the United States Fish and Wildlife Service (FWS) as critical habitat for the SAS, SWWF, and LBV.

Option two involves clearing the entire construction footprint, including an additional maintenance area 26 feet from the centerline of the bridge.

Following implementation of either Option 1 or Option 2 a long-term vegetation and access road maintenance program would be implemented to prevent regrowth within the bridge crossing and access road. Vegetation within 26 feet of the centerline of the bridge would be cleared by hand and collected for disposal off-site. Additionally vegetation would be trimmed back to the edge of the access road. The finished road width would be 15 feet.

Proposed Project Measures

1. Installation of a fish barrier around Piers 7 and 8 if deemed necessary by a qualified biologist;
2. A qualified biologist would be available to relocate any aquatic species found adjacent to Piers 7 and 8;
3. Payment of an in-lieu mitigation fee to the Santa Ana Watershed Authority or other suitable mitigation bank, preservation of equivalent habitat, removal of non-native vegetation, and habitat restoration; and,
4. Vegetation removed from the site outside of the rainy season would be stockpiled and disposed of at an approved landfill

Department Concerns

Because the applicant chose not to process the Project through the MSHCP, the Project is subject to FESA and/or CESA for threatened and endangered species. A CESA Permit must be obtained if the project has the potential to result in "take" of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance, and restore State-listed threatened or endangered species and their habitats. The Department's CESA Incidental Take Permit states that a project must fully minimize and mitigate impacts to State-listed resources. MWD is assuming that the Project site is occupied by SWWF, LBV, and SAS. The Department recommends the following:

1. Focused surveys need to be undertaken for LBV, SAS, WYBC and SWWF. Additionally, should flowing water be present within the Project area, then surveys should be conducted for the arroyo chub, speckled dace and other sensitive aquatic organisms ;

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
Page 4 of 5

2. The MND should propose adequate mitigation measures to offset the loss of critical habitat for the aforementioned species within the project area;
3. The applicant should submit a 1600 Lake and Streambed Alteration Agreement notification for potential impacts to State jurisdictional waters;
4. If it is determined that impacts to State-listed species will occur, then the applicant should submit a CESA Incidental Take Permit ;
5. Surveys for nesting birds should be performed within and adjacent to the project footprint as per current standards;
6. Measures to minimize the impact of lighting on the surrounding area should be implemented;
7. A fish exclusionary plan should be proposed and implemented, and,
8. Surveys to determine if bats are present on the bridge should be conducted. Additional avoidance, minimization, and/or mitigation measures should be implemented if bats are present on the bridge.

Lake and Streambed Alteration Agreement

The JD states that the maximum footprint of the Project comprises 1.43 acres. The Department's jurisdiction on-site is 0.75 acres, of which 0.61 acres are comprised of riparian vegetation. There are two options. Option number one involves impacting 0.06 acres of vegetated streambed. Construction under option one involves the removal of riparian habitat, displacement of water and sediment during drilling activities at the pier (piers 7 and 8) bases and removal of six feet of vegetation along the entire width of the bridge. Construction will only occur when the riverbed around the piers is dry. Option number two involves impacts to 0.61 acres of vegetated streambed.

Vegetation clearance (Exhibit 7C) for long term maintenance will take place between concrete pier number 5, concrete pier number 10 and the northern access road. Long term maintenance will occur along the northern access road and 26 feet from the centerline of the entire bridge between concrete piers five and ten. The Department views the removal of vegetation within 26 feet of the centerline of the bridge as a permanent impact. The project will require a 1600 Agreement for construction, as well as a 1600 Long Term Maintenance Agreement for the maintenance activities disclosed in the MND. Upon filing of the 1600 Agreement Notification the Department will determine whether any changes need to be made regarding the State's jurisdiction.

The Department recommends submitting a notification early on, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Streambed Alteration Agreement notification package, please go to <http://www.dfg.ca.gov/habcon/1600/forms.html>.

The CEQA documents do not fully identify potential impacts to endangered and threatened species, lakes, streams, and associated resources, nor do they provide an adequate description of avoidance, mitigation and monitoring measures, funding sources, habitat management plans and reporting commitments. Therefore, additional CEQA documentation will be required prior to execution (signing) of the Agreement. In order to avoid delays or repetition of the CEQA process, potential impacts to a stream or lake, as well as avoidance and mitigation measures need to be discussed within this CEQA document. Permit negotiations conducted after and outside of the CEQA process are not CEQA-compliant because they deprive the public and agencies of their right to know what project impacts are and how they are being mitigated (CEQA Section 15002).

Mitigated Negative Declaration for the Santa Ana River Bridge Seismic Retrofit and Routine Maintenance, SCH 2012091055
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The Department opposes the elimination of ephemeral, intermittent and perennial stream channels, lakes and their associated habitats. The Department recommends avoiding the stream and riparian habitat to the greatest extent possible. Any unavoidable impacts need to be compensated for with the creation and/or restoration of in-kind habitat either on-site or off-site at a minimum 3:1 replacement-to-impact ratio, depending on the impacts and proposed mitigation. Additional mitigation requirements through the Department's Streambed Alteration Agreement process may be required depending on the quality of habitat impacted, proposed mitigation, project design, and other factors.

The following information will be required for the processing of a Streambed Alteration Agreement and the Department recommends incorporating this information to avoid subsequent CEQA documentation and project delays:

- 1) Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
- 2) Discussion of avoidance measures to reduce project impacts; and,
- 3) Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance.

Please refer to section 15370 of the CEQA guidelines for the definition of mitigation.

In the absence of specific mitigation measures in the CEQA documents, the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Permit negotiations conducted after and outside of the CEQA process deprive the public of its rights to know what project impacts are and how they are being mitigated in violation of CEQA Section 15002. Also, because mitigation to offset the impacts was not identified in the CEQA document, the Department does not believe that the Lead Agency can make the determination that impacts to jurisdictional drainages and/or riparian habitat are "less than significant" without knowing what the specific impacts and mitigation measures are that will reduce those impacts.

In summary, we believe the MND is inadequate in describing project related impacts, demonstrating consistency with the MSHCP, and identifying appropriate mitigation for purposes of CEQA. We recommend that the MND be revised to address the Department's concerns. We appreciate the opportunity to comment on the referenced MND. If you should have any questions pertaining to these comments, please contact Robin Maloney-Rames at (909) 980-3818.

Sincerely,


Jeff Brandt
Senior Environmental Scientist

Response to the October 25, 2012, Comment Letter from OPR State Clearinghouse and Planning Unit

Response to Comment 8

The commenter provides a comment letter from the California Department of Fish and Game (CDFG) dated October 22, 2012.

The CDFG letter provided is the same as Letter 4. Please refer to Response to Comments 4-1 to 4-20.