

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

File No. and Project Name/Description:

File No. PP11-041. San Jose Water Company Phase II Recycled Water Project. Environmental Clearance application to analyze potential environmental impacts associated with a total of seven alignments of recycled water pipeline to be constructed by the San Jose Water Company within the public right-of-way. The project is citywide.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site. Pursuant to the conclusions of the Initial Study, the Director of Planning, Building & Code Enforcement has prepared a draft Mitigated Negative Declaration for this project.

The purpose of this notice is inform the public of the opportunity for public review and comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **July 8, 2011**, and ends on **August 8, 2011**. A public hearing to adopt the Mitigated Negative Declaration has not been scheduled as of the date of this notice. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp#PP11-041>.

For additional information, please contact John Davidson at (408) 535-7895, or by e-mail at john.davidson@sanjoseca.gov.

Joseph Horwedel, Director
Planning, Building and Code Enforcement



Deputy

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Updated 5/6/2011

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: San Jose Water Company Phase II Recycled Water Project

PROJECT FILE NUMBER: PP11-041

PROJECT DESCRIPTION: Environmental Clearance application to analyze potential environmental impacts associated with a total of seven alignments of recycled water pipeline to be constructed by the San Jose Water Company (SJWC) within the public right-of-way.

PROJECT LOCATION : In the right of way, at various locations throughout the City of San Jose; see attached location map.

COUNCIL DISTRICT: all

APPLICANT CONTACT INFORMATION: Curtis Lam, Hydroscience Engineers, 741 Allston Way, Berkeley, CA 94710 **Phone:** 510/540-7100 ext. 12

FINDING:

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. **AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

III. AIR QUALITY. Construction of the Proposed Project has the potential to increase the concentration of diesel particulate matter at near-by sensitive receptors. However, with the implementation of mitigation measures, diesel particulate matter from heavy duty construction equipment would be reduced by 65 percent. This reduction combined within the relatively short duration of construction activities at any one sensitive receptor along the project alignments would result in a less than significant potential for impacts associated with diesel particulate matter emissions. This impact is considered *less than significant with mitigation*.

AQ-1 SJWC shall ensure through contractual obligations that the following construction practices shall be implemented during all phases of construction for the Proposed Project to prevent visible dust emissions from leaving the site and reduce particulate matter emissions:

- The contractor shall water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- The contractor shall cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
- The contractor shall pave, or apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- The contractor shall sweep daily to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
- The contractor shall sweep streets affected by construction activities daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- The contractor shall suspend excavation and grading activities when instantaneous wind gusts exceed 25 mph.
- The contractor shall use aqueous diesel fuel for all heavy duty construction equipment.
- The contractor shall ensure diesel oxidation catalysts are installed on all heavy duty construction equipment.

IV. BIOLOGICAL RESOURCES. The majority of proposed pipelines would be constructed within the road right-of-ways, which do not provide potential habitat for any federal or state listed plants or federally listed wildlife. Species with the potential to be impacted by the Proposed Project are discussed below.

Burrowing Owls

The parks, vacant lots, nonnative grassland, and ruderal/disturbed areas in the vicinity of Alignments A and R provide potential nesting and wintering habitat for western burrowing owl. **Mitigation Measure BR-1** requires preconstruction surveys and exclusion methods and avoidance measures for active nests if present during preconstruction surveys. With the incorporation of **Mitigation Measure BR-1** identified below, impacts to western burrowing owls would be reduced to less than significant.

Nesting Birds

The trees within the riparian habitat in the vicinity of the bridges and within the ornamental trees in the vicinity of the project site provide nesting habitat for migratory bird species and other birds of prey. If active nests are present in these areas, construction activities associated with the installation of the pipelines beneath the bridges and along the roads within the existing right-of-ways that could result in construction-related disturbance through nest abandonment, abandonment of nestlings, or forced fledging would be considered take under federal and state law. **Mitigation Measure BR-2** requires preconstruction surveys and avoidance measures for active nests if present. With the incorporation of Mitigation Measure BR-2 identified below, impacts to nesting birds would be reduced to less than significant.

Pallid and Townsend's Big-Eared Bats

Potential roosting habitat for bats is present beneath the bridges and/or the trees within the ornamental landscaping and riparian habitat in the vicinity of the proposed pipeline alignments. If active roosts are present, potential tree trimming and/or removal could impact these bats through injury or entrapment. **Mitigation Measure BR-3** requires preconstruction surveys and avoidance measures if active roosts are observed. With the implementation of **Mitigation Measure BR-3**, impacts to roosting sites for these bats would be reduced to less than significant.

Western Pond Turtles

Potential habitat for western pond turtles is present beneath the bridges that cross the streams and within the riparian habitat in the vicinity of the proposed pipeline alignments. If western pond turtles are present, installation of the pipeline and trimming of the riparian vegetation could impact this species through disturbance of habitat. **Mitigation Measure BR-4** requires a preconstruction survey and avoidance measures should western pond turtles be observed within construction areas. With the implementation of **Mitigation Measure BR-4**, impacts to western pond turtles would be reduced to less than significant.

BR-1 A qualified biologist shall conduct preconstruction surveys for burrowing owl within 14 days prior to commencement of construction activities within 500 feet of the parks, nonnative grassland, ruderal/disturbed areas, and vacant lots in Alignments A and R. In accordance with the CDFG burrowing owl survey protocol, the survey area will extend 500-feet from construction areas (CDFG, 1995) where legally permitted. The biologist will use binoculars to visually determine whether burrowing owls occur beyond the construction areas if access is denied on adjacent properties. If no burrowing owls or their sign are detected in the vicinity of the project site during the preconstruction survey, a letter report documenting survey methods and findings shall be submitted to the City and the CDFG within 30 days following the survey, and no further mitigation is required. If unoccupied burrows are detected during the non-breeding season (September through January 31), the City shall be contacted within one day following the preconstruction survey to report the findings. The City shall collapse the unoccupied burrows, or otherwise obstruct their entrances to prevent owls from entering and nesting in the burrows. If occupied burrowing owl burrows are detected, impacts on burrows shall be avoided by providing a buffer of 160 feet during the

non-breeding season (September 1 through January 31) or 250 feet during the breeding season (February 1 through August 31). The size of the buffer area may be adjusted if a qualified biologist or the CDFG determines the burrowing owl would not likely be affected by the Proposed Project. Project activities shall not commence within the buffer area until a qualified biologist confirms that the burrow is no longer occupied. If the burrow is occupied by a nesting pair, a minimum of 7.5 acres of foraging habitat contiguous to the burrow shall be maintained until the breeding season is finished.

- BR-2** To the extent feasible, construction should be scheduled between October and December (inclusive) to avoid the nesting season for migratory birds and other birds of prey. If this is not possible, preconstruction surveys for migratory birds and other birds of prey shall be conducted by a qualified biologist to identify active raptor nests that may be disturbed during project construction. Between January and April (inclusive) preconstruction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), preconstruction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying biologist shall inspect all trees in and immediately adjacent to the construction area for active nests. If an active nest is found in or close enough to the construction area to be disturbed by these activities, the biologist shall, in consultation with the CDFG, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Director of Planning indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any encroachment permits.
- BR-3** Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any pipeline installation along the bridges and tree pruning or removal. If bats are observed roosting beneath the bridges or trees anticipated to be pruned or removed, and the project can be constructed without disturbance, a bat biologist shall designate buffer zones as necessary to ensure that no bats will be disturbed. Buffer zones may include a 200-foot buffer zone from the roost until the biologist determines that the bat has vacated the roost and has excluded the bat from returning. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the exclusion of bats shall be performed in accordance with the requirements of the CDFG. A biologist report outlining the results of preconstruction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Director of Planning prior to the issuance of any encroachment permit or tree removal permit, if applicable.
- BR-4** A preconstruction survey shall be conducted by a qualified biologist no more than 30 days prior to commencement of construction activities in the vicinity of the riparian habitat for the western pond turtle. Should a western pond turtle be identified, construction shall not commence until the biologist translocates the turtle or until the turtle leaves the construction site.
- V. CULTURAL RESOURCES.** The project site has a moderate potential for the discovery of archaeological resources and lies within an archaeologically sensitive area. Recommended

mitigation provides for monitoring in the vicinity of known areas of sensitivity and the protection of unanticipated discoveries during ground disturbing activities.

CR- 1 Monitoring of site excavation activities shall occur within 30 feet of P-43-00479 and P-43-000561, as determined by a qualified professional archaeologist to ensure accurate evaluation of potential impacts to prehistoric resources.

- If no resources are discovered, the archaeologist shall submit a report to the City's Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
- If evidence of any archaeological, cultural, and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.)

CR-2 In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:

- a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- b) A final report shall be submitted to the City's Director of Planning. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Director of Planning.

VI. GEOLOGY AND SOILS. The project will not have a significant impact due to geology and soils, therefore no mitigation is required.

VII. GREENHOUSE GAS EMISSIONS. The BAAQMD CEQA Guidelines provide performance-based best management practices (BMPs), that when implemented would reduce construction-related GHG emissions to less than significant levels. Implementation of mitigation measures would result in the achievement of these performance based BMPs, reducing construction-related GHG emissions. Therefore, after mitigation construction GHG emissions would not result in a significant impact to the environment or conflict with an applicable plan, policy or regulation.

GHG-1 SJWC shall ensure through contractual obligations that the following best management practices are implemented during construction to minimize GHG emissions:

- The contractor shall use alternative-fueled (e.g. biodiesel, electric, etc) construction vehicles/equipment of at least 15 percent of their fleet.
- The contractor shall use local building materials of at least 10 percent.
- The contractor shall recycle at least 50 percent of construction waste or demolition materials.

VIII. HAZARDS AND HAZARDOUS MATERIALS. The project will not have a significant hazards and hazardous materials impact, therefore no mitigation is required.

IX. HYDROLOGY AND WATER QUALITY. The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.

X. LAND USE AND PLANNING. The project will not have a significant land use impact, therefore no mitigation is required.

XI. MINERAL RESOURCES. The project will not have a significant impact on mineral resources, therefore no mitigation is required.

XII. NOISE. Construction of the Proposed Project would result in a temporary increase in ambient noise levels. In addition, Maintenance of the recycled water pipelines may require use of some construction equipment, such as jack hammer and pneumatic hand tools; however, these activities would be temporary and in accordance with standard measures and mitigation measures listed below. The Proposed Project would not expose persons to noise levels above the local standards or cause substantial temporary, periodic, or permanent increase in the ambient noise level.

N-1 SJWC shall implement a Construction Management Plan approved by the Director of Planning, Building and Code Enforcement to minimize impacts on the surrounding sensitive land uses to the fullest extent possible. The Construction Management Plan would include the following measures to minimize impacts of construction upon adjacent sensitive land uses:

- Early and frequent notification and communication with the neighborhood where construction activities are to occur.

- Prohibit unnecessary idling of internal combustion engines.
- Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

XIII. POPULATION AND HOUSING. The project will not have a significant population and housing impact, therefore no mitigation is required.

XIV. PUBLIC SERVICES. The project will not have a significant impact on public services, therefore no mitigation is required.

XV. RECREATION. The project will not have a significant impact on recreation, therefore no mitigation is required.

XVI. TRANSPORTATION / TRAFFIC. Construction would occur over a period of up to six months per alignment at various locations along each recycled water pipeline route. During the construction period temporary lane closures would occur. These closures have the potential to impede emergency vehicles. Implementation of the mitigation measures listed below would require that all construction activities are coordinated with affected public agencies and local emergency service providers.

TR-1 SJWC shall provide the City with a Traffic Control Plan upon submittal of construction drawings. At a minimum, the plan shall identify all construction access and parking areas, temporary pavement markings, and temporary construction signage requirements (e.g., speed limit, temporary loading zones).

TR-2 SJWC shall ensure that all construction activities are coordinated with local emergency service providers at least two weeks in advance. Emergency service providers shall be notified of the timing, location, and duration of construction activities. All roads shall remain passable to emergency service vehicles at all times.

TR-3 SJWC shall ensure, through contractual obligation that all open trenches at the end of each workday are covered with metal plates to accommodate traffic and access.

XVII. UTILITIES AND SERVICE SYSTEMS. The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE. The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **August 8, 2011**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period from **July 8, 2011 to August 8, 2011**.


Deputy

Revised 5-6-11 jam

