

Addendum No. 3 to the Negative Declaration for the  
**ONGOING OPERATIONS OF THE CALIFORNIA STATE WATER  
PROJECT IN THE SACRAMENTO-SAN JOAQUIN DELTA FOR THE  
PROTECTION OF LONGFIN SMELT**



State Clearinghouse No. 200901022



State of California  
Department of Water Resources

December 2, 2019



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State Clearinghouse No. 2009012022

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# 1 INTRODUCTION

The California Department of Water Resources (DWR) is submitting a Minor Amendment Request to the California Department of Fish and Wildlife (CDFW) for its incidental take permit (ITP) covering on Longfin Smelt (*Spirinchus thaleichthys*; LFS) (Permit No. 2081-2009-001-03-A2), seeking only of an extension of the expiration date for the ITP from December 31, 2019 to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first. All other provisions of the LFS ITP would remain in effect during the period of extension.

DWR has prepared this Addendum (Addendum No. 3) in compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), augmenting the 2009 Negative Declaration addressing ongoing operations of the State Water Project (SWP) in the Sacramento-San Joaquin Delta for protection of LFS (DWR 2009, State Clearinghouse No. 2009012022). As described in this Addendum No. 3, the proposed extension of the existing LFS ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, does not require revisions to the conclusions or findings presented in the 2009 Negative Declaration because no new or substantially more intense or severe significant environmental impacts or potentially significant environmental impacts would occur.

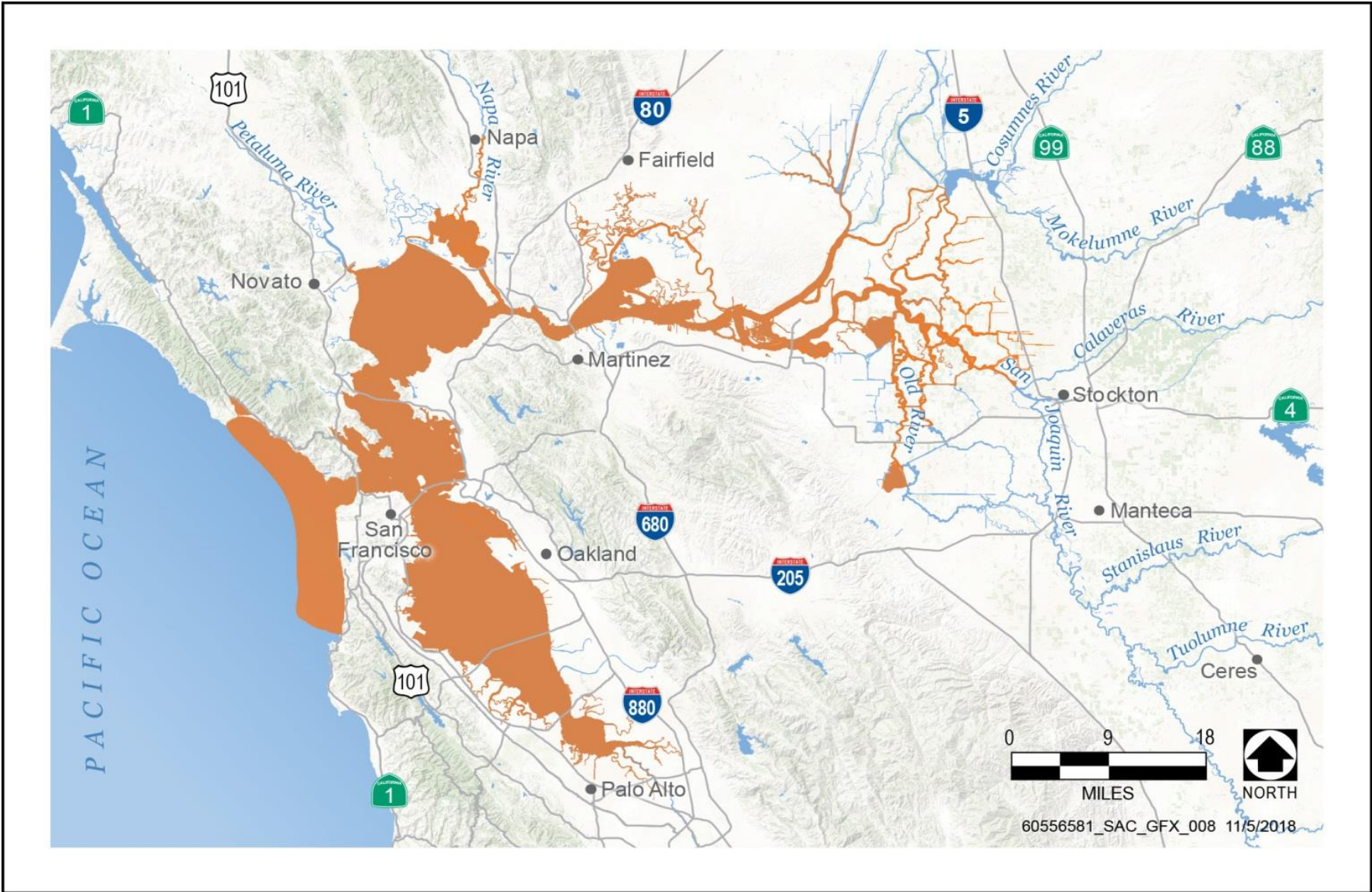
## 2. BACKGROUND

The ongoing operation of the SWP in the Delta involves the operation of existing SWP facilities including: Clifton Court Forebay, Skinner Fish Facility, Harvey O. Banks Pumping Plant, and the North Bay Aqueduct at Barker Slough. The SWP also includes the ongoing operation of existing facilities in coordination with the Central Valley Project (CVP) including: the Suisun Marsh Salinity Control Gates (SMSCG), Roaring River Distribution System, Morrow Island Distribution System, Goodyear Slough Outfall and the South Delta Temporary Barriers Project. The locations of the various facilities of the SWP in the Delta are located within the historic range of LFS (Figure 1 and 2).

DWR currently holds an ITP covering LFS for the operation of the SWP facilities located in the Sacramento-San Joaquin Delta. The existing LFS ITP, which was issued by the California Department of Fish and Game (now CDFW) in 2009 and was amended in 2018. The CEQA document prepared to support the existing ITP were intended to cover a 30-year time period. The minor amendment that was issued in 2018 kept all of the original provisions of the 2009 ITP but extended the expiration date to December 31, 2019.

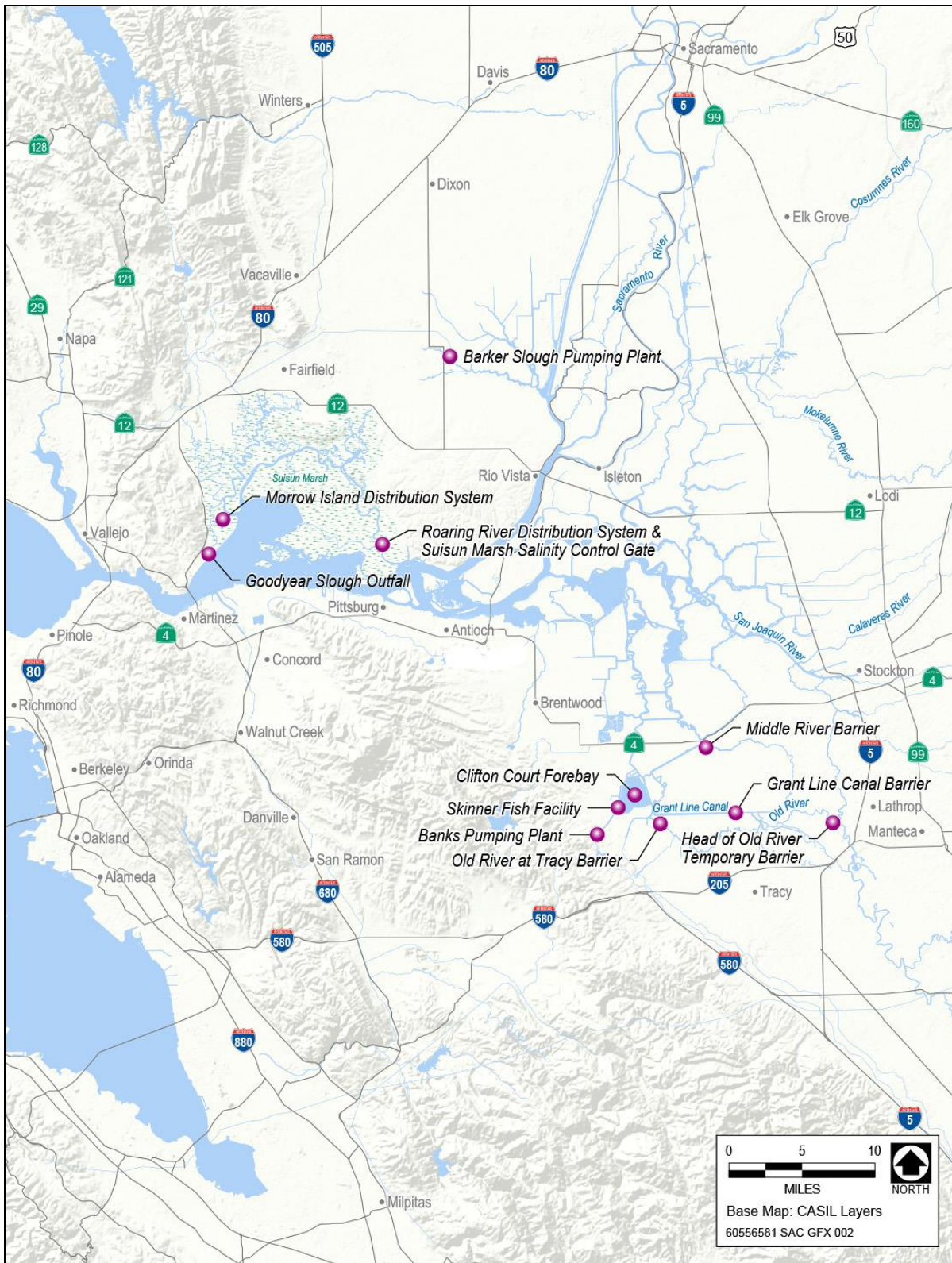
DWR and CDFW have been coordinating studies and discussing information requirements to support the completion of an adequate ITP application to enable the subsequent issuance of a new ITP by CDFW. Because of the complexity of these ongoing discussions and the need to conduct additional analyses and information gathering, a new ITP will not be issued and the associated CEQA analysis will not be complete before expiration of the existing ITP. Therefore, DWR is proposing to submit an ITP Minor Amendment Request that will extend the existing ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first.

All provisions of the LFS ITP would remain in effect, and all operations would continue to comply with the terms of the December 2008 United States Fish and Wildlife Service (USFWS) and 2009 National Marine Fisheries Service (NMFS) Biological Opinion for the Coordinated Operations of the CVP and SWP (BiOps or, individually, BiOp), during the period of extension. All provisions in the LFS ITP and continued operation of the SWP will continue to protect LFS, in addition to other state and federally listed species, during the extended ITP period through March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first.



**Figure 1. Historic Range of Longfin Smelt**





**Figure 2. SWP Facilities Located in the Historic Range of Longfin Smelt**

### 3 SUMMARY OF PREVIOUS ENVIRONMENTAL REVIEW PROCESS

The issuance of the ITP addressing the operations of SWP facilities in the Delta was previously addressed in the *Final Negative Declaration On-Going California State Water Project Operations in the Sacramento-San Joaquin Delta for the Protection of Longfin Smelt* prepared by DWR in January 2009 (DWR 2009).

DWR determined that issuance of the ITP would have no significant impact on the environment and an Environmental Impact Report (EIR) was not warranted. The determination was based on the preparation of an Initial Study (DWR 2009) and the following findings:

1. The issuance of the ITP will not degrade environmental quality, substantially reduce habitat, cause a wildlife population to drop below self-sustaining levels, reduce the number or restrict the range of special-status species, or eliminate important examples of California history or prehistory.
2. The issuance of the ITP does not have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
3. The issuance of the ITP will not have impacts that are individually limited but cumulatively considerable.
4. The issuance of the ITP will not have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly.
5. No substantial evidence exists that the issuance of the ITP will have a negative or adverse effect on the environment.
6. The issuance of the ITP incorporates all applicable mitigation measures or environmental commitments identified in the 2009 Initial Study.
7. The 2009 Negative Declaration reflected the independent judgment of the lead agency.

An addendum to this Negative Declaration was subsequently prepared by CDFW in February 2009 (Addendum No. 1) to facilitate CDFW's issuance of an ITP pursuant to California Endangered Species Act (CESA), California Fish and Game Code Section 2081(b) (CDFG 2009a).

CDFW issued the ITP in February 2009 to DWR for a term expiring on December 31, 2018 (CDFG 2009b).

A second addendum to the Negative Declaration was prepared by DWR in December 2018 (Addendum No. 2) to extend the expiration of the ITP to December 31, 2019 and to allow DWR to operate the SMSCG from July 1, 2019 to October 1, 2019. All other provisions of the ITP remained the same.

## **4 DESCRIPTION OF ONGOING OPERATIONS OF THE SWP IN THE DELTA**

SWP facilities in the Delta and Suisun Marsh are located within the historic range of LFS. The species' range also extends westward to San Francisco Bay, farther west into the Pacific Ocean, and northward along the Pacific west coast. The portion of the LFS range that may be affected by SWP operations is limited to the Bay-Delta. Figure 1 shows the historic range of LFS in the Bay-Delta. Figure 2 shows the locations of SWP facilities that are located within this species' historic range.

As previously described, the SWP facilities located in the Delta which may affect LFS include Clifton Court Forebay, Skinner Fish Facility, Harvey O. Banks Pumping Plant, and the North Bay Aqueduct at Barker Slough. The SWP facilities in the Delta also include the SMSCG, Roaring River Distribution System, Morrow Island Distribution System, Goodyear Slough Outfall and the South Delta Temporary Barriers Project.

## **5 CHANGES OR ADDITIONS TO THE ONGOING OPERATIONS OF THE SWP LOCATED IN THE DELTA**

DWR is proposing to submit a Minor Amendment Request to CDFW extending the term of the existing LFS ITP from December 31, 2019 to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first. The purpose of this request is to enable continued coverage of ongoing operations of the SWP in the Delta which may affect conditions in the historic range of LFS while ongoing studies and consultation occurs related to issuance of a new ITP that covers LFS and three other species listed as threatened or endangered under CESA, including Delta Smelt (*Hypomesus transpacificus*), Winter-run Chinook Salmon (*Oncorhynchus tshawytscha*), and Spring-run Chinook Salmon (*O. tshawytscha*).

No changes to SWP facilities or operations are proposed. All terms and conditions of the 2009 ITP would remain in effect with issuance of the minor amendment and would continue to be applied to ongoing SWP water deliveries. All operations would continue to comply with the terms of the 2008 and 2009 federal BiOps during the period of the extension.

## **6 STANDARD FOR ADOPTION OF A CEQA ADDENDUM**

State CEQA Guidelines Sections 15162–15164 set forth the criteria for determining the appropriate additional environmental documentation, if any, to be completed when there is a previously certified EIR covering the project for which a subsequent discretionary action is required. The State CEQA Guidelines provide three ways to address these changes: a subsequent EIR (Section 15162), a supplemental EIR (Section 15163), or an addendum (Section 15164).

Sections 15162(a) and 15163 of the State CEQA Guidelines state that when an EIR has been certified for a project, no subsequent or supplement to an EIR shall be prepared for that project unless the lead agency determines, based on substantial evidence in light of the whole public record, one or more of the following:

1. Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR.
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measures or alternatives.
- (D) Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

State CEQA Guidelines Section 15163 states that a lead agency may choose to prepare a supplement to the EIR rather than a subsequent EIR if changes proposed would meet the conditions described in Section 15162 and only minor additions and changes would be necessary to make the previous EIR adequate.

State CEQA Guidelines Section 15164 states that a lead agency may prepare an addendum to a certified EIR if some changes or additions are necessary, but none of the conditions described above in Sections 15162 or 15163 calling for the preparation of a subsequent or supplemental EIR have occurred. Courts have applied the standards for supplemental and subsequent CEQA review to negative declarations, in addition to EIRs. *See, e.g., College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937.

As explained in the analysis in Section 7, DWR has determined that issuance of a minor amendment request to extend the ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, would not:

- ▶ result in any new significant or potentially significant environmental effects, or
- ▶ result in a substantial increase in the intensity or severity of previously identified significant or potentially significant effects.

In addition, no new information of substantial importance has arisen that shows:

- ▶ the issuance of the amendment request would have new significant or potentially significant effects,
- ▶ the issuance of the amendment request would have substantially more intense or severe effects,
- ▶ mitigation measures previously found to be infeasible would in fact be feasible, or
- ▶ mitigation measures that are considerably different from those previously analyzed would substantially reduce one or more significant or potentially significant effects on the physical environment.

## 7 ENVIRONMENTAL ANALYSIS

This section of the addendum analyzes the potential effects on the physical environment from implementing the proposed amendment request. This analysis has been prepared to determine whether any of the conditions in Section 15162 or 15163 of the State CEQA Guidelines (as described in Section 6) would occur as a result of

extending the existing ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first.

## 7.1 TOPICS CONSIDERED IN THIS ADDENDUM

The proposed issuance of a minor amendment request extending the existing ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, would not result in new significant impacts or a substantial increase in the intensity or severity of environmental effects analyzed and disclosed in the 2009 Negative Declaration for the following topic areas:

- ▶ Agricultural Resources
- ▶ Geology, Soils, and Mineral Resources
- ▶ Water Quality
- ▶ Noise
- ▶ Visual Resources
- ▶ Utilities and Service Systems
- ▶ Hazards and Hazardous Materials
- ▶ Environmental Justice
- ▶ Biological Resources
- ▶ Cultural Resources
- ▶ Recreation
- ▶ Transportation and Circulation
- ▶ Air Quality
- ▶ Hydrology and Hydraulics
- ▶ Land Use, Socioeconomics, and Population and Housing

Extending the existing ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, would not result in any substantial changes to the ongoing operations of the SWP facilities located in the Delta. Therefore, no physical change to the environment would occur with the extension of the ITP term. No new impacts on any of the topic areas considered in this addendum would occur and the less-than-significant impacts identified in the 2009 Negative Declaration would not become more severe.

## 8 CONCLUSION

As described in this Addendum No. 3, the proposed extension of the existing LFS ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, does not require revisions to the conclusions or findings presented in the 2009 Negative Declaration because no new or substantially more intense or severe significant environmental impacts or potentially significant environmental impacts would occur. In addition, the 2009 Negative Declaration and associated Mitigation Monitoring and Reporting Program (MMRP) remain valid for assessing and mitigating identified impacts that would result from issuing the minor amendment request.

Based on the discussion presented in Section 7, *Environmental Analysis*, the proposed extension of the existing LFS ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, would not result in any of the conditions described in Sections 15162 and 15163 of the State CEQA Guidelines that call for preparation of a subsequent EIR or supplemental EIR.

In summary, the proposed extension of the existing LFS ITP term to March 31, 2020 or until issuance of an ITP covering all listed species, whichever comes first, would not:

- ▶ result in any new significant or potentially significant environmental effects,

- ▶ substantially increase the intensity or severity of previously identified significant effects,
- ▶ result in mitigation measures or alternatives previously found to be infeasible becoming feasible, or
- ▶ result in the availability/implementation of mitigation measures or alternatives that are considerably different from those analyzed in the prior 2010 Final EIS/EIR that would substantially reduce one or more significant or potentially significant effects on the physical environment.

These conclusions confirm that a subsequent or supplemental EIR is not warranted, and this Addendum No. 3 to the 2009 Negative Declaration is the appropriate CEQA document pursuant to State CEQA Guidelines Section 15164 to evaluate and document the changes and additions to the ongoing operations of the SWP facilities in the Delta. No changes are needed to the certified 2009 Negative Declaration or the adopted MMRP for the ongoing operations of the SWP facilities in the Delta.

## 9 REFERENCES

California Department of Fish and Game. 2009a. Addendum to the Final Negative Declaration Adopted by the Lead Agency Department of Water Resources for the Ongoing Operations of the California State Water Project in the Sacramento-San Joaquin Delta for the Protection of Longfin Smelt Incidental Take Permit Under Section 2018(b) of the California Fish and Game Code. February 23, 2009.

———. 2009b. California Endangered Species Act Incidental Take Permit No. 2081-2009-001-03. Department of Water Resources California State Water Project Delta Facilities and Operations.

California Department of Water Resources. 2009. Final Negative Declaration for the Ongoing Operations of the California State Water Project in the Sacramento-San Joaquin Delta for the Protection of Longfin Smelt. January 2009.

CDFG. *See* California Department of Fish and Game.

DWR. *See* California Department of Water Resources.

U.S. Fish and Wildlife Service. 2008. Formal Endangered Species Act Consultation on the Proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP). OCAP Biological Opinion. Memorandum to U.S. Bureau of Reclamation, Central Valley Operations Office, from Regional Director, USFWS Region 8. Available: [https://www.fws.gov/sfbaydelta/documents/SWP-CVP\\_OPs\\_BO\\_12-15\\_final\\_OCR.pdf](https://www.fws.gov/sfbaydelta/documents/SWP-CVP_OPs_BO_12-15_final_OCR.pdf). Accessed November 3, 2017.

USFWS. *See* U.S. Fish and Wildlife Service.