



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Habitat Conservation Planning Branch
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 CHARLTON H. BONHAM, Director



March 20, 2019

Frances Mizuno
 Assistant Executive Director
 San Luis and Delta-Mendota Water Authority
 842 6th St.
 Los Banos, CA 93635

Governor's Office of Planning & Research

MAR 20 2019

STATE CLEARINGHOUSE

Dear Ms. Mizuno:

Long-Term Water Transfers (PROJECT)
 DRAFT JOINT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT
 STATEMENT (RDEIR/SDEIS)
 SCH# 2011011010

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a revised EIR/supplemental EIS (RDEIR/SDEIS) from San Luis and Delta-Mendota Water Authority (SLDMWA) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the originally circulated Draft EIR/EIS (enclosed)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Reclamation and SLDMWA

Objective: The objective of the Project is to:

- Develop supplemental water supply for member agencies during times of Central Valley Project (CVP) shortages to meet existing demands,
- Meet the needs of member agencies for a water supplies that are immediately implementable and flexible and can respond to changes in hydrologic conditions and CVP allocations.

The SLDMWA and Reclamation will allow the transfer of water from willing sellers to willing buyers to meet the buyer's water needs. Primary Project activities include making water available for transfer and developing the infrastructure for the transfer. This requires implementing actions to reduce consumptive use of water by the seller, which include the use of groundwater to make surface water available or the release of additional water from reservoir storage.

Location: Sellers and buyers include water districts from the Central Valley and the Delta.

Timeframe: Through 2024.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the SLDMWA in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concurs that an Environmental Impact Report is appropriate for the Project.

Comment 1:

Section #: ES 7.1, **Page #:** ES-10

Issue: Under the heading 'Groundwater Substitution,' the Executive Summary (ES) indicates that groundwater monitoring will be used to 'avoid changing groundwater levels that could affect stream flows or riparian vegetation.' Non-riparian, phreatophyte vegetation is not included in this monitoring protection.

Specific impact: This exclusion of groundwater dependent vegetation located outside the riparian zone from groundwater monitoring may lead to degraded or lost phreatophyte habitat.

Why impact would occur: A failure to monitor groundwater levels under groundwater dependent vegetation will lead to an inability to effectively manage groundwater pumping for substitution transfers. Phreatophytes can be sensitive to depth to groundwater threshold impacts (Naumburg et al. 2005, Froend and Sommer 2010). Without data on groundwater elevation near vegetated groundwater-dependent ecosystems, vegetation stress or loss may occur without notice and without necessary changes to pumping regimes.

Evidence impact would be significant: There are significant potential vegetated GDEs in the Seller Service Area according to the Department of Water Resources Natural Communities Commonly Associated with Groundwater Dataset (DWR 2018), not all of which are riparian.

NOTE: Page 3.3-28 does address deep-rooted vegetation in the context of monitoring systems, but deep-rooted/groundwater dependent vegetation should also be acknowledged in the ES.

Comment 2:

Section #: 3.3.1.2.2, **Page #:** 3.3-4

Issue: Groundwater use in 'Sacramento Valley Groundwater Basin' is noted as less than 30% of annual supply under normal hydrologic conditions. This RDEIR/SDEIS is intended to help address CVP water supply shortages, most of which occur in dry hydrologic conditions.

Specific impact: Analyzing basin groundwater reliance for this RDEIR/SDEIS under normal hydrologic conditions when the need for groundwater substitutions transfers increases with dry hydrologic conditions may overestimate available groundwater supply in the Seller Service Area and underestimate potential local and cumulative basin impacts.

Comment 3:

Section #: 3.3.2 Page #: 3.3-11

The two subheadings: 'Groundwater pumping would not cause groundwater level declines that would lead to permanent land subsidence,' and 'Groundwater pumping would not cause groundwater level declines that would lead to migration of poor quality groundwater.'

- The paragraphs below each caveat these subheadings, noting that the potential for groundwater level declines that would cause the adverse impact in the Seller or Buyer Service Area under the 'No Action Alternative' would be 'the same as existing conditions.'

Therefore, the subheadings/statements in italics may be misleading if significant subsidence and/or migration of poor quality groundwater is actively happening already. A thorough analysis of 'No Action Alternative' should account for current subsidence and groundwater quality impacts cause by pumping in the Seller/Buyer Service Areas.

Comment 4:

Section #: 3.3.4 Page #: 3.3-28

Issue: The subheading 'Shallow Groundwater Level Monitoring for Deep Rooted Vegetation' explains how monitoring will trigger mitigation activities.

- Mitigation under this subheading may be triggered too late, both where monitoring wells exist, and where biologists are required to observe vegetation response.

Specific impact: Late mitigation triggers could lead to irreversible, or slowly reversible, loss of vegetated groundwater dependent ecosystems and the species therein.

Why impact would occur: Where monitoring wells exist, the requirement to mitigate action is triggered after groundwater levels have dropped below the local vegetation rooting depth. Recovery time for groundwater levels is unknown and prone to pumping lag impacts, meaning vegetation may have to endure substantial periods of stress. Furthermore, where monitoring wells are not required, a loss of deep-rooted vegetation triggers mitigation actions. The term 'loss' suggests vegetation can no longer serve habitat functions – it is already beyond short-term recovery – which in turn can lead to species loss.

Evidence impact would be significant: Some plant and animal species have low resiliency, and may not survive late or un-protective mitigation triggers, potentially permanently reducing the plant or animal species populations.

Comment 5:

Section #3.8.2.4.3: Page #: Starting 3.8-17

Issue: The RDEIR/SDEIS proposes that Mitigation Measure GW-1 will reduce potentially significant impacts from groundwater substitution pumping on special status species. This Mitigation Measure may be insufficient to address potential significant impacts because:

1. Mitigation Measure GW-1 hinges on triggers that could be too late to prevent habitat and species loss (see comment above);
2. Mitigation Measure GW-1 does not require paired groundwater and surface water monitoring, and therefore may not be able to accurately predict the relationship between groundwater pumping and local impacts to surface water/wetlands; and
3. The RDEIR/SDEIS assumes a <10% reduction in surface water will not cause significant impacts on species, which may not always hold true and is dependent on each stream's respective hydrology, water availability, and species needs².

Specific impact: Habitat and species loss.

Why impact would occur: Inadequate mitigation triggers, insufficient monitoring, and un-protective thresholds allow for habitat degradation – both vegetated and aquatic – to go unnoticed and unmitigated until species loss has already occurred.

Evidence impact would be significant: The presence of GDEs in the Seller Service Area (DWR 2018) suggests that the potential for habitat and species loss could be significant if the monitoring and mitigation requirements are not strengthened.

Comment 6:

Section # 1.4, Page # 1-5

Issue: *"When proposing or approving a specific water transfer in the future, the Lead Agencies and/or Responsible Agencies will consider whether the proposed transfer was analyzed in the Final Long-Term Water Transfers EIS/EIR. If so, the Lead Agencies can rely on the analysis in the Final Long-Term Water Transfers EIS/EIR. If it is not covered or there have been significant changes, the Lead Agencies may need to supplement the Final Long-Term Water Transfers EIS/EIR."*

Re-initiation of Consultation of the Long-Term Operations of the CVP and State Water Project (SWP) proposes numerous significant changes to water operations under the

² Richeter et al. suggest a high level of ecological protection with unimpaired flow alterations of less than 10%, but few streams in California flow unimpaired (Richter 2011). Therefore, while a 10% depletion on an unimpaired stream may have minimal ecological harm, the same percentage reduction on an impaired stream may have significant impacts on ecological function.

existing National Oceanic and Atmospheric Administration (NOAA) and U.S. Fish and Wildlife Service (USFWS) Biological Opinions (BOs) are proposed under the recently submitted Biological assessments (BA) for long-term operations of the CVP and SWP. The CalSim analysis upon which this RDEIR/SDEIS is based on will no longer be valid and will need to supplement this RDEIR/SDEIS upon implementation. These changes include widening of the current transfer window evaluated in this document to also include October and November.

Specific impact: The new USFWS and NOAA BOs proposed changes to operating requirements, including widening of the transfer window, would lead to dewatering and potentially significant impacts to salmonid redds. Therefore, upon implementation of new CVP and SWP operating criteria the lead agencies would have to conclude that the analysis provided for proposed transfers this RDEIR/SDEIS or in the previous EIR/EIS is no longer valid.

Why impact would occur: Analysis in this RDEIR/SDEIS is based on current CVP and SWP operating criteria which are likely to be substantially modified under Re-initiation of Consultation of the Long-Term Operations of the CVP and State Water Project (SWP). As such, the analysis provided is insufficient to adequately analyze impacts upon implementation of new CVP and SWP operation criteria and is not valid for the term proposed in this RDEIR/SDEIS which is 2024. In particular, the current transfer window avoids part of the state and federally listed Spring-run Chinook salmon spawning and fall/late fall Chinook salmon spawning periods which occur August through January. The egg incubation period for salmonids is approximately 90 days dependent on water temperature. Water transfers during October and November could result in flows being higher for a short period in which salmonids would build redds in margin habitat that would not be sustained for the duration of egg incubation. This would result in redd dewatering mortality when the transfer flows end. There is no analysis for redd dewatering potential during October and November.

Evidence impact would be significant: Water transfers during the extended October and November period are not described or analyzed. Thus, there is the potential for significant impact.

The lead agencies will need to supplement the Final Long-Term Water Transfers EIS/EIR analysis once a new CVP/SWP operations under the new BOs are implemented. This supplement will require new analysis which includes the new CVP SWP long term operations criteria as the existing analysis provided in this document will no longer be valid. New operational criteria for the CVP and SWP are likely to be implemented prior to the time period that this RDEIR/SDEIS proposes to cover operations through 2024.

Comment 7:

Section # 2.2.2.1 Page # 2.5

Issue: The Coordinated Operations Agreement (COA) was renegotiated and has recently been implemented. It is unclear if the analysis provided accounts for this change and it is unlikely that the change was incorporated in this RDEIR/SDEIS.

Specific impact: The potential impact is that the analysis provided does not rely on current operations of the SWP and the CVP

Why impact would occur: The entire analysis could be incorrect. Potential changes could be significant with subsequent significant species impacts.

Evidence impact would be significant: This project proposes to conduct transfers when conditions are balanced. COA dictates the respective shares that the CVP and the SWP must release from storage to meet in-basin demands including the State Water Resources Control Board Decision -1641 for implementation of the water quality objectives for the San Francisco Bay/San Joaquin Delta Estuary. While the in-basin demands do not change the switch in percentages each project must release water to meet these demands, it does have an effect in overall operations due to differences in the projects. The SWP has lower storage capacity but higher export capacity while the CVP has higher storage capacity and lower export capacity.

These differences may lead to changes in how reservoirs are refilled with subsequent changes to outflow that may not be reflected in Table 3.7-1 which is the basis of the conclusions that impacts to fisheries resources are less than significant.

CDFW recommends that if the COA was not incorporated into the analysis, the analysis be redone to include the COA since Table 3.7-1 does not accurately reflect current operations.

Comment 8

Section # 3.7 Page # 3.7-1

Issue: *"Water transfer actions under the Proposed Action would have a less than significant impact on fisheries resources that may be influenced by Delta outflow, as mean changes in Delta outflow would be small (1.2 percent or lower than baseline depending on month and water year type) in all months and water year types (Table 3.7-1). All cumulative water operations projects affecting Delta exports would be required to meet existing Delta water quality standards (e.g., D-1641) and meet the requirements of the USFWS and NOAA Fisheries BOs for the long-term coordinated operations of the CVP and SWP."*

By presenting averages, actual impacts to species may appear to be insignificant. By examining this more thoroughly there is take of listed longfin smelt that must be fully mitigated under CESA.

Specific Impact: While the percentages in given months are small, the total for Above Normal water year types (AN years) is -105.8 thousand-acre feet less outflow from January through June (Table 3.7.1). This would result in a significant impact on CESA listed longfin smelt. Similar but smaller reductions in outflow would occur in all other year types during the January through June period resulting in smaller but cumulatively significant impacts to Longfin smelt.

Why impact would occur: The Kimmerer 2008 regression is a January through June flow-survival relationship utilized to analyze impacts on longfin smelt juvenile recruitment. As per the Kimmerer regression analysis, reduction in outflow will result in take of CESA listed Longfin smelt that must be fully mitigated under CESA. This analysis must be applied to the information presented in Table 3.7.1 to fully analyze the impacts to Longfin smelt. These potentially significant impacts are not offset by minimal summer outflow increases due to carriage water associated with water transfers as the species is not dependent on outflow during this time period.

Evidence impact would be significant: The Kimmerer 2008 analysis was not conducted for this RDEIR/SDEIS; however, because this analysis is an outflow survival dependent relationship the identified reductions in outflow during January through June will result in take of CESA listed Longfin smelt. While the text states that the PA will adhere to the current USFWS and NOAA BOs these do not cover longfin smelt which are a state listed species only. Similar to the previous comments, the current CVP and SWP operating criteria are being revised and this RDEIR/SDEIS will need to be updated to reflect those substantial changes upon implementation of new CVP and SWP operating criteria.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the RDEIR/SDEIS to assist the SLDMWA in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW staff Karen Carpio, Senior Environmental Scientist at (916) 653-3864 or Karen.Carpio@wildlife.ca.gov.

Sincerely,


Richard Macedo
Branch Chief

Enclosures: 2014 letter for the original Draft EIR/EIS.

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REFERENCES

- California Department of Water Resources (DWR). 2018. Natural Communities Commonly Associated with Groundwater Dataset.
<https://gis.water.ca.gov/app/NCDatasetViewer/>
- Decision – 1641
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/
- Froend R., and B. Sommer. 2010. [Phreatophytic vegetation response to climatic and abstraction-induced groundwater drawdown: Examples of long-term spatial and temporal variability in community response.](#) *Ecological Engineering*. 36:1191-1200.
- Naumburg, E., R. Mata-Gonzalez, R.G. Hunter, T. McLendon, D.W. Martin. 2005. [Phreatophytic vegetation and groundwater fluctuations: a review of current research and application of ecosystem response modeling with an emphasis on great basin vegetation.](#) *Environmental Management*. 35(6):726-40.
- Richter, B.D., M. M. Davis, C. Apse, and C. Konrad. 2011. [A presumptive standard for environmental flow protection.](#) *River Research and Applications*.

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2011011010

Project Title: Long-Term Water Transfers RDEIR/ SDEIS
Lead Agency: San Luis & Delta Mendota Water Authority
Contact Person: Frances Mizuno
Mailing Address: P.O. Box 2157
Phone: (209) 832-6200
City: Los Banos
Zip: 93635
County:

Project Location: County: Multiple- see project description
City/Nearest Community: Multiple- see project description
Cross Streets: N/A - Interagency water transfer
Zip Code:
Longitude/Latitude (degrees, minutes and seconds): 37 ° 03 ' 40.1 " N / 120 ° 50 ' 51.5 " W
Total Acres: N/A
Assessor's Parcel No.: N/A - interagency water transfer
Section:
Twp.:
Range:
Base:
Within 2 Miles: State Hwy #:
Waterways:
Airports:
Railways:
Schools:

Document Type:
CEQA: [] NOP [x] Draft EIR [] Supplement/Subsequent EIR [] Revised Draft EIR
NEPA: [] NOI [] EA [x] Draft EIS
Other: [x] Joint Document [] Final Document [] Other:
Government: [] Planning & Research

Local Action Type:
[] General Plan Update [] Specific Plan [] Rezone [] Annexation
[] General Plan Amendment [] Master Plan [] Use Permit [] Redevelopment
[] General Plan Element [] Planned Unit Development [] Land Division (Subdivision, etc.) [] Coastal Permit
[] Community Plan [] Site Plan [] Other: water transfer

Development Type:
[] Residential: Units _____ Acres _____
[] Office: Sq.ft. _____ Acres _____ Employees _____
[] Commercial: Sq.ft. _____ Acres _____ Employees _____
[] Industrial: Sq.ft. _____ Acres _____ Employees _____
[] Educational:
[] Recreational:
[] Water Facilities: Type _____ MGD _____
[] Transportation: Type _____
[] Mining: Mineral _____
[] Power: Type _____ MW _____
[] Waste Treatment: Type _____ MGD _____
[] Hazardous Waste: Type _____
[x] Other: Interagency water transfer

Project Issues Discussed in Document:
[] Aesthetic/Visual [] Fiscal [] Recreation/Parks [x] Vegetation
[] Agricultural Land [] Flood Plain/Flooding [] Schools/Universities [] Water Quality
[] Air Quality [] Forest Land/Fire Hazard [] Septic Systems [x] Water Supply/Groundwater
[] Archeological/Historical [] Geologic/Seismic [] Sewer Capacity [x] Wetland/Riparian
[x] Biological Resources [] Minerals [] Soil Erosion/Compaction/Grading [] Growth Inducement
[] Coastal Zone [] Noise [] Solid Waste [] Land Use
[] Drainage/Absorption [] Population/Housing Balance [] Toxic/Hazardous [x] Cumulative Effects
[] Economic/Jobs [] Public Services/Facilities [] Traffic/Circulation [] Other:

Present Land Use/Zoning/General Plan Designation:
Seller actions will occur on agricultural property; buyers will use water for agricultural or municipal use.
Project Description: (please use a separate page if necessary)
The Draft Revised Environmental Impact Report and Supplemental Environmental Impact Statement (RDEIR/SDEIS) evaluates out of basin water transfers from willing sellers in northern California to meet existing demands of buyers. Water transfers would occur through various methods such as groundwater substitution, cropland idling, reservoir release, and conservation, and would include individual and multiyear transfers from 2019 through 2024. The transfers could originate in Colusa, Butte, Glenn, Merced, Nevada, Placer, Sacramento, Shasta, Solano, Sutter, Tehama, Yolo, or Yuba counties. The transfer buyers could be in Alameda, Contra Costa, Fresno, Kings, Merced, San Benito, San Joaquin, Stanislaus or Santa Clara counties.

State Clearinghouse Contact: (916) 445-0613
State Review Began: 2-4-2019
SCH COMPLIANCE: 3-20-2019

Project Sent to the following State Agencies

- X Resources
Boating & Waterways
Central Valley Flood Prot.
Coastal Comm
Colorado Rvr Bd
Conservation
CDFW # HQ
Cal Fire
Historic Preservation
Parks & Rec
Bay Cons & Dev Comm.
DWR
Cal EPA
ARB: Airport & Freight
ARB: Transportation Projects
ARB: Major Industrial/Energy Resources, Recycl. & Recovery
SWRCB: Div. of Drinking Water
SWRCB: Div. Drinking Wtr #
SWRCB: Div. Financial Assist.
SWRCB: Wtr Quality
SWRCB: Wtr Rights
Reg. WQCB #
Toxic Sub Ctrl-CTC
Yth/Adlt Corrections
Corrections
Independent Comm
Delta Protection Comm
Delta Stewardship Council
Energy Commission
NAHC
Public Utilities Comm
Santa Monica Bay Restoration
State Lands Comm
Tahoe Rgl Plan Agency
Conservancy
Other:

Please note State Clearinghouse Number (SCH#) on all Comments

SCH#: 2011011010

Please forward late comments directly to the Lead Agency

AQMD/APCD
(Resources: 2, 9)

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