



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



May 24, 2019

Governor's Office of Planning & Research

MAY 24 2019

STATE CLEARINGHOUSE

Mr. Dean Messer  
Chief, Division of Environmental Services  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA, 94236-0001

LONG-TERM OPERATIONS OF THE STATE WATER PROJECT (PROJECT)  
SCH# 2019049121

Dear Mr. Dean Messer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from Department of Water Resources (DWR) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 to exercise regulatory authority as provided by the Fish and Game Code. To the

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<sup>1</sup> 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.

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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), the project proponent may seek related take authorization as provided by the Fish and Game Code (Fish & G. Code, § 2050 et seq.). At the request of an applicant for an incidental take permit (ITP), CDFW shall, to the greatest extent practicable, consult with the applicant regarding the preparation of a permit application in order to ensure that it will meet the requirements CESA and its implementing regulations when submitted to CDFW. (Cal. Code Regs., tit. 14, § 783.2, subd. (b).)

## PROJECT DESCRIPTION SUMMARY

**Proponent:** California Department of Water Resources

**Objective:** The objective of the Project is to continue operating the State Water Project (SWP) to provide flood control and water supply for agricultural, municipal, recreational, and environmental purposes consistent with applicable legal requirements. SWP operations also will continue to be closely coordinated with the Central Valley Project (CVP), including the Coordinated Operations Agreement (COA) and operational requirements resulting from the ongoing reinitiation of federal Endangered Species Act (ESA) consultation on coordinated long-term CVP and SWP operations. Primary Project activities include operating SWP facilities in the Delta such as pumps, the Suisun Marsh Salinity Control Gates, and the North Bay Aqueduct, updates to the COA including the COA Addendum executed on December 12, 2018, and measures that may be adopted to avoid, minimize or mitigate impacts to listed species resulting from SWP long-term operations, including habitat restoration and other actions to address known stressors.

**Location:** The Project area for purposes of CEQA encompasses SWP water diversion, storage, and conveyance facilities and SWP service areas throughout the State.

## COMMENTS AND RECOMMENDATIONS

The NOP states that the EIR is expected to be used to support CDFW's decision on DWR's application for an incidental take permit (ITP) under CESA. CDFW looks forward to ongoing discussions with DWR staff during the development of DWR's Environmental Impact Report (EIR) and ITP application for take of Delta smelt, longfin smelt, winter- and spring-run Chinook salmon associated with ongoing operations of the SWP in the Delta. CDFW offers the comments below to assist DWR in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Based on its review of the NOP, CDFW would like to emphasize the importance of several key components for consideration in the development of project alternatives and the EIR's disclosure and analysis of impacts, and identification and description of

mitigation measures. Such considerations will also be important to DWR's development of an ITP application:

- To the extent the Project incorporates adaptive management, the approach should be based on established biological goals and objectives, utilize best available science to evaluate progress towards those objectives, and present a clear decision-making structure through which any changes in approach to minimizing or mitigating impacts to listed species would ensure that biological objectives are met;
- Establishing a foundation in best available science and thorough literature reviews to support descriptions of the status of the species, known population trends, known and reasonably foreseeable impacts to the species from other related projects and activities, effects analyses, and potential proposals for avoidance, minimization or mitigation measures;
- Including clear descriptions of quantifiable operating criteria that will be used to make decisions about SWP operations (in real-time and longer seasonal or annual time steps);
- An EIR analysis that considers Project impacts in comparison to the existing conditions of the species and environmental conditions including habitat restoration projects that have been completed. The EIR's cumulative impacts analysis may consider the impacts of probable future projects, including habitat restoration actions that are expected to be completed. Note that for its ITP application, DWR must analyze the likelihood and extent of take by the Project, and the impacts of that taking on the proposed covered species. The ITP application must also consider the adverse impacts of the Project on the species in light of population trends, known threats, and reasonably foreseeable impacts from related projects and activities. In-progress habitat restoration projects may be considered related projects but their status and timelines for providing species benefit should be made clear.
- Biological analyses and project operations that consider the need for spring outflow to minimize impacts to fish species, including longfin smelt, as a result of ongoing SWP operations;
- Biological analyses and project operations that consider the need for continuous access to suitable habitat during the summer and fall for Delta smelt;
- Biological analyses that consider known impacts to species and status of the species as a result of cumulative effects of the Project in connection with the effects of past, current, or probable future projects, including the CVP;

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- Biological analyses that disclose and analyze any significant Project impacts to non-listed species, such as fall-run Chinook and steelhead, and if necessary, measures to reduce impacts to less than significant levels;
- Project operations that minimize take as a result of entrainment into SWP facilities and associated impacts of this taking on Delta smelt, longfin smelt, winter- and spring-run Chinook.

## **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: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **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.)

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## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist DWR in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brooke Jacobs at (916) 445-5313 or [Brooke.Jacobs@wildlife.ca.gov](mailto:Brooke.Jacobs@wildlife.ca.gov).

Sincerely,



Joshua Grover  
Water Branch Chief

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: California Department of Fish and Wildlife

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