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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

FEB 27 2023

STATE CLEARING HOUSE

JoAnna Lessard, Project Manager
Yuba County Water Agency
1220 F Street
Marysville, CA, 95901
jlessard@yubawater.org

Subject: Extension of the Lower Yuba River Accord Water Transfer Program - Notice of Preparation of a Supplemental Environmental Impact Report
SCH# 2005062111

Dear Ms. Lessard:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of a Supplemental Environmental Impact Report (SEIR) from Yuba County Water Agency (YCWA) for the Extension of the Lower Yuba River Accord Water Transfer Program (Project) in Yuba County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants, and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. 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 provides, 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.

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.

Extension of the Lower Yuba River Accord Water Transfer Program

February 24, 2023

Page 2 of 6

CDFW may also act 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. 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

The Project proposes to continue the Lower Yuba Accord Water Transfer Program beyond its current expiration date of December 31, 2025, with the same features, terms, and conditions, which include: (1) the YCWA/Department of Water Resources Water Purchase Agreement; (2) the YCWA/Contra Costa Water District /East Bay Municipal Utilities District Water Transfer Agreement; (3) the YCWA/Member Unit Conjunctive Use Agreements; and (4) the terms and conditions imposed in State Water Resources Control Board (SWRCB) Corrected Order WR 2008-0014 and subsequent Accord water transfer change petitions approved by the SWRCB. The Program also includes the Lower Yuba River Fisheries Agreement among YCWA, CDFW, South Yuba River Citizens League, Friends of the River, Trout Unlimited, and The Bay Institute. These elements are collectively referred to as the Lower Yuba Accord Water Transfer Program. The extension is proposed for a 25-year period (i.e., from 2025 to 2050).

The Lower Yuba River Accord consists of a comprehensive settlement resolving issues regarding instream flow requirements for the lower Yuba River, water transfers, conjunctive use of surface water and groundwater, and fisheries management. The environmental effects of the Lower Yuba Accord were evaluated in an Environmental Impact Report (EIR), which was certified by YCWA in 2007 (State Clearinghouse No. 2005062111). The lead agency will prepare a SEIR for the extension, although the NOP states it does not propose any substantial changes to the Lower Yuba Accord Water Transfer Program.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the YCWA in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming SEIR address the following:

Extension of the Lower Yuba River Accord Water Transfer Program

February 24, 2023

Page 3 of 6

Project Description

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including membership units and water district service locations and the locations of major water development facilities in the region.

As required by § 15126.6 of the CEQA Guidelines, the SEIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction.

Environmental Setting

The previous EIR, certified in 2007, included a description of the environmental conditions which established a baseline to assist the lead agency in determining whether impacts caused by the project would be significant. CDFW recommends the SEIR analyze the effects of water transfers on biological resources based upon a determined baseline of current conditions. Circumstances and conditions may have changed with respect to impacted biological resources within the affected area of the proposed Project since the original EIR and analyses was finalized. The SEIR should evaluate the effects of extending the current water transfers on biological resources for an additional 25 years considering drought conditions, climate change impacts, fish populations, and available habitat. If during these analyses, new information of substantial importance shows any sign of having one or more significant effects not discussed in the original EIR, a significant effect that will be more substantially severe than was determined in the original EIR, or mitigation measures or alternatives that are now feasible or would substantially reduce one or more significant effects on the environment where the lead agency declines to adopt the mitigation measure or alternative, then CDFW recommends YCWA consider developing a Subsequent EIR to address these types of major revisions.

Water Transfer Timing

CDFW recommends the SEIR identify what the timeframe for water transfers will be annually and whether water transfer seasonal windows will be increased or decreased. If the SEIR identifies changes to the water transfer timing, CDFW recommends the SEIR analyze the effects of the change in water transfer timing and how this may affect biological resources, especially if the seasonal window for water transfers is extended. If water transfer timing is extended beyond the original EIR's analysis, CDFW recommends YCWA discuss how the extension will be applied through the Project's current agreements. Additionally, CDFW has developed an analysis on the potential impacts of water transfer projects on special-status fish species that occur throughout the areas of the Sacramento River and the San Joaquin Delta and may be able to assist YCWA in evaluating the potential impacts of water transfer activities to biological

Extension of the Lower Yuba River Accord Water Transfer Program

February 24, 2023

Page 4 of 6

resources when considering change in environmental conditions and altered water transfer seasonal windows.

Groundwater Resources

Since the original EIR and analyses were finalized, the Sustainable Groundwater Management Act (SGMA) was passed and the North and South Yuba groundwater subbasins have adopted a groundwater sustainability plan (GSP), which serves to locally govern groundwater supplies and plan for long-term sustainability. CDFW recommends that the SEIR incorporate the relevant GSP sustainable management criteria into its analysis and identification of thresholds of significance for evaluating potential impacts of the water transfer program.

CDFW also recommends that the SEIR analyze the effects of water transfers on groundwater dependent ecosystems (GDEs) as environmental users of groundwater. The SEIR should identify the locations of GDEs within the Project area and evaluate the potential for significant impacts that may result from groundwater substitution transfers, which have the potential to lower the groundwater table. CDFW recommends the analysis consider potential localized impacts near transfer pumping wells on GDEs and their ability to access groundwater supplies, including an assessment of potential cumulative impacts to GDEs that may occur after sequential years of transfers, particularly during dry or critically dry water years. The SEIR should include mitigation measures, if warranted, that would reduce the potential impact on GDEs due to groundwater pumping.

Groundwater substitution transfers have the potential to alter interactions between groundwater and surface waters, including increasing the rate of surface water depletion. CDFW recommends the SEIR identify interconnected surface waters located within the Project area and identify surface waters as likely gaining or losing to groundwater. The SEIR should analyze the potential impacts of water transfers on the rates of streamflow depletion, particularly if transfer pumping wells are located proximate to surface waters, and identify mitigation measures as warranted to reduce any impacts to less-than significant.

California Endangered Species Act

The NOP states “if additional coverage under the California Endangered Species Act is needed, Yuba Water will apply for and obtain an incidental take permit from CDFW.” However, the YCWA currently does not have any existing coverage for this Project under CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species over the life of the Project.

Extension of the Lower Yuba River Accord Water Transfer Program

February 24, 2023

Page 5 of 6

State-listed species with the potential to occur in the area include, but are not limited to: winter-run Chinook salmon (*Oncorhynchus tshawytscha*), spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Delta smelt (*Hypomesus transpacificus*), and longfin smelt (*Spirinchus thaleichthys*).

The SEIR should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. The analysis for potential effects to State-listed species should also consider possible extensions in water transfer seasonal windows and the environmental setting at the time of writing the SEIR. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To facilitate the issuance of an ITP, if applicable, CDFW recommends the SEIR include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

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 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and 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

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

Extension of the Lower Yuba River Accord Water Transfer Program

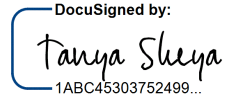
February 24, 2023

Page 6 of 6

CDFW appreciates the opportunity to comment on the Notice of Preparation of the SEIR for the Extension of the Lower Yuba River Accord Water Transfer Program and recommends that the YCWA address CDFW's comments and concerns in the forthcoming SEIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Alexander Funk, Environmental Scientist at (916) 817-0434 or alexander.funk@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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