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May 22, 2020

Governor's Office of Planning & Research

MAY 22 2020

Brian Deason
Environmental Resources Supervisor
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667

STATE CLEARINGHOUSE

Subject: MODIFICATION OF WATER RIGHT PERMIT 21112 PROJECT
NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT
REPORT SCH# 2020049042

Dear Mr. Deason:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of a Draft Environmental Impact Report (DEIR) from the El Dorado Irrigation District (District) for the Modification of Water Right Permit 21112 Project (Project) in El Dorado County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

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 may fall under CDFW's regulatory authority.

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 (Fish & G. Code §1802.). As a Trustee Agency, CDFW provides 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 may also act as a **Responsible Agency** under CEQA (Pub. Resources Code §21069; CEQA Guidelines §15381) if the Project requires any discretionary actions from

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.

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CDFW, such as the execution of a Lake or Streambed Alteration Agreement (Fish & G. Code §1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Fish & G. Code §2050 *et seq.*). CDFW also administers the Native Plant Protection Act (Fish and G. Code §1900 *et seq.*), Natural Community Conservation Program (Fish and G. Code §2800 *et seq.*), and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project location encompasses areas within and near the South Fork American River from Kyburz, California to Folsom Reservoir, including Jenkinson Lake, in El Dorado County, California.

The District seeks to modify its existing Water Right Permit 2112 to add authorized points of diversion and re-diversion to more effectively and efficiently meet the future water demands within El Dorado County. The additional points of diversion are proposed at the District's existing El Dorado Diversion Dam near Kyburz and at the Sacramento Municipal Utility District (SMUD)'s Slab Creek Dam/Reservoir or at SMUD's White Rock Powerhouse Penstock north of Placerville near Chili Bar. In addition, the District proposes to add a point of re-diversion from the El Dorado Diversion Dam at Jenkinson Lake to allow for storage of Permit 21112 water in Jenkinson Lake.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations presented below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that the forthcoming EIR address the following:

Project-Specific Issues

The Notice of Preparation for the Project includes adding several points of re-diversion to the District's existing water rights. CDFW has concerns over the potential direct and cumulative adverse impacts from changes in the quantity, timing, and duration of streamflow releases on the sensitive anadromous and/or resident fisheries within the Lower American River (LAR) and South Fork American River (SFAR). CDFW recommends that in the DEIR:

1. The District prepare operations, flow, and temperature modeling to address how adding points of re-diversion to the District's existing water right permit 21112 may change the amount and timing of water releases within the basin. Moving points of diversion upstream from the existing singular point of diversion at Folsom Reservoir could impact water deliveries, power generation, local

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streamflow and water temperature in the SFAR, and water management downstream of Folsom in the LAR via changes to the cold-water pool.

2. The analysis of impacts to water users and beneficial uses should be based on site-specific multi-year hydrologic, daily water balance modeling, and biological information. The DEIR should disclose anticipated changes to operations by using an operations model or other spreadsheet-type analysis to analyze a full spectrum of potential future condition scenarios.
3. The operations modeling should be used to demonstrate how amount and timing of inflow to SMUD and Pacific Gas and Electric's downstream hydroelectric projects may be impacted by the changes to points of diversion. The DEIR should disclose if and how the changes to points of diversion could impede those operators from being able to meet agreed-upon instream flow, temperature management, pulse and recreation flows, and ramping rate terms of their Federal Energy Regulatory Commission (FERC) licenses (P-184, P-2155).
4. Application of the Instream Flow Incremental Methodology should be used to determine an appropriate minimum streamflow regime if flow reductions are contemplated.
5. If it is determined that aquatic organisms would be significantly affected by Project-induced flow fluctuations or decreases in streamflow, then appropriate avoidance, minimization and/or compensation should be analyzed.
6. If it is the District's intent to use the new infrastructure and permit modifications described in this Project to facilitate future long-term water transfers, the expected changes to operations should be disclosed in DEIR scenarios that show daily changes to stream flows in the SFAR and LAR.
7. The District should disclose how adding points of diversion to water right permit 21112 upstream of Folsom Reservoir is consistent with the 1996 State Water Resources Control Board (SWRCB) Decision 1635 authorizing consumptive use of up to 17,000 acre feet of water annually, made available from the SFAR watershed at Folsom Lake, and subsequent SWRCB Orders and Settlement Agreements on Decision 1635 (available here: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/american_river_southfork/).

CDFW is also concerned that the Kyburz diversion does not have a functional fish screen or fish ladder. CDFW and the District communicated regarding proposed modifications to the Kyburz fish ladder in 2015. Subsequent communications with FERC in 2017 indicated that the District's Board of Directors had not approved funding for the agreed-upon renovations. The DEIR should disclose how and when the Kyburz diversion fish screen and fish ladder facilities have been, or will be, brought into compliance with CDFW guidance and all applicable State and Federal conditions for facilities at this location. CDFW's fish screen criteria are included in Appendix S of

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Volume One of the California Salmonid Stream Habitat Restoration Manual, which can be found at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>.

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the DEIR specifically include:

1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer *et al.* 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of wildlife species that are present or have the potential to be present on-site and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey (USGS) 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* at www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the webpage for information on how to access the CNDDDB to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. Records in the CNDDDB exist only where species have been detected and reported. This means there is a bias in the database towards locations that have had more development pressures, and thus more survey work. A lack of records in a certain area does not mean that no special-status species exist in that area, just that no observations have been submitted to the CNDDDB in that area. CDFW recommends using the CNDDDB QuickView tool to generate a list of special-status species that have been observed in all of the United States Geologic Survey (USGS) 7.5-minute quadrangles in which Project activities will take place, as well as all of the quadrangles adjacent to the quadrangles in which Project activities will take

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place as a starting point in determining what species may be present in the area (see Data Use Guidelines at <https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>).

3. A complete inventory of rare, threatened, endangered, and other sensitive species with the potential to occur within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code §3511) and any other species meeting the CEQA definition of endangered or rare (CEQA Guidelines §15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. CDFW recommends that the DEIR include the results of recently conducted focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be impacted by Project activities. Survey and monitoring protocols and guidelines are available at: www.wildlife.ca.gov/Conservation/Survey-Protocols. Please note that negative survey results do not guarantee that the species in question will not be impacted by future project activities, as species that are absent from a site at one time may move into the area in the future. Some aspects of the Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, in phases, or if surveys are completed during periods of unusual environmental conditions such as drought.
4. A thorough, recent, floristic-based assessment of special-status plants and natural communities within and adjacent to the Project footprint, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see www.wildlife.ca.gov/Conservation/Plants).
5. Any other information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The DEIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. The threshold of significance for each impact should be defined and the criteria used to determine whether the impacts are significant should be discussed (CEQA Guidelines §15064, subd. (f)). To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the DEIR:

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1. A discussion of potential direct impacts such as removal or degradation of habitat; injury to or killing of individual plants and animals; obstruction of wildlife corridors and migration routes; habitat fragmentation; etc.
2. A discussion of potential indirect impacts such as disruption of wildlife behaviors by lighting, noise, vibrations, and/or human activity; increased wildlife-human interactions; increased potential for vehicle strikes; obstruction of wildlife movement across the broader landscape; etc. The DEIR should also discuss potential Project impacts on adjacent natural habitats.
3. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DEIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The DEIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis should include analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all potentially significant impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines §§15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Several Fully Protected Species (Fish & G. Code § 3511) have the potential to occur within or adjacent to the Project area, including, but not limited to: golden eagle (*Aquila chrysaetos*), white-tailed kite (*Elanus leucurus*), American peregrine falcon (*Falco peregrinus anatum*), bald eagle (*Haliaeetus leucocephalus*), California black rail (*Laterallus jamaicensis coturniculus*). Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat

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modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. The analysis should include a discussion of how the proposed mitigation measures will reduce impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.
3. *Habitat Restoration*: CDFW generally recommends habitat restoration, enhancement, and conservation as mitigation for significant impacts on sensitive species and/or their habitat. If possible, habitat restoration should be located on-site or near enough to the impact area that impacted wildlife populations can benefit from it. However, if on-site mitigation is not feasible or would not be biologically viable, then off-site mitigation should be proposed through habitat creation and/or acquisition and preservation in perpetuity.

If habitat restoration is proposed, the DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from long-term future impacts such as development. CDFW recommends that habitat mitigation areas be protected legally via conservation easement when possible, as the protection afforded by other methods of legal preservation such as deed restrictions is not as strong. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

4. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation, if proposed, should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the

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mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated as early as possible in order to accumulate sufficient propagule material for subsequent use in future years. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles.

5. *Nesting Birds*: Nesting and migratory birds are protected by Fish & G. Code §§3503, 3503.5, and 3513. Fish & G. Code §3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish & G. Code or any regulation made pursuant thereto. Fish & G. Code §3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish & G. Code or any regulation adopted pursuant thereto. Fish & G. Code §3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

CDFW recommends that the DEIR include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the DEIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

6. *Moving out of Harm's Way*: The future construction of new water diversion infrastructure associated with the Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, CDFW recommends the District condition the DEIR to require that a qualified biologist with the proper permits be retained to be onsite prior to and during all ground- and habitat-disturbing activities. The qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Please note that CDFW does not consider the temporary relocation of on-site wildlife to be effective

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mitigation for habitat loss.

7. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful.

California Endangered Species Act

CESA (Fish & G. Code §2050 *et seq.*) prohibits the import, export, sale, and take (Fish & G. Code §86) of state-listed endangered (Fish & G. Code §2062), threatened (Fish & G. Code §2067), and candidate (Fish & G. Code §2068) species without proper authorization. If Project activities have the potential to cause incidental take of state-listed species, a CESA Incidental Take Permit (ITP) may be obtained to provide coverage in the event that take occurs. A CESA ITP may also be obtained to provide coverage for rare and endangered plants listed under the Native Plant Protection Act (Fish & G. Code §1900 *et seq.*).

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). CDFW encourages early consultation with staff to determine appropriate measures to offset Project impacts, facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

Native Plant Protection Act

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Lake and Streambed Alteration Program

Fish & G. Code §1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. CDFW anticipates that the Project

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will require notification pursuant to Fish & G. Code §1602 for the diversion of water as well as for any construction and operations and maintenance activities that may alter a river, stream, or lake as described above.

Upon receipt of a complete notification, CDFW determines if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce adverse impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the DEIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas). The DEIR should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined that the Project will result in significant impacts to these resources the DEIR should propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level. To obtain a LSA Notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Please note that the fish and wildlife resources that may be impacted by activities subject to Notification under Fish and Game Code §1602 are not synonymous with Waters of the United States as defined by the U.S. Army Corps of Engineers (USACOE), and a wetland delineation prepared for the USACOE may not include all needed information for CDFW to determine the extent of the impacts to fish and wildlife resources. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of a LSA.

ENVIRONMENTAL DATA

It is the policy of the state 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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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 may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the Notice of Preparation of the EIR for the Modification of Water Right Permit 21112 Project and recommends that the District address CDFW's comments and concerns in the forthcoming EIR. 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 Gabriele Quillman, Environmental Scientist, at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Jeff Drongesen

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