State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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April 21, 2021

David Vang
Westlands Water District
3130 North Fresno Street
Fresno, California 93703
dvang@westlandswater.org

Subject: Westlands Water District Ground Water Pumping and Conveyance Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No. 2021030334

Dear Mr. Vang:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from Westlands Water District (District) for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] Although the public comment period for the NOP ended on April 10, 2021, CDFW respectfully submits the following comments and recommendations for consideration by the District.

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, CDFW appreciates 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.

Prior CEQA Review: CDFW reviewed a prior draft Initial Study and Negative Declaration for the Project (State Clearinghouse No. 2020050434) and provided a comment letter dated June 19, 2020. CDFW reviewed a subsequent draft Initial Study and Negative Declaration (State Clearinghouse No. 2020090040) for the Project and provided comments on October 5, 2020. The District had not adopted the Negative Declarations and instead will be preparing an EIR.

[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.

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. 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.), related authorization as provided by the Fish and Game Code will be required.

Water Rights: The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code § 1200 et seq. CDFW, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from Project activities.

Mendota Wildlife Area: CDFW is also a water contractor and the landowner and manager of the Mendota Wildlife Area (MWA) on Fresno Slough, and as such has a vested interest in water quality in the Fresno Slough, in addition to firsthand management experience with the effects of water use in the area affected by the proposed Project. Many of the comments below are made in the context of MWA operations and the related management for fish and wildlife and their habitats.

PROJECT DESCRIPTION SUMMARY

Proponent: Westlands Water District

Description: Under the Project, the District proposes to implement a five-year groundwater transfer program during years when the District receives 20 percent or less of its contract water allocation from the Central Valley Project (CVP) to permit qualified participating water users to pump groundwater from wells throughout the District to the San Luis Canal (SLC) from April to August using existing public and privately-owned pipelines. The groundwater then would be pumped into the SLC at existing licensed water integration locations. Such water would be conveyed using the SLC for withdrawal and use on other land within the District. Prior to introduction into the SLC, all wells would be tested to demonstrate compliance with the United States Bureau of Reclamation (USBR) Water quality Monitoring Plan SLC Water Quality Monitoring Program standards (based off Title 22 water quality standards).

The Project would allow the District to introduce up to 30,000 acre-feet per year over the next five years, or up to 150,000 acre-feet over the five-year life of the Project, of local acceptable quality groundwater into the San Luis Canal (SLC) in years during which the District's CVP allocation is 20 percent or less.

The non-CVP water would be groundwater and pumped from groundwater wells within the District. The groundwater would be pumped into the SLC via licensed water integration (discharge) facilities located on either side of the SLC. The amount of water from each source would vary, but the total quantity introduced under the proposed Project would not exceed a combined volume of 30,000 acre-feet in a given year. Prior to introduction into the SLC, all wells would be tested to demonstrate compliance with the USBR Non-Project Water Pump-in Program - 2020 Water Quality Monitoring Plan standards, based off Title 22 water quality standards. Only groundwater wells that meet these water quality standards would be used for integration into the SLC. Water sourced from the Mendota Pool Inlet Canal would be tested at laterals discharging to the SLC. Water pumped and exchanged under the Project would be subject to ground subsidence and water quality monitoring and protection measures consistent with the 2020 Water Quality Monitoring Plan standards and the Westside Subbasin Groundwater Sustainability Plan.

Groundwater introduced into the SLC would either be directly delivered to agricultural users located downstream of discharge points, or operationally exchanged with USBR for an in-kind amount, minus conveyance losses, of the District's available water supplies in the San Luis Reservoir. Exchanged water would either be delivered to agricultural users located upstream of introduction points in the District or stored in the San Luis Reservoir as non-CVP water for later delivery to the District via the SLC. Introduction of the District's non-CVP water and storage of the exchanged water would be annually scheduled with USBR and would be subject to excess capacity, operational constraints, and CEQA requirements, as applicable. The District intends to use the water in the same year in which it is introduced into federal facilities; however, if the District is unable to make use of water introduced into the facilities within the designated window, it may be necessary to carry the water over through storage in the San Luis Reservoir until it can be put to productive use.

Under the Project, no new facilities or modifications to the SLC would be authorized. The

Project proposes to utilize existing facilities for pumping of groundwater and introduction of supplies into the SLC, and no ground disturbance or construction/installation of new facilities is proposed under the Project. Because the existing discharge facilities have expired licenses and are expected to renew this year, USBR proposes to issue a combined 25-year license authorization for all discharge points involved in the Project. In addition, all water delivered would be subject to existing water banking, place of use, water allocation and credit provisions. Due to the proposed limitations on pumping and the established historic use of the wells, it is not expected that overall groundwater extractions would increase under this Project.

The Project would complement USBR's most recent approval of the Five-Year Warren Act Contract for Westlands Water District Environmental Assessment and Finding of No Significant Impact (CGB-EA-2020-032 and CGB-FONSI-2020-032) to authorize execution of Warren Act Contracts effective through 2025. Annual Warren Act Contracts would be coordinated with USBR to implement the Project as excess capacity is available.

Location: The proposed Project components will be implemented within the District's service area, which includes 1,000 square miles of farmland on the west side of the San Joaquin Valley within Fresno County and the northern portion of Kings County.

Timeframe: 5 years – to be effective through 2025.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife i.e., (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

CDFW recommends that the following modifications and/or edits be incorporated into the EIR.

I. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through direct removal, filling, hydrological interruption or other means?

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

Comment 1: Land Subsidence, Groundwater Over Drafting, and Impacts to Mendota Wildlife Area:

Issue: The NOP identifies two subsidence prone areas located in the District along the SLC, and these areas are identified in Figure 3 of the NOP. Wells within these two areas would be subject to more restrictive minimum thresholds for ceasing pumping. The CDFW MWA is located directly adjacent to the District, and several groundwater wells are located either directly adjacent to the MWA or in the nearby vicinity. These wells are also shown on Figure 3 of the NOP. Some of these wells pump groundwater into the Inlet Canal, which runs along the southern boundary of the MWA and connects to the District via Lateral Canals 6 and 7. Although not identified as a subsidence prone area in the NOP, MWA has been significantly affected by groundwater overdrafting and subsidence causing substantial damage to water conveyance facilities, and resulting in substantial adverse effects to riparian and sensitive fish and wildlife habitat.

MWA is located within the Delta-Mendota Subbasin and borders the Westside Subbasin. Both the Westside and Delta-Mendota Subbasins are designated as critically overdrafted by the California Department of Water Resources, and such overdrafting is a serious issue within the Mendota Pool area due to ongoing subsidence. Over the years, the Mendota Dam has experienced subsidence, and the California Department of Water Resources, Division of Safety of Dams has required the water level to be lowered due to the subsequent compromised integrity of the dam. The lowered water level at the dam has resulted in lower water levels to the gravity flow and lift pump inlets at the MWA. The northernmost gravity flow inlet receives no water, causing loss of trees and habitat along the northern edge of the MWA. The lift stations no longer pump efficiently because the inlets are not fully covered with water, allowing air to be pulled into the pumps and decreasing water flows. Decreased water flow results in MWA operating its pumps for longer periods, increases the electricity cost and personnel cost to monitor and maintain the pumps, and increases wear and tear on the pumps.

Continued subsidence affects the ability of CDFW to operate the MWA according to its management objectives, and other areas where water is no longer delivered by gravity could increasingly lose associated wetland and riparian habitat features. Subsidence is irreversible and damage to surface water conveyance features caused by subsidence can only be mitigated by removal of damaged infrastructure and replacement, or re-engineering and reconstruction of infrastructure to allow surface water to flow at an acceptable level.

Analysis Recommendations:

- CDFW recommends that the EIR analyze how the drawdown of groundwater from wells along Lateral 7 may affect surface and subsurface water levels at the MWA, and whether these wells are drawing from a confined aquifer.

- CDFW recommends that the EIR include the results of a study developed to determine the percentage of subsidence caused by Project pumping, and to develop an adaptive management program to determine when to cease pumping to prevent excess subsidence.

- CDFW recommends that the EIR evaluate all areas that would be affected by increased subsidence, including the MWA, and develop a plan to offset losses of wetland and riparian vegetation communities caused by changes in hydrology associated with subsidence caused by Project pumping.

- CDFW recommends that the EIR include specific triggers for evaluating subsidence each year and monitoring wetland and riparian habitats that would be affected by subsidence. CDFW further recommends that the EIR identify potential mitigation for impacted wetland or riparian habitat value and function resulting from Project implementation, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources. CDFW suggests that any net loss of these habitats be considered a potentially significant impact.

Recommended Mitigation Measure 1: Subsidence Monitoring and Compensatory Mitigation

CDFW recommends that the EIR include a study to determine the percentage of subsidence caused by Project pumping, and adaptive management program to determine when to cease pumping to prevent excess subsidence.

Recommended Mitigation Measure 2: Wetland and Riparian Habitat Monitoring and Mitigation

CDFW recommends that the EIR include requirements to evaluate and monitor all areas that would be affected by increased subsidence, including MWA, and develop a plan to offset losses of wetland and riparian vegetation communities caused by changes in hydrology associated with subsidence caused by Project pumping. The plan should address mitigation for impacted habitat value and function, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources.

Comment 2: Water Quality

Issue: The Project would transfer up to 30,000 acre-feet per year of CVP surface flow that may have otherwise entered the Mendota Pool via the Delta Mendota Canal. The District would instead pump an equal amount of groundwater from its wells into its service area, including the Mendota Pool. In prior years, water quality monitoring results have demonstrated that groundwater supplied to the Mendota Pool is consistently more saline than surface waters within the Delta Mendota Canal. Consequently, CDFW is

concerned with this "salt loading" into the Mendota Pool and the impact it will have to the water supply for the MWA. Also note that higher salinity correlates with higher total dissolved solids.

Issue: The NOP states that groundwater would be tested to confirm it meets the Water Quality Monitoring Plan before water is transferred via the SLC. The Water Quality Monitoring Plan is not included with the NOP.

Analysis Recommendations:

- CDFW recommends that the EIR clarify whether groundwater mixed with surface water flows may be introduced into the MWA and Kern Wildlife Area, potentially impacting water quality and aquatic species including the giant garter snake (*Thamnophis gigas*) and breeding waterfowl. CDFW also recommends that an analysis with thresholds of significance for aquatic species be included in the EIR with measures proposed to reduce any potentially significant impacts.

- CDFW recommends that the EIR include the 2020 Water Quality Monitoring Plan as an attachment.

- CDFW recommends that the EIR include an analysis of the Water Quality Monitoring Plan water quality criteria, including for total dissolved solids and selenium criteria, to describe thresholds of significance and demonstrate whether the Water Quality Monitoring Plan is sufficiently protective of all potentially affected fish and wildlife.

- CDFW recommends that the EIR clarify how groundwater will be conveyed to the SLC without discharging to the MWA, especially the conveyance of groundwater from those wells capable of discharging into the delivery ditch for the MWA.

Recommended Mitigation Measure 3: Water Quality Monitoring and Impact Minimization or Mitigation

CDFW recommends that the EIR include water quality monitoring requirements to track changes in water quality resulting from the Project that could be harmful to fish and wildlife, including special status species and species using wetland or riparian areas for breeding/nursery sites. CDFW recommends that monitoring begin before Project implementation and continue with a frequency that is adequate to identify changes well before thresholds of significance are reached. CDFW further recommends that the EIR include actions to be taken to minimize or mitigate for impacts to fish and wildlife resulting from water quality effects.

Editorial Comments and/or Suggestions

Warren Act Contract: CDFW recommends the inclusion of the current Warren Act Contract as an appendix with the EIR.

Cumulative Impacts:

Existing and Foreseeable Projects. CDFW reviewed and provided written comments on the Draft Environmental Impact Statement / Environmental Impact Report for the Mendota Pool Group 20-year Exchange Program (DEIR/EIS, State Clearinghouse No. 2013041028) in January 2019, and Table 6 of the DEIR/EIS listed 24 approved and pending projects related to the Mendota Pool Group 20-year Exchange Program, some within the District. CDFW also reviewed and provided comments for the Firebaugh Canal Water District 5-Year Transfer Program (EA/FONSI 18-025) in December 2018. CDFW recommends that the EIR include an analysis of existing and foreseeable projects in the Project area, including potential impacts from the most relevant projects listed in Table 6 for the Mendota Pool Group 20-year Exchange Program and other relevant transfer programs within the Project vicinity. These projects could have substantial cumulative impacts to subsidence and water quality, seriously affecting the infrastructure and fish and wildlife habitat, including within the MWA.

Biological Resources. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities. Special-status species in the Project vicinity include the State and federally threatened giant garter snake, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the federally endangered and California Rare Plant Rank (CRPR) 1B.2 San Joaquin woollythreads (*Monolopia congdonii*), the CRPR 1B.2 Munz's tidy-tips (*Layia munzii*), and the State species of special concern American badger (*Taxidea taxus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), and burrowing owl (*Athene cunicularia*). Suitable habitat exists in the Project area for the Crotch bumble bee (*Bombus crotchii*), which is a rare and endemic species. Riparian and wetland habitat associated with the MWA and Fresno Slough are located adjacent to the District.

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. Therefore, a lack of an occurrence record in the CNDDB is not tantamount to a negative species finding. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

While the Project does not include construction of new facilities in the habitats of special status species, subsidence and lowered water quality and increased salt loading could

potentially impact sensitive aquatic species such as the giant garter snake, and affect habitats for sensitive status species, especially in the context of other existing and pending projects affecting water quality and ground subsidence of Mendota Pool, the MWA, and surrounding areas. CDFW recommends that the cumulative impacts analysis include the effects to special status species, including those listed above, from the Project and other current and foreseeable projects.

Sustainable Groundwater Management Act (SGMA) and Groundwater Dependent Ecosystems: A Groundwater Sustainability Plan was prepared for the Westside Subbasin by the District. The Westside Subbasin (Subbasin No. 5-22.09 of the San Joaquin Valley Groundwater Basin) is designated a high priority Subbasin by the Department of Water Resources. SGMA defines sustainable groundwater management as, "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results (Water Code, § 10721 (v))." Significant and undesirable results that may result from Project related activities include chronic lowering of groundwater levels, reduction of groundwater storage, degraded water quality, land subsidence, depletions of interconnected surface water that have an adverse impact on beneficial uses of surface water. Any of these undesirable results may have adverse impacts to groundwater dependent ecosystems. CDFW recommends that the EIR include an analysis of Project-related activities and groundwater pumping in relation to the Westside Subbasin Groundwater Sustainability Plan, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 (CNDDB). The CNDDB field survey form can be obtained at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data . The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 NOP to assist the District in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be direcFted to Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 243-4014 extension 231 or by email at annette.tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

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

Michael P. Jackson, P.E., Area Manager
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ec: Steve Brueggemann
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Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PROJECT: Westlands Water District Ground Water Pumping and Conveyance Project (SCH No. 2021030334)

RECOMMENDED MITIGATION MEASURES	**STATUS/DATE/INITIALS**
Prior to Certification of the Environmental Impact Report and Project Implementation	
Recommended Mitigation Measure 1: Subsidence Monitoring and Compensatory Mitigation.	
Recommended Mitigation Measure 2: Wetland and Riparian Habitat Monitoring and Mitigation.	
Recommended Mitigation Measure 3: Water Quality Monitoring and Impact Minimization or Mitigation.	