Cashdollar, Shaundra@Wildlife

From: Quillman, Gabriele@Wildlife
Sent: Monday, March 21, 2022 12:24 PM
To: lphillips@sutterewd.com
Cc: Wildlife R2 CEQA; Gibbons, Bridget@Wildlife; Sheya, Tanya@Wildlife; Barker, Kelley@Wildlife; Thomas, Kevin@Wildlife
Subject: CDFW's Comments on the IS/MND for the SEWD 2022 Water Transfer Program Project (SCH No. 2022020530)

Dear Mr. Phillips,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from the Sutter Extension Water District (SEWD) for the Sutter Extension Water District 2022 Water Transfer Program Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines. (Public Resources Code § 2100 et seq.)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. 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.

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.) 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.

CDFW is also submitting comments as a potential **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 authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project area is defined by the SEWD boundaries, encompassing approximately 19,000 acres of irrigable land in the northern Sacramento Valley in Sutter County. Approximately 16,000 acres of the irrigable land within the SEWD boundaries are dedicated to rice production.

The Project consists of the proposed transfer of up to 15,220 acre-feet (AF) of water to the participating member districts of the State Water Project Contractors, Incorporated or other South of Delta purchasers, including one or more Central Valley Project contractors during the 2022 irrigation season. SEWD proposes to make up to 15,220 AF of water available for transfer by idling cropland and through groundwater substitution. Up to 20% of the irrigable acreage in SEWD's service area (3,756.6 acres) would be idled.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SEWD in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

California Endangered Species Act
CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the 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, either through construction or over the life of the Project.

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 issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the IS/MND 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.

Giant Garter Snake
Giant garter snake (*Thamnophis gigas*, GGS) is a State- and federally-listed species with a well-established presence within the Project area. Most of the extant populations of GGS in the Sacramento Valley occur in just over 200,000 hectares (approximately 494,000 acres) of rice agriculture and its associated canals (Halstead et al. 2019).

The IS/MND proposes to limit the Project's adverse impacts on GGS by implementing Mitigation Measure Bio-1, which would limit the maximum amount of idled land to 20% of SEWD's irrigable acreage; Mitigation Measure Bio-2, which would ensure that water remains in SEWD's major irrigation and drainage canals; Mitigation Measure Bio-3, which would require implementation of avoidance practices during maintenance; and Mitigation Measure Bio-4, which would prevent lands with known important GGS populations from participating in the idling transfer. However, CDFW does not concur that these measures are sufficient to reduce the Project's adverse impacts on GGS to below significance for the following reasons:

Habitat and Cumulative Impacts
GGS in the Sacramento Valley are strongly reliant on rice agriculture. Adult GGS survival rates are higher when a greater percentage of the lands surrounding their home ranges are actively cultivating rice; a three-year study found that the annual estimated survival of adult GGS with active rice fields on 86% of the land within 500 meters of their home range was 73%, while the annual estimated survival for adult GGS with active rice fields on 18% of the land within 500 meters of their home range was just 8.5% (Halstead et al. 2019). GGS home ranges can be significantly smaller than rice fields; a study of GGS spatial ecology conducted in Gilsizer Slough and adjacent rice fields found mean home ranges of adult female GGS in agricultural areas of 13.26 hectares (32.77 acres) in 2008 and 7.22 hectares (17.84 acres) in 2009 (Valcarcel 2011). Reducing rice production may impact GGS populations by reducing the productivity of prey species and/or by increasing the concentration of predators in the nearby canals (Halstead et al. 2019). It may also prompt affected GGS to move into other surrounding habitats, increasing the density of GGS and the competition for prey. A significant reduction in the amount of rice grown in the Project area is likely to significantly reduce overall GGS survival rates in the area.

The IS/MND fails to account for the effects of the ongoing drought on the GGS population and how the Project's impacts are likely to compound those effects. The IS/MND cites the one-year duration of the proposed Project as a factor limiting

the severity of its impacts on GGS. However, it is not clear whether and to what extent rice crops were idled within the SEWD boundaries in 2021. Statewide, rice production was cut by about 20% in 2021 (Cleary 2021), which likely increased mortality in the species overall. Continued habitat impacts on an already stressed population may have greater overall effects than they would in isolation.

CDFW recommends the IS/MND be revised to include an analysis of the effects of the reduction of the density of active rice fields within its boundaries and the cumulative impacts of the proposed water transfer and previous reductions in rice acreage. To reduce the significance of the Project's impact on GGS, CDFW recommends reducing the proposed acreage of idled rice crops, restoring or enhancing existing GGS habitat, creating new GGS habitat, preserving existing GGS habitat via a conservation easement or transfer of fee title to a conservation entity, or a combination of two or more of these strategies.

Mitigation Measure Bio-3
Mitigation Measure Bio-3 states, "SEWD will perform GGS best management practices (BMPs), including educating maintenance personnel to recognize and avoid contact with GGS, clean only one side of a major conveyance and drainage channel per year, and raise flail mower blades to at least six inches above the canal operation and maintenance road surfaces." It is not clear whether the inclusion of this measure implies that the Project will include physical alterations to GGS habitat that would necessitate the implementation of such avoidance measures. If this is the case, CDFW recommends revising the IS/MND to include an analysis of the Project's potential to result in take of GGS and, if applicable, a plan to obtain take authorization pursuant to CESA, as described above.

Groundwater Management
Ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface are collectively known as Groundwater Dependent Ecosystems (GDEs) (23 Cal. Code Regs. § 351(m)). These GDEs include seeps and springs; wetlands and lakes; rivers, streams, and estuaries; and terrestrial vegetation. Water transfers made available by groundwater substitution and/or crop idling/shifting have the potential to affect groundwater hydrology due to increased groundwater use and reduced groundwater recharge. Correlating effects could be temporary and/or long-term declines in groundwater levels, reduction of groundwater storage, depletions of interconnected surface water, land subsidence, and degraded water quality. These effects have the potential to adversely impact GDEs in basins where water transfers are made available by groundwater substitution and/or crop idling/shifting.

The IS/MND indicates groundwater impacts of the proposed Project will be less than significant without mitigation. CDFW is concerned with potential localized and cumulative impacts associated with proposed and future groundwater substitution water transfers within or adjacent to the Sutter Subbasin that have the potential to impact GDEs. To avoid potential impacts to GDEs, CDFW recommends SEWD identify a more protective groundwater level trigger that would result in a reduction in pumping volume or a cessation of transfer pumping. The groundwater level trigger should be shallower than the historical low groundwater level to avoid adverse impacts of transfer related pumping on GDEs.

According to the Natural Communities Commonly Associated with Groundwater (NCAAG) Dataset (DWR 2018), there are potential vegetated and aquatic GDEs overlying or adjacent to the Project location. The IS/MND searched for GDEs from the NCAAG dataset within one-half mile of SEWD's production Wells #1 and #2 and identified one wetland area within a one-half mile radius of Well #1. The IS/MND states that due to the monitoring of groundwater levels before, during, and after the transfer, and the comparison of groundwater levels to the historical low groundwater levels, the GDE will experience less than significant impacts as a result of the proposed Project. CDFW is concerned with the reliance on historical low groundwater levels as a threshold for significant impacts during the transfer period. A significant lowering of the depth of shallow groundwater can cut off GDEs from critical water supply and result in stress or loss of vegetation and/or depletions of interconnected surface water, adversely affecting the fish and wildlife that depend on GDE habitat. The deepest documented historical groundwater levels for SEWD Wells #1 and #2 were pumping-induced lows that occurred during the transfer period in 2015, a critically low water year several years into a historic drought when groundwater levels were trending dramatically lower than usual due to reduced surface water availability; the MND does not provide evidence to support the assumption that GDEs were not experiencing significant negative impacts at

the historical low water level. In 2015, Sacramento Valley GDEs were likely experiencing adverse impacts including stressed or dying riparian vegetation, poor instream habitat availability, and increased water temperatures (CDFW 2019). CDFW recommends selecting a more protective groundwater level trigger for wells near deep-rooted vegetation or surface waters that would better mitigate potential impacts to GDEs than the deepest recorded groundwater level on record.

The IS/MND states that as an exclusive Groundwater Sustainability Agency (GSA), SEWD has worked with other GSAs to develop a groundwater sustainability plan (GSP) for the Sutter Subbasin, which was adopted and submitted to the Department of Water Resources (DWR) in January 2022. The GSP acknowledges water transfers as an existing conjunctive use effort within the Sutter Subbasin, including those previously made by SEWD. The IS/MND states that through SEWD's GSP planning efforts as a GSA, it is in compliance with the requirements and objectives of SGMA. However, the IS/MND does not sufficiently discuss the historical low groundwater level triggers in the context of the GSP's sustainable management criteria theoretically designed to protect environmental users of groundwater, including GDEs, from impacts of lowering groundwater levels. The groundwater levels used as trigger thresholds during the transfer period should be consistent with the GSP and *at least* as protective as the SMC identified in the Sutter Subbasin GSP.

The IS/MND states that during previous years' water transfers, groundwater levels in the transfer pumping wells have recovered to pre-transfer levels. In future years, should groundwater levels fail to recover following water transfer pumping, CDFW recommends identifying alternative production wells to avoid adverse impacts related to the cumulative effects of repeated groundwater depletion.

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 (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be submitted online or mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov.

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

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the IS/MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

Gabriele (Gabe) Quillman
She/Her
California Department of Fish and Wildlife – North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2955

REFERENCES

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