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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



**Governor's Office of Planning & Research**

**AUG 01 2022**

August 1, 2022

**STATE CLEARINGHOUSE**

Brian Deason  
Environmental Resources Supervisor  
El Dorado Irrigation District  
2890 Mosquito Road  
Placerville, CA 95667  
bdeason@eid.org

Subject: El Dorado Irrigation District Temporary Conserved Water Transfer Project-  
NEGATIVE DECLARATION (ND)  
SCH# 2022070161

Dear Mr. Deason:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Negative Declaration (IS/ND) from El Dorado Irrigation District (EID) for the El Dorado Irrigation District Temporary Conserved Water Transfer Project (Project) in El Dorado County pursuant 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, 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.

**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.

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### **PROJECT DESCRIPTION SUMMARY**

EID proposes to transfer up to 1,800 acre-feet (AF) of water to Westland's Water District (WWD) from water that has been conserved by EID from the conversion of an earthen unlined ditch (Upper Main Ditch) to a pipeline. Under the proposed project, EID's diversions from the South Fork American River (SFAR) at the El Dorado Diversion Dam will not change. The same amount of water will be diverted into the El Dorado Canal and conveyed to the Forebay. Since EID will be able to meet the same customer demands as they did prior to the pipeline project with less water, the conserved water would instead be used for non-consumptive hydropower production, returned to the SFAR, and remain instream to flow into Folsom Reservoir, where the water will be re-regulated by the U.S. Bureau of Reclamation (USBR) for delivery to WWD.

EID proposes to transfer all water conserved since May 11, 2022, through September 30, 2022, or until the end of delivery of conserved water during 2022. If the conserved water EID delivers to Folsom Reservoir cannot be conveyed to WWD through USBR export facilities during the typical July through September transfer period (or through an extended transfer period through November 30 if authorized by USBR), WWD may seek USBR's authorization to carryover the conserved water in Folsom Reservoir for delivery in 2023. If the carryover water is not lost to spill or storage management operations of Folsom Reservoir during winter/spring 2023 such that it is available for transfer during summer 2023, WWD may arrange to have USBR convey the conserved water up to and including through June 30, 2023, with the mutual agreement of EID and WWD.

### **COMMENTS AND RECOMMENDATIONS**

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

#### **Comment 1: Methodology for Determining the Transferable Quantity of Conserved Water**

The IS/ND indicates EID is able to conserve an average of up to 1,800 AF annually through completing construction of the Upper Main Ditch Piping Project (piping project) that would have otherwise been lost through seepage and evapotranspiration from the unlined ditch. EID relies on the provisions of the California Water Code as authority for the right to transfer the portion of the conserved water that would have been consumptively used in the absence of the piping project, including the following:

Water Code section 1011, subdivision (a) states in part:

"When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or

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reduction in the use of the appropriated water shall be deemed the equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.”

CDFW is concerned with the methodology used to determine the volume of ‘conserved water’ saved from consumptive losses and eligible for transfer. Based on the information provided in the IS/ND on how EID calculated transferable conserved water (Appendix A), CDFW believes EID may be over-accounting for the potential volume that may be transferred.<sup>1</sup> CDFW recommends EID make available the flow measurements, Main Ditch modeling, annual water loss analysis, and previous record of consumptive use or stored water under the water right proposed for transfer to confirm the quantity of conserved, transferable water. These calculations and the record of previous uses under water right S009034 determine water eligible for transfer and may affect the availability of water for downstream users, including public trust resources such as fish and wildlife, and ultimately determine if the conserved water transfer will avoid potential injury to downstream beneficial uses and public trust resources (Wat. Code, § 1706).

### **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: <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](mailto: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

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<sup>1</sup> Although the entire conserved average of 1,800 AF is potentially transferrable, it might not be possible to divert the entire amount under the right, depending on the hydrologic conditions in the year of the transfer and the accuracy of the water loss analysis (Natomas, Order 99-012). Historical flow data and water deliveries, a water budget, Main Ditch losses, and consumptive use losses along the Main Ditch should be based on accurate and reliable flow measurements that would meet criteria for transfer under Water Code section 1101 as applied by the State Water Resources Control Board in Order 99-012.

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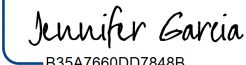
EID and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.)

### CONCLUSION

CDFW appreciates the opportunity to comment on the IS/ND for the El Dorado Irrigation District Temporary Conserved Water Transfer Project and recommends that EID address CDFW's comments to reconcile the proposed volume of water for transfer with relevant Water Code in order to avoid potential injury to downstream beneficial uses and public trust resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

Questions regarding this comment letter or further coordination should be directed to Tiffanee Hutton, Environmental Scientist, at [tiffanee.hutton@wildlife.ca.gov](mailto:tiffanee.hutton@wildlife.ca.gov)

Sincerely,

DocuSigned by:  


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Jennifer Garcia

Environmental Program Manager

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