



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Water Branch  
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 West Sacramento, CA 95606  
 www.wildlife.ca.gov

GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 8, 2022

**Sep 19 2022**

**STATE CLEARINGHOUSE**

Chris Carr  
 Environmental Scientist  
 State Water Resources Control Board  
 P.O. Box 2000  
 Sacramento, CA, 95812-2000

**SUBJECT: BAY-DELTA PLAN IMPLEMENTATION REGULATION FOR LOWER SAN JOAQUIN RIVER FLOW AND SOUTHERN DELTA SALINITY SCH# 2022080184**

Dear Mr. Carr,

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (DEIR) from the State Water Resources Control Board (SWRCB) for the Bay-Delta Plan implementation regulation for Lower San Joaquin River flow and southern Delta salinity (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, we appreciate 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.

**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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** SWRCB

**Objective:** The Bay-Delta Plan establishes water quality objectives for the protection of beneficial uses in the Bay-Delta watershed, a program of implementation to achieve those objectives, and monitoring, reporting, and study provisions. In 2018, the SWRCB amended the Bay-Delta Plan and adopted new and revised flow objectives for the reasonable protection of fish and wildlife beneficial uses in the Lower San Joaquin River (LSJR) and revised salinity objectives for the reasonable protection of agricultural beneficial uses in the

<sup>1</sup> 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.

southern Delta and associated updates to the program of implementation and monitoring, reporting, and study provisions. The LSJR flow objectives and program of implementation require, from February through June, that at least 40 percent of the unimpaired flow be maintained in the Stanislaus, Tuolumne, and Merced Rivers, within an adaptive range of 30 to 50 percent of the unimpaired flow, inclusive. In addition, during February through June, the LSJR flow objectives and program of implementation require the maintenance of a minimum base flow of 1,000 cubic feet per second (cfs), with an adaptive range between 800 and 1,200 cfs, inclusive, as measured at Vernalis on the San Joaquin River. This means that if the percent of unimpaired flow is being met but flows are insufficient to achieve the base flow at Vernalis, then additional flows will be necessary (Table 3, Bay-Delta Plan, p. 15). During the month of October, the LSJR flow objectives and program of implementation require the maintenance of a minimum base flow, as measured at Vernalis on the San Joaquin River, of 1,000 cfs, plus an additional 28 thousand acre-feet pulse flow or a minimum monthly average flow of 2,000 cfs, whichever is less (Table 3, Bay-Delta Plan, Footnote 13). The 2018 adoption of amendments to the Bay-Delta Plan also revised the salinity water quality objectives and program of implementation for the reasonable protection of agricultural beneficial uses in the southern Delta. The southern Delta salinity objective, expressed as a 30-day running average of electrical conductivity, is 1.0 dS/m and applies year-round in three river segments rather than specific point locations.

**Location:** The Implementation Regulation will cover the geographic area of the LSJR flow objectives including the watersheds of the three salmon bearing tributaries to the San Joaquin River: the Stanislaus, Tuolumne, and Merced Rivers to the San Joaquin River near Vernalis, and through the Delta. The Implementation Regulation will also cover the geographic area for the southern Delta salinity objective, which encompasses the lands and channels from Vernalis north to Stockton, the bulk of which are within the boundary of the South Delta Water Agency including: the San Joaquin River from Vernalis to Brandt Bridge, Middle River from Old River to Victoria Canal, and Old River/Grant Line Canal from the Head of Old River to West Canal.

The Implementation Regulation will also cover areas receiving water exported from the LSJR and Bay-Delta that could be impacted by implementation of the LSJR flow objectives and the southern Delta salinity objective.

## COMMENTS AND RECOMMENDATIONS

The current state of the rivers in the Project area calls for immediate action to improve conditions for fish and wildlife. CDFW welcomes and supports the SWRCB process of implementing the new and revised flows that were adopted as part of the 2018 Bay-Delta Plan amendment. CDFW recognizes that an alternative path to implementation could be achieved through Voluntary Agreements. CDFW supports such a pathway provided that implementation of voluntary solutions results in equal or better outcomes for fish and wildlife in the Project area. CDFW offers the comments and recommendations below to assist SWRCB in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

- The Tuolumne, Merced, and San Joaquin Rivers support the federal threatened Central Valley steelhead DPS (*Oncorhynchus mykiss irideus* pop.11) and the State species of special concern fall-run Central Valley Chinook salmon (*Oncorhynchus tshawytscha*). The San Joaquin River supports the nonessential experimental population of spring-run Central Valley Chinook salmon, for which the San Joaquin River Restoration Program goal is to restore a self-sustaining fishery. CDFW documented the presence of the experimental spring-run Central Valley Chinook salmon in the Tuolumne and Merced Rivers during the 2021 escapement surveys, establishing the San Joaquin River as both a migratory corridor for spring/fall Chinook and steelhead and as likely providing rearing habitat. Other special status fish species known to occur within one or more of the three river systems include the State species of special concern hardhead (*Mylopharodon conocephalus*), Kern brook lamprey (*Lampetra hubbsi*), white sturgeon (*Acipenser transmontanus*), and Pacific lamprey (*Entosphenus tridentatus*). Surface and ground water dependent ecosystems, including northern hardpan vernal pool,

swale, riparian, wetland, and oak woodland habitats, are present within the three watersheds.

- White sturgeon were included in the 2018 Substitute Environmental Document (SED), but new information is available on their presence in the San Joaquin tributaries. In the spring of 2021, adult white sturgeon were found in the lower Tuolumne River. CDFW staff monitored these fish and river conditions throughout the spring and summer of 2021. Low river flows resulted in very low water levels in the lower Tuolumne River making it impossible for these fish to emigrate volitionally until flows increased. Although 2021 was a critically dry year, flows on the Tuolumne River were not below the minimum Federal Energy Regulatory Commission (FERC) requirements of 50 cfs at La Grange Dam. Considering this new information, CDFW recommends that the DEIR include an evaluation of the potential impacts of stranding to white sturgeon.
- The NOP states that the revised flow objectives are for the reasonable protection of fish and wildlife beneficial uses in the LSJR. CDFW recommends that the DEIR provide an analysis of impacts, including beneficial impacts, to aquatic resources, including but not limited to those species listed above. CDFW also recommends an evaluation and explanation of how these flows and timing of related flow releases from upstream dams will benefit aquatic resources and critical fish spawning and rearing reaches. In addition, CDFW recommends that the DEIR provide clarity on how implemented flows are accounted for and how they contribute not only to instream flow, but also to Delta inflow and outflow.

Current and proposed surface flow diversions for various projects located within the LSJR and its tributaries may have significant and cumulative impacts on the feasibility of achieving proposed instream flows in the Bay-Delta Plan. These include numerous surface flow diversions for subsurface storage related to Groundwater Sustainability Plan implementation, and surface water transfers made by irrigation districts. CDFW recommends that the DEIR provide a cumulative impact analysis of current and proposed projects that may divert surface flows from the LSJR, Tuolumne, Stanislaus, and Merced Rivers. CDFW recommends the DEIR provide an analysis of how the Implementation Regulation will meet the Bay Delta Plan objectives in light of these current and proposed projects.

- CDFW recommends that the DEIR include a discussion of all Memoranda of Understanding, formal and informal State and local agreements, Federal Biological Opinions, FERC licensing requirements, and water rights affected by the Bay-Delta Plan implementation.

**Water Rights:** The use of unallocated stream flows is subject to appropriation and approval by the SWRCB pursuant to Water Code Section 1225. SWRCB consults with CDFW, as Trustee Agency, 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 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.

Depending upon the information provided in the DEIR, CDFW may have additional comments and recommendations regarding potential impacts and avoidance, minimization, and mitigation measures.

## **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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 SWRCB in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Bjarni Serup, Senior Environmental Scientist Supervisor, at 916-298-8163 or [Bjarni.Serup@wildlife.ca.gov](mailto:Bjarni.Serup@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Brooke Jacobs  
Acting Water Branch Chief

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

ec: California Department of Fish and Wildlife

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