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From: Gibbons, Bridget@Wildlife
Sent: Wednesday, February 21, 2024 2:59 PM
To: lphillips@sutterewd.com
Cc: MacLeod, Ian@Wildlife; Garcia, Jennifer@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: CDFW's Comments on the IS/MND for the SEWD 2024 Water Transfer Program Project (SCH No. 2024010767)

Dear Lynn Phillips,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from Sutter Extension Water District (SEWD) for the Sutter Extension Water District 2024 Water Transfer Program (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 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 Contractors Incorporated, Metropolitan Water District of Southern California, other South of Delta purchasers, including one or more Central Valley Project contractors, or a buyer diverting the transfer water from within or upstream of the Delta during the 2024 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.

COMMENT 1: 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.

COMMENT 2: 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 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 significant for the following reasons:

Comment 2.1: GGS Habitat

Issue: 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^[1]. Reducing rice production may also 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 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.

Recommendation: To reduce the significance of the Project's impact on GGS, CDFW recommends measures such as: reducing the proposed acreage of idled rice crops, restoring or enhancing existing GGS habitat, creating new GGS habitat, or preserving existing GGS habitat via a conservation easement or transfer of fee title to a conservation entity.

Comment 2.2: Cumulative Impacts Analysis

Issue: The IS/MND states that the lands proposed for idling in the 2024 Water Transfer Program were not idled in 2023, and the limited duration (only one year) of the proposed Project is cited as a factor that limits the severity of impacts to GGS. However, the IS/MND later states that similar water transfer projects were implemented during at least 2018, 2020, 2021, and 2022. It is not clear if the proposed lands for 2024 have previously been idled, or what the rotational idling frequency is for participating lands in the SEWD water transfer program. 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.

Recommendation: 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 repeated reductions in rice acreage occurring almost yearly.

Comment 2.3: GGS Best Management Practices

Issue: 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.

Recommendation: CDFW recommends revising the IS/MND to more clearly describe planned operations, whether they will include physical alterations to GGS habitat, and any monitoring or reporting data associated with actions taken to implement this mitigation measure. For instance, what maintenance activities will the maintenance personnel be conducting? In what locations? What type of education will be provided?

COMMENT 3: 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. 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 identifies one wetland area within one-half mile of Well #1.

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. CDFW is concerned with potential localized and cumulative impacts associated with proposed and future groundwater substitution and/or crop idling/shifting water transfers within or adjacent to the Sutter Subbasin that have the potential to impact GDEs.

Comment 3.1: Historical Groundwater Level Triggers

Issue: Consistent with the Department of Water Resources (DWR) Draft Technical Information for Preparing Water Transfer Proposals (Draft White Paper) (DWR 2019), SEWD plans to collect groundwater level information from a network of monitoring wells and will cease pumping if monitoring information indicates that groundwater levels have declined below their historical low level. The IS/MND states that the observance of historical low groundwater levels will reduce Project impacts on GDEs to less than significant.

However, CDFW is concerned with the reliance on historical low groundwater levels as a threshold for significant impacts during the transfer period. 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 dry 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. 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. 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).

Recommendation: CDFW recommends selecting a more protective groundwater level trigger (rather than the deepest recorded groundwater level on record) for wells near deep-rooted vegetation or surface waters to avoid significant potential impacts to GDEs.

Comment 3.2: Localized Impacts of Groundwater Depletion

Issue: The Sutter Subbasin Groundwater Sustainability Plan (GSP) states that adverse impacts to groundwater levels and users, such as GDEs, could occur if groundwater levels in 16 of 63 GSP monitoring wells fall below their minimum thresholds (MT) for two consecutive seasonal high water level measurements, resulting in a SGMA “undesirable result” (Sutter et al. 2022). Historical low groundwater levels were selected as the MT for many well sites in the Sutter Subbasin. Even if the proposed transfer pumping does not lower groundwater levels at enough monitoring wells to trigger this “undesirable result” as defined in the GSP, significant adverse impacts to GDEs may still occur in the immediate vicinity of the transfer pumping wells.

Recommendation: CDFW recommends the IS/MND more clearly identify the historical low groundwater depths and/or the GSP MTs for the monitoring wells included in the transfer program. The MND should evaluate the potential localized impacts of groundwater depletion to the historical low groundwater levels.

Comment 3.3: Cumulative Impacts

Issue: The IS/MND states that similar water transfer projects were implemented during at least 2018, 2020, 2021, and 2022.

Recommendation: CDFW recommends the IS/MND evaluate the potential cumulative impacts on GDEs of the almost yearly repeated reductions in groundwater levels to historical lows for the duration of the transfer season (May–September, when GDEs are most vulnerable). This evaluation should consider localized impacts in the areas surrounding the pumping wells. If the evaluation finds that the proposed Project will result in cumulative impacts to GDEs, CDFW recommends identifying measures to avoid or mitigate those impacts.

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.

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 Bridget Gibbons, Environmental Scientist at (916) 767-3993 or bridget.gibbons@wildlife.ca.gov.

Sincerely,
Bridget Gibbons

Bridget Gibbons

Environmental Scientist | Water Rights and Groundwater Coordinator
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1. A study found that the annual estimated survival of adult GGS was 73% for individuals with active rice fields on 86% of the land within 500 meters of their home range. Alternatively, the annual estimated survival for GGS was just 8.5% for individuals with active rice fields on only 18% of the land near their home range (Halstead et al. 2019).

REFERENCES

Cleary, Luke. "California rice harvest impacted by drought after farmers slashed plantings 20%." ABC 10, September 29, 2021, <https://www.abc10.com/article/news/local/california-rice-harvest/103-aa80b23a-9c8b-461c-8897-650f040bc3f8>.

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^[1] A study found that the annual estimated survival of adult GGS was 73% for individuals with active rice fields on 86% of the land within 500 meters of their home range. Alternatively, the annual estimated survival for GGS was just 8.5% for individuals with active rice fields on only 18% of the land near their home range (Halstead et al. 2019).