



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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July 31, 2024

Ashley Couch, PE, CFM
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San Joaquin County
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Subject: Mokelumne River Integrated Conjunctive Use Program
Notice of Preparation of Environmental Impact Report
SCH No. 2024070107¹

Dear Ashley Couch:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from San Joaquin County (County) for the Mokelumne River Integrated Conjunctive Use Program (MICUP; Project) in San Joaquin County, pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.²

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, CDFW appreciates 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 (Fish & G. 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

¹ <https://ceqanet.opr.ca.gov/2024070107>

² 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.

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review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act 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

The Project involves diverting Mokelumne River water to either serve existing beneficial uses, such as agricultural irrigation and municipal and industrial water supply, or to recharge water into underground storage within the Eastern San Joaquin groundwater subbasin for later extraction and use. The Project would be located within the designated place of use for Water Right Application 029835 (A029835), within and immediately adjacent to the jurisdictional boundaries of San Joaquin County. The County proposes to implement the MICUP with the following partner agencies: North San Joaquin Water Conservation District (NSJWCD), Stockton East Water District (SEWD), City of Stockton, Woodbridge Irrigation District (WID), East Bay Municipal Utilities District (EBMUD), and California Water Service.

Under A029835, the MICUP would divert up to 110,000 acre-feet per year (AFY) at up to 620 cubic feet per second (cfs) between December 1 and June 30 during wet years. In addition, up to 48,000 AFY could be stored in Camanche and/or Pardee Reservoirs, subject to available capacity as determined by EBMUD.

The Project would use a combination of existing and proposed diversion, conveyance, and recharge infrastructure within the Partner Agencies' boundaries. Surface water would either be directly diverted from the Mokelumne River or rediverted from the Mokelumne Aqueduct. Groundwater recharge methodologies may include direct surface recharge, aquifer storage and recovery wells, in-lieu recharge, and flood managed aquifer recharge.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming EIR address the following topics.

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Project Description

The Project description should include the whole action as defined in the CEQA Guidelines § 15378, including proposed new operations and infrastructure, and should specify appropriate detailed exhibits disclosing Project temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, vehicle staging areas, and access and haul roads if applicable.

As required by § 15126.6 of the CEQA Guidelines, the EIR should include an appropriate range of reasonable and feasible alternatives that would attain most of the basic Project objectives and avoid or minimize significant impacts to resources under CDFW's jurisdiction. CDFW specifically recommends the County consider water conservation alternatives.

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the EIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends the EIR specifically include:

1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type.
2. A biological inventory of the aquatic and riparian species that are present in the Mokelumne River and adjacent riparian habitat, and downstream of the Project area. For each species, include the specific life stages likely to be present during Project activities, including water diversion, and reference available information on the species' instream flow, habitat, and water temperature needs.
3. Maps of all planned and potential conveyance infrastructure and points of diversion for the Project with descriptions of the current or planned conveyance and diversion capacity, presence or absence of a fish screen, and type of screen.
4. Maps showing planned or likely recharge areas, with descriptions of the habitat types, current land uses, and plants and terrestrial species present in the recharge areas, or within adjacent areas that could be affected by the Project.
5. Maps and descriptions of groundwater dependent ecosystems (GDEs) within the Project footprint. The EIR should leverage the most up to date mapping and information contained in the Eastern San Joaquin groundwater subbasin Groundwater Sustainability Plan (GSP).

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6. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The EIR should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the EIR:

1. For each water year type, descriptions of baseline water operations for Pardee and Camanche Reservoirs, and release schedules and current flow hydrographs for the Mokelumne River below Camanche and below Woodbridge Dam. The EIR should characterize a range of potential or anticipated changes to operations due to the Project and present modeled scenarios for instream flows below Camanche and Woodbridge Dam, for each water year type, after Project implementation. The EIR should include descriptions of likely rates and volumes of Project diversions, including ramping rates, for each point of diversion, including both direct diversions from the Mokelumne River and re-diversions from the Mokelumne Aqueduct.
2. Analysis of Project impacts to end-of-year reservoir storage and the volume and temperature of water available to release as pulse flows in the fall, to attract salmonids, and in the spring, to aid with juvenile out migration.

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3. Analysis of Project impacts to reservoir and instream temperatures.
4. Description of the Mokelumne River Joint Settlement Agreement (JSA) and any potential Project impacts to end of year reservoir storage, the determination of JSA water year type, the frequency of JSA water year types, and the ability to continue to meet JSA release and instream flow obligations with Project implementation.
5. Environmental benefits attributable to the Project. The NOP states that a proposed objective of the Project is to “achieve integrated water supply and environmental benefits in the lower Mokelumne watershed.” The EIR should explicitly describe what environmental benefits will be achieved, which species and habitats will benefit, and how those benefits will be quantified and measured during Project implementation.
6. Project cumulative effects analysis developed as described under CEQA Guidelines section 15130. The EIR should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The EIR should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and terrestrial and aquatic habitat reductions within the area and their potential cumulative effects. This analysis should consider other pending water rights from the Mokelumne and related GSP projects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

Mitigation Measures for Project Impacts to Biological Resources

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions.

CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the EIR should include

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mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

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 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.

State-listed species with the potential to occur in the area include, but are not limited to: giant gartersnake (*Thamnophis gigas*), Bank Swallow (*Riparia riparia*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), succulent owl's-clover (*Castilleja campestris var. succulenta*), Swainson's Hawk (*Buteo swainsoni*), Crotch's bumble bee (*Bombus crotchii*), California tiger salamander (*Ambystoma californiense*), and Tricolored Blackbird (*Agelaius tricolor*).

The EIR should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. 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 facilitate the issuance of an ITP, if applicable, CDFW recommends the EIR 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.

Lake and Streambed Alteration Program

The EIR should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including utilities, access

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and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined the Project will result in significant impacts to these resources the EIR shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of any river, stream or lake;
2. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
3. Deposit debris, waste or other materials where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

If upon review of an entity's notification, CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, (2) timber harvesting operations, or (3) routine maintenance operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands,

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floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. CDFW recommends lead agencies coordinate with CDFW as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

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 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 effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by San Joaquin County 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 sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the 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.

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CDFW appreciates the opportunity to comment on the Notice of Preparation of the EIR for the Mokelumne River Integrated Conjunctive Use Program and recommends that San Joaquin County address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter, please contact Bridget Gibbons, Environmental Scientist at bridget.gibbons@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

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