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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



October 25, 2019

Governor's Office of Planning & Research

OCT 25 2019

STATE CLEARINGHOUSE

Vince Lucchesi  
General Manager  
Patterson Irrigation District  
Post Office Box 685  
Patterson, California 95363

Subject: Water Transfer to Santa Clara Valley Water District (Project)  
NEGATIVE DECLARATION (ND) State  
Clearinghouse No. 2009112091

Dear Mr. Lucchesi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from Patterson Irrigation District (PID) for the 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, CDFW appreciates 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

<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.

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 AND OBJECTIVE**

This Project is a continuation of water transfer activity that has been ongoing between PID and Santa Clara Valley Water District (SCVWD) since 2010 and does not result in any physical changes or new construction. The proposed Project will consist of a five-year Water Transfer Agreement between PID and SCVWD to transfer up to 30,000 acre-feet (AF) to SCVWD. The water to be transferred will be composed of any combination of the following water rights held by PID:

1. Pre-1914 appropriative water right from the San Joaquin River,
2. Water pursuant to PID's contract with the United States Bureau of Reclamation (USBR) for water supply (Project Water) from the Central Valley Project (Contract 14-06-200-3598A-LTR1) (Contract), and
3. Replacement Water as identified in the Contract.

PID's Contract provides that USBR will provide PID with up to 16,500 AF of Project Water annually, subject to the terms and conditions of the contract. PID's Contract also provides that USBR will provide PID with 6,000 AF of Replacement Water annually in addition to the Project Water because CVP water allocations have reduced SJR flows.

Each year, the transfer of available Replacement Water is prioritized first, followed by available Central Valley Project supplies delivered under PID's Contract and then pre-1914 appropriative supplies.

Due to conservation practices, use of Reclaimed Water, and loss of agricultural acreage to urban development, PID has developed water supplies temporarily in excess of the demands within its service boundaries. Currently, PID's pre-1914 rights are used within and immediately adjacent to PID for agricultural purposes. PID has historically used all its surface and groundwater sources within its boundaries for irrigation demands. Investments in more efficient irrigation and tail water recovery systems have resulted in conserved water available for transfer and/or reductions in groundwater use. In recent years, PID has sought to transfer conserved water to meet regional water needs.

The Project proposes no increase over historical diversions from the San Joaquin River and no increase in allocations or use of other surface or groundwater supplies over historical amounts.

**Proponent:** PID

**Location:** PID's pre-1914 rights are diverted from the San Joaquin River in Stanislaus County at approximately river mile 98.5. PID's existing surface water pumping plant is located on the western bank of the San Joaquin River, approximately 3.5 miles east of the City of Patterson and just over a quarter mile north of West Main Street. The existing diversion facility consists of seven pumps with a total diversion capacity of approximately 195 cubic feet per second (cfs). Water transferred from PID will be made available in O'Neill Forebay and/or the Delta Mendota Canal for delivery to SCVWD at its turnouts in the San Felipe Division.

**Timeframe:** The transfer of surface water from PID to SCVWD will occur as part of a five-year contract. Specific timeframes for surface water transfers are not included in the Project description for the ND.

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations below to assist PID in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends that the following recommendations be incorporated into the ND prior to its adoption by PID.

**I. Incomplete Project Description**

CDFW has questions and comments regarding the Project description and implications for special status fisheries. It is not yet clear if adequate Project information has been provided to allow CDFW to fully evaluate potential Project-related impacts to fish and wildlife.

The ND states that to the extent that PID utilizes pre-1914 conserved water supplies for this transfer, the conserved water would be diverted from the San Joaquin River from PID's pumping facility. The ND does not include a description of the quantity of water conserved within PID's boundary, nor does the ND describe where or how the conserved water is stored prior to its use. CDFW recommends modifying the Project description to describe the quantity of water conserved, how this surface water supply is stored, where it is stored prior to use, and what facilities are used to wheel the water to the pumping facility along the San Joaquin River. Depending upon the location where conserved water is stored and then transferred to the San Joaquin River for use in the Project, impacts to fisheries may involve the Merced River as well as the San Joaquin River.

The ND mentions that the Project proposes no increase over historical diversions from the San Joaquin River and no increase in allocations or use of other surface or groundwater supplies over historical amounts. CDFW recommends the ND provide a summary of the historic diversions and amounts used to conclude that there will be no Project-related increase in surface water diversions.

Finally, the Project description does not specify whether the entire 30,000 AF transfer would be spread out more or less evenly over a five-year timeframe or potentially allow for the diversion of up to 30,000 AF over fewer seasons. Diverting a larger quantity of surface water during a single season may have a greater magnitude of impact on fish and wildlife resources than diverting the same amount over a longer timeframe. CDFW recommends that the Project description specify the expected seasonal amount and frequency of the diversions to SCVWD with emphasis on San Joaquin River diversions and provide an analysis of the impacts to fish and wildlife.

## **II. Impacts to Spring- and Fall/Late Fall-Run Juvenile Chinook Salmon (*Oncorhynchus tshawytscha*)**

The Project as described has the potential to impact outmigrating juvenile Chinook salmon (*Oncorhynchus tshawytscha*), including the species of special concern fall/late fall-run and the nonessential experimental population of Central Valley spring run, for which the San Joaquin River Restoration Program goal is to restore a self-sustaining fishery.

**Issue:** The ND prepared for the Project states that the proposed Project will not impact biological resources, including fisheries resources, because there will be no increase over historical PID diversions from the San Joaquin River. However, the Project has the potential to impact outmigrating juvenile Chinook salmon by impinging fish against pumping screen facilities, resulting in direct mortality.

**Evidence impact is potentially significant:** The San Joaquin River is of great importance to fish species. CDFW considers Project-related impacts to salmon and other fish resources as potentially significant if they could result in losses to listed species or a reduction in the productivity of listed or other special status fish species.

### **Recommended Potentially Feasible Mitigation Measure(s)**

CDFW recommends that the timing of Project diversions from the San Joaquin River consider the ecologically sensitive season for juvenile Chinook salmon to avoid or minimize impacts during migration and when populations have the greatest presence. The optimal timeframe to divert water from the San Joaquin River to minimize impacts to outmigrating juvenile spring- and fall/late fall-run Chinook salmon would be between the months of June through October. CDFW recommends that the ND include a

requirement that PID consult with CDFW fisheries staff to develop an operational window for the Project-related transfer of water from the San Joaquin River in order to minimize impacts to fisheries from pumping facilities.

### **III. Lake and Streambed Alteration.**

CDFW has regulatory authority over certain activities affecting rivers, streams and lakes, pursuant to Fish and Game Code sections 1600 *et seq.* If the Project would substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, sediment, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, then notification to CDFW is required. Notification to CDFW for this Project is warranted for the substantial diversion of the flow from the San Joaquin River. The diversion of water does not require a ground-disturbing activity to the bed or bank to be a jurisdictional activity warranting notification pursuant to Fish and Game Code section 1602. CDFW recommends that the ND identify the need for notification to CDFW, as failure to notify is a violation of Fish and Game Code section 1602.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

### **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: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

### **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

Vince Lucchesi  
Patterson Irrigation District  
October 25, 2019  
Page 6

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

CDFW appreciates the opportunity to comment on the ND to assist PID in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 243-4014 extension 231 or by email at [Annette.Tenneboe@wildlife.ca.gov](mailto:Annette.Tenneboe@wildlife.ca.gov).

Sincerely,



Julie A. Vance  
Regional Manager

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

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