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Subject: San Luis Low Point Improvement Project, Draft Environmental Impact Statement/Environmental Impact Report, SCH #2002082020, Merced and Santa Clara County

Dear Dr. Ozbilgin:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for the San Luis Low Point Improvement Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.[1] In accordance with our mandates, CDFW is submitting comments on the DEIS/DEIR to inform the Santa Clara Valley Water District (Valley Water), as the CEQA Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

Thank you for the opportunity to provide comments and recommendations regarding activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding aspects of the Project for which CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code. CDFW appreciates that with most large projects there may be a continuing effort to analyze impacts and revise the various project alternatives. CDFW remains available for coordination for those purposes.

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 and Game Code, §§ 711.7, subd. (a) and 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 and Game Code, § 1802). Similarly, for purposes of CEQA, CDFW is charged 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.

[1] 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.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, §21069; CEQA Guidelines, § 15381). CDFW expects it may need to exercise regulatory authority for the Project as provided by the Fish and Game Code. For example, the Project, as proposed, may be subject to CDFW's lake and streambed alteration regulatory authority (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project may result in "take" (as defined by State law) of any species protected under the California Endangered Species Act (CESA; Fish and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Planning Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The San Luis Low Point Improvement Project proposes to address water quality issues in the San Luis Reservoir, located in Merced County. The DEIS/DEIR evaluates the potential impacts of alternatives that help maintain a high-quality, reliable, and cost-effective water supply for Valley Water and other contractors of the U.S. Bureau of Reclamation's San Felipe Division. During the summer, high temperatures and declining water levels in San Luis Reservoir create conditions that foster algae growth. The water quality within the algal blooms is not suitable for municipal and industrial water users relying on existing water treatment facilities in Santa Clara County. The alternatives evaluated in the DEIS/DEIR include construction of a new, lower San Felipe Intake; development of new technology retrofits at Valley Water's Santa Teresa Water Treatment Plant; the placement of additional fill material on the Sisk Dam embankment to raise the dam crest for increased San Luis Reservoir storage capacity; and the development of an expanded Pacheco Reservoir and a new earthen dam and spillway constructed on the North Fork of Pacheco Creek, which Valley Water has identified in Section 2.3 of the DEIS/DEIR as the proposed Project for CEQA purposes.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Valley Water in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

1. Environmental Consequences of Alternative 5, Pacheco Reservoir Expansion

1.1. Construction Impacts to Pacheco Creek and Biological Resources

Proposed construction of the Pacheco Reservoir Expansion Alternative would involve the removal of the existing North Fork Dam, dewatering of the existing Pacheco Reservoir, and construction of a temporary cofferdam with a bypass structure to ensure that flows in Pacheco Creek are maintained during construction, which is anticipated to last approximately five years. Impacts to native fish resources in Pacheco Creek during the construction period were not addressed. In addition, the estimated flows that are anticipated from the cofferdam and bypass structure were not provided. CDFW recommends conducting fisheries studies to further

characterize fish resources in Pacheco Creek (North Fork Pacheco Creek, South Fork Pacheco Creek, Cedar Creek, San Felipe Lake, and current Pacheco Reservoir) to assess effects of construction on these resources when the existing North Fork Dam is removed, and the reservoir dewatered. These studies should be coordinated with CDFW and other relevant natural resources agencies. CDFW also recommends providing information on anticipated flows in Pacheco Creek during construction to allow for a complete assessment of impacts to aquatic and terrestrial resources downstream of the construction site.

1.2. Operational Impacts to Pacheco Creek and Biological Resources

Table 2-2 provides proposed average monthly release targets to Pacheco Creek from the expanded Pacheco Reservoir. Additionally, the description of the proposed operations in Section 2.2.5.3 states that, "Winter releases of stored supply would be discontinued when it is estimated that there will be sufficient inflow passed through the reservoir downstream onto Pacheco Creek to provide for aquatic habitat going forward into the spring." Supporting model data provided in Appendix L2 indicate the Pacheco Reservoir Expansion Alternative would provide enhanced average monthly flows on Pacheco Creek, mostly from April to December. However, there is a potential for dewatering and stranding of South-Central California Coast (SCCC) steelhead in Pacheco Creek when winter releases are decreased or discontinued. The level of impact is unclear since the monthly average flows provided in Appendix L2 do not capture daily fluctuations and ramping rates.

In addition, the analysis of operational impacts from the Pacheco Reservoir Expansion Alternative does not provide sufficient information to assess the impacts of proposed reservoir operations and reduced flood flows to aquatic and terrestrial species and habitat downstream of the dam and reservoir. CDFW recommends that an operational plan for the expanded Pacheco Reservoir be developed in coordination with natural resources agencies and the operational impacts analysis be revised to include additional information to address potential impacts to SCCC steelhead spawning and rearing habitat, other native fish species, stream geomorphology, floodplain inundation rates and duration, native riparian vegetation composition and density, and how these effects will be avoided or mitigated. CDFW recommends that operations for the expanded Pacheco Reservoir include prescribed stream flows below the dam and reservoir that mimic natural processes to ensure the reservoir operations provide adequate conditions for native aquatic and terrestrial species and sensitive habitats, including sycamore alluvial woodland, that are present within the Pacheco Creek watershed.

1.3. Conveyance of Imported Water to Pajaro River Watershed

Proposed operations of the Pacheco Reservoir Expansion Alternative involve conveyance and storage of Central Valley Project (CVP) water from the San Luis Reservoir prior to release into Pacheco Creek and the Pajaro River Watershed. Section 4.13.7.2 of the DEIS/DEIR acknowledges that introduction of imported Delta water from the CVP into the Pajaro River Watershed could potentially introduce invasive species. Non-native species introduction is a major concern for CDFW, and we recommend that the DEIS/DEIR provide further analysis and consideration of means to reduce the risk of invasive species introduction. CDFW recommends including in the DEIS/DEIR a risk assessment for all species that could potentially be transferred

from San Luis Reservoir and invade and establish populations in the Pacheco Reservoir, Pacheco Creek and the greater Pajaro River Watershed.

The DEIS/DEIR also acknowledges that introduction of imported Delta water into the local watershed could potentially impact imprinting behavior of SCCC steelhead. Appendix B (Table 7-1) provides water operations modeling results that indicate that the Pacheco Reservoir Expansion Alternative would result in an annual average increase of 3,000-acre feet (AF) in San Felipe Division CVP M&I deliveries and an increase in average available total local surface storage volumes by 97,000 AF. Insufficient information, however, was provided regarding the anticipated frequency and volume of CVP water deliveries to Pacheco Reservoir and subsequent releases to Pacheco Creek. CDFW recommends revising the analysis with more detailed accounting of presumed local and imported storage inputs over time and varying hydrological conditions to assess the degree of potential impact on SCCC steelhead olfactory cues and imprinting.

1.4. Pacheco Creek Steelhead Habitat Suitability Model

The Pacheco Creek Steelhead Habitat Suitability Model was used to evaluate impacts on SCCC steelhead habitat in Pacheco Creek resulting from the Pacheco Reservoir Expansion Alternative operations. Modeling results presented in Appendix L2, Section L2.1.2 indicate improvements in steelhead cohort scores across all water year types for the Pacheco Reservoir Expansion Alternative versus the No Action Alternative. However, limitations in the model make it difficult to determine the accuracy of the projected magnitude of improvements to the steelhead population. The model is based on limited stream temperature measurements and habitat typing that occurred in a single summer, across a limited range of flows. Because the model is based on limited empirical data, there is uncertainty about the magnitude of habitat improvements from the expanded Pacheco Reservoir operations.

CDFW recommends additional discussion with relevant natural resources agencies regarding further development and refinement of the Pacheco Creek Steelhead Habitat Suitability Model and its use for analyzing effects of operational scenarios from the Pacheco Reservoir Expansion Alternative. Development of a more refined model that can estimate habitat suitability for steelhead across multiple life stages (i.e. adult migration, spawning, juvenile rearing, and smolt outmigration) and can predict channel hydraulics in relation to flow may be warranted to better evaluate potential impacts and benefits of future Pacheco Reservoir operational scenarios.

2. Terrestrial Resources in the Pacheco Reservoir Region

Section 3.11.2 of the DEIS/DEIR states that "Biological resource surveys in the Pacheco Reservoir are planned for winter 2018 and results will be incorporated in this chapter." However, it appears that results from biological surveys for the Pacheco Reservoir region were not included in Chapter 3 or Appendices M1 and M2. CDFW recommends that the DEIS/DEIR be revised to include results from all recent biological surveys within the Pacheco Reservoir region, include a quantification of impacts to special-status species, and identify specific and enforceable mitigation measures to reduce any significant impacts to a level of less-than-significant.

Following construction of the new dam for the Pacheco Reservoir Expansion Alternative, an additional 1,245 acres of habitat would be subject to inundation when the expanded reservoir reaches full capacity. The inundation area includes existing ponds, riparian habitat, and oak woodland. Most impacts from inundation would be to oak woodland habitat, including foothill pine-oak woodland, mixed oak woodland, valley oak woodland and blue oak woodland, in addition to sycamore alluvial woodland in the riparian zone. However, the DEIS/DEIR does not provide sufficient information regarding mitigation for inundation impacts to oak woodland habitat. Oak woodlands are an important habitat that support a variety of special-status species, such as California red-legged frog, California tiger salamander, foothill yellow-legged frog, western pond turtle, western burrowing owl, tricolored blackbird, and San Joaquin kit fox. CDFW recommends the impacts analysis be revised to include additional information to address these impacts and how these effects will be mitigated.

3. Water Storage Investment Program Contracts

Section 2.2.5.3 of DEIS/DEIR describes a contract between the California Department of Water Resources (DWR) and Valley Water for the provision of grant funding through the California Water Commission Water Storage Investment Program (WSIP) that would secure habitat flows on Pacheco Creek and provision of refuge water supplies. CDFW recommends revising the WSIP contract description in Chapter 2 to include a description of the CDFW contract for administration of public benefits under the WSIP, which is referenced in Section 6.4.9 of the DEIS/DEIR. In addition, Table 2-3 should list CDFW as a Permitting or Approval Agency for the WSIP Grant Funding Contract.

4. Cumulative Effects Analysis

CDFW recommends that the cumulative effects analysis considers the current Reinitiation of Consultation for the long-term operations of the CVP and State Water Project (SWP).

5. Suggested Revisions to Appendix L1

5.1. For Table L1-1, CDFW recommends providing a complete fish species assemblage list for each Project alternative area (i.e. Delta, San Luis Reservoir, Pacheco Creek/Pajaro River).

5.2. Section L1.1.4 states, "NMFS is in the process of developing a recovery plan for Central Valley spring-run Chinook salmon." CDFW recommends revising this statement to acknowledge the completion of the recovery plan in 2014.

5.3. Section L1.1.7 states, "In March 2006, a petition seeking to relist delta smelt as an endangered species was submitted to the USFWS. The proposal to elevate the listing status remains under review and USFWS has, as yet, not acted on the petition. In June 2007, the California Fish and Game Commission accepted a petition to uplist delta smelt from threatened to endangered status under CESA. This action is currently under review." CDFW recommends updating these statements to state that Delta smelt uplisting under the federal Endangered Species Act (ESA) has been found warranted

but precluded and the species remains listed as threatened under federal law, and the Delta smelt's CESA status was changed to endangered in 2009.

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 (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be emailed to CNDDB at: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

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 and Game 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 notification should be directed to the California Department of Fish and Wildlife, Bay Delta Region.

CDFW appreciates the opportunity to comment on the DEIR/DEIS to assist Valley Water in identifying and mitigating Project impacts to biological resources. Questions regarding this letter or further coordination should be directed to Mr. Craig Weightman, Environmental Program Manager, at (707) 944-5577 or Craig.Weightman@wildlife.ca.gov.

Sincerely,

Gregg Erickson
Regional Manager
Bay Delta Region

ec: Kristal Davis Fadtke, CDFW Water Branch – Kristal.Davis-Fadtke@wildlife.ca.gov