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October 5, 2020

Governor's Office of Planning & Research

Oct 06 2020

STATE CLEARINGHOUSE

David Vang
Westlands Water District
3130 North Fresno Street
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dvang@westlandswater.org

**Subject: Westland Water District Ground Water Pumping and Conveyance Project (Project)
NEGATIVE DECLARATION (ND)
State Clearinghouse No. 2020090040**

Dear Mr. Vang:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from Westlands Water District (WWD) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. CDFW acknowledges and appreciates that WWD has agreed to accept these comments by October 6, 2020. 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.

Prior CEQA Review: CDFW reviewed a prior draft Initial Study and ND for the Project (State Clearinghouse No. 2020050434) and provided a comment letter dated June 19, 2020. The prior draft Initial Study and ND was not adopted and has since been rescinded by WWD.

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

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.

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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.*), related authorization as provided by the Fish and Game Code will be required.

The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code section 1200. CDFW, as Trustee Agency, is consulted by SWRCB 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 and riparian 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.

CDFW is also a water contractor and the landowner and manager of the Mendota Wildlife Area (MWA) on Fresno Slough, and as such has a vested interest in water quality in the Fresno Slough, in addition to firsthand management experience with the effects of water use in the area affected by the Project. Many of the comments below are made in the context of MWA operations and the related management for fish and wildlife and their habitats.

PROJECT DESCRIPTION SUMMARY

Proponent: WWD

Description: Under the Project, WWD would enter into a five-year Warren Act Contract with the United States Bureau of Reclamation (USBR) to allow WWD to introduce up to 30,000 acre-feet per year, or up to 150,000 acre-feet over the five-year life of the Project, of local acceptable quality groundwater into the San Luis Canal (SLC) for the period 2020 to 2025, in years during which the WWD's Central Valley Project (CVP) allocation is 20 percent or less.

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The non-CVP water would be groundwater pumped from wells within the WWD area. The groundwater would be pumped into the SLC via licensed water integration (discharge) facilities located on either side of the SLC. The amount of water from each source would vary, but the total quantity introduced under the Project would not exceed a combined volume of 30,000 acre-feet in a given year. Prior to introduction into the SLC, all wells would be tested to demonstrate compliance with the USBR's 2020 Water Quality Monitoring Plan standards, based off Title 22 water quality standards. Only groundwater wells that meet these water quality standards would be used for integration into the SLC. Water sourced from the Mendota Pool Inlet Canal would be tested at laterals discharging to the SLC. Water pumped and exchanged under the Project would be subject to ground subsidence and water quality monitoring and protection measures consistent with Water Quality Monitoring Plan standards and the Westside Subbasin Groundwater Sustainability Plan.

Non-CVP water introduced into the SLC would either be directly delivered to agricultural users located downstream of discharge points, or operationally exchanged with USBR for an in-kind amount, minus conveyance losses, of the WWD's available water supplies in the San Luis Reservoir. Exchanged water would either be delivered to agricultural users located upstream of introduction points in the WWD or stored in the San Luis Reservoir as non-CVP water for later delivery to the WWD via the SLC. Introduction of the WWD's non-CVP water and storage of the exchanged water would be annually scheduled with USBR and would be subject to excess capacity, operational constraints, and CEQA requirements, as applicable. WWD intends to use the water in the same year in which it is introduced into federal facilities; however, if WWD is unable to make use of water introduced into the facilities within the designated window, it may be necessary to carry the water over through storage in the San Luis Reservoir until it can be put to productive use.

Under the Project, no new facilities or modifications to the SLC or ground-disturbing activity would be authorized. The Project proposes to utilize existing facilities for pumping of groundwater and introduction of supplies into the SLC. Because the existing discharge facilities have expired licenses and are expected to renew this year, USBR proposes to issue a combined 25-year license authorization for all discharge points involved in the Project. In addition, all water delivered would be subject to existing water banking, place of use, water allocation and credit provisions. Due to the proposed limitations on pumping and the established historic use of the wells, it is not anticipated that overall groundwater extractions would increase under this Project.

The Project would complement a proposal to be approved by USBR in 2020 that would issue a Warren Act Contract for the introduction of up to 30,000 acre-feet per year of groundwater into the federal and state operated facilities on the SLC by the WWD or private growers as excess capacity is available. The federal Warren Act Contract would be effective through 2025.

Objectives: The Project has the following objectives:

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1. Provide flexibility in using water supplies from private wells to help customers sustain agricultural crops.
2. Use irrigation water, delivered through WWD facilities, where needed by Project participants.
3. Ensure that pumped groundwater meets standards pursuant to the USBR Water Quality Monitoring Plan. The 2020 Water Quality Monitoring Plan and water quality standards are currently being prepared and may be subject to change prior to publication and adoption of the final plan. The Project will be subject to the final water quality standards and requirements of the plan once adopted.
4. Ensure compliance with the Westside Subbasin Groundwater Sustainability Plan.

Location: The Project components would be implemented within WWD's service area, which includes 1,000 square miles of farmland on the west side of the San Joaquin Valley within Fresno County and the northern portion of Kings County.

Timeframe: 5 years – subject to USBR approval of WWD's Warren Act Contract in 2020, to be effective through 2025.

COMMENTS AND RECOMMENDATIONS

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

CDFW recommends that the following modifications and/or edits be incorporated into the ND prior to its adoption by WWD.

I. Project Description and Related Impact Shortcoming

COMMENT 1 - Wetland, Riparian, and Other Sensitive Natural Communities

Issue: Section 15.4.2 of the ND states there are no sensitive natural communities identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service located in the Project vicinity. Additionally, Section 15.4.2 asserts there are no marshes, vernal pools, or federally protected wetlands in the Project vicinity, and therefore, there would be no impacts to sensitive species, natural communities, vernal pools, marshes, or wetlands as a result of implementation of the proposed Project.

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The MWA is located directly adjacent to the WWD, and several groundwater wells are located either directly adjacent to the MWA or in the nearby vicinity. These wells are shown on Figure 3 of the ND. Some of these wells pump groundwater into the Inlet Canal, which runs along the southern boundary of the MWA and connects to the WWD via Lateral Canals 6 and 7. The MWA has been significantly affected by groundwater overdrafting and subsidence.

MWA is located within the Delta-Mendota Subbasin and borders the Westside Subbasin. Both the Westside and Delta-Mendota Subbasins are designated as critically overdrafted by the California Department of Water Resources, and such overdrafting is a serious issue within the Mendota Pool area due to ongoing subsidence. Over the years, the Mendota Dam has experienced subsidence, and the California Department of Water Resources, Division of Safety of Dams, has required the water level to be lowered due to the subsequent compromised integrity of the dam. The lowered water level at the dam has resulted in lower water levels to the gravity flow and lift pump inlets at the MWA. The northernmost gravity flow inlet receives no water, causing loss of trees and habitat along the northern edge of the wildlife area. The lift stations no longer pump efficiently because the inlets are not fully covered with water, allowing air to be pulled into the pumps and decreasing water flows. Decreased water flow results in MWA operating its pumps for longer periods, increases the electricity cost and personnel cost to monitor and maintain the pumps, and increases wear and tear on the pumps.

Continued subsidence affects the ability of CDFW to operate the MWA according to its management objectives, and other areas where water is no longer delivered by gravity could increasingly lose associated wetland and riparian habitat features. Subsidence is irreversible and damage to surface water conveyance features caused by subsidence can only be mitigated by removal of damaged infrastructure and replacement, or re-engineering and reconstruction of infrastructure to allow surface water to flow at an acceptable level.

Although Section 15.4.2 asserts there are no wetlands or sensitive habitats in the Project vicinity, this same section of the ND acknowledges that MWA is located adjacent to the Project boundary, and that impacts from groundwater pumping in the vicinity of the MWA have caused substantial damage to water conveyance facilities. Further, Section 15.4.2 acknowledges that subsidence impacts have resulted in substantial adverse effects on riparian and sensitive fish and wildlife habitat.

Section 15.4.2 also states the criteria for limiting groundwater pumping for Project wells will be triggered when subsidence exceeds 0.3 feet per year. The ND does not specify whether this means that the Project may, therefore, result in up to 1.5 feet of additional subsidence over the five-year Project timeline without triggering the threshold for limited groundwater pumping. If so, then Project-related subsidence could contribute to further impacts to MWA conveyance infrastructures and resulting subsequent impacts to fish and wildlife habitat. This potential for additional Project-related subsidence in the area

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of MWA contradicts the determination made by WWD that there will be no direct impacts to sensitive species and habitats related to the Project.

Issue: Section 10.3 of the ND discusses ground subsidence monitoring and protection within the WWD area. This section states that there are only two subsidence prone areas located within the WWD along the SLC, and these areas are identified in Figure 3 of the ND. Wells within these two areas would be subject to more restrictive minimum thresholds for ceasing pumping than wells outside of these areas, including the wells closest to MWA.

Issue: Land subsidence from overdrafting wells at Lateral 7 has the potential to affect MWA water infrastructure and therefore wetland habitat. The ND does not address the potential for drawdown of groundwater levels at the Lateral 7 wells to affect surface water levels or sub-surface levels at MWA.

Analysis Recommendations:

- CDFW recommends that the ND analyze how the drawdown of groundwater from wells along Lateral 7 may affect surface and subsurface water levels at the MWA, and whether these wells are drawing from a confined aquifer.
- CDFW recommends that the ND include the results of a study developed to determine the percentage of subsidence caused by Project pumping, and to develop an adaptive management program to determine when to cease pumping to prevent excess subsidence.
- CDFW recommends that the ND evaluate all areas that would be affected by increased subsidence, including the MWA, to determine potential losses of wetland and riparian vegetation communities caused by changes in hydrology associated with Project pumping.

Recommended Mitigation Measure 1: Subsidence Monitoring and Compensatory Mitigation

CDFW recommends that the ND include specific triggers for evaluating subsidence each year and monitoring wetland and riparian habitats that would be affected by subsidence. CDFW further recommends that the ND identify potential mitigation for impacted wetland or riparian habitat value and function resulting from Project implementation, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources. CDFW suggests that any net loss of these habitats be considered a potentially significant impact.

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COMMENT 2 - Water Quality

Issue: Section 15.4.2(d) (pages 33 – 34) states that groundwater pumped from wells within the vicinity of the MWA under the Project would be conveyed directly to Lateral 7 and conveyed away from the MWA towards the SLC. Groundwater supplies conveyed through Lateral 7 would not mix with water supplies in the MWA, to avoid introduction of any potential constituents of concern with regard to wildlife, such as selenium and Total Dissolved Solids (TDS), into the MWA. In addition, the Kern National Wildlife Refuge water supplies could mix with groundwater as a result of the proposed Project thus potentially introducing the same constituents of concern into the Wildlife Refuge wetlands.

Issue: The Project would transfer up to 30,000 acre-feet per year of CVP surface flow that may have otherwise entered the Mendota Pool via the Delta Mendota Canal. WWD would instead pump an equal amount of groundwater from its wells into its service area, including the Mendota Pool. In prior years, water quality monitoring results have demonstrated that groundwater supplied to the Mendota Pool is consistently more saline than surface waters within the Delta Mendota Canal. Consequently, CDFW is concerned with this salt loading into the Mendota Pool and the impact it will have to the water supply for the MWA. Also note that higher salinity correlates with higher total dissolved solids.

Issue: The ND states in Table 2 (page 29) that the Project would have no impact on the State and federally threatened giant garter snake (*Thamnophis gigas*) because the Project would not convey flows to the MWA. The ND, including Section 15.4.2(f) only mentions water quality potentially affecting aquatic habitat for giant garter snake. CDFW recommends that the ND also analyze the water quality objectives for selenium for the protection of other wildlife, especially breeding waterfowl.

Issue: Section 15.10 (page 41) of the ND states that the Project will have no impact to water quality standards or waste discharge requirements, or otherwise substantially degrade surface or groundwater quality. Section 15.10.2 (page 52) states that each well would be required to be sampled prior to discharging any groundwater into the SLC. The primary disqualifying factor would be high salinity levels, where any well with TDS exceeding 1,000 mg/L would be disqualified. This upper limit is 20% higher than the daily mean TDS water quality objective for the MWA of 800 mg/L or less (Reclamation Water Contract Number 14-OC-200 for Refuge Water Supplies to MWA). The addition of water with TDS higher than 800 mg/L would increase the salinity of the receiving waters in the MWA.

Issue: Figure 3 of the ND shows three Project wells located adjacent to the MWA south boundary. The ND does not clarify whether these wells will discharge into the water delivery ditch along the south boundary of the MWA. If these wells will discharge into the MWA delivery ditch, this may increase salinity at the MWA lift pump.

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Analysis Recommendations:

- CDFW recommends that Table 2 of the ND be changed to clarify that groundwater mixed with surface water flows may be introduced into the MWA and Kern Wildlife Area, potentially impacting water quality and aquatic species including the giant garter snake. CDFW also recommends that an analysis with thresholds of significance for aquatic species be included in the ND with measures proposed to reduce any potentially significant impacts.
- CDFW recommends that any revisions made to 2020 Water Quality Monitoring Plan be included with the ND for public review.
- CDFW recommends that the ND include an analysis of the proposed 2020 Water Quality Monitoring Plan water quality criteria, including for TDS and selenium criteria, to describe thresholds of significance and demonstrate whether the WQMP is sufficiently protective of all potentially affected fish and wildlife, and not only giant garter snake.
- CDFW recommends that the ND clarify how groundwater will be conveyed to the SLC without discharging to the MWA, especially the conveyance of groundwater from those wells capable of discharging into the delivery ditch for the MWA.

Recommended Mitigation Measure 2: Water Quality Monitoring and Impact Minimization or Mitigation

CDFW recommends that the ND include water quality monitoring requirements to track changes in water quality resulting from the Project that could be harmful to fish and wildlife, including special status species and species using wetland or riparian areas for breeding/nursery sites. CDFW recommends that monitoring begin before Project implementation and continue with a frequency that is adequate to identify changes well before thresholds of significance are reached. CDFW further recommends that the ND include actions to be taken to minimize or mitigate for impacts to fish and wildlife resulting from water quality effects.

Editorial Comments and/or Suggestions

Warren Contract: A copy of the Warren Contract with USBR described above is not included with the ND. CDFW recommends the inclusion of the Warren Contract with the ND.

Cumulative Impacts:

Existing and Foreseeable Projects. The Mandatory Findings of Significance section 15.21 of the ND states that the Project will not have any cumulative impacts to biological

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resources; however, the ND does not list any existing or foreseeable projects in the area of the Project. CDFW reviewed and provided written comments on the Draft Environmental Impact Statement / Environmental Impact Report for the Mendota Pool Group 20-year Exchange Program (DEIR/EIS, State Clearinghouse No. 2013041028) in January 2019, and Table 6 of the DEIR/EIS listed 24 approved and pending projects related to the Mendota Pool Group 20-year Exchange Program, some within WWD. CDFW also reviewed and provided comments for the Firebaugh Canal Water District 5-Year Transfer Program (EA/FONSI 18-025) in December 2018. CDFW recommends that the ND include an analysis of existing and foreseeable projects in the Project area, including potential impacts from the most relevant projects listed in Table 6 for the Mendota Pool Group 20-year Exchange Program and other relevant transfer programs within the Project vicinity. These projects could have substantial cumulative impacts to subsidence and water quality, seriously affecting the infrastructure and fish and wildlife habitat, including within the MWA.

Biological Resources. Special status species in the Project vicinity include the State and federally threatened giant garter snake, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), the State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the federally endangered and California Rare Plant Rank (CRPR) 1B.2 San Joaquin woollythreads (*Monolopia congdonii*), the CRPR 1B.2 Munz's tidy-tips (*Layia munzii*), the State candidate for listing crotch bumble bee (*Bombus crotchii*), and the State species of special concern American badger (*Taxidea taxus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), and burrowing owl (*Athene cunicularia*).

While the Project does not include construction of new facilities in the habitats of special status species, subsidence, lowered water quality and increased salt loading could potentially impact special status aquatic fish and wildlife species and affect habitats for special status species, especially in the context of other existing and pending projects affecting water quality and ground subsidence of Mendota Pool, the MWA, and surrounding areas. CDFW recommends that the cumulative impacts analysis include the effects to special status species, including those listed above, from this Project and other current and foreseeable projects.

CDFW Document Recirculation: CDFW requests analyses in addition to the existing ND, in order to clarify the potential impacts to wetlands and riparian habitats, and water quality impacts to special status species and/or nursery sites. CDFW also requests that minimization and compensatory mitigation be evaluated for the Project, to ensure that impacts to fish and wildlife resources remain below levels of significance. The inclusion of the additional analyses and of avoidance, minimization, and any compensatory mitigation measures could warrant recirculation of the document as a Negative

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Declaration with Mitigation Applied, to ensure that any actions that are necessary to prevent significant impacts are required and enforceable pursuant to CEQA.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 obtained at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

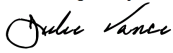
FILING FEES

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 & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist WWD 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.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

cc: See Page Eleven

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California Department of Fish and Wildlife

Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)****PROJECT:** Westland Water District Ground Water Pumping and
Conveyance Project

RECOMMENDED MITIGATION MEASURES	STATUS/DATE/INITIALS
<i>Prior to Adoption of the Negative Declaration and Project Implementation</i>	
Recommended Mitigation Measure 1: A study to determine the percentage of subsidence caused by Project pumping, and adaptive management program to determine when to cease pumping to prevent excess subsidence.	
Recommended Mitigation Measure 2: Evaluate all areas that would be affected by increased subsidence, including MWA, and develop a plan to offset losses of wetland and riparian vegetation communities caused by changes in hydrology associated with subsidence caused by Project pumping. The plan should address mitigation for impacted habitat value and function, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources.	
Recommended Mitigation Measure 3: A Water Quality Management Plan (WQMP) with sufficiently protective water quality criteria (including for TDS and selenium) and thresholds of significance for fish and wildlife species, and measures to reduce any potential significant impacts.	
Recommended Mitigation Measure 4: Amend the selenium detection limit for reporting (DLR) listed in Appendix A of the Negative Declaration to the selenium DLR of 0.005 mg/l in Title 22 Table 64432-A.	