CHAPTER 6
Comments Received

6.1 Federal Agencies

6.1 Federal Agencies

TABLE 6.1-1
FEDERAL AGENCIES THAT SUBMITTED COMMENTS ON THE DRAFT EIS/EIR

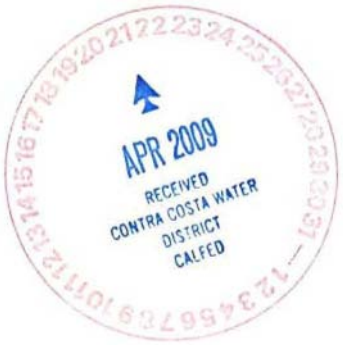
Comment Format	Comment ID	Name of Commenter	Title	Organization/ Affiliation
Email	F_EPA	Kathleen M. Goforth	Manager, Environmental Review Office, Region IX,	Environmental Protection Agency

From: Fujii.Laura@epamail.epa.gov [mailto:Fujii.Laura@epamail.epa.gov]
Sent: Tuesday, April 21, 2009 3:48 PM
To: smchale@usbr.gov; Marguerite Naillon
Subject: Region 9 US EPA comments on DEIS Los Vaqueros Reservoir Expansion Project

Dear Ms. McHale and Ms. Naillon:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. A .pdf file of our comments is attached below. The original signed letter has been mailed to Ms. McHale and copies faxed to each of you.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one hard copy and a CD ROM to the address below (mail code: CED-2). If you have any questions, please contact me at (415) 972-3852 or fujii.laura@epa.gov.



Sincerely,

Laura Fujii
Region 9 US Environmental Protection Agency
Environmental Review Office, CED-2
Communities and Ecosystems Division
75 Hawthorne St., San Francisco, CA. USA 94105
phone: 415-972-3852
fax: 415-947-8026
fujii.laura@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 21, 2009

Sharon McHale
Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
MP-730, Room W-2830
Sacramento, CA 95825-1898

Subject: Draft Environmental Impact Statement (DEIS) for the Los Vaqueros Reservoir Expansion Project, Contra Costa County, California (CEQ# 20090051)

Dear Ms. McHale:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Contra Costa Water District (CCWD) and Bureau of Reclamation (Reclamation) propose to expand the existing Los Vaqueros Reservoir to store water for environmental water management and to improve water supply reliability and water quality for urban users in the San Francisco Bay Area. The reservoir expansion would involve enlarging the existing reservoir; building a new water intake, pump station, and conveyance facilities; modifying and building new power supply facilities; and replacing and enhancing recreation facilities.

We commend CCWD and Reclamation for the well organized, clear, and detailed DEIS. EPA believes it is important to develop water supply strategies consistent with protective water quality standards for the Sacramento River-San Joaquin River Delta (Delta) and San Francisco Bay, and to protect aquatic resources and endangered species. We support the effort to increase water supply management flexibility to serve environmental purposes and improve water supply reliability, provided this can be accomplished without further adverse effects to the Delta and its resources.

The proposed expansion project would allow CCWD to increase diversions of "excess" Delta flows during the winter and spring months, when those diversions will not adversely impact the operations of the State Water Project and Central Valley Project. We recognize that, at this time, the DEIS/EIR can only characterize potential uses of this project and the associated benefits. Notably, the Bay Delta Conservation Plan process and

reevaluation of Delta water quality control requirements by the State Water Resources Control Board could alter the regulatory and operational context for the proposed project. Nonetheless, we recommend a greater effort to provide assurances that environmental benefits will be incorporated into the project.

We have rated this DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "*Summary of Rating Definitions*") because of our concerns regarding environmental assurances for the projected benefits, compensatory mitigation for vernal pools, and climate change effects. We recommend the project design incorporate mechanisms to ensure benefits, and compensatory mitigation for impacts to vernal pools along the Transfer-Bethany Pipeline. The FEIS should include a more in-depth evaluation of climate change effects and adaptation measures. Our detailed comments are enclosed.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one hard copy and a CD ROM to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,

Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:
Detailed Comments
Summary of Rating Definitions

cc: Susan Moore, Sacramento Field Office, US Fish and Wildlife Service
Bill Guthrie, Sacramento District, US Army Corps of Engineers
Robert Solecki, Central Valley Regional Water Quality Control Board
Marguerite Naillon, Contra Costa Water District
Les Grober, State Water Resources Control Board

EPA DETAILED DEIS COMMENTS LOS VAQUEROS RESERVOIR EXPANSION, CONTRA COSTA COUNTY, CA., APRIL 21, 2009

Environmental Benefits

Incorporate environmental assurance mechanisms for projected benefits into the project design. The Draft environmental impact statement (DEIS) contends that the shift of water diversions for South Bay water agencies from the State Water Project (SWP) and Central Valley Project (CVP) diversion pumps to the expanded Los Vaqueros Reservoir, with its state-of-the-art fish screens and multiple intake locations, would provide significant advantages for Delta fish protection due to the increased flexibility to shift water diversions and water conveyance to minimize adverse effects to fish. (This is a "benefit" in the sense of reducing impacts of diverting and supplying water.) Additionally, the project could provide storage for water directed for environmental purposes, such as the Environmental Water Account or refuge water supplies. (These "benefits" depend on a sponsor to fund and manage the supplies.) EPA supports the effort to increase water supply management flexibility for environmental purposes and water supply reliability. We are concerned, however, that the environmental "benefits" are hypothetical and that the needed institutional support and funding are uncertain. 1

> ***Recommendations:***
> We recommend the project design incorporate assurance mechanisms to guarantee environmental and fishery benefits occur. Describe in the Final environmental impact statement (FEIS) a governance process and incentives or requirements to assure that projected environmental benefits are realized in a timely manner. For example, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) could require the establishment of dedicated storage for environmental water as part of the project design, as suggested in the DEIS (p. 1-9).

Evaluate the sensitivity of projected benefits to changes in project design and operational assumptions. The extent of the benefits achieved will depend on factors such as future Delta conveyance and habitat improvements, Delta operations requirements, and the project's precise environmental water management actions as further developed in project permits and agreements with project partners (p. ES- 12).

> ***Recommendation:***
> We recommend the FEIS include a discussion on the sensitivity of projected benefits to changes in the above factors. If appropriate, consider conducting sensitivity analyses to gauge the changes to presumed benefits if project operations and assumptions are changed.

Clean Water Act Section 404

Provide compensatory habitat mitigation for impacts to vernal pools. Alternatives 1 and 2 would each affect 0.86 acres of northern claypan vernal pool habitat along the Transfer-Bethany Pipeline. The project analysis presumes the effect would be temporary because these areas would be restored after construction is completed (p. 4.6-88). It is extremely difficult to re-establish vernal pools once the hardpan has been disturbed. Any 2

disturbance of the hardpan below vernal pools should be considered a permanent impact and compensatory mitigation should be provided. As proposed, the removed hardpan material should be replaced after construction to minimize indirect impacts to surrounding vernal pools. We note that Alternatives 3 and 4 have no vernal pool impacts and that Alternative 4 has significantly fewer impacts to waters of the United States.

> ***Recommendation:***
> Disturbance of the hardpan below vernal pools should be considered a permanent impact requiring compensatory habitat mitigation.

Mitigation should be consistent with the new Compensatory Mitigation Rule of April 20, 2008. The DEIS proposes compensatory mitigation for permanent, unavoidable losses of sensitive plant communities and jurisdictional wetlands and other waters of the United States. A mitigation and monitoring plan would be developed to outline mitigation and monitoring obligations (p. 4.6-91).

> ***Recommendation:***
> Compensatory mitigation, the mitigation and monitoring plan, and long-term protection and management should comply with the new Compensatory Mitigation Rule of April 20, 2008 (40 CFR Section 230.91-230.98; and Federal Register Volume 73, Thursday, April 20, 2008, p. 19687).

2 Cont.

Climate Change

Evaluate the effect of a 3-foot or greater sea level rise and increased tidal surge on Delta water quality and water supply management. The DEIS evaluates the proposed project's contributions to greenhouse gas emissions and the adverse effects of climate change on the project. However, the effects analysis evaluates only the effects of a one-foot sea-level rise on salinity, and does not factor in the influence of tidal incursion (p. 5-11). Moreover, the DEIS contends that Delta water quality standards would still be met by releasing additional water from SWP and CVP reservoirs to offset the projected increases in salinity. There is increasing evidence that sea level rise may be significantly higher than one-foot.[1] We are concerned that the effects of climate change may be much greater than portrayed and would significantly impair the ability to maintain water quality through the release of upstream reservoir water.

> ***Recommendation:***
> We recommend the FEIS update the climate change effect evaluation to analyze a 3-foot or greater sea-level rise and increased tidal surge on water quality (e.g., salinity, organic material). The analysis should evaluate the implications of climate change effects for CVP/SWP operations, water supply reliability, and expanded Los Vaqueros Reservoir operations. Explain the basis for positing that use of stored water upstream would be a feasible way of managing water quality

3

[1] Climate Change and Water Resources Management: A Federal Perspective, Circular 1331, U.S. Department of the Interior and U.S. Geological Survey, 2009, (http://pubs.usgs.gov/circ/1331/). See also Letter from Phillip L. Isenberg to Gov. Schwarzenegger, March 24, 2008 (Delta Vision Blue Ribbon Task Force adopting, for planning purpose, a sea level rise projection for 2100 of 55 inches).

at the intakes. Discuss other potential management responses, if information is available.

3 Cont.

General Comments

Include Federal and State Feasibility Reports in the FEIS. The DEIS states that Federal and State Feasibility Reports are being developed to provide detailed information on the potential project benefits and costs, the allocation of costs to potential project beneficiaries, and project participants (p. ES-6). The identification of final project participants and beneficiaries and potential benefits and costs will influence the final range of alternatives and project design.

4

Recommendation:

To ensure full public disclosure to support decision-making, we recommend the conclusions of the Federal and State Feasibility Reports be summarized in the body of the FEIS, and the Reports be included as appendices in the FEIS.

6.2 State Agencies

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

6.2 State Agencies

6.2 State Agencies

TABLE 6.2-1
STATE AGENCIES THAT SUBMITTED COMMENTS ON THE DRAFT EIS/EIR

Comment Format	Comment ID	Name of Commenter	Title	Organization/ Affiliation
Fax	S_Caltrans	Lisa Carboni	District Branch Chief	California Department of Transportation
Mail	S_CVFPB	James Herota	Staff Environmental Scientist	Central Valley Flood Protection Board
Email	S_DFG	Charles Armor	Regional Manager, Bay Delta Region	California Department of Fish and Game
Fax	S_DOC	Dan Otis	Williamson Act Program Manager	California Department of Conservation
Mail	S_DSOD	David A. Gutierrez	Chief	California DWR, Division of Safety of Dams
Mail	S_SWRCB	Katherine Mrowka	Chief Inland Streams Unit	California State Water Resources Control Board

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 622-5491
FAX (510) 286-5559
TTY 711

Flex your power!
Be energy efficient!

April 6, 2009

BAG0037
SCH #2006012037
CC-4-45.33-47.71
CC-160-R34.35

Ms. Marguerite Naillon
Contra Costa Water District
P.O. Box H20
Concord, CA 94524-2099

Dear Ms. Naillon:

Los Vaqueros Reservoir Expansion Project – Draft Environmental Impact Report (DEIR)

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the Los Vaqueros Reservoir Expansion Project. The following comments are based on our review of the DEIR.

As lead agency, the Contra Costa Water District is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing, scheduling, and implementation responsibilities as well as lead agency monitoring should be fully discussed for all proposed mitigation measures and the project's traffic mitigation fees should be specifically identified in the Environmental Impact Report.

Any required roadway improvements should be completed prior to issuance of project occupancy permits. An encroachment permit is required when the project involves work in the State's right of way (ROW). Therefore, we strongly recommend that the lead agency ensure resolution of the Department's concerns prior to submittal of the encroachment permit application; see the end of this letter for more information regarding the encroachment permit process.

1

Cultural Resources
We are in agreement with the findings and mitigation measures in Section 4.16.1 in the Cultural Resources section of the DEIR. Should ground disturbing activities take place within the State ROW as part of this project, these mitigation measures will need to be

2

expanded to incorporate State land. If there is an inadvertent archaeological or burial discovery, the Department Office of Cultural Resource Studies, District 4, Oakland shall be immediately contacted at (510) 286-5618. A staff archaeologist will evaluate the finds within one business day of being contacted. A data recovery plan and all subsequent reports for investigations within State ROW will need to be approved by the Office of Cultural Resource Studies, District 4.

2 cont

Permits

Transportation Permits - Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by the Department. To apply, a completed transportation permit application with the determined specific route(s) for the shipper to follow from origin to destination must be submitted to the address below.

Office of Transportation Permits
California DOT Headquarters
P.O. Box 942874
Sacramento, CA 94274-0001

See the following website link for more information:
http://www.dot.ca.gov/hq/traffops/permits/.

Encroachment Permits - Additionally, any work or traffic control within the State's ROW requires an encroachment permit that is issued by the Department. Traffic-related mitigation measures will be incorporated into the construction plans during the encroachment permit process. See the following website link for more information:
http://www.dot.ca.gov/hq/traffops/developsery/permits/

3

To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans which clearly indicate State ROW to the address at the top of this letterhead, marked ATTN: Michael Condie, Mail Stop #5E.

Should you have any questions regarding this letter, please contact Lisa Courington of my staff via email at lisa.ann.courington@dot.ca.gov or by phone at (510) 286-5505.

Sincerely,

for LISA CARBONI
District Branch Chief
Local Development – Intergovernmental Review

c: State Clearinghouse

STATE OF CALIFORNIA – THE RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD
3310 El Camino Ave., Rm. LL40
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682

April 23, 2009

Marguerite Naillon
Contra Costa Water District
P.O. Box H20
Concord, CA 94524-2099

Dear Ms. Naillon:

State Clearinghouse (SCH) Number: 2006012037 Draft Environmental Impact Report
Los Vaqueros Reservoir Expansion Project

Staff for the Department of Water Resources has reviewed the subject document and provides the following comments:

The Central Valley Flood Protection Board (Board) is responsible for flood safety within California and maintains the integrity of the existing flood control system and designated floodways through the Board's regulatory authority by issuing permits for encroachments. Development projects within the jurisdiction of the Board are required to meet standards for the construction, maintenance, and protection of adopted plans of flood control that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (Title 23 California Code of Regulations (Title 23 CCR), Section 2). Working with the Contra Costa Water District staff early in the project planning will help Board staff and other interested parties to identify potential project impacts, appropriate mitigation measures, and thereby improve the safety of floodways.

In the Draft Environmental Impact Report Los Vaqueros Reservoir Expansion Project, Volume 1, p. 4.5-5 the State Reclamation Board approval was acknowledged as being required for the proposed project. The Reclamation Board has been changed to the Central Valley Flood Protection Board in accordance with the California Water Code Section 8521 which states " "Board" means the Central Valley Flood Protection Board. Any reference to the Reclamation Board in this or any other code means the Central Valley Flood Protection Board." 1

A Board permit is required prior to starting the work within the Board's jurisdiction for the following:

- The placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting, or removal of vegetation, and any repair or maintenance that involves cutting into the levee(CCR Section 6);

- Existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised (CCR Section 6). 2

The proposed project alternatives include tributaries and distributaries within the Board's jurisdiction including, but not limited to Kellogg Creek and Old River.

The permit application and Title 23 CCR can be found on the Central Valley Flood Protection Board's website at http://www.cvfpb.ca.gov/. Contact your local, federal and state agencies, as other permits may apply. If you have any questions please contact me at (916) 574-0651 or by email jherota@water.ca.gov.

2 Cont.

Sincerely,

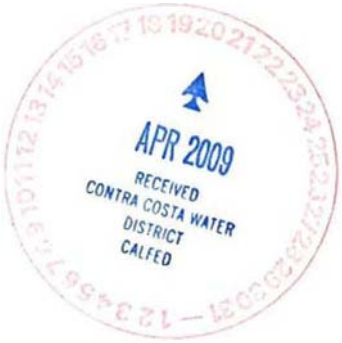
James Herota

James Herota
Staff Environmental Scientist
Floodway Protection Section
Division of Flood Management

cc:
Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

----- Original Message -----
From: Debbie HULTMAN <DHULTMAN@dfg.ca.gov>
To: Marguerite Naillon
Sent: Mon Apr 20 16:25:27 2009
Subject: Los Vaqueros Reservoir Expansion Project

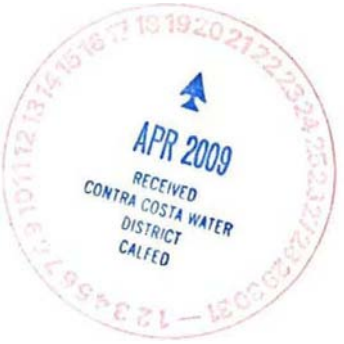
Please see the attached letter. Original to follow.



Debbie Hultman, Office Technician
Department of Fish & Game
Bay Delta Region
Habitat Conservation Unit
(707) 944-5548 phone
(707) 944-5574 fax

California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
Post Office Box 47
Yountville, California 94599
(707) 944-5500
http://www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director



April 20, 2009

Ms. Marguerite Naillon
Contra Costa Water District
Post Office Box H2O
Concord, CA 94524-2187
Via e-mail at mnaillon@ccwater.com

Ms. Sharon McHale
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way, Room W-2830
Sacramento, CA 95825-1898

Dear Ms. Naillon and Ms. McHale:

Subject: Los Vaqueros Reservoir Expansion Project, Draft Environmental Impact Report, SCH #2006012037, Contra Costa County

Department of Fish and Game (DFG) personnel have reviewed the draft Environmental Impact Report (EIR) for the Los Vaqueros Reservoir Expansion Project (Project), dated February 2009. Our comments and recommendations are made under the authority of the California Endangered Species Act (CESA) (Fish and Game Code § 2050-2097), and the California Environmental Quality Act (CEQA) (California Public Resources Code § 21000 et seq.). DFG is identified as a Trustee Agency pursuant to CEQA Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources.

PROJECT DESCRIPTION

The Los Vaqueros Reservoir is located in the foothills west of the Sacramento-San Joaquin Delta (Delta) in Contra Costa County. The current reservoir capacity is 115 thousand acre feet (TAF). The draft EIR describes four action alternatives that represent different combinations of facility and water system operations for expanding Los Vaqueros Reservoir and associated water conveyance. Alternatives 1 and 2 include the largest reservoir expansion to 275 TAF and the South Bay Connection to serve the 3 South Bay water agencies (Contra Costa Water District, Santa Clara Valley Water District, and Zone 7) with connection to the Department of Water Resources South Bay Aqueduct (SBA) facilities at Bethany Reservoir. Alternatives 3 and 4 have no SBA Connection and differ as to the size of the expanded reservoir (275 TAF versus 160 TAF reservoir).

These comments address Alternative 1, which is the largest reservoir expansion considered of the four action alternatives, has the greatest extent of associated facilities, and would be operated to meet both of the primary Project objectives. Under this alternative, the reservoir would be expanded from the existing storage capacity of 115 TAF to 275 TAF. This would involve raising the existing dam, essentially building over the existing dam facility to raise and strengthen it to support the larger reservoir. The reservoir water surface area would increase from about 1,500 acres to about 2,500 acres.

A new Delta Intake and Pump Station as well as new conveyance facilities to move water from the Delta to the Los Vaqueros Reservoir would be constructed. The South Bay Connection would be constructed linking the Los Vaqueros Reservoir system to South Bay water agencies via Bethany Reservoir and the South Bay Aqueduct. New power facilities would be constructed to serve the new intake and other expanded Los Vaqueros Reservoir system facilities. Recreational facilities affected by the increased inundation area would be relocated or replaced. Alternative 1 also includes construction of additional recreational facilities.

IMPACTS AND MITIGATION

General Comments

We have been discussing and reviewing information about the Project with the U.S. Fish and Wildlife Service (USFWS), the Contra Costa Water District (CCWD), and the U.S. Bureau of Reclamation (BOR) from 2004 to 2008. The goal of these efforts was to discuss the best available scientific information and to use this information to formulate an accurate assessment of the impacts of this proposed Project on the special status species and habitats known to occur in the watershed and within the alignment of associated facilities. We also had extensive discussions about land outside of the watershed areas, which will be affected (i.e., Round Valley) and the context of this Project relative to other projects proposed or already constructed in the area from San Joaquin County to Black Diamond Mines Regional Preserve. Measures would then be incorporated to reduce unavoidable impacts to a less-than-significant level as required by CEQA and to fully mitigate unavoidable impacts as required by CESA.

For a number of species, the information generated from these 4 years of efforts was incorporated into the draft EIR. We appreciate that the best available information and recommendations were incorporated into the in-watershed impact assessment for California red-legged frog (*Rana aurora draytonii*; CRLF) and California tiger salamander (*Ambystoma californiense*; CTS). Updated survey methods for western burrowing owl (*Athena cunicularia*) surveys were incorporated. Information about habitat uses and dispersal information for Alameda whipsnake (*Masticophis lateralis euryxanthus)*, although it did not guide the impact assessment, was acknowledged in the draft EIR. It is important that the most accurate information be presented in these public documents.

The draft EIR did not address a number of significant concerns we have expressed throughout the four years of meetings. The draft EIR does not provide all of the information required for DFG or necessary for CEQA, and omits and defers information until a later

1

date. Effects from removal of the north-south connection for grassland species through the watershed, and impacts to habitat other than breeding or "core" habitat, were not adequately mitigated. CEQA requires that the draft EIR provide sufficient analysis and detail about the Project and environmental impacts of the Project to enable informed decision-making by the Lead Agency and informed participation by the public [see CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990)]. Both the public and decision-makers need to fully understand the implications of the Project, alternatives, and mitigation measures [see *Laurel Heights Improvement Ass'n v. Regents of University of California*, 6 Cal.4th 1112, 1123 (1993)]. 1 Cont.

The draft EIR does not adequately identify and discuss all indirect adverse effects associated with the interface of the proposed developed and undeveloped areas. Impacts associated with new trails on the east side of the reservoir, in areas formerly designated as no public access, need to be fully discussed and avoided or mitigated based on that analysis. 2 There is also inadequate discussion of the consequences of the loss of areas encumbered by conservation easements and how these incompatible uses will be allowed to occur. 3

The draft EIR's discussion of potential effects to wildlife corridors and habitat linkages does not consider a number of additional projects in the East Contra Costa and Alameda County areas. Cumulatively, these projects threaten to eliminate the viability of the remaining grassland linkages between Black Diamond Mines Regional Preserve, Cowell Ranch State Park, Round Valley Regional Preserve, the Los Vaqueros Watershed, and San Joaquin County. Although the draft EIR does discuss some projects in these areas, it does not incorporate important information about projects in the critically narrowed grassland corridors and linkages such as the Roddy Ranch Project in Antioch, the Mountain House Residential Development near Tracy, and the Delta College Tracy Campus. For example, impacts to movement corridors from the Mountain House Project were not identified in the EIR for that project and so were not considered here. 4

The draft EIR does not discuss wind leases or wind rights on the watershed lands that may be proposed as conservation areas. DFG has concerns with these and other obligations that may diminish the conservation value of lands. The applicant needs to disclose these or any other incompatible encumbrances on potential Habitat Management lands and work with DFG to resolve any outstanding issues. 5

The draft EIR proposes avoidance and mitigation measures based on guidance in the Multi-Species Conservation Strategy (MSCS) CALFED Fed 2000 document. The various impacts discussed above (i.e., existing encumbrances, cumulative impacts, changed circumstance on previously conserved lands) were not adequately considered in the preparation of the MSCS document. Deficiencies in the discussion and analysis of these impacts make it difficult to determine if implementation of the avoidance strategies and mitigation measures proposed in the draft EIR will reduce impacts to a less-than-significant level. Recognition of these additional cumulative and indirect impacts has led DFG to conclude that conservation of additional high quality habitat will be required and that these 6

conservation areas must be highly functioning for the target species and must preserve critically threatened habitat linkages for San Joaquin kit fox (*(Vulpes macrotis mutica; SJKF)* and other grasslands dependant species. 6 Cont.

Wetlands or Waters

Project Proposal

Under Alternative 1, the Project would directly impact wetland features both within and outside the Los Vaqueros Watershed and would affect mitigation wetlands created to compensate for the existing Los Vaqueros Reservoir. Within the watershed, Permanent Emergent Wetlands would experience the greatest permanent impacts by area (2.54 acres in 17 features). Permanent impacts would also be incurred to Natural Seasonal Wetlands (1.85 acres in 29 features), Riparian Wetlands (0.24 acres in one feature) and Lacustrine Wetlands (1.25 acres in 4 features). Temporary impacts will occur to approximately 7.29 acres (0.02 acres in the watershed to non-tidal freshwater permanent emergent and 7.27 acres of wetland and waters at locations outside of the watershed).

According to the draft EIR, Alternative 1 would be significant prior to mitigation, but can be mitigated to a less-than-significant level through the incorporation of avoidance strategies, Best Management Practices, and on-site and off-site compensatory mitigation. Temporary impacts would be eliminated by site restoration and by removal of the cofferdam at the completion of in-channel work for the new Delta Intake and Pump Station.

The draft EIR states that impacts associated with Alternative 1 would be reduced to a less-than- significant level through the implementation of Mitigation Measure 4.6.2a, which seeks to avoid and minimize effects to wetlands and other waters to the greatest extent practicable, and Mitigation Measure 4.6.2b, which provides compensation for impacts through wetland restoration or creation at a ratio of between 2:1 and 3:1. A DFG-approved management and monitoring plan will be implemented for all mitigation wetland areas.

Comments

DFG does not agree with the findings that the proposed mitigation measures will reduce impacts to less-than-significant levels. The Project proposal must address the following concerns to ensure that impacts to wetlands and waters are reduced to a less-than-significant level.

Acreage estimates must include DFG jurisdictional areas addressed in Fish and Game Code Section 1600 *et. seq*. It is not clear from the description in the document that the impact estimates include all DFG jurisdictional area or if they are limited to U.S. Army Corps of Engineers jurisdictional areas. 7

Temporary impacts should be defined as impacts which last less than one season and that occur in areas where in-situ restoration is reasonably expected to restore the area to pre-project conditions within two years (areas which are unvegetated or support primarily herbaceous or rapidly growing woody vegetation).

DFG does not agree with the assumption that temporary impacts would be eliminated by site restoration and by removal of the cofferdam at the completion of in-channel work for the new Delta Intake and Pump Station. Temporary impacts to wetlands and waters should be mitigated at a ratio of 1.1:1 (conserved:impacted). Restoration of affected areas under DFG jurisdiction must occur according to plans approved by DFG.

Any wetland mitigation areas, including those restored at the impact site, will be considered as mitigation only when the area is restored, conserved, and managed in perpetuity.

DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

Avoidance strategies must include siting access vaults, manholes, and blow off valves for the pipelines outside of DFG jurisdictional areas and where they will minimize impacts to sensitive habitat for native species. Since the draft EIR does not specifically prohibit the location of these facilities in jurisdictional areas, an impact estimate should be provided in the EIR.

7 Cont.

Fisheries

Background

The Delta serves as habitat and/or a migratory route for Federal and State listed species, including Central Valley steelhead (*Oncorhynchus mykiss*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run Chinook salmon, Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*), green sturgeon (*Acipenser medirostris*),and Sacramento splittail (*Pogonychthys macrolepidotus*). Proposed diversions from the Delta have the potential to impact water quality conditions and seasonal passage for State and federally listed anadromous fish species to upstream habitat in the San Joaquin River/Sacramento watersheds. Diversion operations may also result in mortality of listed and other fish species, and have a cumulative impact on water quality objectives necessary to keep Delta species in good condition.

The recent collapse in the abundance of Sacramento and San Joaquin Delta fishes including delta smelt, longfin smelt, threadfin shad and Chinook salmon, may be a result of a significant decline in habitat quality in the Delta. Evidence implies that in normal to dry years, sufficient water is not available to satisfy all existing appropriative and riparian rights within the system without further impairing listed fish. The Interagency Ecological Program (IEP) has determined that there are three main factors acting individually or cumulatively to lower pelagic productivity in the Delta: toxic contaminants, exotic species, and water diversions. Limited information has been available about the quantity and nature of all existing diversions in the Delta, and this lack of information has been an impediment to assessing flow availability and water quality effects in the Delta. Freshwater flows are critical to maintaining minimum water quality objectives.

Project Proposal

The CCWD is aware that, during some years, water is not available for diversion during portions or all of the season authorized under existing water rights either when protective measures for listed fish species are being implemented or when water quality measures are in effect. The proposed Project would more than double the maximum instantaneous rate of diversion that could be conveyed from the Delta and could significantly increase the annual amount of water diverted from the Delta.

Comments

This increase in rate and total amount of water diversion from the Delta will have significant impacts to listed fish species not currently addressed in CESA authorizations with DFG. According to the draft EIR, current water diversions are occurring in conformance with the 1994 CESA Memorandum of Understanding (MOU) between DFG and CCWD. DFG is currently in consultation with CCWD to amend this MOU to address changes to operations, impacts and mitigation measures as part of CCWD's Alternative Intake Project. While it is anticipated that the CESA Amendment will cover water diversion at a rate of up to 320 cubic feet per second and up to 177 TAF per year, it does not address the impacts or mitigation measures resulting from increased diversion proposed by this Project. For DFG to rely on the EIR for future CESA consultation, we recommend the EIR fully disclose and analyze any expected changes to water diversion operations and propose avoidance and mitigation measures consistent with current measures protective of listed fish species. CCWD should consult with DFG to obtain any necessary CESA authorization. 8

Additional water diversions from the Delta above baseline needed to fill the proposed expanded reservoir or increase the number of water users could cause adverse impacts to listed fish species. DFG recognizes some environmental benefits of expanding storage to provide CCWD with additional operational flexibility during dry and critically dry years. However, cumulative impacts of water diversion on listed fish and other conditions in the Delta must be considered and quantified as part of a water availability analysis necessary for CESA authorization.

Special Status Plant Species

Project Proposal

Under Alternative 1, the Project would directly impact special-status plant populations including Brewer's dwarf-flax, rose-mallow, and San Joaquin spearscale. An unknown number of individual Brewer's dwarf-flax plants would be affected by inundation and relocation of the westside access road; a small population of rose-mallow would be affected at the new Delta Intake and Pump Station site; and a population of San Joaquin spearscale would be affected by the Transfer-Bethany Pipeline alignment. Limited follow-up surveys would be needed to assess the presence of heartscale and brittlescale populations that may be present in several distinct locations on the Transfer-Bethany Pipeline and on the Western powerline alignment.

The draft EIR states that Impacts related to Alternative 1 would be significant prior to mitigation, but can be mitigated to a less-than-significant level through avoidance,

protection, restoration, and habitat enhancement. Impacts associated with Alternative 1 would be reduced to a less-than-significant level through implementation of Mitigation Measure 4.6.3a, which strives to minimize impacts through avoidance strategies and protective measures; and Mitigation Measure 4.6.3b, which provides compensation for impacts through restoration and habitat enhancement.

Comments

For all unavoidable impacts to special-status plant species, land that supports known population of affected special-status plants will be identified, enhanced, and protected on mitigation lands within the watershed or on those lands acquired outside the watershed, at a ratio of 1.1:1. In addition, enhancement of suitable unoccupied habitat will occur through site management and translocation of salvaged plants or seeds or seedlings as appropriate at a ratio of 1:1.

Any mitigation areas, including those restored at the impact site or within the watershed, will be considered as suitable for mitigation only when the area is restored, conserved, managed in perpetuity and when the site can meet the success criteria approved by DFG.

DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG under terms approved by DFG.

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California Red-legged Frog and California Tiger Salamander

Project Proposal

Under Alternative 1, the Project would directly impact CRLF and CTS individuals, aquatic breeding habitat, and upland aestivation habitat through inundation, reduction in supplemental water supplied from the reservoir to ponds, sustained dewatering of some ponds, and other construction activities.

Permanent impacts on aquatic sites and upland aestivation habitat would generally occur as a result of reservoir inundation, while temporary impacts on upland aestivation areas would occur along pipeline corridors that traverse undeveloped annual grasslands.

According to the draft EIR, all undisturbed annual grasslands and oak woodland habitats in the watershed may support aestivating CTS or CRLF, and provide upland movement corridors for these species. The expansion of the Los Vaqueros Reservoir and associated in-watershed facilities would cause the direct and permanent loss of 976.2 acres of annual grasslands and 149.6 acres of oak woodlands, representing a total of 1,125.8 acres of upland aestivation and migratory habitat potentially occupied by these species. Temporary impacts in the watershed will occur to 45.8 acres of grassland.

Direct impacts on known and potential aquatic breeding sites include the loss of 11 ponds in the 275 TAF reservoir inundation area. Ten of the eleven inundated ponds support CRLF breeding populations and four ponds support CTS breeding. Eighteen stock ponds are dependent upon the reservoir for supplemental water.

Five ponds in the Inlet/Outlet Pipelines construction area, each of which supports CRLF breeding, would be avoided by Project design; however, these ponds are subject to long-term temporary (i.e., greater than one year) dewatering during construction, as Los Vaqueros Reservoir will be unavailable as a water source during this period.

For out-of-watershed facilities, the draft EIR estimates that there will be 251.6 acres of temporary impacts to grassland and up to 149.6 acres of oak woodland impacts.

In the Inlet/Outlet Pipelines construction area, construction activities would last for two years. The areas of temporary disturbance would ultimately be restored to annual grasslands or oak woodland after Project construction. An unknown number of CRLF and CTS would be destroyed as a result of these impacts to upland habitat and aquatic habitat sites.

Water would be bypassed around Los Vaqueros Dam during construction so that water releases into lower Kellogg Creek would be maintained during construction. Water would also continue to enter the lower reach of the creek seasonally from other natural sources tributary to the creek (e.g., spring releases, surface runoff, and groundwater). With maintained flows, the quality and availability of breeding and nonbreeding (summer) habitat for CRLF is not expected to change markedly in Kellogg Creek.

CCWD shall provide compensation for permanent and temporary impacts on CTS and CRLF aquatic habitat. In accordance with MSCS (CALFED, 2000) objectives, CCWD shall provide compensation for the permanent loss of CRLF and CTS aquatic habitat at a minimum of a 3:1 ratio. The MSCS does not require compensation for loss of CRLF and CTS aestivation habitat.

New mitigation ponds that are created for CRLF and CTS shall be hydrologically self-sustaining and shall not require a supplemental water supply. Because few natural drainages in the Los Vaqueros Watershed could maintain self-sustaining mitigation ponds, a portion of the pond mitigation locations will likely be identified outside of the watershed.

The draft EIR states that impacts related to Alternative 1 would be significant prior to mitigation, but can be mitigated to a less-than-significant level through implementation of Mitigation Measure 4.6.4a, which provides for species take avoidance and impact-minimization measures, through provision of supplemental water to pond breeding sites during construction, and Mitigation Measure 4.6.4b, which provides compensation for impacts through land acquisition and habitat management.

Comments

DFG does not agree with the findings that the proposed mitigation measures will reduce impacts to less-than-significant levels. The Project proposal must address the following concerns to ensure that impacts to CRLF and CTS are reduced to a less-than-significant level.

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DFG will approve the construction monitor. DFG will review and approve any CTS relocation or salvage plan. A description of the pre-construction site survey will be submitted to DFG and USFWS for review and approval at least one month before the survey is to be implemented. DFG and USFWS will determine the most effective time to implement the surveys.

Suitable occupied habitat must be acquired to mitigate unavoidable impacts to CTS and CRLF habitat. Mitigation must be provided for temporary and permanent impacts to upland and aquatic habitat. It is not sufficient to provide mitigation for impacts to breeding habitat only. Lands used to mitigate impacts to these species must support known populations of CTS and CRLF and must be enhanced and protected at a ratio of 3:1. Any mitigation areas, including those restored at the impact site or within the watershed, will be considered as suitable for mitigation only when the area is restored, conserved, managed in perpetuity and when the site can meet the success criteria without the use of supplemental water.

Suitable unoccupied habitat that is within dispersal distance of known populations may be acceptable as a part of the mitigation proposal if alteration of site conditions through management or pond construction results in colonization of these sites. Financial security, which could be used if necessary to acquire alternative mitigation sites, must be provided and held by DFG until it is determined that mitigation sites are occupied and will support the target species for the long-term. Success criteria will be developed in consultation with DFG and must include measurable parameters, use of a reference site, and specific timeline requirements. If DFG determines that the site enhancement is not successful within the specified period of time, the applicant must provide an alternate occupied site.

10 Cont.

DFG must approve mitigation lands for their biological suitability. The needs of CTS and CRLF differ. Requirements for ponding duration and depth, presence of vegetation and other factors differ between these species. The suitability of proposed sites and success of enhanced sites will be evaluated according to each species' specific needs and sites may or may not be suitable for both species. In addition to acreage replacement, the mitigation areas must be able to sustain populations of these species for the long-term. The mitigation areas must provide a range of aquatic features that will be suitable for breeding during a variety of water years. Also, because both species are known to be subject to local periodic extinction due to factors such as disease and predation and rely on genetic exchange to support a healthy sustainable population, landscape position of the site and spatial arrangement of the aquatic features must be accessible to dispersing individuals and conducive to recolonization. Presence of all life stages and successful reproduction and metamorphosis must occur over a number of years for a site to be deemed successful. Specific criteria will approved by DFG.

Mitigation lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

Western Pond Turtle (*Clemmys marmorata marmorata; WPT*)

Project Proposal

Construction of the expanded Los Vaqueros Reservoir, in-watershed facilities, and recreational facilities would directly affect known WPT populations, as well as both aquatic and upland habitat for WPT. Six stock ponds, ten created wetlands, and several drainages (including Kellogg Creek) would be affected by reservoir inundation and in-watershed activities; of these areas, at least three ponds known to support WPT would be directly affected by inundation. Eight ponds that support WPT would be directly affected by construction of Los Vaqueros Dam, associated Inlet/Outlet Pipelines, and relocation of the westside access road. The WPT is documented in the Inlet/Outlet Pipelines construction area, and this species may opportunistically be encountered in ponds, within Kellogg Creek, or in uplands in this area. Where possible, siting of the pipeline and construction activity would avoid aquatic features that could support this species. Turtles would be relocated if encountered in work areas, and turtle populations would be monitored to ensure successful relocation.

Comments

Known occupied WPT habitat should be conserved when possible. A habitat management plan should include provisions that benefit WPT, such as inclusion of basking sites and woody debris where appropriate.

DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

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San Joaquin Kit Fox

Project Proposal

Grassland habitat in eastern Contra Costa County represents suitable habitat for the SJKF. The loss, fragmentation, and degradation of habitat are considered primary threats to the northern population of SJKF. Fragmentation of populations by aqueducts, busy highways, and other obstructions increases isolation, limits dispersal, and reduces genetic flow between populations. Other general threats to SJKF include the application of rodenticides in some areas, either as a direct threat through poisoning or as an indirect threat through reducing the abundance of their prey. Invasion of fragmented habitats by coyotes, red foxes (*Vulpes vulpes*), and feral dogs can also increase SJKF mortality. USFWS, DFG, and other resource experts consider all continuous annual grasslands in the watershed and major portions of the proposed pipeline alignment routes as suitable habitat for the SJKF. Long-term temporary habitat disturbances in the Inlet/Outlet Pipelines construction area would last a period of at least two years during construction of Los Vaqueros Dam and other facilities. During this extended period, these areas would be unavailable for SJKF habitation or movement. While these impacts are in essence temporary, during on-going consultation, DFG and USFWS have indicated that such long-term habitat disturbances require greater compensation than typically applied for short-term temporary impacts (i.e., greater than a 1.1:1 replacement ratio).

Direct Impacts to Potential Movement Corridors: In 1993, USFWS acknowledged that construction of the existing Los Vaqueros Reservoir would partially obstruct SJKF dispersal between the Herdlyn watershed (south and east of the reservoir) and Round Valley (north of the reservoir) (USFWS, 1993a).

Within the watershed, large tracts of grassland surrounding the reservoir on the north, east, and south have been identified as the some of the most important remaining routes for SJKF movement in the watershed. After reservoir expansion, these movement corridors would remain largely intact. The eastern, northeast and northern sides of the reservoir would continue to provide potential dispersal and cover habitat. This general movement corridor area would remain a link between Round Valley and important SJKF areas south and east of the watershed. The reservoir expansion would incrementally reduce the size of this corridor area north of the reservoir from about 5,222 to 5,135 feet (a distance of about 87 feet at its narrowest point). This loss of grassland habitat would not restrict potential SJKF dispersal corridors; thus, this effect on potential regional SJKF movement would be less-than-significant

On the western side, reservoir expansion to 275 TAF would inundate the remaining grassland area, thereby eliminating a potential SJKF movement corridor. This area is currently a 1,000- to 2,000-foot-wide area of annual grasslands, with a few areas of oak woodland intrusion. With reservoir expansion, the waterline would seasonally inundate annual grasslands along this corridor and advance into upslope oak woodland habitat. Assuming SJKF use this corridor, the oak woodland habitat would represent a movement barrier for SJKF. The loss of this potential western movement corridor is considered a potentially significant and unavoidable impact on SJKF movement opportunities. Mitigation through land acquisition and habitat protection is proposed to preserve and enhance other existing regional movement corridors, particularly those with documented use. However, while this mitigation may preserve effective regional movement corridors for SJKF in the eastern Contra Costa County region, information about SJKF movement in this area is insufficient to confirm that this mitigation would fully lessen the potential effects of reservoir expansion. As a result, this impact to this potential SJKF movement corridor is considered significant and unavoidable.

Indirect Impacts: Three potential indirect impacts on SJKF would result from the Project: 1) isolation of annual grasslands on the western side of the reservoir due to inundation, 2) the potential for increased predation of SJKF by coyotes, and 3) habitat disturbances in the Inlet/Outlet Pipelines construction area during construction that, while temporary, could extend for three years and render this area unusable as a movement corridor during that period. However, concurrent with dam construction, the reservoir would be fully drained and dried, opening additional movement opportunities for SJKF in the western portion of the reservoir. These impacts are discussed in the following paragraphs. Some reservoir facilities would require nighttime lighting for safety and security, both during and after construction. Limited nighttime lighting is not expected to have a substantial effect on SJKF populations.

Grassland Isolation. On the western side of Los Vaqueros Reservoir, inundation to the 275 TAF level would raise the waterline into oak woodland habitat along much of the shoreline. Two large grassland areas (118.5 acres and 96.1 acres) would not be inundated or directly affected by the Project; however, reservoir inundation would isolate these areas from surrounding grasslands and render them inaccessible to SJKF. As a result, the Project would contribute to the indirect loss of 214.6 acres of grassland habitat for SJKF habitation and dispersal.

Long-term Temporary Impacts. Construction of the Inlet/Outlet Pipelines would occur over a two-year period, rendering this area temporarily unusable as a potential SJKF movement corridor. Concurrent with Los Vaqueros Dam construction, the reservoir would be fully drained and additional SJKF movement opportunities would be temporarily available in the western portion of the reservoir. Thus, the Project would temporarily alter SJKF migration pathways in the watershed. It is expected that the reservoir would be completely dry within months after water drawdown and that SJKF would have a direct overland route across the dry reservoir within one to three months of draining. This route would require traversing less than a mile of relatively barren mineral soil and dry clay, a significant reduction in travel distances from the Round Valley region to areas south of the Los Vaqueros Reservoir. SJKF have been known to travel up to six miles in a single day and virtually all of their movements occur at night; thus, the lack of cover or refugia features is not expected to decrease the potential use of reservoir areas for overland migration. This route would be available during construction of the Inlet/Outlet Pipelines. As a result, construction of the reservoir Inlet/Outlet Facilities is not expected to contribute additional indirect impacts to SJKF.

Comments

DFG does not agree with the findings that the proposed mitigation measures will reduce impacts to less-than-significant levels and that the loss of the west side grasslands impacts have been mitigated to the maximum extent practicable. The Project proposal must address the following concerns to ensure that impacts to SJKF are reduced to a less-than-significant level.

Impacts associated with loss of the west side grasslands are underestimated. The two areas of grassland that will be isolated by the inundation have been included, as recommended by DFG, but the isolation and diminished accessibility to Round Valley Regional Preserve and habitat to the south and west of the reservoir has not been acknowledged. The most desirable SJKF habitat in the Los Vaqueros Valley was lost with the inundation of the original reservoir area. The remaining grassland on the west side is the highest quality north to south connection through the reservoir area. The accessibility of Round Valley Regional Preserve from the west side grasslands is through gently rolling grassland and is far superior to any connection available in the grasslands on the east side of the reservoir which is impeded by steep slopes and vegetation. Although SJKF can traverse quite steep slopes and vegetated areas, the likelihood of predation increases significantly under these conditions. In addition, it is necessary to maintain as many suitable routes as possible to maximize the successful movement of individuals through the

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area. The impact assessment fails to acknowledge the effect of the diminished access through the reservoir areas to Round Valley Regional Preserve both permanently and during construction of the Inlet/Outlet Pipelines and dam.

The feasibility of the proposal for the drained area of the reservoir to function as suitable habitat for SJKF while construction occurs at the Inlet/Outlet Pipelines needs additional analysis before DFG can support that assumption. Depending on the drawdown schedule; the construction schedule relative to the time it will take the area to dry; vegetation that may colonize the area; and on-going disturbance within the old reservoir footprint, the impacts from the multiple year construction at the Inlet/Outlet Pipelines may further diminish the suitability of an already compromised connection. This area is proposed as the most important long-term conservation area for SJKF in the Los Vaqueros watershed, and we do not know the long-term effect of having disturbance in these areas for multiple years.

The mitigation lands must provide viable and high quality grasslands and ideally would maintain the accessibility to Round Valley Regional Preserve through the reservoir area. Mitigation lands should also provide this function in other locations known to be critical to maintaining the connectivity of the northern range foxes from Black Diamond Mines Preserve in the north through to San Joaquin County and areas further to the south. Landscape position, existing attributes, and effective land management will be critical factors in determining the value of these lands to the SJKF population in this northern extent of the range, where fragmentation of habitat is as critical as the actual loss of acreage. Because of this, it is difficult to formulate a mitigation ratio that will adequately address the impacts from this Project. It is generally recommended that high quality habitat be conserved at a minimum ratio of 3:1. This minimum ratio should be applied to all areas permanently impacted and to long-term temporary impacts in the Inlet/Outlet Pipeline and dam area. This ratio should be used to determine the minimum conservation requirement and consideration may be given, through consultation with DFG, for a proposal for conservation of a reduced acreage of lands which are in a very desirable location for conservation. In addition, diminished access to Round Valley Regional Preserve must be accounted for. The loss of the west side connection to this important area warrants mitigation. Further analysis will be required to determine the extent of the impact and the appropriate minimization and mitigation measures needed to address this currently significant impact.

12 Cont.

Impacts to areas currently protected through conservation easements will be addressed separately.

DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

Western Burrowing Owl (*Athena cunicularia*)

Project Proposal

Under Alternative 1, the Project would directly impact western burrowing owls and their habitat through grading and excavation of grasslands and reservoir inundation. Grading and excavation constitute temporary impacts to 45.8 acres, and 976.2 acres would be permanently impacted when the reservoir is filled. This species could also be encountered at virtually any location on the Delta-Transfer Pipeline, Transfer-LV Pipeline, and Transfer-Bethany Pipeline. Impacts related to Alternative 1 would be significant prior to mitigation. Alternative 1-related impacts would be reduced to a less-than-significant level through implementation of Mitigation Measure 4.6.8a, which provides for surveys and protection measures during construction; and Mitigation Measure 4.6.8b, which provides compensation for impacts through land acquisition and dedication to a conservation easement and/or participation in a mitigation bank at a ratio of 2:1.

Comments

Suitable occupied habitat must be acquired to mitigate unavoidable impacts to burrowing owl habitat. Lands used to mitigate impacts to this species must be identified, enhanced, and protected at a ratio of 2:1. Any mitigation areas, including those restored at the impact site or within the watershed, will be considered as suitable for mitigation only when the area is restored, conserved, managed in perpetuity and when the site can meet the DFG-approved success criteria.

Unoccupied habitat that is adjacent to occupied habitat may be acceptable as a part of the mitigation proposal if alteration of site conditions through management is likely to result in colonization of these sites. Financial security to conserve alternative suitable habitat must be provided and held by DFG until it is determined that these sites are occupied and will support the target species for the long-term. Success criteria will be developed in consultation with DFG and must include measurable parameters, use of a reference site, and specific timeline requirements. If DFG determines that the site enhancement is not successful within the specified period of time, the applicant must provide an alternate occupied site. 13

Use of artificial burrows will be approved only as a temporary measure in areas where the host burrowers are expected to recolonize. Presence and abundance of host burrowers will be measured as part of the site's success criteria. Artificial burrows must be removed when sufficient natural burrows become available.

Burrowing owls populations are concentrated sporadically throughout the watershed. Facilities with some flexibility in their siting should be located to avoid areas of burrowing owl concentrations.

DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

Alameda Whipsnake

Project Proposal

Under Alternative 1, the Project would directly impact potential and occupied habitat for Alameda whipsnakes through the loss of scrub habitat at the borrow area, marina road, dam, and reservoir footprint, as well as habitat in adjacent oak and riparian woodlands and annual grasslands. Under this Alternative, 6.9 acres of scrub would be impacted and 102.2 acres of grasslands would be affected within 1,000 feet of scrub habitat. Impacts related to Alternative 1 would be significant prior to mitigation.

The draft EIR states that Alternative 1-related impacts would be reduced to a less-than-significant level through implementation of Mitigation Measure 4.6.10a, which provides for Project area Alameda whipsnake studies, protection measures during construction, an appropriate revegetation plan, and compensatory habitat creation/restoration within the Project area; and Mitigation Measure 4.6.10b, which provides for compensation of permanent habitat losses through the acquisition, protection, and management of occupied scrub habitat.

Alameda whipsnake movement observations demonstrate that individual dispersing snakes may venture into areas substantially greater than 1,000 feet from scrub habitat, out to 4 miles in some instances. However, the MSCS compensation guidelines do not require compensation for permanent and temporary impacts to non-scrub habitat that may support Alameda whipsnake (CALFED, 2000). Because mitigation is not required for Alameda whipsnake non-scrub habitat under MSCS guidelines, the following analysis of 1,000- and 2,500-foot study buffers around scrub habitat is intended for informational purposes to identify the magnitude of the potential impact to potentially occupied non-scrub habitat, and is not intended to inform Alameda whipsnake mitigation requirements.

Comments

DFG does not agree with the findings that the proposed mitigation measures will reduce impacts to less-than-significant levels. The Project proposal must address the following concerns to ensure that impacts to Alameda whipsnake are reduced to a less-than-significant level.

Impacts to Alameda whipsnake are under-compensated. The Project will impact 457 acres of suitable non-scrub habitat that is within 2500 feet of scrub habitat. At a minimum, this area should be compensated for at a ratio of 3:1, one through conservation and management of in-kind habitat. Mitigation lands should conserve known occupied scrub habitat and non-scrub areas between them to allow for dispersal and foraging to ensure long-term conservation of whipsnakes. This recommendation is based on best available scientific data that has become available since the 2000 CALFED Guidelines. New data indicates that whipsnakes use a wide variety of habitats and in some instances range up to four miles from scrub habitat.

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DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

14 Cont.

Active Breeding Bird Nest Sites

Project Proposal

For all Project alternatives, the implementation of Measure 4.6.12a and 4.6.12c will ensure that during the nesting season, pre-construction surveys will be conducted and any active nests will be adequately buffered. For Alternatives 1, 2, and 3, Mitigation Measure 4.6.12b will reduce the potential for bird electrocution at new powerlines.

The draft EIR states that implementation of these mitigation measures would reduce impacts to a less-than-significant level.

Comments

DFG does not agree with the findings that the proposed mitigation measures will reduce impacts to less-than-significant levels. The Project proposal must address the following concerns to ensure that impacts to nest sites are reduced to a less-than-significant level.

Direct take of nests outside of the breeding season does not reduce the impact to a level of less-than-significant for birds known to have high site fidelity such as burrowing owl, red-shouldered hawk, Swainson's hawk, red-tailed hawk, ferruginous hawk, and barn owl. If there will be direct take of nests on the Project site for species known to have high site fidelity, mitigation should include protection and enhancement of known nesting sites on mitigation lands at a location acceptable to DFG in accordance with established protocol. DFG recommends conducting pre-construction surveys for nesting raptors 15 days prior to tree pruning, tree removal, staging, ground-disturbing, or construction activities. Surveys should be conducted a minimum of 3 separate days during the 15 days prior to disturbance.

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DFG must approve mitigation lands for their biological suitability. These lands must be transferred to DFG in fee title or preserved through a conservation easement or another mechanism that is approved by DFG, under terms approved by DFG.

EXISTING CONSERVATION COMMITMENTS

DFG CESA Memorandum of Understanding (MOU) for San Joaquin Kit Fox

Formal USFWS consultation on the effects of the existing Los Vaqueros Reservoir on the SJKF (federally endangered and state threatened) and bald eagle resulted in a Biological Opinion (BO) from USFWS (USFWS 1-1-92-F-48, September 3, 1993). DFG signed a CESA MOU for the existing Los Vaqueros Reservoir on February 16, 1994, which outlines several conservation measures that were included in the BO for SJKF. Measures in the BO include acquiring the conservation areas mentioned previously for this species and legally conveying the easements to DFG, monitoring of SJKF habitat, and several construction-related measures. Other measures include prohibiting the widespread use of rodenticides

in the watershed. The BO lists several terms and conditions that the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) and CCWD must comply with. Measures that affect long-term management in the watershed include:

- "CCWD shall acquire and protect in perpetuity a total of 7,544 acres of habitat for San Joaquin kit fox, which includes 6,513 acres within the watershed and 1,031 acres in two separate mitigation areas outside the watershed, depending upon final assessment of all impacts from the Project." (Note that recreational impacts to San Joaquin kit fox habitat were lower than initially anticipated. As a result, the required amount of dedicated conservation easement became 5,837 acres. As of December 2008, 4,150 acres have been conveyed to DFG and an additional 1,856 acres are proposed to be conveyed to DFG.) "The habitat will be managed by CCWD under a USFWS- and DFG-approved habitat management plan. This acreage amounts to a 3:1 mitigation ratio (compensation lands: impacted lands) for Project impacts to San Joaquin kit fox habitat."

- "CCWD shall develop a recreation plan that addresses potential effects on San Joaquin kit fox and bald eagle in the watershed. USFWS and DFG shall have approval authority over the plan to ensure that any potential effects on these species are reduced to an 'insignificant level."

- "CCWD shall monitor bald eagles in the watershed to help determine the effects of recreation on bald eagle use of the area and the mortality rates resulting from wind turbines in the Project area. These effects shall be studied by CCWD using a USFWS- and DFG-approved monitoring and study plan."

At present, 4,150 acres of land in the watershed have been conveyed to DFG as a SJKF conservation easement, and 1,856 acres have been proposed to be conveyed. Of the 4,150 acres that have been encumbered by a conservation easement held by DFG, the current reservoir expansion Project will inundate or otherwise affect a total of 746.50 acres. Of this total, there will be permanent impacts to 711.40 acres, long-term temporary impacts on 20 acres at the Inlet/Outlet Pipeline, and temporary impacts to 15.1 acres.

The proposed mitigation is to provide compensation for temporary impacts to annual grasslands in the range of 1.1:1, to 1:1; for long-term temporary impacts in the range of 2:1 to 1:1; and for permanent impacts in the range of 3:1 to 1:1.

Comments

The applicant has proposed to inundate or otherwise negatively impact 746.50 acres that have been conveyed to DFG through conservation easements to ensure permanent conservation and benefit of native species including SJKF.

The majority of this acreage is in the west side grasslands adjacent to the existing reservoir. As stated previously in the SJKF discussion, this area provides a critical and high quality north south connection to Round Valley Regional Preserve and areas further north. Also, there is inadequate information about the disturbance at the Inlet/Outlet Pipeline to assume

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that longer term disturbance will not have permanent impacts. The proposal to mitigate impacts to these conserved areas by conserving similar acreage within the watershed is inadequate. The value of lands within these easement areas is based not only on their present function and value, but on the assumption that their conservation value has increased over time in response to management.

CCWD must follow the procedures of Fish and Game Code Section 1348.3, which requires notice and consultation before a wildlife conservation easement is affected. CCWD must also comply with the eminent domain law, which says that a public entity can take land for a public use, even if it is already being put to public use (CCP 1240.610). While there is a presumption that the State's public use has priority (CCP 1240.640), the public entity attempting to use eminent domain can demonstrate that their public use is more necessary.

Alternatively, DFG may consider a proposal by CCWD to minimize incompatible uses in the conservation easement area (i.e., discretionary siting of facilities would not be allowed to occur within the easement area) and to provide compensation for all losses, including direct, indirect, and temporal losses, that would occur as a result of Project implementation.

16 Cont.

To comply with later Biological Opinions, other areas within the watershed have been conserved, managed, and monitored to mitigate impacts from the construction of the current Los Vaqueros Reservoir to other species including CRLF and CTS. Although these areas are not encumbered by conservation easements, CCWD is obligated to manage and monitor these areas for the benefit of native species. No additional conservation benefit can be gained in these areas, and therefore no conservation credit will be considered.

We appreciate this opportunity to comment on the proposed Project. If you have any further questions, please contact Ms. Janice Gan, Environmental Scientist, at (209) 835-6910; Ms. Corinne Gray, Environmental Scientist, at (707) 944-5526 for fisheries issues; or Mr. Scott Wilson, Environmental Program Manager, at (707) 944-5584.

Sincerely,

Charles Armor
Regional Manager
Bay Delta Region

cc: State Clearinghouse

Apr-21-2009 15:31 From-DIVISION OF LAND RESOURCE PROTECTION 19163273430 T-669 P.001/004 F-565

NATURAL RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

DEPARTMENT OF CONSERVATION
DIVISION OF LAND RESOURCE PROTECTION
801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814
PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

April 21, 2009

VIA FACSIMILE (925) 686-2187
Marguerite Naillor
Contra Costa Water District
P.O. Box H20
Concord, CA 94524

Dear Ms. Naillon:

Subject: Los Vaqueros Reservoir Expansion Project Draft Environmental Impact Report (Contra Costa County) - **SCH# 2006012037**

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Environmental Impact Report (DEIR) for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's impacts on agricultural land and resources.

Project Description

The purpose of the Los Vaqueros Reservoir Expansion project is to use an expanded Los Vaqueros Reservoir system to develop water supplies for environmental water management that supports fish protection, habitat management, and other environmental water needs in the Delta and tributary river systems. The majority of the project is located in southeastern Contra Costa County (County), while a small portion is in Alameda County. Depending on which project alternative is chosen, the project could convert approximately 22 acres of Farmland of Statewide Importance and may affect properties under the Williamson Act. The impact of this project may be significant and unavoidable. Therefore, the Division recommends that any subsequent California Environmental Quality Act (CEQA) document address the following items to provide a comprehensive discussion of potential impacts of the project on agricultural land and activities: 1

Agricultural Setting of the Project

- Location and extent of Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and other types of farmland in and adjacent to the project area.
- Current and past agricultural use of the project area. Please include data on the types of crops grown, and crop yields and farm gate sales values. 2

To help describe the full agricultural resource value of the soils on the site, the Department recommends the use of economic multipliers to assess the total contribution of the site's potential or actual agricultural production to the local, regional and state economies. Two sources of economic multipliers can be found at the University of California Cooperative Extension Service and the United States Department of Agriculture (USDA).

Project Impacts on Agricultural Land

- Type, amount, and location of farmland conversion resulting directly and indirectly from project implementation and growth inducement, respectively.
- Impacts on current and future agricultural operations; e.g., land-use conflicts, increases in land values and taxes, vandalism, etc.
- Incremental project impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely projects in the future.

3

Under California Code of Regulations §15064.7, impacts on agricultural resources may also be both quantified and qualified by use of established thresholds of significance. As such, the Division has developed a California version of the USDA Land Evaluation and Site Assessment (LESA) Model. The California LESA Model is a semi-quantitative rating system for establishing the environmental significance of project-specific impacts on farmland. The model may also be used to rate the relative value of alternative project sites. The LESA Model is available on the Division's website at:

http://www.consrv.ca.gov/DLRP/qh_lesa.htm

Mitigation Measures

The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department recommends the use of permanent agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. If a Williamson Act contract is terminated, or if growth inducing or cumulative agricultural impacts are involved, the Department recommends that this ratio of conservation easements to lost agricultural land be increased. Conservation easements will protect a portion of those remaining land resources and lessen project impacts in accordance with CEQA Guideline §15370. The Department highlights this measure because of its acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

4

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should be conducted regionally or statewide, and not limited strictly to lands within the project's surrounding area.

Other forms of mitigation may be appropriate for this project. One mitigation option would be to direct a mitigation fee to invest in supporting the commercial viability of the remaining agricultural land in the project area, County or region. This would be accomplished through the use of a mitigation bank that would invest in agricultural infrastructure, water supplies, marketing, etc.

The Department also has available a listing of approximately 30 "conservation tools" that have been used to conserve or mitigate project impacts on agricultural land. This compilation report may be requested from the Division at the address or phone number below. General information about agricultural conservation easements, the Williamson Act, and provisions noted above is available on the Department's website:

http://www.conservation.ca.gov/dlrp/index.htm

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

4 Cont.

Williamson Act Lands

Under California Code of Regulations §15206(b)(3), a project is deemed to be of statewide, regional or area-wide significance if it would result in the cancellation of a Williamson Act contract for any parcel of 100 or more acres. The public agency responsible for such a project, must submit a DEIR or Negative Declaration to the State Clearinghouse and the appropriate metropolitan area council of governments for review and comment. In any subsequent CEQA document, the Department recommends that the following information be provided and/or discussed:

- A map detailing the location of agricultural preserves and contracted land within each preserve. The CEQA document should also tabulate the number of Williamson Act acres, according to land type (e.g., prime or non-prime agricultural land), which could be impacted directly or indirectly by the project.
- A discussion of Williamson Act contracts that may be terminated in order to implement the project. The CEQA document should discuss the probable impacts on nearby properties resulting from the termination of adjacent Williamson Act contracts. For example, a termination of a Williamson Act contract may have a growth-inducing impact. In other words, a termination may not only lift a barrier to development, but also result in higher property taxes, and thus, an incentive to shift to a more intensive land use, such as urban development.
- As a general rule, land can only be withdrawn from a Williamson Act contract through the nine-year non-renewal process. Immediate termination via cancellation is reserved for "extraordinary circumstances" (See Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855). Under Government Code §51282, the city or county must approve a request for cancellation and base that approval on specific findings that are supported by substantial evidence. When cancellation is proposed, the Department recommends that a discussion of the findings be included in the CEQA document. Finally, a notice of the hearing to

5

approve the tentative cancellation and a copy of the landowner's petition must be mailed to the Director of the Department ten working days prior to the hearing. (The notice should be mailed to Bridgett Luther, Director, Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 18-01, Sacramento, CA 95814-3528.)

- If portions of the planning area are under Williamson Act contracts (and will continue to be under contract after project implementation) the CEQA document should discuss the proposed uses for those lands. Uses of contracted land must meet compatibility standards identified in Government Code §§51238 - 51238.3. Otherwise, contract termination (see paragraph above) must occur prior to the initiation of the land use.
- An agricultural preserve is a zone authorized by the Williamson Act and established by the local government to designate qualified land to be placed under the Williamson Act's 10-year contracts. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Under Government Code §51230, "An agricultural preserve may contain land other than agricultural land, but the use of any land within the preserve and not under contract shall within two years of the effective date of any contract on land within the preserve be restricted by zoning, including appropriate minimum parcel sizes that are at a minimum consistent with this chapter, in such a way as not to be incompatible with the agricultural use of the land." Therefore, the CEQA document should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the project.

5 Cont.

Thank you for giving us the opportunity to comment on this DEIR. If you have questions regarding our comments, or require technical assistance or information on agricultural land conservation, please contact Elliott Lum, Environmental Planner, at 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 324-0869.

Sincerely,

Dan Otis
Williamson Act Program Manager

cc: State Clearinghouse

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

MAR 16 2009

Ms. Marguerite Naillon
Contra Costa Water District
Post Office Box H2O
Concord, California 94524-2099

Draft Environmental Impact Statement/Report for the Los Vaqueros Reservoir Expansion Project, SCH #2006012037
Contra Costa County

Dear Ms. Naillon:

We have reviewed the subject Notice for this project, which includes the possible enlargement of Los Vaqueros Dam and modifications to its appurtenances.

Los Vaqueros Dam, No. 1019-3, is currently under the jurisdiction of the Division of Safety of Dams. To proceed with the construction project, an enlargement application, together with plans and specifications, must be filed with the Division. All dam safety related issues must be resolved prior to approval of the application and the work must be performed under the direction of a civil engineer registered in California. Mark Schultz, our Acting Design Engineering Branch Chief, is responsible for the application process and can be reached at (916) 227-4619. 1

If you have any questions or need additional information, you may contact Office Engineer Mike Sutliff at (916) 227-4601 or Regional Engineer Y-Nhi Enzler at (916) 227-4604.

Sincerely,

David A. Gutierrez, Chief
Division of Safety of Dams

cc: Ms. Nadell Gayou
Resources Agency Project Coordinator
Environmental Review Section, DPLA
901 P Street
Sacramento, California 95814

Governor's Office of Planning
and Research
State Clearinghouse
Post Office Box 3044
Sacramento, California 95812-3044

Ms. Sharon McHale
Bureau of Reclamation
Mid-Pacific Region - MP-730
2800 Cottage Way, Room W-2830
Sacramento, California 95825-1898

State Water Resources Control Board

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

In Reply Refer
to:kdm:266.0

Marguerite Naillon
Contra Costa Water District
PO Box H20
Concord, CA 94524-2099

Dear Ms. Naillon:

LOS VAQUEROS RESERVOIR EXPANSION PROJECT, ENVIRONMENTAL IMPACT REPORT (EIR) SCH#2006012037, OLD RIVER IN SAN JOAQUIN COUNTY

Division of Water Rights (Division) staff reviewed the EIR for the Los Vaqueros Reservoir Expansion Project. The proposed project would serve Contra Costa Water District (CCWD), Alameda County Flood Control and Water Conservation District, Zone 7, Alameda County Water District and Santa Clara Valley Water District (CCWD and South Bay agencies). The existing reservoir has a capacity of 100,000 acre-feet (af). The EIR evaluated the following options:

Reservoir Expansion Alternatives With Key Distinguishing Characteristics				
Expanded Reservoir Storage Capacity	275,000 af	275,000 af	275,000 af	160,000 af
New South Bay Connection?	Yes, 470 cubic feet per second (cfs)	Yes, 470 cfs	No	No
Intake Facilities	Construct new 170 cfs intake facility on Old River	Construct new 170 cfs intake facility on Old River	Expand existing CCWD intake facilities by 70 cfs	No changes to existing intake facilities
Pipeline Capacity From Intake to Expanded Reservoir	Expand 320 cfs Pipeline from Delta to Reservoir to 670 cfs. See note.	Expand 320 cfs Pipeline from Delta to Reservoir to 670 cfs. See note.	Expand 320 cfs Pipeline from Delta to Reservoir to 570 cfs.	No changes to pipeline capacity
Note: The Old River facility has a current pump capacity of 250 cfs. This would be increased to 500 cfs, by using the 250 cfs capacity Alternative Intake Pump on Victoria Canal. Also, a new 170 cfs pump would be installed on Old River.				

The existing Los Vaqueros Reservoir (or Los Vaqueros) is operated in accordance with the requirements of Decision 1629. Water is stored in the reservoir pursuant to Permits 20749 and 20750 on Applications 20245 and 25516A, and water is also directly diverted or released from upstream storage in U.S. Bureau of Reclamation (Reclamation) reservoirs and re-diverted to storage in Los Vaqueros pursuant to change petitions on 17 Reclamation water rights. Collection to storage is limited to 95,850 afa under Permit 20749. An additional 9,640 afa can be stored pursuant to Permit 20750.

It is unclear how additional water will be stored in Los Vaqueros Reservoir without obtaining an additional appropriative right. Although the EIR indicates that water will be stored in the facility pursuant to petitions to change either State Water Project (SWP) or Central Valley Project (CVP) water rights, it appears that the project is still undefined because the specific rights that will be modified are not identified. If the project proceeds pursuant to change petitions on existing rights, there will be a very limited storage window and it is unclear whether CCWD has properly modeled this limitation. Whenever the upstream reservoirs, such as Lake Oroville, are filling, water passing through these facilities is considered direct diversion. This water cannot be stored in Los Vaqueros. The water could be directly diverted, provided that the SWP and/or CVP direct diversion rights are not exceeded. Direct diversion is restricted by Decision 1629 and is not allowed from April 1 through April 30 (30 days).

In order to store water in Los Vaqueros, water must be released from upstream storage and subsequently re-stored in Los Vaqueros. As mentioned above, this could not occur during storm events or upstream reservoir fill periods, because water is not being released from upstream storage then. The EIR did not discuss which upstream reservoirs would release stored water for re-storage in Los Vaqueros and the timing for such releases. This constraint, coupled with the Decision 1629 75-day no fill period from March 15 through May 31 (unless Los Vaqueros is below specified minimums) creates a significant restriction on filling Los Vaqueros. The SWP or CVP water rights cannot be enlarged as a result of sending water to storage in Los Vaqueros. Therefore, refill of the upstream reservoirs to offset water conveyed to storage in Los Vaqueros would not be authorized. The impact of shifting water to storage in Los Vaqueros and holding reservoir storage down by a commensurate amount in upstream reservoirs was not evaluated in the EIR. Division staff requests that the EIR identify the quantity that can be put in storage and the timing for storage, after considering these issues.

1

Operations Model: (pp. C3-11 – C3-14)

The operations model used to determine the project impacts (Appendix C) states that the 75-day no-fill period and the 30-day no-diversion period were used only for the Existing and Future Without Project conditions and for Alternative 4. For Alternatives 1, 2 and 3, a 30-day no diversion period was assumed to be in effect. This is inconsistent with Decision 1629, which requires a 75-day no-fill period in addition to the 30-day no diversion period. Thus, the EIR overstates the time period when reservoir filling is allowed, which would overstate storage.

The operations model states that diversions for direct delivery are limited by existing X2 requirements. All diversions should be limited by X2 requirements. Division staff requests an analysis of impacts on X2 and other water quality parameters during periods when the reservoir is filling, and especially during periods when both reservoir fill is occurring and water is being directly delivered to customers.

2

The model assumed reduction in exports are made at Banks Pumping Plant equal to the volume of water wheeled through Los Vaqueros diversion facilities or released from Los Vaqueros Reservoir to meet SWP/CVP contract allocations. CCWD is a Reclamation contractor. Division staff discussed the issue of whether the CVP diversions would be reduced as a result of operating the enlarged Los Vaqueros facility with Reclamation staff on March 12, 2009 and was advised that there is significant unmet contractor demand due to pumping restrictions. Therefore, Reclamation will continue using its Delta pumping facility to the extent possible based on biological opinions and other operating constraints. Thus, the underlying assumption in the EIR that there will be no net effects to resources due to Los Vaqueros pumping because such pumping is offset by reduced pumping at the SWP or CVP facilities is unsupported.

The model states that the SWP is compensated for wheeling of CVP water through Los Vaqueros facilities, and corresponding reduction in exports at Banks Pumping Plant, through reassignment of storage in San Luis Reservoir from CVP water to SWP water. CCWD and the South Bay agencies have no authority to reallocate storage in San Luis Reservoir. Therefore, this conclusion is unsupported.

The model assumes that deliveries to South Bay agencies that are shifted from Banks and Jones pumping plants to the Los Vaqueros system are diverted from the Delta year-round, with the exception of the 30-day no-diversion period. Based on the March 12 discussion with Reclamation staff, it is apparent that when Los Vaqueros is filling, and deliveries are ongoing to CCWD and South Bay agencies, pumping will continue at the SWP and CVP facilities to the fullest extent possible given current limitations. Under these conditions, total Delta diversions are greater than under current operations. Division staff was unable to locate any evaluation of this issue in the EIR.

2 Cont.

Under Alternative 3, Delta diversion foregone by CCWD can be retained in Shasta Reservoir without being released to meet instream flow requirements. This statement is unsupported. Reclamation must operate its facilities, including Shasta Reservoir, to meet instream flow and other operating requirements.

The model assumptions do not state whether the following condition from Decision 1629 was used as an input:

> No diversion is authorized that would adversely affect the operation of the CVP or SWP under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from permittee's diversion at any time Reclamation and the Department of Water Resources have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the CVP or SWP to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law.

Significant and Unavoidable Impacts:

Alternative 3 was identified as resulting in an increased adverse impact of Delta fishery resources due to increased water diversion from the Delta. This was identified as both a direct project impact and a cumulative effect of the project. (p. ES-30.) It is unclear why Alternatives 2 and 3 did not result in the same conclusion. All of these alternatives increase both direct diversion and storage in the Delta. 3

Table ES-7, List of Mitigation Measures:

The list of mitigation measures does not include the following items which are discussed in the text as means to mitigate project impacts, but don't have related mitigation measures: 4

- Water treatment at the cofferdam
- Soils disposal due to cofferdam construction
- Installation of the cofferdam as mitigation during installation of the new pump
- Noise and vibration impacts associated with soil loading at the new pump location
- Reduced pumping at the SWP and CVP pumps commensurate with new diversion at the Los Vaqueros facilities

Therefore, it appears that the EIR does not properly set forth mitigation measures.

Place of Use Issues:

The EIR discusses using water from the SWP and CVP interchangeably. The EIR does not, however, evaluate any changes in place of use of the various water rights needed to implement the proposed project. The EIR should state whether new lands would be served as a result of increasing the place of use of each project and evaluate any impacts. 5

Cold Water Retention in Upstream Reservoirs: (p. 3-35.)

The EIR states that Reclamation will be able to retain cold water stored in upstream reservoirs because CCWD could refrain from pumping from the Delta and instead draw from the stored Los Vaqueros Reservoir.

To implement this project, Reclamation must provide released stored water for re-storage in Los Vaqueros Reservoir. At times, the quantity of water provided to CCWD by the CVP will be greater than under current conditions, because CCWD will continue to take water needed for direct use while it also stores water in Los Vaqueros Reservoir. The EIR states that in below normal water years, CCWD may forego some diversion and instead use its stored water. Nonetheless, since storage in Reclamation's reservoirs would be initially lowered to fill Los Vaqueros Reservoirs, it is unclear how there is a net gain in the cold-water pool. Reclamation could not refill the storage that it sends to CCWD during the same water year, because it would be considered an expansion in Reclamation's storage right. 6

Cumulative Impact Assessment:

The cumulative impact assessment states that projects were eliminated from consideration if they would not be constructed at the same time as the proposed project, or if it would not generate the same type of impacts as those resulting from the proposed Los Vaqueros project. Water rights projects are operated for very long periods of time. The following projects were not on the list of projects considered, but Division staff believes that the projects should either be taken into consideration or a valid basis for not considering them provided: Delta Wetlands Project, El Dorado Irrigation District project under State filed application, San Joaquin County's application on the American River, Mokelumne River Water and Power Authority application, Stockton East Water District's pending applications, City of Davis and City of Woodland applications. All of these projects have potential cumulative impacts on water supply, movement of X2, etc. 7

Water Rights and Water Service Contracts:

This section does not state the water rights and/or contracts held by the South Bay agencies. Moreover, this section does not explain how CCWD will obtain sufficient water to fill Los Vaqueros Reservoir when its contract with Reclamation is for delivery of up to 195,000 afa. Division staff requests an explanation of the water contracts of all participating parties, with information on how much water is available under the contracts on a monthly basis (by water year type) to fill the reservoir, while still maintaining customer service. 8

Footnote 1, page 4.2-32:

The footnote states that Common Assumptions has not yet developed a standard constraint equation for Old and Middle River flows under either the Wanger Ruling or the 2008 OCAP. The portion of pumping at the Los Vaqueros intakes to meet CCWD demand and other project benefits, either through direct diversion or diversion to storage, is not included in the equations used in the CalSim II model to constrain modeled net flow in Old and Middle Rivers. It is unclear why this wasn't included in the CalSim II model. 9

If you have any questions, I can be contacted at (916) 341-5363.

Sincerely,

Katherine Mrowka

Katherine Mrowka, Chief
Inland Streams Unit

cc: State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044