



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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EDMUND G. BROWN JR., Governor
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June 5, 2015

Monterey Regional Water Pollution Control Agency
Administration Office
Attention: Bob Holden, Principal Engineer
5 Harris Court, Building D
Monterey, California 93940
E-mail: gwr@mrwpca.com

**Subject: Draft Environmental Impact Report, SCH# 2013051094
Pure Water Monterey Groundwater Replenishment Project**

Dear Mr. Holden:

The California Department of Fish and Wildlife (Department) has reviewed the Draft Environmental Impact Report (DEIR) for the Pure Water Monterey Groundwater Replenishment Project (Project).

According to the DEIR, the Project would divert new source waters to the Monterey Regional Water Pollution Control Agency (MRWPCA) Regional Treatment Plant for two purposes: 1) to create purified recycled water for recharge of the Seaside Groundwater Basin to replace 3,500 acre-feet per year of California American Water Company's (CalAm) current water supplies, enabling CalAm to reduce its diversions from the Carmel River by the same amount, and 2) to provide additional recycled water to growers within the existing Castroville Seawater Intrusion Project service area for crop irrigation. Water sources proposed to be recycled, treated and reused by the GWR Project include municipal wastewater, City of Salinas industrial wastewater, City of Salinas and City of Monterey urban stormwater runoff, and surface water diversions from El Estero Lake, Blanco Drain, Reclamation Ditch and Tembladero Slough. Purified water from a new Advanced Water Treatment Facility at the Regional Treatment Plant would be conveyed through a new Product Water Conveyance pipeline and booster pump station to new Injection Well Facilities in the City of Seaside for recharge to the Seaside Basin. CalAm would extract water from its existing wells, and would deliver the water to its customers via two new pipelines and its existing distribution system. Recycled water produced for crop irrigation would be distributed through the existing Castroville Seawater Intrusion Project system. The Project is being proposed by the MRWPCA in partnership with the Monterey Peninsula Water Management District (MPWMD).

The Project would be located within northern Monterey County and would include new facilities located within unincorporated areas of the Salinas Valley and within the cities

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of Salinas, Marina, Seaside, Monterey, and Pacific Grove, and within former Fort Ord areas in Seaside and Marina.

The following provides the Department's comments and recommendations regarding the Draft EIS/EIR.

Elkhorn Slough:

The Lower Salinas/Tembladero Slough is an important freshwater and sediment source for the Elkhorn Slough estuary. Estuaries by definition are a mixture of freshwater and marine habitats, and one of the last remaining sources of freshwater for Elkhorn Slough is the Old Salinas River channel, which conveys both Salinas River and Tembladero Slough flows. Freshwater pulses have been documented as originating in the Old Salinas River channel and moving far up into Elkhorn Slough with incoming tides. Further loss of freshwater inputs into Elkhorn Slough is a significant adverse impact as it would likely lead to additional loss of fresh/brackish water habitats and negatively impact the biological resources dependent upon these habitats.

The DEIR is incomplete in that it did not analyze direct, indirect, and cumulative impacts to the Lower Salinas River and Elkhorn Slough estuary resulting from proposed surface water diversions from the Salinas River, Tembladero Slough, Blanco Drain, and Reclamation Ditch (which is historically the lower portion of Gabilan Creek and tributary to Tembladero Slough thence Lower or Old Salinas River). Due to this omission it is unlikely that the true geographic extent of direct and cumulative impact analysis has been determined for the DEIR.

The omission of analysis of impacts to Elkhorn Slough does not serve the full public disclosure intent of the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15088.5 (a) states that significant new information requiring recirculation of an Environmental Impact Report (EIR) includes:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusionary in nature that meaningful review and comment were precluded.

Based on the omission of any discussion or analysis of impacts to Elkhorn Slough in the DEIR, the Department believes that all four of the above mentioned criteria that necessitate recirculation of an EIR have been met.

The Department recommends recirculating the DEIR with a thorough analysis of impacts to the Elkhorn Slough estuary. The DEIR should address the following information:

- The percentage of Elkhorn Slough's freshwater inputs, in a variety of climate and irrigation scenarios, that will be removed by the range of alternatives considered in the proposed project.
- How the proposed removal of freshwater from Tembladero Slough and the Salinas River will affect the biota and ecosystem services of Elkhorn Slough.
- How the proposed Project will guarantee continued adequate provision of freshwater to maintain the historical baseline extent of estuarine habitats in Elkhorn Slough.
- The specific analyses, including what flow data, used to determine effects of the proposed Project on the biota and ecosystem services of Elkhorn Slough.
- Project-related impacts to foraging and refugia habitat of young out-migrating steelhead.
- Minimum flow requirements in Old Salinas River, Reclamation Ditch, Tembladero Slough, and Blanco Drain that are necessary to avoid or minimize impacts to the Elkhorn Slough estuary.
- What information will be submitted to the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1260 (j), to address potential effects on fish and wildlife in the Old Salinas River, Reclamation Ditch, Tembladero Slough, Blanco Drain and the Elkhorn Slough estuary.
- How information on minimum flow requirements in the above mentioned water bodies is addressed in any Water Rights application submitted to the State Water Quality Control Board.

Water from the Lower Salinas/Tembladero Slough is highly polluted and the dominant source of nitrate loading to Elkhorn Slough, with the Tembladero Slough accounting for two orders of magnitude more nitrate than the Old Salinas River channel. This proposal

proposes to reduce nitrate load to Elkhorn Slough by reducing flow of Tembladero Slough. Reduction of fresh water flow to an estuary negatively impacts brackish water habitats and the species that exist there. The DEIR should provide an analysis of the impacts of reduced flow to Elkhorn Slough.

Lake El Estero: The DEIR states that the diversion and use of surface water from Tembladero Slough, Reclamation Ditch, and Blanco Drain will require an appropriative water right permit pursuant to Water Code Section 1200 et seq. Lake El Estero is a historic water body that collects surface water from tributaries and a portion of the City of Monterey's stormwater collection system. The DEIR should be changed to reflect that the proposed diversion and use of up to 87 acre-feet per year (afy) of water from Lake El Estero will require an appropriative right from the State Water Resources Control Board (SWRCB).

Tricolored Blackbird: According to the DEIR, tricolored blackbirds (*Agelaius tricolor*) have been documented to occur immediately adjacent to the Project Study Area along the Product Water Conveyance: Coastal alignment option. Suitable habitat is also present at the Salinas Treatment Facility site, Blanco Drain Diversion site, Lake El Estero, and the three Affected Reaches. Page 4.5-25 of the DEIR states that the tricolored blackbird is a California Department of Fish and Wildlife species of special concern. The tricolored blackbird was listed by the Fish and Game Commission as State endangered on an emergency basis and the DEIR should be updated to reflect the correct listing status.

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code).

Responsible Agency Authority: The Department also has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), the Department may need to issue an Incidental Take Permit for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c},

21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

Lake and Streambed Alteration Agreement: The Department has regulatory authority over activities occurring in streams and/or lakes along with riparian habitat associated with and supported by watercourses, that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* If a Project could substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, sediment, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, notification of Lake or Streambed Alteration to the Department is required.

Acquisition of a Lake and Streambed Alteration Agreement (LSAA) for this Project is required for surface water diversion and rediversion, in addition to stream crossings and other jurisdictional features. For projects of this nature, consultation with the Department is recommended well in advance of Project implementation. A substantial diversion of water from a jurisdictional feature is subject to Fish and Game Code (Code) sections 1600 *et seq.*, and failure to notify is a violation of the Code. It is important to note that the Department is required to comply with CEQA in the issuance or extension of an LSAA. For this particular Project, the Department would be acting as a Responsible Agency and would need to rely upon the CEQA document prepared for the Project. If the CEQA document prepared by the Lead Agency (MRWPCA) is insufficient for the Department to make its own Findings or Notice of Determination, the Department might need to assume the role of Lead Agency and prepare a subsequent CEQA document. The LSAA process is administered through the Central Region Office in Fresno and can be initiated by contacting the Lake and Streambed Alteration Program at (559) 243-4593.

Water Rights

The diversion and use of surface water from Tembladero Slough, Reclamation Ditch, Blanco Drain, and El Estero Lake will require an appropriate water right permit from the SWRCB pursuant to Water Code Section 1200 *et seq.*

As proposed in the DEIR, the Project may redirect an estimated 3,733 afy of treated wastewater to the municipal wastewater collection system, thus reducing flow into the Salinas River by up to 2,170 afy. Changing the place of use and purpose of use for

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treated wastewater will require approval of the SWRCB under a waste water change petition pursuant to Water Code Section 1211.

The Department, as Trustee Agency, is consulted by the SWRCB during the water rights permit application and change petition process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. The Department therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

If you have any questions regarding these comments, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 243-4014, extension 231; annette.tenneboe@wildlife.ca.gov, or by writing to the California Department of Fish and Wildlife at 1234 East Shaw Avenue, Fresno, California 93710.

Sincerely,



Gerald Hatler
Acting Regional Manager

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