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## State Water Resources Control Board

MAY 29, 2020

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### NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR THE DEL PUERTO CANYON RESERVOIR PROJECT IN STANISLAUS COUNTY

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) appreciates the opportunity to submit comments in response to the subject Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) published by the U.S. Bureau of Reclamation (Reclamation) in the Federal Register on April 29, 2020. The Del Puerto Canyon Reservoir Project (Proposed Project) is being proposed by the Del Puerto Water District (DPWD or District) in partnership with the San Joaquin River Exchange Contractors Water Authority (SJRECWA or Water Authority) with partial funding provided by Reclamation (Project Partners). The Proposed Project includes the construction and operation of an approximately 82,000 acre-foot reservoir (Del Puerto Canyon Reservoir or DPCR) at the mouth of Del Puerto Canyon in the lower San Joaquin River watershed. The reservoir would provide additional south of Delta storage for surface water previously diverted and stored under Central Valley Project (CVP) water rights held by Reclamation, and onstream storage of a lesser amount of surface water diverted from Del Puerto Creek. CVP water would be conveyed to DPCR from the Delta Mendota Canal (DMC), and then later withdrawn and returned to the DMC along with stored Del Puerto Creek water for distribution to customers located within the DPWD and SJRECWA service areas.

This project will require multiple regulatory approvals from the State Water Board—specifically, water quality certification pursuant to section 401 of the federal Clean Water Act; issuance of a new appropriative water right permit for the proposed diversions from Del Puerto Creek; and approval of one or more change petitions to add a place of storage and points of redirection to involved CVP water rights.

The District is the lead agency responsible for environmental review of the Proposed Project under the California Environmental Quality Act (CEQA) and the State Water Board is a responsible agency. The District prepared a Notice of Preparation (NOP)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

and circulated a draft Environmental Impact Report (DEIR) for the Proposed Project in 2019 but has not yet issued a final EIR for the Proposed Project. The Division filed comments on both the NOP and DEIR (collectively, CEQA comments) which are enclosed. These comments should also be addressed in the EIS. The NOI indicates that Reclamation will use the project alternatives and much of the analysis from the District's EIR when developing its EIS, with additional analysis and information provided for CVP operations, biological resources, and several other environmental resource areas. We assume that the District's EIR will also be updated to include this additional information.

### **General Comments**

The environmental documentation prepared for the Proposed Project should fully evaluate all potential direct, indirect, and cumulative impacts related to the proposed diversion, rediversion, storage, and use of water. The environmental documents should also include consideration of a range of project alternatives that avoid or reduce any environmental impacts. State laws and regulations relating to the review and approval of water right applications and change petitions require that applicants and petitioners provide information concerning the extent to which fish and wildlife will be affected and identify measures to protect fish and wildlife from unreasonable impacts, and that the State Water Board take into consideration the amounts of water required for the preservation and enhancement of fish and wildlife resources and water quality when determining the amount of water available for appropriation. This information is generally included in environmental documents in support of proposed projects. To the extent it is not, additional information would be required to meet the State Water Board's information needs.

### **Project Effects on Del Puerto Creek**

The assessment of impacts to fish and wildlife in Del Puerto Creek should be expanded beyond the information provided in the 2019 DEIR. The 2019 DEIR contains minimal information regarding the fish species present in Del Puerto Creek and includes only a qualitative analysis of impacts to fish and wildlife in Del Puerto Creek above and below the proposed dam site. The DEIR analysis of fish and wildlife impacts is based on an environmental commitment to release "major flow events" downstream of the proposed dam site. "Major flow events" are not quantitatively defined and no modeling information was provided that demonstrates changes in flows anticipated due to the proposed project. The 2019 DEIR finding of "less-than-significant" impacts to fish and wildlife in Del Puerto Creek does not appear to be supported by the information provided in the DEIR. Environmental documentation for the Proposed Project should include information that identifies the fish species present or likely present in Del Puerto Creek and a quantitative assessment describing flows in Del Puerto Creek with and without the proposed project. Changes in flow should be used to estimate potential changes to the quantity and quality of habitat (water temperature, dissolved oxygen, area of inundation, and magnitude, duration, and frequency of flows) for fish species and impacts to fish and wildlife in Del Puerto Creek.

In determining the availability of water for the proposed appropriations from Del Puerto Creek, the State Water Board must consider water quality and the amounts of water required for the preservation and enhancement of fish and wildlife resources. Accordingly, environmental documentation prepared for the Proposed Project should fully evaluate these requirements, including in the context of recent and ongoing updates to the Bay-Delta Plan (see below). Environmental documentation should specifically evaluate the cumulative effects associated with existing water allocations within the Del Puerto Creek, the San Joaquin River, and Delta watersheds. The evaluation should also fully consider baseflow requirements necessary to support aquatic habitat and associated fish and wildlife in the reach of Del Puerto Creek located downstream of the reservoir (see below). Neither of these factors were evaluated in the District's 2019 DEIR. Water right applications that do not account for existing water allocations and the amounts of water required for fish and wildlife do not meet the requirements of Water Code section 1260, subdivisions (j) and (k), and may not be accepted for filing.

### **Project Effects in the Bay-Delta Watershed**

Environmental documentation prepared for the Proposed Project should evaluate potential impacts from the project on the Delta. Under the Proposed Project, water would be conveyed from the DMC to be stored in the DPCR and later discharged back into the DMC. These changes could affect Delta export operations and should be modeled and evaluated in the environmental documents. The environmental documents should specifically analyze whether there would be changes to the timing or volume of Delta exports, Delta outflows, salinity conditions, reverse flows, and entrainment, and whether there could be impacts on water quality and biological resources in the Delta. The environmental documents should also analyze whether changes to Delta exports would affect upstream reservoir operations resulting in changes to tributary flows, reservoir storage levels in Shasta and Folsom Reservoirs, and whether there could be impacts on water quality and biological resources upstream of the Delta, including impacts related to temperatures. The modeling analyses should be presented on a monthly timescale to reflect the seasonal variations in Delta exports, Delta hydrodynamic processes, and upstream flow and reservoir storage levels and the associated effects on native fish and wildlife species.

The environmental documents should evaluate the potential effects of the project on the following aquatic resources at the life-stage and population level. The environmental analysis should evaluate the potential magnitude of impacts to native Delta fish populations by using available relationships between abundance and flow, exports and survival and monthly changes to Del Puerto Creek flows, Lower San Joaquin River flows, export volumes, reverse flows, and Delta outflow.

- California Endangered Species Act (CESA) and federal Endangered Species Act (ESA) Endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*),

- CESA and ESA Threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*),
- ESA Threatened Central Valley Distinct Population Segment (DSP) steelhead (*O. mykiss*),
- ESA Threatened Green Sturgeon southern DPS (*Acipenser medirostris*), and White Sturgeon (*Acipenser transmontanus*)
- ESA Endangered Killer whale Southern Resident DSP (*Orcinus area*)
- ESA Threatened Delta smelt (*Hypomesus transpacificus*)
- CESA Threatened Longfin smelt (*Spirinchus thaleichthys*)
- Sacramento splittail (*Pogonichthys macrolepidotus*)
- Starry flounder (*Platichthys stellatus*)
- California Bay shrimp (*Crangon franciscorum*)
- Zooplankton (*Neomysis mercedis*, *Eurytemora affinis*, and *Pseudodiaptomus forbesi*)
- Non-native species: American shad (*Alosa sapidissima*), Striped bass (*Morone saxatilis*), Largemouth bass (*Micropterus salmoides*), and other ecological and fishery species of concern
- The lower food web (e.g., phytoplankton and zooplankton biomass and flux)

New storage projects south of the Delta have the potential to incrementally reduce local river flows, increase Delta exports, increase reverse interior Delta flows, and reduce Delta outflows which are likely to contribute to further declines in native Delta species. Specific operating criteria should be identified for the Proposed Project in the environmental documentation to avoid or reduce impacts. Proposed Project operations should specifically be designed to avoid increases in exports and reductions in Delta outflows during time periods that are likely to have adverse effects on water quality and native Delta fish and aquatic species populations.

### **Cumulative Effects**

The cumulative impact analysis should evaluate reasonably foreseeable future diversion and storage projects and evaluate and disclose the potential changes to river flows, Delta exports, interior Delta flows, and Delta outflows and the subsequent effects to water quality and native Delta fish and aquatic species populations. As discussed in the Division's CEQA comments, the cumulative impact assessment in the District's 2019 DEIR should be expanded to evaluate several additional issues. Those issues should also be evaluated in Reclamation's EIS. Recent major water diversion and storage project proposals that should potentially be evaluated include: Shasta Dam and Reservoir Enlargement Project, Los Vaqueros Reservoir Expansion Project, Pacheco Reservoir Expansion Project, Sites Reservoir, Centennial Reservoir and Water Supply Project, Temperance Flat Reservoir Project, Kern Fan Groundwater Storage Project, Tulare Lake Storage and Floodwater Protection Project, Willow Springs Water Bank Conjunctive Use Project, and Chino Basin Conjunctive Use Environmental Water Storage/Exchange Program.

As discussed in the State Water Board's Scientific Basis Report for Potential Updates to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan) for the Sacramento River and Delta<sup>1</sup> and the July 2018 Framework for such updates to the Bay-Delta Plan<sup>2</sup>, Delta outflows under existing conditions are highly impaired resulting in prolonged and precipitous declines of native Delta species. Environmental documentation for the Proposed Project should evaluate cumulative impacts of the proposed project in the context of these findings as well as the State Water Board's current effort to update the Bay-Delta Plan to improve protections of fish and wildlife beneficial uses, including potential higher Delta outflow requirements and other CVP and State Water Project (SWP) related operational constraints. More information about this effort is available on the Division's website at:

[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/)

Division staff appreciates the opportunity to provide scoping comments for the Proposed Project. If you have questions or would like to discuss these comments further, please contact Scott Frazier at (916) 341-5289 or [scott.frazier@waterboards.ca.gov](mailto:scott.frazier@waterboards.ca.gov). Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Diane Riddle, Assistant Deputy Director  
Division of Water Rights

Encl: CEQA Notice of Preparation Comments  
CEQA Draft Environmental Impact Report Comments

cc: Anthea Hanson, General Manager  
Del Puerto Water District  
P.O. Box 1596  
Patterson, CA 95363

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<sup>1</sup> [https://www.waterboards.ca.gov/water\\_issues/programs/peer\\_review/docs/scientific\\_basis\\_phase\\_ii/201710\\_bdphasell\\_sciencereport.pdf](https://www.waterboards.ca.gov/water_issues/programs/peer_review/docs/scientific_basis_phase_ii/201710_bdphasell_sciencereport.pdf)

<sup>2</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/sed/sac\\_delta\\_framework\\_070618% 20.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/sed/sac_delta_framework_070618%20.pdf)