State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Habitat Conservation Planning Branch
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

June 25, 2018

Public Comment
Proposed Recycled Water Policy Amendment
Deadline: 6/26/18 by 12 noon

RECEIVED
6-26-18
SWRCB Clerk

Jeanine Townsend
Clerk to the Board
State Water Resource Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend

AMENDMENT TO THE POLICY FOR WATER QUALITY CONTROL FOR RECYCLED WATER (PROJECT)
DRAFT STAFF REPORT AND DRAFT SUBSTITUTE ENVIRONMENTAL DOCUMENT
SCH# 2018052039

The California Department of Fish and Wildlife (CDFW) received the Draft Staff Report and Draft Substitute Environmental Document (Draft SR/SED) for the proposed Draft Amendment to the Policy for Water Quality Control for Recycled Water (Project) from the Regional Water Quality Control Board for the Project pursuant the California Environmental Quality Act (CEQA) and the CEQA Guidelines.[1] CDFW previously submitted comments in response to the early public consultation for the Project in a letter dated December 20, 2017.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are promulgated in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: State Water Resource Control Board

Objective: The objective of the Project is to amend the Recycled Water Policy of 2013, which provides guidelines for the safe use of recycled water from municipal wastewater sources. Primary Project activities include amendments to (1) increase the development and use of recycled water, (2) reflect regulatory changes, (3) reflect the recommendations from the Science Advisory Panel, (4) reflect the evaluations of the salt and nutrient management plan development, and (5) clarify, streamline, and provide statewide consistency for permit requirements for recycled water.

Location: Statewide.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the State Water Resource Control Board in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Both comments pertain to the cumulative impact sections of the Draft SR/SED and Amendment to the Recycled Water Policy.

Section 4.7, Page 50 of the Draft SR/SED for the Draft Amendment to the Recycled Water Policy dated May 9, 2018 and Section 5.3, Page 8 of the Draft Amendment to the Recycled Water Policy dated May 9, 2018.

Wastewater Change Petitions

COMMENT 1:

> **Issue:** Cumulative impacts assessment. The Department advises the State Water Board to add and strengthen the language for considering cumulative impacts within the draft amendment to be consistent with CEQA Guidelines. Specifically, adding clarifying language that a Lead Agency "shall" consider the cumulative impacts of a project to determine whether it will have a significant effect upon the environment.

CEQA Guidelines' Mandatory Findings of Significance § 15065(a)(3) indicates that a project having possible effects that are individually limited but cumulatively considerable shall be assessed when determining whether the project has a significant impact. The Department believes it is important to clarify this requirement within the CEQA process when determining the significance of a project's impact.

COMMENT 2:

Issue: The Project has potential cumulative impacts to the environment and public trust resources caused by the proposed recycled water project and related projects that may reduce stream flows.

Specific impact: Specific loss of in-stream water resources necessary for species that are fully protected, endangered, threatened, and of special concern, and their associated habitat.

Why impact would occur: Stream flows may be reduced substantially due to the cumulative effects of the Project and other related projects.

Evidence impact would be significant: The Project has not fully evaluated the potentially cumulative impacts associated with the loss of wastewater discharge to plant and animal species downstream. The Project states "Although impacts caused by the incremental decrease in streamflow resulting from the approval of a single wastewater change petition may be insignificant, impacts to the environment may be cumulatively considerable when viewed together with impacts from past, present, and probable future projects with the potential to decrease the streamflow. This is particularly true for streams where discharges from wastewater treatment facilities comprise the majority of streamflow for a portion of the year, such as the dry summer months." The reduction of wastewater can have an impact on sediment transport, a reduction in the wetted perimeter (which will result in the reduction in stream habitat), and the over-all function and values of the streams. A significant change in the amount of water in the stream will have a long-term significant and cumulative impact on streams, their habitats and the species that depend on them.

To minimize significant impacts: An evaluation of the quantity of water needed for each species must be considered before reductions in wastewater are approved. CDFW recommends that the State Water Resource Control Board provide guidance to local wastewater treatment facilities with a specific minimum in-stream flow requirement for streams that have been identified as critical habitat for listed species. To ensure projects will not unreasonably affect instream beneficial uses and public trust resources including fish and wildlife (Water Code § 275), the Department recommends the amendment direct project proponents to identify low-flow ecological threshold flows and habitat connectivity flows necessary to maintain the health of aquatic instream and riparian resources. We recommend conducting this analysis in all stream reaches impacted by the project at or below the point of discharge. The establishment of a

seasonally appropriate low-flow threshold helps protect biological productivity during critically low-flow time periods by supporting stream channel forms and riparian communities that directly affect aquatic life. Otherwise, operators at wastewater treatment facilities may not have the necessary knowledge to regulate water discharge at certain times of year to prevent impacts to aquatic and riparian species and habitats.

Flow levels decreasing below the low-flow threshold are typically characterized as rapidly declining in aquatic habitat and aquatic benthic invertebrate productivity, and are generally stressful and potentially lethal conditions for fish and wildlife, and the greater aquatic ecosystem. Aquatic habitat connectivity flows should be identified as well where appropriate, allowing for movement, passage, and persistence of aquatic biota. Incorporating these flow analyses will help ensure the protection of the public trust and its beneficial uses. Thus, water currently discharged and allowed to return to streams, as required by current guidelines, should remain unchanged until flow regimes that are protective are established.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data#44524420-pdf-field-survey-form. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft SR/SED and Draft Amendment to the Recycled Water Policy to assist the State Water Resources Control Board in identifying and mitigating Project impacts on biological resources. The Department also recognizes and appreciates the State Water Resources Control Board adding language encouraging early coordination by the petitioner with the Department when preparing a wastewater change petition, and the consideration of cumulative impacts

while reviewing future wastewater change petitions. Due to the issues presented in this letter, CDFW concludes that the Draft SR/SED and Draft Amendment to the Recycled Water Policy does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. CDFW has concerns that the State Water Resources Control Board may not have the basis to approve the project or make "findings" as required by CEQA unless the environmental document is modified to eliminate and/or mitigate the cumulative impacts, as reasonably feasible (CEQA Guidelines, §§ 15074, 15091 & 15092).

Questions regarding this letter or further coordination should be directed to Karen Carpio, Senior Environmental Scientist at 916-653-3864 or Karen.Carpio@wildlife.ca.gov.

Sincerely,

for

Richard Macedo
Branch Chief

cc: Office of Planning and Research, State Clearinghouse, Sacramento
P.O. Box 3044
Sacramento, CA 94244-2460

ec: California Department of Fish and Wildlife

Ed Pert, Regional Manager
South Coast Region (Region 5)
Ed.Pert@wildlife.ca.gov

Gail Sevrens, Environmental Program Manager
South Coast Region (Region 5)
Gail.Sevrens@wildlife.ca.gov

Erinn Wilson, Senior Environmental Scientist (Supervisor)
South Coast Region (Region 5)
Erinn.Wilson@wildlife.ca.gov

Christine Found-Jackson, Senior Environmental Scientist
South Coast Region (Region 5)
Christine.Found-Jackson@wildlife.ca.gov

Mary Ngo, Environmental Scientist
South Coast Region (Region 5)
Mary.Ngo@wildlife.ca.gov

Kelly Schmoker, Senior Environmental Scientist
South Coast Region (Region 5)
Kelly.Schmoker@wildlife.ca.gov

Scott Cantrell, Branch Chief
Water Branch
Scott.Cantrell@Wildlife.ca.gov

Robert Holmes, Environmental Program Manager
Water Branch
Robert.Holmes@Wildlife.ca.gov

Sean Windell, Environmental Scientist
Water Branch
Sean.Windell@wildlife.ca.gov

Cathie Vouchilas, Environmental Program Manager
Habitat Conservation Planning Branch
Cathie.Vouchilas@wildlife.ca.gov

Ryan Mathis, Senior Environmental Scientist (Supervisor)
Habitat Conservation Planning Branch
Ryan.Mathis@wildlife.ca.gov

Karen Carpio, Senior Environmental Scientist
Habitat Conservation Planning Branch
Karen.Carpio@wildlife.ca.gov