



April 14, 2020

Chair Gloria Gray & Members of the Board  
Metropolitan Water District of Southern California  
700 Alameda Street  
Los Angeles, California 90012

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Two weeks ago, on March 31, our state departments took an important step to enable continued operation of the State Water Project (SWP). The California Department of Fish and Wildlife (DFW) issued a new permit for the long-term operations of the SWP under the California Endangered Species Act (CESA). This permit enables the California Department of Water Resources (DWR) to continue to provide reliable water to 27 million Californians while protecting four species of fish from extinction.

We write to explain this important action and how it advances our shared interests.

### **A New State Approach**

In the past, our state relied on a federal process to protect endangered species. Federal agencies issued Biological Opinions to set rules on water operations under the federal Endangered Species Act (ESA), and DWR covered its operations under CESA by securing a consistency determination from DFW based on these federal Biological Opinions. Our state departments had long considered the benefits of pursuing a stand-alone CESA permit because of its important distinctions from the ESA, and the need to manage water flexibly given California's increasingly extreme hydrology.

In 2018, as federal agencies worked to update the Biological Opinions, President Trump issued a first-of-its-kind Presidential Memorandum to shape the new opinions and greatly accelerate their completion. Recognizing this extraordinary and uncertain situation, state agencies decided to pursue a separate state permit for the first time to ensure that DWR's water operations can comply with state law. Our state departments worked together, drawing on a decade of science to develop a permit that strengthens safeguards for fish while improving real-time management of state water operations.

This new approach strengthens water security for Southern California communities by ensuring the continued lawful operation of the SWP for the next ten years regardless of

what happens in Washington D.C. This regulatory certainty will support continued smart investments, from modernizing conveyance to expanding water recycling, and will empower the state to make operational decisions untethered from needless federal bureaucratic delays.

### **Improved Flexibilities**

This new state permit improves operational flexibility while ensuring environmental protections. It allows our water infrastructure to capture and save more water in wet years for use later in drier years to protect fish and supply communities. The importance of providing this flexibility is a lesson learned from the last drought, when the lack of carryover supplies limited our ability to protect fish and provide water supplies in the sequential dry years. This new approach is a promising way to prepare for dry years.

These new flexibilities also allow for more exports than were previously permitted during large storm events and hydrologically wet years. Under the permit, DWR and DFW will work together and utilize storm events to increase storage and enable environmentally beneficial flows. This balanced approach places more emphasis on maintaining protective environmental conditions during these storm events than do the Biological Opinions, which we believe do not place enough environmental safeguards on export pumping during storm events. At its core, this state permit enables adaptive management based on improved scientific monitoring and research, close collaboration between state and local agencies, and continued coordination with our federal partners.

### **Protecting Salmon**

California's strong protection of our endangered fish and wildlife reflects our collective values. Our state law to protect endangered species, CESA, is a bedrock of this protection. CESA is more protective than the federal ESA and requires that we minimize, avoid, and fully mitigate an action's impacts on endangered species.

Our iconic salmon are highly imperiled and facing extinction. These species, along with Delta and longfin smelt, have recently been surveyed at the lowest population levels ever recorded. Our salmon have been returning to California's rivers for thousands of years, are revered by Tribal Nations, and support a broad coastal fishing industry. Each of these fish species also fills an important niche in a complex ecosystem.

The state permit carefully analyzed operations of our state water infrastructure. It contains a robust set of protective measures. It establishes transparent, science-based guidelines to protect endangered fish. It makes several improvements to waterways, like a new barrier in the south Delta to improve survival of migrating juvenile salmon and better use of salinity gates in the Suisun Marsh to expand habitat for Delta Smelt. It also includes new funding for a comprehensive adaptive management program and updated modeling, monitoring, and analyses that inform real-time operations.

## **Coordination with Federal Agencies**

State water operations must also comply with the federal ESA. Our state and federal water operations must coordinate closely given their joint responsibilities for water supply delivery and environmental protection. For this reason, our state permit incorporates many components of the Biological Opinions and facilitates coordinated decision-making between state and federal agencies.

However, earlier this year, after careful review of the Biological Opinions developed by the Trump Administration, our best experts concluded they do not do enough to protect endangered fish. As a result, after significant discussion with federal agencies the state filed litigation to modify these federal operations to be more protective and more closely align with our state approach. This was a difficult decision given the importance of state and federal coordination, but we consider it essential to stand up for adequate environmental protections for endangered species.

Therefore, the state permit contains elements not included in the Biological Opinions: more sensitive triggers to modify operations if endangered species are being killed; assured blocks of water flows during spring and summer period to support fish migration and survival; and ultimate authority for our fish protection agency to require real-time operational changes to protect endangered species.

The federal and state water projects have a long history of shared responsibilities for meeting environmental needs. Given this, the State Water Project cannot be forced to absorb the burden of environmental compliance that belongs to others, and we continue to work with the federal government in an effort to resolve our differences on endangered species protections.

## **Moving Forward Together**

We must continue to protect our environment *and* build water security for communities and agriculture. Too often, water policy decisions are portrayed as a win for one priority at the expense of another. This state permit to protect endangered species avoids this “winner-take-all” approach. It provides much needed environmental protection while advancing operational flexibilities that benefit economic uses of our state's water.

Establishing clear rules that protect endangered species and aligning federal and state approaches will advance a broader effort to secure voluntary agreements to improve conditions in the Sacramento and San Joaquin River systems and Delta. These agreements hold promise to bring additional water, habitat and science to improve environmental conditions in the two river systems and the Delta while providing regulatory certainty for communities and agriculture by implementing the State Water Board's Bay Delta Water Quality Control Plan. We continue to steadfastly pursue these agreements and have included in this state permit adaptability to sync with that effort.

We are thankful of our lasting partnership with Metropolitan Water District to meet California's water needs. Continued collaboration into the future will be essential as we work to build our collective water resilience. Recognizing this, we thank each Board

member for your thoughtful and deliberate evaluation of this state permit for the State Water Project.

Sincerely,

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Chuck Bonham  
Director, California Department of Fish and Wildlife

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Karla Nemeth  
Director, California Department of Water Resources