



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

*Office of the General Manager*

April 20, 2020

Mr. Chuck Bonham  
Director  
California Department of Fish and Wildlife  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Karla Nemeth  
Director  
California Department of Water Resources  
1416 9th Street, Room 1115-1  
Sacramento, CA 95814

Dear Director Bonham and Director Nemeth:

Metropolitan received your letter dated April 14, 2020, directed to Chairwoman Gray and the Metropolitan Board explaining your collective understanding of the California Endangered Species Act (CESA) Incidental Take Permit (ITP) for the State Water Project (SWP). Chairwoman Gray has requested that I respond.

Metropolitan agrees with and shares your desire for close and continued coordination between the federal Central Valley Project (CVP) and the SWP. This coordination is not only required by law for the SWP to meet federal Endangered Species Act (ESA) requirements, but is also necessary given the coordinated nature of the projects. As a matter of fact, that coordination has been the practice since the SWP first began operations in the early 1970's through annual operating plans, and then by federal law under the Coordinated Operations Agreement adopted by Congress in 1986.

Your letter implies that the new permit issued by the California Department of Fish and Wildlife (DFW) is a "stand alone permit" apart from the federal process to protect endangered species. This is not correct. The permit issued by DFW does not replace or eliminate the SWP obligation to comply with federal ESA and the 2019 Biological Opinions.

The U.S. Bureau of Reclamation and the California Department of Water Resources (DWR) worked together over the reconsultation period to jointly propose coordinated long-term operations as well as approximately \$1.5 billion in conservation, monitoring, and new science over the ten-year term of the 2019 Biological Opinions.

During preparation of the permit Environmental Impact Report, DWR evaluated the proposed project and determined it had no significant environmental impacts, was based on the best available science, and ensured coordinated operations with the CVP. This conclusion was based on robust analysis. However, starting in December 2019 and through the last few months of the CESA permit process, the state abruptly backed away from its own proposed operations plan to a new goal of seeking no increases in SWP exports as compared to the 2008-2009 biological opinions. There is no technical or scientific justification for concluding the ITP is better or more protective than the federal biological

opinions, simply because, “it does not seek to increase SWP exports.” By creating two sets of operating rules for the CVP and SWP, the ITP creates operational conflicts, with the SWP reducing exports at times that it has limited ability to change flows in Old and Middle Rivers. This is further exacerbated by shifting discretion to make operational decisions from DWR to DFW without any obligation for DFW to justify those decisions by tying export reductions to impacts caused by the SWP as required under CESA. Additionally, the ITP significantly increases the financial burden of the SWP as compared to the CVP, including commitments for actions outside of the influence of SWP operations.

Your letter asserts that SWP supplies will be more reliable under the new CESA permit, however, the ITP includes operational criteria that are not scientifically justified which can arbitrarily reduce water supply in key water management years such as dry and above and below normal years. While it does allow for some additional water to be diverted in very wet years as compared to the old biological opinions, very wet years produce many challenges to water conveyance and, in any event, the ITP requires that a majority of this water must be paid back in other water years. These requirements are not justified by the best available science, nor are they proportional to SWP effects.

Your letter also states that CESA is more protective than the ESA and therefore, presumably, the ITP must be more restricting. That is not correct. In fact, CESA and ESA are very similar statutes such that the state has discretion to issue “consistency determinations” finding that compliance with ESA is sufficient and no separate CESA permit is required. This process was deemed satisfactory by DFW for decades as to the SWP and, in fact, this is the very first time the state has ever found it necessary to issue a separate ITP for the SWP.

It is unfortunate that the state decided to file litigation challenging the jointly proposed operations plan and federal permits for the SWP and CVP. This halted the historic voluntary agreement process which, ironically, would provide greater outflows, greater conservation, more robust monitoring, and more funding commitments shared across a broad array of diverters throughout the Delta watershed than the state has unilaterally imposed on the SWP alone in the CESA permit.

Metropolitan has long advocated for improved Delta science, monitoring, and habitat restoration, and it continues to support operational decision making based on best available science, real-time information, and adaptive management. We have invested in science and habitat restoration through the SWP, through the CALFED process, through the State Water Contractors, and through our own individual investments.

Metropolitan urges the state to reinitiate the historic voluntary agreement discussions and commit to reconsidering this ITP. Metropolitan understands and agrees that the SWP must be operated to comply with CESA, and that meeting CESA’s requirements involves substantial conservation, monitoring and science-based adaptive management. However, permit requirements that reduce SWP water supplies, increase costs and “mitigation” must be both legally and scientifically justified. There is no legal basis to impose mitigation or monitoring requirements on the SWP for take or actions by third parties or in geographic locations not impacted by the SWP.

DWR's role and obligation pursuant to the contracts with the State Water Contractors who pay for the project and are its beneficiaries, is not to limit exports without justification but, "to make all reasonable efforts to perfect and protect SWP water rights and to satisfy the water supply commitments under the contract". Proposing limitations on exports without legal or scientific basis is contrary to this obligation.

Metropolitan has a duty to protect its ratepayers' interests in reliable SWP supplies, science-based decision-making and permitting that is legal and equitable. The SWP provides the 19 million Californians in Metropolitan's service area with about 30% of their total water supply. Metropolitan in turn has invested over \$13 billion in the SWP since 1960 to ensure this important supply is delivered. The Metropolitan board did not take the decision to authorize litigation lightly. It is a decision that is both regrettable and necessary.

Metropolitan remains committed to continued discussion to address these and other important water issues facing California. We too appreciate the lasting and productive relationships we have built with the State and your agencies. We hope that we can settle our differences, provide for coordinated operation of the SWP and CVP in a manner that is compliant with both CESA and ESA requirements and, ultimately, consummate the historic voluntary agreements that will ensure environmentally protective, science-based water management and ecosystem restoration for the next 15 years.

Sincerely,



Jeffrey Lightlinger  
General Manager

cc: Gloria D. Gray, Chairwoman, The Metropolitan Water District of Southern California  
Metropolitan Water District Board of Directors