**DEPARTMENT OF WATER RESOURCES**
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-579

**VIA-EMAIL**

3/11/2026

Lynn Phillips,
Sutter Extension Water District
4525 Franklin Road
Yuba City, California 95993
lphillips@sutterewd.com

Subject: The Draft Initial Study and Proposed Mitigated Negative Declaration for Sutter Extension Water District 2026 Water Transfer Program State Clearinghouse #2026020246

Dear Mr. Phillips,

The California Department of Water Resources (DWR) has reviewed the Draft Initial Study and Proposed Mitigated Negative Declaration (IS/MND) for the Proposed Project. DWR provides the following comments for consideration.

**Project Description**

The Sutter Extension Water District (SEWD) proposes to transfer up to 15,080 acre-feet (AF) of water to potential buyer(s) during the 2026 irrigation season. SEWD would make up to 15,080 AF available through idling cropland (non-irrigation of farmland by voluntary participants) and groundwater substitution (using groundwater supplies in lieu of surface water supplies). Transfer water made available by SEWD would be managed and, as operationally feasible, stored and conveyed through the State Water Project (SWP) facilities for delivery to buyer(s), subject to applicable approvals and operational and regulatory constraints.

**Comments**

**SECTION 1 PROJECT DESCRIPTION**

In 2021 and 2022 SEWD successfully transferred water which was conveyed to the buyer through DWR's SWP system during the water transfer window of the same year as the transfer. The Proposed Project describes activities not included in those projects which appear to rely on DWR actions which DWR does not undertake.

**Project Introduction and Background**

The Project Introduction and Background subsection explains that,

> "[i]f DWR is unable to release the water from storage during the 2026 water transfer window of July through November, the transfer water may still be used in one of the following ways: (1) Buyers may negotiate terms with SEWD for a 2027 water transfer which would include consideration for the inability to transfer the water supplies made available by SEWD for 2026; or (2) Buyers may negotiate with DWR to secure rights to store the water transfer supplies purchased from SEWD for conveyance at a later date." The Proposed Project scenario where transfer water would be retained in Lake Oroville and released in 2027, when conveyance capacity is not available during the 2026 transfer window, implies that carryover storage and release beyond the Proposed Project's identified transfer year and transfer window (2026) would occur. The Proposed Project description in this Draft IS/MND for the 2026 water transfer program is not consistent with SEWD's previous MNDs for similar transfers in 2021 and 2022.

Absent an approved agreement and operational basis, DWR does not provide carryover storage for transfer water beyond the 2026 transfer window in this Proposed Project scenario. As noted in Section 1.0 of this document, "if sufficient capacity is not available to convey the SEWD transfer supplies across the Delta and through the export facilities during the 2026 transfer window, the transfer water may be retained in Lake Oroville and released in 2027 instead." This statement creates ambiguity regarding the Proposed Project's operations during the 2026 irrigation season, operational assumptions, and potential downstream effects associated with release timing and conveyance in a different year under different hydrologic conditions. To maintain a stable Proposed Project description and to support the Draft IS/MND's impact conclusions, DWR recommends the necessary removal of the statement regarding the retention and release of transfer water from Lake Oroville in 2027.

Water Deemed Transferred at Thermalito Afterbay

This subsection states that,

> "[d]uring the implementation of the proposed project, water transferred by SEWD would be deemed transferred at SEWD's points of diversion on the Thermalito Afterbay and custody would then transfer to Buyers. As the operator of the SWP, depending on the hydrologic and regulatory conditions controlling SWP operations, DWR may be able to utilize Lake Oroville storage to facilitate the transfer during periods when Delta conditions prevent export of the transfer water. "DWR would make every effort to use Lake Oroville to regulate the water in a manner which would allow for delivery of the water through the Sacramento-San Joaquin Delta, for export through the State's Banks or Barker Slough Delta Pumping Plants or the federal Jones Delta Pumping plant for ultimate delivery to Buyers.

This description needs to be reconciled with the Project Introduction and Background subsection which explains that

> "[i]f DWR is unable to release the water from storage during the 2026 water transfer window of July through November, the transfer water may still be used in one of the following ways: (1) Buyers may negotiate terms with SEWD for a 2027 water transfer which would include consideration for the inability to transfer the water supplies made available by SEWD for 2026; or (2) Buyers may negotiate with DWR to secure rights to store the water transfer supplies purchased from SEWD for conveyance at a later date."

When read together, the two parts of the project descriptions create some ambiguity which may result in an unstable project description. To assist with updating the overall project description, DWR has the following comments and requests for clarification.

- As stated previously, DWR does not provide carryover storage for transfer water beyond the identified transfer window absent a defined agreement and operational basis. This applies to any entity who has custody over transfer water.

- The IS/MND explains that the Proposed Project's implementation phase includes SEWD moving the transfer water to SEWD points of diversion on the Thermalito Afterbay, but the IS/MND does not provide a definition of implementation nor describe the actions which will be part of the project implementation. The Proposed Project description needs to include the activities that are included in the implementation in order to have a complete project description.

- The IS/MND explains that once the transfer water is at SEWD's points of diversion on the Thermalito Afterbay and deemed transferred, custody of the water would then be transferred to Buyer, and in the next sentence states that DWR, as the operator of the SWP, may be able to utilize Lake Oroville storage to facilitate the transfer during periods when Delta conditions prevent export of the transfer water. DWR cannot guarantee that the SWP has the capacity to deliver the transfer water to a buyer based on the Proposed Project Description. Consequently, this section indicates that SEWD assumes the risk that once the transfer water enters Lake Oroville and the Thermalito Afterbay, DWR may not have the capacity to deliver the water to the buyer during the 2026 transfer window. This uncertainty, which is a part of the project, should be included in the Project Description.

- Regarding the description that water transferred by SEWD would be deemed transferred at SEWD's points of diversion on the Thermalito Afterbay and custody would then be transferred to Buyers, please add that this would occur only after DWR confirms that transfer water will be sent to SEWD's points of diversion, and only at the Thermalito Afterbay.

**Specific Comments - Environmental Impacts**

General Comment

DWR recognizes that detailed technical information is commonly submitted later through the Water Transfer Information Management System (WTIMS) as part of the formal transfer proposal and Project Agency review, and until that time, there is some uncertainty as to the mitigation that may be needed for the project impacts, Despite that challenge, DWR recommends the IS/MND includes enforceable mitigation and monitoring commitments that do not rely on undefined future discretion. Even when details are appropriately deferred to WTIMS, the IS/MND needs to describe the performance standards and compliance approach that will be applied to determine the appropriate project mitigation.

IV. Biological Resources (Giant Garter Snake):

The Proposed Project's temporary reduction in available habitat for the GGS could result in a potentially significant impact to the species. The mitigation measures for this potentially significant impact to GGS is found at Mitigation Measure Bio-1. The mitigation measure requires the maximum percentage of land idled for this project be limited to 20% of SEWD's irrigable acreage, and the lands taken out of production would be dispersed throughout the SEWD's jurisdiction such that the contiguity of idled lands would be minimized.

In addition, Mitigation Measure Bio-2provides that SEWD will ensure a depth of water is maintained in its major irrigation and drainage canals that is similar to depths during years when a crop idling transfer does not occur… a depth of at least two feet will be maintained."

To improve clarity and enforceability, DWR recommends the IS/MND to define "dispersed" using objective criteria (for example, limits on contiguous idling and or distribution across the SEWD service area). Maps of "dispersed" idled fields may be provided through WTIMS; however, the IS/MND should state the compliance approach that will apply.

In addition, the IS/MND should identify the canal segments that are covered by Mitigation Measure Bio-2, provide the target canal water depth (during years when a crop idling transfer does not occur) that will be maintained during transfer conditions. The IS/MND should also specify corrective actions if canal water levels fall below the stated targets.

The IS/MND should further indicate that, if the Proposed Project moves forward, SEWD will provide DWR with reasonable access to idled fields and relevant conveyance features as needed for monitoring, verification, and GGS surveys. SEWD should also

acknowledge that DWR may require reimbursement for reasonable costs incurred to support monitoring and verification, consistent with transfer review practice and the Draft 2019 Water Transfer White Paper.

V. Hydrology and Water Quality:

The IS/MND subsidence analysis concludes that the Proposed Project will have less than significant impact on groundwater supplies, groundwater recharge, land subsidence and groundwater dependent ecosystems (GDEs). These findings are based on a groundwater monitoring program where groundwater level monitoring data will be collected and reviewed throughout the transfer period for any depletions in comparison to historical lows of groundwater elevation and DWR land subsidence data, similar to the monitoring undertaken in 2018, 2020, 2021 and 2022.

Since 2022, the scientific knowledge of subsidence has progressed. In order for the impact analysis to be consistent with the current scientific knowledge of subsidence, DWR recommends that the subsidence impact analysis be expanded to incorporate the best available science for subsidence risk management, specifically DWR's Best Management Practices for the Sustainable Management of Groundwater: Land Subsidence (January 2026), which was developed and is available for this purpose.

Lastly, the monitoring program and triggers should be stated in measurable terms, with implementation details provided through WTIMS for DWR review.

Thank you for considering these comments.

Sincerely,

Nancy E Finch

Nancy Finch, Attorney III
Office of the General Counsel
Department of Water Resources
Post Office Box 899
Sacramento, California 95812-0899
(916) 820-8124
Nancy.Finch@water.ca.gov