



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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May 22, 2023

*Via email*

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**Subject: CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CONSULTATION REGARDING the '2023 LOWER OWENS RIVER PROJECT  
SEASONAL HABITAT FLOW AND BLACKROCK WATERFOWL  
MANAGEMENT AREA FLOODED ACREAGE'**

Mr. Perez and Dr. Alpert:

The California Department of Fish and Wildlife (CDFW) has reviewed your Proposal for the *2023 Lower Owens River Project Season Habitat Flow and Blackrock Waterfowl Area Flooded Acreage* (2023 Proposal) dated and received on May 8, 2023. CDFW provided preliminary verbal comments on the 2023 Proposal during the Los Angeles Department of Water and Power (LADWP) and Inyo County Water Department (ICWD) Technical Working Group (TWG) meeting held in person and via Zoom on May 9, 2023. CDFW appreciates the opportunity to provide consultation on this subject, especially in view of the 2023-2024 record-high runoff year at 233% of normal.

### **Blackrock Waterfowl Management Area**

CDFW appreciates the ICWD, LADWP, and MOU Parties' collaborative efforts to implement an adaptive Interim Management and Monitoring Plan (Interim Plan) that will test and monitor the success of seasonal flooding within the Blackrock Waterfowl Management Area (BWMA).

The 2023 Proposal recommends implementing a portion of Year 3 of the BWMA's 5-year Interim Plan in 2023-2024, by incorporating seasonal flooding of a fixed 500 acres of waterfowl habitat in the fall and winter of 2023 and early spring months of 2024. The Interim Plan is geared toward further improving waterfowl habitat conditions,

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Mr. Adam Perez, Los Angeles Aqueduct Manager  
Dr. Holly Alpert, Director  
May 18, 2023  
Page 2

preventing further encroachment of aquatic vegetation, and reducing long-term maintenance in the BWMA. CDFW agrees with the plan to flood a fixed 500 acres of the waterfowl habitat in the fall and winter of 2023 and early spring months of 2024. Unprecedented runoff conditions in 2023 have already flooded the BWMA, and these flooded conditions are expected to persist until late in 2023. These unprecedented flood conditions will make it impossible to implement the second part of the Interim Plan, which consists of drawing down the waterfowl units of the BWMA in the summer months of 2023. LADWP and ICWD anticipate that the waterfowl units will remain flooded until later in 2023, although the exact duration of the flooded status is not known at this time. Despite the impossibility of drawing down the BWMA units as a critical component of the Interim Plan in the summer of 2023, LADWP and ICWD recommend in their written 2023 Proposal resuming implementation of Year 3 of the Interim Plan in 2023-2024, when high runoff conditions subside. During the TWG meeting on May 9, 2023, TWG members verbally agreed to instead pause Year 3 implementation of the BWMA Interim Plan, given the current flooded conditions of the BWMA. CDFW would like to confirm that implementation of Year 3 of BWMA Interim Plan will be postponed until 2024-2025. If BWMA is unable to be drawn down in the summer of 2023 (during the growing season), CDFW advises ICWD and LADWP to reevaluate the length of time needed to implement the Interim Plan depending on 2023 results, given the high runoff conditions. At the end of the 2023 growing season, it is possible that new and reestablished emergent vegetation in the BWMA may reverse the Year 1 and Year 2 Interim Plan gains made so far in reducing emergent vegetation and developing a forage base for migratory waterfowl and shorebirds. In this case, diminished habitat value caused by emergent vegetation re-dominating BWMA may necessitate restarting the 5-year Interim Plan entirely in 2024-2025.

### **Seasonal Habitat Flow**

The 2023 Proposal recommends seasonal habitat flows (SHF) of **200 cubic feet per second (cfs)** to follow the guidance outlined in the 2004 Lower Owens River Project (LORP) Environmental Impact Report (2004 EIR) (Volume 1 – Section 2.3.5.3 Seasonal Habitat Flows).

The 2004 LORP EIR does not address climate change and above 130% of normal runoff years in the Owens Valley such as the current 233% of normal runoff year 2023. Yet, per the 2004 LORP EIR the 200 cfs SHF apply to a forecasted normal (100%) runoff year as well as to any runoff year above 100% of normal. Discharging 200 cfs from the LORP intake in an above normal runoff year will only provide the LORP a small fraction of the water available during this high runoff year. Applying the 2004 LORP EIR guidance during an exponentially high runoff year such as this year also disregards operational constraints of LADWP's infrastructure to move larger than normal amounts of water, as is seen in this year's runoff exceeding the Los Angeles Aqueduct operating capacity, when instead the excess water could (and currently is) be provided as SHF to the LORP.

Mr. Adam Perez, Los Angeles Aqueduct Manager  
Dr. Holly Alpert, Director  
May 18, 2023  
Page 3

The purpose of the LORP is to reestablish and manage a holistic riverine ecosystem to benefit not only warmwater fishery and wetland habitat but also other sustainable uses in the Lower Owens Valley such as recreation, livestock, and agriculture (Hill and Platts, 1997). To achieve the LORP goals adaptive management of the LORP is required. As stated in previous comment letters, SHF above the current maximum of 200 cfs are required to mobilize river bottom fine sediments and to provide conditions conducive to germinating riparian tree seedlings.

In the 2017 LORP SHF consultation letter, CDFW explained that SHF of 200 cfs lack the sheer stress needed to mobilize river bottom fine sediments. This lack of sufficiently high SHF has enabled hardstem bulrush (*Schoenoplectus acutus*) and cattail (*Typha sp.*) encroachment into the channel that further reduces the scouring force of 200 cfs SHF.

The hydraulic models performed during the LORP planning phases had incorrectly determined that 200 cfs discharges from the Intake would sufficiently scour the channel (2004 LORP EIR, p. 4-7). The results expected from the models were not realized, confirmed by over 10 years of implementing these peak SHF; observing increased channel constriction by vegetation and channel roughness as a consequence, further preventing fine organic particulate matter transport during the SHF events.

As evidenced for the past decade, 200 cfs SHF have proven to not be sufficient to substantially scour the channel in normal and above-average runoff year conditions. Tule encroachment is compromising open-water habitat, slowing flow velocities, and inhibiting habitat diversity. Adaptive management is required to meet the LORP goals and must consider river flow adjustments that can alleviate aquatic vegetation encroachment and abundance and improve water quality conditions.

### Recommendation

For the past decade, CDFW has recommended altering the flow regime and deviating from the flow schedule specified in the 2004 LORP EIR (see CDFW's 2013-2022 *LORP Seasonal Habitat Flow and Blackrock Waterfowl Management Area Flooded Acreage Comment Letters*). Continuing to use the 2004 LORP EIR hydrograph to inform SHF magnitude, timing, and duration has less purpose now that tule density in the channel has increased to the point where the river system would need higher peak flows to yield the flushing flow benefits that 200 cfs SHF was intended to provide. As a threshold matter, a thorough analysis of flow changes and predicted results would be needed to validate such a change to the existing flow regime; and thus, a revision to the 2004 EIR hydrograph (i.e., through a subsequent EIR) may be appropriate.

CDFW strongly urges ICWD and LADWP to reevaluate the relevance and application of the hydrograph in the 2004 EIR, in the context of prevailing conditions such as climate change, extreme precipitation events, and extended periods of drought that were not comprehended during the LORP planning phases and preparation of the 2004 LORP EIR. Without even considering these climate variables, the hydrograph outlined in the 2004 LORP EIR has been implemented for over ten years and has not been successful

Mr. Adam Perez, Los Angeles Aqueduct Manager  
Dr. Holly Alpert, Director  
May 18, 2023  
Page 4

at achieving the LORP goals and objectives. CDFW would like to remind ICWD and LADWP that through the adaptive management process, both parties can “make adjustments to the initially proposed flow regimes and other management actions” to conform with the LORP goal of enhancing native fisheries and riparian habitats along 62 miles of the LORP (2004 LORP EIR, Section 2.10.5 Adaptive Management).

The timing of SHF was intended to “roughly coincide with the spring run-off and to facilitate dispersal and germination of riparian plant species” (LORP Monitoring Adaptive Management Plan [MAMP], Section 4.2.3 Seasonal Habitat Flows). As indicated in the 2023 Proposal, record high precipitation has created unprecedented runoff conditions in 2023 that will result in previously unseen LORP flows from “late May through early August 2023”. SHF in the spring were intended to disperse and germinate riverine-riparian tree seeds. Since excess flows will continue until the fall, outside of the growing season, the SHF’s goal to establish native riparian vegetation may no longer apply for 2023, and any previous riparian vegetation gains may indeed be lost due to prolonged flooding.

CDFW encourages LADWP and ICWD to develop a specific monitoring program for high water years that measure water quality parameters, including, at a minimum, temperature, dissolved oxygen, and suspended solids, based not necessarily on a weekly monitoring schedule, but based on when flows in the LORP increase incrementally (i.e., from 100 cfs to 150 cfs to 200 cfs to 250 cfs etc.). The goal of this monitoring program would be to help provide LADWP and ICWD information to establish a comprehensive and mutually agreed upon Adaptive Management Plan for the LORP.

CDFW recommends ICWD and LADWP use the 2023 unprecedented runoff year and unprecedented high flows in the LORP projected to reach upwards of 1600 cfs to inform the parties on how the LORP can be moved towards meeting the projects goals and objectives.

If you have any questions, please contact Trisha Moyer at [Patricia.Moyer@wildlife.ca.gov](mailto:Patricia.Moyer@wildlife.ca.gov) or (760) 835-4304.

Sincerely,

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Mr. Adam Perez, Los Angeles Aqueduct Manager  
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May 18, 2023  
Page 5

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Mr. Adam Perez, Los Angeles Aqueduct Manager  
Dr. Holly Alpert, Director  
May 18, 2023  
Page 6

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