

WaterFix EIR Certification and NOD Client Alert

July 24, 2017

On Friday, July 21, 2017, the California Department of Water Resources (“DWR”) certified the Environmental Impact Report for the California WaterFix tunnels project and filed a Notice of Determination with the Governor’s Office of Planning and Research. The certification and Notice of Determination bring DWR one step closer to breaking ground on the water infrastructure project proposed by DWR and the United States Bureau of Reclamation.

WaterFix, which has been the subject of considerable public attention and debate, is intended to ensure more reliable water exports from the Delta by reducing reliance on the existing south Delta diversion facility that has contributed to reverse flows in Delta channels and harmed endangered species like the Delta smelt and Winter-run Chinook salmon. The project would pump water via two 40-foot-wide, 30-mile-long underground tunnels from intakes in the northern portion of the Sacramento-San Joaquin River Delta to the south Delta facility for the agencies’ respective distribution systems under the State Water Project and Central Valley Project. The new intakes would draw a portion of the fresh water inflows from the Sacramento River that would otherwise wend their way through the complex system of Delta channels and sloughs toward the Bay Delta estuary, and ultimately, the Pacific Ocean.

The document certified by DWR on July 21 was jointly prepared by DWR and Reclamation under the California Environmental Quality Act (“CEQA”) and the National Environmental Protection Act (“NEPA”), which impose regulatory standards that mandate disclosure to the public of a proposed discretionary project’s significant environmental effects through the preparation of an Environmental Impact Report (“EIR”) or Environmental Impact Statement (“EIS”). NEPA requires Reclamation, as the lead federal agency on the project, to prepare and file a Record of Decision in its own environmental review of the project. The Final EIR/EIS that was certified by DWR is composed of the Final EIR/EIS released December 22, 2016, and a document entitled “Developments after Publication of the Proposed Final Environmental Impact Report.”

Importantly, DWR’s certification and Notice of Determination to approve the WaterFix EIR represent but one step, albeit a significant one, among many proceedings that have yet to be completed. Future review and permitting processes include ongoing consultations and approvals through Biological Opinions by the United States Fish and Wildlife Service (“USFWS”) and the National Marine Fisheries Service (“NMFS”) issued under the federal Endangered Species Act,

Related People

Austin C. Cho
Meredith E. Nikkel
Kathryn L. Oehlschlager
Rebecca R. A. Smith

Related Industries

Water Rights & Resources

Related Practices

Water Law
Water Quality Law
Water Rights Litigation

and similar permit approval by the California Department of Fish and Wildlife under California's counterpart statute. Additionally, the State Water Resources Control Board is currently holding a hearing to decide whether it will approve DWR and Reclamation's petition to change the authorized points of diversion under their existing water rights to allow diversion at the north Delta intakes. Before the SWRCB can approve the change, it must first determine that approval of the petition will not injure any legal user of water, cause adverse impacts to the environment, or contravene the public interest.

The certified WaterFix EIR/EIS, which ultimately totaled over 73,000 pages of impact analysis, mitigation measures, and responses to public comments, concluded that while significant impacts are likely to result, they are acceptable in light of the anticipated benefits of the project. That document and its attendant analysis are available online at: <http://baydeltaconservationplan.com/NoticeofDetermination.aspx>. Reclamation has not yet issued a formal approval or Record of Decision on the project.

Our water attorneys are carefully tracking these legal developments, and will offer thoughts and analysis in future alerts as this situation (and the complicated legal issues surrounding it) evolves.