



State Water Resources Control Board

December 10, 2020

Mr. John James
Yuba County Water Agency
1220 F Street
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Via e-mail: jjames@yubawater.org

Governor's Office of Planning & Research

DEC 11 2020

STATE CLEARINGHOUSE

COMMENTS ON NOTICE OF PREPERATION FOR THE NEW BULARDS BAR DAM SECONDARY SPILLWAY PROJECT, PART OF THE YUBA RIVER DEVELOPMENT PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2246

Dear Mr. James:

On November 9, 2020, Yuba County Water Agency (YCWA) filed a Notice of Preparation (NOP) for the New Bullards Bar Dam Secondary Spillway Project (Spillway Project). Per YCWA's final license application and amendments thereto the Federal Energy Regulatory Commission (FERC) for the Yuba River Development Project (YRDP), the Spillway Project is part of the broader YRDP. The NOP contained an overview of the Spillway Project description and discusses items that will be addressed in the Environmental Impact Report (EIR).

Filing of the NOP on November 9, 2020, started a 30-day comment period that provides public agencies, stakeholders, and interested organizations and individuals the opportunity to comment on the scope and content of environmental information that should be addressed in the EIR. (See Pub. Resources Code, § 15082, subs. (b), (d); Cal. Code Regs., tit. 14, § 15103.) This comment period ends on December 10, 2020. (See <https://ceqanet.opr.ca.gov/2020110163/2>.)

State Water Board staff hereby submits the enclosed attachment (State Water Resources Control Board Staff Comments on Notice of Preparation for the New Bullards Bar Dam Secondary Spillway Project), which provides information and comments pertaining to YCWA's NOP on the Spillway Project.

During the current Coronavirus-19 emergency, most State Water Board staff are working from home. Accordingly, if you have questions regarding this letter, please contact Parker Thaler by email at: Parker.Thaler@waterboards.ca.gov. Written correspondence should be addressed as follows:

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Mr. John James

December 10, 2020

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Parker Thaler
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Sincerely,

Parker Thaler, Senior Environmental Scientist
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Division of Water Right

Enclosure: State Water Resources Control Board Staff Comments on Notice of
Preparation for the New Bullards Bar Dam Secondary Spillway Project

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State Water Resources Control Board Staff Comments on Notice of Preparation
for the New Bullards Bar Dam Secondary Spillway Project

The following comments are provided by State Water Resources Control Board (State Water Board) staff on the Notice of Preparation (NOP) issued by Yuba County Water Agency (YCWA) for the New Bullards Bar Dam Secondary Spillway Project (Spillway Project), which is part of the Yuba River Development Project (YRDP) and also referred to as Federal Energy Regulatory Commission (FERC) Project No. 2246.

Clean Water Act Section 401 Certification

Section 401 of the Clean Water Act requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans. Clean Water Act section 401 directs that certifications shall prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law. Conditions of certification shall become a condition of any federal license or permit subject to certification. The Spillway Project will result in a discharge to navigable waters and must obtain certification from the State Water Board prior to its construction, operation, and maintenance and would be subject to Section 401 of the Clean Water Act.

On July 17, 2020, the State Water Board issued water quality certification for the relicensing of the YRDP, which includes certification for the Spillway Project if FERC's finding of waiver is overturned. The certification was issued under a statutory provision providing the State Water Board with authority to issue a certification prior to the completion of California Environmental Quality Act (CEQA) review under certain conditions (Wat. Code, § 13160, subd. (b)(2)), and YCWA has challenged the use of this authority. (E.g., YCWA, Petition for Reconsideration (Aug. 14, 2020), p. 6.) Should the State Water Board's certification ultimately be found to be invalid, a new certification would be necessary for any Clean Water Act Section 404 permit issued by the United States Army Corps of Engineers.

Responsible Agency

As a Responsible Agency, the State Water Board recommends YCWA analyze the potential environmental effects of YRDP relicensing, which would include the Spillway Project. YCWA should fully analyze the potential environmental impacts associated with operation of the YRDP as compared to water quality standards identified in the *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* and the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*. Water quality standards analysis should include examination of potential impacts to beneficial uses of surface water, and to narrative as well as to quantitative water quality objectives. Additionally, the EIR should consider the potential impacts of the YRDP and alternatives vis-à-vis state and federal anti-degradation requirements. The Environmental Impact Report (EIR) should include analysis of the terms of State Water Board's July 17, 2020 water quality certification for the YRDP, at the project or program level, as appropriate for each condition.

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Specifically regarding the spillway changes at New Bullards Bar Dam described in the NOP, State Water Board staff recommend YCWA analyze potential impacts that could occur downstream associated with increased flood-control related discharges in addition to the hydrology and water quality issues discussed in the NOP. The Spillway Project has the potential to increase discharge capacity by 35,000 cubic feet per second (cfs) in order to increase storage capacity in New Bullards Bar Reservoir during flood events. Discharges of this magnitude could result in significant impacts downstream such as increased scour, flooding, and changes in channel morphology.

Scope of Environmental Review

State Water Board staff is concerned that stand-alone environmental review of the Spillway Project could constitute piecemealing, which is impermissible under CEQA. Staff is further concerned that the Spillway Project description as presented in the NOP would not provide the State Water Board with a full analysis of the impacts of related activities associated with YRDP relicensing and alternatives that could support existing certification requirements or provide information for any future certification (e.g., should FERC's waiver finding not be overturned). State Water Board staff encourages YCWA to comply with all CEQA requirements and review the environmental impacts of the entire YRDP.

“There is no dispute that CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project. This rule derives, in part, from [California Code of Regulations, title 14,] section 21002.1, subdivision (d), which requires the lead agency . . . to ‘consider[] the effects, both individual and collective, of all activities involved in [the] project.’” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.) “The requirements of CEQA cannot be avoided by piecemeal review which results from ‘chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.’” (*Rio Vista Farm Bur. Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370 [quoting *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284].) Moreover, the CEQA Guidelines define the term “Project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . .” (Cal. Code Regs., tit. 14, § 15378, subd. (a).)

The NOP identifies YCWA as the lead agency under CEQA and states that YCWA “will prepare a project-level EIR that evaluates the potentially significant environmental effects of the [New Bullards Bar Dam Secondary Spillway Project].” Page one of the NOP further states that New Bullards Bar Reservoir and Dam are part of the YRDP, a hydroelectric project for which YCWA has applied for a new FERC license. Page four of the NOP states:

The construction and operation of the project are evaluated in the 2019 FERC [Final Environmental Impact Statement] for the new license application and are expected to be authorized by and a condition of the

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new license to be issued by FERC. YCWA therefore expects and intends for the project construction and operation to be covered by the new FERC license, which FERC is expected to issue following completion of the pending [Endangered Species Act] consultation.

In YCWA's Amended Final License Application to FERC, the Project Description document describes the YRDP as composed of existing YRDP facilities as well as changes proposed by YCWA, including the "New Bullards Bar Dam Auxiliary Flood Control Outlet." (YCWA, Amended Application for New License, Exhibit A (June 2017), pp. A-49, A55-A57.) In addition, YCWA's Project Operations document states that the "[A]ddition of the . . . New Bullards Bar Dam Auxiliary Flood Control Outlet would have an effect on New Bullards Bar Reservoir operations during flood operations." (YCWA, Amended Application for New License, Exhibit B (June 2017), p. B-78.)