



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY

Gavin Newsom, Governor

DEPARTMENT OF FISH AND WILDLIFE

Charlton H. Bonham, Director

North Central Region – Region 2

1701 Nimbus Road | Rancho Cordova, CA 95670

August 22, 2023

John James

Director of Resource Planning

Yuba County Water Agency

1220 F Street

Marysville, CA 95901

jjames@yubawater.org



**SUBJECT: New Bullards Bar Dam Atmospheric River Spillway Project (PROJECT)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2020110163**

Dear John James:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Preparation of an Environmental Impact Report (EIR) from Yuba County Water Agency for the New Bullards Bar Dam Atmospheric River Spillway Project (Project) in Yuba County pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR on December 7, 2020.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project is located along Marysville Road, in Yuba County, at Latitude: 39.232327° N, Longitude: -121.82440° W (NAD83/WGS84).

The objective of the Project is to provide operational flexibility for managing outflow at the Dam to reduce flood flows and flood stages downstream at Marysville and the Feather-Yuba River confluence. Primary Project activities include release flows downstream, including earlier passage of flows during large storm events and permanently relocating a segment of Marysville Road over the Atmospheric River Control (ARC) Spillway, relocating the existing Dam overlook site, and establishment of a permanent rock and soil disposal area on Yuba County Water Agency property.

The construction of the ARC spillway includes creating a 500-foot-long approach channel, a reinforced concrete hydraulic control structure, a spillway chute downstream of the control structure, and an approximately 690-foot-long discharge channel down to the North Yuba River channel. Construction

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activities will require the temporary detour and relocation of Marysville Road, surface water control and dewatering devices that include a natural soil and rock cofferdam with concrete-bentonite hydraulic barrier, blasting to remove approximately 370,000 cubic yards (cy) of rock, in-reservoir construction in the form of excavation for Project features, hauling approximately 720,000 cy of soil and rock to the permanent disposal area, and site restoration of temporarily impacted areas.

The operation of the ARC spillway will operate conjunctively with the Primary (existing) Spillway and meet overall target releases. The ARC Spillway will be able to release between 33,500 cubic feet per second (cfs) at the reservoir bottom flood water level and 61,100 cfs at the normal maximum water surface elevation. The ARC Spillway would allow for releases from the dam during high-flow events at a substantially lower reservoir water elevation than is currently provided from the Primary Spillway. The ARC Spillway will only be used during the largest winter and spring events based on forecasted encroachment of the reservoir flood pool.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the Yuba County Water Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. CDFW recommends that the forthcoming Final EIR address the following:

COMMENT #1:

Section 3.3.3, Page 3.3-33, Impact BIO-3 Impacts on California Red-legged Frog (CRLF).

Issue: Cottage Creek is potential CRLF habitat occurring only 200 feet west of the proposed staging area. The Impact BIO-3 states that the staging area is developed, and it would be unlikely for the species to be present. The statement that the species are, "extremely unlikely to wander into the staging area because it is developed and does not provide suitable upland habitat," assumes that the species will not potentially cross through this area. CDFW recommends the measure below be included in the Final EIR.

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Recommendation #1:

CDFW recommends the following mitigation measure language be included in Impact BIO-3:

Amphibian Survey Prior to Project Commencement. Prior to construction, the section of Cottage Creek adjacent to the Project area and proposed staging area, shall be surveyed for special-status amphibians by a Qualified Biologist. The survey shall occur both 15 days prior and two (2) days before commencement of construction. If the result of the survey is negative, work may begin as scheduled, however if special-status amphibians are found, work may not begin until consultation occurs with a Qualified Biologist in determining appropriate avoidance and minimization measures.

If CRLF are found in the Project area, CDFW recommends an avoidance and minimization measure include the installation of exclusion fencing. Exclusion fencing should be installed around the Project area near occupied CRLF. After installation of exclusionary fencing, a Qualified Biologist should inspect the Project area and fencing daily, prior to the commencement of activities. If the Qualified Biologist determines that CRLF or other special status species are not within the work area, equipment or materials may be moved onto the work site under the observation of the Qualified Biologist.

COMMENT #2:

Section 3.3.3, Page 3.3-34, Impact BIO-4 Impacts on Foothill Yellow-legged Frog (FYLF).

Issue: Within the "Conclusions," section for Impact BIO-4, the DEIR states that the impact to FYLF would be potentially significant. Despite the implementation of Mitigation Measures HWQ-1 and HAZ-1, CDFW recommends the below measure be incorporated for FYLF to further verify the presence or absence of this species within the footprint of the construction area, as well as 200 feet upstream and downstream, on the North Yuba River (confluence).

Recommendation #2:

CDFW recommends the following mitigation measure language be included in Impact BIO-4:

Amphibian Survey. Within 3 to 5 days prior to beginning any groundbreaking activities near the North Yuba River, a Qualified Biologist, will perform visual

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encounter surveys for amphibians and their egg masses (specifically the FYLF). If the result of the survey is negative, work may begin as scheduled, however if FYLF are found, work may not begin until the Project demonstrates compliance with CESA.

COMMENT #3:

Section 3.3.3, Page 3.3-35, Impact BIO-5 Impacts on Coast Horned Lizard.

Issue: The analysis offered in the DEIR identifies that Coast Horned Lizards can be taken by project vegetation-clearing activities within the adjacent 2 acres of, "brush-dominated habitat," and 5 acres of buck brush chaparral associations. The DEIR also notes that there are no unique habitat factors within those proposed for clearing, and that similar habitat is abundant adjacent to the impact zone of vegetation removal. The absence of unique characteristics within the suitable habitats, or the abundance of suitable adjacent habitat, does not inherently rule out the presence of the species, or use by special status species, within the intended action areas, or potentially significant impact to the species through the possibility of take, or habitat impact. Since the habitat identified for clearing could serve as suitable habitat for this and other special status reptile species, CDFW recommends the following Mitigation Measure be incorporated into the Final EIR.

Recommendation #3:

Coast Horned Lizard. Within two (2) days prior to initiating vegetation clearing activities on the 7 acres slated for vegetation removal, a Qualified Biologist shall survey the action area for coast horned lizard. If coast horned lizards are found, a Qualified Biologist shall prepare a plan to avoid or minimize and mitigate impacts to the lizard and submit it for review to the lead agency. Project activities shall not be initiated until the avoidance, minimization, and/or mitigation plan has been developed and implemented.

COMMENT #4:

Section 3.3.3, Page 3.3-47, Impact BIO-15 Chaparral, Woodland, and Forest Removal.

Issue: The removal of 12 acres of oak forest and woodland, 2 acres of chaparral, and 27 acres of coniferous forest, would be a significant impact. The significance of the impact of habitat clearing, is not reduced by virtue of the abundance of similar or equivalent adjacent habitat to the project impact

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area, and would certainly reduce available habitat for wildlife, and potentially, special-status species which may utilize these forest stands, or habitat types.

Recommendation #4:

CDFW recommends the Final EIR propose mitigation for the impact of vegetation removal during project activities, which will serve to offset the impacts of the tree removal and habitat degradation. Mitigation may include restoring, enhancing, or preserving similar habitat types proposed for removal at higher ratios than those that were removed in order to compensate for temporal habitat loss.

Comment #5:

Section 3.3.3, Page 3.3-47, Impact BIO-16 Impacts on Federal- and State-protected Waters.

Issue: The potential need for requesting a Streambed Alteration Agreement from CDFW for the scope of work is not specifically mentioned with respect to BIO-16.

Recommendation #5:

CDFW recommends adding the requirement to Notify for Lake and Streambed Alterations to BIO-16, or otherwise noting the potential need for requesting a LSAA agreement from CDFW for the scope of work proposed, as appropriate.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of any river, stream or lake;
2. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
3. Deposit debris, waste, or other materials where it may pass into any river, stream or lake.

CDFW has determined that each of the activities requiring Notification of Lake and Streambed Alteration were described in the DEIR and project description.

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California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

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CDFW appreciates the opportunity to comment on the DEIR for the New Bullards Bar Dam Atmospheric River Spillway Project and recommends that the Yuba County Water Agency address CDFW's comments and concerns in the forthcoming Final EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to the Region 2 CEQA Desk at R2CEQA@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Billie Wilson
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