



State Water Resources Control Board

August 21, 2023

Mr. Willie Whittlesey
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Sent via Email: wwhittlesey@yubawater.org



Mr. John James
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**Atmospheric River Control Spillway
Yuba River Development Project
Federal Energy Regulatory Commission Project No. 2246
Yuba, Sierra, and Nevada Counties
Yuba, North Yuba, Middle Yuba Rivers, and Oregon Creek**

COMMENTS ON ATMOSPHERIC RIVER CONTROL SPILLWAY DRAFT NON-CAPACITY LICENSE AMENDMENT APPLICATION AND DRAFT ENVIRONMENTAL IMPACT REPORT

Dear Mr. Whittlesey and Mr. James:

On June 23, 2023, Yuba County Water Agency (YCWA)¹ filed a Draft Non-Capacity License Amendment Application (DLA) and a draft Environmental Impact Report (EIR) for the construction, operation, and maintenance of a new Atmospheric River Control (ARC) Spillway (ARC Spillway) at New Bullards Bar Dam. YCWA's DLA proposes to amend its existing Federal Energy Regulatory Commission (FERC) license for the Yuba River Development Project (YRDP) to include the ARC Spillway. The existing FERC license for the YRDP expired on April 30, 2016, and YCWA has been operating under annual licenses since its expiration.

State Water Resources Control Board staff reviewed YCWA's ARC Spillway DLA and draft EIR and provide comments on these documents in:

- Attachment A: Comments on Yuba County Water Agency's Atmospheric River Control Spillway Draft Non-Capacity License Amendment Application; and

¹ Doing business as Yuba Water Agency.

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- Attachment B: Comments on Yuba County Water Agency's Atmospheric River Control Spillway Draft Environmental Impact Report.

If you have questions regarding this submittal, please contact Adam Cohen by email to: Adam.Cohen@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
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Sincerely,

Adam Cohen
Senior Environmental Scientist
Division of Water Rights

Enclosures: Attachment A – Comments on Yuba County Water Agency's Atmospheric River Control Spillway Draft Non-Capacity License Amendment Application

Attachment B – Comments on Yuba County Water Agency's Atmospheric River Control Spillway Draft Environmental Impact Report

ec: Kimberly D. Bose, Secretary
Federal Regulatory Energy Commission
Via efile to docket for P-2246

California State Clearinghouse
Office of Planning and Research
Via posting to CEQAnet for SCH No. 2020110163

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Mr. Whittlesey and Mr. James

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**ATTACHMENT A:
COMMENTS ON YUBA COUNTY WATER AGENCY'S
ATMOSPHERIC RIVER CONTROL SPILLWAY
DRAFT NON-CAPACITY LICENSE AMENDMENT APPLICATION**

State Water Resources Control Board (State Water Board) staff are providing the following comments in response to Yuba County Water Agency's (YCWA) Draft Non-Capacity License Amendment Application (DLA) for the addition of the Atmospheric River Control (ARC) Spillway (ARC Spillway) to the existing license for the Yuba River Development Project (YRDP), Federal Energy Regulatory Commission (FERC) Project No. 2246.

1. Section 401 of the federal Clean Water Act (33 U.S.C. § 1341) 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 applicable water quality requirements, including the requirements of section 303 of the Clean Water Act (33 U.S.C. § 1313) for water quality standards and implementation plans. Clean Water Act section 401 directs that water quality certifications (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, such as the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). Conditions of certification shall become conditions of any federal license or permit for a project subject to certification. (33 U.S.C. § 1341(d).) YCWA states in DLA Section 1.3.2, *Clean Water Act*, that "YCWA plans to submit to the [State] Water Board an application for [certification]." The State Water Board is the state agency responsible for issuing certification for hydropower projects in California (Wat. Code, § 13160) and looks forward to working with YCWA on future certification processes.

Please note, a certification issued by the State Water Board for the ARC Spillway must ensure compliance with the applicable regional and state water quality control plans. Water quality control plans designate the beneficial uses of water that are to be protected, water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subs. (h), (j).) The beneficial uses, together with the water quality objectives contained in the water quality control plans, and applicable antidegradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. In issuing a certification for a project, the State Water Board must ensure consistency with the designated beneficial uses of waters affected by the project, the water quality objectives developed to protect those uses, and antidegradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714-719.)

2. Changes to the YCWA's Amended Final License Application for relicensing of the YRDP, such as removing construction of the ARC Spillway, may be necessary to accurately describe YCWA's requested relicensing action given YCWA's current

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proposal is to add the ARC Spillway¹ to its existing YRDP license (rather than as part of the YRDP relicensing process).

3. Draft Environmental Assessment section 3.3.3, *Environmental Effects of Operations and Maintenance*, states that “the ARC Spillway could result in additional scour in the lower Yuba River compared to existing conditions, but the increases would be extremely small.” To understand the effect of the additional scour, YCWA’s Final Non-Capacity License Amendment Application (FLA) should include the expected sediment size classes and volume of scour expected during ARC Spillway events. Water quality monitoring downstream of the ARC Spillway should also be included to assess the water quality effects of increased scour (e.g., increases in turbidity), along with adaptive management to address any adverse water quality impacts. Water quality monitoring is recommended prior to, during, and following the first several uses of the ARC Spillway.
4. Draft Environmental Assessment section 3.3.4, *Environmental Effects of Construction*, states that “Construction within the reservoir and Yuba River channel would be done in a manner to minimize contact between waters and disturbed areas.” The FLA should specify what measures, or potential measures (e.g., cofferdams, turbidity curtains, etc.), will be used to minimize contact, reduce turbidity, and protect water quality in the North Yuba River and New Bullards Bar Reservoir during construction.
5. Draft Environmental Assessment section 3.4.2.1, *Hydrology*, Figure 3-2 appears to suggest that operation of the ARC Spillway will result in more frequent low flow (e.g., greater than 90 percent exceedance) conditions. Additional explanation is needed to understand why low flows would increase with use of the ARC Spillway. It is not clear which “selected locations” are being used to create Figure 3-2, nor is it clear what periods of time or flows are included in “periods when the ARC Spillway Would be Operated.” In addition, Figures 3 – 1 through 3 – 3 should be labeled with “exceedance” on the x-axis.
6. Draft Environmental Assessment section 3.4.2.2, *Water Quality*, states “There could be a less-than-significant, local and short-term increase in turbidity in the North Yuba River when the ARC Spillway is first used, but this would have no significant environmental consequences.” The FLA should provide additional information regarding how this conclusion was reached, particularly explaining why there would be no significant environmental effects. In addition, Section 3.3.3 indicates that increased scour will occur in the lower Yuba River resulting from operation of the ARC Spillway. Section 3.4.2.2 should address

¹ The ARC Spillway was referred to as the New Bullards Bar Auxiliary Flood Control Outlet in YCWA’s 2017 Amended Final License Application that was filed as part of the YRDP relicensing process.

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this impact to water quality, which may require additional water quality monitoring prior to, during, and following the first several uses of the ARC Spillway.

7. Draft Environmental Assessment section 3.4.3.2, *Water Quality*, states that effluent water from the excavation area would be tested for contaminants prior to discharge, and treatment controls would be established to prevent contaminants from entering surface waters. However, no potential contaminants are specified, and no treatment controls are discussed. The FLA should specify which contaminants will be tested for, and if found, what treatment controls will be implemented prior to discharge to prevent contaminants from entering surface water.

8. Draft Environmental Assessment section 3.8.3, *Environmental Effects of Construction*, states that an area of potentially suitable aquatic habitat for California red-legged frogs is located 200 feet west of the contractor staging area, and that California red-legged frog "individuals would be extremely unlikely to wander into the staging area because it is developed and does not provide suitable upland habitat." While the staging area may not provide suitable habitat, the close proximity of suitable habitat to heavy machinery suggests that precautions should be taken to prevent harm and to ensure no California red-legged frogs are present in the staging area. Pre-construction surveys of the staging area adjacent to Cottage Creek should be included in the ARC Spillway design and implemented as a precautionary measure to confirm that California red-legged frogs are not present. If California red-legged frogs are observed during pre-construction surveys or otherwise during Project construction, the California Department of Fish and Wildlife (CDFW) and State Water Board staff should be immediately notified, and construction should not commence until CDFW approves and any CDFW recommended actions are implemented.

**ATTACHMENT B:
COMMENTS ON YUBA COUNTY WATER AGENCY'S
ATMOSPHERIC RIVER CONTROL SPILLWAY
DRAFT ENVIRONMENTAL IMPACT REPORT**

State Water Resources Control Board (State Water Board) staff are providing the following comments in response to the Yuba County Water Agency's (YCWA) Notice of Availability of a draft Environmental Impact Report (EIR) for the Atmospheric River Control (ARC) Spillway (ARC Spillway), a proposed addition to the existing Yuba River Development Project license, Federal Energy Regulatory Commission (FERC) Project No. 2246.

The California Environmental Quality Act (CEQA) Guidelines define a Responsible Agency as "a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an [Environmental Impact Report] or negative declaration. For the purposes of CEQA, the term '[R]esponsible [A]gency' includes all public agencies other than the lead agency which have discretionary approval power over the project." (Cal. Code Regs., tit. 14, § 15381.) In this instance, the State Water Board is a Responsible Agency.

As a Responsible Agency, in accordance with the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15096, subd. (d)), and per YCWA's Notice of Availability, State Water Board staff are providing the following comments on YCWA's draft EIR.

1. Comment numbers 3, 4, 6, 7, and 8 in Attachment A: Comments on Yuba County Water Agency's Atmospheric River Control Spillway Draft Non-Capacity License Amendment Application are incorporated here by reference.
2. Mitigation Measure HWQ-4, *Regularly Inspect the ARC Spillway Discharge Channel for Erosion*, should be expanded to include more detail. HWQ-4 should define what constitutes an "inspection" by specifying what metrics will be measured and what methods will be used, as well as explaining what specifically qualifies as "no issues" after the first five years of inspections. State Water Board staff appreciate the inclusion of Light Detection and Ranging (LiDAR) surveys to monitor erosion trends in the discharge channel, however, the proposed 10-year interval is too infrequent to apply measures protective of water quality in a timely manner. Similarly, HWQ-4 should be updated to provide a quantitative threshold for comparison to "erosion features observed in the Primary Spillway." YCWA states that defects in the discharge channel would be "over excavated and treated with dental (rough surface) concrete to prevent excessive erosion." What qualifies as a defect and how dental concrete will be used is not clear and should be described with additional detail to understand potential impacts to water quality. If treatment with dental concrete is required, a monitoring plan and appropriate measures should be developed and implemented to protect water quality. Any necessary dental concrete work should be completed in the dry, and if any residual water is present, the effluent should be measured for pH and turbidity and treated accordingly prior to discharge to the Yuba River to ensure consistency with the water quality objectives identified in the *Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region, Sacramento River Basin and the San Joaquin River Basin*.

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3. In *Impact HWQ-7*, the draft EIR states that “the proposed project is not expected to result in significant effects to channel morphology resulting from scour in the lower Yuba River.” This is based on the assertion that the ARC Spillway will have a “minor increase in frequency of exceeding bankfull and floodway stages.” The final EIR should provide a quantitative assessment to support this claim. It is not clear from the language of *HWQ-7* whether this scour may occur on levee banks, and thus it is important to quantitatively understand the expected effects of the ARC Spillway on scour.