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Governor's Office of Planning & Research

**Nov 29 2021**

## STATE CLEARINGHOUSE

November 23, 2021

Mr. Brad Arnold  
South Sutter Water District  
2464 Pacific Avenue  
Trowbridge, CA 95659  
[sswd@hughes.net](mailto:sswd@hughes.net)

**SUBJECT: CDFW COMMENTS ON SOUTH SUTTER WATER DISTRICT NOI TO ADOPT AN IS/MND FOR CAMP FAR WEST PROJECT (FERC PROJECT NO. 2997)**

Dear Mr. Brad Arnold:

The California Department of Fish and Wildlife (CDFW) received and reviewed South Sutter Water District's (SSWD) Notice of Intent (NOI) to adopt an Initial Study and Mitigated Negative Declaration (IS/MND) for the Camp Far West Hydroelectric Project (Federal Energy Regulatory Commission (FERC) Project No. 2997; referred to as Proposed Project), in Yuba, Nevada, and Placer Counties pursuant the California Environmental Quality Act (CEQA) statute and guidelines<sup>1</sup>. As the appropriate State Fish and Wildlife agency for resource consultation and Federal Power Act Section 10(j)(16 U.S.C. § 803 (j)) purposes, CDFW previously submitted 10(j) recommendations and rationale on May 11, 2021, in response to the *Notice of Application Ready for Environmental Analysis* for the Proposed Project.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Proposed Project that may affect California fish, wildlife, plants and their habitats. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Proposed Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code). It is the goal of CDFW to preserve, protect, and as needed, to restore habitat necessary to support native fish, wildlife, and plant species within the FERC-designated boundaries of these projects, as well as the areas adjacent to these projects in which resources are affected by ongoing project operations and maintenance activities and recreational use.

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<sup>1</sup> 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. (Fish & G. Code, § 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.) The Proposed 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 Proposed Project may result in "take" as defined by State law (Fish & G. Code, § 86) of any species protected under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish & G. Code will be required. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Program, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

## **PROPOSED PROJECT DESCRIPTION SUMMARY**

The SSWD owns and operates the Camp Far West Hydroelectric Project. SSWD is seeking a new license from FERC with a term of 50 years to continue operating the Camp Far West Hydroelectric Project. As part of the proposed approval of the new FERC license, SSWD is proposing five project components: modify the FERC project boundary; implement a new flow regime; implement environmental measures; increase the height of the Camp Far West Spillway by 5 feet to raise the maximum reservoir elevation of the Camp Far West Reservoir; and rehabilitate, replace, and relocate recreation features.

## **COMMENTS**

CDFW recommends SSWD incorporate the following comments into mitigation measures in the IS/MND to reduce the likelihood that the Proposed Project will have a significant impact on biological resources.

### **1. Implementation of New Flow Regime and Environmental Measures: page 87.**

**IS/MND Statement:** "Implementation of the Bald Eagle Management Plan and great blue heron rookery management measure establish requirements to implement protective measures for these species and would, therefore, not result in adverse impacts on biological resources" (IS/MND, page 87).

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**CDFW Comment:** The Bald Eagle Management Plan included in the IS/MND appears to be the same plan filed by SSWD in Amendment #1 to the Final License Application (developed in June 2019) and not the plan developed jointly by U.S. Fish and Wildlife Service (USFWS) and CDFW and first filed with FERC in Nov 2019 (developed in August 2019). The Bald Eagle Management Plan, included as Appendix A of the CDFW 10(j) Recommendations, was developed by CDFW and USFWS and differs from the Bald Eagle Management Plan filed by SSWD in October 2019 as part of Amendment #1 and now referenced in the IS/MND. The SSWD plan includes provisions for nest surveys on a decadal frequency. The CDFW- and USFWS-proposed Bald Eagle Management Plan requires more frequent surveys and is designed to achieve the following objectives:

- Determine occupancy of existing bald eagle (*Haliaeetus leucocephalus*) territories and identify new nests, confirm occupancy of territories and nests, determine presence of eggs and nestlings, and determine nest success and productivity;
- Establish nest buffers, limited operating periods (LOPs), and seasonally restrict public access to protect nesting bald eagles, their nests and eggs, and young;
- Educate Project staff about recognizing nesting and roosting bald eagles and signs of their distress, buffers, LOPs, and other protection measures; and
- Document incidental sightings of special-status raptors.

Though CDFW and USFWS did not reach agreement with SSWD on a Bald Eagle Management Plan through the FERC process, the CDFW-recommended management plan (resubmitted to FERC in July 2020), is consistent with other Bald Eagle Management plans supported by FERC such as the Yuba River Development Project #2246 FEIS (submitted in January 2019). While SSWD anticipates no adverse impacts on bald eagles based on their Bald Eagle Management Plan, CDFW recommends adopting the CDFW and USFWS developed Bald Eagle Management Plan, inclusive of a higher frequency of surveys, to ensure no adverse impacts.

**2. Mitigation Measure MM-BIO-06 No Net Loss of Sensitive Natural Communities: page 91.**

**CDFW Comment:** Mitigation measure MM-BIO-06 requires mitigation in the form of on-site restoration, in-lieu-fee payment, or purchase of mitigation credits for permanent impacts on sensitive natural communities at a minimum 1:1 ratio. Several circumstances may warrant a mitigation ratio greater than 1:1. CDFW recommends the following factors be considered when determining an appropriate mitigation ratio:

- Temporal loss: if temporary impacts will affect habitat for multiple years or if recovery of the temporarily impacted habitat will take a particularly long time (such as when mature trees or slow-growing shrubs need to be replaced), local wildlife populations may be significantly negatively impacted by the length of time

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during which the habitat is not available for use. Restoration of the impacted habitat at a 1:1 ratio may not be sufficient to offset the temporal impacts.

- Location of habitat mitigation: if the mitigation consists of restoration or creation of habitat in a location that is outside the impact area, the specific populations affected by the habitat impacts may not be close enough to benefit from the mitigation. This may negatively impact the species overall even if the habitat is replaced elsewhere.
- Mitigation type: mitigation banks and in-lieu-fee programs may offer credits for preservation and/or enhancement of existing habitats. While these activities benefit wildlife populations, they do not typically increase the acreage of the habitat type in question. If habitat preservation and/or enhancement is proposed as habitat mitigation, a higher ratio may be appropriate.

### **3. Special Status Fishes: page 94.**

**Statement:** Implementation of the new flow regime for the Proposed Project would generally have a beneficial impact on fish species in the Lower Bear River. Specific measures to improve fisheries habitat include **Measure WR1**, Implement Water Year Types, to better characterize water conditions in the lower Bear River based on overall hydrologic conditions. **Measure AR1**, Implement Minimum Streamflows, is designed to benefit fall-run Chinook salmon (*Oncorhynchus tshawytscha*) by providing increased streamflows, when compared to existing conditions, during winter and spring. **Measure AR2**, Implement Fall and Spring Pulse Flow, would provide a pulse flow to encourage fall-run Chinook salmon to enter the lower river and spawn and a spring pulse flow to encourage any fall-run Chinook salmon in the river to outmigrate before conditions in the Lower Bear River become unfavorable due to water temperature. **Measure AR3**, Implement Ramping Rates, would establish ramping rates to protect fall-run Chinook salmon spawning and minimize fish stranding for Chinook and other species.

**CDFW Comment:** SSWD provides the above rationale to support the conclusion that no mitigation measures are necessary to protect special status fishes from potential effects of the Proposed Project. However, CDFW believes that the Aquatics Resources Monitoring Plan (ARMP), submitted by CDFW to FERC on July 31, 2020, should be included as a mitigation measure to monitor ongoing project impacts and avoid potential negative outcomes for species in the in the Proposed Project or affected areas. The three primary objectives of the ARMP are to:

- Monitor annual spawning population abundance for fall-run Chinook salmon and steelhead (*Oncorhynchus mykiss*);
- Monitor abundance, size, and timing of emigrating salmonids; and
- Monitor benthic macroinvertebrate community structure.

The purpose of the ARMP is to augment existing information regarding aquatic resources in the lower Bear River in response to the pending, new FERC license conditions for Camp Far West Hydroelectric Project #2997. The monitoring proposed in this plan will allow the SSWD to adaptively manage and track ecological changes on the

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lower Bear River in response to hydrologic changes (i.e. flow increases), required pulse flow conditions, and ramping rate changes from the initial license to the new license. Observations made from aquatic monitoring will help ensure there are no adverse impacts, assess effectiveness of the new conditions, serve as a baseline for any operations outages, and track long term trends in the watershed that can be used for ongoing operations discussions and adaptive management during the course of this license term.

**4. IS/MND Mitigation Measure MM-BIO-16 Pre-construction Special-status Bird Surveys: page 97.**

**CDFW Comment:** Mitigation measure MM-BIO-16 requires pre-construction surveys for nesting migratory birds and/or raptors to be conducted within 14 days prior to the start of construction for activities that would start between March 1 and August 31. Surveys would cover the proposed impact area as well as a 500-foot buffer. This measure is inadequate because the scope of the required surveys is too narrow and may miss instances of nesting.

Please note that Fish & G. Code § 3503 prohibits the take, possession, or needless destruction of the nest or eggs of any bird, except as otherwise provided by the Fish & G. Code or any regulation made pursuant thereto. This includes bird species that are neither migratory nor raptors. To ensure compliance with Fish & G. Code § 3503, CDFW recommends MM-BIO-16 be modified to include all bird species.

Many bird species are capable of building a nest and beginning to lay eggs very rapidly, and some of the bird species that nest in the area may construct a nest in as few as two or three days (Baepler 1968, Newman 1970, and Badyaev 2012). A preconstruction survey timed two weeks before initiation of project activities has a high likelihood of missing some instances of nesting due to the length of time between the survey and the start of construction. Therefore, CDFW recommends MM-BIO-16 be modified to require that nesting bird surveys be completed by a qualified biologist familiar with local bird species within three (3) days prior to commencing project activities.

Many bird species may begin nesting earlier than March 1. For example, the breeding season for burrowing owls (*Athene cunicularia*) in California is generally February 1 through August 31 (CDFW 2012). Some species, such as great horned owl (*Bubo virginianus*) and Anna's hummingbird (*Calypte anna*) may begin nesting in the region as early as December. To avoid missing instances of early nesting, CDFW recommends MM-BIO-16 be modified to require that nesting bird surveys be completed before construction or vegetation clearing activities between December 1 and August 31.

Some bird species, particularly raptors, may require larger buffers than 500 feet to avoid disturbing nesting activities, especially if the proposed activity will take place during peak nesting season and/or will cause especially high disturbance due to noise, vibration, increased human presence, etc. For example, CDFW's Staff Report on Burrowing Owl Mitigation (2012) recommends avoidance buffers up to 500 meters

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depending on the time of year and level of disturbance. To ensure that nests can be given the appropriate buffer, CDFW recommends MM-BIO-16 be modified to require that surveys for burrowing owl and other raptor nests be conducted within a minimum of 500 meters (1640 feet or as close to 500 meters as is feasible) of proposed construction areas.

#### **5. IS/MND Mitigation Measure MM-BIO-18 Burrowing Owl Avoidance: page 98**

**CDFW Comment:** Mitigation Measure MM-BIO-18 states that if burrowing owls are not detected during the special-status bird nesting season surveys, then no further mitigation is required. CDFW requests revision of mitigation measure MM-BIO-18 for consistency with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) in order to avoid potential take of burrowing owls, destruction of nests, and associated violations of Fish & G. Code §§ 3503 and 3503.5. CDFW recommends Mitigation Measure MM-BIO-18 be revised to include:

- **Breeding Season Surveys:** CDFW recommends four breeding season surveys, including: 1) at least one survey between February 15 and April 15, and 2) a minimum of three surveys, at least three weeks apart, between April 15 and July 15, with at least one survey conducted after June 15. Surveys should be conducted consistent with the methodology outlined in the Staff Report (CDFW 2012).
- **Non-Breeding Season Surveys:** If project activities will occur during the non-breeding season (September 1 to January 31), or if there is potential that the project may need to passively exclude owls from the project area during the non-breeding season in advance of construction activities, CDFW recommends at least four surveys spread evenly throughout the non-breeding season surveys.
- **Take Avoidance Surveys:** Several factors may prevent investigators from documenting presence or occupancy of burrowing owls during breeding or non-breeding season surveys, and failure to locate burrowing owls during one field season does not constitute evidence that the site is not occupied. CDFW recommends that an initial take avoidance survey is conducted no less than 14 days prior to ground disturbing activities using the survey methodology outlined in the Staff Report (2012) to determine potential owl presence. Implementation of avoidance and minimization measures should be triggered by positive owl presence on the site or immediately adjacent to the project site. Because burrowing owls may re-colonize a site after a few days, time lapses between project activities should trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.
- **Avoidance and Minimization Measures:** If burrowing owls are identified during any of the surveys discussed above, the project should implement avoidance and minimization measures including but not limited to: the use of non-disturbance buffers around occupied burrows, visual screens, ongoing site surveillance surveys to monitor owl activity on the project site, and burrow exclusion and/or closure during the non-breeding season. If occupied burrows are proposed for exclusion and/or closure, a Burrowing Owl Exclusion Plan should be developed

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in coordination with and approved by CDFW as described in Appendix E of the Staff Report (CDFW 2012).

- Mitigation: Mitigation for permanent impacts to nesting, occupied, and satellite burrows and/or suitable burrowing owl habitat should be replaced with (a) permanent conservation of similar vegetation communities (i.e. grassland, scrublands, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) sufficiently large acreage with presence of fossorial mammals. Mitigation lands should be permanently protected through a conservation easement with a commitment to fund the maintenance and management of mitigation lands through the establishment of a long-term funding mechanism such as an endowment. Habitat should not be altered or destroyed, and burrowing owls should not be excluded from burrows, until mitigation lands have been legally secured, are being managed for the benefit of burrowing owls in accordance with CDFW-approved management, monitoring and reporting plans, and the endowment or other long-term funding mechanism is in place or security is provided until these measures are completed.

#### **6. IS/MND Mitigation Measure MM-BIO-19 Pre-construction Bat Surveys: page 98.**

**CDFW Comment:** Mitigation measure MM-BIO-19 requires a pre-disturbance survey for potential bat roost sites and identifies further avoidance measures to be taken if potential roosts are identified. However, surveys for roost sites are not always adequate to identify and avoid roosting bats. For example, western red bats (*Lasirurs blossewillii*) roost almost exclusively in foliage and are usually solitary (CDFW 2021) and are therefore often difficult to locate compared to colonial species.

To avoid injury or mortality to western red bats and other tree-roosting bat species, CDFW recommends adding a mitigation measure requiring that trees be scheduled for removal either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall is less than ½ inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours) when possible. Additionally, CDFW recommends that trees be removed in two steps over a period of two days. On the first day, the tree should be bumped or tapped with removal equipment to encourage foliage-roosters to leave, and all smaller branches that do not contain cavities or exfoliating bark should be removed using chainsaws or similar handheld equipment. The remaining portion of the tree should be removed on the second day. This process increases the chance that tree-roosting bats that may have gone unnoticed by prior surveys will vacate the tree before it is removed.

#### **7. Camp Far West Reservoir Pool Raise and Recreation Feature Rehabilitation, Replacement, and Relocation: page 188.**

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**Statement:** In addition, for any ground disturbing work related to minor rehabilitation, major rehabilitation, or relocation, the Recreation Facilities Plan requires that invasive weed prevention and vegetation management practices are followed (e.g., following all applicable measures related to invasive weed and **aquatic invasive species prevention**, revegetation of recreation facility lands, and sensitive resource buffers and/or limited operating periods). With the implementation of biological resources mitigation measures, along with the Recreational Facilities Plan, impacts from the recreation feature relocations and improvements on the physical environment would be less than significant.

**CDFW Comment:** CDFW filed numerous comments recommending the development of an Aquatic Invasive Species (AIS) Prevention and Management Plan for the Proposed Project. SSWD disagreed with the need for a plan and did not include an AIS Management Plan measure in their Final License Application. Although SSWD is working with CDFW outside of the FERC process to complete the Dreissenid Mussel Vulnerability Assessment and Prevention Program, SSWD does not address how they will manage existing presence of AIS or prevent future intrusions of AIS in the Proposed Project boundaries. CDFW recommends the development of an Aquatic Invasive Species Prevention and Management Plan in consultation with USFWS and CDFW. The Plan will address known and potential AIS within Proposed Project reservoirs and streams to ensure that AIS impacts from recreation features are less than significant when managed according to a comprehensive AIS Management Plan.

## **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 Proposed Projects' surveys to the California Natural Diversity Database (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](mailto:CNDDDB@wildlife.ca.gov).

## **CONCLUSION**

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Proposed Projects. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [r2CEQA@wildlife.ca.gov](mailto:r2CEQA@wildlife.ca.gov).

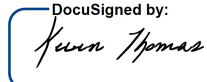
CDFW appreciates the opportunity to comment on the NOI to adopt an IS/MND to assist in identifying and mitigating Proposed Projects impacts on biological resources. CDFW



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personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Michael Maher, Senior Environmental Scientist, Specialist at 916-597-5505 or [michael.maher@wildlife.ca.gov](mailto:michael.maher@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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