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Governor's Office of Planning & Research

JUL 28 2022

July 28, 2022

STATE CLEARINGHOUSE

Eric Bradbury
Environmental Scientist
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, California 95814

**Subject: Phoenix Hydroelectric Project (Project) Negative Declaration (ND)
SCH No. 2022060644**

Dear Mr. Bradbury:

On June 27, 2022, the California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from the State Water Resources Control Board for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ For over five years, CDFW has participated in the relicensing process for the Phoenix Hydroelectric Project (FERC Project No. P-1061-103), operated and maintained by the Pacific Gas and Electric Company (PG&E) (Licensee or Applicant), along with other Resource Agencies, non-governmental organizations and Project stakeholders.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

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 is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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.

Eric Bradbury, Environmental Scientist
State Water Resources Control Board
July 28, 2022
Page 2

projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments 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, Project activities 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.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Pacific Gas and Electric Company

Objective: The Project is an existing hydroelectric project owned and operated by the Pacific Gas and Electric Company (PG&E or Licensee) and regulated by the Federal Energy Regulatory Commission (FERC) in Tuolumne County, California. The objective of the Project is to be operated for power generation and to meet the water supply needs of the Tuolumne Water System, which is a water supply system owned by the Tuolumne Utilities District (TUD). Primary Project activities include the continued operation and maintenance activities similar to the existing license with a few exceptions. No new facilities or substantial modifications to existing facilities are being proposed at this time. Changes or modifications to the existing Phoenix Project include modification to the existing FERC Project Boundary, recreational facility enhancements, maintenance plans, and implementation of operation measures related to water year types, minimum instream flows, and ramping rates. PG&E has developed or is developing resource management plans and measures for the protection of aquatic resources, terrestrial resources, land and aesthetic resources, recreation resources, and cultural resources.

Location: South Fork Stanislaus River Tuolumne County, California, approximately 10 miles northeast of Sonora, California

Timeframe: To the horizon year of 2052 (or 2072), depending on whether a new license extends project operations to a 30- or 50-year term

Eric Bradbury, Environmental Scientist
State Water Resources Control Board
July 28, 2022
Page 3

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the State Water Resources Control Board in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Negative Declaration is appropriate for the Project.

Redeye Bass Management Plan (RBMP)

On August 31, 2021, CDFW submitted recommended Protection, Mitigation and Enhancement (PM&E) measures for the federal licensing of the Project. Pursuant to the Federal Power Act §10(j), Condition No. 5 recommended the development and implementation of a RBMP as follows:

“The Licensee shall develop a plan within the first three years of the issuance of a new license, to determine what measures can be reasonably implemented to reduce the impact of this species within the Project area. The Licensee shall work collaboratively with the CDFW, USFWS and other interested stakeholders to develop this plan. At a minimum, this plan shall include:

- Documentation of discussions with interested stakeholders, species experts for the foothill yellow-legged frog, and experts in the control of nonnative fish species.
- Supporting literature utilized in assessing management strategies (a literature cited).
- A list of the potential methods for control of redeye bass in the South Fork Stanislaus River, including the potential estimated impacts of each method on other species.
- An assessment of the estimated financial and water delivery impact of the potential methods for control of redeye bass.
- Identified federal and/or state agency partners who will assist in the control of redeye bass within the Project area, if possible.
- Collaborative agreement between the Applicant and interested stakeholders on the appropriate method to control redeye bass.”

After listing the minimum components of a RBMP, CDFW included the following caveat to such a plan:

“The Department does not support a redeye bass management plan that would incorporate experimental methods leading to extreme dewatering of any reach within the Project area which could potentially have adverse impacts on other sensitive aquatic resources.”

Eric Bradbury, Environmental Scientist
State Water Resources Control Board
July 28, 2022
Page 4

Upon review of the Draft Initial Study for the Project, CDFW finds a direct contradiction with the above statement. Specifically, the Draft Initial Study states that the “Redeye Bass Management Plan (RBMP) (part of the ARP) defines a process for testing very low or zero test flows designed to isolate populations of bass” (page 54). As explained above, CDFW does not find that dewatering the study reach would be a necessary condition to manage redeye bass populations in the Project area. As a result, CDFW fisheries management staff has participated in ongoing discussions with United States Forest Service experts to find alternative strategies to avoid dewatering portions of the South Fork Stanislaus River and its potentially adverse impacts on sensitive aquatic resources.

Overall, CDFW believes that a RBMP is appropriate; however, the proposed strategy of “testing very low or zero test flows” would not eliminate redeye bass in the proposed reach and likely would have adverse consequences for riparian habitat maintenance and could be stressful or lethal for other native aquatic species. The management actions that would likely provide the most benefits to the native aquatic species would be to provide the most suitable habitat possible and establish a hydrology that is within the operational constraints of PG&E and/or TUD that would mimic the unaltered flows of the natural hydrograph that the native aquatic species have evolved with.

Lake or Streambed Alteration Agreement (LSA Agreement)

It is likely that some Project activities will be subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. If an LSA Agreement is needed, CDFW is required to comply with CEQA in the issuance or the amendment of an LSA Agreement. Therefore, for efficiency in environmental compliance, we recommend that any potential lake or stream disturbance that may result from Project activities be described, and mitigation for the disturbance be developed as part of the relicensing. This will reduce the need for CDFW to require extensive additional environmental review for an LSA Agreement in the future. If inadequate or no environmental review has occurred for Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSA Agreement until CEQA analysis that includes the Project activities subject to Fish and Game Code section 1600 et seq., is complete. This may lead to considerable project delays.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The

Eric Bradbury, Environmental Scientist
State Water Resources Control Board
July 28, 2022
Page 5

types of information reported to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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

CDFW appreciates the opportunity to comment on the ND to assist the State Water Resources Control Board in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Abimael León, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 580-3199 or by electronic mail at Abimael.Leon@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Bob Stafford
5343A684FF02469...

for Julie A. Vance
Regional Manager

ec: State Clearinghouse
state.clearinghouse@opr.ca.gov

Abimael León
California Department of Fish and Wildlife