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**GAVIN NEWSOM, Governor**  
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December 22, 2022

Mr. John James  
Yuba County Water Agency  
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Subject: Yuba River Development Project FERC Relicensing – NOTICE OF INTENT TO PREPARE A SUPPLEMENTAL CEQA ANALYSIS 2022110118 SCH#2022110118

Dear Mr. James:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent (NOI) from the Yuba County Water Agency (YCWA) to provide a supplementary analysis (CEQA Supplement) to the 2019 Final Environmental Impact Statement (FEIS), issued by the Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Army Corps of Engineers (USACE), for the Yuba River Development Project (YRDP or Project) in Yuba, Nevada, and Sierra counties pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.<sup>1</sup>

CEQA requires that, when a project requires both CEQA compliance and an environmental impact statement (EIS) prepared under the National Environmental Policy Act (NEPA), the California agency that is the CEQA lead agency shall, whenever possible, use the EIS as the project environmental impact report (EIR). (Public Resources Code § 21083.7.) CEQA Guidelines section 15221 implements this requirement and provides that when a project will require compliance with both CEQA and NEPA, the CEQA lead agency should use the EIS rather than preparing an EIR under CEQA if: (1) the EIS is prepared before an EIR was completed; and (2) the EIS complies with the CEQA Guidelines (see also Public Resources Code §§ 21083.5, 21083.7). Prior to using the EIS in this situation, the CEQA lead agency must give notice that it will use the EIS in the place of an EIR and that it believes that the EIS meets the requirements of CEQA.

The YRDP CEQA Supplement intends to include the following CEQA considerations that were not addressed or fully covered in the FEIS: 1) air quality effects; 2) noise

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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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effects; 3) climate change; 4) a program for monitoring or reporting on mitigation measures; 5) Native American tribe consultation, including outreach requirements required by Public Resources Code section 21080.3.1 (adopted by Assembly Bill 52); and 6) growth-inducing impacts of the Project. During preparation of the CEQA Supplement, **YCWA may identify other CEQA considerations that will be included.**

CDFW is concerned that the 2019 FEIS did not fully analyze project impacts to biological resources in a way that complies with CEQA. Therefore, in addition to the five listed areas of CEQA considerations above, CDFW recommends that the CEQA Supplement prepared for this Project provide additional impacts analysis related to the topics described in this letter that were not appropriately analyzed in the FEIS. The CEQA supplement should incorporate a detailed analysis of the project impacts to biological resources that the FEIS did not adequately analyze and propose commensurate avoidance or mitigation measures to offset the Project's potential significant impacts to biological resources. In addition, the CEQA Supplement should incorporate an impact analysis based on conditions established in the Project's State Water Resources Control Board (State Water Board or SWRCB) July 2020 Section 401 Water Quality Certification (WQC), or any issuance of an updated WQC.

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).

**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 in Yuba, Nevada, and Sierra counties and consists of (1) New Bullards Bar Dam and Reservoir, and associated recreational facilities, on the North Yuba River; (2) New Colgate Powerhouse, which releases water to the Yuba River downstream of the confluence of the North Yuba and Middle Yuba Rivers; (3) Our House Diversion Dam on the Middle Yuba River upstream of that confluence; (4) Log Cabin Diversion Dam on Oregon Creek in the Middle Yuba River watershed; and (5) Narrows 2 Powerhouse, located on the lower Yuba River just downstream of USACE's Englebright Dam and the confluence of the South Yuba River and the Yuba River. YCWA's proposed Project is the acceptance of a new license issued by FERC for the YRDP's operation. YCWA has applied to FERC for a new license with a 50-year term.

## PROJECT SPECIFIC CEQA COMMENTS AND RECOMMENDATIONS

CDFW provides the following Project-specific comments regarding the NOI to develop a CEQA Supplement for the YRDP that analyzes impacts dictated by pending FERC actions and impacts not thoroughly considered in the 2019 FEIS:

### 1. FERC's March 2021 Additional Information Request

On page 4 of the NOI, YCWA states, "As it prepares the Supplemental Analysis, YCWA will reassess the scope and details of the Proposed Project based on any subsequent related actions or decisions by FERC (e.g., as a result of the [Supplemental] EIS or [Endangered Species Act] consultation). The draft Supplemental Analysis will describe the Proposed Project based on the circumstances existing at the time of its release."

CDFW supports this proposed course of action, particularly as it relates to any future determination by FERC on their Additional Information Request (AIR) issued on March 8, 2021. FERC's AIR direction was:

*To evaluate the equitable allocation of the water that is needed in the Yuba River basin to protect ESA-listed fish species and their designated critical habitat, please consult with NID and PG&E and develop an agreed-upon analysis of the amount of additional water from either storage or transfers to provide the necessary flow in dry and/or critically dry years (or combination of dry type years) to maintain cooler water in the Yuba River from July through November.*

**If subsequent FERC decisions related to this AIR require the implementation of flow or non-flow modifications to Project operations and facilities, the CEQA Supplement should reflect an updated evaluation of the potential impacts of these actions and include measures to avoid or mitigate their impacts.**

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## 2. Lower Yuba River Habitat Restoration

The 2019 FEIS only partially recommended a proposed measure to develop and implement a lower Yuba River Habitat Restoration and Large Woody Material (LWM) Management Plan. CDFW continues to believe that the cutting and grading portion of this measure is necessary to mitigate Project-related impacts to juvenile salmonid habitat in the lower Yuba River.

The Project's reduction in peak flows has created a stable channel condition with little scour. Low and stable flows during the spring have the potential to negatively affect juvenile salmonid migration rates and survival in the lower river. The Project's reductions in flows have also prevented the successful colonization and survival of riparian vegetation into floodplain areas at biologically appropriate timeframes.

CDFW agrees that historical land uses have dramatically affected the current condition of the lower Yuba River, but Project-related impacts also play a role and affect inundation of bank edge, side channel, and off-channel salmonid habitat. Therefore, Project-related habitat restoration projects that include floodplain lowering would be required to inundate at a frequency and duration that would be beneficial to rearing salmonids.

**As these Project-related impacts were not adequately analyzed in the FEIS, the CEQA Supplement should provide a complete evaluation of the above Project-induced ecological degradation on the lower Yuba River and include effective avoidance or mitigation measures.**

## 3. Wood and Sediment Management in the North Yuba River Below New Bullards Bar Dam

Project-related large woody debris/material and sediment management activities can create biological impacts in the north Yuba River below New Bullards Bar Dam. Although the FEIS requires (agreed-upon) wood and sediment management plans below Our House and Log Cabin dams, there are no wood or sediment management plans required for the North Yuba River below New Bullards Bar Dam. The New Bullards Bar and downstream North/Middle Yuba Confluence reaches of the Yuba River (upstream of Englebright Dam) receive neither natural inputs of LWM nor sediment from the North Yuba River due to New Bullards Bar Dam. Thus, these river reaches lack the habitat complexity and geomorphological processes experienced by unimpaired rivers that provide valuable fish habitat. Although YCWA negotiated conditions for wood and sediment management below two dams where the US Forest Service retained mandatory 4(e) conditioning authority, YCWA did not agree to wood or sediment management measures for these adjacent reaches (New Bullards Bar Reach and North/Middle Yuba Confluence Reach). The lack of LWM and sediment/gravel and associated geomorphic processes in these reaches contributes to a lack of suitable habitat for rainbow trout and other aquatic

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species. CDFW believes the placement, monitoring, and management of LWM and gravel in the New Bullards Bar Reach will provide necessary habitat elements to enhance resident aquatic species. Further, placement of LWM will improve sediment retention and facilitate geomorphic processes missing from the further downstream North/Middle Yuba Confluence Reach of the Yuba River above Englebright Reservoir due to Project impacts.

**CDFW recommends the CEQA Supplement consider and propose mitigation for large woody debris/material and sediment management Project impacts to the north Yuba River below New Bullards Bar Dam that were not adequately addressed in the FEIS.**

**WATER QUALITY CERTIFICATION RELATED CEQA COMMENTS**

As provided by YCWA in the NOI, the Supplemental CEQA Analysis may examine alternatives to implementing the proposed Project described in the FEIS, including those based on the July 2020 WQC issued by the State Water Board. **CDFW reiterates the following relevant State Water Board comments, also submitted to FERC in our March 2020 letter of support for the WQC, for inclusion in the Supplemental CEQA Analysis. These comments discuss proposed Amended Final License Application (AFLA) conditions, filed by YCWA, that lack an evaluation of potential impacts under a CEQA alternatives analysis.**<sup>2</sup> Should these conditions be included in the forthcoming license, an improper assessment of potential impacts risks inadequate protections for fish and wildlife beneficial uses of water that may otherwise be considered by the State Water Board in their WQC. The supporting detailed rationale for evaluating each of these conditions and alternatives under CEQA is included in CDFW's 10j recommendations and summarized below:

- ***Condition AR3: Maintain Streamflows Downstream of Narrows 2 Powerhouse and Narrows 2 Full Bypass***

*Proposed Condition AR3 may not achieve a level of Yuba River protection and enhancement adequate to offset Project impacts. The [AFLA] identified the following "high stressors" to salmonids that could be ameliorated by the flow regime: floodplain habitat availability, natural river morphology and function, and fry and juvenile rearing physical habitat structure. Proposed Condition AR3 does*

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<sup>2</sup> CDFW previously submitted comments by letter on March 25, 2020 opposing waiver of the State Water Board's WQC. In that letter, CDFW discussed the potential inadequacy of measures proposed by YCWA in their Amended Final License Application (AFLA) and by FERC in their FEIS to protect water quality and the beneficial uses of water for the Yuba River, as outlined by the State Water Board in the Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin (Basin Plan), without an evaluation under CEQA.

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*not adequately address these stressors. [SWRCB Comments, August 28, 2017, page 24]*

- **Condition AR9: Control Project Ramping and Flow Fluctuation Downstream of Englebright Dam**

*Proposed Condition AR9 includes ramping and flow fluctuation requirements from April 1 through July 15 to prevent a greater than 2.5 cm/day drop in stage. Reedy et al. (2016) identified a maximum recession rate of 2.5 cm/day, citing recommendations by Mahoney and Rood (1998) and Stella et al. (2006), for riparian vegetation seedling establishment. SWRCB staff suggests that the Commission evaluate Proposed Condition AR9 and a riparian recession rate from April 1 through August 31 that would capture the entire cottonwood seed and native willow dispersal period in the lower Yuba River (SYRCL 2016). [SWRCB Comments, August 28, 2017, page 29]*

- **Condition AR10: Maintain Minimum Streamflow below New Bullards Bar Dam**

*Proposed Condition AR10 may not be protective of resources in the NBB Reach. Minimal adult habitat and limited spawning gravel does not support the viability of rainbow trout in the NBB Reach. Additionally, Proposed Condition AR10 may not provide tolerable water temperatures for rainbow trout downstream of New Bullards Bar Dam. [SWRCB Comments, August 28, 2017, page 23]*

- **Condition AR11: Periodically Close Lohman Ridge Diversion Tunnel**

*Proposed Condition AR11 may not provide adequate protection to the beneficial uses of the Middle Yuba River. Significant levels of entrainment occurred in Study 03-11 during a dry water year type, yet Proposed Condition AR11 only addresses entrainment in wetter water year types. [SWRCB Comments, August 28, 2017, page 32]*

- **Condition GS2: Implement Our House and Log Cabin Diversion Dams Sediment Management Plan**

*Proposed Condition GS2 is a comprehensive plan that includes mechanical sediment removal, sediment pass through, emergency protocols, and measures to unclog valves. However, Proposed Condition GS2 does not include monitoring elements to illustrate compliance with Basin Plan objectives or to address 303(d) listed impairments. [SWRCB Comments, August 28, 2017, page 32]*

- **SWRCB Comment 7: Use Both Power intakes to Colgate Powerhouse**

*To the extent feasible, YCWA should draw water from both New Colgate*

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*Powerhouse intakes and develop a plan to operate and maintain the upper and lower intakes. [SWRCB Comments, August 28, 2017, page 30]*

- **SWRCB Comment 9: Sediment Augmentation in the New Bullards Bar Reach of the North Yuba River**

*YCWA discusses sediment injection in the NBB reach in the [AFLA] on page E3 3.3.3264. YCWA is concerned with implementation, cost, and effectiveness of sediment injection in the NBB Reach. However, sediment transport is stopped as a result of Project facilities. Therefore, mitigation for the removal of sediment from the NBB Reach may be appropriate. Potential sediment mitigation is included in Attachment B - Preliminary Condition 12. [SWRCB Comments, August 28, 2017, page 32]*

- **SWRCB Comment 12: Public Access to the North Yuba River below New Bullards Bar Dam**

*The North Yuba River below New Bullards Bar Dam is designated for REC-1 beneficial uses. However, the public currently does not have access to the North Yuba River below New Bullards Bar Dam. YCWA owns land directly downstream of New Bullards Bar Dam, which contains a private access road. The Licensee should develop a plan to provide public access to the North Yuba River below New Bullards Bar Dam while ensuring public safety around Project facilities. [SWRCB Comments, August 28, 2017, page 32]*

- **SWRCB Comment 18: Narrows 2 Intake Extension Project**

*As a requirement of YCWA's water right Permits and RD-1644, YCWA is required to "diligently pursue development of the Narrows 2 Powerhouse Intake Extension Project (Intake Extension Project) at Englebright Dam...." [SWRCB Comments, August 28, 2017, page 38]*

- *Notwithstanding FERC's November 13, 2014, determination that Study 07-02 is complete, YCWA remains obligated to pursue the Intake Extension Project under its water right permits. [SWRCB Comments, August 28, 2017, page 39]*
- *The SWRCB is evaluating existing information and may identify additional information needed to make a determination regarding the need for an intake extension structure. [SWRCB Comments, August 28, 2017, page 40]*

- **SWRCB Comment 21: Anadromous Fish Reintroduction above Englebright Dam**

*The SWRCB, through the CEQA process or the water quality certification*

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*process, may seek an evaluation and analysis of alternatives for potential anadromous fish reintroduction above Englebright Dam. The SWRCB may condition the Project given the result of the potential anadromous fish reintroduction evaluation and analysis. [SWRCB Comments, August 28, 2017, page 42]*

**GENERAL CEQA COMMENTS AND RECOMMENDATIONS**

CDFW provides the following general comments on the NOI to develop a CEQA Supplement to assist YCWA 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 CEQA Supplement for Project with respect to impacts on biological resources. **CDFW recommends that the forthcoming CEQA Supplement address the following issues if they are not addressed in the FEIS or a future updated FEIS:**

**ASSESSMENT OF BIOLOGICAL RESOURCES**

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the CEQA Supplement should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends the CEQA Supplement specifically include:

1. An assessment of all habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following, *The Manual of California Vegetation*, second edition (Sawyer 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the CDFW webpage [www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data](http://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data)). Please review the webpage

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for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

3. A complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § § 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. The CEQA Supplement should include the results of focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Species-specific surveys should be conducted in order to ascertain the presence of species with the potential to be directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends YCWA rely on survey and monitoring protocols and guidelines available at: [www.wildlife.ca.gov/Conservation/Survey-Protocols](http://www.wildlife.ca.gov/Conservation/Survey-Protocols). Alternative survey protocols may be warranted; justification should be provided to substantiate why an alternative protocol is necessary. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought or deluge.
4. A thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see [www.wildlife.ca.gov/Conservation/Plants](http://www.wildlife.ca.gov/Conservation/Plants)).

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5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

## **ANALYSIS OF DIRECT, INDIRECT, AND CUMULATIVE IMPACTS TO BIOLOGICAL RESOURCES**

The CEQA Supplement should provide a thorough discussion of the Project's potential direct, indirect, and cumulative impacts on biological resources that were not already considered in the FEIS. To ensure that Project impacts on biological resources are fully analyzed, the following information should be included in the CEQA Supplement if not already considered in the FEIS:

1. The CEQA Supplement should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The CEQA Supplement must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed and it must permit the significant effects of the Project to be considered in the full environmental context.
2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by Project activities especially those adjacent to natural areas, exotic and/or invasive species occurrences, and drainages. The CEQA Supplement should address Project-related changes to drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g., National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Conservation or Recovery Plan, or other conserved lands).
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The CEQA Supplement should discuss the Project's cumulative impacts to natural resources and determine if that contribution would result in a significant impact. The CEQA Supplement should include a list of present, past, and probable future projects producing related impacts to biological resources or shall include a summary of the projections contained in an adopted local, regional, or statewide plan, that consider conditions contributing to a cumulative effect. The cumulative analysis shall include impact analysis of vegetation and habitat reductions within the area and their potential cumulative effects. Please include all potential direct and indirect Project-related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive

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species and/or special-status species, open space, and adjacent natural habitats in the cumulative effects analysis.

**MITIGATION MEASURES FOR PROJECT IMPACTS TO BIOLOGICAL RESOURCES**

The CEQA Supplement should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project that are not already covered in the FEIS. CDFW also recommends the environmental documentation provide scientifically supported discussion regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully Protected Species (Fish & G. Code §§ 3511, 5515, 5050) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the CEQA Supplement should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the CEQA Supplement fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that YCWA include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
2. *Species of Special Concern*: Species of Special Concern (SSC) have the potential to occur within or adjacent to the Project area. Project activities described in the CEQA Supplement should be designed to avoid impacts to any SSC that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the CEQA Supplement fully analyze potential adverse impacts to SSC due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends YCWA include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce impacts to SSC.
3. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level.

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These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer 2009). The CEQA Supplement should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

4. *Native Wildlife Nursery Sites*: CDFW recommends the CEQA Supplement fully analyze potential adverse impacts to native wildlife nursery sites, including but not limited to bat maternity roosts. Based on review of Project materials, aerial photography, and observation of the site from public roadways, the Project site contains potential nursery site habitat for structure and tree roosting bats and is near potential foraging habitat. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). CDFW recommends that the CEQA Supplement fully identify the Project's potential impacts to native wildlife nursery sites, and include appropriate avoidance, minimization and mitigation measures to reduce impacts or mitigate any potential significant impacts to bat nursery sites.
5. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the CEQA Supplement should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The CEQA Supplement should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

6. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in the regional ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g)

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specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be appropriately timed to ensure the viability of the seeds when planted. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project. Examples may include retention of woody material, logs, snags, rocks, and brush piles. Fish and Game Code sections 1002, 1002.5 and 1003 authorize CDFW to issue permits for the take or possession of plants and wildlife for scientific, educational, and propagation purposes. Please see our website for more information on Scientific Collecting Permits at [www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations](http://www.wildlife.ca.gov/Licensing/Scientific-Collecting#53949678-regulations).

7. *Nesting Birds*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory nongame native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area. The Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity.

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Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the CEQA Supplement.

CDFW recommends the CEQA Supplement include specific avoidance and minimization measures to ensure that impacts to nesting birds or their nests do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The CEQA Supplement should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g., Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier.

8. *Moving out of Harm's Way*: The Project may result in the clearing of natural habitats that support native species. To avoid direct mortality, YCWA should state in the CEQA Supplement a requirement for a qualified biologist with the proper handling permits, will be retained to be onsite prior to and during all ground- and habitat-disturbing activities. Furthermore, the CEQA Supplement should describe that the qualified biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities, as needed. The CEQA Supplement should also describe qualified biologist qualifications and authorities to stop work to prevent direct mortality of special-status species. CDFW recommends fish and wildlife species be allowed to move out of harm's way on their own volition, if possible, and to assist their relocation as a last resort. It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.
9. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to rare, threatened, or endangered species as these efforts are generally experimental in nature and largely unsuccessful. Therefore, the CEQA Supplement should describe additional mitigation measures utilizing habitat restoration, conservation, and/or preservation, in addition to avoidance and minimization measures, if it is determined that there may be impacts to rare, threatened, or endangered species.

The CEQA Supplement should incorporate mitigation performance standards that would ensure that impacts are reduced to a less-than-significant level. Mitigation measures proposed in the CEQA Supplement should be made a condition of approval of the Project. Please note that obtaining a permit from CDFW by itself with no other mitigation proposal may constitute mitigation deferral. CEQA Guidelines section 15126.4, subdivision (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. To avoid deferring mitigation in this way, the CEQA Supplement

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should describe avoidance, minimization and mitigation measures that would be implemented should the impact occur.

### **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.

The CEQA Supplement should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To facilitate the issuance of an ITP, if applicable, CDFW recommends the CEQA Supplement include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

### **NATIVE PLANT PROTECTION ACT**

The Native Plant Protection Act (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of State-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

### **LAKE AND STREAMBED ALTERATION PROGRAM**

The CEQA Supplement should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other hydrologically connected aquatic features, and any associated biological resources/habitats present within the entire Project footprint (including utilities, access and staging areas). The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources/habitats that may occur because of the Project. If it is determined the Project will result in significant impacts to these resources the CEQA Supplement shall propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level.

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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.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

If upon review of an entity's notification, CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the CEQA Supplement should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, (2) timber harvesting operations, or (3) routine maintenance operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. CDFW recommends lead agencies coordinate with us as early as possible, since potential modification of the proposed

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Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

Based on review of Project materials, aerial photography and observation of the site from public roadways, the Project site supports the lower Yuba River and its associated riparian habitat. CDFW recommends the CEQA Supplement fully identify the Project's potential impacts to the stream and/or its associated vegetation and wetlands.

### **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](mailto: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 YCWA 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: [r2ceqa@wildlife.ca.gov](mailto:r2ceqa@wildlife.ca.gov).

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CDFW appreciates the opportunity to comment on the NOI of the CEQA Supplement for the YRDP and recommends that YCWA address CDFW's comments and concerns in the forthcoming CEQA Supplement. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact 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:  
  
B35A7660DD7848B...

Jennifer Garcia  
Environmental Program Manager  
North Central Region

cc: Beth Lawson, Senior Hydraulic Engineer  
[Beth.Lawson@wildlife.ca.gov](mailto:Beth.Lawson@wildlife.ca.gov)  
Briana Seapy, Water Program Supervisor  
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CDFW CEQA  
[R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov)  
*Department of Fish and Wildlife*

Office of Planning and Research, State Clearinghouse, Sacramento

#### Literature Cited

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A Manual of California Vegetation, 2<sup>nd</sup> ed. California Native Plant Society Press, Sacramento, California.  
<http://vegetation.cnps.org/>