



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



June 27, 2023

Andrea Sellers, Project Manager  
State Water Resources Control Board  
Division of Water Rights – Water Quality Certification Program  
Post Office Box 2000  
Sacramento, California 95812-2000  
Andrea.Sellers@wildlife.ca.gov

**Subject: Kerckhoff Hydroelectric Project Relicensing (Project)  
Notice of Preparation (NOP) of a Draft Environmental Impact  
Report (DEIR)  
State Clearinghouse No. 2023050702**

Dear Andrea Sellers:

The California Department of Fish and Wildlife (CDFW) received an NOP from the State Water Resources Control Board for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, CDFW appreciates 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 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

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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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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, 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.), 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 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 (PG&E)

**Objective:** PG&E is requesting to relicense the Kerckhoff Hydroelectric Project (Federal Energy Regulatory Commission (FERC) No. 96) for a 50-year term. The Proposed Project involves continued operations with the following changes: Proposed Project Boundary Updates, Proposed Updates to Project Facilities, and Proposed Project Measures.

**Location:** The Proposed Project is located on the San Joaquin River in Fresno and Madera counties. The nearest city is Auberry, approximately four miles northeast of Kerckhoff Dam.

**Timeframe:** n/a

## COMMENTS AND RECOMMENDATIONS

**Special Status Species:** Given the intercounty nature of the Proposed Project, there is the potential for the Project to impact State-listed species. Records from the California Natural Diversity Database (CNDDDB) show the following special status species including CESA-listed species (CDFW 2023a,b,c; CWHR 2005) are known to occur or potentially occur within the Proposed Project area and could be impacted: the State endangered and federally proposed endangered foothill yellow-legged frog (*Rana boylei*); the State threatened California tiger salamander (*Ambystoma californiense*); the State endangered and fully protected California condor (*Gymnogyps californianus*) and bald eagle (*Haliaeetus leucocephalus*); the State fully protected golden eagle (*Aquila*

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*chrysaetos*), white-tailed kite (*Elanus leucurus*), and American peregrine falcon (*Falco peregrinus anatum*); the State endangered least Bell's vireo (*Vireo belli pusillus*) and willow flycatcher (*Empidonax traillii (brewsteri)*); the State threatened Swainson's hawk (*Buteo swainsoni*); and the following State species of special concern hardhead (*Mylopharodon conocephalus*), California roach (*Lavinia symmetricus*), hitch (*Lavinia exilicauda*), white sturgeon (*Acipenser transmontanus*), Kern brook lamprey (*Lampetra hubbsi*) (Moyle *et al.* 2015), California red-legged frog (*Rana draytonii*), western pond turtle (*Actinemys marmorata*) (Thomson *et al.* 2016), grasshopper sparrow (*Ammodramus savannarum*), short-eared owl (*Asio flammeus*), long-eared owl (*Asio otus*), burrowing owl (*Athene cunicularia*), Northern harrier (*Circus cyaneus*), yellow-breasted chat (*Icteria virens*), loggerhead shrike (*Lanius ludovicianus*), yellow warbler (*Setophaga petechia*), and California spotted owl (*Strix occidentalis occidentalis*). The following mammals are also State species of special concern known to occur or potentially occur within the Proposed Project area: pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), spotted bat (*Euderma maculatum*), western mastiff bat (*Eumops perotis californicus*), and American badger (*Taxidea taxus*).

The following special status plants occur within the Proposed Project area and could be impacted: the State endangered fleshy owl's clover (*Castilleja campestris* var. *succulenta*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), Hartweg's golden sunburst (*Pseudobahia bahiifolia*), and San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*); the State threatened tree-anemone (*Carpenteria californica*); and the State rare Tracy's eriastrium (*Eriastrum tracyi*). In addition, the State species of special concern redhead (*Aythya americana*) occur within the Proposed Project area. Rare and imperiled natural communities with potential to occur include Great Valley Mixed Riparian Forest and Northern Basalt Flow Vernal Pool.

Other native fish and mollusc species that are known to occur within and nearby the Proposed Project Boundary that have not been assigned a special status but have a high ecological and cultural value include: rainbow trout (*Oncorhynchus mykiss*), Sacramento sucker (*Catostomus occidentalis*), prickly sculpin (*Cottus asper*), threespine stickleback (*Gasterosteus aculeatus*) and the western pearlshell (*Margaritifera falcata*).

The primary purpose of a DEIR is to consider all potential impacts associated with the Proposed Project that would eventually tier from the EIR over time. As such, the EIR should serve primarily as a planning level DEIR and consider, in detail, the cumulative impacts of the reasonably foreseeable projects, in this case project operation and maintenance, on the environment and on the species CDFW has identified in this comment letter. CDFW recommends that proposed ongoing studies and analyses from the Revised Study Plan (PG&E 2018, 2021) be conducted and completed in and surrounding all locations for the planned continued operation and maintenance of PG&E's Kerckhoff hydroelectric project in the EIR and identify all potential plant, animal, invertebrate, and fish species that could be present. Then, for those species, CDFW recommends a robust analysis of cumulative impacts for each of those species along

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with avoidance, minimization, and mitigation measures that could be implemented on the Project to reduce harm. For many species, subsequent protocol-level surveys may be required during biological studies conducted in support of the future CEQA documents that will be tiered from this DEIR and, depending on the results, avoidance and minimization measures, permits, and mitigation may be required.

CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of the DEIR, with conclusions of those studies summarized therein and repeated as necessary prior to Project ground-disturbing activities. For foothill yellow-legged frog, focused surveys following the survey methods described in pages 16–22 of “A Standardized Protocol for Surveying Aquatic Amphibians” (Fellers and Freel 1995) is recommended; however, please note that dip-netting would constitute take as defined by Fish and Game Code section 86, so it is recommended this survey technique be avoided. For California spotted owl, CDFW recommends that focused surveys be conducted by qualified biologists familiar with California spotted owl following the protocol prepared by the United States Fish and Wildlife Service (USFWS) (USFWS 2011, revised 2012). In the subsequent EIR, CDFW advises that special-status species be addressed with appropriate avoidance and minimization measures and the above survey methods be included. Detection of any CESA-listed species or candidate warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, acquisition of an Incidental Take Permit, pursuant to Fish and Game Code section 2081(b), would be necessary to comply with CESA.

**Project Alternatives Analysis:** CDFW recommends the information and results obtained from the biological technical surveys, studies, and analyses conducted in support of the Proposed Project’s CEQA document be used to develop and modify the Proposed Project’s alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA and we recommend that the State Water Resources Control Board reach out to CDFW to discuss various methodologies and strategies for an analysis of this type for CDFW trustee agency resources.

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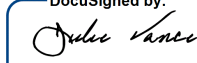
**CNDDDB:** Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether any special-status species are present at or near the Project area.

**Lake and Stream Alteration (LSA):** The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires any project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, foothill yellow-legged frog. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

On June 15, 2023, CDFW participated at a scoping meeting held by the State Water Board to receive information about the Project, the CEQA process, and stakeholder feedback. CDFW is available to meet with you ahead of DEIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact 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](mailto:Abimael.Leon@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

ec: See Page Six

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United States Fish and Wildlife Service

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