



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
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CHARLTON H. BONHAM, Director



February 23, 2024

Governor's Office of Planning & Research

Feb 23 2024

STATE CLEARINGHOUSE

Eric Bradbury
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Lead Agency
P.O. Box 2000
Sacramento, CA 95814
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Subject: Tiger Creek Regulator Dam Spillway Replacement Project
MITIGATED NEGATIVE DECLARATION (MND)
SCH No. 2024010525

Dear Eric Bradbury:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an MND from the State Water Resources Control Board for the Tiger Creek Regulator Dam Spillway Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, CDFW appreciates 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.

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.

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.

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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 Site is located in Amador County, California, approximately 24 miles northeast of Jackson, at the Tiger Creek Regulator Reservoir, Latitude: 38.477806 N, Longitude: -120.452194 W (NAD83/WGS84). The project proponent is Pacific Gas and Electric Company (Proponent).

The Project consists of the construction of a new spillway along Pacific Gas and Electric Company's Tiger Creek Regulator Dam (Dam) and the decommissioning of the existing spillway and associated infrastructure. The spillway would be constructed on the Dam's right abutment to allow the Dam to safely pass a flood event of up to 6,000 cfs. The spillway construction includes construction of a spillway intake, a new notch through the existing Dam, a concrete shoot, flip bucket splitter blocks, and a plunge pool. Plunge pool construction would involve temporary dewatering and diversion of Tiger Creek below the Dam. The Project would also construct permanent and temporary access roads, four temporary bridges across Tiger Creek, a cofferdam in the reservoir, a log boom and anchor blocks, and new lighting on the Dam.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the State Water Resources Control Board in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments are also 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 Mitigated Negative Declaration is appropriate for the Project.

COMMENT 1: Lake and Streambed Alteration Notification for Plunge Pool Construction, 3.3 Hydrology and Water Quality, 3.3-12

Issue: Section 3.3.5 describes construction of the plunge pool in Tiger Creek involving excavation and streamflow diversion. CDFW believes this activity may trigger a Notification for a Streambed Alteration Agreement.

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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:

- a. Substantially divert or obstruct the natural flow of any river, stream, or lake;
- b. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- c. 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 environmental document 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. LSA Notifications 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>.

Recommendation: CDFW recommends that the Proponent notify pursuant to Section 1602 of the Fish and Game Code as early as possible to determine if an LSA is needed.

COMMENT 2: Impacts of Plunge Pool Construction on Aquatic Life, 3.5 Biological Resources, 3.5-69

Issue: The excavation and creation of the plunge pool in Tiger Creek would involve the diversion of streamflows around the work area. Dewatering and diversion have the potential to harm aquatic species via stranding. These activities may also disrupt established patterns of instream flow that support ecological and geomorphic function.

Recommendations: CDFW recommends the Proponent adopt the following measures during plunge pool construction to minimize impacts to aquatic life:

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Diversion and Dewatering

CDFW agrees that it is appropriate to prepare a fish rescue and relocation plan as part of Biological Resources Mitigation Measure 8: Rescue and Relocate Fish from Affected Habitat, 3.5-73. To avoid impact to any non-listed fish species, a Fish Relocation Plan should be submitted to CDFW for approval at least 30 calendar days prior to the start of any in-water project activities. The Proponent should ensure that any other necessary permits are acquired prior to fish relocation activity. The plan should be prepared and implemented by a Qualified Biologist.

A Qualified Biologist is defined as a person who is knowledgeable and experienced in the biology, life stages, natural history, and identification of local fish and wildlife resources present at the Project Site.

A copy of the approved plan should be available on-site during all project activities. The Qualified Biologist should be present on site for the duration of dewatering, plunge pool construction, and rewatering of Tiger Creek to ensure all avoidance and minimization measures are implemented.

The Qualified Biologist should check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, bucket, and by hand. Captured aquatic life should be released immediately in the closest body of water adjacent to the work site. This condition does not allow for the take or disturbance of any listed species. The Qualified Biologist shall be authorized to stop any project activities if necessary to protect fish and wildlife resources. If the Proponent encounters a listed or fully protected species during a project activity that could be harmed, the Proponent should suspend work and consult with CDFW. The Fish Relocation Plan should address the monitoring of the fish to be relocated during the water diversion or dewatering process.

A post-relocation report should be provided that includes, at a minimum, the date and time of capture and relocation, the method of capture, map of locations in relation to the Project Site, and the number and species of fish captured and relocated. The post-relocation report should be provided to CDFW within 14 calendar days of completing each fish relocation activity.

Instream Flows

CDFW notes that the Proponent's FERC License (Mokelumne River FERC No. 137 Project) requires the Proponent to maintain minimum instream flows, pulse flows, and ramping rates (Forest Service 4(e) Conditions 5 and 6). The Proponent should ensure that the required flows will be maintained throughout the duration of the Project, even during diversion and dewatering activities. The Proponent should clarify that infrastructure used for diversion and dewatering activities has the capacity to release flows at the magnitude and ramping rates consistent with their License.

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COMMENT 3: Impacts on Foothill Yellow-legged Frog; 3.5 Biological Resources, 3.5-35

Issue: The plunge pool construction site at Tiger Creek is potential habitat for the state and federally endangered foothill yellow-legged frog (*Rana boylei*; FYLF) and individuals have been observed downstream of the Project Site and in Tiger Creek upstream of the Dam (PG&E 2022). Although the MND rates the Project Site as having “low potential” for species occurrence at the site, construction activities at the location of plunge pool and downstream of the Project Site have the potential to impact FYLF.

Recommendation: CDFW recommends the Proponent adopt the following mitigation measures:

FYLF Surveys

A Qualified Biologist should develop a Pre-Construction Survey Plan for FYLF and submit it to CDFW for review at least 30 calendar days prior to commencing ground-disturbing activities and in-water work. The Plan shall include what life-stage(s) shall be surveyed for, survey method(s), and timing of survey(s). The Plan should provide justification for timing and methodology of survey design (e.g., watershed characteristics, regional snowpack, timing and rate of spring runoff, day length, average ambient air and water temperatures, local and seasonal conditions). If the Project Site has suitable frog breeding habitat, the Pre-Construction Survey Plan shall include performing egg mass/larval surveys.

Within 3 calendar days prior to ground-disturbing activities and in-water work at the Project Site, the Qualified Biologist should perform a pre-construction survey, as specified in the Pre-Construction Survey Plan, within the boundaries of the Project Site, plus a 500-foot buffer zone upstream and downstream of the Project Site. The survey should include a description of any standing or flowing water. The Proponent should provide Pre-Construction Survey results, notes and observations to CDFW prior to commencing ground disturbing activities and in-water work. If the Proponent encounters any life stages of FYLF during pre-construction surveys or during ground-disturbing activities or in-water work, work should be suspended in the Project Site, and CDFW should be notified within 24 hours. Work may not re-initiate in the Project Site until the Project demonstrates compliance with CESA.

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. FYLF are state and federally endangered. Pending results of the surveys described above, 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, including FYLF, either through construction or over the life of the Project.

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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 issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code § 2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the IS/MND 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 CDFW staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service to coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

Instream Flows

CDFW also recommends the Proponent adhere to recommendations described above in Comment 2 regarding maintaining instream flows consistent with its FERC license to protect FYLF occurring at or downstream of the Project Site.

COMMENT 4: Impacts of Rock Slope Protection on Channel Hydraulics, 3.3 Hydrology and Water Quality, 3.3-18

Issue: Permanent placement of 500 cubic yards of rock slope protection (RSP) along the banks of Tiger Creek may alter channel hydraulics and local geomorphic processes and may result in scouring.

Recommendation: CDFW recommends the Proponent conduct a scour analysis to evaluate the hydraulic and water quality impacts of the installation of RSP. The analysis should ensure that the RSP does not transfer the erosion force of the stream to the opposite bank, or to another area downstream, or cause the formation of downstream eddies.

COMMENT 5: Impacts of Rock Slope Protection Placement on Water Quality, 3.3 Hydrology and Water Quality, 3.3-18

Issue: Initial RSP placement may dislodge and mobilize sediment, resulting in a temporary increase in suspended sediment and turbidity. Inadequately placed RSP may mobilize and create water quality and hydraulic issues.

Recommendation: CDFW agrees that installation of a silt curtain for sediment control is appropriate prior to RSP placement. In addition, CDFW recommends that RSP consist of clean rock, sufficient for the application, sized and properly installed to resist washout. RSP slopes shall be supported with competent boulders keyed into a footing trench with a depth sufficient to properly seat the footing course boulders and prevent instability.

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COMMENT 6: Inadequate Evaluation of Additional Impacts

Issue: The MND does not fully evaluate impacts of two activities, (1) the installation of four temporary bridges, and (2) the abandonment of the existing spillway. The MND also does not discuss any mitigation measures associated with the removal of 13.5 acres of Sierran mixed conifer forest.

Recommendation: CDFW encourages the Proponent to further evaluate potential temporary and permanent impacts associated with bridge installation. CDFW recommends the Proponent evaluate impacts of abandoning the existing spillway and to provide further details related to upkeep and maintenance of the old spillway structure.

CDFW also recommends the Proponent propose mitigation for the impact of vegetation removal, the abandonment of the existing spillway, and bridge installation during project activities to ensure no net loss of habitat or fish and wildlife resource value occurs as a result of the Project. Mitigation would serve to offset the impacts of the tree removal and/or habitat degradation. Mitigation may include restoring, enhancing, or preserving similar habitat types proposed for removal at higher ratios than those that were removed in order to compensate for habitat loss.

COMMENT 7: Impacts of Tree Removal on Nesting Birds and Bats, 3.5 Biological Resources, 3.5-43

Issue: The Project would result in the removal of 13.5 acres of Sierran Mixed Conifer Forest, or approximately 747 trees. Removal of these trees could result in significant habitat loss for a variety of bird and bat species, including bald eagle (*Haliaeetus leucocephalus*), northern goshawk (*Accipiter gentilis*), California spotted owl (*Strix occidentalis occidentalis*), fringed myotis (*Myotis thysanodes*), long-legged myotis (*Myotis volans*), hoary bat (*Lasiurus cinereus*), silver-haired bat (*Lasionycteris noctivagan*), and Townsend's big eared bat (*Corynorhinus townsendii*). The significance of the impact of habitat clearing is not reduced by virtue of the abundance of similar or equivalent adjacent habitat to the Project Site, and would reduce available habitat for wildlife, and potentially, special-status species which may use these forest stands.

Migratory non-game native bird species are protected under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish & G. Code also 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 Fish & G. 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 Fish & G. 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

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by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Recommendation: CDFW acknowledges that the Proponent has undertaken nesting bird and bat surveys. CDFW recommends the following additional actions be taken to minimize impacts to nesting bird and bats:

Nesting Bird Surveys

To avoid impacts to nesting and migratory birds, CDFW recommends that a Qualified Biologist conduct a preconstruction nesting bird survey be scheduled no more than 3 calendar days prior to vegetation removal activities if construction is scheduled to begin between February 1 and August 31. Because construction noise and vibrations may disturb nearby nesting birds to the point of causing nest failure, CDFW recommends the survey be conducted within a minimum of 1500 feet around the construction area. If an active nest is observed, an appropriate buffer shall be established to avoid impacts to nesting activities.

Please note that the MBTA and Fish & G. Code apply regardless of the time of year. Therefore, if an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

CDFW recommends the Qualified Biologist remain on-site for the duration of the project, as appropriate, to ensure avoidance and minimization measures are implemented. The Qualified Biologist shall be authorized to stop construction if necessary to protect fish and wildlife resources.

Bat Surveys

Within 15 calendar days prior to the start of vegetation removal, a Qualified Biologist should conduct a pre-construction survey to identify potentially suitable bat roosting habitat. The pre-construction survey shall be performed at potential habitat structures during the peak activity period, typically 45 minutes before sunset and continue the survey until 2 hours after sunset. The Qualified Biologist shall conduct a minimum of 3 emergence surveys within a 7-calendar day period. The habitat assessment should include a visual inspection of suitable habitat features (e.g., trees, bridges, and other structures) for suitable bat roosting habitat within the Project Site and a minimum of a 500-foot radius adjacent to these areas that may be impacted by project activities.

If bat roosting habitat is present, and activities are scheduled during the maternity season (April 15 to August 31) or the hibernation season (October 15 to March 1), the Proponent should develop a Bat Avoidance and Exclusion Plan (BAEP). The BAEP should include the following:

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- 1) A bat roost buffer, which would establish an appropriate no-disturbance buffer around bat roosts during maternity (April 15 to August 31) or hibernation (October 15 to March 1) seasons. The Qualified Biologist shall clearly delineate habitat and bat roosts within the Project Site with posted signs demarking the avoidance areas using stakes, flags, and/or rope or cord.
- 2) Exclusion devices, which should be installed either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall 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). Specific exclusion devices may include one-way doors, lights and fans, foam or steel wool.
- 3) Tree trimming and/or removal guidance. Tree trimming and/or tree removal should be scheduled either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall 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). Additionally, trees should be removed in two steps over a period of two days. On the first day, all branches that do not contain roosting habitat shall be removed. The remaining portion of the tree should be removed on the second day. All branch removal will be conducted using chainsaws or similar handheld equipment.

EDITORIAL COMMENTS

The numbers on Figure 3.5-1 (on pages 1-4) are rotated and mirrored and are not legible.

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 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.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination

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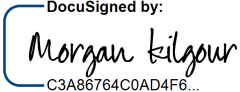
by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. 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.

CDFW appreciates the opportunity to comment on the MND for the Tiger Creek Regulator Dam Spillway Replacement Project to assist the State Water Resources Control Board in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Alyssa Obester, Senior Environmental Scientist (Specialist), at alyssa.obester@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

ec: Jennifer Garcia, Environmental Program Manager
Ian MacLeod, Senior Environmental Scientist (Supervisory)
Alyssa Obester, Senior Environmental Scientist (Specialist)
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REFERENCES

Pacific Gas and Electric Company (PG&E). 2022. 15-Year Summary Report Stream Ecology Monitoring Program (SEMP) Amphibian Monitoring. Available for request from FERC Relicensing Library.