



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 North Central Region  
 1701 Nimbus Road  
 Rancho Cordova, CA 95670  
 www.wildlife.ca.gov

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



July 23, 2024

Jennifer Hanson  
 General Manager  
 Nevada Irrigation District  
 1036 W Main Street  
 Grass Valley, CA 95945  
 (530) 273-6185  
[hansonj@nidwater.com](mailto:hansonj@nidwater.com)

**SUBJECT: CALIFORNIA DEPARTMENT OF FISH & WILDLIFE COMMENTS ON THE NOTICE OF INTENT TO PROVIDE SUPPLEMENTAL CALIFORNIA ENVIRONMENTAL QUALITY ACT ANALYSIS OF FEDERAL ENERGY REGULATORY COMMISSION FINAL ENVIRONMENTAL IMPACT STATEMENT FOR HYDROPOWER LICENSE: YUBA-BEAR HYDROELECTRIC PROJECT (FERC PROJECT NO. 2266)**

Dear Jennifer Hanson:

The California Department of Fish and Wildlife (CDFW) has received and reviewed the Nevada Irrigation District (NID) Notice of Availability (NOA) for the Notice of Intent (NOI) to rely on the 2014 Federal Energy Regulatory Commission (FERC) Final Environmental Impact Statement (FEIS) in combination with a Supplemental Analysis (CEQA Supplement) for the Yuba-Bear Hydroelectric Project FERC Relicensing (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

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, 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 (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 (Fish & G. Code, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) 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. The mission of CDFW is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public. It is the goal of CDFW to preserve, protect, and as needed, to restore habitat necessary to support native fish, wildlife, and plant species within the FERC-designated boundaries of these projects, as well as the areas adjacent to these projects in which resources are affected by ongoing Project operations, maintenance activities, and recreational use.

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## **RELEVANT BACKGROUND**

The initial hydropower license for the Yuba-Bear Hydroelectric Project was issued to NID on June 24, 1963, for a term ending on April 30, 2013. Since the date of license expiration, NID has operated the Project under annual licenses with the same terms as the initial license. On April 11, 2008, NID filed a Pre-Application Document and NOI to seek a new license for the Project following the FERC Integrated Licensing Process. On April 15, 2011, NID filed its Final License Application (FLA) with FERC; and on January 19, 2012, FERC issued a notice stating the FLA was ready for environmental analysis and requested conditions and recommendations from license stakeholders. On July 30, 2012, CDFW filed final Federal Power Act section 10(j) and 10(a) recommendations for the Project as the appropriate State Fish and Wildlife agency for resource consultation under Federal Power Act Section 10(j) (16 U.S.C. § 803 (j)). On September 14, 2012, NID filed responses to those recommendations. On May 17, 2013, FERC issued a joint Draft Environmental Impact Statement analyzing the effects of the Project and the Pacific Gas & Electric (PG&E) Drum-Spaulding Hydroelectric Project. On December 19, 2014, FERC issued a joint FEIS for the Project and PG&E's Drum-Spaulding Hydroelectric Project. On February 5, 2015, CDFW filed a letter with FERC providing comments and clarifications related to CDFW's 10(j) and 10(a) recommendations analyzed in the FEIS.

## **PROJECT DESCRIPTION SUMMARY**

The Project site is located on the Middle and South Yuba River, and the Bear River in the Sierra Nevada Mountain Range in Sierra, Nevada, and Placer Counties.

The Project involves the transfer of water from the Middle and South Yuba River to the Bear River basin. The Project is composed of 13 dams with a combined usable storage of 210,823 acre-feet; four water conduits; four powerhouses with a combined capacity of 79.32 megawatts; one 9.0 mile-long, 60-kilovolt transmission line; 17 campgrounds and associated boat launches, trails and other recreation facilities; and other appurtenant facilities and structures. The Project will consist of:

- Continued operation, maintenance, and management of the existing Project facilities;
- Removal of a segment of Chicago Park Forebay Road and an unnamed recreation road that provides access to the Jackson Meadows administrative site;
- Construction of a new proposed powerhouse (the Rollins upgrade) that would be within the existing FERC Project boundary on NID-owned land adjacent to the existing Rollins Powerhouse;
- Construction and rehabilitation of existing facilities at the following recreation areas: Jackson Meadows reservoir, Milton diversion impoundment, Bowman Lake, Sawmill Lake, Canyon Creek, Dutch Flat No. 2 forebay, and Dutch Flat afterbay;
- Minor modifications to the existing FERC Project boundary; and
- The implementation of other terms and conditions in the new FERC license.

NID has applied to FERC for a new Project license with a 50-year term. Under this NOI, NID is evaluating the acceptance and implementation of the new FERC license and continued operation and maintenance of the Project pursuant to the new license conditions. The discretionary action of accepting and implementing the new FERC license is subject to CEQA.

## **PROJECT SPECIFIC CEQA COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist NID in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on

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biological resources that may not be adequately addressed in the 2014 FEIS. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the CEQA Supplement with respect to impacts on fish and wildlife resources for which CDFW is a Trustee Agency.

### **Analysis and Disclosure of Direct and Indirect Impacts**

The CEQA Guidelines necessitate that all potential direct and indirect impacts (temporary and permanent) that may occur with implementation and operation of the Project be disclosed and evaluated (CEQA Guidelines, § 15126.2). CDFW's review of the FEIS identified several areas of resource analysis that lack sufficient and/or current information to meaningfully identify significant impacts and propose appropriate protective or mitigating measures. Accordingly, CDFW recommends that NID's CEQA Supplement analyze the following areas of potential Project direct and indirect impacts and propose commensurate avoidance and mitigation measures:

1. **COLD Freshwater Habitat Beneficial Use.** The CEQA Supplement should analyze Project release impacts on the COLD Freshwater Habitat beneficial use in the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Middle Yuba River. NID should consider CDFW's "block of water" 10(j) recommendation designed for temperature control and protection of the COLD Freshwater Habitat beneficial use found in the 2012 letter: *CDFW Recommended Conditions for Fish and Wildlife Protection, Mitigation, and Enhancement Provided Under Federal Power Act and 18 CFR § 4.34(b)(2) in the Relicensing of the Yuba-Bear Hydroelectric Project*.
2. **Fish Stocking.** Based on the 2014 FEIS, the scope and details of NID's anticipated fish stocking mitigation within Project reservoirs is unclear. CDFW recommends that NID specify within the CEQA Supplement on-going Project impacts to recreational fishing opportunities and develop mitigation measure(s) accordingly. Of note, reoccurring drought conditions throughout the state have jeopardized the ability of CDFW-operated trout hatcheries to meet regional fish-stocking demand. CDFW North Central Region hatcheries therefore cannot support in-perpetuity fish-stocking beyond fishing license-funded stocking operations. This means CDFW North Central Region is currently not obligating hatchery trout production to meet compensatory fish-stocking requests from FERC license holders. With the uncertain future of trout production at CDFW facilities, CDFW recommends FERC license holders, including NID, identify private aquaculture facilities to meet Project stocking mitigation requirements and develop stocking plans that detail coordination with, and payment of, private aquaculture facilities.
3. **Construction Impacts.** If NID intends to use the 2014 FEIS and CEQA Supplement to cover environmental review for known Project-related construction activities, NID should ensure the CEQA Supplement clearly describes and evaluates potential construction impacts for the newly proposed powerhouse (the Rollins upgrade), and the proposed construction and rehabilitation of existing facilities at Jackson Meadows Reservoir, Milton Diversion Impoundment, Bowman Lake, Sawmill Lake, Canyon Creek, Dutch Flat No. 2 Forebay, and Dutch Flat Afterbay.

### **Analysis and Extent of Mitigation Measures**

The CEQA Guidelines direct NID, as the lead agency, to consider and describe all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370).

Consistent with NID's commitment to address "a program for monitoring or reporting on mitigation measures" (NOA, page 2), any impacts that cannot be avoided should include a detailed description of measures intended to protect or enhance affected species in a

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companion Mitigation, Monitoring, and Reporting Plan (MMRP). The MMRP should include sufficient information specificity to determine the appropriateness of the proposed measures to match the level of impact determined through the CEQA evaluation process. 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). For mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. CDFW recommends NID's MMRP encompass proposed mitigation, monitoring, and reporting from both the FEIS and the CEQA Supplement.

### **Analysis of Cumulative Impacts**

The CEQA Supplement should identify existing and reasonably foreseeable future projects or operational changes in the Project vicinity, disclose any cumulative impacts associated with the Project, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, § 15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Specific cumulative impacts that should be addressed in the CEQA Supplement include:

1. Cumulative impacts of Project and Drum-Spaulding Project operations on anadromous species in Auburn Ravine, including during Yuba-Bear and Drum-Spaulding periods of routine maintenance and/or outages.
2. Cumulative impacts of hydropower operations, including Project operations, on lower Yuba River water temperature as required by FERC in their March 8, 2021 Additional Information Request.

### **Impacts to Foothill Yellow-legged Frog**

The foothill yellow-legged frog (FYLF, *Rana boylei*) North/Northeastern Sierra clade is listed as "threatened" under CESA. On February 5, 2015, CDFW provided comments to FERC on the Project's 2014 FEIS that discussed flow operations opportunities to minimize impacts to FYLF. Additionally, CDFW submitted comments to FERC on June 16, 2023, describing the updated FYLF status as "threatened" under CESA and specifying hydropower project operations impacts on FYLF populations. Due to the updated FYLF listing status, the CEQA Supplement should include an analysis of potential Project impacts to FYLF and methods to avoid, reduce, or mitigate those impacts throughout the Project.

Daily flow ramping measures intended to protect FYLF have already been specified for many Project components, as detailed in license Condition Number 31 via U.S. Forest Service mandatory 4(e) conditions. However, no daily ramping conditions were specified below Rollins Reservoir and Powerhouse to protect FYLF, as this reach is not within U.S. Forest Service jurisdiction. Because the 2014 FEIS did not consider protective flow ramping for FYLF at this location, the CEQA Supplement should specifically analyze the potential effects of Project operations, including flow fluctuation, on FYLF in the Bear River reach below Rollins Reservoir. CDFW generally recommends NID consult with CDFW and work collaboratively to protect FYLF within the Project footprint to avoid "take" of FYLF.

## **GENERAL CEQA COMMENTS AND RECOMMENDATIONS**

### **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

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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.

### **Lake and Streambed Alteration Agreement**

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 CEQA Supplement 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.

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:

- Substantially divert or obstruct the natural flow of any river, stream or lake;
- Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- 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. All 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>.

### **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)).

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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).

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the NOI for the Project CEQA Supplement and recommends that NID address CDFW's comments and recommendations in the forthcoming analysis. 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 email, or wish to schedule a meeting and/or site visit, please contact Michael Maher, Senior Environmental Scientist, Specialist at [michael.maher@wildlife.ca.gov](mailto:michael.maher@wildlife.ca.gov) or (916) 597-5505.

Sincerely,

DocuSigned by:  
  
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Morgan Kilgour,  
Regional Manager

ec: Jennifer Garcia, [jennifer.garcia@wildlife.ca.gov](mailto:jennifer.garcia@wildlife.ca.gov)  
Beth Lawson, [beth.lawson@wildlife.ca.gov](mailto:beth.lawson@wildlife.ca.gov)  
Michael Maher, [michael.maher@wildlife.ca.gov](mailto:michael.maher@wildlife.ca.gov)  
Briana Seapy, [briana.seapy@wildlife.ca.gov](mailto:briana.seapy@wildlife.ca.gov)  
*California Department of Fish and Wildlife*

Kris Stepanian, [stepiank@nidwater.com](mailto:stepiank@nidwater.com)  
*Nevada Irrigation District*