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October 15, 2024

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**Subject: Response to Notice of Intent to Rely on FERC Final Environmental Impact Statement, With Mandatory Conditions, In Combination with A Supplemental Analysis, To Satisfy CEQA for the Don Pedro and La Grange Hydroelectric Projects under P-2299-082 and P-14581-002 State Clearinghouse No. 2024090634**

Dear Michael Cooke:

This correspondence is in response to a September 16, 2024 *“Notice of Intent (NOI) to Rely on FERC Final Environmental Impact Statement, With Mandatory Conditions in Combination with a Supplemental Analysis, To Satisfy CEQA for the Relicensing of the Don Pedro Hydroelectric Project and an Original License for the La Grange Hydroelectric Project”*. This NOI informed the California Department of Fish and Wildlife (CDFW), a California Environmental Quality Act (CEQA) Responsible and Trustee Agency, about Turlock Irrigation District’s (Turlock ID) intention to prepare a CEQA Supplemental Analysis to the Federal Energy Regulatory Commission’s (FERC or Commission) final environmental impact statement (FEIS) that contains FERC staff’s recommendation with mandatory conditions for terms to be included in the relicensing of the Don Pedro Hydroelectric Project (FERC Project No. 2299-082) and issuing of an original license for the La Grange Hydroelectric Project (FERC Project No. 14581-002) (collectively, Projects). Pursuant to CEQA Guidelines section 15225, TID in its lead agency role must give notice that it will use the FEIS in the place of an Environmental Impact Report (EIR) or Negative Declaration and that it believes that the FEIS meets the requirements for CEQA. A CEQA Supplemental Analysis will follow the general CEQA Initial Study format as a guideline to add and supplement any CEQA considerations that were not addressed or fully covered in the FEIS.

## **BACKGROUND**

The Don Pedro Hydroelectric Project (Don Pedro Project) is owned and operated by Turlock ID and Modesto Irrigation District (MID) (collectively, Districts). The Turlock ID operates and maintains hydropower facilities at La Grange Diversion Dam (La Grange Project). The Projects are located on the Tuolumne River in Tuolumne and Stanislaus

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counties, California. The Districts seek to obtain a new 50-year license for the Don Pedro Project and an original 50-year license for the La Grange Project from FERC.

Under a new FERC license for the Don Pedro Project, the Districts would accept to: (1) continue to operate and maintain the existing Don Pedro Project facilities; and (2) make modifications to: operations and maintenance, some facilities, the existing FERC Project boundaries; and (3) implement the other terms and conditions in the new license consistent with those in FERC Staff Alternative with Mandatory Conditions for the Don Pedro Project as described in the FEIS.

Under an original FERC license for the La Grange Project, Turlock ID would accept to: (1) continue to operate and maintain the La Grange Project facilities; and (2) implement the terms and conditions in an original license consistent with those in FERC Staff Alternative with Mandatory Conditions for the La Grange Project as described in the FEIS.

The FEIS' FERC Staff Alternative with Mandatory Conditions would not require any hydropower generation-related project facilities be added to the Projects. However, on October 11, 2017, the Districts proposed enhancements to existing recreation facilities associated with the Don Pedro Project in the Recreation Resource Management Plan (RRMP) of the Amendment to the Don Pedro Project Final License Application (AFLA) filed with FERC.

Mandatory Conditions in the 2020 FEIS include preliminary conditions submitted by the United States Department of the Interior (DOI), Bureau of Land Management (BLM) pursuant to the Federal Power Act (FPA) Section 4(e). FERC recommendations within the scope of FPA Section 10(j) have been submitted by CDFW, the DOI Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS).

The FPA requires that every hydropower license applicant must have a Water Quality Certification (WQC or Certification) pursuant to Section 401 of the Federal Water Pollution Control Act (Clean Water Act) or a waiver of certification from the state. The State Water Resources Control Board (State Water Board) is the state agency responsible for federal issuance of Certifications. FERC staff recognized that any conditions included in a final, valid, and timely WQC must also be included in the FERC license for the Projects as Mandatory Conditions. The WQC conditions are not being assessed in this CEQA process. The State Water Board requires CEQA compliance to issue a WQC for the proposed Projects.

The Districts will use and primarily rely on the FEIS to satisfy CEQA review requirements for the FERC relicensing of the Don Pedro Project and the licensing of the La Grange Project.

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## **AUTHORITY**

CDFW is the appropriate State Fish and Wildlife agency for resource consultation and FPA Section 10(j) (16 U.S.C. § 803, subd. (j)) purposes. The fish and wildlife resources of the State of California are held in trust for the people of the state by and through CDFW (Fish & G. Code § 711.7). CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). 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 and maintenance activities and recreational use.

CDFW's coordination with the State Water Board and other resource agencies is an effective path to codifying our preferred conditions via certifications, because CDFW only has recommendation authority under the FPA. Along with federal land management agencies' mandatory 4(e) conditions and National Oceanic and Atmospheric Administration's (NMFS) Section 18 fishway prescriptions, Certification conditions can be used by state and federal agencies to help mitigate hydropower impacts on riverine ecosystems. In the proposed Projects, CDFW and the State Water Board will both act as Responsible and/or Trustee Agencies, as both agencies have discretionary permits and approvals to be made in support of the proposed Projects. Specifically, CDFW may be requested to provide a permit that would authorize "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), if deemed necessary for project implementation.

## **COMMENTS AND RECOMMENDATIONS**

### **General**

The Commission's FEIS for the Projects, released almost five years ago, included recommendations regarding special-status species, water infrastructure and instream flow requirements. The proposed Supplemental CEQA analysis should revise and update the findings of the FEIS as necessary.

The FEIS conveys that before the Commission makes licensing decisions, it will consider all concerns relevant to the public interest. The FEIS will be part of the record from which the Commission will make its decisions. Therefore, CDFW anticipates that the Commission will consider the findings of the most recent CEQA analysis when

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making relicensing decisions, including project concerns relevant to the public interest that were not addressed in the FEIS.

### **Special-Status Species**

San Joaquin River spring-run Chinook salmon (*Oncorhynchus tshawytscha*) are known to occur in the Tuolumne River. The observed spring-run Chinook salmon have been identified as strays that were raised in captivity on the San Joaquin River near Friant Dam as part of the San Joaquin River Restoration Program (SJRRP) for the purpose of developing a San Joaquin River-specific population of fish (SJRRP 2016). Spring-run Chinook salmon can be vulnerable to water project operations in the Tuolumne River. Therefore, the CEQA analysis for the proposed Projects must assess the impacts of water project operations on this experimental population.

White sturgeon (*Acipenser transmontanus*), a State Candidate for Listing species under CESA (CNDDDB 2024), have been recently documented in the lower Tuolumne River. White sturgeon have been reportedly stranded in this reach because of low flows attributed to water project operations (CDFW 2023). It is important to note that State Candidate species are afforded the full protection of CESA, and therefore to avoid a violation of CESA, any project-related take of white sturgeon would require acquisition of an Incidental Take Permit pursuant to Fish and Game Code Section 2081(b). Therefore, the CEQA analysis for the proposed Projects must assess the impacts of water project operations on white sturgeon passage and avoidance measures implemented.

North American green sturgeon (*Acipenser medirostris*), a federally listed threatened species, has been recently documented in the Stanislaus River and in the San Joaquin River upstream of the Merced River confluence (Anderson et al. 2018, Root et al. 2020). The CEQA analysis for the proposed Projects must assess the impacts of water project operations on green sturgeon, at least throughout the reach upstream of the infiltration galleries. CDFW anticipates that the operation of these features of the Don Pedro Project could affect flows in this reach with possible impacts on special-status fish species, such as green sturgeon.

### **Water Infrastructure: Infiltration Galleries**

The infiltration galleries are part of a regional surface water supply project with the goal of withdrawing water from the Tuolumne River to serve municipal and industrial uses in the cities of Ceres and Turlock. The FEIS (FERC 2020) assessment of the infiltration galleries is partially based on their description in the Stanislaus Regional Water Authority Surface water supply project draft Environmental Impact Report (DEIR) (Horizon 2018). This DEIR described the proposed construction and operation of the infiltration galleries at the time. The September 2024 NOI includes an updated description of the infiltration galleries in the discussion about the proposed operations

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and maintenance of the Don Pedro Project (Section 3.3.2.1). The proposed operations for water supply purposes, are initially described as consistent with existing operations, including the operation of infiltration galleries from June 1 through October 5. Subsequently, the NOI proposed additional uses of the infiltration galleries outside of this period in years with extended high flows. However, this proposed use is an introduced exception to existing conditions that was not evaluated in the 2020 FEIS. Therefore, CDFW requests that the CEQA Supplemental Analysis evaluates alternatives to fully compare and explain the existing and proposed operations of the infiltration galleries. An alternatives analysis should include information about all the proposed uses of the infiltration galleries, including years with extended high flows.

CDFW also requests clarification of the designated compliance location for the infiltration galleries. The FEIS does not specify if the designated compliance location for the infiltration galleries is at La Grange Diversion Dam or downstream of the infiltration galleries. Therefore, the CEQA Supplemental Analysis should include both an alternative with compliance, by flow gauge, downstream of the infiltration galleries, as well as compliance at the confluence (State Water Board 2018).

### **Flow Requirements**

The 2020 FEIS discussed instream flow requirements but did not sufficiently consider the need for functional flows on the Tuolumne River, particularly the fall pulse and winter storm flows. The California Environmental Flows Framework (CEFF) (UC Davis 2024) identifies five distinct flows of a natural flow regime that are important to sustain the ecological, geomorphic, and biogeochemical functions of a river. CDFW requests that the CEQA Supplemental Analysis includes a discussion of how each alternative provides functional flows and a discussion of how any flow proposals that do not contain all functional flows provides support to the physical, biological, and ecological processes of the Tuolumne River.

Comprehensive functional flow requirements are important to maintain both the fishes, wildlife, and riparian species that need a healthy river to survive and complete their lifecycles.

CDFW supports license conditions conducive to functional environmental flows that promote riparian and floodplain restoration, adequate water quality and special-status species.

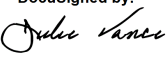
### **CONCLUSION**

The CDFW is looking forward to considering the results of Turlock ID's environmental analysis under CEQA to ensure an adequate assessment and disclosure of potential project impacts on environmental resources. An adequate and timely CEQA process should inform the development of new water quality certifications for the Projects.

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CDFW appreciates the opportunity to review and provide public comments to Turlock ID on their "*Notice of Intent to Rely on FERC Final Environmental Impact Statement, With Mandatory Conditions in Combination with a Supplemental Analysis, To Satisfy CEQA for the Relicensing of the Don Pedro Hydroelectric Project and an Original License for the La Grange Hydroelectric Project*". Please address any questions or concerns regarding these comments to Abimael León, the Regional FERC Coordinator, at [Abimael.Leon@wildlife.ca.gov](mailto:Abimael.Leon@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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