



State Water Resources Control Board

December 2, 2024

Mr. John James
Director of Resource Planning
Yuba County Water Agency
1220 F Street
Marysville, CA 95901
Sent via email: jjames@yubawater.org

**Yuba River Development Project and Narrows Hydroelectric Project
Federal Energy Regulatory Commission Project Nos. 2246 and 1403
Yuba, Sierra, and Nevada Counties
Yuba River, North Yuba River, Middle Yuba River, and Oregon Creek**

**COMMENTS ON YUBA COUNTY WATER AGENCY'S NOTICE OF PREPARATION
OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND NOTICE OF PUBLIC
SCOPING MEETINGS FOR THE YUBA RIVER DEVELOPMENT PROJECT FERC
RELICENSING (FERC PROJECT NO. 2246) AND THE NARROWS
HYDROELECTRIC PROJECT FERC RELICENSING (FERC PROJECT NO. 1403)
(SCH NO. 2024101277)**

Dear Mr. James:

On October 29, 2024, Yuba County Water Agency (YCWA)¹ issued a *Notice of Preparation of a Draft Environmental Impact Report and Notice of Public Meetings for the Yuba River Development Project FERC [Federal Energy Regulatory Commission] Relicensing (FERC Project No. 2246) and Narrows Hydroelectric Project FERC Relicensing (FERC Project No. 1403) (NOP)*.

State Water Resources Control Board staff appreciate the opportunity to provide comments on the NOP and look forward to working with YCWA and other interested parties on completion of the California Environmental Quality Act process for the Yuba River Development Project and Narrows Hydroelectric Project FERC relicensing processes. Please see the Attachment for comments on YCWA's NOP.

¹ Doing business as Yuba Water Agency.

If you have questions regarding this letter, please contact Adam Cohen, by email at Adam.Cohen@waterboards.ca.gov. Written correspondence should be mailed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Adam Cohen
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

Adam Cohen
Senior Environmental Scientist
Water Quality Certification Program
Division of Water Rights

Attachment: Comments on Yuba County Water Agency's October 29, 2024 Notice of Preparation for the Yuba River Development Project Relicensing and Narrows Hydroelectric Project Relicensing

ec (with attachment): Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
Via e-filing to FERC Dockets for P-2246 and P-1403

Randy Olsen, Sacramento District Chief of Operations
United States Army Corps of Engineers
Email: randy.p.olsen@usace.army.mil

Willie Whittlesey, General Manager
Yuba County Water Agency
Email: wwhittlesey@yubawater.org

Patrick Pulupa, Executive Officer
Central Valley Regional Water Quality Control Board
Email: patrick.pulupa@waterboards.ca.gov

California State Clearinghouse
Office of Planning and Research
Via posting to CEQAnet for SCH Number 2024101277

**ATTACHMENT:
COMMENTS ON YUBA COUNTY WATER AGENCY'S OCTOBER 29, 2024 NOTICE
OF PREPARATION FOR THE YUBA RIVER DEVELOPMENT PROJECT
RELICENSING AND NARROWS HYDROELECTRIC PROJECT RELICENSING**

State Water Resources Control Board (State Water Board) staff are providing the following comments in response to Yuba County Water Agency's¹ (YCWA's) October 29, 2024 *Notice of Preparation of a Draft Environmental Impact Report and Notice of Public Meetings for the Yuba River Development Project FERC [Federal Energy Regulatory Commission] Relicensing (FERC Project No. 2246) and Narrows Hydroelectric Project FERC Relicensing (FERC Project No. 1403) (NOP)*.

(1) **Distribution List:** YCWA's distribution list for the NOP includes staff that no longer work on items related to the Yuba River Development Project (YRDP) and Narrows Hydroelectric Project (Narrows Project) (collectively Projects). To ensure future notices get to the right people in the State Water Board's Division of Water Rights, staff request that YCWA add the following individuals to its distribution list for the Projects:

- James Noss, Environmental Scientist
Email: James.Noss@waterboards.ca.gov
- Derek Wadsworth, Water Resources Control Engineer
Email: Derek.Wadsworth@waterboards.ca.gov
- Stephanie Postal, Attorney
Email: Stephanie.Postal@waterboards.ca.gov
- Parker Thaler, Environmental Program Manager
Email: Parker.Thaler@waterboards.ca.gov
- Jose Ayala, Environmental Scientist
Email: Jose.Ayala@Waterboards.ca.gov
- Robert McCarthy, Senior Environmental Scientist
Email: Robert.McCarthy@Waterboards.ca.gov

State Water Board staff also request YCWA remove the following State Water Board-related contacts from its distribution list for the Projects:

- Bob Baiocchi
- Jeffrey Parks
- John Baum
- Jordan Smith
- Philip Meyer
- Kristen Gangl

In addition, State Water Board staff note that YCWA included the State Water Board's Division of Water Quality, rather than the State Water Board's Division of Water Rights, as a reviewing agency on the *Notice of Completion & Environmental Document Transmittal* filed with the Office of Planning and Research as posted on the CEQAnet Web Portal. State Water Board staff request that YCWA list the State Water Board's Division of Water Rights as a

¹ Doing business as Yuba Water Agency.

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responsible and/or reviewing agency in future California Environmental Quality Act (CEQA) forms and filings related to the Projects and FERC relicensings of the Projects.

- (2) **Water Quality Certification Authority:** Section 401 of the federal Clean Water Act (Section 401) requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters to obtain water quality certification (certification) from the State that the activity will comply with water quality requirements. (33 U.S.C. § 1341(a)(1), (d).) Certifying authorities may issue certifications with conditions implementing Clean Water Act requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans, or to implement “any other appropriate requirement of State law.” (*Id.*, § 1341(d).) Section 401 further provides that certification conditions shall become conditions of any federal license or permit for the project. (*Ibid.*) If a certifying authority denies certification, the federal agency cannot issue a license or permit approving the project. (*Id.*, § 1341(a)(1).)
- (3) **Compliance with CEQA:** Compliance with CEQA (Pub. Resources Code, § 21000 et seq.) is required as part of the certification process. The CEQA Guidelines define the lead agency as “the public agency which has the principal responsibility for carrying out or approving a project.” (Cal. Code Regs., tit. 14, § 15367.) As noted in the NOP, YCWA intends to act as the lead agency for the purposes of CEQA and prepare a new, standalone “joint” EIR for relicensing of both Projects.

CEQA requires the lead agency to evaluate a project's potential impacts to environmental resources as well as identify mitigation measures and alternatives to reduce project impacts. CEQA also requires public input on identified impacts and mitigation measures. CEQA documentation must analyze and evaluate a project's potential impacts to all relevant resources, including aquatic biological resources, special status species, and water quality standards and other provisions of applicable water quality control plans and policies.

- (4) **Responsible Agency Recommended Reasonable Alternatives:** The CEQA Guidelines define a Responsible Agency as “a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an [Environmental Impact Report (EIR)] or negative declaration. For the purposes of CEQA, the term ‘[R]esponsible [A]gency’ includes all public agencies other than the lead agency which have discretionary approval power over the project.” (Cal. Code Regs., tit. 14, § 15381.) For the Projects, the State Water Board is a Responsible Agency.

As a Responsible Agency, in accordance with the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15096, subd. (b)(2), 15082, subd. (b)), and per YCWA's request in its NOP, the State Water Board is identifying reasonable alternatives (below)

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and mitigation measures (Comment 5) that it requests be evaluated in YCWA's draft and final EIR. The NOP states: "The CEQA document serves as an informational source for the California agency's own decision-making regarding relicensing." In addition to informing YCWA's decision-making, the EIR must provide sufficient information for the State Water Board to act on certification requests for the Projects. Alternatives that State Water Board staff request analysis of in YCWA's EIR are as follows:

- Any certifications issued by the State Water Board for the Projects will include mandatory conditions² that must be analyzed as part of the CEQA process. Certification conditions for the YRDP would likely include, but not be limited to: (1) flow provisions (e.g., minimum instream flows and ramping rates); (2) seasonal closures of Lohman Ridge Diversion Tunnel; (3) operation of both New Colgate Powerhouse Tunnel intakes; (4) prevention of Narrows Reach fish stranding events; (5) river habitat restoration; (6) water quality, recreation, drought, and aquatic resource management; (7) coordinated operations planning; (8) fish passage/reintroduction considerations; and (9) mercury management. Implementation of such conditions needs to be included in YCWA's CEQA analysis. In 2020 the State Water Board's Executive Director issued a certification for relicensing the YRDP. This certification was set aside³ on the State Water Board's own motion for procedural reasons on September 18, 2024 (State Water Board [Order WQ-2024-0083](#)⁴) and is therefore no longer in effect. Although the 2020 YRDP certification was set aside, it may still be a helpful resource for YCWA in identifying potential details of requirements or alternatives that should be analyzed as part of YCWA's CEQA analysis. Several areas listed above are also likely to be included as certification conditions for relicensing the Narrows Project; therefore, State Water Board staff request that YCWA also analyze these as potential certification conditions for the Narrows Project in its EIR.
- An analysis should be included of the regulatory and Voluntary Agreements pathways in the draft *Water Quality Control Plan for the San Francisco*

² In describing the new FERC licenses for the Projects, YCWA's NOP lists "mandatory terms and conditions," which the NOP appears to define as those required by the United States Forest Service and United States Army Corps of Engineers under section 4(e) of the Federal Power Act. As noted in Comment 2, pursuant to Section 401, certification conditions become conditions of the federal license or permit; therefore, a certification is also a source of mandatory terms and conditions.

³ The set aside [2020 YRDP certification](#) can be accessed online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/ferc2246/yrdp_certification1.pdf.

⁴ State Water Board Order WQ-2024-0083 can be accessed at the following address: https://waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2024/wqo2024-0083.pdf.

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Bay/Sacramento-San Joaquin Delta Watershed ([draft Bay-Delta Plan](#)⁵) that was released for public comment on October 25, 2024. Please see Comment 7 below for more details.

- New Bullards Bar Dam (NBBB) dual intake operation: Use of both intakes at NBBB should be analyzed separately from the remainder of YCWA's October 2022 "Offer of Settlement." Operation of both NBBB intakes is likely to have a beneficial impact on lower Yuba River water temperature and does not require additional flow contributions from hydropower projects upstream of the Projects.
- On May 17, 2022 FERC issued a Revised Additional Information Request (Revised AIR) to YCWA, Pacific Gas and Electric Company (PG&E), and Nevada Irrigation District (NID) requesting that YCWA, PG&E, and NID evaluate options for maintaining lower Yuba River water temperatures for listed species. As part of its response to that Revised AIR, on February 27, 2023, YCWA provided a Narrows 1 and Narrows 2 Intake Extension Assessments Technical Report (Intake Extension Report). The Intake Extension Report analyzes several potential actions at the Narrows 1 and 2 intake structures that would have beneficial impacts to water temperature in the lower Yuba River, including a Narrows 2 Powerhouse Intake Extension, a Narrows 1 Powerhouse Intake Extension, a Narrows 2 Temperature Control Device, and a Narrows 1 Temperature Control Device. YCWA's Intake Extension Report concludes that one or more of these options would result in some cooling in the lower Yuba River, though with varying degrees of effect. In its EIR, YCWA should analyze the intake extension or temperature control device proposals that are the most effective at improving temperatures.

(5) Responsible Agency Recommended Mitigation Measures: As a Responsible Agency, in accordance with the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15096, subd. (b)(2), 15082, subd. (b)), and per YCWA's request in its NOP, State Water Board staff provide the following mitigation measures for consideration and analysis in YCWA's EIR:

- *FERC Staff Recommendations:* At a minimum, YCWA's EIR should consider the FERC Staff Recommendations listed in Section 5.1 of FERC's 2019 Yuba River Development Project Final Environmental Impact Statement, and any supplements thereto, as potential mitigation measures.
- *10(j) Measures:* YCWA's EIR should also consider as potential mitigation measures, any Federal Power Act (FPA) section 10(j) recommendations filed by the United States Fish and Wildlife Service, California Department of Fish and Wildlife, National Marine Fisheries Service, and other agencies;

⁵ The October 2024 draft Bay-Delta Plan can be accessed online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/2024/drft-sacdelta-bdplan-updates.pdf.

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and section 10(a) recommendations filed by nongovernmental organizations and other interested parties.

(6) **303(d) Listings of Waterbodies Impacted by the Projects:** On January 19, 2022, the State Water Board adopted, and on May 11, 2022 the United States Environmental Protection Agency (USEPA) approved the [2020-2022 California Integrated Report \(Clean Water Act Section 303\(d\) List\)](#) (2022 Integrated Report). Multiple waterbodies impacted by the Projects are listed as impaired. These listings include:

- North Fork Yuba River is listed for mercury;
- Oregon Creek is listed for copper and iron;
- Yuba River (confluence of North and Middle Fork to Englebright Lake) is listed for chromium and mercury;
- New Bullards Bar Reservoir is listed for mercury;
- Englebright Reservoir is listed for mercury; and
- Yuba River from Englebright Dam to the Feather River is listed for copper and mercury.

YCWA's CEQA analysis needs to include analyses of the Projects' potential impacts on copper, iron, and mercury and identify mitigation measures, as appropriate.

On February 6, 2024, the State Water Board adopted the [2022-2024 California Integrated Report \(Clean Water Act Section 303\(d\) List\)](#) (2024 Integrated Report). Once approved by USEPA, the 2024 Integrated report will supersede the 2022 Integrated Report. Although there are no changes to 303(d) listings of waters impacted by the Projects in the 2024 Integrated Report relative to the 2022 Integrated Report, YCWA's CEQA analysis should include reference to the 2024 Integrated Report once approved.

Reservoir management can affect the methylation of mercury and the EIR should include an analysis of the Projects' proposed operations and maintenance on potential mercury-related impacts over the term of the FERC licenses. Mitigation measures to reduce any impacts of the Projects to the methylation of mercury should be evaluated in the EIR. Please note, certification actions must ensure that projects comply with water quality control plans and policies, including the Statewide Mercury Provisions.

(7) **CEQA Analysis Related to New Bay-Delta Flows:** In September 2023, State Water Board staff released a *Draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta* ([draft](#)

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[Staff Report](#)⁶) that identified a possible regulatory pathway that would include, among other measures, a new Delta inflow objective of 55 percent of unimpaired flow with an adaptive range of 45 to 65 percent of unimpaired flow, a cold water habitat objective that would require that cold water flows are maintained and timed to provide for downstream temperatures to protect salmon, and a new inflow-based Delta outflow objective that would specify that required inflows from the Sacramento/Delta tributaries and the San Joaquin River be provided as Delta outflow. In addition, the draft Staff Report identified a possible Voluntary Agreements pathway that would provide flow and non-flow habitat commitments in lieu of contributing to the new inflow, cold water habitat, and outflow objectives. These options were further refined in the draft Bay-Delta Plan text released on October 25, 2024, which includes additional detail on adaptive management provisions that provide the information necessary to model the inflow requirements in combination with the cold water habitat requirements to minimize impacts to cold water habitat and water supply. In addition to the above, the EIR should evaluate alternatives consistent with the draft Sacramento/Delta updates to the Bay-Delta Plan, including the regulatory pathway and the Voluntary Agreements pathway. Modeling of the regulatory pathway should include use of the adaptive management and cold water habitat provisions as provided for in the draft Bay Delta Plan to minimize impacts to cold water habitat and water supply.

(8) Corrections to Statements in the NOP: State Water Board staff note the following corrections to statements in YCWA's NOP:

- Page three of the NOP states, "At the [State Water Board's] request, [YCWA] withdrew and refiled its application for a [water quality certification] on August 3, 2018." The State Water Board disagrees with YCWA's characterization of the email exchange that occurred in 2018 prior to YCWA's withdrawal and resubmittal of its application for certification. As YCWA had not even begun its CEQA process and at that time state law did not allow the State Water Board to issue a certification before the completion of CEQA, State Water Board staff reached out to YCWA to remind it of the one-year deadline. In this email exchange, State Water Board staff explained that YCWA could either withdraw and resubmit its application a few weeks before the one-year deadline or the State Water Board would issue a denial without prejudice. YCWA understood its options and chose to withdraw and resubmit its certification application for the YRDP.

⁶ The September 2023 draft Staff Report can be accessed online at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html