

## **Fisch, Nathan@Waterboards**

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**From:** Moeszinger, Patrick@Wildlife <Patrick.Moeszinger@wildlife.ca.gov>  
**Sent:** Wednesday, October 11, 2017 11:38 AM  
**To:** Fisch, Nathan@Waterboards  
**Cc:** Hatton, Laurie@Wildlife; Barker, Kelley@Wildlife; Wildlife R2 CEQA; Cornell, MaryLisa@Wildlife  
**Subject:** Proposed Mitigated Negative Declaration for the Poe Hydroelectric Project, SCH # 2017092021

Mr. Fisch,

The California Department of Fish and Wildlife (CDFW) has reviewed the proposed Mitigated Negative Declaration (MND) prepared by the State Water Resources Control Board (SWRCB; Lead Agency) for the Poe Hydroelectric Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

The CDFW appreciates 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 for which 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 provide, 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 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. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

### **PROJECT DESCRIPTION SUMMARY**

The Project is located on the North Fork Feather River (NFFR), just south of the community of Pulga, in Butte County, California. The Poe Project boundary encompasses 313 acres of land, including 157 acres of Pacific Gas and Electric Company (PG&E) owned land, 144 acres of United States Forest Service lands (Plumas National Forest), and 12 acres of private land. PG&E proposed to expand the existing FERC license boundary by incorporating Big Bend Dam and Reservoir (up to the existing boundary downstream of the powerhouse tailrace) into the proposed Project boundary. Big Bend Dam and part of the reservoir are currently within the boundary of the downstream Oroville Project.

The Poe Project consists of: (1) the 400-foot-long, 60-foot-tall Poe Dam, with four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a 19 feet diameter pressure tunnel with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet long and about 14 feet in diameter; (7) a reinforced concrete powerhouse, which is 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower and a total authorized installed capacity of 142.83 megawatts (MW) and an average annual generation of 583 gigawatt hours (GWh); (8) the 370-foot-long, 61-foot-tall, concrete gravity Big Bend Dam; (9) the 42-acre Big Bend Reservoir; and (10) a switchyard including two 3-phase 69,000-kilovolt ampere transformers and two 230-kilovolt (kV) circuit breakers with accompanying equipment. There are no transmission lines as part of the Poe Project. Power from the Poe Project is delivered directly to the Rock Creek-Rio Oso No. 1 230-kV transmission line, which loops into the Poe Project switchyard.

The Lead Agency will use the MND in its decision making process for issuance or denial of a Water Quality Certification for the following actions requiring approval by FERC or ACOE:

- a) Issuing a new license for the Poe Hydroelectric Project (FERC Project No. 2107);
- b) Operating and maintaining Poe Hydroelectric Project;
- c) Conducting construction associated with the implementation of license conditions including, but not limited to, recreational improvements and road maintenance;
- d) Removing the steel bridge at Bardees Bar; and
- e) Regrading, revegetating, and controlling erosion at the Bardees Bar spoil pile.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. These comments and recommendations are based on the requirement for the environmental document to include the following information:

- A project description, including reasonably foreseeable future phases of the proposed project, that contains sufficient information to evaluate and review the project's environmental impact (CEQA Guidelines, §§ 15063, 15124 & 15378);
- A description of the environmental setting that contains sufficient information to understand the project's, and its alternative's (if applicable), significant impacts on the environment (CEQA Guidelines, §§ 15063, 15125 & 15360);
- Identification of environmental impacts of the proposed project (CEQA Guidelines, §§ 15063, 15065, 15126, 15126.2, 15126.6 & 15358); and
- A description of feasible mitigation measures to avoid potentially significant impacts, and/or mitigate significant impacts, of the proposed project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370).

### Environmental Setting

The Environmental Setting section of the MND (Section 3.1.2.2 Wildlife Resources, pg. 8) discusses special-status wildlife potentially occurring on the Project site, but does not indicate that western pond turtle (*Emys marmorata*; WPT) and foothill yellow-legged frog (*Rana boylei*; FYLF) are both designated by CDFW as California Species of Special Concern. Additionally, both the American peregrine falcon (*Falco peregrinus anatum*) and the bald eagle (*Haliaeetus leucocephalus*) are designated a California fully protected species and listed as endangered under CESA.

Subsequent to the release of the proposed MND, the CESA status of the FYLF changed. On June 27, 2017, the California Fish and Game Commission (Commission) published a Notice of Findings regarding FYLF and accepted for consideration

a petition from the Center for Biological Diversity to list this species as threatened under the CESA. Simultaneously, the Commission also provided notice that the FYLF is now a candidate species as defined by Section 2068 of the Fish and Game Code. Within one year of the date of publication of the Notice of Findings, the CDFW will submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. During this period, candidates for listing under CESA are afforded the same protections as listed species; therefore the FYLF is currently treated as a threatened species under the CESA.

### FYLF Impacts

The discussion of potential FYLF impacts in the Environmental Checklist and Analysis section of the MND (Section 5.4.5 Biological Resources, pages 44-47) identifies multiple Project activities including increasing base flows, implementing ramping/recession rates and pulse flows, out-of-season discretionary flow events, and implementation of recreational flows that have the potential to affect FYLF egg masses, tadpoles, and metamorphs within the Project area. Potential impacts to FYLF identified in the evaluation of environmental impacts include: increased risk of predation or displacement, reduction of feed and cover habitat, egg mass/tadpole stranding, desiccation of egg masses/tadpoles, and scour of egg masses, tadpoles or metamorphs.

The CDFW is concerned that the Initial Study prepared for the Project states that the Lead Agency has determined that the proposed Project will have a less than significant impact on any special status species identified by the CDFW. The Biological Resources section of the MND identifies several Project activities that have the potential to result in negative impacts to FYLF egg masses, tadpoles, and metamorphs, including potential "take" of FYLF as defined by State law. Additionally, the Environmental Protection Measures section of the MND (pages 86-92) identifies several proposed measures intended to minimize Project impacts to FYLF, though these measures are not explicitly described in the MND.

In reviewing the Initial Study and MND, CDFW has had a difficult time determining what measures are required as a condition of approval for the Project. If mitigation measures are required as part of the Project, the Lead Agency is required to prepare a mitigation monitoring or a reporting program to ensure the implementation of those measures (CEQA Guidelines, § 15097). CDFW recommends that the mitigation monitoring or reporting program be included in the MND rather than incorporating measures by reference so that CDFW, any other trustee or responsible agency, and the members of the public can review the proposed measures and provide input to the Lead Agency.

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the Lead Agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented, and explain why the measure is feasible. The MND should identify the following items: how each measure will be carried out; who will perform the measures; when the measures will be performed; the performance standards and mechanisms for achieving success; and an assured source of funding to acquire and manage identified mitigation lands, when applicable.

### CESA

A CESA ITP (FGC §2081(b)) should be obtained if the Project has the potential to result in incidental take of species of plants or animals listed under CESA, either during any construction, or over the life of the Project. Issuance of a CESA permit is subject to the CEQA documentation; therefore, the CDFW requests that the CEQA document for this Project evaluate activities that may result in direct or indirect incidental take, identify measures to avoid and minimize take, identify measures to fully mitigate the take, and include a mitigation monitoring and reporting program. A CESA ITP may only be obtained if the impacts of the authorized take of the species is minimized and fully mitigated and adequate funding has been ensured to implement the mitigation measures. The CDFW may only issue a CESA ITP if the CDFW determines that issuance of the ITP does not jeopardize the continued existence of the species. The CDFW will make this determination based on the best scientific information available, and shall include consideration of the species' capability to survive and reproduce, including the species known population trends and known threats to the species.

## Fully Protected Species

As stated previously, the proposed Project is located within known range of both the bald eagle and peregrine falcon. Please note that fully protected species listed in the Fish and Game Code sections 3511, 4700, 5050, and 5515 may not be taken at any time. If any fully protective species is present or reasonably expected to occur within or immediately adjacent to the Project limits during the life of the Project, the MND should provide measures to ensure that no take to the mentioned species will occur as a result of the implementation of the Project.

## Fish & Game Code Section 1602

The MND should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas).

The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resource/habitat that may occur as a result of the Project. If it is determined that the Project will result in significant impacts to these resources, the MND should proposed appropriate avoidance, minimization and/or mitigation measures.

Notification to the CDFW is required, pursuant to FGC section 1602 if the Project proposes activities that will substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

CDFW approval of projects subject to Notification under FGC section 1602, is facilitated when the MND discloses the impacts to and proposes measures to avoid, minimize, and mitigate impacts to perennial, intermittent, and ephemeral rivers, streams, and lakes, other features, and any associated biological resources/habitats present within the Project study area.

## CONCLUSION

Please note that when acting as a responsible agency, CEQA guidelines section 15096, subdivision (f) requires CDFW to consider the CEQA environmental document prepared by the Lead Agency prior reaching a decision on the Project. Addressing CDFW comments and disclosing potential Project impacts on CESA-listed species and any river, lake, or stream, and provide adequate avoidance, minimization, mitigation, monitoring and reporting measures; will assist CDFW with the consideration of the MND and reduce potential delays when issuing an ITP and/or Lake or Streambed Alteration Agreement.

Thank you for the opportunity to comment on the proposed MND. CDFW North Central Region staff are available to discuss our comments with SWRCB Project staff. If you have any questions regarding these comments please contact Patrick Moeszinger, Senior Environmental Scientist (Specialist) at (916) 358-2850, or Laurie Hatton, Senior Environmental Scientist (Specialist) at (916) 358-2847.

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