

**OD-ORDER, 107 FERC ¶62,004, Yuba County Water Agency, Project No. 2246-046 April 5, 2004**

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**Yuba County Water Agency, Project No. 2246-046**

**[64,007]**

**[¶62,004]**

**Yuba County Water Agency, Project No. 2246-046**

**Order Approving Revision of the Recreation Plan**

**(Issued April 5, 2004)**

**George H. Taylor, Chief, Biological Resources Branch, Division of Hydropower Administration and Compliance.**

The Yuba County Water Agency (Licensee) filed on June 11, 2003, and supplemented on November 12, 2003, a request to modify the Recreation Plan to afford more public access at Moran Road while protecting threatened species. The Recreation Plan was originally filed on February 26, 1993, and approved by order issued August 19, 1993.<sup>1</sup> The project is located on the North Yuba River, in Yuba, Sierra, and Nevada Counties, California. Parts of the project are located within the Tahoe and Plumas National Forests. Moran Road is located on the west side of New Bullards Bar Reservoir. The road extends into Moran Cove close to Little Oregon Creek. The lowest portion of the road is located on National Forest lands.

### ***Background***

The approved 1993 recreation plan provided for development of a primitive access site at Moran Road (County Road 163) consisting of reconstruction of 1/2 mile of unpaved road, enlarging a turnaround area to accommodate parking for about six cars, and permanently closing the road year-round beyond the turnaround area as part of the initial phase recreation development (with construction to start by August 1995, and to be completed by August 1997). This was not done. From the late 1990's to the present, the licensee has been negotiating with resource agencies, elected officials, and members of the public to try to work out an alternative to permanently closing Moran Road year-round to vehicular traffic below the proposed parking area while also addressing resource management and public safety concerns. The parking area was to be located close to the high water elevation of New Bullards Bar Reservoir. As shown on the November 20, 2002, drawing attached to the June 11, 2003, filing, the high water elevation is 1956 feet.

Members of the public expressed a desire to keep Moran Road open year-round to vehicular traffic. Since the portion of the road below the proposed closure gate is located below the high water elevation of New Bullards Bar Reservoir, this could involve travel on a previously submerged road bed in an area where clay soils could be eroded from the cut banks onto the road. Under wet conditions, this could result in slippery and unsafe driving conditions. Representatives of the Forest Service requested that the lower portion of the road be closed to vehicular travel to avoid these potentially unsafe conditions during the rainy season. Several possible proposals for recreation at the Moran Road site have been considered over the years. None of the proposals restrict pedestrian access to the reservoir from the parking area.

### ***Licensee's Proposal***

As described in the June 11, 2003, filing and modified in the November 12, 2003, filing, the licensee proposes

to allow additional access at the lowest portion of Moran Road (seasonal vehicular access from May 2 to October 14 each year) over that approved in the 1993 recreation plan (no vehicular access year-round). In addition, the proposed revision now includes a portable accessible toilet and a slightly enlarged parking area (about seven versus six parking spaces) above the high water elevation, erosion control culverts, and two gravel-surfaced turnaround areas below the high water elevation with boulder barriers on the down-slope side of the road opposite these turnarounds. Other safety improvements to the road include grading, graveling the surface, and closing the road off at a distance of about 800 feet below the high water line with boulders.

The licensee's revision to the recreation plan also proposes to limit construction and maintenance activities to the same vehicular access window, from May 2 to October 14. The improvements are to be constructed between May 2 and October 14, 2004.

### **Resource Agency Consultation and Public Notice Comments**

The licensee worked closely with the Forest Service, Tahoe National Forest, to draft a revised proposal for the Moran Road area. The Forest Service consulted with the USFWS concerning threatened and endangered species in the Moran Road area of New Bullards Bar Reservoir. The Downieville Ranger District, Tahoe National Forest, issued a Decision Memo dated August 26, 2003, and a Biological Assessment for Birds, Amphibians, Fish, and Invertebrates for the Moran Road Project dated August 11, 2003. The USFWS issued a letter dated October 21, 2003, with determinations based on a July 10, 2003 site visit, and the Forest Service Decision Memo and Biological Assessment.

The USFWS letter found that the Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) and

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the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) were not present in the area and did not need further consideration. The letter also stated that reconstruction and subsequent recreation use in the Moran Road area was not likely to adversely affect California red-legged frogs (*Rana aurora draytonii*) and bald eagles (*Haliaeetus leucocephalus*), both federally listed as threatened species, as long as the road remained closed from October 15 to May 1 each year to protect California red-legged frogs during the rainy season and bald eagles during the wintering season, and as long as the proposed conservation measures were implemented. These conservation measures include following Forest Service best management practices; cleaning any equipment transported to the site to avoid spreading noxious weeds and seeds; coordination with the USFWS regarding any changes in management requirements, and, during construction of the facilities, reporting any sightings of California red-legged frogs, Northwestern pond turtles (*Clemmys marmorata marmorata*, a federal species of concern in Yuba County), or bald eagles to a Forest Service biologist.

Public notice of the request to modify the project recreation plan to allow increased access at Moran Road was issued on December 5, 2003. Publication occurred in the *Appeal Democrat* (Marysville, California) on December 12, 2003.

The US Department of the Interior, Office of Environmental Policy and Compliance, in comments dated January 9, 2004, stated that, after review of the application, it had no comments.

Mr. Hal Stocker, Yuba County Supervisor, Fifth District, filed comments with the Secretary on January 9, 2004. The filing included signatures of 45 members of the public expressing opposition to a barricade at the end of Moran Road (a petition circulated in 1999). The concerns in the letter regarding closure of Moran Road below the high water elevation of New Bullards Bar Reservoir for 7 1/2 months each year are as follows.

1. Cars parked at the turnaround would be unattended and subject to vandalism.

2. The action reduces recreation access to the west side of the reservoir, where there are more residents. Most public recreation opportunities are on the east side of the reservoir. The Burnt Bridge Campground on the west side of the reservoir was closed, further reducing west-side recreation opportunities.

3. There is a long history of various reasons put forward as to why Moran Road should be closed. The safety issue is not valid since the Agency is proposing an engineered reconstruction of the road. Recreation users have used Moran Road for over 30 years with no reported mishaps.

4. Since it is a county road, and since Yuba County Supervisors voted to not abandon the road, closure of Moran Road by anyone other than Yuba County could be illegal.

5. Consultation with the USFWS should have addressed whether the road could be left open year-round instead of asking for concurrence to close the road seasonally.

6. The hundreds of cards and letters sent to the San Francisco Regional Office prior to the public notice should be considered. [Each copied post card read, "The November 2002 Bullards Bar recreation plan is not acceptable to me. Please have the Forest Service and Water Agency come up with something more acceptable to the public."].

### ***Discussion and Comments***

The requirements contained in the USFWS letter dated October 21, 2003, will protect threatened species near the Moran Road site while still affording increased public access at the site over that approved in the 1993 recreation plan. These requirements are being incorporated into the license by this order.

Regarding Supervisor Stocker's comments, the licensee's proposal will actually keep the lower portion of Moran Road open to vehicles 5 1/2 months (with a closure of 6 1/2 months rather than the 7 1/2 months listed in Supervisor Stocker's January 9, 2004 protest). We respond to each of the seven points in the protest.

1. The remote location of the Moran Road site at New Bullards Bar Reservoir makes vandalism a possibility at any location. The licensee states that the length of road closed will vary from 100 to 1200 feet, depending upon reservoir elevation. Recreationists at the reservoir shoreline will still be relatively close to their vehicles.

2. Burnt Bridge Campground was located away from the New Bullards Bar Reservoir shoreline. The Commission's order issued August 19, 1993<sup>2</sup> approved the recreation plan, including closure of the campground. The order noted prior closures due to vandalism and under-use of the facility.

3. Engineered road improvements below the high water elevation will be subject to periodic inundation by the reservoir. The existence of clay soils and cut banks along Moran Road below the proposed gate make sloughing of material and a slippery road bed during the rainy season likely. A slick road surface could contribute to vehicles slipping off the road, down the bank, and into the reservoir; or slipping forward on the road into the reservoir; or slipping and hitting other vehicles or pedestrians on the road. Public safety is a high priority, as reflected in the Commission's Regulations, the Forest Service's evaluations, and the licensee's

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proposal. The lack of reported public safety incidents over the past does not guarantee that an area or facility is safe under current conditions.

4. The lower portion of Moran Road is not being abandoned. It also is not being closed to public access; it is only being closed to vehicular access for part of each year, with pedestrian access preserved year-round. The Commission already ordered that the lowest portion of Moran Road be permanently closed to vehicular access by approving the 1993 recreation plan. Public notice of the 1993 plan was issued on March 16, 1993. No comments were received pursuant to the public notice.

5. The on-site meeting, the Forest Service Decision Memorandum, and the biological assessment provided the necessary information to the USFWS to allow their determination of appropriate protection measures at the site.

6. The Commission did not receive a filing of the November 2002 draft recreation plan. The licensee's proposal represents an improvement in public access from the November 2002 plan as represented by the drawing

attached to the June 11, 2003, filing, and as requested by members of the public who sent in comments prior to the December 5, 2003, public notice. After years of diligent work by both the licensee and the Forest Service, public meetings, negotiations, and consultations, the current proposal represents a longer period in which the lowest portion of Moran Road will remain open to vehicular access (May 2 to October 14 versus May 15 to September 15).

The licensee's plan, as modified herein, will increase vehicular public access at the Moran Road site over that required in the 1993 Recreation Plan by five-and-a-half months. The plan will increase vehicular public access over that defined in the November 2002 draft plan [drawing] by 43 days, as described in our response to Item No. 6 above. The licensee's plan will also provide enhanced public recreation facilities, consisting of an accessible portable toilet at the expanded parking area and additional road and drainage improvements over that proposed in the approved 1993 recreation plan.

The licensee's plan will also address public safety concerns by keeping the road closed during the rainy season when slippery clay materials can slough off onto or be deposited onto the road bed below the New Bullards Bar high water elevation, as described in Item No. 4 above.

As determined by the USFWS, the reconstruction and subsequent recreation use of Moran Road proposed in the licensee's plan is not likely to adversely affect the federally listed as threatened California red-legged frogs and bald eagles, as long as the road below the high water elevation of New Bullards Bar Reservoir remains closed from October 15 to May 1 each year and conservation measures are implemented. As described in the Resource Agency Consultation and Public Notice Comments section above, these measures include following Forest Service best management practices; cleaning any equipment transported to the site to avoid spreading noxious weeds and seeds; coordination with the USFWS regarding any changes in management requirements, and, during construction of the facilities, reporting any sightings of California red-legged frogs, Northwestern pond turtles, or bald eagles to a Forest Service biologist.

The modified plan should be approved.

The drawing attached to the June 11, 2003, filing has not been updated to show the proposed road closure from October 15 to May 1. In addition, on-site conditions may require minor changes in the alignments or locations of the structures shown on the drawing. In order to assure an accurate project exhibit, as required by Articles 2 and 3, an as-built drawing should be filed upon completion of the new facilities and road improvements.

***The Director orders:***

(A) The request to modify the recreation plan filed by Yuba County Water Agency on June 11, 2003, and supplemented on November 12, 2003, with a seasonal closure of Moran Road to vehicular traffic from October 15 to May 1 each year, road surface and drainage improvements, a parking area for approximately 7 cars, an accessible portable toilet, and all construction and maintenance activities to occur between May 2 and October 14, is approved, subject to the modifications listed in Paragraphs B, C, and D.

(B) The licensee shall implement the conservation measures described in the August 26, 2003, U.S. Forest Service Decision Memo for the Moran Road Project and in the October 21, 2003, letter from the U.S. Fish and Wildlife Service.

(C) If any California red-legged frogs, northwestern pond turtles, or bald eagles are sighted in or near the Moran Road project area during construction, the licensee shall immediately consult with the U.S. Forest Service and the U.S. Fish and Wildlife Service to determine any needed additional mitigation measures. The licensee or its contractor shall stop work if deemed necessary by the resource agencies to protect California red-legged frogs, northwestern pond turtles, bald eagles, or their habitats. The licensee shall provide to the Commission within 10 days of any such sighting, details of the sighting, the results of consultations, any stop-work date, and a description of what actions have been taken on-site.

(D) The licensee shall file, for Commission approval, an as-built exhibit of the Moran Road recreation improvements no later than December 15, 2004.

(E) This order constitutes final agency action. Request for rehearing by the Commission must be filed within 30 days from the date of the issuance of this order, pursuant to 18 C.F.R. §385.713.

<sup>1</sup> See 64 FERC ¶62,117.

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