

SECTION 4

MAJOR APPLICABLE LAWS

This section provides a discussion of major federal (Section 4.1) and State of California (Section 4.2) laws that apply to the relicensing of Yuba County Water Agency's (YCWA or Licensee) Yuba River Development Project (Project), and Licensee's plan to comply with each of these laws during the relicensing proceeding.¹

4.1 Federal Laws

4.1.1 **Federal Power Act of 1920, as Amended (16 USC §§ 791-828c)**

The Federal Power Act (FPA) is the most important legislation regarding hydro relicensing. The FPA provides the Federal Energy Regulatory Commission (FERC) with the exclusive authority to license all non-federal hydroelectric projects that are located on navigable waterways or on federal lands.

Several sections of the FPA are particularly relevant to relicensing. Section 4(e) contains two key standards. The first is equal consideration, which requires that FERC give equal consideration, but not necessarily equal weight, to developmental and environmental values when considering issuing a license. The second is mandatory conditioning authority, which applies to projects located on "federal reservations," and provides the federal agency with the responsibility for managing the reservation an opportunity to file with FERC terms and conditions to protect the reservation that FERC must include verbatim in any license issued for the project.

At this time, Licensee believes that one land management agency may have Section 4(e) Mandatory Conditioning Authority over the Project: the United States Department of Agriculture (USDA) Forest Service (Forest Service) for affected United States-owned land managed by the Forest Service as part of the Plumas National Forest (PNF) and the Tahoe National Forest (TNF). Licensee anticipates the Forest Service will exercise its authority during the relicensing proceeding, as appropriate.

Section 10(j) of the FPA states that FERC must include conditions to adequately protect, mitigate damage to, and enhance fish and wildlife and their habitats, based on recommendations by state and federal fish and wildlife agencies. In general, FERC must incorporate these agencies' recommendations in the license conditions unless FERC determines that a recommendation is inconsistent with the purposes or requirements of the FPA or other applicable law. In this regard, § 10(j) recommendations are distinguished from mandatory conditions filed pursuant to § 4(e) of the FPA. Licensee expects that the appropriate federal and state fish and

¹ While not specifically required to be included in the Pre-Application Document (PAD), Licensee has included this description of major applicable laws in this Preliminary Information Package to better inform Relicensing Participants as the relicensing proceeding begins.

wildlife agencies will make § 10(j) recommendations during the relicensing proceeding, as appropriate.

Section 10(a) of the FPA requires FERC to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. To this end, FERC accords Section 10(a) comprehensive plan status to any federal or state plan that meets all of the following three criteria: 1) is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; 2) specifies the standards, the data, and the methodology used; and 3) is filed with FERC. Section 5.0 of this Preliminary Information Package lists comprehensive plans that qualify for Section 10(a) status. Licensee will evaluate Project consistency with these plans during the relicensing proceeding.

Section 18 gives the Secretaries of the United States Department of Commerce (USDOC) and the United States Department of the Interior (USDO) the authority to prescribe such fishways as deemed necessary. Section 1701(b) of the Energy Policy Act of 1992 provides guidance on the elements that are appropriate for inclusion in a fishway definition. The Secretaries may exercise their authorities under these statutes during the relicensing proceeding.

4.1.2 Endangered Species Act of 1973, as Amended (*16 USC § 1531 et seq.*)

The main purpose of the federal Endangered Species Act (ESA) of 1973, as amended, is to protect and conserve endangered and threatened species and the ecosystems upon which they depend. An “endangered” species under the ESA (referred to in this Preliminary Information Package as FE) is one in danger of extinction throughout all or a significant portion of its range. A “threatened” species under the ESA (referred to in this Preliminary Information Package as FT) is one that is likely to become endangered within the foreseeable future. In addition, a species may be officially proposed in the Federal Register for listing under the ESA as endangered or threatened (FPE or FPT, respectively), or be a candidate for listing (CE or CT, respectively).²

The ESA is administered by the Secretary of the Interior through the USDO Fish and Wildlife Service (USFWS) for most species, and by the Secretary of Commerce through the National Oceanic and Atmospheric Association (NOAA), National Marine Fisheries Service (NMFS) for marine and anadromous species.

Three sections of the ESA are most applicable to the Project. Section 4 establishes a complex process for listing FE and FT species, identifying their critical habitats (as well as evolutionary significant units, or ESU, and Distinct Population Segments, or DPS), and developing and

² The Sacramento USFWS office no longer maintains a list of “species of concern.” However, other agencies and organizations may maintain a list of what they consider to be at-risk species. These may include species on the American Fisheries Society's list of Protected Fishes of the United States and Canada, state lists of protected species, and species identified as imperiled or vulnerable by state Natural Heritage Programs and various conservation organizations, such as The Nature Conservancy. These species, unless otherwise indicated, have no legal status.

implementing recovery plans. Section 7 requires federal agencies to consult with the USFWS or NMFS to ensure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of any FE or FT species, or result in the destruction or adverse modification of critical habitat for these listed species. Finally, Section 9 of the ESA prohibits any person from “taking” a FE or FT species.

FERC is the lead federal agency (or “action agency” under the ESA) for relicensing of the Project and, therefore, must consult with USFWS and NMFS to ensure that FERC’s actions and authorizations do not jeopardize the continued existence of any FE or FT species or adversely affect any designated critical habitat. Jeopardy exists when an action would “appreciably reduce the likelihood of both the survival and recovery of a listed species” (50 CFR § 402.02). Consultation typically is initiated by a request to USFWS and NMFS for an inventory of FE and FT species, and species officially proposed by USFWS or NMFS for listing as endangered or threatened that may be present in the Project Region.³ FERC then prepares a biological assessment (BA), to determine whether these listed species or their critical habitats are likely to be adversely affected by the federal action. Under current regulations, if FERC’s BA indicates that the relicensing may have an adverse effect on a listed species or its critical habitat, formal consultation with USFWS and/or NMFS is required. At the end of the consultation process, USFWS or NMFS issues a biological opinion (BO), which specifies whether or not the action will place a FE or FT species or critical habitat in “jeopardy.” If a jeopardy opinion is issued, USFWS or NMFS must include reasonable and prudent alternatives to the action. A non-jeopardy opinion may be accompanied by an “incidental take statement” that specifies impacts of the taking, mitigation measures, and terms and conditions for implementation of the mitigation measures.

Section 7.7 of this Preliminary Information Package discusses species listed under the ESA and designated critical habitats that Licensee will address in the relicensing proceeding.

As provided for in 18 CFR § 5.5(e), Licensee in its Notice of Intent (NOI) to file an application for a new license intends to request that FERC designate Licensee as FERC’s non-federal representative for purposes of consultation under Section 7 of the ESA and the joint agency regulations thereunder at 50 CFR Part 402, and Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR § 600.920.

4.1.3 National Historic Preservation Act (16 USC § 470 et seq.)

The National Historic Preservation Act (NHPA) of 1966 established the Advisory Council on Historic Preservation (ACHP); authorized the Secretary of the Interior to maintain the National Register of Historic Places (NRHP); directed the Secretary to approve state historic preservation programs that provided for a State Historic Preservation Officer (SHPO); established a National Historic Preservation Fund program; and codified the National Historic Landmarks program.

³ For the purposes of this document, Project Region is defined as the area surrounding the Project in the order of a county or national forest.

Section 106 of the NHPA requires that federal agencies take into account the effects of their actions on properties that may be eligible for or listed on the NRHP, and afford the ACHP a reasonable opportunity to comment. To determine if an undertaking could affect NRHP-eligible properties, all cultural sites (*i.e.*, archeological, historical, traditional cultural and architectural properties) that could be impacted by the undertaking must be inventoried and evaluated for inclusion in the NRHP.

If there would be an adverse impact on historic properties, a Historic Properties Management Plan (HPMP) may be prepared to avoid or mitigate effects. FERC must consult with the ACHP, SHPO, Tribal Historic Preservation Officers, National Park Service (NPS), members of the public, federal land management agencies, and affected Indian tribes, where applicable.

As provided in 18 CFR § 5.5(e), Licensee in its NOI intends to request that FERC designate Licensee as FERC's non-federal representative for purposes of initiating consultation under Section 106 of the NHPA and the implementing regulations at 36 CFR § 800.2(c)(4).

4.1.4 Wild and Scenic Rivers Act, as Amended (*16 USC §§ 1271-1287*)

Rivers protected under the Wild and Scenic Rivers Act are designated as such for their outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values. According to the National Wild and Scenic River system, these rivers shall be preserved in free-flowing condition, and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The goal of the wild and scenic designation is not to prevent use of the river, but rather to manage the river and its existing resources so they are compatible with use.

The Project Region does not include any areas that have been included in the federal Wild and Scenic Rivers program. In 1999, the Forest Service recommended for Wild and Scenic River designation: 1) the 45 miles of North Yuba River upstream of New Bullards Bar Reservoir (elevation unspecified); 2) Canyon Creek, a tributary to the North Yuba River; and 3) the South Yuba River between Lake Spaulding and Point Defiance. Each of these river segments is upstream of the Project Area.⁴ Though legislation to confirm this recommendation has not yet been proposed by Congress, the Forest Service currently manages the river to protect its wild and scenic values.

4.1.5 Wilderness Act of 1984, as Amended (*16 USC §§ 1131-1136.*)

The Project Region does not include any areas that have been included in or are proposed for inclusion in the federal Wilderness Act.

⁴ For the purposes of this document, Project Area is defined as the area within the FERC Project Boundary and the land immediately surrounding the FERC Project Boundary (*i.e.*, within about 0.25 mile of the FERC Project Boundary) and includes Project-affected reaches between facilities and downstream to the next major water controlling feature or structure, the United States Army Corps of Engineers' (USACE) Daguerre Point Dam.

4.1.6 Coastal Zone Management Act, as Amended (16 USC §§ 1451-1456 et seq.)

Section 307(C)(3) of the Coastal Zone Management Act (CZMA) requires that all federally licensed and permitted activities be consistent with approved state Coastal Zone Management Programs. If a project is located within a coastal zone boundary or if a project affects a resource located in the boundaries of a designated coastal zone, the applicant must certify that the project is consistent with the state Coastal Zone Management Program.

The Project is not located within the boundary of a designated Coastal Zone Management Program, nor would continued Project operation and maintenance (O&M) affect resources within the boundary of a designated coastal zone.

4.1.7 National Environmental Policy Act of 1969 (42 USC § 4321)

The National Environmental Policy Act (NEPA) of 1969 identifies environmental protection as a major national policy objective. NEPA requires all federal agencies involved in the permitting of activities affecting the environment, such as the issuance of a license for the Project, to evaluate environmental impacts and the significance of these impacts. The NEPA process is to be used to identify and assess the reasonable alternatives to proposed actions, and federal agencies are to use all practical means to restore and enhance the quality of the human environment and to avoid or minimize any possible adverse effects of their actions upon the quality of the human environment. FERC is bound by the statutory requirements of NEPA and maintains a policy adhering to the objectives of the NEPA.

An Environmental Assessment (EA) or Environmental Impact Statement (EIS) typically is the NEPA document prepared for an application for a new license. In rare circumstances, FERC prepares an EIS after preparation of an EA.

The EA or EIS acts as a disclosure or guidance document in which FERC considers the effects of proposed actions and possible protection, mitigation, and enhancement measures; assesses the environmental effects of relicensing the project; and concludes that relicensing the project is: 1) not a major federal action significantly affecting the quality of the human environment; or 2) a major federal action significantly affecting the quality of the human environment, and therefore requires an EIS.

4.1.8 Americans with Disabilities Act of 1990 (Public Law 101-336)

Public recreation facilities must comply with the Americans with Disabilities Act (ADA) of 1990 as amended. FERC, however, has no statutory role in implementing or enforcing the ADA as it applies to its licenses. A licensee's obligation to comply with the ADA exists independent of its FERC project license. Nevertheless, during the relicensing proceeding Licensee intends to consult with the Forest Service and others with jurisdiction over recreation facilities regarding compliance with the ADA.

4.1.9 Clean Water Act of 1970, as Amended (33 USC § 1251 et seq.)

Congress delegated the primary responsibility for implementing the Clean Water Act (CWA) of 1970, as amended, to the United States Environmental Protection Agency (EPA), and the EPA has designated the State Water Resources Control Board (SWRCB) as the water pollution control agency with authority to implement the CWA in California (see Water Code § 13160). The SWRCB and the State's nine Regional Water Quality Control Boards (RWQCBs) work in a coordinated manner to implement and enforce the CWA, as provided for in the State's Porter-Cologne Water Quality Act. The Project is within the jurisdiction of the Central Valley Region Water Quality Control Board (CVRWQCB).

The CWA requires that the EPA adopt water quality standards for surface waters within the United States, and that these standards be reviewed and revised, if necessary, at least every 3 years. The SWRCB carries out its water quality protection authority through the application of specific Regional Water Quality Control Plans, formulated and adopted by the RWQCBs, which submit these plans to the SWRCB for review. The SWRCB reviews the plans, revises them as necessary, and approves the plans (Water Code § 13245).

State water quality standards “consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.” [33 USC § 1313(C)(2)(A)]. RWQCB basin plans provide standards through: 1) a designation of existing and potential beneficial uses; 2) water quality objectives to protect those beneficial uses; and 3) programs of implementation needed to achieve those objectives. The RWQCBs are required to consider a number of items when establishing water quality standards, including: 1) past, present and probable future beneficial uses; 2) environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; 3) water quality conditions that could reasonably be achieved through the coordinated control of all factors that affect water quality in the area; and 4) economic considerations.

SWRCB's management goals are specified in CVRWQCB's *Water Quality Control Plan (Basin Plan) for the Sacramento and San Joaquin Rivers*, the fourth edition of which was initially adopted in 1998 and most recently revised in 2007 (CVRWQCB 1998). The Basin Plan formally sets forth designated existing and potential beneficial uses and water quality objectives for areas including the Yuba River.

The Basin Plan divides the area in the Project Vicinity⁵ into two Hydro Units (HU): 1) HU 517, which includes the Yuba River and its tributaries upstream of the United States Army Corps of Engineers' (USACE) Englebright Reservoir; and 2) HU 515.3, which includes the Yuba River from USACE's Englebright Dam to the Feather River. Table 4.1.9-1 lists designated beneficial uses in the river.

⁵ For the purposes of this document, Project Vicinity is defined as the area surrounding the Project in the order of a United States Geological Survey (USGS) 1:24,000 topographic quadrangle.

Table 4.1.9-1. Beneficial uses of surface water within the Project and the area downstream as designated by HU in the Basin Plan.

Designated Beneficial Use Description from Basin Plan, Section II		Designated Beneficial Use by HU from Basin Plan, Table II-1		
		Use	Yuba River from Headwaters to USACE's Englebright Dam	Yuba River from USACE's Englebright Dam to Feather River
			HU 517	HU 513.3
Municipal and Domestic Supply (MUN)	Uses of water for community, military or individual water supply systems including, but not limited to, drinking water supply.	MUNICIPAL AND DOMESTIC SUPPLY	Existing	----
Agricultural Supply (AGR)	Uses of water for farming, horticulture, or ranching including, but not limited to, irrigation (including leaching of salts), stock watering, or support of vegetation for range grazing.	IRRIGATION	Existing	Existing
		STOCK WATERING	Existing	Existing
Industrial Process Supply (PRO)	Uses of water for industrial activities that depend primarily on water quality.	PROCESS	----	----
Industrial Service Supply (IND)	Uses of water for industrial activities that do not depend primarily on water quality including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well repressurization.	SERVICE SUPPLY	----	----
		POWER	Existing	Existing
Water Contact Recreation (REC-1)	Uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water skiing, skin and scuba diving, surfing, white water activities, fishing, or use of natural hot springs.	CONTACT	Existing	Existing
		CANOEING AND RAFTING	Existing	Existing
Non-Contact Water Recreation (REC-2)	Uses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, beach-combing, camping, boating, tide-pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.	OTHER NON-CONTACT	Existing	Existing
Warm Freshwater Habitat (WARM)	Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.	WARM ¹	----	Existing
Cold Freshwater Habitat (COLD)	Uses of water that support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.	COLD ¹	Existing	Existing
Migration of Aquatic Organisms (MGR)	Uses of water that supports habitats necessary for migration or other temporary activities by aquatic organisms, such as anadromous fish.	WARM ²	----	Existing
		COLD ³	----	Existing
Spawning (SPWN)	Uses of water that support high quality aquatic habitats suitable for reproduction and early development of fish.	WARM ²	----	Existing
		COLD ³	Existing	Existing

Table 4.1.9-1. (continued)

Designated Beneficial Use Description from Basin Plan, Section II		Designated Beneficial Use by HU from Basin Plan, Table II-1		
		Use	Yuba River from Headwaters to USACE's Englebright Dam	Yuba River from USACE's Englebright Dam to Feather River
			HU 517	HU 513.3
Wildlife Habitat (WILD)	Uses of water that support terrestrial or wetland ecosystems including, but not limited to, preservation or enhancement of terrestrial habitats or wetlands, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.	WILDLIFE HABITAT	Existing	Existing

Source: CVRWQCB 1998

¹ Resident does not include anadromous. Any hydrologic unit with both WARM and COLD beneficial use designations is considered COLD water bodies by the SWRCB for the application of water quality objectives.

² Striped bass, sturgeon and shad.

³ Salmon and steelhead.

In addition, Section 303(d) of the CWA requires that every 2 years each State submit to the EPA a list of rivers, lakes and reservoirs in the State for which pollution control or requirements have failed to provide for water quality. The SWRCB and CVRWQCB work together to research and update the list for the State of California. Based on a review of this list and its associated Total Maximum Daily Load (TMDL) Priority Schedule, in the Project Vicinity, the following surface water bodies water have been identified by the SWRCB as CWA §303(d) State Impaired (SWRCB 2006):

- USACE's Englebright Reservoir for mercury
- Deer Creek, a tributary to the Yuba River, for pH
- Kanaka Creek, a tributary to the Middle Yuba River, for arsenic

There are currently no approved TMDL plans for the Yuba River.

Additional surface waters of the Yuba River watershed are being considered for addition to the CWA §303(d) list. In 2009, the CVRWQCB recommended including: 1) New Bullards Bar Reservoir, the North Fork Yuba River between New Bullards Bar and USACE's Englebright Reservoir, the Middle Yuba River, the South Yuba River from Lake Spaulding to USACE's Englebright Reservoir, and the Lower Yuba River from USACE's Englebright Reservoir to the Feather River in the list as impaired for mercury (CVRWQCB 2009). The CVRWQCB also recommended that the South Yuba River from Lake Spaulding to USACE's Englebright Reservoir be listed as impaired for temperature and the lower Yuba River downstream of USACE's Englebright Dam be listed as impaired for iron (CVRWQCB 2009).

For hydro relicensing, the most important section of the CWA is § 401, which requires that all applicants for federal licenses or permits must seek certification that the proposed project is in compliance with SWRCB established water quality standards. Certification may be conditioned with other limitations to assure compliance with various CWA provisions. The SWRCB is the administrator of the CWA in the State of California, and FERC cannot change or dismiss conditions included in a water quality certificate. No water quality certificate was issued for the

current FERC license for the Project because the license was issued prior to the enactment of the CWA.

Licensee intends to file with the SWRCB a request for a Section 401 Water Quality Certificate within 60 days of the date that FERC issues it notice accepting Licensee's application for a new license and stating the application is ready for environmental review.

4.1.10 Federal Land Policy and Management Act (16 USC § 1701)

Section 1701 of Title 16 of the United States Code is known as the Federal Land Policy and Management Act (FLPMA). The FLPMA, among other measures, allows for the management of federal-owned lands by federal agencies. As discussed above, the FPA provides for mandatory conditioning by the federal agency that manages the reservation on which a project occurs.

As described in Section 4.1.1, some portions of the Project are located on United States-owned lands managed by the Forest Service as part of PNF and TNF. Licensee anticipates the Forest Service will exercise its authority, as appropriate.

4.1.11 Magnuson-Stevens Fishery Conservation and Management Act, as Amended (16 USC § 1801 et seq.)

The purpose of this Act is to conserve and manage, among other resources, anadromous fishery resources of the United States. The Act establishes eight Regional Fisheries Management Councils that prepare, monitor, and revise fishery management plans with the goal of achieving and maintaining the optimum yield from each fishery.

In California, the Pacific Fisheries Management Council is responsible for achieving the objectives of the statute. The Secretary of Commerce has oversight authority. The Act was amended in 1996 to establish a new requirement to describe and identify "essential fish habitat" (EFH) in each fishery management plan. EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." EFH has been established by NMFS for waters in California supporting anadromous fish. The Act requires that all federal agencies, including FERC, consult with NMFS on all actions, or proposed actions, permitted, funded or undertaken by the agency, that may adversely affect EFH. Adversely affect means any impact that reduces the quality and/or quantity of EFH. Comments from NMFS following consultation are advisory only; however, a written explanation must be submitted to NMFS if the implementing federal agency does not agree with NMFS' recommendations.

The Project includes two sections of river designated as EFH for Chinook salmon. These are: 1) about 21 miles of the main stem of the Yuba River and Middle Yuba River from the Feather River to Our House Diversion Dam; and 3) about 41 miles of the North Yuba River from the confluence upstream to about Salmon Creek near Sierra City. (<http://swr.nmfs.noaa.gov/hcd/cvschshd.htm> accessed on January 25, 2009.)

4.2 California Laws

4.2.1 California Endangered Species Act (Fish and Game Code §§ 2050 – 2116) and Fully Protected Species Statutes (Fish and Game Code §§ 3505, 3511, 4700, 5050, 5515 and 5517)

The California Endangered Species Act (CESA), enacted in 1984, is codified in the Fish and Game Code (Division 3, Chapter 1.5). The CESA is patterned after the ESA and administered by the California Department of Fish and Game (CDFG). Species may be listed under the CESA as endangered (referred to in this Preliminary Information Package as SE) or threatened (referred to in this Preliminary Information Package as ST).⁶ If a project may affect species listed jointly under the ESA and CESA, CDFG must participate in ESA Section 7 consultation to the maximum extent possible. The federal BO will generally reflect both CDFG's and USFWS's or NMFS's findings, and the CDFG is encouraged by CESA to adopt, when possible, USFWS's or NMFS's BO as CDFG's own formal written determination on whether jeopardy exists. However, if CDFG ultimately does not agree with USFWS or NMFS, CDFG may issue an independent CESA determination.

In addition, the Fish and Game Code affords protection to some species referring to them as fully protected, or SFP. (See Fish & Game Code § 3505, 3511, 4700, 5050, 5515, 5517.)

Section 7.7 of this Preliminary Information Package discusses species listed under the CESA or the SFP statutes that Licensee will address in the relicensing proceeding.

4.2.2 California General Plan Law (*Government Code §§ 65300 et.seq.*)

The General Plan Law of the State of California requires that each local government in California prepare a "general plan" that establishes the land use policies and details the likely future development patterns within the local government's boundaries. Zoning ordinances and subdivision procedures must be consistent with the general plan. There are seven required elements of the general plan: land use, circulation, housing, conservation, open-space, noise, and safety. In general, governments can and often add other elements to their general plans; consequently, general plans typically change over time. County land use plans do not apply to United States-owned lands.

Section 7.9 of this Preliminary Information Package discusses general plans that Licensee will address in the relicensing proceeding.

⁶ CDFG, pursuant to its goal of maintaining viable populations of all native species, also designates "species of special concern" (referred to in this Preliminary Information Package as CSC) when in CDFG's opinion, declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction. The CSC designation is an administrative term and has no legal status.

4.2.3 California Environmental Quality Act (*Pub. Resources Code, § 21000 et seq.*)

In 1970, the State of California enacted California Environmental Quality Act (CEQA). Like NEPA, CEQA was created to require public agencies to identify the potential environmental effects of proposed projects. CEQA requires public agencies to describe both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures that will avoid or substantially lessen those significant effects. The public agency that has the greatest responsibility for supervising or approving the project is the “lead agency” for the CEQA analysis. The lead agency determines if the project is subject to CEQA or exempt from the CEQA process. If the project is subject to CEQA, the lead agency prepares an Initial Study to identify the project’s potential environmental impacts and to determine if any of those impacts may be significant.

After a determination regarding the significance of potential impacts, the lead agency will create one of three environmental review documents. If the project is found to have no significant impacts, a Negative Declaration will be prepared. If the project has been modified to mitigate or avoid significant impacts, a Mitigated Negative Declaration will be prepared. If the project is found to have significant impacts, an Environmental Impact Report (EIR) will be prepared. The EIR will provide the state and local agencies and the general public with detailed information on the potentially significant environmental effects that a proposed project is likely to have, will list ways which the impact or impacts may be minimized, and describe alternatives to the project.

For the Project, Licensee plans to be the Lead Agency for CEQA compliance and anticipates that the SWRCB will be a Responsible Agency for the purpose of issuing a Section 401 Water Quality Certificate for the Project.

4.2.4 California Wild and Scenic Rivers Act (*Public Resources Code § 5093.50 et seq.*)

The California Wild and Scenic Rivers Act was enacted in 1972 to preserve designated rivers possessing extraordinary scenic, recreation, fishery, or wildlife values. Like the federal Act, the State Act provides protection for a river or river segment to remain free flowing, and allows for the construction of water diversion facilities only if the Resources Secretary determines that the facility is needed to supply domestic water to local residents and that the facility will not adversely affect the river’s free-flowing condition and natural character. The Act requires State and local agencies to exercise their existing powers consistent with the Act’s policies and provisions. Initially the Act required the implementation of a management plan for each river or river segment designated as Wild and Scenic, but the amendments of 1982 eliminated the requirement, instead requiring the Resource Agency to coordinate activities affecting the system with other federal, State and local agencies. State designated rivers may be added to the federal system upon the request of the Governor of California and the approval of the Secretary of the Interior. Future management of state rivers added to the federal system is the responsibility of the State.

The Project Area does not include any sections of stream designated or proposed for designation under the State Wild and Scenic Rivers program. The nearest State-designated Wild and Scenic River is the South Yuba River from Lang Crossing to its confluence with Kentucky Creek below Bridgeport. It is managed by the USDOJ Bureau of Land Management (BLM) in partnership with the Forest Service and the California Department of Parks and Recreation (CDPR), and is upstream of the Project Area.

4.3 List of Attachments

None.