

## APPENDIX E1

# REPLY TO FERC STAFF COMMENTS ON DRAFT LICENSE APPLICATION AND REQUESTS FOR STUDY MODIFICATIONS AND NEW STUDIES

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This appendix provides a reply to each of FERC staff's comments on the DLA included in FERC's March 4, 2014 letter to YCWA, and a reply to requests for study modifications or new studies contained in the comment letters filed on YCWA's DLA.

## **1.0      Reply to FERC Staff's Comments**

FERC's March 4, 2014 letter included: two requests for clarification regarding Exhibit A; four requests for clarification on Exhibit E, Terrestrial Resources; and one request for clarification on Exhibit H. YCWA has revised the appropriate sections in this FLA to include the clarifications requested by FERC staff. For ease of reference, the requested clarifications are also provided below.

### **1.1      Exhibit A Clarifications**

#### **1.1.1      New Colgate Powerhouse Tailwater Depression System**

FERC staff stated:

- (1) It is unclear from the Draft License Application how the Tailwater Depression System (TDS) functions and what are its potential environmental effects. Please describe in further detail:
  - a. Is the depression of water levels by pressurized air confined to the turbine chamber?
  - b. Does the increased air pressure introduced into the turbine chamber by the TDS result in a greater level of dissolved gases in the water discharged from the turbine?
  - c. Under what flows and water surface elevations at the Colgate powerhouse would the TDS be used?
  - d. How often would the TDS be used? Please include information on frequency, duration, and timing of TDS use.
  - e. What are the potential environmental effects of using the TDS in terms of effects on water quality and aquatic resources?
  - f. Please quantify the increased power production that would result from the construction and operation of the TDS.

A detailed description of the proposed New Colgate Powerhouse TDS, its operations and effects can be found in Exhibit E, Section 2.2.1.1.1. Descriptions are also provided in Exhibit A, Section 5.1.1.1 and Exhibit B, Section 7.2.3. YCWA's direct responses to FERC staff's questions are as follows:

- a. The pressurized air resulting from activation of the TDS would be confined to the turbine discharge chamber, the supply piping and compressor equipment on the deck of the powerhouse.
- b. The air pressure necessary to operate the TDS would be approximately 6.5 pounds per square inch (psi), which would not increase dissolved gases in the water released from the turbine chamber.
- c. The TDS would be used when spills at New Bullards Bar Reservoir combined with flows from the Middle Yuba River and Oregon Creek raise the WSE within the turbine chamber to a level of approximately 556 ft or higher. This corresponds to flows above the New Colgate Powerhouse of approximately 20,000 cfs or higher.
- d. The flow conditions described in c above caused 14 generation curtailment events over a 31-year period between WY 1971 through 2002 (*Report of Feasibility of Tailwater Depression at New Colgate Powerhouse, an Element of the Yuba-Feather Supplemental flood control Project, YCWA October 2002*). The ability to release approximately 7,000 ac-ft per day from New Bullards Bar Reservoir before water elevations reach the lip of the spillway would reduce the rapid loss of available storage space between the normal operating level in good water years and the lip of the existing (or proposed Flood Control Outlet) spillway during flood events. This additional release capacity could also decrease the amount and peak rate of spill flows, which are currently limited by the height of the spillway lip (El. 1,902 ft) and the spillway capacity, which ranges from 19,000 cfs at the minimum level of the flood control pool (El. 1,918 ft), to approximately 167,000 cfs at maximum water surface elevation (El. 1,965 ft). The duration of TDS use per event would be approximately equal to or less than the average historical duration of spills at New Bullards Bar Reservoir, approximately 21 days per year.
- e. The potential environmental effects of the TDS are related to the possible release of approximately 12 gallons of lubricating oil for the electrical air compressors used by the system (taken from a report for the SWRCB by NCPA on the No. Fork Stanislaus River Project FERC No. 2409 – Feb. 2008 GLR 031214]) and the potential for super-saturation of dissolved gases in the tailwater discharge of the New Colgate Powerhouse during TDS operations. The potential for oil releases would be mitigated by containment structures around the base of the air compressors capable of capturing the entire volume of oil in the system, and a condensation system for removing oil mist from the compressed air before it is introduced into the turbine chamber. The negligible effect of the 6.5 psi increased air pressure on dissolved gases in the discharged water would not have a measurable effect of aquatic life and does not require mitigation.

- f. The cumulative loss of power generation between 1971 and 2002 was nearly 204,000 MWh, or about 6,580 MWh per year on the average. These amounts equal the amounts of increased power production that would result from the construction and operation of the TDS.

### 1.1.2 New Bullards Bar Flood Control Outlet

FERC staff stated:

(1) The Draft License Application states that the primary benefit of the new flood control outlet is increased flood control. However, it is unclear from the Draft License Application how the new outlet would operate in tandem with the existing concrete ogee overflow spillway, what changes to high flows would occur as a result of the construction and operation, and what are its potential environmental effects. Please describe in further detail:

- a. The differences in flood release operations that would occur due to the addition of the new flood control outlet.
- b. The differences in high flow hydrology, if any, that would occur at the stations downstream of Bullards Bar reservoir that were analyzed in the Hydrologic Alteration study. Please compare “with project hydrology” to “with project and a new flood control outlet hydrology.”

A detailed description of the proposed New Bullards Bar Flood Control Outlet, its operations and effects are included in Exhibit E, Section 2.2.1.2.1. Descriptions are also provided in Exhibit A, Section 5.1.2.1 and Exhibit B, Section 7.2.3. YCWA’s direct responses to FERC staff’s questions are as follows:

The proposed Flood Control Outlet would be operated under two situations:

- The new Flood Control Outlet would be operated if a large storm event is forecasted to occur within the near future, and the combination of New Bullards Bar Reservoir storage and the contributing watershed to New Bullards Bar Reservoir are in a state in which the storm event would necessitate very large releases from New Bullards Bar Reservoir. Under this scenario, the proposed Flood Control Outlet would be used to make releases from New Bullards Bar Reservoir in anticipation of the storm event, to reduce the subsequent required peak release from the reservoir.
- If a large storm event is forecasted to occur within the near future, and there is a concern that the required peak release from New Bullards Bar Dam would coincide with the peak release from DWR’s Oroville Reservoir, the proposed Flood Control Outlet would be used to make releases from New Bullards Bar Reservoir in anticipation of the storm event, so the peak flow would occur at an earlier time than it would otherwise would have occurred, to allow for better management of flood operations from Oroville Reservoir.

Under each situation, the proposed Flood Control Outlet would be used only during high-flow events, and is not planned that this new outlet would be used for routine flood management releases that may be necessary because of relatively small encroachments into the flood reservation. The existing New Bullards Bar Dam spillway is anticipated to continue to be the primary flood management release facility for New Bullards Bar Reservoir. The proposed Flood Control Outlet would be a supplementary facility, and would be used in an anticipatory manner to avoid potential subsequent flood management challenges. Other than reducing the peak flow rate during storms, or shifting the peak release to an earlier time, the proposed Flood Control Outlet would not affect Project operations.

Below are specific responses to FERC's questions.

- a. Flood management operations with the proposed Flood Control Outlet would generally be the same as under current operations; for the majority of storm events, the proposed Flood Control Outlet would not be used.

If YCWA forecasts a substantial storm event is imminent, and basin conditions are such that inflow to New Bullards Bar Reservoir would necessitate a large release from the New Bullards Bar Dam spillway, YCWA would open the proposed Flood Control Outlet, even if storage in New Bullards Bar Reservoir had not encroached into the flood reservation. YCWA would likely also open the New Bullards Bar Dam spillway to its maximum opening, so long as the combined release from the two outlets did not exceed the objective flow below New Bullards Bar Dam (i.e., 50,000 cfs). The resulting flow in the North Yuba River below New Bullards Bar Dam and in the Yuba River would be greater than if the New Bullards Bar Dam spillway had been used by itself, but, by increasing releases in anticipation of the storm event, additional space would be created within New Bullards Bar Reservoir so the ultimate peak flow would be reduced in magnitude.

Similarly, if YCWA forecasts a substantial storm event is imminent and both New Bullards Bar Reservoir and Oroville Reservoir would experience substantial inflows, potentially necessitating large releases from both reservoirs, YCWA would open the proposed Flood Control Outlet in addition to the New Bullards Bar Dam spillway ahead of the storm to create additional space within New Bullards Bar Reservoir, both reducing the peak storm event, and releasing it earlier than it would otherwise have occurred, so as not to coincide with the peak release from Oroville Reservoir, allowing for improved conditions on the Feather River downstream from the Yuba River.

- b. The Operations Model used for the Hydrologic Alteration Study is not intended to be used for flood management operations, particularly including the proposed Flood Control Outlet. Detailed flood operations modeling reflecting operations of the proposed Flood Control Outlet would require additional information, including an hourly timestep, a representation of the state of New Bullards Bar Reservoir's contributing watershed, a detailed implementation of the USACE flood operations manual for New Bullards Bar Reservoir; and modeling on DWR's Oroville Reservoir for flood control purposes. Accordingly, a quantitative analysis of the differences in high-flow flows between "With

Project Hydrology” and “With Project and the Proposed Flood Control Outlet” is not possible. From a qualitative perspective, the proposed Flood Control Outlet would not affect the frequency of spills from New Bullards Bar Dam, but it would reduce the peak flow on the Yuba River near Smartsville, and on the Yuba River near Marysville for storms with a return period greater than approximately 10 years.

## 1.2 Exhibit E, Terrestrial Resources, Clarifications

### 1.2.1 Use of Pesticides on Non-federal Land

FERC staff stated:

(1) Although you discuss the use of pesticides on federal lands in the *Integrated Vegetation Management Plan*, you do not provide any specifics on the use of pesticides on non-federal lands. Therefore, describe the use, if any, of pesticides on non-federal lands including application procedures, situations when pesticides are used, and general extent of use and area covered.

On private land, YCWA’s State-certified applicators periodically apply herbicides, such as Garlon® or Surflan®, around the immediate vicinity (i.e., within 100 feet) of Project facilities. All federal, state and local regulations are adhered to during the application. The herbicides are used on an as needed basis, but typically twice each year.

Table 1.2-1 summarizes YCWA’s herbicide use on non-federal lands in 2012, a typical year.

**Table 1.2-1. Location, types and amounts of herbicides applied to non-federal lands by Yuba County Water Agency for the Yuba River Development Project in 2012.**

Facility Where Applied	Herbicide							
	Hoss Ultra®	Garlon® 3A/4	Surflan®	Roundup®	Goal®	Milestone™	Oust®	Telar®
	Liquid (gal) <sup>1</sup>	Liquid (gal) <sup>1</sup>	Liquid (gal) <sup>1</sup>	Liquid (gal) <sup>1</sup>	Liquid (gal) <sup>1</sup>	Liquid (oz) <sup>2</sup>	Solid (oz) <sup>2</sup>	Solid (oz) <sup>2</sup>
New Colgate Right-of-Way	5	32.5	25	35	30	190	48	12
Narrows 2 Access Road	--	--	5	5	5	--	--	--

<sup>1</sup> gal = gallons

<sup>2</sup> oz = ounces

### 1.2.2 Non-native Invasive Plants on Private Land

FERC staff stated:

(2) In Section 3.3.4.1.1, *Botanical Resources*, you describe the presence of non-native invasive plants on public lands but not on private lands within the project area. Please describe any existence of non-native invasive plants on private lands in the project area.

A detailed description of NNIPs can be found in Exhibit E, Section 3.3.4.1.1, *Botanical Resources*. Descriptions are also provided in the IVMP, Section 2.3.2, *Existing NNIP Populations*. YCWA's direct response to FERC staff's question is below.

In 2012, YCWA performed surveys for NNIPs, as part of Study 5.1, *Special-Status Plants* (YCWA 2012a). YCWA found 13 NNIP species, which was comprised of 291 occurrences (276.35 ac) excluding Himalayan blackberry. There were 111 occurrences (76.04 ac) on public land, and 180 occurrences (200.31 ac) on private lands. On public lands, 122 occurrences of Himalayan blackberry were located, totaling 167.39 ac. On private lands, 102 occurrences of Himalayan blackberry were located, totaling 191.45 ac. In total, there were 515 occurrences of NNIP on 635.19 ac, 233 (243.43 ac) on public lands and 282 (391.76) on private lands.

### **1.2.3 Bald Eagle Nest Productivity**

FERC staff stated:

(3) In Section 3.3.4.1.2, *Wildlife Resources*, you indicate that you received nesting survey reports from the Tahoe National Forest for 1989 through 2011 but do not provide information on nest success. Please provide any available data on the productivity of these nests.

The discussion on YCWA's *Special-status Wildlife – Bald Eagle Study* in Section 3.3.4.1.2 of Exhibit E was updated to include a summary of nesting survey reports from the TNF. The summary describes nesting success of the Garden Point Peninsula Nest since 1989, identifies years in which the nest failed, and the likely cause for nest failure during those years.

According to the TNF (2002), the Garden Point Peninsula nest was used from 1989 until its destruction in the October 1999 Pendola Fire, which was not caused by the Project. In 2000, the nest was rebuilt on the east side of the peninsula near Tractor Cove and has remained in use since. Over the 23 years of monitoring the Garden Point Peninsula Nest (1989-2012), 21 bald eagles have fledged for an annual reproductive rate of 0.91. According to the TNF (TNF 2002, 2005, 2006, 2007, 2009a, 2009b, 2010, 2011, and 2012) nesting survey reports, nesting did not occur in 1995, 1996, 1997, 2000, 2004, 2005, 2006, and 2010. In four of the years that nesting did not occur (2004, 2005, 2006, and 2010), the TNF believes late winter/early spring storms were believed to have damaged the nest and is the suspected cause of failure. The TNF also believes the rebuilding of the nest after the Pendola Fire, may be related to the pair not successfully nesting in 2000. The cause of the three remaining nest failures (1995, 1996, and 1997) are unknown, but these years also correspond to wetter than normal (based on 50 year average for unimpaired runoff) (YCWA 2012c).

## **1.2.4 Number of Acres of Disturbed by New Bullards Bar Dam Flood Control Outlet and Recreation Facilities Rehabilitation and Enhancements**

FERC staff stated:

(4) You indicate in section 3.3.4.2.5, *Effects due to New Ground-Disturbing Activities*, that New Bullards Bar dam flood control outlet and recreation facilities rehabilitation and enhancements would result in ground disturbance and habitat alteration, but you do not quantify the effects. Therefore, please provide an estimate of the number of acres of different habitat types that would be temporarily or permanently disturbed by these construction activities.

The discussion in Section 3.3.4.2.5, *Effects due to New Ground-Disturbing Activities*, was updated to reflect the number of ac of different habitat types that would be temporarily or permanently disturbed by construction activities associated with the New Bullards Bar Dam flood control outlet and recreation facilities rehabilitation and enhancements.

Areas permanently disturbed by construction activities associated with the New Bullards Bar Dam flood control outlet would likely be limited to 2.4 ac (1.7 ac of Douglas-Fir, and 0.7 ac of Barren habitats).<sup>1</sup> This site is located at the base of the New Outlet Works on Figure 2.2-5 (Exhibit E, Section 2.0). Those areas where disturbances are believed to be temporary include 10 sites that could serve as staging, laydown, or disposal areas. Combine, these areas encompass 83.7 ac, and include the following, 30.2 ac of Barren; 26.9 ac of Montane Hardwood Conifer; 24 ac of Douglas-Fir; 1.6 ac of Urban; 0.6 ac of Montane Hardwood; and 0.4 ac of Sierran Mixed Conifer. At this time, these 10 sites are only a proposed list of areas that could serve as staging, laydown, or disposal areas.

## **1.3 Exhibit H Clarifications**

### **1.3.1 Number of Acres of Affected by Disturbed by New Bullards Bar Dam Flood Control Outlet and Recreation Facilities Rehabilitation and Enhancements**

FERC staff stated:

Even though YCWA does not serve retail customers, please describe any of YCWA's ongoing efforts to encourage energy conservation.

YCWA encourages energy efficiency improvements especially in regards to agricultural users within its Member Units. For example, as part of the Lower Yuba River Accord, YCWA paid approximately \$884,000 for the conversion of 72 diesel groundwater pump motors to cleaner, more efficient electrical groundwater pump motors. Also, YCWA constructed the Wheatland Project to provide surface water supplies to farmers in southwestern Yuba County that

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<sup>1</sup> Acreages of permanently and temporarily disturbed habitat were derived from overlaying the conceptual-level map with California Wildlife Habitat Relationship habitat types.

previously relied entirely on groundwater pumping. This information is included in Section 11.0 of Exhibit H.

## **2.0 Reply to Requests for Study Modifications or New Studies**

YCWA carefully reviewed each of the eight comment letters (FERC's letter did not include any study requests) filed on its December 2013 DLA for requests for modifications to ongoing studies that have been directed by FERC or request for new studies. YCWA found several such requests, but in all except two cases, the request was a repeat of, or a reference to, a request made by a Relicensing Participant in its comments on YCWA's December 3, 2013 Updated Study Report, to which YCWA filed responses with FERC on March 3, 2014. YCWA has not repeated its responses here.

This section provides YCWA's response to the requests for the eight new studies listed in Table 2.0-1.

YCWA organized each of its responses to address the five criteria identified by FERC in 18 C.F.R. Section 5.15(f) that must be addressed when a party requests a new study. Specifically, Section 5.15(f) states the proponent must address the criteria at 18 C.F.R. 5.15(e), which states:

*e) Criteria for new study.* Any proposal for new information gathering or studies pursuant to paragraphs (c)(1)-(4) of this Section<sup>2</sup> must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a statement explaining:

- (1) Any material changes in the law or regulations applicable to the information request;
- (2) Why the goals and objectives of any approved study could not be met with the approved study methodology;
- (3) Why the request was not made earlier;
- (4) Significant changes in the project proposal or that significant new information material to the study objectives has become available; and
- (5) Why the new study request satisfies the study criteria in § 5.9(b).

As reference, FERC's study criteria in 18 C.F.R. Section 5.9(b) are:

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<sup>2</sup> Section c(1) through (4) of 18 C.F.R. Section 5.15 deals with the Initial and Updated Study Reports, applicant's Initial and Updated Study Report meetings, applicant's filing of Initial and Updated Study Report meeting summaries, and Relicensing Participants' and Commission staff's filing of any disagreements regarding applicant's Initial and Updated Study Report meeting summaries.



1. Describe the goals and objectives of each study proposal and the information to be obtained;
2. If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;
3. If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;
4. Describe existing information concerning the subject of the study proposal, and the need for additional information;
5. Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;
6. Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and
7. Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

In addition, Section 5.15(f) states “*the proponent must demonstrate extraordinary circumstances warranting approval.*”

## **2.1 Response to Cal Fish and Wildlife’s Request for New Study Regarding Surveys for Five Special-Status Birds**

Cal Fish and Wildlife requests in its March 3, 2014 letter that YCWA perform protocol level surveys for golden eagle, American peregrine Falcon, Great Grey Owl, northern goshawk, and California spotted owl (pp. 25 and 26 on Cal Fish and Wildlife’s March 3, 2014 letter). YCWA’s response to Cal Fish and Wildlife’s request is provided below.

### **2.1.1 YCWA’s Analysis**

#### **2.1.1.1 Criterion 1 – Material Changes in Laws or Regulations**

Cal Fish and Wildlife does not base its request on material changes in applicable laws and regulations, or the implementation of those laws and regulations. YCWA is unaware of any laws or regulations that have changed since FERC’s Determination that would support Cal Fish and Wildlife’s request.

### **2.1.1.2 Criterion 2 – Goals and Objectives Could Not Be Met With Approved Study**

Cal Fish and Wildlife suggests that a historic occurrence of these five species in the Project Area indicates a need for species specific surveys, and that the information YCWA used to determine presence and distribution (CDFG 2008, Cal Fish and Wildlife 2013, Forest Service 2009 and 2013) is insufficient for the development and implementation of PM&E measures.

YCWA compiled information on these five species from studies performed in accordance with FERC-approved studies for the Project. The studies showed that, with the exception of golden eagle, these species and their habitats do regularly occur within 0.25 mi of the Project area. Cal Fish and Wildlife fails to recognize that the data used by YCWA to determine species presence and distribution was not restricted to Cal Fish and Wildlife sources (CNDDDB and CWHR), but included information from the Forest Service, who gathers and maintains information on species that occur within the TNF and PNF. Some of this information, specifically on northern goshawk and California spotted owls, comes from monitoring performed by the Forest Service in order to maintain protective boundaries (PACs) around active nests. Information regarding golden eagle, American peregrine falcon, and great grey owl occurrences was obtained from the Forest Service's species occurrence databases for the TNF and PNF (Forest Service 2009 and 2013). Furthermore, information on American peregrine falcon nesting near Narrows 2 Powerhouse was obtained through incidental observations by YCWA operations staff and biologists familiar with American peregrine falcon nesting surveys. YCWA believes that species occurrence information from the CNDDDB and Forest Service, incidental observations, and the habitat information obtained from the CWHR, is accurate, relevant, and adequate for determining where these species occur with respect to disturbances that could result from the proposed Project.

### **2.1.1.3 Criterion 3 – Why Request Was Not Made Earlier**

Cal Fish and Wildlife does not indicate why its request for these five species-specific surveys utilizing approved protocols was not made earlier.

### **2.1.1.4 Criterion 4 – Significant Changes in Proposed Project or New Information**

Cal Fish and Wildlife does not base its request on the fact that there have been significant changes to the proposed Project.

### **2.1.1.5 Criterion 5 - Study Criteria in Section 5.9(b)**

In reviewing the request for new studies, Cal Fish and Wildlife did not formally address the seven study criteria presented in 18 C.F.R Section 5.9(b). However, YCWA believes that Cal Fish and Wildlife implies the following study goals on pages 25 and 26 of their March 3, 2014 letter: 1) “...to inventory nesting and migrating/wintering golden eagles within the Project area” and 2) for American peregrine falcon, great gray owl, northern goshawk, and California spotted owl “...to locate nest sites within the Project area.” YCWA also believes that Cal Fish and Wildlife implies the following objective on pages 25 and 26 of their March 3, 2014 letter, “...develop and implement measures that ensure the Project does not result in the take of...”

Cal Fish and Wildlife's description of itself on Page 24 of its March 3, 2014 letter satisfies Criterion 2.

The fact that Cal Fish and Wildlife is a resource agency satisfies Criterion 3.

With respect to Criterion 4, Cal Fish and Wildlife does not describe existing information concerning the subject of the study request. However, Cal Fish and Wildlife indicates that the information used is inadequate because it is based on Cal Fish and Wildlife's databases that are "*not comprehensive*" and "*may not contain the most current species and community occurrence information*" (Cal Fish and Wildlife March 3, 2014 letter, page 24). As indicated above, under Criteria 2 (Section 2.1.1.2), YCWA did not rely solely on Cal Fish and Wildlife derived data, but also used information from other sources. YCWA believes that the existing information, obtained from sources maintained by agencies responsible for protecting these five species, is accurate, relevant, and adequate for determining the Project's potential to disturb terrestrial wildlife.

Cal Fish and Wildlife does not address any of the three remaining study criteria, and therefore YCWA is unable to respond to these deficiencies in the study request.

### **YCWA's Recommendation**

FERC should not adopt Cal Fish and Wildlife's request to perform additional surveys for golden eagle, American peregrine falcon, great gray owl, northern goshawk, and California spotted owl. YCWA believes that species occurrence information from the CNDDDB and Forest Service, and the habitat information obtained from the CWHR, is accurate, relevant, and adequate for determining where these species occur with respect to disturbances that could result from the proposed Project.

Furthermore, YCWA's proposed measure GEN1, *Annual Meeting with Agencies and Indian Tribes*, and GEN3, *Review Special-status Species List and Assess Newly Listed Species Annually*, provide avenues for YCWA and agencies to discuss planned changes to FERC-licensed Project facilities or features. YCWA anticipates that if any of those planned changes are identified as having the potential to affect golden eagle, northern goshawk, great grey owl, or California spotted owl, species-specific surveys will be identified at that time. With respect to American peregrine falcon, YCWA has included in its proposed Project the *Bald Eagle and American Peregrine Falcon Management Plan* (TR2) that requires YCWA to: 1) consult with agencies on any ground disturbing activities that could affect nesting American peregrine falcon; 2) defines the need to survey and specifies survey methodology; and 3) identifies protective measures such as LOP's and nest buffers that will be implemented to protect active nests.

## **2.2 Response to USFWS' Request for New Study Regarding Non-ESA Listed Fish Species Downstream of Englebright Dam**

One of the exceptions is that the USFWS requested in its March 3, 2014 letter that YCWA perform a new study regarding Project affects to non-ESA listed fish species downstream of

Englebright Dam (pp. 8 -10 on USFWS' March 3, 2014 letter). YCWA's response to USFWS' request is provided below.

## **2.2.1 YCWA's Analysis**

### **2.2.1.1 Criterion 1 – Material Changes in Laws or Regulations**

USFWS does not refer to material changes in the law or regulations applicable to this information request.

### **2.2.1.2 Criterion 2 – Goals and Objectives Could Not Be Met With Approved Study**

USFWS does not explain why the goals and objectives of the FERC-approved Study 3.9 could not be met with the approved study methodology.

### **2.2.1.3 Criterion 3 – Why Request Was Not Made Earlier**

USFWS does not explain why the requests were not made earlier.

### **2.2.1.4 Criterion 4 – Significant Changes in Proposed Project or New Information**

USFWS does not refer to significant changes in the Project proposal or to significant new information material to the study objectives.

### **2.2.1.5 Criterion 5 - Study Criteria in Section 5.9(b)**

USFWS does not sufficiently address the new study criteria in Section 5.9(b), with the exception of some references to analytical methodologies. However, the analytical methodologies referenced by USFWS would not be scientifically and statistically appropriate for conducting the evaluations USFWS is requesting.

## **YCWA's Recommendation**

FERC should not adopt USFWS' study request. USFWS requested additional evaluations regarding fall-run Chinook salmon spatial and habitat distribution, fish species composition, and relationships with flow in the Yuba River downstream of Englebright Dam.

Evaluations requested by USFWS are not scientifically and statistically valid. For example, there are not sufficient comparable years of fish assemblage data available that would be necessary to calculate an IBI or carry out the regression analyses of IBI and flows that USFWS requests. In addition, the data resulting from the Beak and Kozlowski fisheries surveys are not comparable in terms of survey methodology, and therefore cannot be standardized as USFWS requests. There also are not sufficient comparable fish survey data available to conduct statistical analyses of fish species assemblages and seasonal flows over time, as USFWS requests.

In addition to the inappropriateness of USFWS' information requests, USFWS also does not explain how the additional evaluations would assist in evaluating potential effects of the Project on fish species downstream of Englebright Dam beyond the data that have already been provided in the Aquatic Resources section in Exhibit E and YCWA's Applicant-prepared Draft EFH Assessment included in Volume IV of YCWA's Application for New License.

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