



United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814



In reply refer to:
FERC 2246

Tim Konnert, Chief
West Branch
Division of Hydropower Licensing
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

JUN 21 2018

Subject: U.S. Fish and Wildlife Service Response to FERC's Request for Concurrence with Not Likely to Adversely Affect Determinations for Listed Species Affected by the Yuba River Development Project; Yuba, Nevada, and Sierra Counties, California; FERC No. P-2246

Dear Mr. Konnert:

This is in response to your letter of May 31, 2018, in which you requested U.S. Fish and Wildlife Service (USFWS) concurrence with the Federal Regulatory Energy Commission (FERC or Commission) determination that relicensing of the Yuba River Development Project (Project) "may affect, but is not likely to adversely affect" the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and the California red-legged frog (*Rana draytonii*) or its critical habitat. This document is issued under the authority and regulations of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and 50 CFR 402) (ESA).

The USFWS's response is based on: (1) FERC's letter requesting concurrence with the determination of NLAA; (2) the draft Environmental Impact Statement (draft EIS) for the Project, dated May 30, 2018; (3) the preliminary conditions pursuant to section 4(e) of the Federal Power Act (FPA) filed by the U.S. Department of Agriculture, Forest Service on August 25, 2017; (4) preliminary Section 401 water quality certification conditions filed by the California State Water Resources Control Board on August 28, 2017; (5) numerous integrated licensing process (ILP or relicensing) meetings, site visits, and study results; (6) the listing and recovery information on the species (USFWS 1980, 1984, 1996, 2002, 2010, 2017); and (7) additional information on file and available at the San Francisco Bay-Delta Fish and Wildlife Office and Sacramento Fish and Wildlife Office. The USFWS has been working collaboratively and providing ongoing technical assistance to the Yuba County Water Agency (YCWA) and to the Commission to identify conservation measures that should be implemented with a new License to avoid or minimize impacts to federally-listed species and their critical habitat. In the Department of Interior's Comments on the Notice Ready for Environmental Analysis, USFWS

included comments and Federal Power Act § 10(j) Conditions that would be protective of endangered species. In the Commission's draft EIS, FERC staff evaluated protective measures for each species and recommended additional measures.

A summary of protective measures that FERC recommended to be included in a new license for the Project is provided below by species:

Valley elderberry longhorn beetle

- Implement the proposed Integrated Vegetation Management Plan (TR1) that includes measures for controlling non-native plant species, protecting special-status species, and revegetating disturbed areas, with a modification that prior to any activities that would result in vegetation disturbance, conduct surveys for elderberry plants within 165 feet of the activity area and consult with USFWS if elderberry plants areas are found in order to determine if additional protective measures are necessary.

California red-legged frog

- Implement the Our House and Log Cabin Diversion Dams and New Bullards Bar Reservoir Woody Material Management Plan (GS3) filed on April 12, 2018 that includes measures for the collection, storage, and disposal of woody material from project reservoirs and prevents wood stockpiling and/or burning in California red-legged frog critical habitat.
- Implement the proposed Integrated Vegetation Management Plan (TR1) that includes measures for controlling non-native plant species, protecting special-status species, and revegetating disturbed areas, with modifications to: "... (3) implement BMPs to protect foothill yellow-legged frog and California red-legged frog habitat when vegetation management activities occur within 300 feet of streams; (4) define protocols for any pesticide use that is deemed necessary within the project boundary and within 500 feet of known locations of foothill yellow-legged frog that avoid adverse effects on individuals and their habitats; (5) prohibit the use of pesticides within a 260-foot buffer around the mean high water mark of aquatic features; (6) avoid stockpiling and subsequent removal of any fuels, slash, or debris related to hazard tree removal within 1,000 feet of wetlands or aquatic features."
- Implement the proposed Recreation Facilities Plan (RR1), with modifications to: "... (3) include footbridges over stream crossings and signs to make users aware of the sensitive nature of California red-legged frog habitat along the West Shoreline Trail; and (4) continue closure of Moran Road from October 15 to May 1 to protect the California red-legged frog from vehicle mortality."
- Implement the proposed Aquatic Invasive Species Monitoring Plan (AR5) that includes measures for bullfrog suppression efforts in Moran Cove, which is located in California red-legged frog critical habitat. The Commission included modifications to ensure procedures for decontaminating field equipment to prevent the spread of

aquatic pests and disease, including chytrid, are applied to all activities where equipment is transported from one body of water to another.

Conclusion

Based on our review of the information provided in the Commission's draft EIS describing the proposed conservation measures to be included with a new license for this Project, information obtained during relicensing, and discussions between the USFWS, relicensing participants, and FERC staff, the USFWS concurs with the Commission's determination that the Project, as described, may affect, but is not likely to adversely affect, valley elderberry longhorn beetle and California red-legged frog. In addition, the Project is not likely to adversely affect the primary constituent elements of critical habitat for the California red-legged frog.

We continue to recommend environmental training to YCWA employees and contractors, in order for the conservation and avoidance measures that we have agreed upon to be implemented consistently.

This concludes our ESA consultation on the Project. Please note, however, that this concurrence letter does not authorize take of listed species. Section 9 of the Endangered Species Act prohibits the "take" (e.g., harm, harass, pursue, injure, kill) of federally-listed wildlife species. Unless new information reveals effects of the Project that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the Project, no further action pursuant to the ESA is necessary at this time.

If you have any questions, please contact Dr. Stephanie Millsap of my staff at 916-930-5669.

Sincerely,



Daniel Welsh
Deputy Field Supervisor

cc:

FERC #P-2246 Service List, Yuba River Development Project
Mary-Lisa Cornell, CDFW, Rancho Cordova
Tom Holley, NMFS, Sacramento
Rachel Hutchinson, SYRCL,
Jennifer Norris, USFWS, SFWO, Sacramento

References

- U.S. Fish and Wildlife Service. 1980. Final Rule: Listing the Valley Elderberry Longhorn Beetle as a Threatened Species with Critical Habitat. September 8, 1980. Federal Register 45(155): 52803- 52807.
- U.S. Fish and Wildlife Service. 1984. Valley Elderberry Longhorn Beetle Recovery Plan. Portland, Oregon. 70pp.
- U.S. Fish and Wildlife Service. 1996. Final Rule: Determination of Threatened Status for the California Red-Legged Frog. May 23, 1996. Federal Register 61(101):25813-25833.
- U.S. Fish and Wildlife Service. 2002. Recovery Plan for the California Red-Legged Frog (*Rana aurora draytonii*). Portland, Oregon. viii + 173 pp.
- U.S. Fish and Wildlife Service. 2010. Final Rule: Revised Designation of Critical Habitat for the California Red-Legged Frog. March 17, 2010. Federal Register 75(51)12816-12959.
- U.S. Fish and Wildlife Service. 2017. Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle (*Desmocerus californicus dimorphus*). Sacramento Fish and Wildlife Office, California. 28 pp.

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

CERTIFICATE OF SERVICE

I hereby certify that the U.S. Fish and Wildlife Service response to the May 31, 2018 Request for concurrence with the endangered species determinations under Section 7 of the Endangered Species Act for the Yuba River Development Project, has this day been electronically filed with the Federal Energy Regulatory Commission and electronically served on Parties indicating a willingness to receive electronic service and served, via deposit in U.S. mail, first-class postage paid, upon each other person designated on the service list for Project #2246, compiled by the Commission Secretary.

Dated at Sacramento, California, this 22nd of June, 2018



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Document Content(s)

USFWS_comments_YRDP_FERC2246_ESAconcur_ signed.PDF.....1-5