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May 20, 2025

Bryan Kelly, Deputy General Manager (Water)
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Subject: Notice of Preparation (NOP) of a Draft Environmental Impact Report for the FERC License of Merced River Hydroelectric Project and Merced Falls Hydroelectric Project (Project) State Clearinghouse No. 2025041094

Dear Bryan Kelly:

The California Department of Fish and Wildlife (CDFW) received a NOP from Merced Irrigation District (Merced ID) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take except as specifically provided for in Fish and Game Code; none of those specific exceptions are applicable to this project.

Bird Protection: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Other Special Status Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines (California Code of Regs tit. 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for the Project.

Federal Energy Regulatory Commission (FERC): CDFW is the appropriate State Fish and Wildlife agency for resource consultation and Federal Power Act (FPA) Section 10(j) (16 U.S.C. § 803 (j)) purposes. The fish and wildlife resources of the State of California are held in trust for the people of the state by and through CDFW (Fish & G. Code § 711.7). CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). The mission of CDFW is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public. It is the goal of CDFW to preserve, protect, and as needed, to restore habitat necessary to support native fish, wildlife, and plant species within the FERC-designated boundaries of these Projects, as well as the areas adjacent to these Projects in which resources are affected by ongoing project operations and maintenance activities and recreational use.

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CDFW's coordination with the State Water Board and other resource agencies is an effective path to codifying our preferred conditions via certifications, because CDFW only has recommendation authority under the FPA. Along with federal land management agencies' mandatory 4(e) conditions and National Oceanic and Atmospheric Administration's (NMFS) Section 18 fishway prescriptions, Certification conditions can be used by state and federal agencies to help mitigate hydropower impacts on riverine ecosystems.

PROJECT DESCRIPTION SUMMARY

Proponent: Merced ID

Project Description/Objective: Merced ID, the CEQA lead agency, announced the availability of an NOP of a Draft Environmental Impact Report (EIR) for the proposed Project. Merced ID is proposing to prepare an EIR for the relicensing or acceptance of new licenses from FERC to continue operation of the Merced River Hydroelectric Project and Merced Falls Hydroelectric Project. Merced ID has applied for licenses with a term of up to 50 years. FERC may decide to offer none, one or two licenses for a term from 30 to 50 years for the project(s). For both projects, Merced ID proposed alterations to existing project boundaries. In addition, Merced ID proposes improvements to its existing recreational facilities and construction of a new recreational facility, which are analyzed in a separate CEQA document (Merced Recreation PEIR; SCH# 2024051222 <https://ceqanet.opr.ca.gov/2024051222>). Aside from recreation area upgrades, there are no proposed changes to existing hydroelectric facilities or operations and maintenance of both projects.

Merced ID determined that the proposed Project may have a significant impact on the physical environment. Therefore, the EIR will describe the proposed Project and evaluate potential environmental impacts with the Project and its alternatives, and will develop measures to avoid, reduce, or compensate for any significant impacts.

The existing Merced River Project consists of two developments, New Exchequer and McSwain. The initial license for the Merced River Project was issued by the Federal Power Commission, FERC's predecessor, to Merced ID on April 18, 1964, effective on March 1, 1964, for a term ending February 28, 2014. Merced ID filed with FERC an application for new license on February 26, 2012, which Merced ID amended on April 23, 2014.

On February 8, 2012, Pacific Gas and Electric Company (PG&E) filed with FERC an application for a new license for the Merced Falls Project. On March 2, 2017, PG&E formally transferred the license and ownership of the Merced Falls Project to Merced ID. On December 4, 2015, FERC issued a joint Final Environmental Impact Statement (FEIS) for the Merced River Project and Merced Falls Project relicensings. Merced ID will continue operating the Merced River Project and Merced Falls Project under annual FERC licenses until the FERC relicensing process is complete.

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The purpose and objectives of the proposed Project as stated by the Proponent include: “[obtaining] new FERC licenses of maximum term for the Merced River Project and the Merced Falls Project at minimum cost, both initially and ongoing, that protects and enhances the projects’ primary purposes, which include flood control, water supply, electricity generation using a carbon-free and renewable source, economic benefits for Merced County, environmental protection, and recreational opportunities.”

Location: The proposed Project is on the Merced River watershed in the western foothills of the Sierra Nevada, in Merced and Mariposa counties, California. The existing Merced River Project is on the mainstem of the Merced River, about 23 miles northeast of the city of Merced, California. It occupies approximately 11,143 acres of land, with 3,154.9 acres being federal lands administered by the United States (U.S.) Department of the Interior, Bureau of Land Management (BLM) as part of the Sierra Resource Management Area. Most of the remaining lands are owned by Merced ID.

The existing Merced River Project consists of two developments, New Exchequer and McSwain. Completion of these two dams (New Exchequer and McSwain dams) in 1967 created two lakes, Lake McClure and the McSwain Reservoir. The lakes are in the foothills on the western slope of the Sierra Nevada Mountain range, approximately 23 miles northeast of Merced. Lake McClure has a storage capacity of about 1,025,000 acre-feet, while Lake McSwain has a storage capacity of 9,730 acre-feet. In total, the lakes combined include a total shoreline length of 94.5 miles.

The proposed Project ranges in elevation from approximately 880 feet (ft) at the upstream end of Lake McClure to 320 ft at McSwain Reservoir.

The existing Merced Falls Project is located on the mainstem of the Merced River immediately downstream of the Merced River Project in Mariposa and Merced counties. It occupies approximately 75.6 acres of land, with 1.0 acre of federal lands administered by BLM, and most of the remaining lands owned by Merced ID.

Timeframe: Unspecified; Up-to 50-year term(s)

COMMENTS AND RECOMMENDATIONS

The comments and recommendations offered below are limited in scope and content to the environmental information relevant to our statutory responsibilities in connection with the proposed FERC relicensings.

General Scope: CDFW recommends that the Project proponent refer to relevant comments and recommendations offered in previous letters, which are cited below.

FERC License Duration: To continue operation and maintenance of the Merced River and Merced Falls projects, Merced ID must either obtain new federal licenses from FERC or continue to apply and be granted annual temporary licenses until a permanent

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license is accepted by Merced ID. Merced ID proposed Project includes the acceptance of new FERC licenses to continue operation and maintenance of the Merced hydroelectric projects over multiple decades. Merced ID has applied to FERC for licenses with 50-year terms for both projects.

CDFW acknowledges FERC, under the authority of the FPA, may issue licenses for terms ranging from 30 to 50 years for the continued operation and maintenance of non-federal hydroelectric projects. Regarding this statement, CDFW recommends the Commission issue *30-year licenses* given the difficulties foreseeing and effectively mitigating environmental consequences more than three decades into the future. Uncertainties such as potential shifts in hydrologic and meteorological conditions due to climate change require shorter, more flexible license terms. CDFW is particularly concerned with the potential for decline in the status of the native fish assemblage and other aquatic communities in the Merced River or community shifts that could favor the proliferation of introduced species over the next 30 to 50 years. Regardless of license term, CDFW recommends an explicit "10-year re-opener" statement be included in the license to allow the Commission to consider whether to amend the new license and adaptively manage the Merced River projects if new relevant information regarding Project-impacted resources is developing during the new license term.

The State Water Resources Control Board (Water Board) may rely on this CEQA analysis, as a supplement to the National Environmental Policy Act (NEPA) FEIS, to make its decision regarding whether to issue a Clean Water Act (CWA) Section 401 water quality certification (WQC) for the FERC Merced River and Merced Falls Hydroelectric Projects' relicensing. Therefore, CDFW makes this same recommendation about introducing adaptive management strategies to the Water Board in their granting of a final Clean Water Act, Section 401 Water Quality Certification for the Merced River and Merced Falls hydroelectric projects.

Ramping Rates: The FEIS identified the importance of avoiding rapid flow fluctuations that could have adverse effects on the Merced River fishery; however, CDFW considers the ramping rates in FERC's Staff recommendation to be too high. Consequently, CDFW recommends the development of adequate ramping rates to ensure that the goal of avoiding rapid flow fluctuations is met. The FEIS recommended that Merced ID operate the power plants to avoid rapid fluctuation of the Merced River. At Crocker-Huffman diversion, it was recommended to restrict the rate of change of release during any one-hour period to no more than double nor less than one-half the amount of release as the start of the change, and during emergency periods, endeavor to make releases in a manner that is not detrimental to fish (license article 42). Likewise, CDFW would like to ensure that ramping rates are not detrimental to fish. The FEIS requirement above could be improved by prescribing ramping rates that are more protective to fish. We recommend using Hunter (1992) which recommends rates of no more than two-inches/hour. In addition, the scope of emergency conditions should be defined and in emergency conditions, a consideration should be made if more

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aggressive ramping rates are necessary. As described in the FEIS, the proposed rate changes emphasize flow management under emergency conditions as opposed to normal operations. Such emergency conditions need to be defined objectively. If more aggressive ramping rates are needed for emergency purposes, then those could be considered and adopted in consultation with resource agencies.

Ramping at the very highest flows and very lowest flows is not as likely to cause fish stranding and other impacts as when flows are decreasing from being on floodplains to in channel. Moreover, CDFW would be more concerned with rapid flow decreases rather than increases. Potentially different rates could be determined for different flow thresholds.

Rapid flow decreases are particularly concerning in terms of their impact on fish and other species. Since the FEIS, CDFW has observed that in at least one case ramping has been done at the maximum allowed rate. These rates of change are too fast and have a high potential for disconnecting floodplains which not only increases the potential for stranding juvenile salmonids, but it also impedes riparian recruitment of native trees (e.g., cottonwood) which requires slow recession of flows.

CDFW recommends that the Proponent considers other ramping rates besides those analyzed by FERC staff in the joint FEIS for the Merced River Project and Merced Falls relicensings in consultation with fish and wildlife agencies.

Fish Stocking: One of the broader purposes of the Project is to continue to offer opportunities for public recreational use, including fishing. The Proponent should consider that the adequacy of the EIR will make it more useful as a basis to issue any permits or project approvals in the future. As such, the EIR should consider the importance of fish stocking to support or mitigate the loss of recreational fishing opportunities in the Merced River and Merced Falls after the improvement of fishing access as well as the potential construction, enhancement, repair, and maintenance of infrastructure (e.g., boat-launch facilities, boat docks, fishing ponds).

CDFW recommends the inclusion of fish stocking as a recreation measure in this Project. This measure can be developed based on a previous Memorandum of Understanding (MOU) between CDFW and Merced ID regarding fish stocking at McClure and McSwain reservoirs. Moreover, fish stocking had been included in FERC's final EIS for Merced River and Merced Falls including a recommendation to "[a]nnually stock rainbow trout, fingerling kokanee, and Chinook salmon in Lake McClure and McSwain reservoir for recreational fishing."

Special-Status Species: Special-status species are known to exist in the vicinity of the Project Site and there is the potential for the Project to impact State- and federally listed species. Records from the California Natural Diversity Database (CNDDDB) show that the following special-status species, including State and federally listed species (CDFW 2025), could be impacted by construction and operation of the Project: the State

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endangered and fully protected bald eagle (*Haliaeetus leucocephalus*); the State and federally endangered foothill yellow-legged frog (*Rana boylei*); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State threatened and fully protected limestone salamander (*Hydromantes brunus*); the State fully protected ringtail (*Bassariscus astutus*) and golden eagle (*Aquila chrysaetos*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*); the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*); the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*) and western pond turtle (*Actinemys marmorata*); the State species of special concern American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*), Townsend's big-eared bat (*Corynorhinus townsendii*), western mastiff bat (*Eumpos perotis*), western red bat (*Lasiurus blossevillii*), coast horned lizard (*Phrynosoma cronatum*), American white pelican (*Pelecanus erythrorhynchos*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), short-eared owl (*Asio flammeus*), northern harrier (*Circus cyaneus*), purple martin (*Progne subis*), yellow-breasted chat (*Icteria virens*), and yellow warbler (*Setophaga petechia*).

CDFW recommends that a habitat assessment be conducted at and in the vicinity of the Project Site for the aforementioned plant and animal species (hereafter, special-status species). The assessment should be conducted by a qualified biologist knowledgeable with the species and any potentially suitable habitat identified should be surveyed by a qualified biologist for the potential presence of these species as part of the biological technical studies conducted in support of the EIR. If the surveys detect presence of special-status species at and/or near the Project Site, the EIR should include measures to minimize, mitigate, and avoid impacts to those species, or require the Proponent to obtain incidental take authorization under Section 2081 of Fish and Game Code if take avoidance of species listed pursuant to CESA is infeasible. Similarly, if the biological surveys detect the presence of special-status species, the EIR should require that the Proponent consult with CDFW prior to commencing the Project, to identify and implement appropriate measures to avoid or minimize impacts to those species. It should be noted that when a species, such as ringtail, is State fully protected, no "take", incidental or otherwise, except as specifically provided for in Fish and Game Code can be authorized by CDFW; none of those specific exceptions are applicable to this Project and complete avoidance of this species is required to comply with State law.

CDFW recommends that the Proponent conduct focused surveys for limestone salamander. In addition, CDFW recommends that the surveys for foothill yellow-legged frog, California red-legged frog, and western burrowing owl be conducted in accordance with the species-specific protocols which can be found here: <https://wildlife.ca.gov/Conservation/Survey-Protocols>. CDFW recommends that the special-status species plant surveys be surveyed for by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" which can also be found at:

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<https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary. If take could occur because of Project-related activities, consultation with CDFW to discuss how to avoid take is warranted.

Special-Status Fish:

California Central Valley Spring-run Chinook Salmon

CDFW concurs with the NOP statement that adult spring-run Chinook salmon found in the San Joaquin River from Friant Dam downstream to its confluence with the Merced River are part of a Section 10(j) nonessential experimental population related to the National Marine Fisheries Service (NMFS) San Joaquin River Spring-run Chinook Salmon Reintroduction Program. However, the nonessential experimental population designation does not extend to stray fish in the Merced River and their offspring. Although they occur in low numbers, these spring-run Chinook salmon are important to the conservation and recovery of the species. Spring-run experimental Chinook salmon released as part of implementation of the San Joaquin River Restoration Program have been documented in the Merced River in both 2021 and 2023. These fish were recovered in Escapement Surveys in the Merced River and at CDFW's Merced River Hatchery. This data is available on the Regional Mark Processing Center (RMPC) website (<https://www.psmfc.org/program/regional-mark-processing-center-coded-wire-tag-rmpc>). Therefore, CDFW requests a broader consideration of the proposed Projects' impacts on all native fish in the Merced River, including Spring-run Chinook salmon.

White Sturgeon

The NOP states that white sturgeon, a state threatened candidate species, is not likely to occur in the proposed Project area. However, white sturgeon have been documented in the Merced River. The Sacramento-San Joaquin Delta White Sturgeon Acoustic Telemetry Study has provided white sturgeon migration information from over 300 acoustically tagged white sturgeon from 2010-2021. Some of the white sturgeons were detected in the Merced River in 2018, 2019, 2023, and 2024. This detection data is available on the Delta Science Tracker website (<https://sciencetracker.deltacouncil.ca.gov/activities/white-sturgeon-telemetry-synthesis>)."

Bird Protection: CDFW recommends that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1 through September 15), CDFW recommends the EIR commit the Project applicant to being responsible for ensuring that implementation does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

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To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the EIR. Depending on the results of that assessment, CDFW further recommends that the EIR for this Project require that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground- or vegetation-disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project Site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends the EIR include a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project Site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CNDDDB: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project Site.

Project Alternatives Analysis: The NOP states that the EIR will identify and evaluate feasible alternatives to the proposed Project that might reasonably be assumed to reduce significant impacts, including a “No Project” alternative (Section 4.17). As such, the NOP described a scope for the analysis of alternatives to the proposed Project, including an “FEIS/Merced HR&L Agreement” alternative, previously called a Voluntary

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Agreement. This proposed alternative would include the terms and conditions in Merced ID's Merced River Healthy Rivers and Landscape (HR&L) proposed agreement. However, the details of a Merced HR&L agreement are not publicly available, and Merced ID has not signed onto the Voluntary Agreement Memorandum of Understanding (MOU) to finalize it. Consequently, CDFW deems the analysis of a Merced HR&L agreement to be inappropriate until Merced ID has finalized and signed onto the MOU with other parties. Until such time as Merced ID completes the Voluntary Agreement process, commitments in the proposal may change resulting in a CEQA document that may not accurately describe or analyze the final agreement.

CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the Project's CEQA document be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Lake and Stream Alteration: Portions of the Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq, such as some types of projects that require in-lake work including expanding and rehabilitating boat ramps, or adding sand for inland expansion of existing beach areas are important to support fish stocking activities in the Merced River and Merced Falls areas.

Fish and Game Code section 1602 requires the Proponent notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. The EIR should address the potential Project-related impacts to all streams at

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and near the Project Site. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration (LSA) Program at (559) 243-4593 or R4LSA@willife.ca.gov.

CDFW is required to comply with CEQA in the issuance of an LSA Agreement; therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For additional information on notification requirements, please contact staff in the Central Region LSA Program at (559) 243-4593 or R4LSA@willife.ca.gov, or visit the Lake and Streambed Alteration Program website at <https://wildlife.ca.gov/Conservation/LSA>.

Federally Listed Species: CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to federally listed species including, but not limited to the aforementioned foothill yellow-legged frog, California red-legged frog, western spadefoot, and western pond turtle. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of any Project activities.

CDFW is available to meet with you ahead of Draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please address any questions or concerns regarding these comments to Abimael León, the Regional FERC Coordinator, at Abimael.Leon@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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for Julie A. Vance
Regional Manager

ec: See Page Twelve

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ec: Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
Via electronic submittal

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REFERENCES CITED

- CDFW (California Department of Fish and Wildlife). 2025. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed May 7, 2025.
- CDFW. 2022. CDFW Responds to Petitions for Reconsideration of Water Quality Certification for Merced River and Merced Falls Hydroelectric Projects under P-2179 and P-2467. November 17, 2022.
- CDFW. 2024a. Response to Proposed Order Reconsidering Water Quality Certifications for Merced River and Merced Falls Hydroelectric Projects under P-2179 and P-2467. April 8, 2024.
- CDFW. 2024b. Response to Notice of Intent to Rely on FERC Final Environmental Impact Statement, with Mandatory Conditions, in Combination with a Supplemental Analysis, to Satisfy CEQA for the Merced River and Merced Falls Hydroelectric Projects under P-2179 and P-2467. State Clearinghouse No. 2024051222. June 25, 2024.
- CDFW. 2024c. Notice of Preparation (NOP) of a Draft Environmental Impact Report for the Merced Irrigation District Recreation Facilities Improvement Project (Project) at Lake McClure and McSwain Reservoir. State Clearinghouse No. 2024051222. August 2, 2024.
- CDFW. 2025. Response to Notice of Intent to Adopt Initial Study/Mitigated Negative Declaration to Satisfy CEQA Requirements for Merced River and Merced Falls Hydroelectric Projects FERC Relicensings and Merced Irrigation District Recreation Facilities Improvement Project Program Environmental Impact Report. State Clearinghouse No. 2024051222. March 17, 2025.
- Hunter, M. A. 1992. Hydropower flow fluctuations and salmonids: A review of the biological effects, mechanical causes, and options for mitigation. State of Washington, Department of Fisheries. Technical Report. Number:119