



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4014  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*EDMUND G. BROWN, Jr., Governor*  
*CHARLTON H. BONHAM, Director*



April 14, 2015

Jeffrey Parks  
Water Quality Certification Program  
Division of Water Rights  
State Water Resources Control Board  
Post Office Box 2000  
Sacramento, California 95812-2000  
[Jeff.Parks@waterboards.ca.gov](mailto:Jeff.Parks@waterboards.ca.gov)

Subject: **Mitigated Negative Declaration  
Pinecrest Lake Level Modification Project (Project)  
SCH#2015032047  
Tuolumne County**

Dear Mr. Parks:

The California Department of Fish and Wildlife (Department) has reviewed the above Pinecrest Lake Level Modification Project (Project) submitted by the State Water Resources Control Board. Approval of the Project would allow Pacific Gas and Electric (PG&E) to reduce the water level of Pinecrest Lake between the end of spill and Labor day from the current minimum elevation of 5,608 feet to a minimum of 5,606 feet in wet water years, 5,604 feet in normal–wet water years, and 5,600 feet in normal dry and dry water years. The end of spill is defined in the water quality certification as when the reservoir elevation falls below 5,617 feet and the inflow to Pinecrest Lake decreases so the diurnal fluctuation does not cause the water surface elevation to approach 5,617 feet and the outlet valve is used by PG&E to control water releases from Strawberry Dam. End of spill typically occurs around mid-July in wet water years, early July to late June in normal water years, and mid-June in dry water years. The Federal Energy Regulatory Commission (FERC) Spring Gap-Stanislaus Hydroelectric Project (FERC Project No. 2130) was evaluated under California Environmental Quality Act (CEQA) in 2009 prior to the issuance of the water quality certification, however, the above proposed lake levels were not evaluated. The Department commented on the 2014 temporary variance requested by PG&E in a letter sent to the State Water Resources Control Board dated April 22, 2014, which is posted on the State Water Resources Control Board website at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/docs/springgap\\_stanislaus\\_ferc2130/comments\\_cdfw\\_variance\\_04232014.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/springgap_stanislaus_ferc2130/comments_cdfw_variance_04232014.pdf). The Project is located south at Pinecrest Lake, east of Highway 108, Pinecrest USGS Topographic Map, Tuolumne County.

The Department is concerned with the potential Project impacts to special status species that may occur on or adjacent to the Project site. The Department is specifically concerned with the potentially significant impacts to the State Endangered and State Fully Protected bald eagle (*Haliaeetus leucocephalus*), osprey (*Pandion haliaetus*) and other nesting birds, and aquatic resources. The Department requests the following recommendations be included in the CEQA document prepared for this Project as enforceable mitigation measures as appropriate. Our comments follow.

### **Department Jurisdiction**

**Trustee Agency Authority:** The Department is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 [commencing with section 21000] of the Public Resources Code).

**Responsible Agency Authority:** The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), the Department may need to issue an Incidental Take Permit (ITP) for the Project. CEQA requires a mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (sections 21001(c), 21083, Guidelines sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. Issuance of an Incidental Take Permit (ITP) is subject to CEQA review. The Department recommends that the CEQA document prepared for this Project describes and addresses the potential impacts to listed species; otherwise, preparation of a supplemental CEQA document would be necessary if issuance of an ITP is necessary.

**Unlisted 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 Regulations, Title 14, Chapter 3, and Section 15380), it ought to be fully considered in the environmental analysis for the Project. If special status animal or plant species are detected during ground disturbing activities, consultation with the Department is warranted to discuss potential avoidance, minimization, and mitigation measures.

**Fully Protected Species:** The Department has jurisdiction over fully protected 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 the Department cannot authorize their "take". The bald eagle is a fully protected species that is known to occur in the Project area. The Department recommends the CEQA document for this Project evaluate and address potential Project-related impacts to this species and include appropriate species specific avoidance and minimization measures.

**Bird Projection:** The Department has jurisdiction over actions which may 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 destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory non-game bird). Unless the Project-related activities will be conducted outside the bird nesting season, the Department recommends that the lead agency require appropriate avoidance and minimization measures for raptors and other nesting birds in the Project area be included in the CEQA document.

**Lake and Stream Alteration Agreement (LSAA):** The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 et seq. The MND includes mitigation measures for substrate improvements, including the removal of rocks, stumps, and mud flats from the shoreline of Pinecrest Lake. These project activities warrant notification to the Department pursuant to Fish and Game Code section 1602, which requires an entity to notify the Department 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; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. The Department is required to comply with CEQA in the issuance or the renewal of an LSAA. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243 4593.

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species.

## **Recommendations**

**Nesting birds:** Mitigation Measure #1 indicates rocks, stumps, and mud flats, exposed by the lowering of the lake water level, may be removed at the direction of the United States Forest Service. It is unclear what type of disturbance (e.g. vegetation, vibrations, and noise) may occur during these project related activities. The trees, shrubs, and

grasses within and in the vicinity of the Project site likely provide nesting habitat for songbirds and raptors. Based on the information provided, it is assumed these activities will take place during water level draw down, anytime from mid-June through early September. The Department encourages Project implementation to occur during the non-nesting bird season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. Prior to work commencing; including staging, clearing, and grubbing, the Department recommends surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of Project commencement and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by noise, vibration, odors, and movement of workers or equipment. Identified nests should be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline. Once work commences, all nests should be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, the work causing that change should cease and the Department consulted for additional avoidance and minimization measures. If continuous monitoring of identified nests by a qualified biologist is not feasible, the Department recommends a minimum no disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors 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 parental care for survival. Variance from these no-disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended the Department be notified in advance of implementation of a no disturbance buffer.

**Bald Eagle:** The State endangered and State fully protected bald eagle is known to occur in the Project area vicinity. Mitigation Measure #1 indicates rocks, stumps, and mud flats, exposed by the lowering of the lake water level, may be removed at the direction of the United States Forest Service. The Department recommends this work is conducted outside the bald eagle nesting season (approximately March through early July), or until a qualified wildlife biologist has determined that the young have fledged and are no longer reliant on parental care for survival. The Department recommends following the Protocol for Evaluating Bald Eagle Habitat and Populations in California (Jackman and Jenkins, 2004), and if breeding bald eagles are detected within the Project area the Department requests the project proponent follow CDFW's Bald Eagle Breeding Survey Instructions (2010). CDFW advises the bald eagle be fully addressed in the CEQA document for the Project, including all avoidance, minimization, and mitigation measures, and that these measures be made enforceable conditions of Project approval.

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We appreciate the opportunity to provide recommendations for this Project. If you have any questions on these issues, please contact Margarita Gordus, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 243-4014, ext. 236, or by electronic mail at [Margarita.Gordus@wildlife.ca.gov](mailto:Margarita.Gordus@wildlife.ca.gov).

Sincerely,



Jeffrey R. Single, Ph.D.  
Regional Manager

cc: State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044

Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, D.C. 20426

John Aedo  
San Francisco Regional Office  
Federal Energy Regulatory Commission  
100 First Street, Suite 2300  
San Francisco, California 94105-3084

Richard Doble  
Pacific Gas and Electric Company  
Post Office Box 770000; Mail Code N13E  
San Francisco, California 94177

Beth Martinez  
Stanislaus National Forest  
19777 Greenly Road  
Sonora, California 95370

Deborah Giglio  
United States Fish and Wildlife Service  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825

ec: California Department of Fish and Wildlife  
Dean Martson - [Dean.Martson@wildlife.ca.gov](mailto:Dean.Martson@wildlife.ca.gov)

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Linda Connolly - [Linda.Connolly@wildlife.ca.gov](mailto:Linda.Connolly@wildlife.ca.gov)  
Annette Tenneboe - [Annette.Tenneboe@wildlife.ca.gov](mailto:Annette.Tenneboe@wildlife.ca.gov)  
Margarita Gordus - [Margarita.Gordus@wildlife.ca.gov](mailto:Margarita.Gordus@wildlife.ca.gov)  
Sarah Bahm - [Sarah.Bahm@wildlife.ca.gov](mailto:Sarah.Bahm@wildlife.ca.gov)

### **Literature Cited**

CDFG. 2010. Bald Eagle Breeding Survey Instructions. California Department of Fish and Game, March 2010.

Jackman, R.E., and J.M. Jenkins. 2004. Protocol for evaluating bald eagle habitat and populations in California. U.S. Fish and Wildlife Service, Endangered Species Division, Forest and Foothills Ecosystem Branch, Sacramento California.