

**DEPARTMENT OF WATER RESOURCES**

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February 14, 2020

*Electronically Filed*

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street Northeast  
Washington, DC 20426

FERC Project No. 14797—Devil Canyon Project Relicensing Final  
License Application—Response to Agency Additional Study Request

Dear Ms. Bose:

On November 20, 2019, pursuant to Sections (§) 4.51 and 16.8(d) of Title 18 of the Code of Federal Regulations (CFR), the California Department of Water Resources (DWR) filed with the Federal Energy Regulatory Commission (FERC) its Final Application for New License for Major Project—Existing Dam (FLA) for the Devil Canyon Project Relicensing, FERC Project Number 14797 (Project).

On December 3, 2019, FERC issued its *Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments*, which provided a January 20, 2020, deadline for agencies to file with FERC additional study requests. On January 16, 2020, the California Department of Fish and Wildlife (CDFW) filed with FERC a Request for Additional Information.

Upon review of CDFW's letter, DWR notes that CDFW requested two additional studies: (1) habitat assessments and surveys for State of California sensitive species within areas that will be directly or indirectly affected by the Project; and (2) surveys for aquatic invasive species, special-status semiaquatic and aquatic wildlife species, and benthic macroinvertebrates in the West Fork Mojave River from Cedar Springs Dam to Deep Creek. This letter provides DWR's response for your consideration to each of these study requests.

In addition to requesting the two additional studies, in its letter CDFW proposed several protection, mitigation, and enhancement plans and measures. These included, among others, development of a vertebrate pest management plan, a bat management plan, and a non-native invasive species plan. This letter does not respond to these CDFW requests; however, DWR reserves its right to respond to CDFW's proposed plans and measures at the appropriate time in the relicensing process.

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DWR notes that pursuant to 18 CFR § 4.32(b)(7), requests for additional studies after the filing of an application must meet the following requirements:

*For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available.*

### **CDFW Study Request #1: Habitat Assessments and Surveys for State-Listed Sensitive Species within Areas Directly or Indirectly Affected by the Project**

CDFW requested that FERC direct DWR to conduct “complete habitat assessments and surveys for state sensitive species within areas that will be directly or indirectly affected by the Project.” CDFW’s letter provided no rationale or specificity in support of its request, other than indicating that the surveys should be “similar to those that were conducted for other resources (e.g., non-native invasive plants, federally listed bird and plant species).” CDFW’s study request is the same as a study request it made in its comments on DWR’s Draft License Application (DLA). DWR did not adopt CDFW’s request for the reasons stated in Section 5.3.4.2 of Exhibit E in DWR’s FLA, which are summarized below.

DWR recommends that FERC not adopt CDFW’s study request. Fundamentally, CDFW has not described why existing information developed by DWR’s relicensing Terrestrial Wildlife Species—California Wildlife Habitat Relationship Study is not adequate. DWR’s study identified habitat for 53 special-status wildlife species, which include State-listed and sensitive species, within the Project boundary. DWR then identified where Project operation and maintenance activities or Project-related recreation would occur within or adjacent to the species’ habitat. Where overlap between these activities and the habitat occurred, DWR assessed the potential for the activity to affect the species’ habitat and the species itself if it was occupying the habitat when the activity would occur. DWR’s analysis, which is presented for each of the 53 species in Section 5.4.1.2 in Exhibit E of DWR’s FLA, is an efficient and adequate approach and analysis of potential Project effects on State-listed special-status wildlife species and sensitive species, especially when compared to the cost and level of effort that would be necessary to conduct detailed habitat assessments and field surveys similar to what DWR performed for federally-listed species for each of the 53 wildlife

species potentially affected by the Project. CDFW has not provided any details as to why DWR's analysis is not adequate and why it is necessary for DWR to perform these costly and time-consuming surveys to inform license conditions.

Additionally, CDFW has not proposed any specific study methodologies, other than stating that methods should be "similar to those that were conducted for other resources," nor has it described the level of effort entailed or the estimated costs to be incurred in performing the requested study. While CDFW has not provided a description of the methods it proposes for conducting the requested study, developing and gaining concurrence on the methods and conducting the study would likely take an additional year or more, understanding that it could take time to reach agreement on detailed field methods for each of the 53 wildlife species and at least 12 months to perform all the field surveys. Given that the requested study would provide no information that would meaningfully add to the body of knowledge needed for relicensing, a likely delay of over a year in the relicensing process is not warranted.

### **CDFW Study Request #2: Surveys for Aquatic Invasive Species, Special-Status Semiaquatic and Aquatic Wildlife Species, and Benthic Macroinvertebrates in the West Fork Mojave River from Cedar Springs Dam to Deep Creek**

CDFW requested that FERC direct DWR to "conduct surveys of aquatic invasive species [AIS]; special-status semiaquatic and aquatic wildlife species; and benthic macroinvertebrate from the West Fork Mojave River downstream of Cedar Springs Dam to Deep Creek." As the basis for its request, CDFW cites: the fact that DWR makes water releases into the West Fork Mojave River; California statutes emphasizing the importance of maintaining adequate streamflows below dams; and the potential for the Project both to promote invasive species and benefit other aquatic/semi aquatic species by creating slow moving water and pool habitat. CDFW further hypothesized that: "Not all exotic species found within Silverwood Lake will become invasive, but if the distribution and abundance of any exotic species were to increase beyond acceptable levels, it would more than likely disrupt ecological processes."

DWR recommends that FERC not adopt CDFW's study request. CDFW rightly notes that its study request is similar to the request made in response to DWR's DLA. In its DLA comment letter, CDFW requested additional AIS surveys, protocol-level three-pass fish sampling, and identification of potential fish spawning habitat in the West Fork Mojave River downstream of Cedar Springs Dam to Grass Valley Creek. DWR did not adopt CDFW's request for the reasons stated in Section 5.3.4.2 of Exhibit E in DWR's FLA. Most importantly, the Project does not use any local, natural inflow into Silverwood Lake to generate power or other Project purposes: the timing and magnitude of water releases into the West Fork Mojave River are not related to the

Project, and are established by the Mojave River Court Decree and the Decree's Watermaster. In addition, DWR performs no Project work in the reach, and no Project facilities are in the reach; AIS surveys would not further inform license requirements, since if AIS were found, it would be impossible to determine whether the AIS were in the streams due to Project activities or non-Project activities, such as recreation unrelated to the Project and dispersal from other areas; and CDFW provided no mechanism under which the Project would affect AIS, fishes, special-status semiaquatic or aquatic wildlife or benthic macroinvertebrates in this area. CDFW's January 16, 2020, letter provides no evidence to rebut DWR's argument in its FLA for not adopting CDFW's requested studies.

In its January 16, 2020, letter, CDFW has not described why existing information developed by DWR's Reconnaissance Survey of the West Fork Mojave River Downstream of Cedar Springs Dam is not adequate. DWR's study summarized flow, habitat, and species in the reach, and undertook considerable effort to assimilate information that satisfies the technical requirements for the new license application. DWR maintains that the data provided in the draft and final license applications provides decision-makers with sufficient technical data to make an informed decision regarding license requirements.

CDFW has not described why the information that would be developed by its requested study would better inform the development of license requirements than existing information already does, nor has it established a clear nexus to the Project. As noted above, the Project does not have any facilities in the reach, does not perform any work in the reach, and does not determine the amount or timing of flow entering the reach.

CDFW has not proposed any specific study methodologies or described the level of effort or anticipated cost that would be entailed in performing the requested study. Again, DWR found that existing information is adequate to inform license requirements and, therefore, this effort would be superfluous.

If FERC directed DWR to perform the requested study, DWR understands that it could take time to reach agreement on detailed field methods and at least six months to perform the field survey. Such a delay in the relicensing and in issuance of a new license is not warranted since the resulting study information would not provide any additional information beyond what has been submitted.

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DWR's role as the Licensee is dedicated to conducting studies that have been determined necessary; we follow agency protocol to support the preparation of license applications for its projects and eventual implementation of the license. We are confident that the technical information provided in the FLA to FERC meets that requirement.

If you have any questions or would like to discuss this further, please contact me at (916) 557-4554 or your staff may contact Jeremiah McNeil, DWR's Relicensing Program Manager at (916) 557-4555.

Sincerely,



Gwen Knittweis, Chief  
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cc w/out Attachment: (See Attached Distribution List.)

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