

DEPARTMENT OF WATER RESOURCES

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February 19, 2021

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
Scoping Document 1—Responses to Stakeholder Comments

Dear Ms. Bose:

On December 2, 2020, the Federal Energy Regulatory Commission (FERC) issued its Scoping Document 1 (SD1) for the Department of Water Resources' (DWR) Devil Canyon Project Relicensing, FERC Project No. 14797 (Project). FERC requested information and comments on SD1 be filed no later than February 1, 2021.

Comments on SD1 were filed with FERC by the San Bernardino County Department of Public Works on January 26, 2021 by the California State Water Resources Control Board, California Department of Fish and Wildlife (CDFW), and the San Bernardino National Forest (SBNF) under the U.S. Department of Agriculture, Forest Service (USFS) on January 29, 2021, and by the Pacific Crest Trail Association (PCTA) on February 1, 2021.

This letter provides clarification on comments brought forward by CDFW, USFS, and the PCTA. To assist FERC staff with their review, additional background information and references to existing license application documentation that discuss several of the individual comments in detail are provided below.

PCTA Comments

In the PCTA comment letter dated February 1, 2021, the PCTA expresses concern with the proposed modification to the existing Project boundary and notes that DWR will need to conduct a study and provide further measures to manage the landscapes outside the trail easement to meet SBNF Land Management Plan (LMP) standards. The PCTA notes that there could be potential Project impacts to lands that would be removed from the boundary with the new proposed boundary modifications.

Ms. Kimberly D. Bose, Secretary
February 19, 2021
Page 2

A discussion of the existing and proposed Project boundary can be found in Exhibit A of the Final License Application (FLA). In Section 3.0 of Exhibit A, there is a listing of non-project facilities that are within the existing and proposed Project boundary, such as the Pacific Crest Trail (PCT). These facilities represent other uses that occupy lands, pass through, or are otherwise sited adjacent or near the Project facilities, but are not part of the existing or proposed Project. As noted in the FLA, most of the lands being removed have no development and are steep, brush-covered slopes. FERC requirements specify to only include those lands necessary for operation and maintenance (O&M) of the Project.

Specifically, as noted in Exhibit E of the FLA, Section 5.5.1.1, the PCT crosses through Silverwood Lake State Recreation Area (SRA) on State of California lands along the north and west shores of Silverwood Lake and is administered by USFS through easement agreements with the Department of Parks and Recreation and DWR. The SBNF LMP addresses management actions for National Forest System (NFS) lands.

As noted in Section 2.0 of Appendix C to Exhibit E of the FLA, DWR has no responsibility for originally routing the PCT. The PCT was aligned and constructed by USFS after Silverwood Lake and Cedar Springs Dam were constructed and is subject to an easement agreement between USFS and DWR on State lands near Cedar Springs Dam (including the road/laydown yard). That agreement specifies that USFS is responsible, at its sole cost, for constructing and maintaining the PCT in this area. However, DWR has agreed to review and enter cooperative discussions on a rerouting proposal if one is put forward by USFS as the administering agency for the trail.

In regards to the PCTA's comments on anticipated potential increase in recreation demand in and adjacent to the Project, DWR would like to point out that the proposed Recreation Management Plan includes a visitor services program to help manage the potential for overcrowding and provide new measures for recreationists during trip planning stages. The visitor service program will provide users with information that may help users avoid peak times, which may then help reduce overcrowding, thus reducing potential issues that can occur if the park reaches capacity and temporarily closes to further entry.

Lastly, the PCTA asks to be included in all federal land tabulations. However, the PCT is located on State lands, not federal lands as it is within Silverwood SRA, where it crosses into and through the Project boundary.

Ms. Kimberly D. Bose, Secretary
February 19, 2021
Page 3

USFS Comments

In the USFS comment letter dated January 29, 2021, SBNF suggests that Miller Canyon area of Silverwood Lake SRA could be expanded to accommodate use on NFS lands. Further, USFS disagrees with DWR's measures to help manage and reduce the potential for spill-over use on NFS lands when Silverwood Lake SRA reaches full capacity. In Section 5.5.1.1 of Exhibit E in the FLA, DWR addresses Miller Canyon area use patterns. Additionally, Section 5.5.1.3 of Exhibit E provides further discussion of recreation demand and documents an interview with a recreation user that frequents and volunteers for projects in the Miller Canyon area. As noted in the FLA, the USFS Miller Canyon/Pilot Rock area is a popular Off Highway Vehicle (OHV) riding area, and the USFS Miller Canyon Trailhead serves a strategic portal for OHV use onto the SBNF from private and Bureau of Land Management lands to the north. The FLA also notes that OHV use in Miller Canyon is a separate form of recreation use at Silverwood Lake SRA where users are seeking water-based opportunities, and such OHV use would likely occur whether the Project was present or not.

Regarding visual resources, USFS requests that DWR stain Cedar Springs Dam to reduce the contrast of the structure as seen from the PCT. In Section 5.7.2 of Exhibit A and Section 4.0 of Appendix C of Exhibit E in the FLA, DWR provides responses to the USFS proposed measure to stain the Cedar Springs Dam and spillway, which note these Project facilities are located on State lands, not on NFS lands, and the downstream faces of the dam and spillway are not visible from NFS lands.

Regarding USFS' concern about recoating the penstocks to help reduce visual contrast, it should be noted that only a small portion of the penstocks are on NFS lands and DWR agreed to recoat the penstocks with colors and materials that will help the facilities to better blend into the surrounding landscapes, but would do so when the penstock facilities need recoating.

Regarding arroyo toad (*Anaxyrus californicus*), USFS asserts the U.S. Fish and Wildlife Service (USFWS) has designated critical habitat in the West Fork Mohave River upstream of the lake. However, as noted in Section 5.4.3.1 of Exhibit E, the USFWS has determined that there is no designated critical habitat in the upper West Fork Mojave River. This has also been stated in the Federal Register notice, as of February 9, 2011 (76 FR 7246). Informal consultation with USFWS in 2020 also determined that West Fork Mohave River is not considered in their geographic analyses for impacts to arroyo toad.

Ms. Kimberly D. Bose, Secretary
February 19, 2021
Page 4

CDFW Comments

Regarding aquatic resources—water quantity, CDFW notes a concern regarding releases from Cedar Springs Dam such that “the algorithm/agreement previously used may be underestimating the natural inflow” and recommends development of a water balance and operations model/study to detect the potential changes and long-term cumulative impacts to the water supply. As noted in Section 5.2.1.1 of Exhibit E and Appendix G to Exhibit E of the FLA, due to the statutory authority granted to Mojave Water Agency (MWA) by the California Legislature in 1959, the Court decided that MWA should be the Watermaster in charge of administering the Decree. In its role as Watermaster, MWA is responsible for managing the water supplies released from Silverwood Lake for use downstream.

Regarding wildlife resources, CDFW recommends that current bat species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, be conducted. As noted in Appendix D to Exhibit E of the FLA, DWR has modified its proposed Integrated Vegetation Management Plan (IVMP) to incorporate a measure for pre-construction bat surveys and biological monitoring for proposed hazardous tree removal or major work at Project facilities. Additionally, CDFW requested similar surveys for State special-status terrestrial wildlife species in its January 16, 2020 letter to FERC. FERC’s April 16, 2020 letter response to those requests noted that CDFW has not shown why more focused surveys and specific habitat assessments are necessary and DWR contends the same is true in these comments by CDFW. Further, DWR is proposing surveying Project facilities for bats upon license issuance and installation of bat exclusion devices as required at facilities where bats or bat indicators are located.

Also, for wildlife species, CDFW recommends that survey protocols be used to determine occupancy of various species including arroyo toad and other state special-status amphibians within the Project, and that these protocols are to be considered in measures for future detection, avoidance, and mitigation of the Project impacts to these species (e.g., preconstruction surveys, annual reports, etc.). As noted in Section 3.1.2.2 of the proposed IVMP (Attachment 4 of Appendix E to Exhibit E), preconstruction surveys will be conducted and noted if any of these species are in the areas of proposed disturbance. If the observation of such species is verified within an area where regular O&M or Project-related recreation typically takes place, surveys will be conducted to determine the extent of the newly observed special-status species or sensitive natural community in the Project boundary.

Ms. Kimberly D. Bose, Secretary
February 19, 2021
Page 5

It should be noted that CDFW has requested DWR to perform such surveys previously and DWR has addressed these requests in Section 5.3.4.2 of Exhibit E in the FLA. DWR's role as the Licensee is dedicated to conducting studies that have been determined necessary and to follow agency protocol to support the preparation of license applications for its projects and eventual implementation of the license. DWR is 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
Hydropower License Planning and Compliance Office
Executive Division

Document Content(s)

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