

**ATTACHMENT 3
TO SSWD'S OCTOBER 13, 2016 LETTER**

**SSWD'S RESPONSE TO GERNERAL COMMENTS RECEIVED
BY RELICENSING PARTICIPANTS**

Attachment 3 - SSWD's Response to General Comments received by Relicensing Participants.

Agency	Comment No.	General Request	SSWD's Reply
GENERAL			
CDFW	1	"The Department requests that all species occurrence data obtained by Licensee during Project relicensing studies or through incidental observations by Project staff during Project operations and maintenance activities are submitted to the Department using the CNDDDB Online Field Survey Form located on the Department's website: https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data . The Department requests data are submitted to CNDDDB within six months of surveys or incidental observations." (p. 2)	All observations of special-status species by SSWD during relicensing studies will be reported to the CDFW in a format suitable for incorporation into the the CNDDDB. In instances where more than 10 occurrences of the same species are observed during relicensing studies, SSWD will submit a spreadsheet of the information which CDFW has considered a generally accepted practice in past relicensings. SSWD respectfully declines to require that, if SSWD staff observe special-status species during normal Project O&M activities, they submit the observations to CDFW on CNDDDB Online Field Survey Forms. SSWD O&M staff are not trained or required as part of their job description to perform such observations and reporting, and SSWD is unaware of any other hydro operator in California that requires its O&M staff to do this.
CDFW	2	"The Department requests Licensee provide sufficient notification of planned Project field activities, including Project site visits and implementation of Project studies described in the study plans, so the Department and other Project relicensing participants have the opportunity to be onsite to participate in Project field activities. The Department considers sufficient notification to be no less than two weeks." (p.2)	Prior to the start of each month, SSWD will post on its Relicensing Website a schedule of anticipated field activities for the next calendar month. It will provide SSWD's anticipated fieldwork for the month and a contact if CDFW staff wish to coordinate to observe the work. Due to liability issues, CDFW staff may not participate in the fieldwork.
CDFW	3	The Department strongly encourages that all persons conducting surveys for special status species (i.e., those species listed as endangered or threatened or candidates for listing under the California Endangered Species Act (CESA), fully protected species, California species of special concern, and rare plants) are knowledgeable of the life history, behavior, and habitat requirements of the species being surveyed and are experienced in the survey protocol required by the Project's final study plans. The Department requests that Licensee provide the name and qualifications of all surveyors for study plans involving special-status species for review and approval prior to implementing study plans." (p.3)	SSWD and its consultants are well versed in the proposed survey methods and species of interest. Where required by the requirements of specific permits needed to perform a relicensing study, SSWD will provide specific staff information as part of the permitting process. SSWD respectfully declines to obtain agency approval of all relicensing surveyors prior to implementing relicensing studies. SSWD is unaware of any relicensing in California where this has been required by FERC or volunteered by an applicant.
CDFW	4	"The Department (and likely other Project relicensing participants), has several questions and concerns regarding the most efficient way to collect useful data for Licensee's proposed study plans and the study plans requested by the Department. The Department recommends, although not a requirement under the TLP, Licensee host two or three meetings to discuss and develop the Project study plans collaboratively with Project relicensing participants. These meetings will allow Licensee and Project relicensing participants to resolve differences of opinion on study plans more quickly and efficiently prior to Licensee finalizing the study plans." (p. 12)	As mentioned, the TLP, nor the ILP, requires an applicant develop study plans in collaboration with interested parties. SSWD has gone well beyond TLP requirements by including in its PAD detailed study plans, including the specific locations of proposed study sites. SSWD carefully reviewed comments on the PAD and have modified its relicensing studies as described in this reply matrix, and has initiated the studies. However, SSWD agrees to schedule and host a meeting with interested parties to discuss any outstanding differences.

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CDFW	5	"The Department encourages Licensee to facilitate the formation of an operations model technical working group early during the Project relicensing process so technical staff from the resource agencies, non-governmental organizations (NGOs), and Licensee can meet to collaboratively work through model development and calibration so that Project relicensing participants can better understand the model and come to an agreement on the model utility as specified in goal #3 above." (p.4)	The TLP, nor the ILP, requires an applicant to develop an operations model in collaboration with interested parties. However, SSWD understands that some parties may have questions regarding the model, which was provided in the PAD. Therefore, SSWD will hold a workshop with interested Relicensing Participants to reply to any questions regarding the water balance/operations model.
CDFW	6	"The Department believes the methods and development of this complicated approach should be the subject of one or more technical meetings with Project relicensing participants. Project hydrology is one of the key pieces of information upon which the Project operations model is built, and all Project relicensing participants need to agree that the unimpaired hydrology dataset represents the best professional estimate for this Project watershed." (p.5)	Refer to SSWD's reply to CDFW General Comment 5.
SWRCB	1	"Furthermore, State Water Board staff strongly recommends that SSWD consult with the California Department of Fish and Wildlife (CDFW), the National Marine Fisheries Service, U.S. Fish and Wildlife Service, State Water Board, and other appropriate resource agencies and Native American Tribes, to determine minimum instream flows based on water year type that would be protective of water resources and designated existing and potential beneficial uses downstream of the Project, including but not limited to: municipal-and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; cold freshwater habitat; migration of aquatic organisms; spawning; and wildlife habitat." (p.10)	FERC's TLP process, which SSWD is following in the relicensing, requires an applicant to consult with agencies, Indian tribes, NGOs and interested members of the public regarding potential conditions in a new license, and provides these parties an opportunity to participate in the process. The parties will also have an opportunity to provide input during FERC's NEPA process and SSWD's CEQA process.
SWRCB	2	"There should be clearer and more specific justification describing why SSWD did not incorporate the recommended set of instream flows for the relicensing of the Project." (p.10)	The set of instream flows were not recommended to FERC for inclusion in the existing license. SSWD will consider them as it develops its proposed measures for inclusion in a new license.

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SWRCB	3	"Near the end of each proposed study plan in Appendix H, an overall schedule for the study plan is described. While a general timeframe for data collection is identified, there should be a specific description of sampling frequency (i.e. daily, weekly, monthly, etc.) for the data collection phase of each proposed study. As currently described it is not clear how often and at what frequency the data will be collected for each proposed study within the general timeframe. Sampling frequency could influence study results as well as the interpretation of study results, thus it is vital to clearly and specifically describe when and how often the data is collected for each proposed study." (p. 10)	The sampling frequency for each study is described in the Methods section. The schedule provided at the end of each study is an overview of the study schedule.
SWRCB	4	"Given that most of the lower Bear River below the non-Project diversion dam is within private lands, State Water Board staff recommends that SSWD take into consideration any potential site accessibility issues when selecting for the final study site locations. Specifically, SSWD should be able to ensure site accessibility to the selected final study reaches for the duration of the relicensing process, and for the duration of the new license." (p.11)	SSWD considered site accessibility, including land ownership, when selecting relicensing study sites. SSWD does not require access to the Bear River downstream of the Project under the existing license and, at this time, it is unknown whether SSWD will require access to the Bear River downstream of the Project in the new license. If it does, accessibility, including land ownership, will be considered.
USFWS	1	"The Service requests that the Applicant host meetings to discuss and develop the Project study plans collaboratively with Project relicensing participants. These meetings will allow the Applicant and Project relicensing participants to come to agreement on study plans more quickly and efficiently prior to the Applicant finalizing the study plans." (p. 12)	Refer to SSWD's reply to CDFW General Comment 4.
USFWS	2	USFWS letter, page 11. Specific Comments on PAD, California Red-legged Frog "...the CNDDDB occurrence information is not suitable for making a determination that a species does not occur in the Project area. The habitat description in Table 3.2.5-1 does not adequately reflect the habitat utilized by the species. In a site visit on June 27, 2016, Service staff noticed potential California red-legged frog (<i>Rana draytonii</i>) habitat within the FERC Boundary. The Service requests that the Applicant add the California red-legged frog to the list of special-status species that could occur within the FERC Boundary."	California red-legged frog is included in Section 3.2.5.2.1 as an ESA-listed species that could potentially be affected by continued Project O&M and associated recreation. Information in Table 3.2.5-1 is not meant to provide a comprehensive accounts of habitat requirements of the listed species. Section 3.2.5.2.5 presents a detailed account of the life history and habitat requirements of California red-legged frog. SSWD has made no determination that California red legged frog does not occur in the Project area.

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USFWS	3	USFWS letter, page 12: "We enclose Finkle (2012) and Fuller et al. (2010) (Enclosures G and H) for consideration by the Commission regarding Project effects on California red-legged frogs from operations that support bullfrog establishment and dispersal."	Neither source is informative of possible Project effects on CRLF. Finkle's paper is an undergraduate student class project report (Environmental Science 196, University of California, Berkeley), posted online on the university's website, and does not meet the standards of a peer-reviewed, scientific publication. Finkle (2012) associated the presence of American bullfrogs with lower larval numbers of one native amphibian species (Pacific treefrog [now Sierran chorus frog, <i>Pseudacris sierra</i>]), with no significant effect on the other species, but he nonetheless made sweeping conclusions regarding the effects of bullfrogs. Although unpublished articles or anecdotal observations can be valid sources of information, few conclusions should be drawn from Finkle's study, because of substantial flaws, including the small number of study sites, insufficient sampling, incomplete data presentation, invalid statistical design (i.e., repeated samples and measurements at each pond treated as independent observations), and unsupported and inaccurate statements. Interestingly, Finkle's visual surveys for CRLF consisted of two qualitative, daytime surveys per site between July and October, a methodology that would not be accepted by USFWS as evidence for absence of CRLF. The other citation, Fuller et al. (2010), is a published scientific paper, but has limited application to SSWD's project. The paper reports findings regarding the presence of American bullfrogs and native herpetofauna along the Trinity River floodplain in northwest California. The study found that American bullfrogs bred only in perennial aquatic habitats, all but one of which was unconnected to the Trinity River, and the majority of the sites with bullfrog breeding were highly modified habitats (i.e., dredge tailing ponds and disconnected side channels) and "tended to have still, deep water habitat with rooted floating vegetation and open shoreline vegetation." In the Trinity River system, modified off-channel habitats happened to be located along the upper part of the river below Lewiston Dam. The study concluded that native amphibians would benefit most from management to make these modified, off-channel habitats less suitable for bullfrogs "by decreasing depth or reducing hydroperiod and increasing connection with the active river channel."
FWN	1	"the Network requests that either 1) historical hydrology data for Dry Creek-Spenceville be added to the Appendix F of the PAD as a supplement, or else 2) that the licensee install a temporary gage on Dry Creek-Spenceville near the site of the historical USGS gage and provide the data to relicensing participants in sufficient time to inform terms, conditions and recommendations in the relicensing process." (p. 2)	An existing USGS gage, <i>11424500 Dry Creek near Wheatland CA</i> , collects gage height, but does not report flow. Existing gage data at this location will be provided to Relicensing Participants upon request. SSWD does not believe flow in Dry Creek is necessary in determining potential Project affects. Adequate information regarding Dry Creek hydrology is available to inform downstream conditions.

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UAIC	1	<p><i>"Tribal Interests (Native American Consultation)</i> According to the pre-application document, no sacred lands were identified within the project area. This is not correct. The UAIC has sacred and ceded lands within the project area. The location of these lands is stored by the Tribe in a Tribal Historical Resources Information System (THRIS), and not in the Sacred Lands Inventory maintained by the NAHC. Similarly our THRIS contains several Traditional Cultural Properties that intersect with your project area. In addition the Tribe has several hundred acres of trust land to the south of the project area that should be identified as an Indian Trust Asset. Although this trust land is not immediately adjacent to your project area, it is subject to indirect and cumulative effects from your project. As UAIC staff has indicated in the past, UAIC will be consulting independently as a sovereign nation. Consultation with other government agencies such as the NARC, the BIA or the NCIC is not a substitute for consulting with the UAIC. In previous correspondence with the SSWD the Tribe had requested formal government-to-government consultation with the FERC. We repeat this request." (p.3)</p>	<p>SSWD acknowledge the presence of Indian Trust Land located to the south of the Project. Formal government to government consultation is between FERC and the Tribe, and SSWD cannot intercede for either of these parties to implement this consultation.</p>
UAIC	2	<p><i>"Tribal Views on Human Remains, Grave Goods and Tribal Cemeteries</i> The Tribe's view on human remains, grave goods and tribal cemeteries is that they should be preserved in place with no disturbance, invasive testing or destructive analysis and testing... The Tribe's views on the culturally-appropriate treatment of ancestral human remains and grave goods should be reflected in the TLP and any technical studies that support that process. Some of these views may need to be placed into a confidential section and confidential part of the project administrative record. Should there be any questions about this, my staff are happy to discuss them with you." (p.3)</p>	<p>Should human remains be identified during implementation of the Cultural Resources Study, SSWD and SSWD's contractor, HDR, will follow state law concerning the discovery and treatment of human remains (California Health and Safety Code 7050.5, 7051, 7054 and California Public Resources Code 5097).</p>

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UAIC	3	<p><i>"Insufficiencies of Background Research</i> The NCIC record search returned information about 23 prehistoric sites, 9 historic period sites and 4 multi-component sites. Twenty-six of the 36 archaeological sites are listed as not eligible, which is concerning. Similarly the 38 isolated finds are listed as ineligible. We request that these eligibility determinations be revisited, and would be happy to provide information or narratives to contribute to the eligibility of the sites under all four NRHP criteria. Similarly, several features are incorrectly listed as historic features, when they are actually examples of Nisenan vernacular architecture. This includes grasshopper pits that are incorrectly identified as mining pits and stone walls that are not identified as Nisenan hunting fences. Please provide copies of all previous cultural resources reports and environmental sections listed in Table 3.2.10-4. The Tribe requests to be invited to participate in this inventory, evaluation, assessment, finding of effect and treatment implementation process. UAIC would like to see a monitor plan and program developed to assist with the identification, assessment and mitigation of historic and traditional cultural properties." (p.4)</p>	<p>As also described under UAIC response to comment number 14, below, SSWD will hire one tribal monitor to work on the field crew during implementation of the archaeological survey undertaken for the Cultural Resources Study. SSWD will evaluate all resources that can be evaluated at the inventory level and are being affected by Project operation and maintenance activities. SSWD will include in this evaluation process any resources previously evaluated for which new information presented warrants reevaluation. Copies of previous cultural resources records and previously conducted cultural resources investigation reports for the Project area can be obtained from the North Central Information Center. SSWD will consult with participating tribes and agencies regarding the implementation and results of the <i>Cultural Resources Study</i>.</p>
UAIC	4	<p><i>"Known or Potential Project Effects</i> ...We are concerned about the project effects on sanctified cemetery sites, not simply on burials, as well as the effects listed in this letter under separate headings. The tribe is also concerned about identifying all of the cultural resources that are present and the potential impacts to these cultural resources. Furthermore the project documentation should explore the history of the project area, including its significance to the Native American community. This should include the prior impacts to the project area that occurred because of prior reservoir work and development. What might the effects of the proposed reservoir work be to the remaining cultural resources? Might this work increase the potential for pot hunting and other damage to the sites? Could the reservoir work be altered to avoid or reduce impacts to cultural resources? The TLP must also examine indirect and cumulative impacts in the context of prior impacts to other cultural resources similar to those identified by the Tribe." (p.5)</p>	<p>The proposed federal undertaking that must comply with Section 106 of the National Historic Preservation Act is the relicensing of the Project, activities for which consist of the continued operation and maintenance of the Project. Direct and indirect effects to historic properties from Project operation and maintenance activities to be conducted under the new license issued by FERC will be considered. Impacts to historic properties already incurred by past Project-related construction, maintenance, and operations activities will not be addressed as these impacts are not related to the current federal undertaking.</p>

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UAIC	5	<p><i>"Visual Impacts</i> Visual and aesthetic resources are a component of tribal values and can contribute to a site's significance. Visual simulations from and towards the project area from key viewpoints selected through consultation with the Tribe should be performed and included in the TLP. Impacts to setting and context for the area and tribal practices must also be considered." (p.5)</p>	<p>The proposed federal undertaking is the relicensing of the Project, which consists of the continued operation and maintenance of the Project and does not include any proposed construction or modification of existing facilities, thus there will be no change to the existing viewscape to or from the Project. However, per the requirements of Section 106 of the National Historic Preservation Act, direct and indirect effects to historic properties will be considered during implementation of the <i>Cultural Resources Study</i> .</p>
UAIC	6	<p><i>"Biological and Natural Resources</i> Biological and natural resources are a component of traditional ecological knowledge, as are tribal values and Cultural Landscapes pursuant to NPS guidance. These can all contribute to a site's significance. The Biological section of the pre-application document mentions substantial impacts to Native plants and animals that will affect cultural resources. These aspects of the cultural property must be considered in the TLP and in the eligibility determinations." (p.5)</p>	<p>Per the requirements of Section 106 of the National Historic Preservation Act, direct and indirect effects to historic properties will be considered during implementation of the Cultural Resources Study.</p>
UAIC	7	<p><i>"Noise, Light and Privacy</i> The Tribe requests that the TLP analyze the project's noise and light impacts relative to the cultural resources and relative to the Tribe's property to the south of the project area and whether the proposed use would adversely impact the intangible, physical or metaphysical cultural use of the cultural resources or affect the privacy of practitioners." (p.5)</p>	<p>Per the requirements of Section 106 of the National Historic Preservation Act, direct and indirect effects to historic properties will be considered during implementation of the Cultural Resources Study.</p>
UAIC	8	<p><i>"Vibration and Compression</i> Vibration and compression must also be studied during the TLP for the potential of construction, maintenance or residential equipment to damage cultural resources that remain in the ground. What measures can be taken to reduce the potential for such impacts? Frequently vibration and compression cause damage to buried tribal cemeteries." (p.6)</p>	<p>Per the requirements of Section 106 of the National Historic Preservation Act, direct and indirect effects to historic properties will be considered during implementation of the <i>Cultural Resources Study</i> . No mitigation is proposed at this time. SSWD anticipates that for cultural resources the PM&E measures will be outlined in a Historic Properties Management Plan that will be developed in consultation with FERC, SHPO and participating tribes.</p>
UAIC	9	<p><i>"Need More Specific and Complete Project Description</i> The TLP must completely describe the whole of the project. This would include the proposed horizontal and vertical extent of the excavations and of any wave action from the reservoir. There also must be complete description of any PG&E, NID, SSWD, or any other underground work, as well as use of cranes, land leveling, utility pole removal and relocation or replacement, tree replanting and vegetation removal as these are all activities that could pose significant impacts on burials and cultural resources." (p.7)</p>	<p>The Privileged report documenting the results of the <i>Cultural Resources Study</i> will identify potential Project-related affects that may occur from Project O&M activities that would be authorized under a new FERC license.</p>

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UAIC	10	<p><i>"Export, Fill, Borrow and Disposal Locations Must be Considered</i> Any fill must be certified clean. It must not come from a historic site and it must not contain archaeological materials or human remains." (p.7)</p>	<p>No construction is planned as part of relicensing efforts at this time that would result in borrowing, disposing of, or using any fill from or within the Project boundaries.</p>
UAIC	11	<p><i>"Land Use Restrictions</i> When tribal cemeteries are identified, land use restrictions should be put in place to prevent activities that would now or later in time that adversely impact the resources. These restrictions on property use must be enforceable." (p.6)</p>	<p>Refer to SSWD's reply to UAIC Comment 2.</p>
UAIC	12	<p><i>"Public Land</i> Please provide a map showing any public land in or near the project property. This would include any public easements. Please clearly show and mark any fee acquisition, permanent or temporary rights of way and permanent or temporary easements and indicate whether all these areas have been surveyed with qualified Native American Monitor participation. Such acquisitions would trigger public lands analysis under Public Resources Code sections 5097.9, 5097.97. This issue is not addressed in the pre-application document and could have profound implications for the project, mitigation and site management. Please note that the NAHC is the state trustee agency for resources of tribal concern and as such must receive copies of any environmental documents prepared." (p.6)</p>	<p>The Project includes only private lands.</p>
UAIC	13	<p><i>"Dam Raise</i> As a result of Camp Far West Reservoir there will be sanctified cemeteries, and historic and traditional cultural properties that will be adversely effected as a result of inundation, wave action, and erosion that are at or near the high water mark. These resource concerns will need to be accurately accessed and discussed between the FERC and UAIC." (p.6)</p>	<p>No dam raise is currently planned as part of relicensing efforts.</p>
UAIC	14	<p><i>"Tribal Monitors for Investigations</i> It appears that geotechnical studies and surveys have not yet been conducted in support of project development. Native American Monitors should be present for this and all ground disturbing work. The Tribe has found that cultural resources are often encountered during geotechnical or soils work and therefore requests that paid tribal monitors be required any time ground disturbing studies or surveys are being conducted - even before project approval. Is there any record of tribal consultation or cultural resources being encountered and recorded in any of these reports or elsewhere?" (p.6)</p>	<p>SSWD will hire one tribal monitor to work on the field crew during implementation of the archaeological survey undertaken for the Cultural Resources Study. As described in the PAD, a number of previously recorded cultural resources have been identified within the Project boundaries. Section 106 consultation for the Camp Far West Hydroelectric Project FERC relicensing was initiated with a Section 106 kick-off meeting held on June 29, 2016.</p>
UAIC	15	<p><i>"Mitigation Measure Development</i> The Tribe requests that SSWD consult with the Tribe on mitigation measures prior to the preparation of any environmental documents. UAIC also recommends these mitigation measures so that the mitigation process is more straightforward..." (p.7)</p>	<p>No mitigation is being proposed at this time. Later in the relicensing process SSWD will consult with participants regarding protection, mitigation, and enhancement measures (PM&Es). Presumably, for cultural resources, the PM&E measures will be outlined in a Historic Properties Management Plan that will be developed in consultation with participating tribes and agencies.</p>

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OHP	1	"All cultural resources must be evaluated in order to determine whether there are any potential historic properties (NHPA) or historical resources (CEQA) before effects can be identified or assessed. If the identified cultural resources do not meet the eligibility thresholds the projects will not affect historic properties/resources." (p.1)	SSWD will evaluate all resources that can be evaluated at the inventory level and are being affected by Project operation and maintenance activities. It is SSWD's understanding that FERC plans to defer complete historic properties identification and evaluation efforts, pursuant to 36 C.F.R 800.4(b)(2), and to develop a programmatic agreement, pursuant to 36 C.F.R. 800.14, to implement Section 106 of the National Historic Preservation Act. The programmatic agreement will require implementation of a Historic Properties Management Plan (HPMP). The HPMP will not only outline the alternative approach to identifying and evaluating historic properties pursuant to 36 C.F.R. 800.4(b) and 36 C.F.R. 800.4(c), but will also provide the guidelines for managing and considering historic properties throughout the life of any new license issued by FERC.

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