

# Rector Reservoir Bypass Valve Project

## Final Environmental Impact Report

CEQA Lead Agency:

California Department of  
Veterans Affairs



with support from

California Department of General Services  
Real Estate Services Division



November 2021



**ECORP Consulting, Inc.**  
ENVIRONMENTAL CONSULTANTS

# **Final Environmental Impact Report**

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## **Rector Reservoir Bypass Valve Project**

Napa County, California

SCH No. 2020070017

### **CEQA Lead Agency:**

California Department of Veterans Affairs



1227 Q Street  
Sacramento, California 95814

with support from

California Department of General Services  
Real Estate Services Division  
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**November 2021**

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## **ES-1 EXECUTIVE SUMMARY**

### **ES-1.1 INTRODUCTION**

This Final EIR (FEIR) incorporates by reference the Draft Environmental Impact Report (DEIR) prepared for the Rector Reservoir Bypass Valve Project (the Project) and circulated for public review on July 1, 2021. The DEIR in its entirety is also included as Appendix B to this FEIR.

The FEIR evaluates the potential environmental effects of the proposed construction and operation of the Project located in Napa County, California. The California Department of Veterans Affairs (CalVet), with support from the California Department of General Services/Real Estate Services Division (DGS/RESO), is serving as the CEQA Lead Agency for this Project. The FEIR was prepared in accordance with the requirements of the CEQA (PRC Section 21000-21177) and the Guidelines for the Implementation of CEQA (California Administrative Code §§ 15000 et seq.).

This Executive Summary complies with the CEQA Guidelines Section 15123(b), which states that an Environmental Impact Report (EIR) should contain a brief summary of the proposed project and its consequences, and should identify the following:

1. Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;
2. Areas of public controversy known to the lead agency, including issues raised by the agencies and the public; and
3. Issues to be resolved, including the choice among alternatives and how to mitigate the significant effects.

CalVet operates Rector Dam and Reservoir to supply drinking water to the Veterans Home of California in Yountville, the Napa State Hospital, the California Department of Fish and Wildlife's (CDFW) Bay-Delta Region office, the Town of Yountville, and several local wineries. CalVet also supplies untreated water to the CDFW Silverado Fisheries Base (Fisheries Base), which includes a hatchery located along Rector Creek downstream of the dam, and to the California Department of Forestry and Fire Protection (CAL FIRE) training facility, located at the base of Rector Dam. Rector Dam is located on Rector Creek, approximately 2.5 miles northeast of the Town of Yountville on Silverado Trail, in Napa County between Napa and St. Helena. Rector Creek crosses Silverado Trail approximately 700 feet downstream of the dam's spillway. Vehicle access to the reservoir and the water treatment plant (WTP) is through the gate at 7300 Silverado Trail.

The State Water Resources Control Board license to operate Rector Dam does not include specific instream flow release requirements; however, California Fish and Game Code 5937 requires the owner or operator of any dam to allow sufficient flow to pass through or over the dam to keep fish downstream of the dam in good condition. The Project addressed in this EIR would implement an interim schedule for minimum environmental releases to Rector Creek below Rector Dam to meet Code 5937 requirements. To facilitate these releases, CalVet proposes to construct new facilities below Rector Dam to convey, monitor

and release stored water from the reservoir to Rector Creek. These facilities include a bypass valve at the base of Rector Dam and a raw water pipeline connecting the valve to a proposed outfall structure on Rector Creek downstream of the dam. A detailed description of the proposed interim environmental release schedule and proposed facilities construction and operation is presented in Section 2 of the DEIR, which is included in its entirety in Appendix B of this FEIR.

An Initial Study was conducted to determine the Project's potential for any significant environmental impacts. Based in part on the results of that study, CalVet determined preparation of an EIR was appropriate to meet its obligation for environmental review under CEQA. A Notice of Preparation (NOP) for the EIR was circulated for public review, along with the Initial Study, in July 2020. CEQA requires that the Lead Agency consider the information contained in the EIR prior to taking any discretionary action on the Project. The EIR may also be used by other public agencies that must make discretionary actions related to the Project.

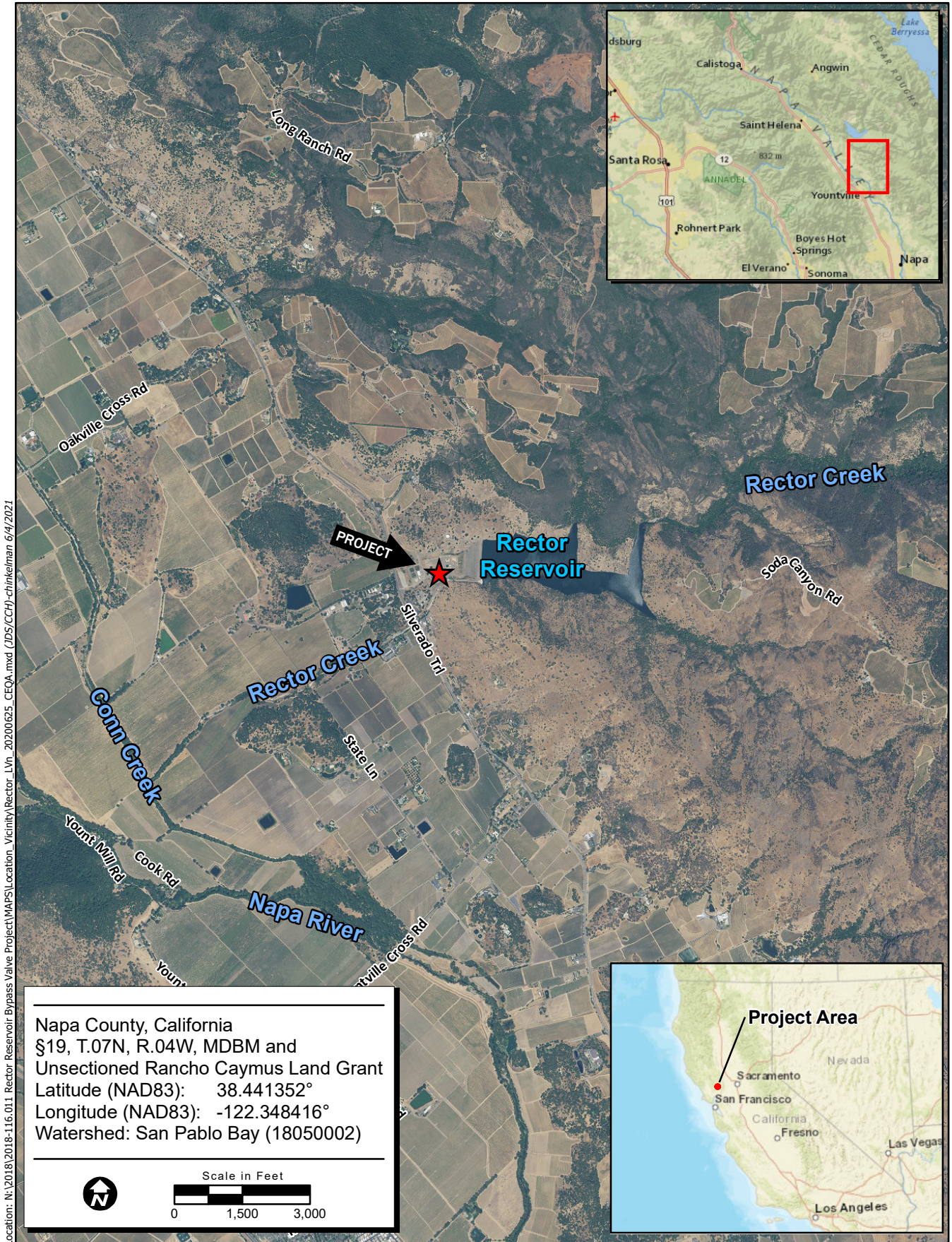
## **ES-1.2 LOCATION AND SETTING**

Rector Creek Dam and Reservoir are located at approximately 38°26'28.91"N, 122°20'50.85"W at the base of the Howell Mountains in Napa County (see Figure ES-1). As noted, the dam and reservoir are approximately 2.5 miles northeast of the Town of Yountville on Silverado Trail, in Napa County between Napa and St. Helena.

Three main tributaries contribute to Rector Reservoir storage: North Fork Rector Creek; mainstem Rector Creek and South Fork (known locally as LeRette Creek). The drainage area contributing to Rector Reservoir encompasses about 11 square miles or roughly 6,971 acres (Barber 2017). The watershed boundary around Rector's contributing drainage area extends upstream easterly 4.7 miles to Atlas Peak Mountain. Rector Canyon is steep and narrow and is bounded by the wide plateau, which continues to be developed for wine grape agriculture. Rector Creek, downstream of the dam, runs west approximately 1.7 miles to its confluence with Conn Creek, a tributary to the Napa River.

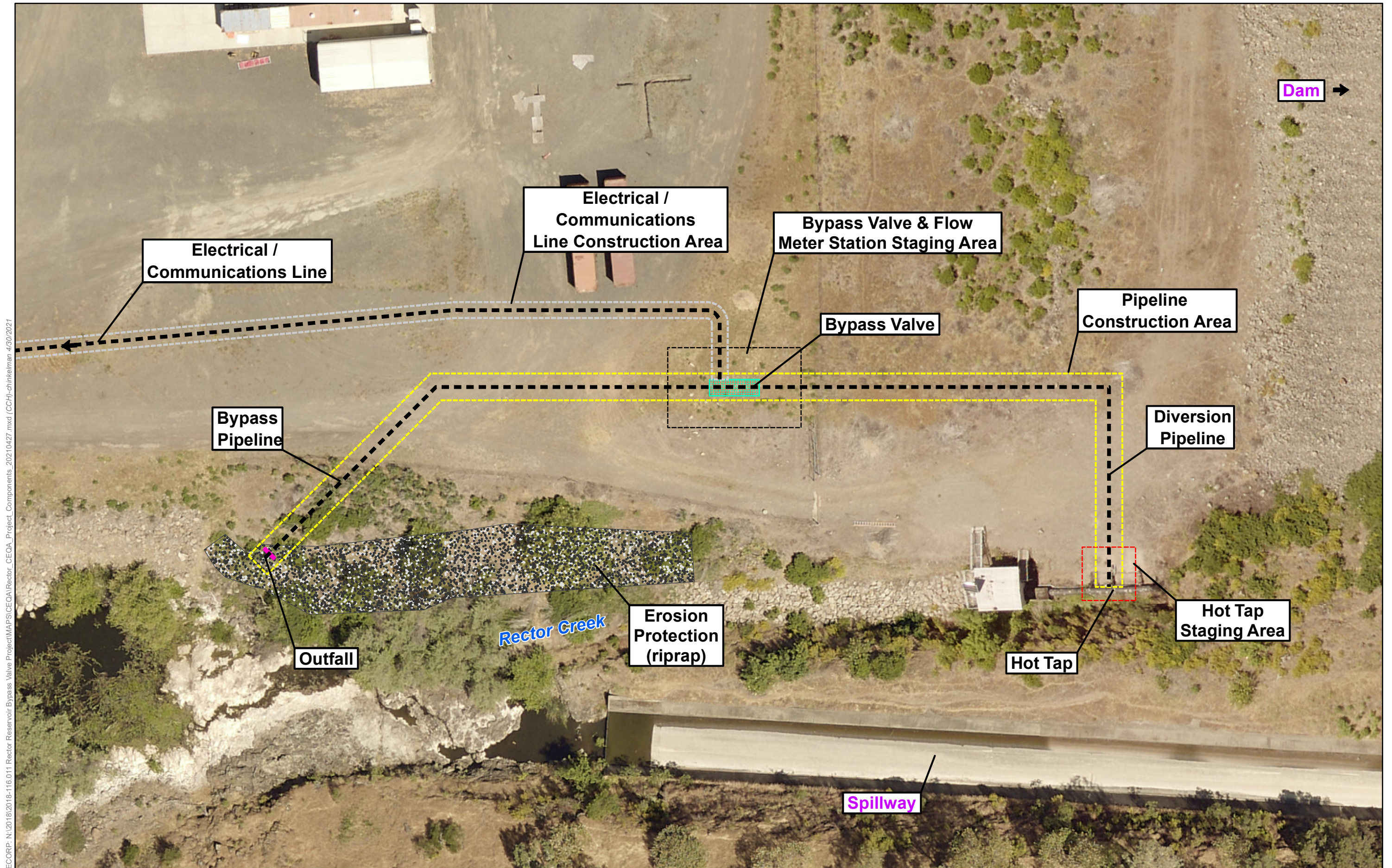
Proposed Project facilities, i.e., the bypass valve, 12-inch-diameter water pipeline, Rector Creek outfall structure, underground electrical/communications conduit, and Rector Creek erosion control measures, would be constructed immediately downstream of Rector Dam on CalVet property (see Figure ES-2). A CAL FIRE training facility and the reservoir water treatment plant are immediately north and west of the Project site. A Department of Fish and Game facility (CDFW Fisheries Base) is also further west, on the west side of Silverado Trail. The Napa County Yountville Maintenance Facility is located southwest of the Project site on both sides of Rector Creek just east of Silverado Trail. There are a number of vineyards and wineries in close proximity to the Project site including Vine Cliff Winery to the north, Vyborny Vineyard Management to the west, Perata Vineyard and Paraduxx to the southwest, and Gemstone Vineyard and Clos Valmi to the south. Numerous other vineyards are located north and south of the Project site along Silverado Trail.





**Figure ES-1. Project Location and Vicinity**



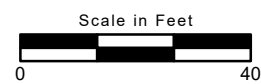


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Map Date: 4/30/2021 Photo Source: USGS Topo; ESRI Base Imagery

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**Figure ES-2. Project Components**

2018-116.011 Rector Reservoir Bypass Valve Project



### **ES-1.3 PROJECT SUMMARY**

As noted above and shown in Figure ES-2, Project facilities to be constructed include a bypass valve, 12-inch-diameter water pipeline, Rector Creek outfall structure, underground electrical/communications conduit, and Rector Creek erosion control measures. Specifically, the key components of the proposed Project include the following:

- Diversion pipeline to convey water from the existing 30-inch water line at the base of Rector Dam to the proposed bypass valve and from the bypass valve to Rector Creek;
- Bypass valve and flow meter;
- Underground electrical line and conduit between the bypass valve and CalVet WTP;
- Twelve-inch-diameter underground water pipeline between the bypass valve and proposed Rector Creek outfall; and
- Rector Creek outfall structure at the terminal end of that pipeline in Rector Creek and streambank erosion controls.

Upon completion of the bypass valve facilities described above, CalVet will implement minimum environmental releases to Rector Creek in accordance with the recommendations presented in the *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment* (see *Appendix 3.3-C* of the DEIR) prepared by Stillwater Sciences and dated July 2019. The data, considerations and methodology used in the development of the interim flow schedule recommendations are described in detail in that report and summarized in Sections 2.7.1 and 2.7.2 of the DEIR. The interim release schedule to be implemented by the Project is shown in Table ES-1 below:

In developing the interim release schedule, Stillwater Sciences noted that multiple data limitations related to hydrology, fish condition, and instream flow conditions were encountered in the modeling of the reservoir storage and the development of the interim release schedule flows. These data limitations need to be addressed to better quantify the available water for releases downstream of Rector Reservoir and ultimate benefit to fisheries resources. Additional long-term studies are currently ongoing to provide these data. Upon completion of these studies, a permanent environmental flow schedule will be proposed, at which time supplemental environmental review will be conducted if warranted.

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**Table ES-1. Proposed interim environmental flow release schedule for outflows below Rector Creek Dam**

Water-Year Type <sup>1</sup>	Minimum Environmental Flow Releases <sup>2</sup> (cfs)														
	Oct	Nov	Dec 1-15	Dec 16-31	Jan	Feb 1-15	Feb 16-30	Mar 1-15	Mar 16-31	Apr	May	Jun	Jul	Aug	Sep
Wet	0.8	0.8	1.5	2.5	3.5	4.0	4.0	4.5	4.5	2.5	2.5	1.0	0.8	0.8	0.8
Above Normal	0.7	0.7	1.3	1.3	3.5	4.0	4.0	4.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Below Normal	0.7	0.7	1.3	1.3	2.5	2.5	4.0	3.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Dry	0.25	0.50	1.0	1.0	2.0	2.5	2.5	3.0	3.0	2.5	1.5	1.0	0.25	0.25	0.25
Critical	0.25	0.50	1.0	1.0	2.0	2.2	2.2	2.8	2.8	2.5	1.0	0.5	0.25	0.25	0.25

<sup>1</sup> Water-Year Type based on the DWR Sacramento Valley Index.

<sup>2</sup> Rector Dam minimum environmental flow releases consider the Fisheries Base discharge releases for stream habitat; however, compliance is met by releases from Rector Dam.

Note: Flows shown shaded in blue represent the increased flow levels for winter and spring migration and spawning. These proposed interim flows reflect the combined releases through both the proposed bypass and the CDFW Fisheries Base.

## ES-1.4 PROJECT OBJECTIVES

CEQA Guidelines Section 15124(b) requires that an EIR provide a description of the basic objectives of the proposed project and includes the following reasoning:

- (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.

With implementation of the Project, CalVet seeks to develop a flow regime with two stated objectives:

1. Compliance Goal: To allow sufficient water ("environmental flows") to pass over, around, or through Rector Dam to keep fish below the dam in good condition, and prevent unlawful take of federally or state designated protected species; and
2. Water Management Goal: To maintain the other purposes of the dam's operations while accomplishing the Compliance Goal, specifically to reduce or avoid adverse water supply impacts to all lawful users of water sourced from Rector Creek that may result from environmental flow releases.

## **ES-1.5 PROJECT ALTERNATIVES**

CEQA requires an evaluation of the comparative effects of a reasonable range of alternatives to the Project that would feasibly attain most of the project's basic objectives and that would avoid or substantially lessen any of the significant impacts of the Project. For purposes of this EIR, three alternatives to the Project, including the No Project Alternative, were selected for detailed analysis. As discussed in Section 4.3 of the DEIR, several other alternatives were considered but eliminated from further analysis as allowed under CEQA.

The alternatives selected for comparative analysis in this EIR include the following and each is described below:

- No Project Alternative;
- Alternative 1: Alternate Pipeline Alignment and Outfall Location; and
- Alternative 2: Enhanced Interim Environmental Release Schedule.

## **ES-1.6 INITIAL STUDY AND PROJECT SCOPING**

### **ES-1.6.1 NOP/Initial Study**

In accordance with CEQA Guidelines Section 15082, CalVet circulated an NOP for the EIR and Project Initial Study for public review for a period of 30 days beginning on July 1, 2020. The documents were distributed to responsible agencies and stakeholders, and the review period concluded on July 31, 2020. The State Clearinghouse number assigned to the Project is SCH No. 2020070017.

The Initial Study determined that the Project would have a less than significant impact or no impacts on the following Initial Study impact areas:

Aesthetics	Public Services
Agriculture and Forest Resources	Recreation
Land Use and Planning	Transportation
Mineral Resources	Utilities (except for water facilities and water supply)
Population and Housing	Wildfires

The NOP and Initial Study are provided in *Appendix 1.1-A* of the DEIR.

### **ES-1.6.2 Scoping Meeting**

On July 21, 2020, DGS/RESO held an online scoping meeting from 6:00 p.m. to 8:00 p.m. in order to allow early public/agency input and comments about the Project, Initial Study, and future environmental review. DGS/RESO and the Project's environmental consultant (ECORP Consulting, Inc.) presented a description of the Project and an overview of the upcoming environmental review process. During the scoping session, no attendees signed in and no comments from the public were presented.

### **ES-1.6.3      *Draft EIR***

As noted, the Rector Bypass Valve Project DEIR was circulated for public review on July 1, 2021 for a period of 45 days. At the request of the California Department of Fish and Wildlife the comment period was extended and closed on August 27, 2021.

On August 3, 2021, during the public review period, DGS and ECORP Consulting, Inc. conducted an online public meeting. During that meeting, the environmental consultant presented a description of the proposed project and summarized the results of the environmental review contained in the DEIR. The meeting provided an opportunity for the public to ask questions about the Project and environmental review.

## **ES-1.7      AREAS OF CONTROVERSY**

CEQA requires the EIR to identify areas of controversy or public interest. As noted, an NOP for the DEIR was circulated for review on July 1, 2020 to Responsible and Trustee Agencies, the State Clearinghouse, and other interested parties for a 30-day scoping period. One comment letter on the NOP/Initial Study was received during the review period. That letter was submitted by the CDFW (Bay-Delta Region) and is included in *Appendix 1.1-A* of the DEIR. In summary, concerns presented in the letter included the following issues related to project facilities construction activities:

- Maintenance of minimum flows in Rector Creek during Project construction;
- Potential for “take” (California Fish and Game Code, § 86) of special-status species;
- Locations and acreage of encroachment into riparian habitat and other sensitive areas;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence; and
- Impacts to rare and special-status plant species and their habitat.

CDFW also recommended that the DEIR address the following concerns regarding long-term project operations, specifically, the implementation of the proposed interim reservoir release schedule:

- How will adequate flows be maintained to CDFW’s Silverado Fisheries Base (SFB) to avoid interruptions?
- How will habitat between the dam and Silverado Fisheries Base be affected by the Project?
- How will CalVet ensure that the Project will not have an adverse impact on existing water demands and priorities for the use of Rector Reservoir water?

Upon review of the DEIR, CDFW submitted a comment letter (see Comment Letter 2 in Chapter 3 of this FEIR) in which it reiterated a number of concerns listed above, requested additional information, and



recommended revisions to mitigation measures in the DEIR to resolve these issues. The additional information and mitigation revisions are contained in Responses to Comment Letter 2 provided in Chapter 3 of this FEIR.

The key issues yet to be resolved by CalVet as Lead Agency include the following:

- whether the Final EIR adequately describes the environmental impacts of the Project;
- whether the recommended mitigation measures should be modified/adopted; and
- which among the Project and its Alternatives should be selected for approval.

## **ES-1.8 SUMMARY OF IMPACTS AND MITIGATION MEASURES**

Table ES-2 presents a summary of environmental impacts analyzed in this FEIR, the mitigation measures proposed for those impacts (if required), and the level of significance after mitigation. In some cases, mitigation measures presented in the DEIR have since been revised in response to comments and at the discretion of the Lead Agency. These revisions are indicated below with new text underlined and deleted text ~~struck through~~. These changes do not alter the DEIR in a way that deprives the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect.

The analysis in the DEIR and in this FEIR concludes that, although certain impacts are considered significant, all such impacts could be avoided or reduced to less than significant with implementation of mitigation measures identified for each. As shown in Table 2-1, no impact would remain significant with implementation of the proposed mitigation measures. Each measure identified in Table 2-1 is feasible. Therefore, the Project would not result in any significant and unavoidable environmental effects.

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**Table ES-2. Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Without Mitigation	Mitigation Measure	Resulting Level of Significance
NI = No Impact, S=Significant, LTS = Less than Significant, SU = Significant and Unavoidable, LCC = Less Than Considerable Contribution to Cumulative Impacts, CC = Cumulatively Considerable			
<b>Air Quality</b>			
<b>Impact 3.2-1:</b> The Project could conflict with or obstruct implementation of an applicable air quality plan.	NI	None required	NI
<b>Impact 3.2-2:</b> Implementation of the Project could result in a cumulatively considerable net increase of a criteria pollutant for which the Project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors).	LTS	None required	LTS
<b>Impact 3.2-3:</b> Implementation of the Project could expose sensitive receptors to substantial pollutant concentrations (i.e., carbon monoxide hot spots or TACs).	LTS	None required	LTS
<b>Impact 3.2-4:</b> Implementation of the Project could result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.	NI	None required	NI
<b>Impact 3.2-5:</b> Implementation of the Project would not result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is in non-attainment under an applicable Federal or State ambient air quality standard.	LCC	None required	LCC
<b>Biological Resources</b>			
<b>Impact 3.3-1:</b> Project construction activities could adversely affect, either directly or through habitat modifications, species	S	<b>BIO-1: <i>Protect Water Quality and Minimize Sedimentation Runoff in Wetland and Non-Wetland Waters</i></b>	LTS

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identified as a candidate, sensitive, or special-status wildlife species in local or regional plans, policies or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.		<p>CalVet and its contractors shall ensure that the Project will comply with all construction site BMPs specified in the Storm Water Pollution Prevention Plan (if required) and/or Mitigation Measure HYD-1 to minimize the introduction of construction-related contaminants and mobilization of sediment in wetlands and non-wetland waters in and adjacent to the Project Study Area. These BMPs shall address soil stabilization, sediment control, wind erosion control, vehicle tracking control, non-stormwater management, and waste management practices. The BMPs shall be based on the best conventional and best available technology.</p> <p><b>BIO-2:   <i>Install Fencing and/or Flagging to Protect Sensitive Biological Resources</i></b></p> <p>Prior to construction, CalVet and its contractor shall install high-visibility orange construction fencing and/or flagging, as appropriate, along the perimeter of the work area where adjacent to Environmentally Sensitive Areas (e.g., any special-status species habitat and/or active bird nests that may be identified during per-construction surveys). CalVet shall ensure that the final construction plans show the locations where fencing will be installed. The plans also will define the fencing installation procedure. CalVet and the contractor (at the discretion of CalVet) shall ensure that fencing is maintained throughout the duration of the construction period. If the fencing is removed, damaged, or otherwise compromised during the construction period, construction activities will cease until the fencing is repaired or replaced. Project construction specifications shall provide clear language regarding acceptable fencing material and prohibited construction-related activities, vehicle operation, material and equipment storage, and other surface-disturbing activities within Environmentally Sensitive Areas. All temporary fencing shall be removed upon completion of construction.</p> <p><b>BIO-3:   <i>Conduct Environmental Awareness Training for Construction Personnel</i></b></p> <p>Before any work occurs within the project limits, including equipment staging, grading, and tree and/or vegetation removal (clear and grub), CalVet and its contractors shall retain a qualified biologist (familiar with the resources in the area) to conduct a mandatory contractor/worker environmental awareness training for construction personnel. The awareness training shall be provided to all construction personnel (contractors and subcontractors) prior to beginning</p>	

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		<p>construction to brief them on the need to avoid effects on sensitive biological resources adjacent to construction areas and the penalties for not complying with applicable state and federal laws and permit requirements. The biologist shall inform all construction personnel about the life history and habitat requirements of special-status species with potential for occurrence onsite, the importance of maintaining habitat, and the terms and conditions of any resource agency permit or approval. The environmental training shall also cover general restrictions and guidelines that must be followed by all construction personnel to reduce or avoid effects on sensitive biological resources during project construction.</p> <p><b>BIO-4: Conduct Preconstruction Surveys for California Red-legged Frog and Mitigate Impacts</b></p> <p>CalVet and its contractors shall retain a qualified biologist to conduct a CRLF assessment according to the <i>Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog</i> (USFWS 2005). The USFWS will provide guidance, based on the initial assessment, whether field surveys are appropriate, where the field surveys should be conducted, and whether incidental take authorization should be obtained through Section 7 consultation or a Section 10 permit pursuant to the ESA <u>as further described below</u>.</p> <ul style="list-style-type: none"> <li>• <u>After the qualified biologist has completed a California red-legged frog habitat assessment in accordance with the Revised Guidance on Site Assessments and Field Surveys for the California red-legged frog (U.S. Fish and Wildlife Service 2005) (survey protocol), the results of the habitat assessment shall be submitted to USFWS and CDFW for review and written acceptance prior to starting Project activities. If after review of the results of the habitat assessment, USFWS or CDFW determines that surveys are warranted, then surveys shall be conducted in accordance with the USFWS survey protocol prior to starting Project activities. Results of surveys shall also be submitted to CDFW for review and approval in writing.</u></li> <li>• <u>If the Project may impact California red-legged frog based on the results of the habitat assessment and any surveys, the Project shall obtain authorization from USFWS for impacts to the species prior to</u></li> </ul>	



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		<p><u>project start.</u></p> <ul style="list-style-type: none"> <li><u>If a California red-legged frog is discovered during the habitat assessment, surveys, or during Project construction, CalVet and its contractors shall delay/cease work immediately and contact CDFW and USFWS within 24 hours. In this event, Project work shall not resume/proceed until the frog, through its own volition, moves out of harm's way and CDFW and USFWS have provided permission in writing to proceed with the Project.</u></li> </ul> <p><b>BIO-5: Conduct Preconstruction "Clearance" Surveys for Foothill Yellow-Legged Frog and Mitigate Impacts</b></p> <p><u>CalVet and its contractors shall retain a qualified biologist to perform a preconstruction survey within 24 hours prior to the initiation of construction to confirm the site is clear of FYLF. Should FYLF be detected during survey, and impacts cannot be avoided or minimized, a qualified biologist with a scientific collecting permit shall relocate frogs to suitable nearby habitat that would not be disturbed by Project construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment in the vicinity of the Project to determine where foothill yellow-legged frogs (FYLF) may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a FYLF survey methodology to CDFW for review and approval a minimum of 30 days prior to Project construction. No Project activities shall begin until FYLF surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years' experience conducting habitat assessments and surveys for FYLF, with detections. If any FYLGs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written</u></p>	

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		<p><u>acceptance and implement the plan prior to and during Project activities as applicable.</u></p> <p><b>BIO-6: Conduct Northwestern Pond Turtle Surveys and Mitigate Impacts</b></p> <p>CalVet and its contractors shall retain a qualified biologist to conduct a pre-construction northwestern pond turtle survey within 24 hours prior to the initiation of construction activities and retain a qualified biologist to survey immediately prior to ground-disturbing activities in suitable habitat. If northwestern pond turtle is found, consultation with CDFW shall be undertaken and a relocation plan shall be developed for Northwestern pond turtle encountered during construction. <u>A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project, prior to starting Project activities. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the project area. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for written acceptance prior to starting Project activities, and then implement the plan. A pond turtle habitat improvement plan shall also be prepared and implemented if required by CDFW. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.</u></p> <p><b>BIO-7: Conduct Vegetation Removal during the Non-breeding Season, Conduct Preconstruction Surveys for Nesting Migratory Birds, other Special Status Birds and Raptors and Avoid Impacts</b></p> <p>CalVet and its contractors shall conduct vegetation removal, where required to construct project features, during the non-breeding season for migratory birds and raptors (generally between September 16 and January 31) to the extent feasible.</p> <p>For Project activities that begin between February 1 and September 15, including tree and other vegetation removal, CalVet and its contractors shall retain a qualified biologist to conduct preconstruction surveys for white-tailed kite and other raptors to identify active nests on and within 500 feet of the Project site. For other special status birds and/or other nesting migratory birds, a qualified biologist</p>	

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		<p>shall conduct preconstruction nesting bird surveys on and within 100 feet of the Project site. These surveys shall be conducted within 147 days before the beginning of any construction activities between February 1 and September 15. <u>Furthermore, should a lapse in construction of 7 days or more occur during the nesting season, a qualified biologist shall conduct an additional survey and follow the protocols outlined herein, prior to resuming work.</u></p> <p>CalVet and its contractors shall avoid impacts to active raptor nests and any special-status bird and MBTA bird nests by establishing appropriate buffers around nests identified during preconstruction surveys; buffers shall be determined by a qualified biologist in consultation with CDFW. Project activity shall not commence within the buffer areas until a qualified biologist has determined, in coordination with CDFW, that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment. The size of the buffer may be adjusted if a qualified biologist and CalVet, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest. Monitoring of the nest by a qualified biologist during construction activities may be necessary.</p> <p><b>BIO-8: Conduct Preconstruction Special Status Mammal Surveys for Roosting Bats and Implement Protection Measures</b></p> <p>CalVet and its contractors shall retain a qualified wildlife biologist to conduct bat roost surveys within 14 days before any tree removal or clearing. Locations of vegetation and any required tree removal or excavation shall be examined for potential bat roosts. Specific survey methodologies shall be determined in coordination with CDFW, and may include visual surveys of bats (e.g., observation of bats during foraging period), inspection for suitable habitat, bat sign (e.g., guano), or use of ultrasonic detectors (e.g., SonoBat, Anabat).</p> <p>Removal of any significant roost sites located onsite shall be avoided if feasible.</p> <p>If it is determined that an active roost site cannot be avoided and will be affected, bats shall be excluded from the roost site before the site is removed. The biologist shall first notify and consult with CDFW on appropriate bat exclusion methods and roost removal procedures. Exclusion methods may include use of one-way doors at roost entrances (bats may leave, but not reenter), or sealing roost entrances</p>	

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		when the site can be confirmed to contain no bats. Once it is confirmed that all bats have left the roost, crews will be allowed to continue work in the area.	
<b>Impact 3.3-2:</b> The Project could affect riparian habitat or sensitive natural communities.	S	<p><b>Implement Mitigation Measures BIO-2 and BIO-3 presented above.</b></p> <p><b>BIO-9    Compensate for the Loss of Riparian Habitat and Restore Temporary Disturbed Areas</b></p> <p>To compensate for the permanent loss of riparian habitat communities, prior to construction, CalVet shall purchase habitat credits at an agency approved mitigation bank to ensure no net loss of riparian functions and values. To account for temporal loss, the Project shall purchase riparian credits at a 3:1 ratio. The final mitigation ratio and acreage shall be confirmed during review of final engineering drawings and may be modified during the CDFW Section 1602 permitting process which will dictate the ultimate compensation.</p> <p>CalVet shall provide written evidence to the resource agencies that compensation has been established through the purchase of mitigation credits. Alternatively, as part of the CDFW Streambed Alteration Agreement process, CalVet may provide a plan/proposal for CDFW approval to conduct on or offsite riparian habitat creation/enhancement to compensate for the Project's direct riparian impacts.</p> <p>All riparian areas subject to temporary construction disturbance shall be restored by CalVet and its contractors in accordance with a post construction Erosion Control and Habitat Restoration Plan (ECHRP). The ECHRP shall address all temporarily disturbed areas, be prepared by a qualified biologist, be developed as part of the CDFW Streambed Alteration Agreement process and be reviewed and approved by CDFW prior to implementation.</p>	LTS
<b>Impact 3.3-3:</b> The Project Could require construction and fill within waters of the U.S. and waters of the State.	S	<b>Implement Mitigation Measures BIO-1, BIO-2, and BIO-3 presented above.</b>	LTS
<b>Impact 3.3-4:</b> The Project could affect wildlife movement and/or migration.	LTS	None required.	LTS



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<b>Impact 3.3-5:</b> The Project would be implemented consistent with the intent of local policies and ordinances associated with protection of biological resources.	LTS	None required.	LTS
<b>Impact 3.3-6:</b> The Project could conflict with HCPs, NCCPs, or other conservation plans.	NI	None required.	NI
<b>Impact 3.3-7:</b> Cumulative Biological Resource Impacts.	CC	None required with implementation of Project mitigation (BIO-1 through BIO-9).	LCC
<b>Cultural Resources</b>			
<b>Impact 3.4-1:</b> Impacts to historical resources.	S	<p><b>CUL-1    <i>Inadvertent Discovery</i></b></p> <p>CalVet and its contractors shall implement the following measures. If subsurface deposits believed to be cultural or human in origin are discovered during construction, then all work must halt within a 100-foot radius of the discovery. A qualified professional archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards for prehistoric and historic archaeology, shall be retained to evaluate the significance of the find, and shall have the authority to modify the no-work radius as appropriate, using professional judgment. The following notifications shall apply, depending on the nature of the find:</p> <p>If the professional archaeologist determines that the find does not represent a cultural resource, then work may resume immediately, and no agency notifications are required.</p> <p>If the professional archaeologist determines that the find does represent a cultural resource from any time period or cultural affiliation, then he or she shall immediately notify DGS. The agencies shall consult to determine whether the resource is an historical resource or a unique archaeological resource. Work cannot resume within the no-work radius until the lead agencies, through consultation as appropriate, determine that the site either: 1) is not a Historic Property according to Section 106 or a Historical Resource according to CEQA; or</p>	LTS

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		<p>2) that appropriate treatment measures have been completed to their satisfaction. Appropriate treatment measures are those consistent with CEQA Guidelines Section 15126.4(b) and Public Resources Code Section 21083.2.</p> <p>If any archaeological find that includes Native American or potentially Native American resource that does not include human remains, the archaeologist shall notify the Mishewal-Wappo Tribe of Alexander Valley consistent with Mitigation Measure TCR-1.</p>	
<b>Impact 3.4-2:</b> Impacts to archaeological resources.	S	<b>Implement Mitigation Measure CUL-1</b>	LTS
<b>Impact 3.4-3:</b> Impacts to human remains.	S	<p><b>CUL-2 Human Remains</b></p> <p>CalVet and its contractors shall implement the following measures. If the find includes human remains, or remains that are potentially human, CalVet and its contractors shall retain a professional archaeologist to ensure reasonable protection measures are taken to protect the discovery from disturbance. The archaeologist shall notify the Napa County Coroner (as per § 7050.5 of the Health and Safety Code). The provisions of Section 7050.5 of the California Health and Safety Code, § 5097.98 of the California PRC, and AB 2641 shall be implemented. If the Coroner determines the remains are Native American and not the result of a crime scene, the Coroner shall notify the NAHC, which then will designate a Native American Most Likely Descendant (MLD) for the project (§ 5097.98 of the PRC). The designated MLD shall have 48 hours from the time access to the property is granted to make recommendations concerning treatment of the remains. If CalVet does not agree with the recommendations of the MLD, then the NAHC can mediate (§ 5097.94 of the PRC). If no agreement is reached, CalVet must rebury the remains where they will not be further disturbed (§ 5097.98 of the PRC). This shall also include either recording the site with the NAHC or the appropriate Information Center; using an open space or conservation zoning designation or easement; or recording a reinternment document with the county in which the property is located. Work cannot resume within the no-work radius until the lead agencies, through consultation as appropriate, determine that the treatment measures have been completed to their satisfaction. This mitigation measure should be carried out consistent with Mitigation Measure <b>TCR-1</b>.</p>	LTS

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<b>Impact 3.4-4:</b> Project construction and operation could contribute to the cumulative impact on cultural resources.	CC	None required with implementation of Project mitigation measures CUL-1 and CUL-2	LCC
<b>Greenhouse Gas Emissions</b>			
<b>Impact 3.5-1:</b> Implementation of the proposed Project would generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.	LTS	None required.	LTS
<b>Impact 3.5-2:</b> Implementation of the proposed Project would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.	NI	None required.	NI
<b>Impact 3.5-3:</b> Result in a considerable contribution to cumulative impacts associated with greenhouse gas emissions.	LCC	None required.	LCC
<b>Geology, Soils, and Paleontological Resources</b>			
<b>Impact 3.6-1:</b> The proposed project could result in soil erosion or the loss of topsoil.	S	<i>Implement Mitigation Measure HYD-1.</i>	LTS
<b>Impact 3.6-2:</b> Project facilities could be subject to seismic hazards, instability of existing fills, and settlement that could potentially result in future failure of those facilities.	LTS	None required.	LTS
<b>Impact 3.6-3:</b> The project could directly impact a unique paleontological resource during excavation activities.	NI	None required.	NI

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<b>Impact 3.6-4:</b> Cumulative geology, soils and paleontological resources impacts.	LCC	None required.	LCC
<b>Hazards and Hazardous Materials</b>			
<b>Impact 3.7-1:</b> The Project would require the transport, storage and use of hazardous materials common for such activities and could result in their inadvertent release to the environment.	LTS	None required.	LTS
<b>Impact 3.7-2:</b> Project contribution to the cumulative impact of the transport, handling and storage of hazardous materials.	LCC	None required.	LCC

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<b>Hydrology and Water Quality</b>			
<p><b>Impact 3.8-1:</b> The Project could adversely affect water quality during construction by increasing the concentration of pollutants in surface runoff from the Project site, but would not significantly impact water quality during operation.</p>	S	<p><b>HYD-1: <i>Prepare and implement a Construction Stormwater Erosion Control Plan and implement construction Best Management Practices (BMPs).</i></b></p> <p>Should a SWPPP not be required per Mitigation Measure BIO-1, the construction contractor shall submit a Construction Stormwater Erosion Control Plan to CalVet for review and approval. At a minimum, the Construction Stormwater Erosion Control Plan shall include the following erosion prevention BMPs which shall be implemented throughout Project construction:</p> <ul style="list-style-type: none"> <li>• Diversion of offsite runoff away from the construction area;</li> <li>• Silt containment measures including silt traps, ponds, perimeter straw wattles, silt fences and/or temporary basins shall be implemented onsite to trap sediment before it leaves the site;</li> <li>• Regular sprinkling of exposed soils to control dust during construction during the dry season;</li> <li>• Stockpile management to ensure materials stockpiles are upland of the Rector Creek ordinary high-water mark and contained with straw wattles or other silt containment measures;</li> <li>• Erosion control measures maintained throughout the construction period;</li> <li>• Construction scheduling to minimize soil disturbance during the wet weather season; and</li> <li>• Regular inspections and maintenance BMPs and storm event monitoring.</li> </ul>	LTS
<p><b>Impact 3.8-2:</b> Project outfall construction and operation within the north bank of Rector Creek could result in increased erosion due to alteration of the course of Rector Creek during high flow conditions and or as a result of outfall discharges.</p>	LTS	None required.	LTS

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<b>Impact 3.8-3:</b> Cumulative Project impact on Rector Creek hydrology and water quality.	LCC	None required.	LCC
<b>Noise</b>			
<b>Impact 3.9-1:</b> The Project could result in short-term construction generated noise in excess of County standards.	LTS	None required.	LTS
<b>Impact 3.9.2:</b> Project construction activities could generate groundborne vibration or groundborne noise levels.	LTS	None required	LTS
<b>Impact 3.9.3:</b> Result in exposing individuals residing or working in the Project area to excessive airport noise levels.	LTS	None required.	LTS
<b>Impact 3.9-4:</b> Result in a considerable contribution to cumulative noise and vibration impacts.	LCC	None required.	LCC
<b>Tribal Resources</b>			
<b>Impact 3.10.1:</b> Project construction could adversely affect tribal cultural resources.	S	<p><b>TCR-1    <i>Unanticipated Discovery</i></b></p> <p>CalVet and its contractors shall implement the following measures. If any suspected TCRs or any archaeological find that includes Native American or potentially Native American resource that does not include human remains are discovered during ground disturbing construction activities, all work shall cease within 100 feet of the find. DGS, and/or the on-site archaeologist (if applicable) shall notify Mishewal-Wappo Tribe of Alexander Valley. The agencies shall consult with the tribe on a finding of eligibility and implement appropriate treatment measures, if the find is determined to be an Historical Resource under CEQA, as defined in Section 15064.5(a) of the CEQA Guidelines. Preservation in place is the preferred treatment, if feasible. Work cannot resume within the no-work radius</p>	LTS

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		<p>until the lead agencies, through consultation as appropriate, determine that the site either: 1) is not an Historical Resource under CEQA, as defined in Section 15064.5(a) of the CEQA Guidelines; or 2) that the treatment measures have been completed to their satisfaction. This shall be carried out in congruence with the process outlined in mitigation measure CUL-1.</p> <p>Human Remains. If the find includes human remains, or remains that are potentially human, the measures outlined in Mitigation Measure CUL-2 shall be followed.</p>	
<b>Impact 3.8.2:</b> Project construction and operation could contribute to cumulative adverse impact on tribal cultural resources.	CC	Implement Mitigation Measure TCR-1	LCC
<b>Utilities and Service Systems: Water Supply</b>			
<b>Impact 3.11-1:</b> The project would construct new water conveyance facilities which could adversely affect environmental resources.	S	Implement all mitigation measures contained in Sections 3.2-3.10 and listed in Table ES-1 above.	LTS
<b>Impact 3.11-2:</b> Implementation of the Proposed Project Release Schedule could result in the inability of CalVet to meet current water delivery commitments to its customers.	LTS	None required.	LTS
<b>Impact 3.11-3:</b> Project construction activities could contribute to the cumulative impact on significant environmental resources.	CC	Implement all mitigation measures contained in Sections 3.2-3.10 and listed in Table ES-1 above.	LCC

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<p><b>Impact 3.11-4:</b> Implementation of the Proposed Project Release Schedule could result in the inability of CalVet to meet future water delivery commitments to its customers. Impact Determination: <i>less than cumulatively considerable with mitigation.</i></p>	CC	<p><b>UTIL-1    <i>Alternate Water Supply to Napa State Hospital.</i></b></p> <p>In the event that Napa State Hospital pursues a future agreement with CalVet to provide the hospital with up to 500 AF/yr of potable water, CalVet shall assess its water supply availability taking into account its interim or long-term environmental release schedule, whichever is in effect at the time, and its current consumptive water demand from existing customers. If CalVet determines such an agreement would adversely affect Rector Reservoir operations and result in infringement on the conditions of its water rights license and/or its ability to meet the consumptive water demand of its current customers, CalVet shall not enter into a new agreement with Napa State Hospital. CalVet shall then work with the hospital to identify and secure feasible alternative sources of potable water to meet its demand. An alternate water source includes, but, is not limited to, the City of Napa which currently supplies the hospital with potable water.</p>	LCC



## **1 INTRODUCTION**

### **1.1 Purpose of this Final EIR**

This final environmental impact report (FEIR) evaluates the potential environmental effects of the proposed Rector Reservoir Bypass Valve Project (Project). This FEIR was prepared in accordance with California Environmental Quality Act (CEQA) (Public Resources Code [PRC] §§ 21000-21177) and the Guidelines for the Implementation of CEQA (California Administrative Code §§ 15000 et seq.). As described in CEQA Guidelines Section 15121(a), an EIR is a public informational document that assesses the significant environmental impacts of a project, identifies ways to minimize the significant impacts, and describes a reasonable range of alternatives to the project. CEQA requires that an EIR be prepared by the agency with primary responsibility over the approval or carrying out of a project (the Lead Agency).

The California Department of Veterans Affairs (CalVet), with support from the California Department of General Services/Real Estate Services Division (DGS/RES), is serving as the CEQA Lead Agency for this Project. An Initial Study was conducted to determine the Project's potential for any significant environmental impacts. Based in part on the results of that study, CalVet determined preparation of an Environmental Impact Report (EIR) was appropriate to meet its obligation for environmental review under CEQA. A Notice of Preparation (NOP) for the EIR was circulated for public review, along with the Initial Study, in July 2020. Subsequently a Draft EIR (DEIR) was completed and circulated for public review on July 1, 2021 for a period of 45 days. The comment period was scheduled to close on August 16, 2021, but at the request of the California Department of Fish and Wildlife, the comment period was extended to August 27, 2021.

Three (3) comment letters were received during the public review period from the following parties: the California Department of the Review Period from the following agencies: California Department of Water Resources, Division of Safety of Dams; California Department of Fish and Wildlife (CDFW); and Russ Liebig of Stillwater Sciences. The letters and responses to comments contained therein are presented in Chapter 3 of this FEIR.

CalVet will review and consider the FEIR. If CalVet finds that the FEIR is "adequate and complete," it will then certify the FEIR. Upon certification of the FEIR, CalVet may take action to approve, revise, or reject the Project. Any decision to approve the Project would be accompanied by written findings, and if necessary, a Statement of Overriding Considerations, in accordance with CEQA Guidelines Section 15091 and Section 15093. A Mitigation Monitoring and Reporting Program (MMRP) must also be adopted for mitigation measures that have been incorporated into the Project to reduce or avoid significant effects on the environment. The MMRP for this Project is included as Appendix A to this FEIR. The MMRP is intended to ensure that proposed Project measures are enforceable and will be implemented during Project implementation.

## **1.2 Project Overview**

The following is a summarized description of the Rector Dam Bypass Valve Project. A more detailed description, including figures, is provided in Chapter 2 of the DEIR (see Appendix B of this FEIR) and in the Executive Summary (ES) of this FEIR.

Rector Creek flows from the east side of the Napa Valley and is a tributary to Conn Creek, which is a tributary to the Napa River (see Figure ES-1). The State of California built Rector Dam in 1946 and CalVet has operated the dam and reservoir since that time to supply drinking water to the Veterans Home of California in Yountville, the Napa State Hospital, the California Department of Fish and Wildlife's (CDFW) Bay-Delta Region office, the Town of Yountville, and several local wineries. CalVet also supplies untreated water to the CDFW Silverado Fisheries Base (Fisheries Base), which includes a hatchery located along Rector Creek downstream of the dam, and to the CAL FIRE training facility, located at the base of Rector Dam. Water delivered to the Fisheries Base is returned to Rector Creek approximately 0.35 miles downstream of the spillway while water delivered to the other uses listed above are for consumptive purposes.

The stream reach below Rector Dam is accessible to anadromous fish. Neither CalVet's license to operate Rector Reservoir nor its water rights supporting those operations include specific instream flow release requirements. In response to a complaint filed in relation to the absence of specific instream flow release requirements, CalVet is proceeding in good faith to assess and implement minimum flow release requirements for Rector Reservoir and construct the needed infrastructure to facilitate these releases. In support of this effort a preliminary instream flow study was conducted to provide guidance in establishing an interim minimum flow release schedule at Rector Dam. DGS recognizes the need for further data collection and analysis needed in order to establish an effective and sustainable long-term minimum flow release schedule for Rector Reservoir and is currently in the process of conducting additional data collection and analysis.

Rector Creek Dam is a 164-foot-high earth-fill structure with a crest elevation of 381.5 feet above Mean Sea Level (MSL). A tower with intake inverts at 270, 291, 307, 323, 335, and 339 feet above MSL supplies the low-level outlet, a 30-inch iron pipe. In order to facilitate long-term releases to Rector Creek below Rector Dam, CalVet proposes to construct a bypass water pipe to provide a constant flow back to the creek at a point immediately downstream of the dam. The Project would construct a "hot tap" (bypass valve) which would connect to the existing 36" diameter raw water main that runs beneath the dam and carries water from the reservoir's intake tower to the CalVet water treatment plant. The bypass valve would be installed between an existing 8" tap which serves the CDFW Fisheries Base and a 6" tap which serves the fire training facility. Raw water to be released to Rector Creek will be carried from the bypass valve via a short pipeline to an outfall structure located on the bank of Rector Creek (see Figure ES-2).

With the completion of the bypass valve facilities described above, CalVet would implement minimum flow releases to Rector Creek in accordance with the recommendations presented in the Rector Creek Preliminary Instream Flow and Stream Habitat Assessment prepared by Stillwater Sciences and dated December 2018. The DEIR analyzed implementation of the interim minimum flow release schedule and construction and operation of the bypass valve facilities at the project level. In recognition that, with the

completion of ongoing long-term minimum release studies, permanent minimum flow release schedules may be implemented that could vary from the proposed interim schedule, the EIR will address the future establishment of a permanent schedule at a programmatic level.

### **1.3 Environmental Review Process**

#### **1.3.1 Notice of Preparation and Initial Study**

In accordance with CEQA Guidelines Section 15082, CalVet prepared an NOP of an EIR and Initial Study for the Project that was distributed to responsible agencies and the public for a 30-day comment period, beginning on July 1, 2020, and concluding on July 31, 2020 (State Clearinghouse [SCH] No. 2020070017). Along with the NOP, the Rector Reservoir Bypass Valve Project Initial Study was circulated by CalVet for the 30-day public review period.

The Initial Study determined that the Project would have a less than significant impact or no impacts on the following Initial Study impact areas:

Aesthetics	Public Services
Agriculture and Forest Resources	Recreation
Land use and Planning	Transportation
Mineral Resources	Utilities (except for water facilities and water supply), and
Population and Housing	Wildfires

The NOP and Initial Study are provided in *Appendix 1.1-A* of the DEIR.

##### **1.3.1.1 Scoping Meeting**

On July 21, 2020, DGS/RESA held an online scoping meeting from 6:00 p.m. to 8:00 p.m. in order to allow early public/agency input and comments about the Project, Initial Study, and future environmental review. DGS/RESA and the Project's environmental consultant (ECORP Consulting, Inc.) presented a description of the Project and an overview of the upcoming environmental review process. During the scoping session, no attendees signed in and no comments from the public were presented.

#### **1.3.2 Public Review of the DEIR**

As noted, the DEIR was circulated for public and agency review beginning on July 1, 2021 and ending on August 27, 2021. The DEIR contains a description of the Project, description of the environmental setting, identification of Project direct, indirect, and cumulative impacts on affected environmental resources, and feasible mitigation measures for impacts found to be significant. A Notice of Completion (NOC) was filed with the California Office of Planning and Research (OPR) to begin the public review period in accordance with (PRC § 21161).

On August 3, 2021, during the public review period, DGSG and ECORP Consulting, Inc. conducted an online public meeting. During that meeting, the environmental consultant presented a description of the proposed project and summarized the results of the environmental review contained in the DEIR. The meeting provided an opportunity for the public to ask questions about the Project and environmental review.

### **1.3.3      *Final EIR***

This FEIR was prepared following the close of the public review period. The FEIR responds to all substantive comments received during the public review period that raise significant environmental concerns. The FEIR contains revisions to the DEIR made in response to comments or at the discretion of the Lead Agency.

As noted, CalVet will review and consider the FEIR. If CalVet finds that the FEIR is adequate and complete in accordance with CEQA Guidelines, CalVet would then certify the FEIR. Upon certification, CalVet may then take action to approve, revise, or reject the Project. Any decision to approve the Project would be accompanied by written findings, and if necessary, a Statement of Overriding Considerations, in accordance with CEQA Guidelines Section 15091 and Section 15093. A Mitigation Monitoring and Reporting Program must also be adopted for mitigation measures that have been incorporated into the Project to reduce or avoid significant effects on the environment. The MMRP is included with this FEIR as Appendix A.

## **1.4      Final EIR Organization**

This FEIR is organized as follows:

**ES-1, “Executive Summary,”** summarizes the Project, environmental impacts, and mitigation measures; summarizes the alternatives evaluation, identifies the CEQA environmentally superior alternative; and summarizes areas of controversy and issues to be resolved.

**Chapter 1, “Introduction,”** provides an overview of the proposed Project facilities, location, background, environmental review process, and FEIR organization.

**Chapter 2, “Revisions to the DEIR,”** presents revisions to the DEIR that have been made in response to comments on the DEIR and at the discretion of Madera County as the Lead Agency.

**Chapter 3, “Comment Letters and Responses to Comments,”** presents the comment letters received on the DEIR. Substantive comments within each letter are bracketed and identified by number. After each letter, written responses to each numbered comment are presented.

**Chapter 4, “List of Preparers,”** identifies the lead agency contacts as well as the preparers of the DEIR and FEIR.

**Appendices:** Appendices to the FEIR include the Mitigation Monitoring and Reporting Program, Draft EIR, and Draft EIR Appendices.

## 2 REVISIONS TO THE DRAFT EIR

### 2.1 Purpose of this Chapter

Regarding the preparation of responses to comments on a Draft EIR, Section 15088 (d) of the State CEQA Guidelines states:

The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where responses to comments makes important changes in the information contained in the text of the draft EIR, the Lead Agency should either:

- (1) Revise the text in the body of the EIR, or
- (2) Include marginal notes showing that the information is revised in the response to comments.

In accordance with Section 15088 (d) above, this Chapter of the FEIR presents revisions to the DEIR that are hereby made in response to comments received on the DEIR and at the discretion of the Lead Agency. Each revision includes the section number of the DEIR in which the change is made and the location of the revision within the section. Revised DEIR text is shown with deleted text ~~struck-through~~ and new text underlined.

The changes shown here clarify and amplify the information and analysis presented in the DEIR and do not alter the EIR in a way that deprives the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. No new significant environmental effects and no increase in the severity of an environmental impact are identified in this FEIR.

### 2.2 Revisions to the DEIR

**Section ES-1.3, Table ES-1 is revised as follows:**

Table 2-8. Proposed interim environmental flow release schedule for outflows below Rector Creek Dam															
Water-Year Type <sup>1</sup>	Minimum Environmental Flow Releases <sup>2</sup> (cfs)														
	Oct	Nov	Dec 1-15	Dec 16-31	Jan	Feb 1-15	Feb 16-30	Mar 1-15	Mar 16-31	Apr	May	Jun	Jul	Aug	Sep
Wet	0.8	0.8	1.5	2.5	3.5	4.0	4.0	4.5	4.5	2.5	2.5	1.0	0.8	0.8	0.8
Above Normal	0.7	0.7	1.3	1.3	3.5	4.0	4.0	4.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Below Normal	0.7	0.7	1.3	1.3	2.5	2.5	4.0	3.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Dry	0.25	0.50	1.0	1.0	2.0	2.5	2.5	3.0	3.0	2.5	1.5	1.0	0.25	0.25	0.25
Critical	0.25	0.50	1.0	1.0	2.0	2.2	2.2	2.8	2.8	2.5	1.0	0.5	0.25	0.25	0.25

<sup>1</sup> Water-Year Type based on the DWR Sacramento Valley Index.

<sup>2</sup> Rector Dam minimum environmental flow releases consider the Fisheries Base discharge releases for stream habitat; however, compliance is met by releases from Rector Dam.

Note: Flows shown shaded in blue represent the increased flow levels for winter and spring migration and spawning. These proposed interim flows reflect the combined releases through both the proposed bypass and the CDFW Fisheries Base.

**Section ES-1.9, Table ES-2 under Biological Resource, Mitigation Measure BIO-4:**

**BIO-4: Conduct Preconstruction Surveys for California Red-legged Frog and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a CRLF assessment according to the *Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog* (USFWS 2005). The USFWS will provide guidance, based on the initial assessment, whether field surveys are appropriate, where the field surveys should be conducted, and whether incidental take authorization should be obtained through Section 7 consultation or a Section 10 permit pursuant to the ESA as further described below.

- After the qualified biologist has completed a California red-legged frog habitat assessment in accordance with the *Revised Guidance on Site Assessments and Field Surveys for the California red-legged frog* (U.S. Fish and Wildlife Service 2005) (survey protocol), the results of the habitat assessment shall be submitted to USFWS and CDFW for review and written acceptance prior to starting Project activities. If after review of the results of the habitat assessment, USFWS or CDFW determines that surveys are warranted, then surveys shall be conducted in accordance with the USFWS survey protocol prior to starting Project activities. Results of surveys shall also be submitted to CDFW for review and approval in writing.
- If the Project may impact California red-legged frog based on the results of the habitat assessment and any surveys, the Project shall obtain authorization from USFWS for impacts to the species prior to project start.
- If a California red-legged frog is discovered during the habitat assessment, surveys, or during Project construction, CalVet and its contractors shall delay/cease work immediately and contact CDFW and USFWS within 24 hours. In this event, Project work shall not resume/proceed until the frog, through its own volition, moves out of harm's way and CDFW and USFWS have provided permission in writing to proceed with the Project.

**Section ES-1.9, Table ES-2 under Biological Resource, Mitigation Measure BIO-5:**

**BIO-5: Conduct Preconstruction "Clearance" Surveys for Foothill Yellow-Legged Frog and Mitigate Impacts**

~~CalVet and its contractors shall retain a qualified biologist to perform a preconstruction survey within 24 hours prior to the initiation of construction to confirm the site is clear of FYLF. Should FYLF be detected during survey, and impacts cannot be avoided or minimized, a qualified biologist with a scientific collecting permit shall relocate frogs to suitable nearby habitat that would not be disturbed by Project construction.~~ A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment in the vicinity of the Project to determine where foothill yellow-legged frogs (FYLF) may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a FYLF survey methodology to CDFW for review and approval a minimum of 30 days prior to Project construction. No Project activities shall begin until FYLF surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream

surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years' experience conducting habitat assessments and surveys for FYLF, with detections. If any FYLGs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written acceptance and implement the plan prior to and during Project activities as applicable.

***Section ES-1.9, Table ES-2 under Biological Resource, Mitigation Measure BIO-6:***

**BIO-6: Conduct Northwestern Pond Turtle Surveys and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a pre-construction northwestern pond turtle survey within 24 hours prior to the initiation of construction activities and retain a qualified biologist to survey immediately prior to ground-disturbing activities in suitable habitat. If northwestern pond turtle is found, consultation with CDFW shall be undertaken and a relocation plan shall be developed for Northwestern pond turtle encountered during construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project, prior to starting Project activities. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the project area. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for written acceptance prior to starting Project activities, and then implement the plan. A pond turtle habitat improvement plan shall also be prepared and implemented if required by CDFW. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.

***Section ES-1.9, Table ES-2 under Biological Resource, Mitigation Measure BIO-7:***

**BIO-7: Conduct Vegetation Removal during the Non-breeding Season, Conduct Preconstruction Surveys for Nesting Migratory Birds, other Special Status Birds and Raptors and Avoid Impacts**

CalVet and its contractors shall conduct vegetation removal, where required to construct project features, during the non-breeding season for migratory birds and raptors (generally between September 16 and January 31) to the extent feasible.

For Project activities that begin between February 1 and September 15, including tree and other vegetation removal, CalVet and its contractors shall retain a qualified biologist to conduct preconstruction surveys for white-tailed kite and other raptors to identify active nests on and within 500 feet of the Project site. For other special status birds and/or other nesting migratory birds, a qualified biologist shall conduct preconstruction nesting bird surveys on and within 100 feet of the Project site. These surveys shall be conducted within ~~147~~ days before the beginning

**Rector Reservoir Bypass Valve Project  
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of any construction activities between February 1 and September 15. Furthermore, should a lapse in construction of 7 days or more occur during the nesting season, a qualified biologist shall conduct an additional survey and follow the protocols outlined herein, prior to resuming work.

CalVet and its contractors shall avoid impacts to active raptor nests and any special-status bird and MBTA bird nests by establishing appropriate buffers around nests identified during preconstruction surveys; buffers shall be determined by a qualified biologist in consultation with CDFW. Project activity shall not commence within the buffer areas until a qualified biologist has determined, in coordination with CDFW, that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment. The size of the buffer may be adjusted if a qualified biologist and CalVet, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest. Monitoring of the nest by a qualified biologist during construction activities may be necessary.

**Section 2.7.2, Table 2-8 is revised as follows:**

Table 2-8. Proposed interim environmental flow release schedule for outflows below Rector Creek Dam															
Water-Year Type <sup>1</sup>	Minimum Environmental Flow Releases <sup>2</sup> (cfs)														
	Oct	Nov	Dec 1-15	Dec 16-31	Jan	Feb 1-15	Feb 16-30	Mar 1-15	Mar 16-31	Apr	May	Jun	Jul	Aug	Sep
Wet	0.8	0.8	1.5	2.5	3.5	4.0	4.0	4.5	4.5	2.5	2.5	1.0	0.8	0.8	0.8
Above Normal	0.7	0.7	1.3	1.3	3.5	4.0	4.0	4.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Below Normal	0.7	0.7	1.3	1.3	2.5	2.5	4.0	3.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Dry	0.25	0.50	1.0	1.0	2.0	2.5	2.5	3.0	3.0	2.5	1.5	1.0	0.25	0.25	0.25
Critical	0.25	0.50	1.0	1.0	2.0	2.2	2.2	2.8	2.8	2.5	1.0	0.5	0.25	0.25	0.25

<sup>1</sup> Water-Year Type based on the DWR Sacramento Valley Index.

<sup>2</sup> Rector Dam minimum environmental flow releases consider the Fisheries Base discharge releases for stream habitat; however, compliance is met by releases from Rector Dam.

Note: Flows shown shaded in blue represent the increased flow levels for winter and spring migration and spawning. These proposed interim flows reflect the combined releases through both the proposed bypass and the CDFW Fisheries Base.

**Section 3.3.5 under "Impact 3.3-1," Mitigation Measure BIO-4 is revised as follows:**

**BIO-4: Conduct Preconstruction Surveys for California Red-legged Frog and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a CRLF assessment according to the *Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog* (USFWS 2005). The USFWS will provide guidance, based on the initial assessment, whether field surveys are appropriate, where the field surveys should be conducted, and whether incidental take authorization should be obtained through Section 7 consultation or a Section 10 permit pursuant to the ESA as further described below:



- After the qualified biologist has completed a California red-legged frog habitat assessment in accordance with the *Revised Guidance on Site Assessments and Field Surveys for the California red-legged frog* (U.S. Fish and Wildlife Service 2005) (survey protocol), the results of the habitat assessment shall be submitted to USFWS and CDFW for review and written acceptance prior to starting Project activities. If after review of the results of the habitat assessment, USFWS or CDFW determines that surveys are warranted, then surveys shall be conducted in accordance with the USFWS survey protocol prior to starting Project activities. Results of surveys shall also be submitted to CDFW for review and approval in writing.
- If the Project may impact California red-legged frog based on the results of the habitat assessment and any surveys, the Project shall obtain authorization from USFWS for impacts to the species prior to project start.
- If a California red-legged frog is discovered during the habitat assessment, surveys, or during Project construction, CalVet and its contractors shall delay/cease work immediately and contact CDFW and USFWS within 24 hours. In this event, Project work shall not resume/proceed until the frog, through its own volition, moves out of harm's way and CDFW and USFWS have provided permission in writing to proceed with the Project.

**Section 3.3.5 under "Impact 3.3-1," Mitigation Measure BIO-5 is revised as follows:**

**BIO-5: Conduct Preconstruction "Clearance" Surveys for Foothill Yellow-Legged Frog and Mitigate Impacts**

~~CalVet and its contractors shall retain a qualified biologist to perform a preconstruction survey within 24 hours prior to the initiation of construction to confirm the site is clear of FYLF. Should FYLF be detected during survey, and impacts cannot be avoided or minimized, a qualified biologist with a scientific collecting permit shall relocate frogs to suitable nearby habitat that would not be disturbed by Project construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment in the vicinity of the Project to determine where foothill yellow-legged frogs (FYLF) may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a FYLF survey methodology to CDFW for review and approval a minimum of 30 days prior to Project construction. No Project activities shall begin until FYLF surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years' experience conducting habitat assessments and surveys for FYLF, with detections. If any FYLGs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to~~

CDFW for written acceptance and implement the plan prior to and during Project activities as applicable.

**Section 3.3.5 under "Impact 3.3-1," Mitigation Measure BIO-6 is revised as follows:**

**BIO-6: Conduct Northwestern Pond Turtle Surveys and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a pre-construction northwestern pond turtle survey within 24 hours prior to the initiation of construction activities and retain a qualified biologist to survey immediately prior to ground-disturbing activities in suitable habitat. If northwestern pond turtle is found, consultation with CDFW shall be undertaken and a relocation plan shall be developed for Northwestern pond turtle encountered during construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project, prior to starting Project activities. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the project area. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for written acceptance prior to starting Project activities, and then implement the plan. A pond turtle habitat improvement plan shall also be prepared and implemented if required by CDFW. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.

**Section 3.3.5 under "Impact 3.3-1," Mitigation Measure BIO-7 is revised as follows:**

**BIO-7: Conduct Vegetation Removal during the Non-breeding Season, Conduct Preconstruction Surveys for Nesting Migratory Birds, other Special Status Birds and Raptors and Avoid Impacts**

CalVet and its contractors shall conduct vegetation removal, where required to construct project features, during the non-breeding season for migratory birds and raptors (generally between September 16 and January 31) to the extent feasible.

For Project activities that begin between February 1 and September 15, including tree and other vegetation removal, CalVet and its contractors shall retain a qualified biologist to conduct preconstruction surveys for white-tailed kite and other raptors to identify active nests on and within 500 feet of the Project site. For other special status birds and/or other nesting migratory birds, a qualified biologist shall conduct preconstruction nesting bird surveys on and within 100 feet of the Project site. These surveys shall be conducted within ~~147~~ days before the beginning of any construction activities between February 1 and September 15. Furthermore, should a lapse in construction of 7 days or more occur during the nesting season, a qualified biologist shall conduct an additional survey and follow the protocols outlined herein, prior to resuming work.

CalVet and its contractors shall avoid impacts to active raptor nests and any special-status bird and MBTA bird nests by establishing appropriate buffers around nests identified during preconstruction surveys; buffers shall be determined by a qualified biologist in consultation with CDFW. Project activity shall not commence within the buffer areas until a qualified biologist has

determined, in coordination with CDFW, that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment. The size of the buffer may be adjusted if a qualified biologist and CalVet, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest. Monitoring of the nest by a qualified biologist during construction activities may be necessary.

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### **3 COMMENTS AND RESPONSES TO COMMENTS ON THE DRAFT EIR**

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#### **3.1 Introduction**

This chapter includes each comment letter on the DEIR received by CalVet and CalVet's responses to each substantive comment in those letters. During the public review period, three comment letters were received. These include:

- Comment Letter 1. Russell Bowlus, California Department of Water Resources, Division of Safety of Dams dated July 7, 2021;
- Comment Letter 2. Garret Allen, California Department of Fish and Wildlife (CDFW) dated August 27, 2021; and
- Comment Letter 3. Russ Liebig, Stillwater Sciences dated July 23, 2021.

In keeping with the requirements of Section 15088 of the State CEQA Guidelines, substantive comments warranting written responses from the CEQA Lead Agency are identified with brackets and numbering in the right margin of each page of the letters. The Lead Agency's written responses to each numbered comment are presented after each letter.

Rector Reservoir Bypass Valve Project  
Final Environmental Impact Report

### 3.2 Comment Letter #1: Department of Water Resources

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STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



July 7, 2021

Ms. Terry Ash  
California Department of General Services  
707 Third Street, 4<sup>th</sup> Floor  
West Sacramento, California 95605

Environmental Document Transmittal for the Rector Reservoir Bypass Valve Project  
SCH# 2020070017  
Napa County

Dear Ms. Ash:

The Division of Safety of Dams (DSOD) has reviewed the Draft Environmental Impact Report for the "Rector Reservoir Bypass Valve Project" which describes a proposed modification to the outlet system at Rector Creek Dam to provide environmental releases.

The proposed work will be subject to the jurisdiction of DSOD. As such, an alteration application, together with plans, specifications, and the appropriate filing fee, must be filed with DSOD for the work. All dam safety related issues must be resolved prior to approval of the application, and the work must be performed under the direction of a civil engineer registered in California. Erik Malvick, our Design Engineering Branch Chief, is responsible for the application process and can be reached at (916) 565-7840.

1-1

If you have any questions or need additional information, you may contact Area Engineer Michelle Holmes at (916) 565-7814 or me at (916) 565-7813.

Sincerely,

*R. Bowlus*

Russell Bowlus, Regional Engineer  
Northern Region  
Field Engineering Branch  
Division of Safety of Dams

cc: Governor's Office of Planning and Research  
State Clearinghouse  
state.clearinghouse@opr.ca.gov

2021 JUL 22 A 9:49

## **Responses to Comment Letter 1**

- 1-1:** Comment 1-1 notes that the proposed Project would be subject to the jurisdiction of the Division of Safety of Dams (DSOD), and that CalVet, the Project proponent, would need to file an alteration application with the Division. The comment states that Project plans, specifications, and the appropriate filing fee must accompany the application filing. The comment further notes that all dam safety-related issues must be resolved prior to approval of the application, and that work must be performed under the direction of a civil engineer registered in California.

In response to the comment, the Lead Agency recognizes DSOD's jurisdiction in regard to proposed Project construction and understands that Project construction will require an alteration application as stated in the comment. The comment is hereby forwarded to the Project decision-makers for their consideration.

### 3.3 Comment Letter 2: California Department of Fish and Wildlife

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State of California  
Department of Fish and Wildlife



#### Memorandum

Date: August 27, 2021

To: Ms. Terry Ash  
California Department of General Services  
707 3<sup>rd</sup> Street, 4<sup>th</sup> Floor  
West Sacramento, CA 95605  
[Terry.Ash@dgs.ca.gov](mailto:Terry.Ash@dgs.ca.gov)

DocuSigned by:  
*Stacy Sherman*  
From: Ms. Stacy Sherman, Acting Regional Manager  
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534  
Subject: Rector Reservoir Bypass Valve Project, Draft Environmental Impact Report, SCH No. 2020070017, Napa County

In a memorandum dated August 5, 2020, the California Department of Fish and Wildlife (CDFW) provided comments on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Rector Reservoir Bypass Valve Project (Project). Since then, CDFW personnel have reviewed the DEIR for the Project. CDFW is submitting comments on the DEIR to inform the California Department of General Services, the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

2-1

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits under the California Endangered Species Act (CESA) or Native Plant Protection Act, Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

#### PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project is located at the Rector Creek Dam (Dam) and Reservoir approximately 2.5 miles northeast of the Town of Yountville, Napa County, State of California; Latitude 38.44109°, Longitude -122.34629°. The property address is 7300 Silverado Trail, Napa, CA 94558.

Three main tributaries contribute to Rector Creek Reservoir storage: North Fork Rector Creek; mainstem Rector Creek; and South Fork Rector Creek. The drainage area contributing to the Rector Creek Reservoir is approximately 6,971 acres and extends upstream easterly to Atlas Peak Mountain. Rector Creek downstream of the Dam runs west to its confluence with Conn Creek, a direct tributary to the Napa River. The Project area is bounded by disturbed/ruderal areas to the north, including the CalFire Training

2-2



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Ms. Terry Ash  
California Department of General Services

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August 27, 2021

Facility and California Department of Veterans Affairs (CalVet) Water Treatment Plant; open space to the south; Rector Reservoir to the east; and Silverado Trail and other developments to the west, including CDFW's Silverado Fisheries Base, located approximately 0.35 miles downstream of the Dam. Vegetation communities at the Project site are predominantly degraded riparian scrub, dispersed with existing rock boulders on the northern creek bank. Species include willows (*Salix* sp.), Fremont cottonwood (*Populus fremontii*), California wild grape (*Vitis californica*), two coast live oak trees (*Quercus agrifolia*), and invasive weeds such as Italian thistle (*Cardus pycnocephalus*).

2-2

(Cont'd)

**PROJECT DESCRIPTION**

The Project is in response to a complaint filed against CalVet for failing to allow sufficient water to pass through the Dam to keep fish below the Dam in good condition, as required by Fish and Game Code section 5937. The Project includes the following components: (1) construction of a 12-inch diameter diversion pipeline to convey water from the existing 30-inch diameter water line at the base of the Dam to a discharge point in Rector Creek approximately 350 feet downstream of the Dam, (2) installation of a bypass valve to control the rate of water discharged to Rector Creek, (3) the installation of rock riprap at the outfall of the diversion pipeline and upstream along the right bank to prevent channel incision and further bank erosion; (4) installation of an underground electrical conduit between the bypass valve and CalVet Water Treatment Plant, (5) implementation of interim flow releases as shown in Table 4-1 of the *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment*, prepared by Stillwater Sciences, dated July 2019; and (6) eventual adoption and implementation of a long-term minimum flow release schedule.

2-3

**COMMENTS AND RECOMMENDATIONS**

**Notice of Preparation Comments**

The DEIR does not appear to address all of the comments in our August 5, 2020 memorandum responding to the Notice of Preparation. Specifically, the DEIR does not answer the following questions: (1) *How will adequate flows be maintained to CDFW's Silverado Fisheries Base to avoid interruptions?* (i.e., after completion of the Project, how will 2.5 cubic feet per second, the base flow needed to allow the Silverado Fisheries Base to operate without interruptions, be provided in perpetuity?), and (2) *How will fish and wildlife and their habitat between the dam and Silverado Fisheries Base be affected by the Project?* the Project could have a significant impact on potentially critical tailwater habitat for juvenile steelhead (*Oncorhynchus mykiss*) summer rearing between the Dam and the Silverado Fisheries Base discharge point into Rector Creek, approximately 0.35 miles downstream of the Dam. The *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment* (Stillwater Sciences 2019) states: "Adult *O. mykiss* have been observed in the reach, and juveniles have been observed near the dam, indicating some limited successful spawning has occurred in the past." The Interim Environmental Flow Release Schedule references discharges from the Silverado Fisheries Base to Rector Creek; however, this may result in

2-4

2-5

**Rector Reservoir Bypass Valve Project  
Final Environmental Impact Report**

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Ms. Terry Ash  
California Department of General Services

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August 27, 2021

insufficient flow releases to sustain summer steelhead habitat between the Dam and the Silverado Fisheries Base. CDFW recommends that the DEIR address question (2) above in detail and that the interim environmental flow release schedule include sufficient release from the Dam to keep steelhead habitat between the Dam and the Silverado Fisheries Base discharge point into Rector Creek in good condition.

2-5  
(Cont'd)

#### **Long-Term Environmental Flow Releases**

The DEIR does not adequately address the timing by which the development of a long-term minimum flow release schedule will be prepared and implemented. Section 2.7.3 of the *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment* states:

*“Following additional data collection and synthesis, the timing, magnitude, and conditions of the Rector Creek environmental flow release schedule will be reassessed based on the condition of the fishery and updated hydrology of Rector Creek.”*

2-6

CDFW recommends that the DEIR include a timeline with target dates by which specific studies will be completed, and when the long-term minimum flow release schedule will be prepared for CDFW review and approval under an LSA Agreement for the Project. CalVet should consider using the recently developed California Environmental Flows Framework (CEFF) approach for re-evaluating and refining the interim environmental flow schedule. The CEFF is a management approach that provides technical guidance to help managers efficiently develop scientifically defensible environmental flow recommendations. Environmental flow recommendations consist of instream flow criteria that balance human and ecological needs for water. For more information, see the CEFF website: <https://ceff.sf.ucdavis.edu>.

2-7

As additional data is collected to evaluate the effectiveness of the interim bypass flow schedule in providing suitable habitat downstream of the Dam, CDFW would like to work in coordination with CalVet on an adaptive management strategy where we can collaborate and discuss monitoring results and determine what changes, if any, need to be made to the flow release schedule. This coordination will ensure that field monitoring results are informing future stream flow release operations.

2-8

#### **Fish Populations and Conditions**

The *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment* recommends additional data collection to re-evaluate and refine the timing, magnitude, and conditions of Rector Creek environmental flow release. CDFW recommends the inclusion of wet/dry mapping coupled with water quality monitoring (i.e., temperature and dissolved oxygen) in pools during the summer/fall months to determine the extent and quality of juvenile summer rearing habitat.

2-9

**Rector Reservoir Bypass Valve Project  
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Ms. Terry Ash  
California Department of General Services

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**California Red-Legged Frog (*Rana draytonii*)**

The Project is within the range<sup>1</sup> of the California red-legged frog, a species listed as threatened under the Federal Endangered Species Act (ESA) and a California Species of Special Concern (SSC). California red-legged frogs require a variety of habitats, including aquatic breeding habitats and upland dispersal habitats. Breeding sites of the species are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally, California red-legged frogs frequently breed in artificial impoundments such as stock ponds (U.S. Fish and Wildlife Service (USFWS) 2002). Breeding sites are generally found in deep, still, or slow-moving water (>2.5 feet) and can have a wide range of edge and emergent cover amounts. California red-legged frogs can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails or overhanging willows, or can proliferate in ponds devoid of emergent vegetation (i.e., stock ponds). Habitat includes nearly any area within one to two miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, and abandoned sheds) (USFWS<sub>b</sub> 2017).

California red-legged frog populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, mining, overgrazing by cattle, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to the species (Thomson et al. 2016, USFWS 2017<sub>b</sub>). The Project could injure or kill California red-legged frogs if they occur on-site, resulting in a substantial reduction of the population. Therefore, pursuant to CEQA Guidelines section 15065, subdivision (a)(1) Mandatory Findings of Significance, Project activities have the potential to significantly impact California red-legged frog, a species considered threatened pursuant to CEQA Guidelines section 15380, subdivision (c)(2). To reduce impacts to less than significant, CDFW recommends that Mitigation Measure BIO-5 be revised to include the following:

- After the qualified biologist has completed a California red-legged frog habitat assessment in accordance with the *Revised Guidance on Site Assessments and Field Surveys for the California red-legged frog* (U.S. Fish and Wildlife Service 2005) (survey protocol), the results of the habitat assessment shall be submitted to USFWS and CDFW for review and written acceptance prior to starting Project activities. If after review of the results of the habitat assessment, USFWS or CDFW determines that surveys are warranted, then surveys shall be conducted in accordance with the USFWS survey protocol prior to starting Project activities. Results of surveys shall also be submitted to CDFW for review and approval in writing.

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<sup>1</sup> The California red-legged frog range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=7104&inline=1>

2-10



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- If the Project may impact California red-legged frog based on the results of the habitat assessment and any surveys, the Project shall obtain authorization from USFWS for impacts to the species prior to project start.
- If a California red-legged frog is discovered during the habitat assessment, surveys, or during Project construction, CalVet and its contractors shall delay/cease work immediately and contact CDFW and USFWS within 24 hours. In this event, Project work shall not resume/proceed until the frog, through its own volition, moves out of harm's way and CDFW and USFWS have provided permission in writing to proceed with the Project.

2-10

(Cont'd)

**Foothill Yellow-Legged Frog (*Rana boylei*)**

The Project is within the range<sup>2</sup> of the Northwest/North Coast clade of foothill yellow-legged frog, an SSC, and California Natural Diversity Database (CNDDDB) occurrences exist in upper Rector Creek, upstream of the reservoir. Different life stages of the species use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about foothill yellow-legged frog terrestrial movements and the species may travel farther from streams. The species also occur in swales or other moist areas.

The Northwest/North Coast genetic clade of foothill yellow-legged frog has been extirpated from much of the southern segment of its range in the San Francisco Bay Area and is at risk from urbanization, severe wildland fires, and climate change (*ibid.*). The Project may result in injury or mortality to foothill yellow-legged frog through crushing, killing, or injuring individuals from vehicles, equipment, and workers during Project activities. Therefore, Project impacts to foothill yellow-legged frog would be potentially significant. To reduce impacts to less than significant, CDFW recommends that Mitigation Measure BIO-6 be replaced with the following measure:

2-11

*A qualified biologist shall conduct a habitat suitability assessment in the vicinity of the Project to determine where foothill yellow-legged frogs may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a foothill yellow-legged frog survey methodology to CDFW for review and approval a minimum of 30 days prior to Project construction. No Project activities shall begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified*

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<sup>2</sup> The foothill-yellow-legged frog range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1501&inline=1>

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*biologist shall also conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for foothill yellow-legged frog, with detections. If any foothill yellow-legged frogs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written acceptance, and implement the plan prior to and during Project activities as applicable.*

2-11

(Cont'd)

**Western Pond Turtle (*Actinemys marmorata*)**

The Project is within the range<sup>3</sup> of western pond turtle, an SSC, and the Project site contains suitable habitat for the species. Western pond turtle has been observed in Conn Creek, approximately 1.4 miles downstream of the Project site. The Project may result in loss of western pond turtle adults, young, or their nests, or disturbance to this species from construction activities. Western pond turtle is declining throughout its range, primarily due to loss of habitat from urbanization and conversion to agriculture (Spinks et al. 2003). Additionally, bouts of prolonged drought have exacerbated species decline (Purcell et al. 2017). Based on the above, the Project would potentially substantially adversely affect western pond turtle. Therefore, Project impacts to western pond turtle would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends that Mitigation Measure BIO-6 be replaced with the following:

2-12

*A qualified biologist shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project, prior to starting Project activities. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the project area. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for written acceptance prior to starting Project activities, and then implement the plan. A pond turtle habitat improvement plan shall also be prepared and implemented if required by CDFW. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.*

**Nesting Birds**

Mitigation Measure BIO-7 requires that a qualified biologist perform a nesting bird survey within 14 days prior to the start of Project activities, if Project activities need to occur during the nesting season. While CDFW generally agrees with implementation of this measure, we recommend that the survey be conducted within 7 days of starting Project activities, so that nesting birds are less likely to begin nesting on the Project site between the time of the survey and the start of Project work, thus causing Project delays. If there is a lapse in construction of 7 days or more during the nesting season, a

2-13

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<sup>3</sup> The western pond turtle range map is available at  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2658&inline=1>

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qualified biologist shall conduct an additional survey and follow the measures outlined in Mitigation Measure BIO-7, if applicable, prior to resuming work.

2-13  
(Cont'd)

The LSA Agreement issued by CDFW will likely include the above recommended mitigation measures, as applicable.

2-14

#### **ENVIRONMENTAL DATA**

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link:

2-15

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

#### **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

2-16

CDFW appreciates the opportunity to provide comments on the DEIR for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at [Garrett.Allen@wildlife.ca.gov](mailto:Garrett.Allen@wildlife.ca.gov); or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

cc: State Clearinghouse (SCH No. 2020070017)

#### **REFERENCES**

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## **Responses to Comment Letter 2**

- 2-1:** Comment 2-1 states that the California Department of Fish and Wildlife (CDFW) provided comments on the Notice of Preparation (NOP) for the Rector Bypass Valve Project (Project) and that CDFW staff have reviewed the Project Draft EIR. CDFW is submitting this comment letter to inform the Lead Agency of their concerns regarding potentially significant impacts on sensitive resources associated with the Project. The comment also describes CDFW's role as a "Trustee Agency" and "Responsible Agency" pursuant to CEQA. The comment is hereby noted and forwarded to the Project decisionmakers for their consideration.
- 2-2:** Comment 2-2 reiterates information from the Draft EIR regarding the Project location and environmental setting. The comment is noted and forwarded for consideration.
- 2-3:** Comment 2-3 summarizes information presented in the Draft EIR regarding Project objectives and key features of the proposed Project construction and operation. The comment is noted.
- 2-4:** Comment 2-4 states that the Draft EIR does not appear to address all comments from CDFW's August 5, 2020 response to the NOP. The comment asks the questions: "How will adequate flows be maintained to CDFW's Silverado Fisheries Base to avoid interruptions?" In response to the comment, we refer the reader to Section 3.11 (Utilities and Service Systems: Water Supply) of the Draft EIR and the discussion of Impact 3.11-2 beginning on page 3.11-7. The discussion addresses the potential effect of Project implementation, particularly implementation of the proposed interim environmental release schedule, on the ability of CalVet to meet current delivery commitments to its customers. As shown in Table 3.11-1 of the Draft EIR, CDFW's Fisheries Base is among the "existing customers" considered in the analysis under Impact 3.11-2, with a current and future annual raw water pass-through demand of 970 acre-feet per year.

The discussion under Impact 3.11-2 presents a detailed analysis of the effects of implementing the interim environmental release schedule on Rector Reservoir storage and Rector Creek hydrology, and the subsequent effects on water supply availability for CalVet current and potential future customer water demand. Based on the results of that analysis, the Draft EIR found the Rector Reservoir system could accommodate the proposed interim environmental release schedule at the existing level of water demand including the 970 acre-feet designated for pass-through at the Fisheries Base. Under these conditions, the system can operate within the normal storage range while meeting the existing system demand. The Draft EIR notes that, while CalVet does typically request increased conservation and reductions in deliveries during critically dry years, this was not included as a factor in assessing the Project's impact on system operations. Even without these potential reductions, the analysis determined the system could operate within normal storage range while meeting demand, and CalVet would be able to meet current water delivery commitments to its customers.

Further, it is important to note that the interim release schedule incorporates pass-through flows at the Fisheries Base as part of the schedule's minimum releases. Therefore, releases made to Rector Creek to maintain the proposed environmental release schedule would be passed through

the Fisheries Base with the remainder delivered via the proposed bypass valve below the dam, thus eliminating the possibility of any interruption to Fisheries Base deliveries that could be caused, either directly or indirectly, by Project releases.

- 2-5:** Comment 2-5 states the question “How will fish and wildlife and their habitat between the dam and Silverado Fisheries Base be affected by the Project?” The comment lists specific concerns related to *Oncorhynchus mykiss* (steelhead) including providing sufficient flow to sustain summer steelhead habitat and maintaining steelhead habitat in good condition between the dam and the Fisheries Base discharge point.

In response to the comment, the Project will result in increased streamflow releases into Rector Creek downstream of Rector Dam. Although Rector Creek is naturally intermittent downstream of the dam and remains intermittent during the summer and fall months, under the interim instream flow release schedule the releases will benefit native species by providing some continuous flow immediately downstream of the dam where there was no release prior to 2019. The interim flow schedule was developed based on available data to reflect a more natural hydrograph, including maintaining the disconnected habitat throughout the reach (Stillwater Sciences 2019).

Additional studies, outlined in the Rector Creek Instream Flow and Fish Condition Assessment Study Plan, include assessments of stream fish populations, water temperature, instream flow, and benthic macroinvertebrates. Data collection for the fish condition assessment component of the Study Plan was completed in 2020. No steelhead were observed in Rector Creek between the dam and Silverado Fisheries Base. The draft Stream Fish Population Technical Memorandum (Stillwater Sciences 2021) is available on the CalVet website:

<https://www.calvet.ca.gov/VetHomes/Documents/Rector-Creek-Stream-Fish-Population-Technical-Memorandum.pdf#search=rector%20creek>

Some study components, including the instream flow assessment, have been delayed due to the lack of surface flow (i.e., spill flows) in 2020–2021. Stillwater Sciences anticipates completing this component of the study in 2023, pending adequate precipitation to fill Rector Reservoir. Results from these studies will inform the development of an Operations Plan, which will include any needed updates to the interim instream flow release schedule.

- 2-6:** Comment 2-6 states the Draft EIR does not adequately address the timing by which the development of a long-term minimum flow release schedule will be prepared and implemented. CDFW recommends that the Draft EIR include a timeline with target dates by which specific studies will be completed, and when the long-term minimum flow release schedule will be prepared for CDFW review and approval under an LSA Agreement for the Project.

In response, development of a long-term flow release schedule is dependent on completion of the tasks specified in the *Rector Creek Instream Flow and Fish Condition Assessment Study Plan*. Data collection for this study plan could not be completed in 2020 or 2021 due to lack of surface flow downstream of Rector Dam. Stillwater Sciences anticipates completing this component of the study in 2023, pending adequate precipitation to fill the reservoir.

- 2-7:** Comment 2-7 states CalVet should consider using the recently developed California Environmental Flows Framework (CEFF) approach for re-evaluating and refining the interim environmental flow schedule.

In response to the comment, the *Rector Creek Instream Flow and Fish Condition Assessment Study Plan* states that a long-term flow schedule will be developed using the framework of functional flows (Yarnell et al., 2015), which forms the scientific basis for CEFF. Given the extremely limited ability to control discharge prior to completion of this Project, CEFF would not be appropriate for use in refining the interim environmental flow schedule.

- 2-8:** Comment 2-8 states that, as additional data is collected to evaluate the effectiveness of the interim bypass flow schedule, CDFW wishes to coordinate with CalVet on an adaptive management strategy where we can collaborate and discuss monitoring results and determine what changes, if any, need to be made to the flow release schedule. This coordination will ensure that field monitoring results are informing future stream flow release operations.

In response, given the nature of the project, i.e., supplementing current releases to Rector Creek below Rector Dam, future coordination with CDFW and development of an adaptive management strategy is not strictly warranted to avoid an identified significant direct or indirect impact of the proposed project. Nevertheless, the comment is noted and hereby forwarded to the Lead Agency for their consideration.

- 2-9:** Comment 2-9 recommends the inclusion of wet/dry mapping coupled with water quality monitoring (i.e., temperature and dissolved oxygen) in pools during the summer/fall months to determine the extent and quality of juvenile summer rearing habitat. In response to the comment, stream connectivity (i.e., wet/dry mapping) is being conducted as part of the instream flow study component, which is scheduled for completion in 2023 (pending adequate flow availability). Additionally, water quality monitoring was completed in 2020 and included continuous water temperature and dissolved oxygen monitoring in four pools in lower Rector Creek. Pools were selected to reflect the complexity of aquatic habitat within the reach and for the likelihood of remaining wetted throughout the summer (Stillwater Sciences 2021). Results of these studies, along with the others included in the Study Plan, will be used to inform the development of an Operations Plan for the Rector Dam facilities.

- 2-10:** Comment 2-10 concerns potential Project impacts on California red-legged frog (*Rana draytonii*), as species listed as threatened under the Federal Endangered Species Act (ESA) and a California Species of Special Concern. In response to the comment, the Draft EIR (as discussed under Impact 3.3-1, beginning on page 3.3-29), states that proposed construction of the Diversion Pipeline and Outfall Structure and associated riprap would result in temporary and permanent impacts to riparian scrub habitat and could injure or kill California Red-legged Frog (CRLF). The Draft EIR identifies this impact as significant and recommends mitigation measures **BIO-1; BIO-2; BIO-3** and **BIO-4** to reduce this impact to ***less than significant with mitigation incorporated***.

Comment 2-10 provides additional information and documentation in support of the Draft EIR Red-legged Frog impact finding and recommends additions to Mitigation Measure **BIO-5** to

ensure potential impacts are reduced to less than significant. However, we note that Draft EIR Mitigation Measure **BIO-5** addresses Foothill Yellow-legged Frog (FYLF) not CRLF as stated in the comment and, therefore, it is believed the above comment is intended to reference Mitigation Measure **BIO-4** instead which addresses CRLF. Requested additions would enhance coordination with CDFW and USFWS on habitat assessment results and the potential need for future determinate surveys and related results. These additions have been incorporated into Mitigation Measure **BIO-4** as shown below.

**BIO-4: Conduct Preconstruction Surveys for California Red-legged Frog and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a CRLF assessment according to the *Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog* (USFWS 2005). The USFWS will provide guidance, based on the initial assessment, whether field surveys are appropriate, where the field surveys should be conducted, and whether incidental take authorization should be obtained through Section 7 consultation or a Section 10 permit pursuant to the ESA as further described below.

- After the qualified biologist has completed a California red-legged frog habitat assessment in accordance with the *Revised Guidance on Site Assessments and Field Surveys for the California red-legged frog* (U.S. Fish and Wildlife Service 2005) (survey protocol), the results of the habitat assessment shall be submitted to USFWS and CDFW for review and written acceptance prior to starting Project activities. If after review of the results of the habitat assessment, USFWS or CDFW determines that surveys are warranted, then surveys shall be conducted in accordance with the USFWS survey protocol prior to starting Project activities. Results of surveys shall also be submitted to CDFW for review and approval in writing.
- If the Project may impact California red-legged frog based on the results of the habitat assessment and any surveys, the Project shall obtain authorization from USFWS for impacts to the species prior to project start.
- If a California red-legged frog is discovered during the habitat assessment, surveys, or during Project construction, CalVet and its contractors shall delay/cease work immediately and contact CDFW and USFWS within 24 hours. In this event, Project work shall not resume/proceed until the frog, through its own volition, moves out of harm's way and CDFW and USFWS have provided permission in writing to proceed with the Project.

The modification above clarifies and adds information to the proposed mitigation. It does not alter the conclusion presented in the Draft EIR of ***less than significant with mitigation*** nor does it deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. No new significant environmental effects and no increase in the severity of an environmental impact are associated with the above revision.

- 2-11:** Comment 2-11 provides information on the foothill yellow-legged frog (*Rana boylei*) (FYLF), its natural history, current status, and its listing as a State Sensitive Species. The comment suggests revisions to Mitigation Measure BIO-6 presented in the Draft EIR. In response to the comment, as stated in the Draft EIR under Impact 3.3-1, beginning on page 3.3-29, proposed construction of the Diversion Pipeline and Outfall Structure and associated riprap would result in temporary and permanent impacts to riparian scrub habitat and could injure or kill FYLF. The Draft EIR identifies this impact as significant and recommends mitigation measures **BIO-1; BIO-2; BIO-3** and **BIO-5** to reduce this impact to *less than significant with mitigation incorporated*.

This CDFW comment provides additional information and documentation in support of the above FYLF impact finding and recommends replacement language for Mitigation Measure **BIO-6**. However, Mitigation Measure **BIO-6** addresses Northwestern Pond Turtle and therefore it is believed the above comment is intended to reference Mitigation Measure **BIO-5** which addresses FYLF. The requested revisions provide added detail with respect to survey requirements, timing, field biologist qualifications, coordination with CDFW and required contingency plans should FYLF be detected. These additions have been incorporated into Mitigation Measure **BIO-5** as shown below.

**BIO-5: Conduct Preconstruction “Clearance” Surveys for Foothill Yellow-Legged Frog and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to perform a preconstruction survey within 24 hours prior to the initiation of construction to confirm the site is clear of FYLF. Should FYLF be detected during survey, and impacts cannot be avoided or minimized, a qualified biologist with a scientific collecting permit shall relocate frogs to suitable nearby habitat that would not be disturbed by Project construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment in the vicinity of the Project to determine where foothill yellow-legged frogs (FYLF) may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a FYLF survey methodology to CDFW for review and approval a minimum of 30 days prior to Project construction. No Project activities shall begin until FYLF surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years’ experience conducting habitat assessments and surveys for FYLF, with detections. If any FYLGs are found, the biologist shall prepare an avoidance,

minimization, and relocation plan and submit it to CDFW for written acceptance and implement the plan prior to and during Project activities as applicable.

The modification above clarifies and adds information to the proposed mitigation. It does not alter the conclusion presented in the Draft EIR of ***less than significant with mitigation*** nor does it deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. No new significant environmental effects and no increase in the severity of an environmental impact are associated with the above revision.

- 2-12:** Comment 2-12 presents information concerning western pond turtle (*Actinemys marmorata*), previous observations in Conn Creek (to which Rector Creek is a tributary), its natural history, current status, and its listing as a State Sensitive Species. The comment recommends that Mitigation Measure BIO-6 be replaced with text provided within the comment.

In response to the comment, as stated in the Draft EIR (see the discussion under Impact 3.3-1, beginning on page 3.3-30), the Project site is located within and adjacent suitable habitat for Northwestern pond turtle. Even though no in-water construction activities are proposed, Project construction would result in temporary and permanent impacts to Northwestern pond turtle suitable habitat and could injure or kill Northwestern pond turtle if present in the area affected by construction activities. This was found to be a significant impact. The Draft EIR recommends implementation of mitigation measures **BIO-1, BIO-2, BIO-3** and **BIO-6** to reduce this impact to ***less than significant with mitigation***.

This CDFW comment provides additional information and documentation in support of the above Draft EIR Northwestern pond turtle impact finding and recommends replacement language for Mitigation Measure **BIO-6**. The requested replacement language provides added detail with respect to habitat suitability assessment, pre-construction surveys, and contingency measures should Northwestern pond turtle be detected. These additions have been incorporated into Mitigation Measure **BIO-6** as shown below.

**BIO-6: Conduct Northwestern Pond Turtle Surveys and Mitigate Impacts**

CalVet and its contractors shall retain a qualified biologist to conduct a pre-construction northwestern pond turtle survey within 24 hours prior to the initiation of construction activities and retain a qualified biologist to survey immediately prior to ground-disturbing activities in suitable habitat. If northwestern pond turtle is found, consultation with CDFW shall be undertaken and a relocation plan shall be developed for Northwestern pond turtle encountered during construction. A qualified biologist, retained by CalVet and/or its contractors, shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project, prior to starting Project activities. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the project area. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for

written acceptance prior to starting Project activities, and then implement the plan. A pond turtle habitat improvement plan shall also be prepared and implemented if required by CDFW. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.

The modification above clarifies and adds information to the proposed mitigation. It does not alter the conclusion presented in the Draft EIR of **less than significant with mitigation** nor does it deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. No new significant environmental effects and no increase in the severity of an environmental impact are associated with the above revision.

- 2-13:** Comment 2-13 states CDFW generally agrees with Mitigation Measure BIO-7 which requires that a qualified biologist perform a nesting bird survey within 14 days prior to the start of Project activities, if Project activities need to occur during the nesting season. However, CDFW, recommends that the survey be conducted within 7 days of starting Project activities, so that nesting birds are less likely to begin nesting on the Project site between the time of the survey and the start of Project work, thus causing Project delays. If there is a lapse in construction of 7 days or more during the nesting season, a qualified biologist shall conduct an additional survey and follow the measures outlined in Mitigation Measure BIO-7, if applicable, prior to resuming work.

In response to the comment, as discussed on Draft EIR page 3.3-34, Mitigation Measure **BIO-7** requires that a qualified biologist perform a nesting bird survey within 14 days prior to the start of Project activities, if Project activities need to occur during the nesting season. In this comment, CDFW states that they generally agree with provisions of this measure, however they recommend that the survey be conducted within 7 days of starting Project activities, so that nesting birds are less likely to begin nesting on the Project site between the time of the survey and the start of Project work. This comment also recommends that, should a lapse in construction of 7 days or more occur during the nesting season, a qualified biologist shall conduct an additional survey and follow the measures outlined in Mitigation Measure **BIO-7**, if applicable, prior to resuming work.

CDFW's recommended revisions are incorporated into Mitigation Measure **BIO-7** as shown below.

**BIO-7: Conduct Vegetation Removal during the Non-breeding Season, Conduct Preconstruction Surveys for Nesting Migratory Birds, other Special Status Birds and Raptors and Avoid Impacts**

CalVet and its contractors shall conduct vegetation removal, where required to construct project features, during the non-breeding season for migratory birds and raptors (generally between September 16 and January 31) to the extent feasible.

For Project activities that begin between February 1 and September 15, including tree and other vegetation removal, CalVet and its contractors shall retain a qualified biologist to conduct preconstruction surveys for white-tailed kite and other raptors to identify active



nests on and within 500 feet of the Project site. For other special status birds and/or other nesting migratory birds, a qualified biologist shall conduct preconstruction nesting bird surveys on and within 100 feet of the Project site. These surveys shall be conducted within 147 days before the beginning of any construction activities between February 1 and September 15. Furthermore, should a lapse in construction of 7 days or more occur during the nesting season, a qualified biologist shall conduct an additional survey and follow the protocols outlined herein, prior to resuming work.

CalVet and its contractors shall avoid impacts to active raptor nests and any special-status bird and MBTA bird nests by establishing appropriate buffers around nests identified during preconstruction surveys; buffers shall be determined by a qualified biologist in consultation with CDFW. Project activity shall not commence within the buffer areas until a qualified biologist has determined, in coordination with CDFW, that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment. The size of the buffer may be adjusted if a qualified biologist and CalVet, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest. Monitoring of the nest by a qualified biologist during construction activities may be necessary.

The modification above clarifies and adds information to the proposed mitigation. It does not alter the conclusion presented in the Draft EIR of ***less than significant with mitigation*** nor does it deprive the public of a meaningful opportunity to comment on a substantial adverse environmental effect or a feasible way to mitigate or avoid such an effect. No new significant environmental effects and no increase in the severity of an environmental impact are associated with the above revision.

- 2-14:** Comment 2-14 states, “The LSA [Lake and Streambed Alteration] Agreement issued by CDFW will likely include the above recommended mitigation measures, as applicable.” The comment is hereby noted and forwarded to the Project decision-makers for their consideration.
- 2-15:** Comment 2-15 notes that CEQA requires the inclusion of EIR information into a public database and requests that any special-status species and natural communities detected during Project surveys be reported to the California Natural Diversity Database. This comment is noted.
- 2-16:** Comment 2-16 provides information concerning mandatory filing fees for the EIR’s Notice of Determination and expresses appreciation for the opportunity to comment. The comment is noted and forwarded to the Project decisionmakers.

## **References:**

Stillwater Sciences. 2021. *Rector Creek Stream Fish Population Technical Memorandum*. Prepared for California Department of Veteran Affairs. June.

Stillwater Sciences. 2019. *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment*. Prepared for California Department of Veteran Affairs. July.

### 3.4 Comment Letter 3: Stillwater Sciences



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July 23, 2021

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Subject: Rector Reservoir Bypass Valve Project Draft Environmental Impact Report (DEIR)

Dear Ms. Ash,

Thank you for the opportunity to review the Rector Reservoir Bypass Valve Project Draft Environmental Impact Report (DEIR). Stillwater Sciences is providing one editorial comment related to DEIR Text Page 2-0, Section 2.7.2, Table 2.8, *Proposed interim environmental flow release schedule for outflows below Rector Creek Dam*.

Comment: Table 2.8 column and row headings, the footnotes appear inadvertently re-formatted to text and the corresponding footnotes are missing. The missing footnotes should be:

<sup>1</sup> Water-Year Type based on the DWR Sacramento Valley Index.

<sup>2</sup> Rector Dam minimum environmental flow releases consider the Fisheries Base discharge releases for stream habitat; however, compliance is met by releases from Rector Dam.

Please let us know if you have any questions or would like any additional information. Thank you again,

Sincerely,

Russ Liebig  
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3-1

## Responses to Comment Letter 3

**3-1:** Comment 3-1 states that footnotes associated with Table 2.8 of the DEIR titled *Proposed interim environmental flow release schedule for outflows below Rector Creek Dam*, are missing. In response to the comment, the table is hereby revised to include those footnotes with new text underlined:

<b>Table 2-8. Proposed interim environmental flow release schedule for outflows below Rector Creek Dam</b>															
<b>Water-Year Type<sup>1</sup></b>	<b>Minimum Environmental Flow Releases<sup>2</sup> (cfs)</b>														
	<b>Oct</b>	<b>Nov</b>	<b>Dec 1-15</b>	<b>Dec 16-31</b>	<b>Jan</b>	<b>Feb 1-15</b>	<b>Feb 16-30</b>	<b>Mar 1-15</b>	<b>Mar 16-31</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>
Wet	0.8	0.8	1.5	2.5	3.5	4.0	4.0	4.5	4.5	2.5	2.5	1.0	0.8	0.8	0.8
Above Normal	0.7	0.7	1.3	1.3	3.5	4.0	4.0	4.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Below Normal	0.7	0.7	1.3	1.3	2.5	2.5	4.0	3.5	3.0	2.5	2.5	1.0	0.5	0.5	0.5
Dry	0.25	0.50	1.0	1.0	2.0	2.5	2.5	3.0	3.0	2.5	1.5	1.0	0.25	0.25	0.25
Critical	0.25	0.50	1.0	1.0	2.0	2.2	2.2	2.8	2.8	2.5	1.0	0.5	0.25	0.25	0.25

<sup>1</sup> Water-Year Type based on the DWR Sacramento Valley Index.

<sup>2</sup> Rector Dam minimum environmental flow releases consider the Fisheries Base discharge releases for stream habitat; however, compliance is met by releases from Rector Dam.

Note: Flows shown shaded in blue represent the increased flow levels for winter and spring migration and spawning. These proposed interim flows reflect the combined releases through both the proposed bypass and the CDFW Fisheries Base.

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