

From: [Borneman, Tracy E](#)
To: [Pacheco Expansion](#)
Cc: [Todd Sexauer](#); [Mason Holmes](#); [Leeman, Thomas](#); joseph_terry@fws.gov; brenda.blinn@wildlife.ca.gov; [Mayra.Molina](#)
Subject: Pacheco Reservoir Expansion Project Draft Environmental Impact Report
Date: Tuesday, February 15, 2022 10:47:20 AM

Dear Mr. Sexauer,

Valley Water and the U.S. Fish and Wildlife Service's Migratory Birds Program (Service) have had several meetings discussing potential eagle issues under the Bald and Golden Eagle Protection Act (Eagle Act) regarding the proposed Pacheco Reservoir Expansion Project (Project). The Project Draft Environmental Impact Report (EIR) acknowledges that habitat loss may cause adverse effects to eagles and that there is the potential for disturbance take of eagles from Project activities, however, we wanted to provide a few comments to assure that Valley Water clearly understands take prohibitions under the Eagle Act.

Eagle nests themselves, whether in-use or not, are protected from take (i.e. nest removal and destruction) under the Eagle Act. The Service has the ability to provide a permit for authorized removal of eagle nests under certain circumstances. Eagle nests that are in-use may only be permitted for removal if the circumstances involve a safety emergency (50 CFR 22.85). If trees containing eagle nests that are not in-use must be removed as part of vegetation clearing for the Project or will be destroyed from the proposed reservoir inundation, the Service may provide a permit to authorize this nest take (50 CFR 22.85). We recommend applying for a permit for take of any eagle nest to assure Valley Water remains in compliance with the Eagle Act.

There is potential for the loss of nesting and foraging habitat from the proposed inundation of the expanded reservoir area of the Project to cause loss of eagle territories. Eagle territory loss constitutes take under the Eagle Act. To provide information on how eagle territories and the eagle population within the vicinity of the proposed project may be affected, the Service recommends conducting a survey of all eagle habitat within four miles of the maximum expanded reservoir area to provide data on eagle use, eagle nest location, and approximate eagle territory ranges. We recommend contacting us with these survey results to discuss the potential for effects to eagle territories and consideration of submitting an application for a permit to authorize eagle territory loss, if necessary.

Eagles breeding pairs may have multiple nests in their territories, which they may switch between using year to year. Eagles may also not breed in every year. Therefore, eagle nests that were found to not be in-use during a single year survey very well may become in-use in subsequent years. There is also the potential for eagles to build new nests from year to year. Therefore, the Service recommends conducting surveys for eagles and their nests at the time Project activity will be occurring to assure the most accurate information of eagle use at the time.

We recommend that the Project EIR address the potential for nest take and territory loss of bald and golden eagles. The Service looks forward to continuing to work with Valley Water to assess and address any potential eagle effects from the Project.

Thank you,

Tracy Borneman
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