

**SHORT-TERM EAGLE INCIDENTAL TAKE****Permit Number:** MBPER1309794**Version Number:** 0**Effective:** 2023-04-07 **Expires:** 2026-08-31**Issuing Office:****Department of the Interior****U.S. FISH AND WILDLIFE SERVICE**

MB Sacramento Permit Office

2800 Cottage Way - Room W-2606

Sacramento, California 95825

permitsR8MB@fws.gov

Tel: 916-978-6183

Digitally signed by*Chief, Migratory Bird Program, Pacific Southwest Region***Permittee:**

Sites Project Authority

122 Old Highway 99 West, P.O. Box 517

Maxwell, California 95955

U.S.A.

Name and Title of Principal Officer:

Alicia Forsythe Environmental Planning and Permitting Manager

Authority: Statutes and Regulations: 16 U.S.C. 668-668(d), 16 U.S.C 703-712 50 CFR Part 13, 50 CFR 22.80

Location where authorized activity may be conducted:

The vicinity of Sites Reservoir Project geotechnical evaluations in Glenn and Colusa Counties, California. See Condition D for more information.

Reporting requirements:

To retain the authorizations granted under this permit, you must comply with its reporting requirements. See Condition I for more information.

Authorizations and Conditions:**Link to federal eagle permit regulations:**



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<https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-22>

Link to federal incidental eagle take permit information:

<https://www.fws.gov/service/3-200-71-eagle-take-associated-not-purpose-activity-incident-take>

Contacts:

Regional Biologist: Tracy Borneman, 279-200-2292, tracy_borneman@fws.gov

Migratory Bird Regional Permit Office:

Migratory Bird Program (Eagle Permits)
 US Fish and Wildlife Service
 2800 Cottage Way, W-2606
 Sacramento, CA 95825
fw8_eaglepermits@fws.gov
 916-978-6183

Law Enforcement: 916-569-8476

Permit Conditions:

- A. General conditions set out in Subpart B of 50 CFR 13, and specific conditions contained in 50 CFR 22 and the federal regulations cited above, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. You are responsible for ensuring that the permitted activity is in compliance with all federal, tribal, state, and local laws and regulations applicable to eagles.
- C. Valid for use by permittee named above and any subpermittees (see Condition J).
- D. **Authorized Take.**
 You are authorized up to three incidents of disturbance and loss of breeding productivity take for bald eagle breeding pairs and up to six incidents of disturbance and loss of breeding productivity take for golden eagle breeding pairs in the vicinity of Sites Reservoir Project geotechnical evaluations in Glenn and Colusa Counties, California during the 2023 through 2026 eagle breeding seasons (1 January through 31 August).

The current nesting location of eagle breeding pairs estimated to be disturbed by project activities are at latitude/longitude coordinates: 39.34045204, -122.3175645; 39.29976855, -122.3180317; 39.27719613, -122.3408741. If eagle breeding pairs with nests in different locations are to be disturbed by project activities, you must notify the migratory bird permit



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issuing office at fw8_eaglepermits@fws.gov, as well as the Regional Biologist listed above, and provide the new nesting location(s) within 14 days of nest discovery.

The authorizations granted by this permit apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes, you must immediately contact the Regional Biologist listed above to determine whether a permit amendment is required in order to retain take authorization.

To disturb/disturbance means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (50 CFR 22.6).

This permit does not authorize *intentional* take of eagles or eagle nests.

E. You must immediately notify the migratory bird permit issuing office at fw8_eaglepermits@fws.gov, as well the Regional Biologist listed above, upon discovery of any unanticipated take.

F. Avoidance and Minimization Measures.

You must comply with the following avoidance and minimization measures:

- a. To the maximum extent practicable, conduct all project geotechnical evaluation activities (including but not limited to geotechnical survey work, seismic refraction surveys, boring and/or CPT surveys, test pit activities, trenching activities, test fill construction activities, helicopter use, and use of overland temporary access routes) within recommended eagle nest buffers outside of the eagle breeding season (1 January through 31 August);
- b. To the maximum extent practicable, access work areas from existing roads;
- c. To the maximum extent practicable, conduct geotechnical work only during daylight hours;
- d. To the maximum extent practicable, avoid conducting geotechnical investigation activities during severe weather such as heavy rain, severe thunderstorms, high winds, and/or extreme temperatures (high or low);
- e. Implement temporary erosion controls, spill prevention and management measures, materials containment, and geotech-specific best management practices;
- f. Along with other worker environmental awareness training, train work crews about nesting eagles and eagle protection measures.

G. Compensatory Mitigation.

You must provide compensatory mitigation to offset your authorized golden eagle take. Compensatory mitigation must fully offset the loss of productivity due to disturbance of golden eagle pairs authorized for disturbance take (Condition D) and must be provided at a 1.2 to 1 ratio, as required by Bald and Golden Eagle Protection Act regulations (81 FR 91494). The loss of productivity of a golden eagle pair is estimated to be 0.59 young fledged per pair per breeding season.

Compensatory mitigation must be completed by retrofitting electric power poles that are an electrocution risk to eagles. We conducted a Resource Equivalency Analysis to determine retrofitting of 10-24 power poles will offset the take of 0.71 golden eagles (a 1.2 to 1 ratio of the estimated take of 0.59 young fledged per pair per breeding season) each year. The



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final number of poles retrofitted will depend on several factors, including the type and expected longevity of each retrofit once poles to be retrofitted have been identified.

To complete the required compensatory mitigation, you must either work directly with a utility company to complete the required power pole retrofits, with Service approval of the developed plan, or you must work with a Service-approved in-lieu fee program to purchase credits to fulfill the required retrofits to be completed.

Compensatory mitigation may be provided in full upon permit issuance, but is required to be provided at minimum on an annual basis. Compensatory mitigation for loss of productivity during the 2023 breeding season must be documented within 30 days of permit issuance. Mitigation for estimated loss of productivity during the 2024, 2025 and 2026 breeding seasons must be documented before the start of the eagle breeding season, i.e. 1 January each year. If it's determined after 1 January that additional take over what was estimated may occur in a given year, the additional mitigation must be documented within 60 days of discovering its need.

If mitigation is paid but the Service determines that golden eagles successfully breed that year and productivity is not lost, the mitigation paid to offset take that did not occur will be applied to future years of estimated take authorized to the permittee under this or future permits.

H. Monitoring Requirements.

You are required to survey for and monitor all bald eagle and golden eagle pairs and nests that may be disturbed by Project geotechnical activities, determining nesting status and nest fate each year, during the 2023, 2024, 2025, and 2026 eagle breeding seasons.

- a. Monitors must be qualified biologists experienced in recognizing specific patterns and changes of eagle behavior described below in Conditions H.b) to H.i).
- b. Monitoring must be done during the eagle breeding season from 1 January through 31 August each year, with monitoring continuing until successful fledging or nest failure/abandonment is documented.
- c. The initial survey for eagle breeding pairs and nests must be done during the courtship period of the breeding season when adults are most mobile and conspicuous.
- d. Conduct ground-based surveys as access allows.
- e. Monitoring must occur at a time of day when eagles are most likely to be in the area and must be done during favorable weather conditions.
- f. Monitoring must be able to provide data on the following:
 - i. Known eagle territory occupancy,
 - ii. Nest activity status,
 - iii. Nesting status (eggs present, incubating, eaglets present, etc.), and
 - iv. Nesting attempt outcome (# eaglets fledged, nest failed).
- g. Monitoring must be able to provide data as described below in Condition I.
- h. If no eagle activity is observed, monitoring observation periods must be a minimum of four hours, with all nests and potential nests sites in the territory visible and monitored.
- i. The protocols, *Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations* (Pagel et al. 2010) and *Protocol for Evaluating Bald Eagle Habitat and Populations in California* (Jackman and Jenkins 2004) may be used as references.



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I. Reporting Requirements.

You must submit an annual report summarizing the information you obtained through eagle monitoring to the Service each year.

You may use Form 3-202-15 (Eagle Take Report) found online at: <https://www.fws.gov/sites/default/files/documents/3-202-15Rpt.pdf> (<https://www.fws.gov/sites/default/files/documents/3-202-15Rpt.pdf>).

Your annual report must be submitted by **30 September** each year.

Reports should be submitted via ePermits (epermits.fws.gov) by uploading the report to the permit record. **Please also provide notification of report submission to the Regional Biologist contact listed above and to the issuing migratory bird permit office at: fw8_eaglepermits@fws.gov (mailto:fw8_eaglepermits@fws.gov).**

Your annual report should include the location of any eagle nests and final outcome of any eagle nesting attempt (i.e., successful with number of eaglets fledged, nest failure, or the eagles abandoned the area).

Your annual report must include the following information for each monitoring session:

- a. Date and length of time eagles were observed;
- b. Time of day;
- c. Occupancy status of eagle territories, if territories are known;
- d. Number and age of eagles observed (i.e., juvenile, immature, subadult, adult); if age is not known, provide description;
- e. Observed behavior (e.g. perching, feeding, sitting on or attending nest, in flight);
- f. Location and status of known eagle nest locations and any eagle nesting attempt; and
- g. A description of any human activity at the time eagles are observed.

If no eagle activity is observed, a report indicating "no activity observed" is still required.

If project activities were delayed or not conducted, an annual report indicating that "no activities occurred" is required.

J. Subpermittees.

Any person who is under your direct control or employed by or under contract to you for the activities specified in this permit, or to whom you have provided written authorization to conduct permitted activities, may exercise the authority of this permit. A subpermittee is an individual to whom you have provided written authorization to conduct some or all of the permitted activities in your absence. Subpermittees must be at least 18 years of age. Any subpermittee who has been delegated this authority may not re-delegate to another individual/business. As the permittee, you are legally responsible for ensuring that subpermittees are in compliance with the terms and conditions of this permit, are qualified to perform these authorized activities and adhere to the terms of this permit. You are also responsible for maintaining current records of anyone designated as a subpermittee, including copies of communications provided to the subpermittees authorizing them to conduct the permitted activities. You and any subpermittees must carry a legible copy of this permit and display it upon request whenever exercising its authority. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit and that responsibility may not be delegated.



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K. Acceptance of this permit serves as evidence that the permittee and any person under the direct control of the permittee or who is employed by or under contract to the permittee for the activities specified in this permit (subpermittees) agree to abide by the terms of this permit and all sections of the *Title 50 Code of Federal Regulations* (CFR) part 13 and §22.80, pertinent to issued eagle take permits. The Bald and Golden Eagle Protection Act, as amended, provides for civil and criminal penalties for failure to comply with the permit conditions. Failure to comply with the conditions of this permit could be cause for permit suspension, revocation, and/or citation.

For suspected illegal activity, immediately contact the USFWS Law Enforcement at: 916-569-8476

The permit conditions above do not establish a precedent for future actions and do not represent a decision in principle about future consideration or the structure of future eagle-take permit conditions. The Service will analyze the issuance of each permit on a case-by-case basis and the details of each permit's conditions could be different.

Standard Conditions Eagle Take (Disturbance) Permit 50 CFR 22.80

All of the provisions and conditions of the governing regulations at 50 CFR part 13 and 50 CFR part 22.80 are conditions of your permit. Failure to comply with the conditions of your permit could be cause for suspension of the permit and/or citation. The standard conditions below are a continuation of your permit conditions. If you have any questions regarding these conditions, refer to the regulations and forms, or to obtain contact information for your issuing office, visit:

<https://www.fws.gov/program/migratory-bird-permit/contact-us>

1. This permit does not authorize you to conduct activities on federal, state, tribal, or other public or private property without additional prior written permits or permission from the agency/landowner.
2. You remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit. Provisions for discontinuance of permit activity are outlined in 50 CFR 13.26.
3. You must maintain records as required in 50 CFR 13.46. Your records must also include the data gathered for monitoring and reporting purposes. All records relating to the permitted activities must be kept at the location indicated in writing by you to the migratory bird permit issuing office.
4. Acceptance of this permit authorizes the U.S. Fish and Wildlife Service to inspect and audit or copy any permits, books or records required to be kept by the permit and governing regulations (50 CFR 13.47).
5. You must allow Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected by your project activities, at any reasonable hour, and with reasonable notice from the

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- Service, for purposes of monitoring eagles at the site(s) while the permit is valid and for up to 3 years after it expires.
6. The Service may amend, suspend, or revoke a permit issued under this section if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§13.23, 13.27, and 13.28 of this chapter.
 7. To renew this permit if the activities described in Condition D have not been completed by the expiration date of this permit, permittee must meet issuance criteria at the time of renewal and must also have been in compliance with permit conditions, including all monitoring and reporting requirements of the original permit.
 8. You may request amendment to your permit. The Service will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee is \$500 for commercial permittees and \$150 for non-commercial permittees (50 CFR 13.11(d)(4)). Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under 13.23(c), and the Service will not charge a fee for such amendments. Requests for substantive amendment must be submitted via Form 3-200-71.