

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

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Modesto and Turlock Irrigation Districts	)	P-14581
La Grange Project	)	
_____	)	

**CONSERVATION GROUPS’ COMMENTS ON MODESTO AND TURLOCK  
IRRIGATION DISTRICTS’ PROPOSED STUDY PLAN**

Pursuant to 18 C.F.R. § 5.12, American Rivers, American Whitewater, California Sportfishing Protection Alliance, California Trout, Central Sierra Environmental Resource Center, Friends of the River, Golden West Women Flyfishers, Trout Unlimited, and the Tuolumne River Trust (collectively, “Conservation Groups”) provide these comments on Modesto and Turlock Irrigation Districts’ (collectively, “Districts”) Proposed Study Plan (“PSP”)<sup>1</sup> for the original licensing of the La Grange Project.

As we stated in comments on the Pre-Application Document and Scoping Document 1,<sup>2</sup> the study plan must produce data necessary to evaluate the La Grange Project’s effects on non-developmental uses of the Tuolumne River, particularly aquatic resources and recreation. We recommend modifications to the updated PSP<sup>3</sup> where the proposed studies will not produce adequate data to assess the project’s effects on beneficial uses of the Tuolumne River.

We organize these comments as follows: Section I states our procedural comments; Section II states our comments on specific studies; and Section III includes a request for a new study of water hyacinth.

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<sup>1</sup> eLibrary no. 20140905-5139 (Sept. 5, 2014).

<sup>2</sup> eLibrary no. 20140722-5104 (July 22, 2014).

<sup>3</sup> On November 21, 2014, the Districts submitted an Updated Fish Passage Assessment Study Plan with the meeting notes from the October 6 Study Plan Meeting. eLibrary no. 20141121-5174. These comments are responsive to that update.

**I.**  
**PROCESS COMMENTS**

**A. Study Plan Meeting**

Several representatives of the Conservation Groups attended the study plan meeting convened by the Districts, as indicated in the Districts' summary.<sup>4</sup> We incorporate by reference the comments made by each of the members of the Conservation Groups in attendance, as reported in the meeting notes.<sup>5</sup>

Many of the Conservation Groups' substantive concerns regarding the Districts' "Fall-Run Chinook Salmon Migration Barrier Draft Study Plan," as originally proposed, and the Districts' rejection of Conservation Groups' proposed "Fish Passage Engineering Assessment Study Request" and "Upper Tuolumne River Anadromous Fish Habitat Assessment Study Request,"<sup>6</sup> were discussed at the study meeting. The Districts' Updated Study Plan, which changes the Licensee's approach to these issues, has substantially addressed most of these concerns. We are pleased with the outcome of the discussion at the meeting, which is a commitment by the parties to develop pertinent information on fish passage in a collaborative environment without presupposing any particular outcome. We commend the Districts and all meeting participants for both the content and tone of the dialogue, and we thank the Districts for their decision to reconsider their approach. We also thank Office of Energy Projects ("OEP") Staff for its attendance and counsel at the meeting.

**B. Complete Unit of Development**

The Districts state that Conservation Groups' request that OEP Staff consider whether La Grange should be licensed as part of the "complete unit of development" of the Don Pedro Project is "misplaced."<sup>7</sup> They argue:

FERC Staff has no authority to act inconsistent with the FERC Commissioners' determinations in their July 19, 2013 Order on Rehearing (1) that La Grange does not act as reregulating facility for Don Pedro and (2) to defer a decision on whether La Grange's passing of Don Pedro minimum flows makes it part of a Don Pedro "complete unit."

*Id.* Although the Conservation Groups' continue to dispute the Commission's finding on re-regulation, we agree that OEP Staff is bound to follow that finding unless and until the

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<sup>4</sup> These representatives included: Chris Shutes (California Sportfishing Protection Alliance); John Buckley (Central Sierra Environmental Resource Center); Peter Drekmeier (Tuolumne River Trust); and Theresa Simsiman (American Whitewater).

<sup>5</sup> See eLibrary no. 20140722-5104, pp. 3-26 (pdf pagination).

<sup>6</sup> eLibrary no. 20140722-5104, Attachments 5 and 6.

<sup>7</sup> PSP, Appendix A, p. 1.

Commission decides to revisit it, or is directed to do so by the U.S. Court of Appeals for the D.C. Circuit.<sup>8</sup>

We disagree with the Districts' assertion that Staff's inquiry here should be limited based on the Commission's decision to defer a determination on whether the Districts' use of La Grange to make minimum flow releases renders it part of the complete unit of development for the Don Pedro Project. Scoping Document 2 ("SD2") confirmed that this issue is still unresolved.<sup>9</sup> As long as this issue remains unresolved, we believe it is reasonable to request that the scope of study and environmental analysis be sufficiently broad to allow a decision by the Commission to license the projects as a complete unit of development.

We agree that water flows downhill, and that if La Grange were not there the Districts would still be able to meet their minimum flow requirements. However, La Grange *is* there, and rather than just letting the water flow downhill, the Districts

make prudent, real-time decisions at La Grange as to how to pass Don Pedro releases downstream (i.e., via the spillway on the dam, various gates, and/or La Grange powerhouse releases) based on all relevant factors (e.g., time of year, flow amount, hydraulic capacity of the various potential outlet devices, and the condition and operability of those devices).

PSP, Appendix A, p. 3. We maintain that the District's deliberate use of La Grange facilities to ensure the projects serve power and water supply functions while also meeting the minimum flow requirements included in the Don Pedro Project license warrants licensing both projects as a complete unit of development.

### **C. Joint EIS**

The Districts state that, "[t]he [Conservation Groups'] plea for a single EIS must be rejected." *Id.* at 1.

We support OEP Staff's recommendation to prepare a single EIS for both projects. We continue to recommend a single EIS, even though it is unclear whether the study schedules for both projects will continue to be aligned, in light of the Districts' latest proposal to undertake two-year fish passage studies.

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<sup>8</sup> The Tuolumne River Trust's appeal of the Commission's finding that the La Grange Project does not regulate flows released at the Don Pedro Project is pending before the U.S. Court of Appeals for the D.C. Circuit. *See Turlock Irrigation Dist., et al. v. FERC Nos. 13-1250, 13-1253* (D.C. Cir. Filed Sept. 17, 2013). American Rivers, American Whitewater, California Sportfishing Protection Alliance, California Trout, Friends of the River, and Golden West Women Flyfishers are intervenors in that case.

<sup>9</sup> eLibrary no. 20140905-3012 (Sept. 5, 2014), p. 6 ("The Commission has explained that if the Districts decide to remove the generating equipment rather than to continue operating the La Grange Project, the Commission will then need to determine whether the La Grange Project might nevertheless require licensing as part of the Don Pedro Project.").

We believe the results of the fish passage studies proposed by the Districts are relevant to the relicensing of the Don Pedro Project. OEP Staff rejected fish passage studies at Don Pedro on the grounds that the La Grange Project was the terminal barrier to fish passage and that the Commission did not have jurisdiction over La Grange. The Commission has since asserted jurisdiction over La Grange under Federal Power Act section 23(b)(1), but OEP Staff has yet to revisit its study plan determination for the Don Pedro Project. We recommend that Staff revise the approved study plan for Don Pedro in light of the fish passage studies proposed for the La Grange Project. We believe that the information to be gathered by fish passage studies is relevant to the environmental analysis at both projects as they cumulatively block fish passage and the transport of marine deprived nutrients to the upper Tuolumne River. Further, the National Marine Fisheries Service has indicated that it may seek to use its Federal Power Act section 18 authority to reintroduce fish to habitat above Don Pedro Dam, not just the La Grange Dam pool.<sup>10</sup>

## **II.**

### **SPECIFIC COMMENTS ON THE DISTRICTS' PROPOSED STUDIES**

#### **A. Recreational Access and Safety Assessment**

Recreational use is one of the beneficial uses that the Commission must balance in its comprehensive development determination under Federal Power Act section 10(a)(1), 16 U.S.C. §803(a)(1). Under its regulations, the Commission must seek the “ultimate development” of recreational resources at projects it licenses:

The Commission will evaluate the recreational resources of all projects under Federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost.<sup>11</sup>

Conservation Groups appreciate the fact that the Districts have proposed to study recreational access and safety at La Grange. We recommend several revisions to ensure the study provides sufficient information for purposes of environmental analysis and development of

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<sup>10</sup> NMFS, “Comments on the Proposed Study Plan for the La Grange Hydroelectric Project,” eLibrary no. 20141204-5152 (Dec. 4, 2014), Enclosure A, p. 3.

<sup>11</sup> 18 C.F.R. § 2.7. Under this policy, the Commission “expects the licensee to ensure public access, develop suitable public recreation facilities, and incorporate, by fee acquisition if necessary, sufficient lands within the project boundaries to ensure optimum development of the recreation resources offered by the project.” Division of Project Compliance and Administration, “Recreation Development at Licensed Hydropower Projects (Mar. 1996), p. 3.

PM&Es to protect the public interest in navigation<sup>12</sup> and recreation<sup>13</sup> at the Project. We also respond to the Districts' request to identify recreation activities that may be applicable to the project area in sub-section 3, *infra*.

## 1. Geographic scope

The Districts propose to extend the study area upstream of La Grange Dam to an elevation of 300 feet. We believe that this is inadequate and that the study area should be extended to include the area in the vicinity of La Grange Dam up to an elevation of 950 feet. Step 1 of the proposed study includes a Public Access Review intended to identify and describe public access routes, including route length, terrain, and barriers to use. Potential public access routes may originate along Bonds Flat Road in the vicinity of the Don Pedro Dam Visitor Center, located at an elevation of approximately 900 feet. Additionally, lands and potential access locations owned or managed by public agencies including the Bureau of Land Management and the Districts that may provide ingress/egress to the La Grange Reservoir are located in the vicinity of Bonds Flat Road and the Don Pedro Dam Visitor Center. Thus, to adequately describe potential public access routes it will be necessary to examine the area surrounding La Grange Reservoir up to approximately 950 feet.

## 2. Potential Public Access Routes

The proposed study appears to be limited to identifying *existing* public access routes. We believe that the study plan should examine *potential* public access routes as well. If the study strictly looks at existing public access routes it is unlikely to identify very many, if any, other than routes that can be hiked on foot, which we consider to be insufficient.

Under Step 1, the Districts state that “site characteristics in the study area will be assessed for recreation potential.” The Districts should clarify that they intend to assess the characteristics of *potential* recreational sites. Additionally, potential recreational uses should include hiking, shore-based fishing, and bird watching. Potential recreational facilities should include launches for non-motorized and motorized watercraft, parking, and restrooms.

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<sup>12</sup> “Members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft.” *People ex rel. Baker v. Mack*, 19 Cal.App.3d 1040, 1050 (Cal. Ct. App. 1971).

<sup>13</sup> California has adopted a recreation policy that emphasizes the importance of recreational access for all of its citizens. See California Department of Parks and Recreation, *Comprehensive Outdoor Recreation Plan 2008*, pp. 55-60) available at <http://www.parks.ca.gov/pages/795/files/2009-2014%20corp.pdf> (last checked Dec. 4, 2014). Further, “The *California Children’s Outdoor Bill of Rights* states that every child should have the opportunity to explore nature, learn to swim, go fishing, go boating, and do six other recreation activities (California Roundtable on Recreation, Parks and Tourism 2012).” Department of Water Resources, *California Water Plan Update 2013*, Vol. 3, Ch. 31, p. 31-6, available at [http://www.waterplan.water.ca.gov/docs/cwpu2013/Final/Vol3\\_Ch31\\_Water-Dependent-Recreation.pdf](http://www.waterplan.water.ca.gov/docs/cwpu2013/Final/Vol3_Ch31_Water-Dependent-Recreation.pdf) (last checked Dec. 4, 2014).

### 3. Potential Public Activities

Also, Step 2, Number 2 of the proposed study has an internal inconsistency. The header of Number 2 states “Identify **Potential** Recreation Activities within Each Component” (emphasis added) whereas the description that follows states “Information will be obtained regarding the types and level of public activities **currently associated** with each component, where applicable” (emphasis added). We request that the Districts make the description consistent with the header and by modifying the description to read “Information will be obtained regarding the types and level of **existing and potential** public activities associated with each component, where applicable.”

Action Item 5 attached to the Meeting Notes for the October 6 meeting states: “Mr. Shutes and others will provide to the Districts recreation activities which they believe are applicable to the Project area.” In response to this request, we reviewed the Canadian Dam Association Public Safety around Dams Risk Assessment Tool that is to be used in the Recreation Access and Safety Study. We recommend the addition of bird watching to the list of activities identified in the chart that comprises part of the tool. We recommend that skating, ice fishing, and snowmobiling be eliminated from the chart. We believe that jet skiing, water skiing, high speed boating, and ATV/Dirt Biking uses are probably inappropriate recreational activities for the La Grange Project; however, it may be useful to evaluate the safety of these latter activities, since there may be some value-based disagreement about how appropriate they might be.

### 4. Risk Assessment Methodology

The Districts propose to use the Canadian Dam Association’s risk assessment process, as outlined in the Guidelines for Public Safety around Dams to assess the risk to public safety of using Project lands and facilities for recreation. The Districts provide no justification as to why the Canadian protocol is most appropriate for the La Grange Project. We request that the Districts consider other protocols that have been used in the United States to assess risk to public safety and explain the basis for their proposal to use the Canadian Dam Association’s protocol.

We are concerned that the Districts may attempt to use the results of Step 2 of the proposed study (Assess Risk to Public Safety) to justify an actual or *de facto* prohibition on boating and recreation on the reservoir. A *de facto* prohibition could result from the Districts’ finding that the risks are too high and, therefore, no public access facilities should be built. Step 3 of the proposed study is simply to prepare a report on the study results; it does not clarify whether and on what basis the Districts will make a determination and recommendation for public access and recreational facilities.

If there are aspects of the Project that do create a hazard, the PSP does not describe a method for determining whether these potential hazards can be mitigated through management policies, signage, buoys, or other means. For example, if the results show a concern related to the potential danger of obstructions caused by water flowing over the top of La Grange Dam or fluctuating reservoir levels, reasonable responses could include the marking of hazards by

signage or buoys, closing areas in close proximity to the dam to boating, reduced speed limits, restricting motorized operations, or possibly closing the reservoir during high flow conditions. The installation of a buoy line (as is done at virtually every other dam in the state) at a reasonable distance upstream from the dam could successfully mitigate the potential risk of a boater washing over La Grange Dam. These reasonable restrictions on the public's right to navigate are commonly used on reservoirs throughout California.

## **5. Public Participation**

The Districts should include a public-participation component to this study. The Whitewater Take-Out Feasibility Study in the Don Pedro Relicensing (RR-02) included focus groups to solicit input and ideas for improving the whitewater takeout facility at Wards Ferry Bridge. A similar focus group could generate new and creative ideas for providing public access to the La Grange facility.

### **B. Fish Passage Assessment Study Plan**

In the Updated Study Plan, Licensees propose a La Grange Hydroelectric Project Fish Passage Assessment Study Plan, two studies of which (Fish Passage Facilities Assessment and Upstream Habitat Assessment) include the majority of the elements requested by Conservation Groups in our proposed Fish Passage Engineering Assessment Study Request and Upper Tuolumne River Anadromous Fish Habitat Assessment Study Request. In addition, the Districts propose to coordinate their studies with concurrent studies that the National Marine Fisheries Service has announced it will undertake. We generally support the proposed study elements and thank the Districts for reconsidering their approach to fish passage studies. We note that each area of study includes a defined opportunity for Licensing Participants to further discuss with the Districts any additional issues or study elements that are not resolved or included in the studies. We will address any outstanding areas of disagreement, interpretation, or omission at that time, if needed.

As stated at the study meeting, we do not see the value of the area of study that would evaluate the number of salmon that currently reach La Grange Dam, and we disagree with the premise of the elements outlined in Study Plan Section 6.2.1.2. As some of our representatives suggested at the meeting, we also disagree with many of the caveats expressed by the Districts in the narrative that explains the Study Plan. Nonetheless, we are more than willing to agree to address proper use of information after the information is gathered. For the present, we accept the caveats as an expression of the Districts' interests and reaffirm that we do not presuppose the eventual use of any study results.

We look forward to working collaboratively with the Districts, the resource agencies, and other Licensing Participants to develop the details of a Fish Passage Assessment Study Plan that is both technically sound and cost efficient.

### **III. NEW STUDY REQUEST**

#### **Water Hyacinth Study**

- (1) Describe the goals and objectives of each study proposal and the information to be obtained.**

We request that the Districts undertake a study to determine the most effective means of controlling the spread of water hyacinth which has proliferated within the Project area. We did not request this study in our comments on the pre-application document, which were submitted on July 22, 2014, before the extent of the water hyacinth problem became clear. The problem became more apparent and severe after July following a prolonged flow of just over 90 cfs (June 1 – October 1) coupled with high ambient temperatures.

The study should:

- a. Document the locations and extent of water hyacinth, identifying the worst problem areas.
- b. Determine the impacts of water hyacinth on native plants, fish, and other organisms, focusing on the blockage of sunlight, the depletion of dissolved oxygen, and barriers to fish migration.
- c. Determine the impacts of water hyacinth on recreational opportunities, such as boating, fishing, and swimming.
- d. Investigate how the increased nutrient load from agricultural runoff might be exacerbating the proliferation of water hyacinth.
- e. Determine whether increasing instream flows might reduce the build up of water hyacinth.
- f. Explore the potential use of chemical, biological, and mechanical controls to reduce the growth and spread of water hyacinth.
- g. Consider collaborating with the Department of Boating and Waterways and supporting the Harbors and Watercraft Revolving Fund to monitor and control water hyacinth.

- (2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied.**

Although we do not represent the resource agencies, we have identified several resource management goals that would be addressed by the study.

The California Department of Water Resources (DWR) has identified several resource management needs within the state, including ecosystem restoration and water dependent

recreation.<sup>14</sup> Control of non-native invasive plant species is important to meeting both of these needs.

Recreational uses of waterways . . . have been negatively affected in the Delta region by invasive plant species. Invasive aquatic plants such as *Egeria densa* and *water hyacinth* limit recreational and commercial vessel navigation and passage, restrict water flows, clog water intakes, and entrap sediments. These nonnative plants potentially decrease productivity of Delta fisheries by hindering and impeding anadromous and pelagic fish migration, competing with native vegetation, causing anoxic (low-oxygen) conditions and threatening water quality. These invasive plants also increase agricultural pumping maintenance requirements and other associated costs. The expansion rate of these invasive species in the Delta is approximately 10 percent per year. Invasive plants also are opportunistic and are able to occupy areas stressed by drought, fire, and other conditions caused by changes in climate. Once established, these plants not only out-compete native vegetation, but also tend to utilize more water than natives and can create greater fire and flooding hazards in riparian areas (California Department of Boating and Waterways 2012a).<sup>15</sup>

DWR has recommended the development of “long-term watershed-based strategies for invasive species control that affects water-dependent recreation.”<sup>16</sup>

The adverse impacts of water hyacinth on recreation opportunities is also relevant to the California Department of Parks and Recreation’s goal of increasing recreational opportunities within the State:

An ample supply of park and recreation areas, along with their associated open space and natural areas, facilities, beaches and waterways, trails and programs should exist throughout California so all people can safely engage in near-home activities as well as opportunities to visit distant locations for extended leisure time or vacation pursuits.<sup>17</sup>

**(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study.**

This study is in the public interest because in recent years, the rapid proliferation of water hyacinth (*Eichhornia crassipes*) has become a significant problem on the lower Tuolumne River (see photos taken by DFW Staff on Sept. 22, 2014 (Attachment 1)) and within the Delta.

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<sup>14</sup> See *California Water Plan Update 2013*, Vol. 3, Ch. 22, 31.

<sup>15</sup> *Id.*, Vol. 3, Ch. 31, p. 31-23 (emphasis added; internal citation in original).

<sup>16</sup> *Id.*, Vol. 3, Ch. 31, p. 31-30.

<sup>17</sup> *California Outdoor Recreation Plan 2008*, p. 55.

Water hyacinth is a free-floating perennial aquatic plant native to the Amazon Basin. Outside of its native habitat, water hyacinth is a highly invasive species. It is one of the fastest growing plants known and has been identified by the International Union for Conservation of Nature as one of the 100 most aggressive invasive species.

Water hyacinth thrives in still and slow moving waterways, such as lakes and placid streams. According to the California Department of Boating and Waterways, “[t]his extremely prolific aquatic invasive plant can double in size every ten days in hot weather and can quickly become a dense floating mat of vegetation up to six feet thick . . . Mats can also attach to structures in the water, limiting access to boats and reducing swimming areas.”<sup>18</sup>

Water Hyacinth has adverse effects on water quality and beneficial uses, including:

- Creation of navigation and safety concerns in waterways, harbors, and marinas.
- Interference with irrigation and power generation by clogging pumps and siphons.
- Complete exclusion of native floating and submerged vegetation, shading of habitat, and water temperature change.
- Depletion of dissolved oxygen.<sup>19</sup>

Dense mats of water hyacinth prevent air and light diffusion into water, often harming or killing native plants, invertebrates, and fish, while preventing decomposition of detritus. In addition to suppressing the growth of native plants and microbes, the rapid decomposition of water hyacinth can cause eutrophication of waterways.<sup>20</sup>

Floating mats of water hyacinth decrease water currents and can support vectors such as mosquitos. When mats jam against bridges and other structures, they can cause flooding and reduce accessibility to recreational opportunities.<sup>21</sup>

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<sup>18</sup> California Department of Boating and Waterways, “About Water Hyacinth,” *available at* <http://www.dbw.ca.gov/BoaterInfo/WaterHyacinth.aspx> (last checked Dec. 4, 2014).

<sup>19</sup> See San Francisco Estuary Institute, “Practical Guidebook for the Identification and Control of Invasive Aquatic and Wetland Plants in the San Francisco Bay-Delta Region” (2003), *available at* <http://www.sfei.org/nis/NISguidebook.pdf> (last checked Dec. 4, 2014). See also Roy Van Driesche *et al.*, “Biological Control of Invasive Plants in the Eastern United States” (2002), pp. 41-42, *available at* [http://www.fs.fed.us/foresthealth/technology/pdfs/BiocontrolsOfInvasivePlants02\\_04.pdf](http://www.fs.fed.us/foresthealth/technology/pdfs/BiocontrolsOfInvasivePlants02_04.pdf) (last checked Dec. 4, 2014).

<sup>20</sup> European Environment Agency, “The impacts of invasive alien species in Europe,” EEA Technical report No 16/2012 (2012), *available at* <http://www.eea.europa.eu/publications/impacts-of-invasive-alien-species>.

<sup>21</sup> Florida Fish and Wildlife Conservation Commission, “Weed Alert: Water Hyacinth,” *available at* <http://myfwc.com/wildlifehabitats/invasive-plants/weed-alerts/water-hyacinth/> (last checked Dec. 4, 2014).

The California Department of Fish and Wildlife has cited the impacts of water hyacinth in the Delta:

Floating invasive aquatic plants such as water hyacinth . . . form thick, extensive mats that sit on the water surface. . . . Both mats and stands of invasive aquatic plants impact the Delta by creating navigational obstructions and hazards for boats and other watercraft; impairing recreational activities, such as swimming, fishing, and hunting; clogging and damaging water utility and flood control infrastructure; altering water quality; and modifying the physical and chemical characteristics of fish and wildlife habitat. *The impacts caused by invasive aquatic plants may ultimately reduce recreational use and tourism, create public safety hazards, interfere with the delivery of water, and reduce the quality and quantity of habitat for native and desirable plant, fish, and wildlife species.*<sup>22</sup>

**(4) Describe existing information concerning the subject of the study proposal, and the need for additional information.**

We are unaware of any existing information regarding the proliferation of water hyacinth in the Tuolumne River and the Project's contribution to conditions preferred by water hyacinth. We are also unaware of any studies specific to the Tuolumne River that address the effects of water hyacinth on water quality and designated beneficial uses. It is our understanding that there has been very little study of the effects of water hyacinth on salmon migrations.<sup>23</sup>

**(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements.**

This issue has a nexus to project operations because instream flow is a key factor in the growth and control of water hyacinth. The Project has contributed to alteration of hydrologic conditions, creating more lentic conditions favorable to the proliferation of water hyacinth, especially during times of low flow. It has also affected high flow events which can serve to flush non-native aquatic vegetation out of the system.<sup>24</sup> Video footage by FishBio shows a buildup of water hyacinth being forced down the river during an April 2014 pulse flow.<sup>25</sup>

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<sup>22</sup> DFW, "Newsletter: Eye on Invasives (Winter 2013)," Vol. 3, Issue 2, p. 4 (emphasis added), available at <https://www.wildlife.ca.gov/Conservation/Invasives/Newsletter> (last checked Dec. 4, 2014).

<sup>23</sup> FishBio, "Hyacinth Woes: From a Gift to a Curse," (Dec. 1, 2014), available at <http://fishbio.com/field-notes/the-fish-report/hyacinth-woes-gift-curse> (last checked Dec. 4, 2014).

<sup>24</sup> See, e.g., *Pacific Gas and Electric Co.*, 102 FERC ¶ 61,309, \*\*12 (Mar. 19, 2003).

<sup>25</sup> Available at, <https://www.youtube.com/watch?v=U-24h2mWB1M> (last checked Dec. 4, 2014).

- (6) **Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge**

We request that the Districts develop the specific study methodology in consultation with the resource agencies, including the State Water Resources Control Board and DFW.

- (7) **Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.**

We defer specific estimates of level of effort pending the development of specific methodology. We do not expect the study would take more than one year.

### **CONCLUSION**

We thank the Districts and OEP Staff for considering these comments. We look forward to working with the Districts, resource agencies, and other Licensing Participants in finalizing and implementing the study plan once approved.

Dated: December 4, 2014

Respectfully submitted,



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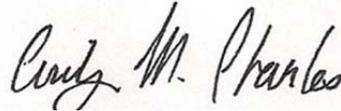
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**CERTIFICATE OF SERVICE**

**La Grange Hydroelectric Project (P-14581)**

I, Nicholas Niiro, hereby certify that I have this day served the foregoing document, "Conservation Groups' Comments Regarding Modesto and Turlock Irrigation District's Proposed Study Plan," on each person designated on the official service lists compiled by the Secretary in the P-14581-000 docket.

Dated: December 4, 2014

By:



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Nicholas Niiro  
WATER AND POWER LAW GROUP PC  
2140 Shattuck Ave., Suite 801  
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(510) 296-5591  
[niiro@waterpowerlaw.com](mailto:niiro@waterpowerlaw.com)

**Attachment 1**

# Water Hyacinth Lower Tuolumne

Photos taken September 22, 2014

# Fox Grove Fishing Access



# Legion Park



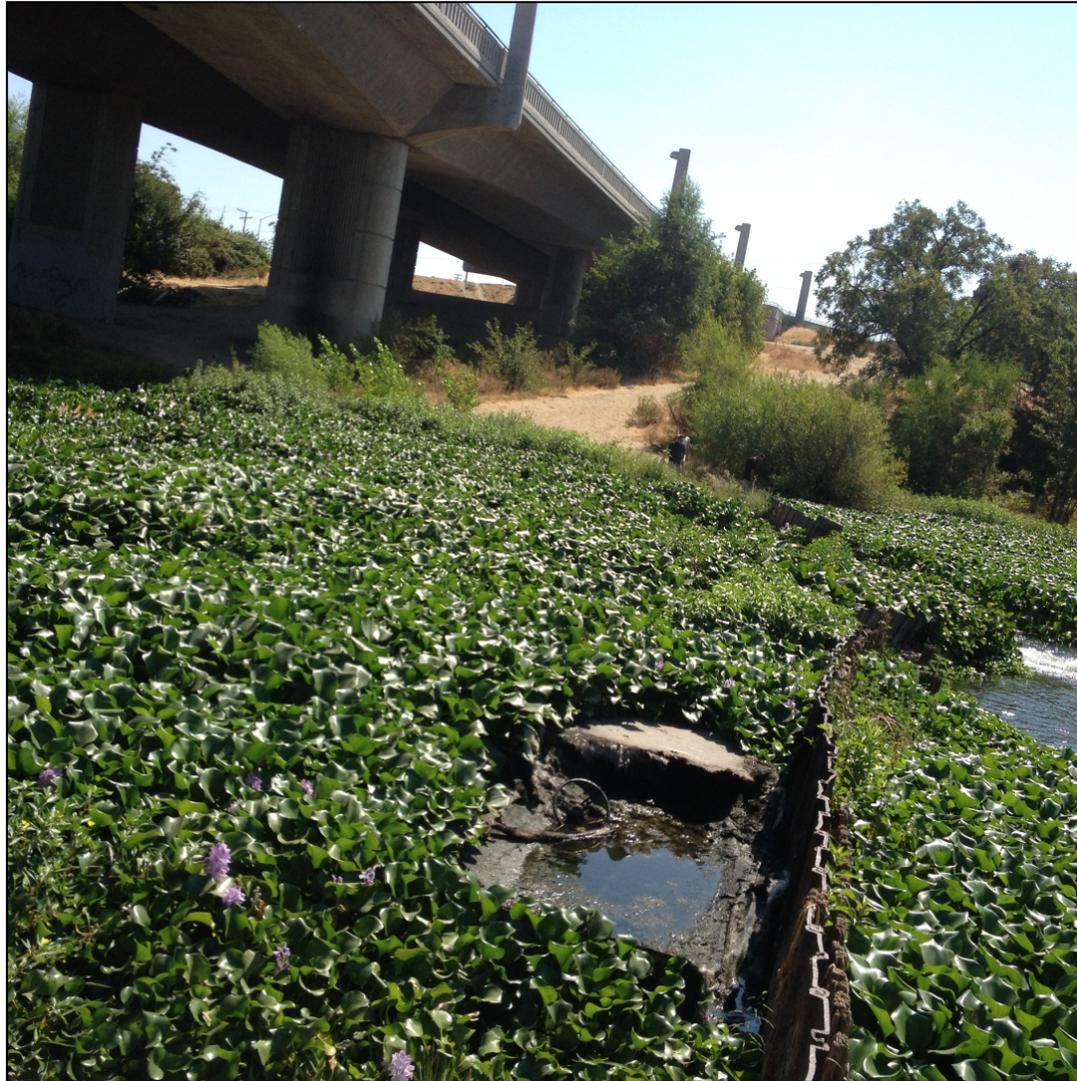
# 9<sup>th</sup> Street Bridge



# Dennett Dam (9<sup>th</sup> Street Bridge)



# Dennett Dam



# Dennett Dam



# Rivedale Park and Fishing Access (Carpenter Road Thermograph Site)



# Rivedale Park and Fishing Access (Carpenter Road Thermograph Site)



# Rivedale Park and Fishing Access (Carpenter Road Thermograph Site)



# Carpenter Road Bridge



# Carpenter Road Bridge



09/22/2014

# Shiloh Road



# Shiloh Road

