

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

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

**CONSERVATION GROUPS’ COMMENTS REGARDING PRE-APPLICATION
DOCUMENT AND SCOPING DOCUMENT 1, AND STUDY REQUESTS FOR
THE LA GRANGE PROJECT**

Pursuant to 18 C.F.R. § 5.9, American Rivers, American Whitewater, California Sportfishing Protection Alliance, California Trout, Central Sierra Environmental Resource Center, Friends of the River, Golden West Women Flyfishers, Merced Fly Fishing Club, Northern California Federation of Flyfishers, Pacific Coast Federation of Fishermen’s Associations, Trout Unlimited, and the Tuolumne River Trust (collectively, “Conservation Groups”) provide these comments on Modesto and Turlock Irrigation Districts’ (collectively, “Districts”) Pre-Application Document (“PAD”)¹ and the Federal Energy Regulatory Commission’s (“Commission”) Scoping Document 1 (“SD1”)² for the La Grange Project. We also make several study requests.

The Conservation Groups seek to restore and conserve the Tuolumne River’s natural resources. The Districts’ construction and operation of the Don Pedro and La Grange Projects (collectively, the “Projects”) have cumulatively degraded the non-developmental uses of the Tuolumne River for decades. The contemporaneous relicensing of the Don Pedro Project and original licensing of the La Grange Project present the first opportunity for the Commission to address the Projects’ cumulative effects on a comprehensive basis. The Commission should maximize this opportunity by preparing a single environmental document that addresses both projects. We believe coordinated environmental review and consideration of alternatives that span operational changes at both projects are important to the development of license conditions that satisfy the Commission’s obligation under Federal Power Act (“FPA”) section 10(a)(1) to ensure the new licenses are best adapted to a comprehensive plan of development or improvement of the Tuolumne River for all beneficial uses.

These comments are organized into three sections. Section I provides comments on the PAD. Section II provides comments on SD1. Section III states our study requests and indicates our support for study requests made by the resource agencies.

¹ eLibrary no. 20140129-5254 (Jan. 29, 2014).

² eLibrary no. 20140523-3004 (May 23, 2014).

I.
COMMENTS ON PRE-APPLICATION DOCUMENT

Pursuant to 18 C.F.R. § 5.6(b)(1), the Districts must prepare a PAD which

provides the Commission and the entities . . . with existing information relevant to the project proposal that is in the potential applicant's possession or that the potential applicant can obtain with the exercise of due diligence. This existing, relevant, and reasonably available information is distributed to these entities to enable them to identify issues and related information needs, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. It is also a precursor to the environmental analysis section of the Preliminary Licensing Proposal or draft license application provided for in § 5.16, Exhibit E of the final license application, and the Commission's scoping document(s) and environmental impact statement or environmental assessment under the National Environmental Policy Act (NEPA).

Based on our review of the PAD, additional information is needed to develop study plans and alternatives and to establish the proper scope of environmental analysis. We request that Office of Energy Projects ("OEP") Staff direct the Districts to supplement the PAD with additional information as described below.

For ease of reference, we organize our comments according to the headings provided in the PAD.

3.4 Project Facilities

Throughout their description of project facilities, the Districts make assertions as to what are and what are not project works. It appears that the Districts are seeking to exclude certain facilities because they are primarily used for water supply. However, the PAD's conclusory statements are inadequate to show that these facilities are not also used and useful for power generation. We seek clarification for the facilities highlighted below and request that OEP Staff independently investigate which facilities should be licensed as part of the project.

The FPA defines "project works" as "the physical structures of a project." 16 U.S.C. § 796(12). It defines "project" as

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit

16 U.S.C. § 796(11).

The PAD states that the Districts’ respective intakes, tunnels, and canals are not project works because they are not used in conjunction with power generation at the La Grange Project. PAD, pp. 3-5, 3-9, 3-10. Again, we request that OEP Staff independently determine whether these features should be licensed as part of the complete unit of development for the La Grange Project or the Don Pedro Project.

In its Order on Rehearing finding La Grange jurisdictional, the Commission deferred decision on whether the La Grange Project required licensing as part of a complete unit of development with the Don Pedro Project.³ The Commission rejected the Conservation Groups’ argument that La Grange reregulated flows from Don Pedro and declined to decide whether the Districts’ use of La Grange to make minimum flow releases required by the Don Pedro license made La Grange a part of the complete unit of development with Don Pedro. However, the Commission has previously referred to La Grange as a “diversion and reregulating facility,”⁴ and there have been no substantial changes to the La Grange facility since 1996 that would alter its reregulating function. We request that OEP Staff consider whether La Grange should be licensed as a part of a complete unit of development with Don Pedro.

3.8 Proposed Project Boundary

Under 18 C.F.R. § 4.41(h)(2), the project boundary must include “all project works and other features” as well as “lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources”

The PAD proposes that

The Districts will develop a proposed Project Boundary during development of the Draft License Application. In its filings made to date on the jurisdictional status of the LGP, the Districts have provided backwater modeling, analysis, and field survey information that demonstrates that the upper end of the La Grange impoundment, in accordance with FERC regulations, terminates approximately 5,400 feet above the La Grange diversion dam under normal river flows (TID 2011*b*).

The downstream portion of the proposed Project Boundary will be defined by metes and bounds that will encompass the primary LGP features related to hydropower generation and include only those lands needed and necessary to safely operate and maintain the FERC-jurisdictional aspects of the LGP and to provide adequate protection of affected

³ *Turlock & Modesto Irrigation Dists.*, 144 FERC ¶ 61,051 (July 19, 2013), ¶¶ 105-106. Both the Conservation Groups and the Districts are challenging this Order in the D.C. Circuit Court. Briefing is completed; oral arguments have not been scheduled.

⁴ *Turlock & Modesto Irrigation Dists.*, 76 FERC ¶ 61,117 (July 31, 1996), ¶ 61,610 n.28.

shoreline resources. The upstream portion of the proposed Project Boundary will be defined as contour elevation consistent with the reservoir's normal high water elevation.

PAD, p. 3-15.

The Commission has already made a finding regarding the upper extent of the La Grange reservoir. *Turlock and Modesto Irrigation Dists.*, 144 FERC ¶ 61,051 (July 19, 2013), ¶ 77. We recommend that this finding be used in drafting the project boundary. The project boundary should not be limited to facilities and features related to power generation. The regulations specifically require the inclusion of lands necessary for environmental, recreational, and other mitigation measures.

4.7 Basin Dams

Dennett Dam should be included in Table 4.7-1, "Owners and capacities of known dams or diversion facilities and their associated reservoirs in the Tuolumne River basin." PAD, p. 4-8.

Dennett Dam is an abandoned, broken, and non-functioning dam on the lower Tuolumne River in Modesto. It poses a hazard to navigation, and there have been three drownings at the site in the last five years, including two children.⁵

It was originally constructed by the City of Modesto in the 1930s but was washed out within a decade of its construction. It was re-built but washed out again shortly thereafter and was subsequently abandoned. Its ownership is disputed. It no longer has any storage capacity, but its remains are a significant river hazard, block recreational boat passage, and create a partial barrier to fish passage. Tuolumne River Trust, "Dennett Dam Removal: Concept Level Basis of Design Report" (2012) (Prepared by Tuolumne River Trust, NewFields, and HDR) (Attachment 1).

The La Grange Project impacts recreation and aquatic resources in the Tuolumne River. The Districts should provide additional information regarding Dennett Dam so that OEP Staff and stakeholders can evaluate whether its removal might help mitigate the project's cumulative effects on recreation and fish passage.⁶

The former haul road bridge remnant a mile downstream from new La Grange Bridge, J-59, should also be listed in Table 4.7-1. The vertical steel beams were placed for a cobble haul bridge, which was used during the construction of the current Don Pedro Dam. At flow of about 150 cfs, the tallest beam is a few inches below the river surface, which poses a potential hazard to boaters and their watercraft. Pers. Comm. Bob Hackamack (July 21, 2014). Although the water here is clear and most alert boaters can avoid this hazard, the Districts should provide

⁵ For more information, see <http://www.tuolumne.org/content/article.php/20100608124248155>.

⁶ The Commission is required to "[i]nclude reasonable alternatives not within [its] jurisdiction." 18 CFR § 1502.14.

additional information regarding this structure so that OEP Staff and stakeholders can evaluate removal to protect and develop recreational opportunities in the project area.

Hickman Spill is listed in Table 4.7-1. Located at RM 33, Hickman Spill requires structural changes for boater safety where spill water flow enters the river at high velocity, perpendicular to river flow. The drowning of a young boy occurred there recently due to the high velocity cross flow. Again, the Districts should provide additional information regarding Hickman Spill so that stakeholders can evaluate whether there are actions the Districts can take that would help mitigate the project's cumulative effects on recreation. For example, the Districts should provide information about availability of methods to reduce high cross current to a safe and manageable speed for paddle craft and drift boats. Turlock Irrigation District has placed permanent signs at nearby put-in locations, warning of this danger, but this is not a solution to the problem. These signs might frighten away citizens who are interested in boating.

5.3.1 Anadromous Fish

The PAD states that “[a]lthough low numbers of anadromous *O. mykiss* have been documented in the Tuolumne River (Zimmerman et al. 2008), there is no empirical scientific evidence of a self-sustaining “run” or population of steelhead currently in the Tuolumne River.” PAD, p. 5-15.

The Commission has already found that steelhead are present in the Tuolumne River.⁷

It should be noted that it is very hard to obtain accurate population estimates for anadromous *O. mykiss* because endangered species protections and other factors make capturing these fish difficult. Additionally, the causes of the anadromous life history of *O. mykiss* are not well understood.⁸

5.4.2.1 Noxious Weeds

Water hyacinth (*Eichhornia crassipes*) should be added to Table 5.4.2-1, “Noxious weeds potentially occurring in the vicinity of the Project.” During the 1977 drought, the Tuolumne River flow was low, and invasive water hyacinth blocked the river, preventing salmon from reaching spawning gravel and passage for recreational boaters. Ailanthus also is establishing a foothold in the river corridor and, if left unchecked, will proliferate along the river corridor, possibly interfering with flood flow. Pers. Comm. Bob Hackamack (July 14, 2014). The Districts should provide sufficient information regarding this invasive vegetation for OEP Staff and stakeholders to evaluate the project's contribution to conditions suitable for invasive vegetation and potential mitigation measures.

⁷ See *Turlock & Modesto Irrigation Dists.*, 128 FERC ¶ 61,035 (Jul. 16, 2009), ¶¶ 60-61. The Commission found sufficient information “to support the conclusion that steelhead are present in the Tuolumne River.” *Id.*

⁸ See Conservation Groups, “Comments on Don Pedro Draft License Application and Updated Study Report,” eLibrary no. 20140224-5095 (Feb. 24, 2014) (“Don Pedro DLA Comments”), pp. 13-20 (discussing at length the difficulty of characterizing *O. mykiss* in the Lower Tuolumne River).

5.6.3 Existing Recreational Facilities and Opportunities in the LGP Vicinity

The description of recreational facilities in the LGP Vicinity omits a number of important recreational parks and locations along the Tuolumne River. *See* PAD, p. 5-40. The information provided does not encompass all existing uses and opportunities. The entire 52-mile lower Tuolumne from La Grange to the San Joaquin River is used by boaters. Public access points from upstream to downstream include:

- Old La Grange Bridge (RM 50.2) (La Grange Regional County Park, with no facilities);
- Basso Bridge County Park (RM 47.5);
- Turlock Lake State Recreation Area (RM 42);
- Waterford River Walk Park (RM 31.5);
- Fox Grove County Park (RM 26);
- Ceres River Bluff Park (RM 20);
- Legion Park (owned by the Tuolumne River Regional Park Joint Powers Authority of Modesto, Ceres, Stanislaus County);
- Riverdale County Park (RM 12); and
- Shiloh Fishing Access (RM 3.5) (county owned).

The more popular runs include:

- Old La Grange Bridge to Basso Bridge County Park;
- Basso Bridge to Turlock Lake State Recreation Area;
- Old La Grange Bridge to Turlock Lake State Recreation Area;
- Put-in, for paddle around and motorboat, and take-out at Fox Grove County Park;
- Fox Grove County Park to Legion Park;
- Riverdale Park to Shiloh Fishing Access for drift boat and canoe run;
- Shiloh Fishing Access to destinations on the San Joaquin River.

Although currently unsafe, Legion Park to Riverdale Park could be a popular run.

Contrary to the description in the PAD (p. 5-42), there are several developed river and fishing accesses along the lower Tuolumne River outside of Turlock Lake State Recreation Area. There are access points at Basso Bridge, Fox Grove, Waterford Riverwalk Park, Ceres River Bluff Park, the Tuolumne River Regional Park, and Riverdale County Park.

Basso Bridge Fishing Access is only closed *to fishing* from October 16 through December 31 due to the Chinook salmon run (Stanislaus County 2010 *as cited in* TID/MID 2011).

The PAD omits the following recreational access points and facilities:

- Fox Grove County Park is located at approximately RM 26 and provides a concrete boat launch, parking lot, restrooms, trails, and picnic tables.
- Waterford Riverwalk Park extends for over one mile along the north side of the river from RM 31 to RM 32. The park consists of a riverside trail for its entire length plus a one-acre lawn area with a boat launch, picnic tables, restrooms, barbecues, and beach area for swimming.
- Ceres River Bluff Park is located at RM 20 and includes approximately ½ mile of river frontage with a boat launch, trails, wetlands, benches, and other park features.
- The Tuolumne River Regional Park (TRRP) is a 500-acre park that extends for approximately seven river miles in the Modesto area, from RM 12 to RM 19. The TRRP is in various stages of development, from the well-developed Legion Park area, with a boat launch, lawn, picnic tables, restrooms, and other amenities, to the Gateway Park, which is currently under development, to the Carpenter Road Park, which is completely undeveloped.
- Downstream of the Tuolumne River Regional Park is the Riverdale County Park, which is approximately four acres in size and includes a boat launch, picnic tables, playground, and other features.
- Shiloh Road Fishing Access is a fishing and boating access located at RM 3.5. It has been neglected and is in need of maintenance and improvement. This is the only put-in and take-out for about nine miles along the Tuolumne, but it is infrequently used because of the difficult put-in, lack of adequate parking, ramp, and toilet, and an often locked gate.
- Turlock Lake State Recreation Area is a very important takeout because the run down to it is very beautiful and popular and because it is currently the only access along that part of the river. It also is the only campground along the lower Tuolumne River. However, officially, there is no day use allowed to launch at the river. Although it is a State Recreation Area, it is situated on land owned by Turlock Irrigation District and leased to the State.

5.6.7 Potential LGP Effects and Resource Issues

The PAD states

In comments filed by participants in the La Grange jurisdictional proceeding under Docket UL11-1, boating interests have expressed an interest in having public access to the LGP, but current landownership, topography, lack of safe escape routes for boaters near the dam and spillway, and other factors greatly complicate this potential. Additional discussions about this resource issue will be conducted during the three-stage licensing consultation process.

PAD, p. 5-45.

While there are currently no boating facilities and there may be factors that need to be addressed to allow boating, we believe that a boating experience at La Grange could be a unique and valuable amenity for the region. Boating is provided in a safe manner at many reservoir locations throughout the state, including at Don Pedro, and we see no reason why a boating program could not be successfully implemented at the La Grange Project. Additionally, although boating access may be difficult to provide, shoreline access for fishing and hiking may be a feasible alternative that should be studied on District- and BLM-owned lands.

II.

COMMENTS ON SCOPING DOCUMENT 1

Our comments generally track the title and outline number in SD1 for each section where we have comments.

However, at the outset we ask that OEP Staff clarify how it will treat the administrative record for this licensing, given the overlap with the administrative record for the Don Pedro Project relicensing.⁹ Will the Commission’s licensing decision here be limited to the administrative record assembled for the P-14581 docket, or will it consider information in the P-2299 docket?

1.0. Introduction

Single Environmental Impact Statement

SD1 states, “[a]t this time, we intend to prepare an environmental assessment (EA) that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives.”

“NEPA and its implementing regulations require the agency preparing an EIS [environmental impact statement] *to consider carefully the scope of its analysis*, defined by Council on Environmental Quality (“CEQ”) regulations as ‘the range of actions, alternatives, and impacts to be considered in an environmental impact statement.’” *Hammond v. Norton*, 370 F. Supp. 2d 226, 234 (D.D.C. 2005) (quoting 40 C.F.R. § 1508.25) (emphasis added). We ask that OEP Staff reconsider its initial decision regarding the scope of environmental review for the La Grange Project and instead prepare a single EIS that analyzes the full range of actions, alternatives, and impacts related to the relicensing of the Don Pedro Project *and* the licensing of the La Grange Project.¹⁰

“[U]nder NEPA, “proposals for . . . actions that will have cumulative or synergistic environmental impacts upon a region . . . pending concurrently before an agency . . . must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.”” *Delaware Riverkeeper Network v. FERC*, 2014 WL 2535225, *8 (D.C. Cir. 2014) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)).

⁹ For example, “[t]he PAD contains existing information about the [La Grange Project] and also relies heavily on information contained in or provided in the relicensing proceedings for the Districts’ upstream Don Pedro Project (FERC No. 2299).” PAD, p. 1-1.

¹⁰ OEP Staff has done so with many other projects, even where there are different licensees for each of the projects in the joint environmental document. *See, e.g.*, Draft EIS for the Yuba-Bear (Nevada Irrigation District) and Drum-Spaulding (Pacific Gas & Electric) Hydroelectric Projects, eLibrary no. 20130517-4001 (May 17, 2013); Final EIS for the Yadkin (Alcoa Power Generating) and Yadkin-Pee Dee (Progress Energy Carolinas) Hydroelectric Projects, eLibrary no. 20080418-4000 (Apr. 18, 2008); Scoping Document for the Conowingo Hydroelectric and Muddy Run Pumped Storage Projects (both Exelon), eLibrary no. 20090511-3019 (May 11, 2009), p. 4.

CEQ regulations¹¹ specifically provide that cumulative actions, those that “have cumulatively significant impacts,” should be discussed in the same impact statement. 40 C.F.R. § 1508.25(a)(2).

Further, similar actions, those that “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography,” may be analyzed in the same impact statement. *Id.* § 1508.25(a)(3). The agency “should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.” *Id.*

The circumstances here weigh in favor of a single EIS for the licensing of these projects. They are geographically adjacent; less than three miles separates them. They are both owned and operated by the Districts. While the projects have independent utility, the Districts operate them in a highly coordinated manner to maximize the water supply and power benefits at both projects. *See infra* note 21.

There is no dispute that the projects cumulatively affect resources in the Lower Tuolumne River and farther downstream.¹² The Districts’ Don Pedro Draft License Application states that “all flow-related effects on the Don Pedro Project downstream of the La Grange Diversion Dam are, by definition, cumulative effects.” Ex. E, p. 4-1.

The Don Pedro Project contributes to cumulative effects on fish and aquatics resources, including fall-run Chinook salmon and Central Valley steelhead, in the lower Tuolumne River and downstream in the San Joaquin River and Delta. Other actions conducted within the Tuolumne River basin that contribute to cumulative effects include . . . water diversions at La Grange Dam

Id. at 4-71 – 4-72.

The La Grange PAD similarly lists Don Pedro Dam as contributing to La Grange’s cumulative effects in its discussion of potential cumulative effects. PAD, pp. 5-16 – 5-19.

Although the Districts initiated the La Grange licensing several years after the relicensing of Don Pedro, OEP Staff is scheduled to issue the Notices of Readiness for Environmental Analysis for the Don Pedro Project in May 2016, just one month before it issues the NREA for the La Grange Project.¹³ Given that the schedules are already closely aligned, we believe it

¹¹ “The Commission will comply with the regulations of the Council on Environmental Quality except where those regulations are inconsistent with the statutory requirements of the Commission.” 18 C.F.R. § 380.1.

¹² *See* Don Pedro DLA Comments, pp. 33-36 (citing Don Pedro DLA, eLibrary no. 20131126-5015 (Nov. 26, 2013), Ex. E, p. 4-1); PAD, pp. 5-16 – 5-19.

¹³ FERC, “Notice of Don Pedro Application Tendered for Filing,” eLibrary no. 20140509-3015 (May 9, 2014), p. 3; SD1, p. 20.

would be more efficient to have a single EIS, in addition to contributing to a more complete environmental analysis of the proposed licensing decisions.

Cooperation with the State Water Resources Control Board

In 2013, the Commission and the California State Water Resources Control Board (State Water Board) entered into a Memorandum of Understanding (MOU) for the coordination of pre-application activities for non-federal hydropower projects (Attachment 2). The MOU recognizes that the State Water Board has mandatory conditioning authority under Clean Water Act section 401, 33 U.S.C. § 1341.

As a part of the scoping process, the Commission and the State Water Board are to “discuss and attempt to reach consensus on the proposed geographic scope of studies.” MOU, p. 2. They are also to discuss the development of their respective environmental documents (under NEPA and the California Environmental Quality Act (CEQA)) and the types of alternatives they may consider. *Id.* at 3. The MOU further contemplates the possibility of a cooperative environmental document for the satisfaction of both NEPA and CEQA. *Id.* at 4.

We request that the OEP Staff comply with the letter and spirit of the MOU in coordinating with the State Water Board, to the maximum extent possible, to limit the duplication of effort and otherwise facilitate the timely issuance of the water quality certification and original license.

2.2 Comments, Scoping Meetings, and Environmental Site Review

Representatives of the California Sportfishing Protection Alliance and Tuolumne River Trust attended the scoping meetings on behalf of the Conservation Groups. Representatives of American Rivers, California Trout, and the Tuolumne River Trust attended the site visit on behalf of the Conservation Groups.

We thank OEP Staff for hosting and attending the scoping meetings, as well as providing a written transcript. We thank the Districts for hosting a thorough and informative site visit.

3.1.2 Existing Project Operations

SD1 does not describe the Districts’ operation of the La Grange Project to benefit the Don Pedro Project. OEP Staff should describe and analyze the extent to which the Districts operate La Grange to provide benefits at the Don Pedro Project in the environmental document.

The Commission has stated that La Grange is a “reregulating facility” in relation to the Don Pedro Project:

Flows from 100 cfs to 550 cfs can be regulated through releases from the powerhouse at La Grange Dam, which is *a diversion and reregulating facility* located downstream of the New Don Pedro Dam.

Turlock & Modesto Irrigation Dists., 76 FERC ¶ 61,117, ¶ 61,610 n.28 (July 31, 1996) (Emphasis added).

The Commission recently departed from this precedent, finding that La Grange Reservoir did not have sufficient capacity to re-regulate releases from Don Pedro. We have appealed this finding to the D.C. Circuit; the appeal is pending.

The Commission has also acknowledged that the La Grange Project is used to make fish flow releases required by the existing Don Pedro License. 144 FERC ¶ 61,051, ¶ 115.

3.3 Alternatives to the Proposed Action

We request that OEP’s alternatives analysis include, separately or in some combination, (1) an alternative whereby La Grange and Don Pedro are licensed as a complete unit of development; and (2) an alternative that includes fish passage at La Grange and Don Pedro Projects.

Under FPA section 10(a)(1), the Commission decides whether a new license is best adapted to a comprehensive plan of development, based on a thorough analysis of alternatives.¹⁴ The Commission has a similar, procedural obligation under National Environmental Policy Act (“NEPA”) section 102(2)(E) to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources” 42 U.S.C. § 4332(2)(E). Under the CEQ implementing rules, an EIS must:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.^[15]
- (d) Include the alternative of no action.
- (e) Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

¹⁴ *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608, 612 (2d Cir. 1965).

¹⁵ An EIS must include those reasonable alternatives that “are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.” CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” 46 Fed. Reg. 18026 (Mar. 23, 1981), Question 2a.

- (f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

40 C.F.R. § 1502.14.

OEP Staff should consider an alternative that includes fish passage facilities and flows adequate to support reintroduction of anadromous fish at both La Grange and Don Pedro. The projects collectively block fish passage to the upper reaches of the Tuolumne River.

The Tuolumne River formerly “sustained very large salmon populations.”¹⁶ Since the 1890s, the time when La Grange Dam was constructed,

[h]abitat quantity and quality [for anadromous fish] have declined due to construction of levees and barriers to migration, modification of natural hydrologic regimes by dams and water diversions, elevated water temperatures, and water pollution.¹⁷

The National Marine Fisheries Service (“NMFS”) has found that two of the most significant stressors leading to steelhead decline in the Tuolumne River include (1) La Grange and Don Pedro dams blocking access to historical habitat and (2) “[i]nadequate summer flow on the Tuolumne River.”¹⁸ Central Valley spring-run Chinook and Central Valley steelhead currently are listed as threatened under the federal Endangered Species Act, and fall-run Chinook are listed as a species of concern.¹⁹

To date, the fact that Don Pedro has been licensed separately and exclusive of La Grange has frustrated the development of a coordinated plan for fish passage. Salmon and steelhead continue to experience dramatic declines due in part to the lack of access to historical habitat located above the La Grange and Don Pedro projects.

As stated above, an EIS must include a thorough analysis of alternatives that might better achieve the purposes of the proposed action, and otherwise minimize conflicts between competing beneficial uses.²⁰ In this case, the Commission has jurisdiction over both projects,

¹⁶ National Marine Fisheries Service, “Public Draft Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and Distinct Population Segment of Central Valley Steelhead” (Oct. 2009), p. 150.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 48-49.

¹⁹ Draft Recovery Plan at 4; *see also* NMFS, “Species of Concern: Fall-Run Chinook Salmon” (2010), available at http://www.nmfs.noaa.gov/pr/pdfs/species/chinooksalmon_highlights.pdf.

²⁰ The Commission must “give consideration to the benefits to be obtained by the public in utilizing the waters available for all purposes and to consider the burdens placed on each class of the public by conflicting uses.” *Namekagon Hydro Co.*, 12 FPC 203, 206-07 (Jul. 30, 1953).

there is common ownership, coordinated operation, and contemporaneous licensing proceedings. An alternative that includes both projects is not only feasible but would be the most efficient way to make licensing decisions that maximize all beneficial uses. Just as the Districts currently coordinate operations to maximize irrigation and consumptive uses,²¹ so too can facilities and operations be coordinated to maximize other beneficial uses.

Reopener at Don Pedro has previously been proposed as a means to coordinate fish passage between the Projects. Reopener would be insufficient to protect fish resources. The Commission takes the position that, even with a reopener provision, it cannot reopen and amend a license “absent agreement among the parties.” *Turlock Irrigation Dist. & Modesto Irrigation Dist.*, 140 FERC ¶ 61,207, ¶ 17 (2012). Additionally, a reopener proceeding “removes the incentive for a speedy and efficient resolution of fishery issues” that exists during licensing. *Confederated Tribes & Bands of the Yakima Indian Nation v. FERC*, F.2d 466, 473 (9th Cir. 1984). Addressing all issues at licensing through the analysis of a comprehensive alternative is superior to relying on tentative reopener.

Both projects will be ready for environmental analysis within a month of each other in 2016 – Don Pedro in May and La Grange in June. This creates the first opportunity to comprehensively evaluate and coordinate fish passage at both projects. As stated by several commenters at the Scoping Meeting,²² the Commission should undertake a thorough evaluation of fish passage and habitat suitability at both projects so that it has a complete record on which to base its licensing determinations under Section 10(a)(1).

In response to Conservation Groups’ argument before the D.C. Circuit Court that only a single proceeding for La Grange and Don Pedro would permit adequate evaluation of fish passage, the Commission assured the Court that separate proceedings “will provide the Commission and relevant resource agencies with the necessary information to develop whatever license terms may be necessary to protect aquatic resources on the Tuolumne River.”²³ Only the analysis of a comprehensive alternative that includes fish passage facilities and flows at La Grange and Don Pedro will fulfil the Commission’s stated promise.

²¹ Before the D.C. Circuit Court, the Districts explained how they are “engaging in the prudent and financially sound practices of (1) arranging Don Pedro releases at such times as the Districts want the water and have the capacity to divert and store it for irrigation and other consumptive purposes [at La Grange] without wasting it by letting it pass downstream unused and (2) having such releases occur more often during more valuable peak-demand periods.” Intervenor Brief of Districts at 8, *Turlock Irrigation Dist., et al. v. FERC*, Nos. 13-1250 and 13-1253 (D.C. Cir. July 17, 2014) (Attachment 3).

²² Scoping Meeting Transcript, eLibrary no. 20140618-4016 (June 18, 2014), pp. 22:7-9 (comments by Eric Caine), 25:8-12 (comments by Jeremy Terhune), 37:5-7 (comments by Stephen Nielson), 51:6-13 (comments by Tom Hicks).

²³ Brief of Respondent at 46, *Turlock Irrigation Dist., et al. v. FERC*, Nos. 13-1250 and 13-1253 (D.C. Cir. July 17, 2014) (Attachment 4).

3.4.1 Decommission the Project's Generating Equipment

Conservation Groups agree with OEP Staff's findings that the Districts would need to decommission the La Grange Project if they decided to cease generating power. SD1, p. 11. We also agree this is not a reasonable alternative to licensing the project with appropriate environmental measures. *Id.*

The Districts upgraded the turbines at the La Grange powerhouse in 1989.²⁴ According to the PAD, since 1996 La Grange has produced an average of 19,638 MWh (megawatt-hours) per year, with a low of 9,384 MWh in 2009 (dry year) and a high of 34,439 MWh in 2006 (wet year). There appears to be no rational basis for decommissioning the powerhouse, based on the Districts' assertion that the adverse project impacts are caused by water supply, not power operations. The Commission should not permit the Districts to remove the powerhouse for the purpose of avoiding the Commission's jurisdiction.

4.0 Scope of Cumulative Effects and Site-Specific Resource Issues

There is no dispute that the La Grange and Don Pedro projects cumulatively affect beneficial uses in the lower Tuolumne River. We ask that OEP Staff prepare a single EIS that addresses the cumulative effects of the La Grange and Don Pedro projects to the fullest extent possible, consistent with the Commission's policy to:

address and consider cumulative impact issues at original licensing and relicensing to the fullest extent possible consistent with the Commission's statutory responsibility to avoid undue delay in the relicensing process and to avoid undue delay in the amelioration of individual project impacts at relicensing.

18 C.F.R. § 2.23.

4.1.1 Resources that could be Cumulatively Affected

SD1 identifies aquatic resources "as having the potential to be cumulatively affected by the continued operation of the La Grange Project in combination with other activities in the Tuolumne River Basin." SD1, p. 12. In addition to aquatic resources, we believe water resources, geomorphology and sediment transport, recreation, and socioeconomics are also cumulatively affected by the continued existence, operation, and maintenance of La Grange.

4.1.2 Geographic Scope

SD1 states, "[f]or water resources aquatic resources, and socioeconomics we define the geographic scope as extending upstream on the Tuolumne River to Hetch Hetchy and extending downstream to San Francisco Bay." SD1, p. 13. We agree with this geographic scope.

²⁴ Districts, "Request for Rehearing and Motion for Stay," eLibrary no. 20130118-5187 (Jan. 18, 2013), p. 4.

4.2.2 Aquatic Resources

We recommend that OEP Staff add the following bullet for purposes of its analysis of the project's direct, indirect, and cumulative impacts to aquatic resources:

- Effects of the project on downstream migration of fish.

4.2.5 Recreation and Land Use

We recommend that OEP Staff add the following bullet for purposes of its analysis of the project's direct, indirect, and cumulative impacts to recreational resources:

- Effects of existing project operations on recreation

OEP Staff's thorough analysis of project effects on recreation is important to comply with the Commission's policy on recreation, which states:

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.

18 C.F.R. § 2.7.

5.0 Proposed Studies

SD1 states: "[a]lthough the Districts do not propose any studies at this time, they state that studies specific to the La Grange Project are not expected to be complex and any additional study plans would be cooperatively developed with interested parties." SD1, p. 17.

This statement is consistent with the PAD, which indicates that the Districts are to rely heavily on studies conducted for the Don Pedro Project as the basis for their new license application.²⁵ We agree that the record assembled in the Don Pedro proceeding will be useful for evaluating the effects of and alternatives to existing operations and facilities at La Grange. However, we believe that the Districts will need to conduct additional studies for purposes of the La Grange licensing. Further, studies developed as part of the La Grange licensing may inform decisions by the Commission and other agencies with mandatory conditioning authority at Don Pedro. It is too early to presume that these studies, which should include fish passage and upper Tuolumne River habitat studies, will not be complex.

We look forward to meeting with the Districts and other stakeholders to review existing information and to discuss additional studies needed to support development of the license application.

²⁵ See, e.g., PAD, p. 5-56.

6.0 Request for Information and Studies

We provide our recommendations for new studies in Section III, *infra*.

7.0 EA Preparation

As stated above, we request that OEP prepare a single EIS that analyzes the full range of actions, alternatives, and effects of relicensing the Don Pedro Project and licensing the La Grange Project. We believe a single impact statement is warranted, particularly given the cumulative effects of both projects on the Lower Tuolumne River and downstream of the confluence with the San Joaquin River. The Commission's regulations recognize the importance of coordinating analysis of cumulative impacts of licensed projects located in the same river basin.²⁶

9.0 Comprehensive Plans

The Draft EIS should analyze and display the consistency of each action alternative with the specific management objectives or requirements in each of the comprehensive plans identified as relevant to the relicensing. We respectfully disagree with the Commission's standard practice of summarily concluding, in a single sentence of a NEPA document, that a preferred alternative is consistent with such management objectives or requirements.

We request that the Commission consider the following, additional comprehensive plans in preparing the Draft EIS and also in its analysis under Federal Power Act section 10(a)(2) and 18 C.F.R. §2.19.²⁷

For Aquatic Recourse and Threatened, Endangered, and Fully Protected Species:

NMFS, "Public Draft Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and the Distinct Population Segment of Central Valley Steelhead" (2009), p. 3, *available at*

http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/california_central_valley/public_draft_recovery_plan_october_2009.pdf.²⁸

²⁶ "In issuing both new and original licenses, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing." 18 C.F.R. § 2.23.

²⁷ We will e-file copies of these plans with a request for consideration under FPA section 10(a)(2) separately.

²⁸ NMFS has stated that the final plan will be released on July 22, 2014. This reference should be updated with the final plan once it is released.

For Recreation and Land Use:

California Department of Parks and Recreation, “Comprehensive Outdoor Recreation Plan” (2008), *available at* http://www.parks.ca.gov/?page_id=27895.

10.0 Mailing List

We request that you add the undersigned to the service list compiled for this proceeding and that the Districts note the undersigned as the designated contacts requested in Section 2.3.1 of the PAD.

III. **STUDY REQUESTS**

We are submitting the following Study Requests as attachments for consideration by OEP Staff:

- Fish Passage (Attachment 5);
- Upper Tuolumne Habitat Suitability (Attachment 6); and
- Recreational Access, Safe Passage at Manmade Hazards, and Facilities Feasibility Study (Attachment 7).

CONCLUSION

We thank the Commission for considering these comments.

Dated: July 22, 2014

Respectfully submitted,



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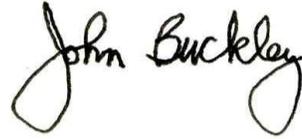
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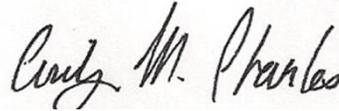
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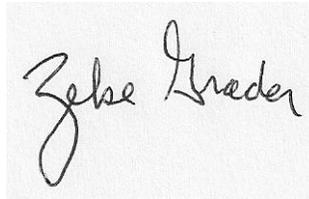
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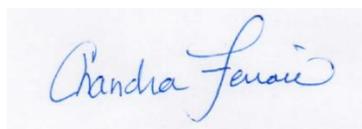
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CERTIFICATE OF SERVICE

La Grange Hydroelectric Project (P-14581)

I, Nicholas Niiro, hereby certify that I have this day served the foregoing document, “Conservation Groups’ Comments Regarding Pre-Application Document and Scoping Document 1, and Study Requests for the La Grange Project,” on each person designated on the official service lists compiled by the Secretary in the P-14581-000 docket.

Dated: July 22, 2014

By:



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