State Water Resources Control Board

JUL 22 2014

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Dear Secretary Bose:

COMMENTS ON THE PRE-APPLICATION DOCUMENT AND SCOPING DOCUMENT 1 FOR THE LA GRANGE HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 14581; STANISLAUS AND TUOLUMNE COUNTIES

Modesto Irrigation District and Turlock Irrigation District (collectively referred to as Districts[1]) own and operate the La Grange Hydroelectric Project (Project), also known as Federal Energy Regulatory Commission (Commission) Project No. 14581. On January 29, 2014, the Districts filed the Project's Pre-Application Document (PAD) with the Commission. The PAD contains the Districts' Project proposal for their Commission license. On May 23, 2014, the Commission issued Scoping Document 1 (SD1) for the Project. State Water Resources Control Board (State Water Board) staff's comments on the Districts' PAD and the Commission's SD1 are provided in Attachment A. State Water Board staff's study requests are provided in Attachment B.

Items 1 and 3 of the Pre-Application Filing Activities under the Integrated Licensing Process (ILP) section of the Memorandum of Understanding (MOU) executed between the Commission and State Water Board on November 19, 2013[2] apply to this phase of the ILP process. Based upon the Process Plan and Schedule put forth by the Commission in Appendix B of their SD1, State Water Board staff provides the following initial estimate of process milestones for water quality certification[3]:

- Application for water quality certification: October 2016
- Issuance of draft water quality certification for public review: January 2018
- Issuance of final water quality certification: June 2018

As this Project continues to move forward, State Water Board staff will work with Commission staff to refine these process milestones. As outlined in Item 3 of the MOU, State Water Board staff will actively participate in the study plan development.

[1] Districts also refers to the consultants that represent them.

[2] A copy of the MOU is available online at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/ferc_mou/index.shtml

[3] These milestones are dependent upon timely completion and compliance with the California Environmental Quality Act, for which State Water Board staff understands the Districts will be the Lead Agency and the State Water Board is a responsible agency.

If you have any questions regarding this letter, please contact me at (916) 445-9989 or by email at Peter.Barnes@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights
Water Quality Certification Program
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Sincerely,

on behalf of

Peter Barnes
Engineering Geologist
Water Quality Certification Program

Enclosures: Attachment A – Comments on the Pre-Application Document and Scoping Document 1 for the La Grange Hydroelectric Project
Attachment B – Study Plan Requests for the La Grange Hydroelectric Project

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ATTACHMENT A:
COMMENTS ON THE PRE-APPLICATION DOCUMENT AND
SCOPING DOCUMENT 1 FOR THE LA GRANGE HYDROELECTRIC PROJECT

The following comments are provided by State Water Resources Control Board (State Water Board) staff on the Pre-Application Document (PAD) and Scoping Document 1 (SD1) for the La Grange Hydroelectric Project (Project), Federal Energy Regulatory Commission (Commission) Project No. 14581. The Project is owned and operated by Modesto Irrigation District and Turlock Irrigation District (collectively referred to as the Districts).

Regulatory Authority

Before the Commission can issue a new license, the Districts must obtain water quality certification from the State Water Board pursuant to section 401(a)(1) of the federal Clean Water Act (CWA) (33 U.S.C. §1341(a)(1)). Section 401 of the CWA requires any applicant for a federal license or permit, which may result in any discharge to navigable waters, to obtain water quality certification that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. In California, the State Water Board is the certifying agency under Section 401 for the Project. Accordingly, the State Water Board may set conditions implementing CWA requirements, including the requirements of Section 303 of the CWA for water quality standards and implementation plans, or to implement "any other appropriate requirement of State law." (33 U.S.C. §1341(d).)

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency (USEPA) approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan). The Basin Plan identifies the following beneficial uses for the Tuolumne River from the Don Pedro Reservoir to the San Joaquin River: irrigation, stock watering, contact recreation, canoeing and rafting, non-contact recreation, warm freshwater habitat, cold freshwater habitat, cold migration (salmon and steelhead), warm spawning (striped bass, sturgeon, and shad), cold spawning (salmon and steelhead), and wildlife habitat. Municipal and domestic supply is listed as a potential use.

The beneficial uses together with the water quality objectives that are contained in water quality control plans (basin plans) and state and federal anti-degradation requirements constitute California's water quality standards under section 303 of the CWA. The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. The State Water Board must evaluate the impacts of the Project on the associated water bodies to determine whether the Project complies with all applicable water quality objectives in the Basin Plan, and protects the designated beneficial uses. As such, the Districts must evaluate the impacts of the Project on the Tuolumne River to determine whether the Project complies with both the Basin Plan and amendments to the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary*, if adopted. Water quality certification also may address a project's effects on public trust resources. In developing a water quality certification the State Water Board looks not only on proposed modifications to Project operations from the existing condition, but also on whether past, existing, or future operations may impair or degrade water quality.

The Districts must file an application for water quality certification once the Commission issues the notice of Ready for Environmental Analysis. A complete application for a water quality certification must include a description of any steps that have been, or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of water. (Cal. Code Regs. tit. 23, § 3856, subd. (h)(6).). If the Project does not comply with one or more of the water quality objectives or criteria, then the Districts must describe the actions that they

will take to bring the Project into compliance in order to protect and maintain the beneficial uses of the State's waters. During the licensing process, State Water Board staff will act in an advisory role to inform the Districts of the information necessary for a complete application for water quality certification. Filing requirements for an application for water quality certification are specified in California Code of Regulations, title 23, section 3856. The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the application (Cal. Code Regs., tit. 23, § 3836.). State Water Board staff cannot prejudge the outcome of any proceeding before the State Water Board on an application for water quality certification.

Pre-Application Document Comments

General Comments

The following comments are on the information contained in the PAD developed by the Districts. However, State Water Board staff request the Commission's consideration of the comments below when developing its preliminary list of issues and alternatives to be addressed in the Environmental Assessment required by the National Environmental Policy Act. Many of the topics raised in these comments are applicable to the Commission's SD1.

5.2.1 Water Quality

The Tuolumne River, from Don Pedro Reservoir to its confluence with the San Joaquin River, is listed under section 303(d) of the Clean Water Act as impaired for temperature, Chlorpyrifos, Diazinon, Group A Pesticides, Mercury, and Unknown Toxicity. The PAD makes no mention of these impairments. State Water Board staff requests that the Districts acknowledge these impairments and address how the Project, in operation with the upstream Don Pedro Hydroelectric Project, may contribute to these impairments. Specifically, State Water Board staff is looking for a thorough discussion and analysis as to how the Districts' operation of the Project, in connection with the Districts' operation of the Don Pedro Hydroelectric Project, has the ability to affect water temperature in the lower Tuolumne River.

Scoping Document 1 Comments

4.1.1 Resources that could be Cumulatively Affected

Commission staff identifies aquatic resources as having the potential to be cumulatively affected by continued Project operation. State Water Board staff requests that the Commission also include water resources (specifically related to water quality) as potentially cumulatively affected by Project operations.

4.1.2 Geographic Scope

State Water Board staff agrees with and supports the Commission's determination that the geographic scope for cumulative impacts to water resources, aquatic resources, and socioeconomics should extend upstream on the Tuolumne River to Hetch Hetchy and downstream to the San Francisco Bay. State Water Board staff also agrees that the geographic scope for cumulative impacts to geomorphology should extend upstream on the Tuolumne River to Hetch Hetchy and downstream to the confluence of the Tuolumne and San Joaquin Rivers.

The Commission has tentatively set the geographic scope for cumulative impacts to anadromous fish and Essential Fish Habitat (EFH) to include the Tuolumne River basin downstream to the confluence with the San Joaquin River, and through the Sacramento-San Joaquin Delta to the San Francisco Bay. State Water Board staff interpret this to include the entire Tuolumne River basin (Tuolumne River and its tributaries), not just that below La Grange dam. State Water Board staff supports this interpretation and encourages the Districts and the Commission to work closely with relicensing participants (RPs), specifically the California Department of Fish and Wildlife, United States Fish and Wildlife Service, and National Marine Fisheries Service to develop a final geographic scope acceptable to all parties.

6.0 Request for Information and Studies

State Water Board staff has reviewed the requests from FERC (italics) and provides comments below.

- *Information, quantitative data, or professional opinions that may help define the geographic and temporal scope of the analysis (both site-specific and cumulative effects), and that helps identify significant environmental issues.*

  The geographic scope of analyses for potential site-specific impacts varies depending on the resource being evaluated. State Water Board staff recommends that the geographic scope for site-specific impacts be developed in close consultation with the RPs. For both site-specific and cumulative impacts, State Water Board staff recommends that the temporal scope also be developed in consultation with the RPs. Ideally the temporal scope would be determined in such a manner that it helps define the Project's impacts on that particular resource.

- *Identification of, and information from, any other EA [Environmental Assessment], EIS [Environmental Impact Statement], or similar environmental study (previous, on-going, or planned) relevant to the proposed relicensing of the project.*

  The relicensing efforts for the Don Pedro Hydroelectric Project have resulted in numerous studies and environmental reports which are relevant to the Tuolumne River watershed and should be relied upon in the licensing of the La Grange Hydroelectric Project.

  The Districts are the Licensees for both of these projects and should be able to provide the information that has been developed.

  The State Water Board is also involved in an ongoing effort to establish flow objectives for the San Joaquin River and associated tributaries, including the Tuolumne River. While the State Water Board has not yet established flow objectives, it has developed technical information applicable to the Tuolumne River and other San Joaquin tributaries. Accordingly, the State Water Board recommends that the Districts and Commission consider Appendix C of the *Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the Bay Delta: San Joaquin River Flows and Southern Delta Water Quality* and use as appropriate in the

Project's relicensing. The most recent version of Appendix C can be found using the following link: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/

- *Existing information and any data that would help to describe the past and present actions and effects of the project and other developmental activities on environmental and socioeconomic resources.*

  See above response.

- *Information that would help characterize the existing environmental conditions and habitats.*

  State Water Board staff believes that this information will be obtained through the implementation of studies developed through the relicensing process.

- *The identification of any federal, state, or local resource plans, and any future project proposals in the affected resource area (e.g., proposals to construct or operate water treatment facilities, recreation areas, water diversions, timber harvest activities, or fish management programs), along with any implementation schedules.*

  As previously stated, the Project-affected water bodies fall within the boundaries of the Basin Plan and must meet applicable water quality objectives and be protective of designated beneficial uses. Additionally, the State Water Board is developing statewide mercury water quality objectives. Information regarding the State Water Board mercury water quality objectives can be found at: http://www.waterboards.ca.gov/water_issues/programs/mercury/. It is anticipated that the objectives will address the amount of locally caught fish that may be consumed by humans and wildlife. When finalized, these objectives would apply to California's inland surface waters which include the Project-affected water bodies.

- *Documentation that the proposed project would or would not contribute to cumulative adverse or beneficial effects on any resources. Documentation can include, but need not be limited to, how the project would interact with other projects in the area and other developmental activities; study results; resource management policies; and reports from federal and state agencies, local agencies, Indian tribes, NGOs [nongovernmental organizations], and the public.*

  State Water Board staff believes that this information will be developed during the relicensing process.

- *Documentation showing why any resources should be excluded from further study or consideration.*

- *Study requests by federal and state agencies, local agencies, Indian tribes, NGOs, and the public that would help provide a framework for collecting pertinent information on the resource areas under consideration necessary for the Commission to prepare the EA/EIS for the project.*

  Please refer to Attachment B for the State Water Board's study requests. In addition to the study requests contained in Attachment B, State Water Board staff acknowledges the specialized expertise of RPs such as the California Department of Fish and Wildlife, the United States Fish and Wildlife Service, and National Marine Fisheries Service. The State Water Board respects the ability of these agencies to rigorously evaluate the Project's impacts both on aquatic and terrestrial biological resources, which are integral components of the beneficial uses designated in the Basin Plan. State Water Board staff supports the study requests and proposals submitted by these resource agencies.

ATTACHMENT B:
STUDY REQUESTS FOR
LA GRANGE HYDROELECTRIC PROJECT
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 14581

The information developed through the implementation of study plans will not only be used by the Federal Energy Regulatory Commission (Commission) to develop license conditions and fulfill requirements under the National Environmental Policy Act (NEPA), but also by other agencies that must take permitting actions during the proceeding. The information will assist the State Water Resources Control Board (State Water Board) in developing water quality certification conditions to ensure compliance with the Clean Water Act and other appropriate requirements of state law. Modesto Irrigation District, Turlock Irrigation District, and the State Water Board will use these studies to fulfill the requirements of the California Environmental Quality Act (CEQA). It is the State Water Board's understanding that Modesto Irrigation District and Turlock Irrigation District (collectively Districts) will act as lead agencies for CEQA and the State Water Board will be a responsible agency.

As a mandatory conditioning agency under the Commission's relicensing process and as a responsible agency under CEQA, the State Water Board will act in an advisory role to inform the Districts of the information that it believes is necessary to fulfill the requirements of CEQA and federal and state water quality laws, and to develop a complete application for water quality certification.

In this advisory role, State Water Board staff will participate in the Study Plan Development process and submit study plan requests and comments in accordance with the Commission's Integrated Licensing Process (ILP). If the study plans approved by the Commission do not cover those requested by State Water Board staff, and are determined to be insufficient in providing the information needed in connection with the issuance of the water quality certification, the State Water Board may choose to request such information under other applicable authority.

The following is a list of studies requested by State Water Board staff:

1. Fish Passage Feasibility Study at Project Facilities

Study Goal and Objective

Project facilities currently block upstream and downstream volitional passage of native anadromous and native resident fish. The primary goal of this study is to evaluate and identify fish passage options at Project facilities. The study should look at different options for providing fish passage up to the Upper Tuolumne River watershed. Each option should be evaluated based upon its cost, construction impacts, and overall benefit to the fishery.

Relevant Resource Management Goals

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency (USEPA) approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan). The beneficial uses together with the water quality objectives that are contained in water quality control plans (basin plans) and state and federal anti-degradation requirements constitute California's water quality standards under section 303 of the CWA. The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. Cold freshwater habitat is a designated beneficial use for the entire Tuolumne River. The Tuolumne River, from the

New Don Pedro dam to its confluence with the San Joaquin River, also has cold water migration and cold water spawning as designated beneficial uses. This beneficial use has been limited due to the Project's presence. State Water Board staff must understand measures that may be required to bring the Project into compliance with Basin Plan standards. It is also important to State Water Board staff that future Project operations are protective of these designated beneficial uses.

Relevant Public Interest Considerations
State Water Board is a resource agency with mandatory conditioning authority.

Existing Information
State Water Board staff is unaware of any existing information regarding fish passage related to this Project. The PAD does not identify any information regarding fish passage options. However, the PAD does indicate that that fish passage at the Project was identified as a resource issue during the relicensing proceedings for the Don Pedro Hydroelectric Project and is likely to be of interest during the licensing of the Project.

Nexus Between Project and Resource to be Studied
The Project, along with the Don Pedro Project, acts as a barrier to anadromous and native fish migration. Salmonid habitat above the Don Pedro Project is inaccessible to salmonids. Continued operation of both projects currently block access to historical salmonid habitat and have the potential to be a significant limiting factors of salmonid populations in the Tuolumne River.

Methodology and Consistency with Generally Accepted Scientific Practice
State Water Board staff recommends that the Districts work with relicensing participants (RPs) to develop a methodology and scope that is appropriate. Much of the information may be readily available and it may just be a matter of compiling the data and reviewing studies. The Districts should work with RPs to determine where additional information needs to be developed and the most appropriate method for developing such information.

Level of Effort and Cost
The level of effort to develop a feasibility study is considered substantial given the scale and size of the Districts' project facilities. The total cost is estimated to be $150,000.

2. Upper Tuolumne River Habitat Assessment

Study Goal and Objective
The primary goal of this study is to assess the amount and types of salmonid habitat lost as a result of the Project, and the upstream Don Pedro Project, which is also owned and operated by the Districts, and characterize the capacity of the Upper Tuolumne River to support the reintroduction of salmonids. The study should identify the complete and partial (e.g. low flow) barriers to migration of salmonids on all tributaries and forks of the Tuolumne River. The study should also quantify the quality of the available habitat using various biotic and abiotic factors, which can be developed in consultation with the appropriate RPs.

Relevant Resource Management Goals
Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency (USEPA) approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan). The beneficial uses together with the water quality objectives that are contained in water quality control plans (basin plans) and state and federal anti-degradation requirements constitute California's water quality standards under section 303 of the CWA. The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. Cold freshwater habitat is a designated beneficial use for the entire Tuolumne River. It is important to State Water Board staff that future Project operations are protective of these beneficial uses. State Water Board staff must also understand the extent to which this beneficial use has been limited due to the Project's presence in order to adequately inform mitigation measures.

Relevant Public Interest Considerations
State Water Board is a resource agency with mandatory conditioning authority.

Existing Information
Some information was provided in the PAD for the Don Pedro Project. Additionally, State Water Board staff understands that the San Francisco Public Utilities Commission has performed some studies on the Upper Tuolumne River. The quality of this existing information should be determined in consultation with RPs.

Nexus Between Project and Resource to be Studied
The Project, along with the Don Pedro Project, acts as a barrier to anadromous fish migration. As such a large amount of salmonid habitat above the Don Pedro Project is inaccessible to salmonids. Continued operation of both projects currently block access to historical salmonid habitat and have the potential to be limiting factors of salmonid populations in the Tuolumne River. It is important to understand and quantify the amount of habitat that is being lost due to the presence of both the Project and the Don Pedro Project. This study, along with the information gathered through the implementation of the Fish Passage Feasibility Study will help inform the development of mitigation measures.

Methodology and Consistency with Generally Accepted Scientific Practice
State Water Board staff recommends that the Districts work with RPs to develop a methodology and scope that is appropriate. Much of the information may be readily available and it may just be a matter of compiling the data and reviewing studies. The Districts should work with RPs to determine where additional information needs to be developed and the most appropriate method for developing such information.

Level of Effort and Cost
The level of effort and cost will be dependent upon the amount and quality of existing information. The total cost is estimated to be $250,000.

3. Tailrace Habitat Assessment

Study Goal and Objective

The primary goal of this study is to characterize the salmonid habitat in the Tuolumne River, below the Project powerhouse tailrace in relation to stream flow. Due to Project operations, this stretch of river is subject to rapid flow fluctuations and potential dewatering. The study should evaluate the geomorphology and salmonid habitat within the area and how salmonid habitat is affected by changes in flow. The study must also evaluate the potential for redd dewatering, redd scouring, and stranding that may occur due to changes in flow.

Relevant Resource Management Goals
Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency (USEPA) approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan). The beneficial uses together with the water quality objectives that are contained in water quality control plans (basin plans) and state and federal anti-degradation requirements constitute California's water quality standards under section 303 of the CWA. The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. Cold freshwater habitat, cold water migration, and cold water spawning are designated beneficial uses for the Tuolumne River from New Don Pedro Dam to the confluence with the San Joaquin River. State Water Board staff must be able to evaluate how the operation of the Project affects these designated beneficial uses in that stretch of river. It is important for State Water Board staff to understand how the operation of the Project affects habitat in the vicinity of the tailrace.

Relevant Public Interest Considerations
State Water Board is a resource agency with mandatory conditioning authority.

Existing Information
State Water Board staff is unaware of any existing information regarding this subject.

Nexus Between Project and Resource to be Studied
Project tailrace releases directly influence flows in this stretch of river. Changes in releases from powerhouse and bypass structures have the potential to affect the quality and availability of habitat within the reach. Rapid changes in instream flows could have potential adverse impact on salmonid habitat.

Methodology and Consistency with Generally Accepted Scientific Practice
State Water Board staff recommends that the Districts work with RPs to develop a methodology and scope that is appropriate. The methods used should be comparable to those employed for similar studies undertaken for the Don Pedro Project relicensing efforts.

Level of Effort and Cost
The level of effort and cost will be dependent upon the methodology chosen. However, the study will be confined to the specific stretch of the Tuolumne River that is influenced by the powerhouse. The narrow geographical scope of the study should limit overall costs. The potential cost of this study is estimated to be $50,000.