



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

February 26, 2014

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

Dear Secretary Bose:

COMMENTS ON UPDATED STUDY REPORT FOR NEW DON PEDRO HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2299; TUOLUMNE COUNTY

State Water Resources Control Board (State Water Board), Division of Water Rights staff have reviewed the Updated Study Report (USR) for the New Don Pedro Hydroelectric Project (Project) that was prepared by the licensees, Modesto Irrigation District and Turlock Irrigation District (Districts¹) and filed with the Federal Energy Regulatory Commission (Commission) on January 6, 2014. On January 16, 2014, the Districts held a meeting at the Modesto Irrigation District Offices in Modesto to present and discuss the findings of the second year of studies with the Relicensing Participants (RPs). The Districts filed a summary of this meeting and associated PowerPoint presentations with the Commission on January 27, 2014.

Before the Commission can issue a new license for the Project, 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, in which an activity may result in a discharge to navigable waters, to obtain water quality certification from the State Water Board that the discharge will comply with the applicable water quality standards.

The information developed through the implementation of these studies will not only be used by the 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. This information will assist the State Water Board in developing conditions in the water quality certification to ensure compliance with the CWA and other appropriate requirements of state law. Both the Districts and the State Water Board must also comply with the California Environmental Quality Act (CEQA) because the Districts will act as lead agency and the State Water Board will be a responsible agency under CEQA.

As a mandatory conditioning agency under the Commission's relicensing process and as a responsible agency under CEQA, the State Water Board has acted 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 law, and to develop a complete application for water quality

¹ "Districts" also refers to the consultants that represent them.

certification. In doing so, State Water Board staff has not, and will not, advocate any particular alternative under CEQA relating to the relicensing process, or make a prior commitment to, or prejudice the outcome of, the Districts' application for water quality certification.

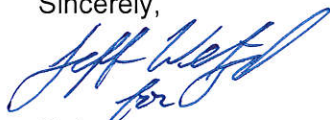
In this advisory role, State Water Board staff has participated in the Study Plan Development process and submitted study plan requests and comments as provided by the Commission's Integrated Licensing Process. Some of these requests and comments have been accepted by the Commission, while others have been dismissed. If the study plans approved by the Commission are not sufficient to provide the information needed in connection with the water quality certification, the State Water Board may choose to exercise its authority under the Porter-Cologne Water Quality Control Act (Cal. Wat. Code, § 13000 et seq.) to establish monitoring, inspection, entry, reporting, recordkeeping and other requirements as may be reasonably required pursuant to Water Code section 13383 or other applicable authority.

State Water Board staff submits the comments on the USR for the Project as outlined in Attachment A.

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
Attn: Peter Barnes
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Sacramento, CA 95812

Sincerely,



Peter Barnes
Engineering Geologist
Water Quality Certification Program

Enclosures: Attachment A – Comments on the Updated Study Report for the New Don Pedro Hydroelectric Project

cc: Mr. John Kemmerer, Acting Director
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ATTACHMENT A:
COMMENTS ON THE UPDATED STUDY REPORT
FOR THE NEW DON PEDRO HYDROELECTRIC PROJECT

The following comments are provided by State Water Resources Control Board (State Water Board) staff on the Updated Study Report (USR) for the New Don Pedro Hydroelectric Project (Project), Federal Energy Regulatory Commission (Commission) Project No. 2299. The Project is owned and operated by Modesto Irrigation District and Turlock Irrigation District (Districts).

General Comments:

The USR identifies five Water and Aquatic Resource (W&AR) studies which are still in progress:

- W&AR-07: 2014 Predation Study;
- W&AR-11: Chinook Salmon Otolith Study;
- W&AR-14: Temperature Criteria Assessment;
- W&AR-21: Floodplain Hydraulic Analysis; and
- Instream Flow Incremental Methodology (IFIM) – Habitat Suitability Curves for Splittail and Lamprey.

State Water Board staff believes that some of these studies have the potential to provide valuable technical fish and wildlife information that could be used in developing water quality certification conditions. Due to the incomplete or ongoing status of these studies, State Water Board staff is reserving comments until these studies are completed.

However, State Water Board staff would like to reiterate that it is anticipated that the temperature water quality standards for salmonids in the *U.S. Environmental Protection Agency (USEPA) Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards* (USEPA 2003) will be used to inform conditions of the water quality certification for the Project related to fisheries resources. The Temperature Criteria Assessment Study Plan (W&AR-14) is being conducted by the Districts, but is not supported by the California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS), or the National Marine Fisheries Service (NMFS) and was not required by the Commission in its Final Study Plan Determination. Additionally, the first year of studies did not reveal information that would indicate a need for the Temperature Criteria Assessment Study Plan and it was not requested by any Relicensing Participants (RPs) or included in the Commission's Determination on Requests for Study Modification and New Studies. While some of the information developed by the Temperature Criteria Assessment could be useful in some instances, State Water Board staff nonetheless will likely use the USEPA 2003 criteria as a starting point for fish-related temperature related issues. Please see specific comments on W&AR-16 (Attachment A) for other temperature-specific concerns associated with the Districts' USR.

On June 5, 2013, the Districts held an all-day model integration workshop at their consultant's offices in Sacramento. The workshop was intended to show RPs how to run each model and integrate the results. Due to technical difficulties, the intent of this workshop was not met. Since the workshop, the Districts have worked diligently to address these issues and have even held subsequent workshops for individual models. The State Water Board acknowledges and appreciates the efforts put forth by the Districts in addressing these issues. However, State Water Board staff requests that the Districts work with RPs to determine if additional training workshops are necessary to ensure that there is a proper understanding of how the models are operated and integrate with one another.

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Since there are multiple ongoing studies which will be completed at different times after the Districts file their Final License Application (FLA), State Water Board staff requests that the Commission outline how the study report consultation process will occur for each pending study or a delay in the deadline for submittal of the FLA until after the USR consultation process is complete for each required study. The outline should include when the Commission expects the study report to be filed with the Commission and when comments from the RPs will be due.

W&AR-6: Chinook Salmon Population Model Study Report and W&AR-10: *O. Mykiss* Population Model Study Report

Each of these population models has inputs for temperature related mortality thresholds for different salmonid life stages. Many, if not all, of the temperature related mortalities used are not based upon the USEPA 2003 criteria. State Water Board staff requests that both models be updated to include the USEPA 2003 temperature criteria for the various life stages. If the Districts do not wish to update the models with these criteria, State Water Board staff requests that the Districts provide RPs with versions of the models where the temperature mortality thresholds can be adjusted.

W&AR-12: *O. Mykiss* Habitat Survey Study Report

The Districts did not conduct the second annual reservoir survey for large woody debris (LWD) ordered by the Commission on July 25, 2013. This survey was to occur upon the cessation of high flow events. Since these high flow events did not occur during the second year of studies, the survey did not take place. Understanding the relationship between flow events and LWD transport is essential in developing an accurate LWD budget. State Water Board staff requests that the second annual reservoir survey for LWD occur when the appropriate high flow events are triggered.

During the USR summary meeting on January 16, 2014, the Districts presented the results of the *O. Mykiss* Habitat Survey, which compared the LWD size classes in the Lower Tuolumne River with those found in Don Pedro Reservoir. The information was presented by the Districts to illustrate the Districts' belief that the LWD found in the Lower Tuolumne River and Don Pedro Reservoir is small in size and, therefore, not of good quality. State Water Board staff disagrees with this characterization. A review of the data show that nearly 20 percent of the LWD collected in Don Pedro Reservoir was greater than 6.6 feet in length and 16.1 inches in diameter. This proportion is based on the number of pieces collected, not the volume of the wood collected. If one were to compare the size of the pieces collected with the overall volume of wood collected, it is likely that the data would show a higher proportion attributed to larger pieces. Even as presented, the data shows that a greater proportion of the large pieces of LWD are being trapped behind Don Pedro Reservoir illustrating a potential impact attributable to the Project. The study report indicates that the LWD currently occurring in the lower Tuolumne River study reach "is unlikely to provide significant cover and habitat value for *O. Mykiss*." The lack of LWD in the lower Tuolumne River is at least in part a result of the Project and its associated facilities. The presence and size of LWD noted in the study report is important as it offers a source of LWD that could improve the cover and habitat value for *O. Mykiss* that the lower Tuolumne River currently lacks.

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W&AR-16: Lower Tuolumne River Temperature Model Study Report

A copy of the Lower Tuolumne River Temperature model was provided to State Water Board staff on February 24, 2014. As such, staff has not had sufficient time and opportunity to conduct a thorough technical review. Therefore, State Water Board staff may provide additional comments on this study at a later date. This is a model that may require an additional workshop to ensure that all RPs properly understand how to operate it.

Temperature is a water quality parameter of particular interest to the State Water Board. The Districts have indicated that temperature would be adequately addressed in this study report, because it was not addressed in the Water Quality Assessment Study Report (W&AR-01). In previous comments, State Water Board staff provided comments that the final Lower Tuolumne River Temperature Model study report must include a discussion of the fact that the Tuolumne River, below Don Pedro Reservoir, is listed under Section 303(d) of the Clean Water Act as temperature impaired. State Water Board staff believes that this is very important issue that needs to be acknowledged by the Districts and adequately addressed as part of the Project relicensing. Don Pedro Reservoir is the largest impoundment of water on the Tuolumne River. It has greatly altered the natural hydrograph of the Tuolumne River and is a major contributor to elevated summer water temperatures. A discussion of the temperature impairments facing the Tuolumne River, and how the Project influences those impairments will be required in the water quality certification application when submitted to the State Water Board. This discussion is also essential to any environmental analysis conducted under the National Environmental Policy Act (NEPA) or the California Environmental Quality Act.

In addition to the preceding comments on specific studies, State Water Board staff acknowledges the specialized expertise of the CDFW, USFWS, and NMFS. 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 designations in the Basin Plan.