



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
SOUTHWEST REGION
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

December 21, 2010

In response, refer to:
FERC P-2079

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

Re: Comments on Draft License Application for Middle Fork American River Hydroelectric Project, Federal Energy Regulatory Commission No. 2079, Middle Fork American River, California

Dear Secretary Bose:

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is filing our comments in Enclosure A and our "*Resource Management Goals and Objectives*" in Enclosure B pertaining to the Draft License Application (DLA) of Placer County Water Agency (Applicant), for the Middle Fork American River Hydroelectric Project, Federal Energy Regulatory Commission (FERC or Commission) Project No. 2079 (Project), Middle Fork American River, California.

NMFS also incorporates by reference, to FERC Docket ZZ09-5-000, NMFS' "*Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and California State Water Project*" (OCAP BiOP), dated June 4, 2009. NMFS recently filed the OCAP BiOP under Docket ZZ09-05-000 with the Commission for consideration as a comprehensive plan under section 10(a)(2)(A) of the Federal Power Act. NMFS is also electronically filing the OCAP BiOP and NMFS' "*Public Draft Recovery Plan for Central Valley Winter-run and Spring-run Chinook Salmon and Steelhead*" (Draft Recovery Plan), dated October 7, 2009, with the Commission, under separate cover, as information to consider in the P-2079 proceeding.

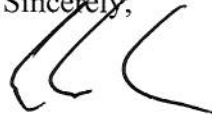
NMFS emphasizes that future reintroduction of migratory anadromous fishes to areas of the American River upstream of the U.S. Bureau of Reclamation's (USBR) Nimbus and Folsom dams should be considered in the design, planning, implementation, and operations of the Project. The Central Valley steelhead (*Oncorhynchus mykiss*) distinct population segment was listed as threatened under the Endangered Species Act (January 5, 2006, 71 FR 834). NMFS' OCAP BiOP contains a "Reasonable and Prudent Alternative" (RPA), which includes the development of a Fish Passage Program to reintroduce Central Valley steelhead over the



USBR's dams and into the upper watersheds of the American River. The OCAP BiOP was prepared in accordance with the information, goals, and guidance presented in the Draft Recovery Plan. As the USBR will implement actions and RPAs within the American River watershed in order to avoid jeopardy in accordance with with the OCAP BiOP, steelhead are reasonably likely to occur downstream, within, or upstream of the Project in the near future.

If you have questions regarding these documents, please contact Larry Thompson (916-930-3613) or William E. Foster (916-930-3617) of my staff.

Sincerely,

Handwritten signature of Richard L. Wantuck, consisting of stylized initials and the word "for" written in cursive.

Richard L. Wantuck
Hydropower Program Supervisor
Habitat Conservation Division

Enclosures

cc: Steve Edmondson, NMFS, Santa Rosa, CA
Howard Brown, NMFS, Sacramento, CA
U.S. Bureau of Reclamation (electronically delivered)
U.S. Fish and Wildlife Service (electronically delivered)
FERC Service List for P-2079

NOAA's NATIONAL MARINE FISHERIES SERVICE'S
COMMENTS ON THE DRAFT LICENSE APPLICATION

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Placer County Water Agency)
Middle Fork American River Hydroelectric Project)
_____)

Project No. P-2079

1.0 Introduction

The United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) herein files its Federal Power Act (FPA) comments with the Federal Energy Regulatory Commission (FERC or Commission) regarding the Draft License Application (DLA) of Placer County Water Agency (Applicant), for the Middle Fork American River Hydroelectric Project, FERC Project No. 2079 (Project), Middle Fork American River, California.

NMFS is a federal agency with jurisdiction over anadromous fish resources affected by the licensing, operation, and maintenance of hydroelectric projects. See Reorganization Plan No. 4 of 1970, 84 Stat. 2090, as amended; the FPA at 16 U.S.C. § 803(j) and 811; the Fish and Wildlife Coordination Act (FWCA) at 16 U.S.C. § 661 and 662; the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. §1801 *et seq.*; and the Endangered Species Act (ESA), 16 U.S.C. §1531 *et seq.* The potential effects of the Project on passage and flow conditions, habitat, water quality, and other effects on anadromous fish resources directly concern NMFS under the statutory authorities listed above.

NMFS listed the Central Valley (CV) steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS) (71 Fed. Reg. 834, January 5, 2006) (steelhead) as “threatened” under the ESA. Steelhead occur in the American River downstream of the U.S. Bureau of Reclamation’s (USBR) Folsom and Nimbus dams. NMFS issued a final rule to designate critical habitat under

the ESA for steelhead on September 2, 2005 (70 Fed. Reg. 52488); the designation included the American River downstream of Nimbus Dam. In addition, NMFS' recently filed a Biological Opinion with the Commission, under Docket ZZ09-05-000, *Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and California State Water Project*, dated June 4, 2009 (OCAP BiOP) (NMFS 2009a). NMFS' OCAP BiOP contains a "Reasonable and Prudent Alternative" (RPA), which includes the development of a Fish Passage Program to reintroduce steelhead over the USBR's dams on the American River and into the upper watersheds of the American River. The OCAP BiOP was prepared in accordance with the information, goals, and guidance presented in the Draft Recovery Plan (NMFS 2009b). Under section 7(a)(2) of the Endangered Species Act, the USBR's operations must avoid jeopardy to the listed steelhead. Accordingly, when anadromous fish passage is made available into the reaches of the American River upstream of the USBR's dams, pursuant to the RPA in the OCAP BiOP, NMFS will develop recommendations for additional protection, mitigation, and enhancement measures for these migratory fishes under its statutory authorities listed above, on which recommendations the Commission must base its relicensing conditions.

Pursuant to the above-mentioned authorities, NMFS has a federal statutory responsibility for protection, mitigation, and enhancement of anadromous fish resources that may be directly affected by the proposed Project. The FPA, FWCA, MSA, and ESA confer upon NMFS a specific right to participate in this proceeding. The interests of NMFS as a regulatory agency with jurisdictional responsibility for the protection, mitigation, and enhancement of anadromous fish resources are not adequately represented by any other party in this proceeding. By carrying out its statutory responsibilities under the ESA, FPA, FWCA, and MSA NMFS acts in the public interest. Upon the Commission's solicitation of interventions following the filing of the License Application, NMFS will intervene in this proceeding. In addition, NMFS is obligated to satisfy its tribal trust responsibilities in the exercise of its statutory authorities affecting tribal interests and tribal treaty obligations.

2.0 Comments on the Draft License Application

2.1 - The Applicants should plan to have the Project's operations and any existing or planned facilities meet or exceed NMFS' Resource Management Objectives (Enclosure B) for FERC projects in the American River watershed (upstream of USBR's Folsom Dam), and consider the

following categories: Flows, Water Quality, Water Availability, Fish Passage, River Channel Maintenance, Fish Hatchery Operations, Predation, Riparian Habitat, Flow Ramping, and Coordination.

2.2 - The Project should be operated so that ongoing and future listed salmonid restoration and recovery actions can be effectively implemented, due to the following:

- a) NMFS released its Public Draft Recovery Plan for the evolutionarily significant units of Sacramento River winter-run and CV spring-run Chinook salmon (*O. tshawytscha*) and the DPS of CV steelhead on October 7, 2009 (<http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm>). The Plan contains specific treatment of the American River watershed (NMFS 2009b).
- b) NMFS issued a Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (OCAP BiOP), dated June 4, 2009, (<http://swr.nmfs.noaa.gov/ocap.htm>) that includes “reasonable and prudent alternatives” to be implemented in the American River to avoid jeopardy to the CV steelhead (NMFS 2009a).

2.3 - NMFS has preliminarily identified the following concerns regarding the Project:

The Project should not interfere with the efficient and timely implementation and operation of upstream and/or downstream anadromous fish passage at any Project dams, should the USBR determine that passage actions are required in the vicinity of the Project to meet the requirements of the 2009 OCAP BiOP. Future anadromous fish passage facilities may include passive or active structures or devices to provide upstream and/or downstream passage. Passage within or beyond the Project boundaries may include modifications to Project facilities, reservoirs, and operations so as to ensure the safe, timely, and effective passage of anadromous fishes.

Therefore, the Applicant should consult with the Fish Passage Steering Committee organized by the USBR regarding anadromous fish passage in the American River. NMFS is represented on the Committee and stands ready to assist the Applicant. The Committee will likely need to evaluate the areas near Project facilities in the American River watershed as potential sites for volitional upstream and downstream fishways, or for the collection of upstream migrating adult fishes for non-volitional transport upstream. Upstream migrating fishes are often attracted to turbulent flows such as those that would be created by a powerhouse outflow, so the siting of either a fishway entrance or a collection facility is an issue closely “coupled” with Project operations or the siting of any future powerhouse. In addition, the space or footprint required for fishway or collection facilities is an issue coupled with the Project’s facilities (current or

planned). Close coordination with the Committee will be required, and fish passage issues could greatly affect the scope of how the Applicant operates the Project.

**NOAA’s NATIONAL MARINE FISHERIES SERVICE’S
RESOURCE MANAGEMENT GOALS AND OBJECTIVES
FOR THE PROJECT**

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

Placer County Water Agency) Project No. P-2079
Middle Fork American River Hydroelectric Project)

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1.0 Introduction

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) herein provides our Resource Management Goals and Objectives that apply to the American River watershed, upstream of the U.S. Bureau of Reclamation’s (USBR) Nimbus & Folsom dams, and are applicable to the Draft License Application (DLA) of Placer County Water Agency (Applicant), for the Middle Fork American River Hydroelectric Project, Federal Energy Regulatory Commission (FERC or Commission) Project No. 2079 (Project), Middle Fork American River, California.

NMFS’ Resource Management Goals and Objectives were prepared in accordance with our “*Public Draft Recovery Plan for Central Valley Winter-run and Spring-run Chinook Salmon and Steelhead*” (Draft Recovery Plan), (<http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm>), dated October 7, 2009, (NMFS 2009b) and our “*Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and California State Water Project*” (OCAP BiOP), dated June 4, 2009, (NMFS 2009a) for the evolutionarily significant units of Sacramento River winter-run and Central Valley (CV) spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and the distinct population segment (DPS) of CV steelhead (*Oncorhynchus mykiss*).

Subject to certain exceptions, the Federal Power Act (FPA) Section 10(j) states that,

“in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this subchapter shall include conditions for such protection, mitigation, and enhancement... based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.” [16 U.S.C. § 803(j)]

The Commission’s licensing regulations likewise request that resource agencies list their resource management goals and objectives to serve as the basis for study recommendations and subsequent prescriptions and recommendations for a project's protection, mitigation, and enhancement measures to be incorporated into a new license. See, *e.g.*, 18 CFR §5.9(b) (2) and 18 CFR §5.26(b). NMFS articulates its Resource Management Goals and Objectives broadly in connection with these responsibilities, and consistently with the guidelines for determining the scope of a licensing action.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), together with its implementing regulations, require the Commission to analyze the direct and indirect environmental effects and cumulative impacts of a project's alternatives and connected actions. The Council on Environmental Quality regulations under 40 CFR 1508.8 (b) defines indirect effects as:

“[effects]...which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include human population growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”

Cumulative impacts, in turn, are those combined effects on quality of the human environment that result from:

“[... the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions...”] (40 CFR 1508.7, 1508.25(a), and 1508.25(c)).

Therefore, NMFS’ Resource Management Goal and Objectives for the Project, as well as our comments, study proposals, and information requests, seek, in part, information relating not

simply to the direct and immediate effects of the Project, but also the indirect and cumulative effects.

In the context of the foregoing authorities, NMFS' Resource Management Goal and Objectives apply with respect to species listed under the Endangered Species Act (ESA) (16 U.S.C. §1531 *et seq.*) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §1801 *et seq.*), as well as anadromous species that are not currently listed but are affected by continuing operations of the Project or may require listing in the future. Thus, our Resource Goals and Objectives, listed in Sections 3.0 and 4.0 below, serve to link our study proposals and information requests with information needed to inform our various decisions that we will make during these proceedings:

- (A) Information to inform how we may exercise our FPA Section 18 authority, to either reserve our fish passage prescriptive authority or, in the future, to stipulate fish passage prescriptions;
- (B) Information to inform the contents of our proposed FPA Sections 10(j) and 10(a) protection, mitigation, and enhancement measures;
- (C) Information to inform what we recommend as Essential Fish Habitat designations, pursuant to the MSA; and
- (D) Information to inform our needs so that we may recommend Critical Habitat and conduct an adequate Section 7 consultation on listed species, pursuant to the ESA.

Based on the expected reintroduction of anadromous fish and potential passage issues in the project area, and comments from NMFS regarding its resource management goals and recovery actions, the Commission may determine that insufficient information has been developed regarding potential project effects to conduct a proper environmental analysis . NMFS suggests that the Applicant carefully consider the information needs expressed above in preparing its Final License Application.

2.0 Current State of Anadromous Fishes: NMFS is concerned with ESA-listed fishes and critical habitat designated under the ESA that are currently in the American River watershed downstream of USBR's dams. NMFS is also primarily concerned with the USBR's and the Fish

Passage Steering Committee's reintroduction of listed steelhead above the USBR's dams into the Upper American River watersheds as the USBR seeks to satisfy the RPAs in NMFS OCAP BiOp and avoid jeopardy on listed steelhead.

2.1 Central Valley Steelhead: CV steelhead are present in the American River watershed, downstream of USBR's dams, and the CV steelhead DPS is currently listed as threatened under the ESA (January 5, 2006, 71 FR 834; NMFS 2006a). Critical Habitat has also been designated for CV steelhead in this area of the American River (September 2, 2005, 70 FR 52488; NMFS 2005c). NMFS' recovery planning efforts involve maintaining and enhancing existing CV steelhead populations, as well as their re-establishment in the upper American River.

Based in part on the foregoing facts, NMFS finds that future consultation will likely be necessary under the ESA and the MSA for the effects of the Project on CV steelhead noted above.

3.0 Resource Goals

3.1 - Protect, conserve, enhance, and recover native anadromous fishes and their habitats by providing access to suitable habitats and by restoring fully functioning habitat conditions for related spawning, rearing, migration, and adjoining riparian habitats.

3.2 - Identify and implement measures to protect, mitigate or minimize direct, indirect, and cumulative impacts to, and enhance native anadromous fish resources, including related spawning, rearing, and migration habitats and adjoining riparian habitats.

4.0 Resource Objectives

4.1 Flows - Implement scheduled flows in the American River to the benefit of native anadromous fishes and their habitats. A range or schedule of flows is necessary to:

- (A) Optimize suitable habitat, including the distribution of holding and spawning habitat;
- (B) Stabilize flows during spawning and incubation of in-gravel forms;
- (C) Maintain flows necessary to facilitate the efficient migration of spawning adults, the safe and timely emigration of smolts and kelts, and movement of rearing juveniles between feeding and sheltering areas;
- (D) Maintain flows necessary to ensure redd placement in viable areas; and

- (E) Maintain flows necessary for channel forming processes, riparian habitat protection, and maintenance movement of forage communities.

In addition, scheduled flows should mitigate for impacts of flood control, irrigation or other Project structures or operations that act to displace individuals or their forage or destabilizes, scours, or degrades physical, chemical, or biological quality of habitat.

4.2 Water Quality - Modify Project structures or operations necessary to mitigate direct, indirect, or cumulative water temperature and quality impacts associated with Projects' structures and operations or enhance water temperature and quality conditions in salmonid habitat. This includes water temperature management necessary to ensure the optimal survival and distribution of all life stages of anadromous fishes within and downstream of the FERC-delineated physical project boundaries.

4.3 Water Availability - Coordinate operations with other projects, programs, or initiatives and/or use water transfers, water exchanges, water purchases, or other forms of agreements to maximize potential benefits to anadromous fishes from limited water supplies.

4.4 Fish Passage - Passage to suitable spawning, rearing, and migration habitats within and beyond the physical Project boundaries as necessary for anadromous fish to complete their life cycles and utilize seasonal habitats necessary to contribute to the recovery of CV steelhead.

For each individual species of concern, our decision to exercise our Section 18 authority, by either reserving our fish passage prescriptive authority or stipulating a fish passage prescription, depends on an understanding of many factors affecting the aquatic environment. These factors include:

- (A) Man-made, in-stream facilities, their interrelated operations, and their direct, indirect, and cumulative effects on fish and other aquatic organisms;
- (B) Life history adaptations and biological requirements of affected anadromous fish species;
- (C) Natural and project-impaired river hydrology and geomorphology;
- (D) Seasonal habitat conditions; and
- (E) Ecologically sustainable river characteristics.

Our studies and information requests submitted for the Projects seek to describe and understand the species of concern and the many factors that affect the species' aquatic environment.

4.5 Channel Maintenance - Implement flow regimes and non-flow related measures necessary to mitigate and minimize direct, indirect, and cumulative impacts of Project facilities and operations on sediment movement and deposition, river geometry, and channel characteristics. This includes impacts on stream competence, capacity, flood plain conductivity, bank stability and extent, duration, and repetition of high flow events. In addition, this includes impacts to habitat diversity and complexity such as pool riffle sequencing and instream cover.

4.6 Hatchery Operations - Minimize and mitigate the impacts of hatchery facilities and/or operations on native, wild anadromous salmonids. These include the direct, indirect, and cumulative impacts of hatchery product on anadromous salmonids and the direct, indirect, and cumulative impacts of hatchery facilities and operations on anadromous salmonids and their habitats.

4.7 Predation - Minimize and mitigate the impact of Project structures or operations that either have in the past or continue to introduce predators, create suitable habitat for predators, harbor predators, or are conducive to the predation of native anadromous salmonids.

4.8 Riparian Habitat - Protect, mitigate or minimize direct, indirect, and cumulative impacts to, and enhance riparian habitat and habitat functions necessary to mitigate and minimize direct, indirect, and cumulative impacts of Project facilities and operations.

4.9 Flow Ramping - Modify Project structures or operations necessary to minimize impacts of flow fluctuations associated with increases or decreases in Project discharges.

4.10 Coordination - In developing alternatives for relicensing, include a full range of alternatives for modifying Project and non-Project structures and operations to the benefit of anadromous fishes, including anadromous salmonids and their habitats, while minimizing conflicts with operational requirements and other beneficial uses. This includes developing alternatives for greater coordination with other stakeholders and water development projects to ensure that, at a minimum, Project structures and operations are consistent with and can potentially enhance on-going and future restoration efforts.

REFERENCES

- National Marine Fisheries Service (NMFS). 1998a. Federal Register Notice, 63 Fed. Reg. 11482, March 9, 1998. Endangered and Threatened Species: Proposed Endangered Status for Two Chinook Salmon Evolutionarily Significant Units (ESUs) and Proposed Threatened Status for Five Chinook Salmon ESUs; Proposed Redefinition, Threatened Status, and Revision of Critical Habitat for One Chinook Salmon ESU; Proposed Designation of Chinook Salmon Critical Habitat in California, Oregon, Washington, Idaho. Proposed Rule.
- NMFS. 1998b. Federal Register Notice, 63 Fed. Reg. 13347, March 19, 1998. Endangered and Threatened Species: Threatened Status for Two Evolutionarily Significant Units of Steelhead in Washington, Oregon, and California. Final Rule.
- NMFS. 1999. Federal Register Notice, 64 Fed. Reg. 50394, September 16, 1999. Endangered and Threatened Species: Threatened Status for Two Chinook Salmon Evolutionarily Significant Units in California. Final Rule.
- NMFS. 2004a. Federal Register Notice, 69 Fed. Reg. 19975, April 15, 2004. Endangered and Threatened Species; Establishment of Species of Concern List, Addition of Species to Species of Concern List, Description of Factors for Identifying Species of Concern, and Revision of Candidate Species List Under the Endangered Species Act. Final Rule.
- NMFS. 2004b. Federal Register Notice, 69 Fed. Reg. 33102, June 14, 2004. Endangered and Threatened Species: Proposed Listing Determinations for 27 Evolutionarily Significant Units of West Coast Salmonids. Proposed Rule.
- NMFS. 2005a. Federal Register Notice, 70 Fed. Reg. 37160, June 28, 2005. Endangered and Threatened Species: Final Listing Determinations for 16 Evolutionarily Significant Units (ESUs) of West Coast Salmon, and Final 4(d) Protective Regulations for Threatened Salmonid ESUs. Final Rule.
- NMFS. 2005c. Federal Register Notice, 70 Fed. Reg. 52488, September 2, 2005. Endangered and Threatened Species: Designation of Critical Habitat for Seven Evolutionarily Significant Units of Pacific Salmon and Steelhead in California. Final Rule.
- NMFS. 2006a. Federal Register Notice, 71 Fed. Reg. 834, January 5, 2006. Endangered and Threatened Species: Final Listing Determinations for 10 Distinct Population Segments of West Coast Steelhead. Final Rule.

- NMFS. 2006c. Federal Register Notice, 71 Fed. Reg. 61022, October 17, 2006. Endangered and Threatened Species: Revision of Species of Concern List, Candidate Species Definition, and Candidate Species List.
- NMFS. 2009a. Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (OCAP BiOp). NMFS, Southwest Office, Long Beach, June 4, 2009. Available at: <http://swr.nmfs.noaa.gov/ocap.htm>.
- NMFS. 2009b. Public Draft Recovery Plan for the Evolutionarily 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. NMFS, Southwest Region, Sacramento Protected Resources Division. October 2009.
- San Joaquin River Restoration Program (SJRRP). 2010. SJRRP website at www.restoresjr.net/background.html.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

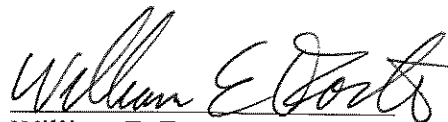
Placer County Water Agency)
Middle Fork American River Hydroelectric Project)
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Project No. P-2079

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, a letter to Secretary Bose, Federal Energy Regulatory Commission, containing the National Marine Fisheries Service's comments and Resource Management Goals and Objectives regarding the Draft License Application for the Middle Fork American River Hydroelectric Project (P-2079). This Certificate of Service is served upon each person designated on the official Service List compiled by the Commission in the above-captioned proceeding.

Dated this 21st day of December 2010



William E. Foster
National Marine Fisheries Service