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6.0 STATUTORY AND REGULATORY REQUIREMENTS

The Federal Energy Regulatory Commission (FERC or Commission) license for the Middle Fork American River Project (MFP or Project) is subject to requirements under the Federal Power Act (FPA) and other applicable statutes, including: Clean Water Act (CWA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), the Wild and Scenic Rivers Act (WSRA), and Wilderness Act. There are three Acts listed in Title 18 of the Code of Federal Regulations (CFR) § 5.18(b)(3) that do not apply to the MFP, including: the Magnuson-Stevens Fishery Conservation and Management Act, Coastal Zone Management Act (CZMA), and the Pacific Northwest Power Planning and Conservation Act. The Magnuson-Stevens Fishery Conservation and Management Act does not apply to the MFP because no Essential Fish Habitat (EFH) is present in the MFP area. Additionally, the MFP is not located within a coastal zone boundary, and therefore, will not result in effects on resources within a coastal zone boundary. The Pacific Northwest Power Planning and Conservation Act only applies to projects that occur within the Columbia River Basin, and therefore, is not applicable to the MFP. Major regulatory and statutory requirements that apply to the MFP are described below.

6.1 FEDERAL POWER ACT

6.1.1 Section 4(e) Conditions

Section 4(e) of the FPA provides that any license issued by FERC for a project within a federal reservation shall be subject to and contain such conditions as the Secretary of the responsible federal land management agency deems necessary for the adequate protection and use of the reservation. Following FERC's issuance of the Notice of Acceptance and Notice of Ready for Environmental Analysis (REA), FERC will request 4(e) conditions from Eldorado National Forest (ENF) and Tahoe National Forest (TNF).

6.1.2 Section 10(j) Recommendations

Section 10(j) recommendations are conditions proposed by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the Project. Following FERC's issuance of the Notice of Acceptance and REA, FERC will request 10(j) recommendations from appropriate fish and wildlife agencies.

6.2 CLEAN WATER ACT – SECTION 401

Under Section 401(a)(1) of the CWA, every applicant for a federal permit or license for any activity which may result in a discharge to a water body must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards. The State Water Resources Control Board (State Water Board) was designated by the United States Environmental Protection Agency as the water pollution control agency with authority to implement the CWA in California. In accordance with 18 CFR § 5.23, Placer County Water Agency (PCWA) will request a water quality

certification, including proof of the date on which the certifying agency received the request, no later than 60 days following issuance of the Notice of Acceptance and REA.

6.3 ENDANGERED SPECIES ACT – SECTION 7

Section 7 of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. PCWA requested to be designated as the non-federal representative for the purpose of conducting Section 7 Consultation pertaining to the MFP on December 6, 2007, and was granted this request by the FERC on February 11, 2008. PCWA has routinely met with United States Fish and Wildlife Service (USFWS) during the relicensing process to obtain tentative approvals on study plans and technical study reports. Refer to Section 14.0 – Consultation Documentation for a detailed description of ESA Section 7 consultation completed for the MFP. Supporting Document (SD) C of this Draft Application for New License includes a Draft Biological Assessment/Biological Evaluation (BA/BE) (PCWA 2010a; SD C), which was concurrently submitted to USFWS for review and comment. The Draft BA/BE was developed based on the Sacramento Fish and Wildlife Office Species List dated June 15, 2010. A Final BA/BE addressing USFWS comments will be included in the Final License Application.

Analyses of potential Project effects on aquatic and terrestrial resources (including threatened and endangered species and critical habitat) are included in Section 8.0 – Environmental Effects of the Proposed Action. Refer to Section 12.0 – Conclusions and Recommendations for a comprehensive analysis of the preferred alternative including protection, mitigation, and enhancement of fish and wildlife.

6.4 NATIONAL HISTORIC PRESERVATION ACT – SECTION 106

Section 106 of the NHPA of 1966, as amended, requires federal agencies to consider the potential effects of agency undertakings on historic properties and, if appropriate, afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. The issuance of a license for the MFP by FERC constitutes an undertaking as defined at 36 CFR § 800.16(y).

In a letter dated December 6, 2007, in accordance with 36 CFR § 800.2(c)(4), PCWA requested that FERC authorize PCWA to initiate consultation on behalf of FERC, with the California State Historic Preservation Officer (SHPO) and others regarding the relicensing of the MFP. In response, FERC designated PCWA as a non-federal representative for the purposes of conducting Section 106 consultation under the NHPA on February 11, 2008.

PCWA has inventoried cultural resources in the study area and determined the eligibility of cultural resources that could be affected by the Project for inclusion on the National Register of Historic Places (NRHP). This work was done in consultation with government agencies, Tribes, and members of the public. Refer to Section 14.0 –

Consultation Documentation for a detailed summary of NHPA Section 106 consultation and tribal consultation completed for the MFP.

On April 11, 2008, FERC submitted a Request for Additional Information directing PCWA to develop a Historic Properties Management Plan (HPMP) and include it in the Draft License Application. The HPMP was developed in consultation with government agencies, Tribes, and other interested persons. Specifically, the following Tribes were consulted during development of the HPMP:

- Colfax – Todds Valley Consolidated Tribe;
- El Dorado Intertribal Council;
- Miwok Tribe of the El Dorado Rancheria;
- Shingle Springs Rancheria;
- Todd Valley Miwok – Maidu Cultural Foundation;
- Tsi-Akim Maidu;
- Washoe Tribe of Nevada and California;
- United Auburn Indian Community of the Auburn Rancheria; and
- Nisenan Maidu.

To meet the requirements of Section 106, FERC will execute a Programmatic Agreement (PA) to protect historic properties from potential effects of operation and maintenance of the MFP. The terms of the PA ensure that the MFP License addresses and treats all historic properties identified within the Project's Area of Potential Effects (APE) through implementation of the HPMP (PCWA 2010b; SD E).

6.5 WILD AND SCENIC RIVERS ACT

Section 7(a) of the WSRA requires federal agencies to make a determination as to whether the operation of the Project under a new license will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the designated river corridor.

Portions of the North Fork American River, the Middle Fork American River, and the Rubicon River have been identified as eligible or suitable for inclusion in the National Wild and Scenic River (W&SR) system. The current status of these rivers is described below.

6.5.1 North Fork and Middle Fork American River

In 1978, 38.3 miles of the North Fork American River from near Heath Springs to the Iowa Hill-Colfax Bridge crossing was designated as “Wild” under the National Wild and Scenic Rivers Act (WSRA) based on a study conducted by the United States Department of Agriculture-Forest Service (USDA-FS). This segment is located upstream of Lake Clementine and does not intersect the FERC Project boundary; therefore, is not affected by operation of the MFP.

In January 1993, the United States Bureau of Reclamation (USBR) published a report entitled, “American River Water Resources Investigation, Wild and Scenic Rivers Eligibility and Preliminary Classification” (USBR 1993). In this study report, the USBR identified two segments on the North Fork American River and one segment on the Middle Fork American River as eligible for inclusion in the National W&SR system. These segments are all located downstream from the segment identified above and are delineated in the USBR report as follows:

- **North Fork American River:** From Colfax-Iowa Hill Bridge to the upper end of Lake Clementine (approximately 16 miles).
- **North Fork American River:** From the North Fork Debris Dam to the intake of the Auburn Dam diversion tunnel (approximately 5 miles).
- **Middle Fork American River:** From Oxbow Dam to the confluence with the North Fork American River (approximately 23 miles).

These river segments are not located within the existing FERC Project boundary, with the exception of a small segment of the Middle Fork American River below Ralston Afterbay Dam (0.5 mile). MFP operations affect streamflow in the Middle Fork American River and a portion of the North Fork American River.

According to the USBR, a suitability study has not been conducted on any of these segments and there are no plans to conduct a suitability study at this time (R. Schroeder, pers. comm. 2010). Regardless, federal agencies, including the USBR, manage the river and the area within 0.25 mile either side of the river to preserve the values for which the river is considered eligible under the WSRA.

6.5.2 Rubicon River

Three segments of the Rubicon River, from Hell Hole Dam to Ralston Afterbay, were found eligible and suitable for inclusion in the National WSR system by the ENF. The background behind the eligibility and suitability studies for the Rubicon River is complex and is explained in detail in Appendix A of PCWA’s PAD Errata (PCWA 2008). In 2007, the ENF adjusted their original classification information to reflect on-the-ground conditions, based on new information developed as part of their motor vehicle route designation process. The following are the most current segment descriptions.

- **Segment 1:** Hell Hole Dam to 1.5 miles below Ellicott Bridge (approximately 10.5 miles) meets the “Scenic” classification criteria.
- **Segment 2:** 1.5 miles below Ellicott Bridge to a point upstream of Ralston Afterbay (approximately 18 miles) meets the “Wild” classification criteria.
- **Segment 3:** A point immediately upstream of the Ralston Ridge Road to Ralston Afterbay and Ralston Powerhouse (0.5 mile) meets the “Scenic” classification criteria.

None of these segments has been formally included in the National W&SR system. Regardless, the ENF manages the Rubicon River, and a 0.25 mile corridor on each side of the river, to protect the outstandingly remarkable values (ORV) identified in their WSR eligibility and suitability studies. The ORV for which the Rubicon River is eligible is “fisheries”.

None of these river segments are located within the existing FERC Project boundary of the MFP, with the exception of a small segment of the Rubicon River below Hell Hole Dam (0.48 mile) and a small section (0.12 mile) of the Rubicon River above the Ralston Afterbay. Operation of the MFP affects streamflow in the Rubicon River.

6.6 WILDERNESS ACT

Section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c), states that there shall be no commercial enterprise and no permanent road within any wilderness area designated by the Act and no structure or installation within any such area. None of the Project facilities are located within a designated Wilderness Area. However the Granite Chief Wilderness Area, created by the California Wilderness Act of 1984, and the Desolation Wilderness Area, created by Congress in 1969 under Public Law 91–82, are located in the vicinity of the MFP. At its closest point, the Granite Chief Wilderness Area boundary is located approximately 0.25 mile east of Hell Hole Reservoir and approximately 4.5 miles east of French Meadows Reservoir. The Desolation Wilderness Area boundary, at its closest point, is about 8 miles south east of Hell Hole Reservoir. See Section 7.0 – Affected Environment for further information.

LITERATURE CITED

Placer County Water Agency (PCWA). 2008. Middle Fork American River Project. Update/Errata of the Pre-application Document.

_____. 2010a. Draft BA/BE. Available in PCWA's Application for New License – Supporting Document C.

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United States Bureau of Reclamation (USBR). 1993. American River Water Resources Investigation: Wild and Scenic Rivers Eligibility Study and Preliminary Classification.

PERSONAL COMMUNICATION

USBR. Folsom Office. 2010 (Feb 10). E-mail correspondence between Rob Schroeder of USBR and Julie Smith of ENTRIX.