



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

July 29, 2011

In response, refer to:
SWR/F/SWR3:WEF FERC P-2079

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

Re: United States Department of Commerce's, National Oceanic and Atmospheric Administration's, National Marine Fisheries Service's, Southwest Region's, Federal Power Act COMMENTS, Preliminary § 18 PRESCRIPTIONS, § 10(j) Recommended CONDITIONS, § 10(a) RECOMMENDATIONS, and Notice of INTERVENTION for the Middle Fork American River Hydroelectric Project, Federal Energy Regulatory Commission Project No. 2079, California

Dear Secretary Bose:

The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, United States Department of Commerce, provides in the attached Enclosure A NMFS' comments on the license application for the Middle Fork American River Hydroelectric Project, NMFS' preliminary prescriptions under section 18 of the Federal Power Act, and NMFS' recommendations for terms and conditions under sections 10(a) and 10(j) of the Federal Power Act. NMFS provides a Notice of Intervention in Enclosure B.

Thank you for the opportunity to participate in this proceeding. If you have questions regarding this document, please contact Mr. William Foster at (916) 930-3617.

Sincerely,

Richard L. Wantuck
Hydropower Program Supervisor
Habitat Conservation Division

Enclosures

cc: Steve Edmondson, NMFS, Santa Rosa, CA
Maria Rea, NMFS, Sacramento, CA
Service List P-2079



U.S. DEPARTMENT OF COMMERCE'S,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S,
NATIONAL MARINE FISHERIES SERVICE'S

FEDERAL POWER ACT
COMMENTS, PRELIMINARY § 18 PRESCRIPTIONS,
§ 10(j) RECOMMENDED CONDITIONS,
AND § 10(a) RECOMMENDATIONS

TO

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

1.0 Introduction

On February 23, 2011, the Placer County Water Agency (Applicant) filed a Final License Application (FLA), with the Federal Energy Regulatory Commission (Commission or FERC) for the Middle Fork American River Hydroelectric Project (P-2079) (Project), located in the Middle Fork American River watershed, California (PCWA 2011). On June 7, 2011, the Commission issued its "*Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions*" (FERC 2011b) in the proceeding, setting an August 5, 2011, deadline for filing a response. Thus, the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, United States Department of Commerce, provides comments, preliminary prescriptions under section 18 of the Federal Power Act (FPA), and recommendations for terms and conditions under sections 10(j) and 10(a) of the FPA.

2.0 Project Description

The Project has two principal water storage reservoirs, French Meadows Reservoir, formed by French Meadows Dam on the Middle Fork American River, and Hell Hole Reservoir, formed by Hell Hole Dam on the Rubicon River. These two reservoirs have a combined gross storage capacity of 342,583 acre-feet (ac-ft).

Starting at the highest elevation of the Project, water is diverted from Duncan Creek at the Duncan Creek diversion and routed through the 1.5-mile-long Duncan Creek-Middle Fork Tunnel into French Meadows Reservoir (134,993 ac-ft of gross storage).

Flows in the Middle Fork American River are captured and stored in French Meadows Reservoir along with diversions from Duncan Creek. From French Meadows Reservoir, water is transported via the 2.6-mile-long French Meadows-Hell Hole Tunnel, passed through the French Meadows Powerhouse, which has an installed generating capacity of 15.3 megawatts (MW), and released into Hell Hole Reservoir, which has 207,590 ac-ft of gross storage. Flows in the Rubicon River are captured and stored in Hell Hole Reservoir along with water released from French Meadows Reservoir through French Meadows Powerhouse. Water released from Hell Hole Reservoir into the Rubicon River to meet instream flow requirements first pass through the Hell Hole Powerhouse, which is located at the base of Hell Hole Dam and has installed generating capacity of 0.73 MW.

From Hell Hole Reservoir, water is also transported via the 10.4-mile-long Hell Hole-Middle Fork Tunnel, passed through the Middle Fork Powerhouse, with an installed generating capacity of 122.4 MW, and released into the Middle Fork Interbay Reservoir, which has 175 ac-ft of gross storage.

Between Hell Hole Reservoir and Middle Fork Powerhouse, water is diverted from the North and South Forks of Long Canyon creeks directly into the Hell Hole-Middle Fork Tunnel. Water diverted from these creeks into the Hell Hole-Middle Fork Tunnel can either be stored in Hell Hole Reservoir or be used to augment releases from Hell Hole Reservoir to the Middle Fork Powerhouse.

Flows from the Middle Fork American River, including instream flow releases from French Meadows Reservoir, are captured at Middle Fork Interbay Reservoir along with water released from Hell Hole Reservoir through Middle Fork Powerhouse. From Middle Fork Interbay Reservoir, water is transported via the 6.7-mile-long Middle Fork-Ralston Tunnel, passed through the Ralston Powerhouse, and released into the Ralston Afterbay Reservoir. The Ralston Powerhouse has an installed generating capacity of 79.2 MW, and the Ralston Afterbay Reservoir has 2,782 ac-ft of gross storage.

Flows from the Middle Fork American River (including instream flow releases from Middle Fork Interbay Reservoir) and flows from the Rubicon River (including instream flow releases from Hell Hole Reservoir) are captured in Ralston Afterbay Reservoir along with water transported from Middle Fork Interbay Reservoir through Ralston Powerhouse. From Ralston Afterbay Reservoir, water is transported via the 400-foot-long Ralston-Oxbow Tunnel, passed through the Oxbow Powerhouse (installed generating capacity of 6.1 MW), and released from the Project into the Middle Fork American River. The project has a total generation capacity of 224 MW.

The Applicant proposes to modify the Duncan Creek, North Fork Long Canyon, and South Fork Long Canyon creeks to provide screening and modified outlets; increase the storage

capacity of Hell Hole Reservoir by adding 6-foot-tall crest gates; and provide additional flow gaging stations throughout the Project.

3.0 Current State of Anadromous Fish

NMFS is concerned with anadromous fish listed under the Endangered Species Act (ESA), 16 U.S.C. §1531 *et seq.* and their designated critical habitat. ESA-listed anadromous fish and their designated critical habitat exist in the American River watershed downstream of the U.S. Bureau of Reclamation's (USBR) Folsom and Nimbus dams. Nimbus Dam currently blocks all upstream migration of anadromous fish.

3.1 California Central Valley Steelhead

NMFS listed the California Central Valley (CCV) steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS) (71 FR 834, January 5, 2006) (steelhead) as “threatened” under the ESA. CCV Steelhead occur in the American River downstream of the USBR's Folsom and Nimbus dams. NMFS issued a final rule to designate critical habitat under the ESA for CCV steelhead on September 2, 2005 (70 FR 52488); the designation included the American River downstream of Nimbus Dam. In addition, NMFS recently filed with the Commission. under Docket ZZ09-05-000, NMFS' *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). The OCAP BiOp contains a “Reasonable and Prudent Alternative” (RPA), which includes the development of a fish passage program, guided by a Fish Passage Steering Committee, to reintroduce CCV steelhead over the USBR's dams on the American River and into the upper American River watershed. The OCAP BiOp was prepared in accordance with the information, goals, and guidance presented in NMFS' “*Public Draft*

Recovery Plan for the evolutionarily significant units of Sacramento River winter-run and CV spring-run Chinook salmon (O. tshawytscha) and the distinct population segment of CCV steelhead' (Draft Recovery Plan) (NMFS 2009b). In addition, both the OCAP BiOp and the Draft Recovery Plan were filed to the Project's administrative record under P-2079 for the Commission's consideration (NMFS 2010a).

Under section 7(a)(2) of the Endangered Species Act, the USBR's operations must avoid jeopardy to the continued existence of any listed species or destruction or adverse modification of their designated critical habitat. NMFS' BiOp concluded that the USBR's proposed action could avoid jeopardy to listed CCV steelhead through the implementation of a RPA implementing a fish passage program. NMFS expects that the implementation of this program will occur during the term of any new license the Commission grants for this Project in response to the Application. Accordingly, when anadromous fish passage is made available upstream of the USBR's dams and into the upper American River watershed, pursuant to the RPA in the OCAP BiOp, NMFS will develop recommendations for additional protection, mitigation, and enhancement measures for CCV steelhead under its statutory authorities listed above.

Based in part on the foregoing facts, NMFS believes that future consultation during the term of the new license is likely to be necessary under the ESA for the effects of the Project on CCV steelhead. Consequently, when listed CCV steelhead are reintroduced into the upper American River watershed into the vicinity of the Project, NMFS will request an opening of the Project's license to allow the exercise of our authority under the FPA to prescribe fishways and make recommendations for additional terms and conditions for the protection of listed anadromous fish

and their habitat. At that time, NMFS will also request that our protection, mitigation, and enhancement measures for CCV steelhead become incorporated as license conditions.

4.0 Comments

4.1 - The Applicants should plan to have the Project's operations and any existing or planned facilities meet or exceed NMFS' Resource Management Objectives (NMFS 2010b) 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.

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

- A) 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. The OCAP BiOp includes "reasonable and prudent alternatives" to be implemented in the American River to for the protection and recovery of CCV steelhead (NMFS 2009a). This document is available at: (<http://swr.nmfs.noaa.gov/ocap.htm>).
- B) 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 distinct population segment of CCV steelhead*" (Draft Recovery Plan) on October 7, 2009. The Draft Recovery Plan contains specific treatment of the American River watershed for reintroducing CCV steelhead upstream of the USBR's Folsom Dam (NMFS 2009b). This document is available at: (<http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm>).

4.3 - 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 for CCV steelhead 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 CCV steelhead.

Therefore, the Applicant should consult with the Fish Passage Steering Committee organized by the USBR regarding anadromous CCV steelhead fish passage in the American River. NMFS is represented on the Fish Passage Steering Committee and stands ready to assist the Applicant. The Fish Passage Steering 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 CCV steelhead for non-volitional transport upstream. Upstream migrating CCV steelhead 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 Fish Passage Steering Committee will be required, and fish passage issues could greatly affect the scope of how the Applicant operates the Project.

5.0 NMFS' Preliminary FPA § 18 Prescription

NMFS respectfully requests, pursuant to its authority under § 18 of the FPA, that the Commission incorporate into the Project license, in its entirety and without modification, the following article:

Authority is reserved for the Department of Commerce, through the National Marine Fisheries Service, to prescribe the construction, operation, and maintenance of fishways at the Project, including measures to determine, ensure, or improve the effectiveness of such prescribed fishways, pursuant to § 18 of the Federal Power Act, as amended, during the term of the Project license.

Justification for NMFS' FPA § 18 Article

Pursuant to § 18 of the FPA, the Commission shall require the construction, maintenance, and operation by an Applicant at its own expense of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate, 16 U.S.C. § 811. The Secretary of Commerce is exercising its § 18 authority through the inclusion in the license of a separate license article that reserves the authority to prescribe fishways, over the term of the license, pursuant to § 18 of the FPA.

6.0 NMFS' FPA § 10(j) Recommended Conditions

NMFS' FPA § 10(j) Recommended Conditions and rationale are presented below in Sections 6.1 through 6.5. The "Resource Agencies" referred to below include NMFS, the U.S. Forest Service (USFS), the U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Reclamation (USBR), the U.S. Bureau of Land Management (USBLM), California Department of Fish and Game (CDFG), and the State Water Resources Control Board (SWRCB).

6.1 NMFS' FPA § 10(j) Condition #1: Special-Status Species Protection and Mitigation

(A) Special status species include: Any species that are Federal or State rare, threatened, or endangered, pursuant to the CESA or ESA; Federally sensitive or species of concern; California Fully Protected; or California Species of Special Concern.

(B) Prior to construction of new Project features or non-routine maintenance activities that may affect special status species or their habitats, the Licensee shall prepare a Draft Biological Evaluation or a Draft Biological Assessment or other required documents and obtain any necessary permits or approvals from the Resource Agencies. The Draft Biological Evaluation, Draft Biological Assessment, or other required documents describe the potential impacts of the action on the species or their habitats.

(C) The Draft Biological Evaluation or Draft Biological Assessment shall evaluate the potential impact of proposed action(s) on the species or its habitat. In coordination with the Commission, the appropriate Resource Agencies may require protection, mitigation, and enhancement measures for the affected species. The Draft Biological Evaluation or Draft Biological Assessment shall be submitted to the appropriate Resource Agencies for review and approval. The Licensee shall incorporate comments from the Resource Agencies into a Final Biological Evaluation or Final Biological Assessment and submit the document to the Commission for review and approval.

(D) The Draft Biological Evaluation or Draft Biological Assessment shall:

- 1) Include procedures to minimize adverse effects to special status species;
- 2) Ensure Project-related activities shall meet restrictions included in site management plans for special status species;
- 3) Develop implementation and effectiveness monitoring of measures taken or employed to reduce effects to special status species; and
- 4) Meet requirements of any applicable Federal or State laws or regulations related to special status species.

**6.2 NMFS' FPA § 10(j) Condition #2:
Special Status Species Annual Consultation**

(A) Beginning the first full calendar year after license issuance and in consultation with the Resource Agencies, the Licensee shall annually review the current list(s) of special status species that might occur in the Project area directly affected by Project operations. When a species is added to one or more of the special status lists (per § 10(j) Condition 1 above), the Resource Agencies, in consultation with the Licensee, shall determine if the species or un-surveyed suitable habitat for the species is likely to occur in the Project area directly affected by Project operations.

(B) For such newly added special status species, if the Resource Agencies determine that the species is likely to occur in the Project area directly affected by Project operations, then the Licensee shall develop and implement a study plan in consultation with the Resource Agencies to reasonably assess the effects of the Project on the species. The Licensee shall also prepare a Draft Biological Evaluation or Draft Biological Assessment and include objectives, methods, results, recommended resource measures where appropriate, and a schedule of implementation.

(C) Similar to § 10(j) Condition 1 above, the Licensee shall provide the Draft Biological Evaluation or Draft Biological Assessment to the Resource Agencies for review and approval, pursuant to the relevant Sections of the California and or Federal Endangered Species Acts (CESA/ESA), as amended, if the species are listed. The Licensee shall file the Final Biological Evaluation or Final Biological Assessment report, including evidence of consultation with the Resource Agencies, with the Commission. Concurrently, the appropriate Resource Agencies shall initiate consultations, pursuant to the CESA and/or ESA, with the Licensee and the Commission. The study results and the biological evaluation or assessment forms the basis for consultations by the appropriate Resource Agencies with the Commission and for the issuance of a new Biological Opinion for the Project, whereby the Commission must integrate the resource measures from the Biological Opinion into License terms pursuant to FPA regulations.

6.3 Rationale for § 10(j) Conditions #1 and #2:
(1) Special-Status Species Protection and Mitigation and (2) Annual Consultation

NMFS' concerns regarding potential jeopardy to the continued existence of ESA-listed species or the destruction or adverse modification of their critical habitat and related issues associated with the Project would be addressed through the Commission's compliance with § 7 of the ESA. The assessment and monitoring of all special status species is necessary to ensure that Project operations and maintenance does not adversely affect special status species or their habitats. During the term of the new license, species present in the Project area (directly affected by the Project) could be added to one of the special-status species lists for which the Licensee performed relicensing studies. The purpose of § 10(j) Conditions 1 and 2 is to provide a mechanism for the evaluation of Project effects on any new special-status species, such as CCV steelhead, in the Project area and implementation of appropriate resource management measures. § 10(j) Conditions 1 and 2 requires the Licensee to make a good faith effort to meet with the Resource Agencies annually to review pertinent special-status species lists. An annual review is appropriate because changes to special-status species lists are usually very minor from year to year. If a species has been added to any Federal or State rare, threatened, endangered or sensitive/special concern lists, then that species has a reasonable likelihood of being directly affected by the Project. If adequate information is not available to assess likely Project effects, then the Licensee would develop a study plan to assess potential Project effects, provide the plan to the Resource Agencies for review, and file the plan with the Commission. The contents of the study plan would generally follow the study plan requirements in 18 CFR § 5.9(b). The measure provides that the Licensee would perform the study as approved by the Commission, and develop a report, including recommended measures. The Licensee would provide the report to the Resource Agencies for review, file the report with the Commission, and implement those

measures as directed by the Commission. The results of the study as well as the biological evaluations and/or assessments form the basis by which the appropriate Resource Agencies would initiate consultations with both the Licensee and the Commission, pursuant to relevant sections of the CESA and/or ESA. The terms of the resultant Biological Opinion would be incorporated by the Commission as License terms pursuant to FPA regulations.

NMFS' § 10(j) Conditions #1 and #2 also supports the achievement of NMFS' Resource Management Goals and Objectives (NMFS 2010b). Specific Goals and their associated Objectives are noted below and in NMFS (2010b).

Goal 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 rearing and feeding (see 4.1-4.4), ... spawning (See 4.6), and adjoining riparian and benthic macroinvertebrate (BMI) habitats (see 4.7); and

Goal 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 rearing and feeding (see 4.1-4.4), ... spawning (See 4.6), riparian and BMI habitats (see 4.7), ... and ... minimize risk to anadromous fishes.

Finally, these same two terms above were also recommended by NMFS in the McCloud-Pit (P-2106) proceeding and they were both set forth in and adopted by the Commission in its Final Environmental Impact Statement for the McCloud-Pit Project (FERC 2011a). The McCloud River watershed is the location of a similar anadromous fish reintroduction and fish passage program, guided by the Fish Passage Steering Committee, that was stipulated to occur within the next license term as found in the OCAP BiOp (NMFS 2009a). USBR still has to implement that fish passage program in the American River watershed. Thus, it would benefit CCV steelhead and be easier for the Commission to track the fish passage program's progress if the Licensee participates with the Fish Passage Steering Committee.

6.4 **NMFS' FPA § 10(j) Condition #3:**
Annual Report on Status of Reintroduction of ESA-listed Species.

(A) By December 31 of each year following license issuance, the Licensee shall file with the Commission a report on the status of reintroduction into the American River watershed of Endangered Species Act-listed species, based on the Licensee's participation in the USBR's Fish Passage Steering Committee. The report shall include a discussion of the steps that have been taken to assist in the reintroduction process, provide a summary of the results of any studies that have been undertaken to benefit the reintroduction effort, and discuss the status of any reintroduction programs.

(B) The Licensee shall prepare the report and all components after consultation with the NMFS, USBR, USFWS, and the CDFG.

(C) The Licensee shall include with the report documentation of consultation, copies of comments on the completed report after it has been prepared and provided to the above agencies and specific descriptions of how the agencies' comments are accommodated by the report. The Licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the report with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the reporting requirements.

6.5 **Rationale for § 10(j) Conditions #3:**
Annual Report on Status of Reintroduction of ESA-listed Species.

This same condition was set forth in and adopted by the Commission in its Final Environmental Impact Statement for the McCloud-Pit Project (FERC 2011a) where a similar anadromous fish reintroduction and fish passage program was stipulated to occur within the next

license term as found in the OCAP BiOp (NMFS 2009a). USBR still has to implement the Fish Passage Program in the American River watershed. Thus, it would benefit CCV steelhead and be easier for the Commission to track the fish passage program's progress if the Licensee participates with the Fish Passage Steering Committee.

7.0 NMFS' FPA § 10(a) Recommendations

NMFS' FPA § 10(a) Recommendations and rationale are presented below in Sections 7.1 through 7.2. The "Resource Agencies" referred to below include NMFS, the U.S. Forest Service (USFS), the U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Reclamation (USBR), the U.S. Bureau of Land Management (USBLM), the California Department of Fish and Game (CDFG), and the State Water Resources Control Board (SWRCB). NMFS fully supports all of the other FPA Preliminary § 4(e) Conditions, § 10(j) Conditions, and § 10(a) Recommendations proposed by the other Resource Agencies for this Project. However, NMFS only has management jurisdiction for anadromous fish resources. Although anadromous CCV steelhead are not currently present, they will be reintroduced into the upper American River watershed as the USBR implements its fish passage program over the term of the new license for the Project.

Under section 7(a)(2) of the Endangered Species Act, the USBR's operations must avoid jeopardy to the continued existence of any listed species or destruction or adverse modification of its designated critical habitat. NMFS' BiOp concluded that the USBR's proposed action could avoid jeopardy to listed CCV steelhead through the implementation of an RPA implementing a fish passage program. NMFS expects that the implementation of this program will occur during the term of any new license the Commission grants for this Project in response to the Application. Accordingly, when anadromous fish passage is made available into the reaches of the American River watershed upstream of the USBR's dams, NMFS will work with

USBR, the Commission, and the Licensee to develop additional protection, mitigation, and enhancement measures for CCV steelhead. Thus, we provide at this time the following recommendation under § 10(a) of the FPA for consideration by the Commission.

7.1 NMFS' § 10(a) Recommendation #1:
Fish Monitoring Plan

Within 1 year of License issuance, the Licensee shall file with the Commission a Fish Monitoring Plan that shall be developed in consultation with the Resource Agencies and shall utilize as a starting point what the Licensee had proposed in their "Fish Population Monitoring Plan (FPMP) in its FLA (PCWA 2011). However, NMFS' Fish Monitoring Plan (Plan), 10(a) Recommendation #1, shall include the following:

- (1) Fish population and young-of-the-year (YOY) monitoring in all Project reaches will be conducted at locations that were sampled in 2007–2009 as part of relicensing studies completed for the Project. These locations are noted in Table FPMP-1 in the Licensee's proposed FPMP.
- (2) Fish population and YOY monitoring will be conducted following License issuance at each of the above monitoring sites in Table FPMP-1 according to the following schedule:
 - For two consecutive years during the first 15-years (years 2, 3, 7, 8, 13, and 14); and thereafter
 - For two consecutive years during every 10-year period for the term of the License (years 19, 20, 29, 30, 39, 40, 49, and 50 if a 30-50 year License term).
- (3) Sampling methods for fish population and YOY monitoring shall utilize a combination of electrofishing and snorkeling as proposed in Sections 4.1.2 (general fish) and 4.2.1.2 (YOY) in the Licensee's FPMP.

(4) Data analysis and reporting for fish and YOY abundance (standing crop), biomass, and age structure and condition factor analyses shall be determined in consultation with the Resource Agencies. However, a starting point can be what the Licensee has proposed in its FPMP.

(5) The Licensee shall include with the Plan documentation of consultation, copies of comments and recommendations on the completed Plan after it has been prepared and provided to the Resource Agencies, and specific descriptions of how the Resource Agencies' comments are accommodated by the Plan. The Licensee shall allow a minimum of 30 days for the Resource Agencies to comment and to make recommendations before filing the Plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on project-specific information.

(6) The Commission reserves the right to require changes to the Plan. The Plan shall not be implemented until the Licensee is notified that the Plan is approved by the Commission. Upon Commission approval, the Licensee shall implement the Plan.

7.2 Rationale for § 10(a) Recommendation #1:
Fish Population Monitoring

The specifics of NMFS' proposed Fish Monitoring Plan are specifically designed to assess what fish and their YOY are present in the Project's watershed and assess how the Project could be affecting those fish. This monitoring needs to be done throughout all Project stream reaches and must include both adult and YOY/juvenile monitoring for *O. mykiss* as well as for other native and non-native fish. The lifestages of both resident and anadromous *O. mykiss* may become intermingled and some resident *O. mykiss* may exhibit anadromous behavior once listed CCV steelhead are reintroduced into the upper American River watershed. The assessments in the Fish Monitoring Plan would show how all the various fish species are collectively utilizing

the Project's reaches. In addition, such monitoring will guarantee that when listed CCV steelhead are reintroduced, all lifestages will be documented, and the Project's effects upon them will be evaluated in accordance with NMFS' 10(j) Conditions above. In addition, the USFS will likely include FPA 4(e) terms that are similar to NMFS' above FPA 10(j) and 10(a) terms for assessing the presence of any new listed species and monitoring fish populations within the vicinity of the Project. Finally, NMFS' § 10(a) recommendation also supports the achievement of NMFS' Resource Management Goals and Objectives (NMFS 2010b) by identifying the presence of CCV steelhead life stages so that these listed species and their habitats can be protected (Goal 3.1) through the development and implementation of protection and enhancement measures (Goal 3.2) as noted below.

Goal 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 rearing and feeding (see 4.1-4.4), ... spawning (See 4.6), and adjoining riparian and benthic macroinvertebrate (BMI) habitats (see 4.7); and

Goal 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 rearing and feeding (see 4.1-4.4), ... spawning (See 4.6), riparian and BMI habitats (see 4.7), ... and ... minimize risk to anadromous fishes.

NOTICE OF INTERVENTION

BY

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE**

TO

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

Placer County Water Agency)	Project No. P-2079
Middle Fork American River Hydroelectric Project)	
<u>Middle Fork American River Watershed</u>)	

1.0 Background

On February 23, 2011, the Placer County Water Agency (Applicant) filed a Final License Application with the Federal Energy Regulatory Commission (Commission or FERC) for the Middle Fork American River Hydroelectric Project (P-2079) (Project), located in the Middle Fork American River watershed, California (PCWA 2011). On June 7, 2011, the Commission issued its *"Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions"* (FERC 2011b) in the proceeding, setting an August 5, 2011, deadline for filing a response. Thus, the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, United States Department of Commerce, provided our comments, preliminary prescriptions under section 18 of the Federal Power Act (FPA), and our recommendations for terms and conditions under sections 10(j) and 10(a) of the FPA in Enclosure A above.

2.0 Intervention

The NMFS hereby timely provides its notice of intervention in the above-referenced proceeding pursuant to 18 CFR §385.214(b). Service of process and other communications concerning this proceeding should be made to:

Kathryn Kempton, Office of General Counsel
National Oceanic and Atmospheric Administration, Southwest Regional Office
501 W. Ocean Blvd, Suite 4470
Long Beach, CA 90802
Phone: (562) 980-4091; Facsimile: (562) 980-4084;
Electronic mail: Kathryn.Kempton@noaa.gov

and

Richard Wantuck
National Oceanic and Atmospheric Administration, Santa Rosa Area Office
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404-6515
Phone:(707) 575-6063; Facsimile: (707) 578-3435
Electronic mail: Richard.Wantuck@noaa.gov

REFERENCES

TO

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Federal Energy Regulatory Commission (FERC). 2011a. *“Final Environmental Impact Statement for the McCloud-Pit Hydroelectric Project, FERC Project No. 2106.”* February 25, 2011. Available at www.ferc.gov.

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CERTIFICATE OF SERVICE

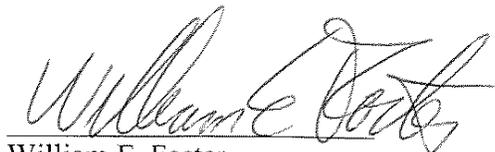
TO

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

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

I hereby certify that I have this day served, by first class mail or electronic mail, a letter to Secretary Bose of the Federal Energy Regulatory Commission, containing the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, United States Department of Commerce, FPA Comments, preliminary §18 Prescriptions, §10(j) recommended Conditions, §10(a) Recommendations (REA Terms) and Notice of Intervention regarding 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 29th day of July 2011



William E. Foster
National Marine Fisheries Service