

MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT RELICENSING  
COMMUNICATION AND PARTICIPATION PROTOCOL SUBCOMMITTEE

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PLEASE PROVIDE YOUR COMMENTS ON THE DRAFT PROTOCOL BY JULY 5, 2006.

PLEASE EMAIL YOUR COMMENTS TO: [RELICENSING@PCWA.NET](mailto:RELICENSING@PCWA.NET)

## Middle Fork American River Hydroelectric Project Communication and Participation Protocols

June 20, 2006

### 1.0 OBJECTIVES

The objective of the Communication Protocols is to provide guidelines for participation in the relicensing process for Placer County Water Agency's (Licensee) Middle Fork American River Hydroelectric Project, FERC No. 2079 (MFP). The Communication Protocols pertain to Licensee, governmental agencies, non-governmental organizations, Native American tribes, and unaffiliated members of the public who participate in the proceeding. The Communication Protocols were formulated to provide guidance during early phases of the relicensing leading to settlement discussion on proposed license terms and conditions for the MFP. It is anticipated that Communication Protocols will be reviewed and revised, if appropriate, by the participants prior to initiation of settlement discussions.

### 2.0 DEFINITIONS

The following definitions apply:

- **FERC:** Federal Energy Regulatory Commission
- **ILP:** FERC's Integrated Relicensing Process described at 18 CFR § 5.
- **MFP:** Placer County Water Agency's Middle Fork American River Project, FERC No. 2079.
- **PM&E Measures:** Protection, mitigation and enhancement measures
- **Relicensing:** The relicensing process for the Middle Fork American River Hydroelectric Project, FERC Project No. 2079.
- **Relicensing Participants:** Those Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others interested in the Relicensing and represented at a scheduled Relicensing meeting or who participate in Relicensing activities.
- **FERC Project No. 2079 Mailing List:** A mailing list of interested parties prepared and maintained by FERC throughout the Relicensing.
- **FERC Project No. 2079 Service List:** A mailing list of parties that have formally intervened in the Relicensing proceeding. The mailing list is prepared and maintained by FERC after it accepts the License Application.
- **Licensee's FERC Project No. 2079 Interested Parties Mailing List:** A list of interested parties, by mailing address, Licensee has prepared and maintains for the Relicensing. Licensee anticipates that at some time, Licensee's FERC Project No. 2079 Interested Parties

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Mailing List and FERC's Project No. 2079 Mailing List may be consolidated into one common list.

- Licensee's FERC Project No. 2079 Interested Parties E-Mailing List: A list of interested parties, by e-mailing address, Licensee has prepared and maintains for the Relicensing. Licensee anticipates that Licensee's FERC Project No. 2079 Interested Parties E-Mailing List will be updated periodically with FERC's Project No. 2079 e-mail list to keep both e-mail lists current during the Relicensing. *Licensee's FERC Project No. 2079 Interested Parties E-Mailing List does not consist of all interested parties on the Licensee's FERC Project No. 2079 Interested Parties Mailing List since not all Licensing Participants have access to e-mail.*
- Process Plan and Schedule: The Relicensing Process Plan and Schedule prepared by the Licensee and included in Section 2.0 of the Licensee's Pre-Application Document (PAD), which will be maintained and updated by the Licensee through the Relicensing.
- Technical Working Group (TWG) – Subset focus group working on specific issues in the relicensing.

## 3.0 PARTICIPATION

### 3.1 **Participants**

Participation in the Relicensing proceeding is open to Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others having an interest in the Relicensing. To facilitate communication, governmental agencies and non-governmental organizations are encouraged to designate one individual and one alternate to represent them during the Relicensing proceeding. The individuals designated as the representative for an agency or organization will be the point of contact for Relicensing correspondence and are encouraged to keep their respective organizations and constituencies informed of Relicensing activities. The individual so identified is expected to have the authority to speak on behalf of the organization.

Participants will clearly identify who they represent at the beginning of each meeting and if they represent more than one entity, all organizations will be identified.

### 3.2 **Late Participation in the Relicensing**

Relicensing Participants who begin participating in the Relicensing after commencement of the Relicensing are expected to get themselves informed and "up-to-speed" with the rest of the Relicensing Participants. Absence, or late or delayed participation will not be allowed to disrupt the process.

### 3.3 **Roles of Relicensing Participants with Independent Statutory Authority**

Certain Relicensing Participants administer statutory authorities that may constrain participation in settlement negotiations. The Communication Protocols do not modify the rights or duties of any such Relicensing Participant. Federal agencies with mandatory conditioning authority will participate in the relicensing process with the goal of reaching a settlement agreement on PM&E

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measures but will retain their independent statutory authority to condition the license.

The SWRCB has authority to grant, waive, or deny water quality certification as provided under Section 401 of the federal Clean Water Act. (Water Code § 13160; 33 U.S.C. § 1341.) The SWRCB and its staff are not Relicensing Participants within the meaning of that term in the Communication Protocols, but its staff will provide input to the analysis of proposed PM&Es that may lead to a settlement among the Relicensing Participants. The staff of the SWRCB will not make commitments on behalf of the SWRCB, and will provide input only to the extent that doing so does not compromise the ability of the SWRCB to remain impartial in its decision-making role. The staff of the SWRCB will provide input to the settlement sessions with a view towards encouraging settlement among the Relicensing Parties and providing Relicensing Participants with information concerning requirements applicable to SWRCB approvals. The Relicensing Participants understand that the role of the SWRCB staff is solely a guidance role and the SWRCB will not be a signatory to a Settlement Agreement.

Additional supplemental stakeholder participation statements are provided in Attachment A.

## **4.0 LICENSEE'S RELICENSING WEBSITE**

Licensee has established and plans to maintain a publicly-accessible Internet website as a means of making Relicensing information readily available to participants. Licensee anticipates posting the PAD, meeting notices/agenda, meeting summaries, public documents sent and received, reference materials, the Process Plan and Schedule, and other Relicensing information on the website. The Middle Fork American River Project Relicensing website can be accessed at <http://relicensing.pcwa.net>.

## **5.0 MEETINGS**

Participants will sign in at the beginning of the meetings to record who is at the meetings and their representation. Meetings will begin with introductions of all participants including who they represent.

### **5.1 Types of Meetings**

FERC's regulations require that certain meetings be conducted, and the Relicensing Process Plan and Schedule identifies several of these meetings. The ILP regulations stipulate that some of these meetings are the responsibility of FERC and some are the responsibility of the Licensee. In addition to the required meetings, Licensee anticipates that other meetings will be needed, particularly during development of study plans and potential protection, mitigation, and enhancement measures. The Communication Protocols apply only to meetings sponsored by the Licensee.

#### **5.1.1 Licensee's Meetings**

- **Notice/Agenda** - Licensee anticipates that it will provide notice for meetings not specifically required by the regulations (e.g., study plan development meeting), principally via e-mail using Licensee's FERC Project No. 2079 Interested Parties E-mail List. Licensee-sponsored

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Relicensing meetings will generally be scheduled with the consensus of the participants present. The Licensee will develop an agenda for upcoming meetings based on input from the Participants at the previous meeting. The last agenda topic prior to adjourning a Relicensing meeting will always be to identify agenda topics for the next scheduled meeting.

- Meeting Moderation - Licensee anticipates it will lead Licensee's meetings and be responsible to assure that all Relicensing Participants are heard. The relicensing meetings will reflect the Licensee's commitment to conduct an open and transparent process with a free exchange of information and interests.
- Meeting Summaries - Licensee will prepare a memo summarizing each Relicensing meeting to assist Relicensing Participants. The purpose of the memo is to summarize decisions and action items committed to at the meeting for reference in future meetings and for review by those who could not attend the meeting. This memo is not intended to be a transcript of the meeting or meeting notes or to state the position of any Relicensing Participant. Licensee will distribute such meeting summaries via e-mail using Licensee's FERC Project No. 2079 Interested Parties E-Mailing List and post all meeting notices and summaries on the Project website. One of the first agenda items at each Licensee-sponsored meeting will be the review and approval of the most recent meeting summary.
- Use of Facilitator - Licensee will use an independent third-party neutral facilitator for the Plenary Collaborative meetings. If requested, the Licensee will provide a neutral facilitator for the other Licensee-sponsored meetings.
- Decision Making - Relicensing Participants are expected to make a good faith effort to make decisions and reach agreement by consensus among the Relicensing Participants present at any scheduled Licensee-sponsored Relicensing meeting. Consensus means that all participants to a given decision can "live with" the decision. For all major decisions the Relicensing Participants make, the moderator/facilitator will call the decision to question, asking each participant if they can live with the decision. Participants are expected to "speak-up" and respond to all decisions that are put to question. Unless otherwise indicated, all decisions made by Relicensing Participants are considered interim decisions subject to further discussion and modification based on additional information or reconsideration. All decisions and agreements of Relicensing Participants will be documented in writing. Documentation of decisions should cover any Relicensing Participant who misses a meeting and would like to return to a decision.
- Dispute Resolution - If consensus regarding a particular issue is not achieved after reasonable efforts, the issue will be considered to be in dispute. If a Technical Working Group (TWG) cannot move past the dispute, the TWG will document the dispute and present it to the Plenary Group for resolution. The Licensee's obligation in this situation is to keep a record of the thread, parties, issues and important milestones regarding the dispute. If the Plenary Group cannot find a solution, the Plenary Group may request assistance from FERC's formal dispute resolution team. Any unresolved disputes will be documented in the formal record and submitted to FERC.

## 5.2 Attendance at Meetings

Relicensing Participants are expected to make a good faith effort to attend or have a representative attend every full Relicensing meeting and every meeting of each subgroup in which the participant is active. If the Licensing Participant is unable to attend or have a representative attend a meeting, the Licensing Participant will provide to Licensee any input at least two working days prior to the meeting.

Relicensing Participants wanting to participate in Relicensing but unable to attend a Relicensing meeting may request to receive all materials distributed at the Relicensing meeting and may provide written comments to the Licensee for consideration by the Relicensing Participants.

## 5.3 Caucus

Any Licensing Participant may call for a caucus at any time during any meeting.

## 5.4 Preparation

Relicensing Participants are expected to make a good faith effort to read background information provided before each meeting and to be prepared to effectively discuss topics on the meeting agenda.

## 6.0 DOCUMENTS

### 6.1 Types of Documents

FERC's regulations identify a number of documents required for the ILP. The ILP regulations stipulate that some of the documents are the responsibility of FERC and some are the responsibility of the Licensee. Licensee anticipates that there will also be other informal documents generated during the course of the Relicensing.

#### 6.1.1 FERC's Documents

For documents issued by FERC, Licensee anticipates that FERC will distribute these documents in accordance with its protocols. FERC has indicated it will use its FERC Project No. 2079 Mailing List for such distributions. Licensee anticipates that all documents issued or received by FERC will be posted and publicly available in the E-Library on FERC's website at [www.ferc.gov](http://www.ferc.gov). Click on "Documents and Filing," "eLibrary," then "General Search." The website provides further instructions for obtaining documents.

***Note: Each participant in the Relicensing can register to receive a notice each time FERC posts a document to its website regarding the Relicensing. To register, go to FERC's website at [www.ferc.gov](http://www.ferc.gov). Click on "Documents and Filing," then "eSubscription." The website provides further instructions.***

#### 6.1.2 Licensee's Documents

Licensee anticipates using electronic filing whenever possible for documents it files with FERC, and anticipates distributing such documents by e-mail to Licensee's FERC Project No. 2079 Interested Parties E-Mailing List or hard copy to Licensee's FERC Project No. 2079 Interested

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Parties Mailing List (the distribution will also go to FERC's Project No. 2079 Service List after the License Application is accepted). Licensee anticipates that it will also use e-mail for distribution of informal documents it initiates. Licensee anticipates that it will post on the Relicensing website all public documents it sends or receives regarding the Relicensing.

## 6.1.3 Other Participants' Documents

Licensee anticipates that most Relicensing Participants will use electronic filing for documents they file with FERC and will distribute such documents by e-mail to Licensee's FERC Project No. 2079 Interested Parties E-Mailing List. Whenever possible, hard copies of documents filed with FERC should be made to FERC's Project No. 2079 Mailing List (the distribution will go to FERC's Project No. 2079 Service List after the License Application is filed). Licensee anticipates that all documents received by FERC will be posted and publicly available in the E-Library on FERC's website at [www.ferc.gov](http://www.ferc.gov).

Licensee anticipates that most Relicensing Participants will use e-mail for distribution of informal documents they initiate.

## 6.1.4 Public Review File

The Licensee shall maintain a Public Review File that constitutes the formal written record of the relicensing process. The Public Review File will include copies of written correspondence, summaries of all Plenary Group and TWG meetings, study plans and reports, status reports, contact logs, decision logs, and other documents submitted for inclusion in the formal record. The public review file will contain the latest version of all agreements and decisions reached by the Plenary Group, thereby ensuring all such material will be transmitted to FERC.

The Licensee will document all action items and critical decisions of Relicensing Participants and post them on the website so that Relicensing Participants can track the decision-making and actions. The action items and decisions to be documents will be reviewed at the end of each meeting.

The Licensee will document oral communications for significant consultation activities (i.e. teleconferences) and information requests.

The Public Review File will be made available at the following locations for public review:

- In electronic format, at PCWA's Hydro Relicensing web page, accessible through <http://relicensing.pcwa.net>.
- In paper format, at PCWA's Resource Library, located at the PCWA Business Center 144 Ferguson Road, Auburn, California.

FERC's website will also have formally submitted documents. Any interested party may submit comments and other materials to PCWA and FERC for inclusion in the Public Review File. All written and electronic communications that an interested party would like to include in the Public

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Review File for the Middle Fork American River relicensing must be sent to both PCWA and FERC.

Written comments to FERC should be mailed to FERC's Secretary of the Commission (not FERC's staff assigned to the Relicensing) at:

Magalie Roman Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Comments can also be electronically filed on FERC's website at [www.ferc.gov](http://www.ferc.gov). All material submitted for inclusion in the formal record must clearly display the following information on the first page: **Middle Fork American River Project, Project No. 2079 Formal Communication**. Licensing Participants should provide all material in electronic format, to the extent reasonably possible, to allow the material to be posted promptly on PCWA's relicensing website. Material may be submitted in both electronic and paper format, if appropriate. Written comments received by FERC will become part of the official record for the Project and be posted and publicly available in the E-Library on FERC's website.

## 6.2 Single-Text Approach

Participants in Plenary and Technical Working Groups will use a single-text approach for development of important, decision-based documents such as communication protocols, study plans and agreements. All comments by the Licensing Participants on a given document under consideration in or among the Plenary and/or TWGs will be made on the actual document in question, using track/edit changes if possible, such that the comments can easily be understood, shared, and integrated into a revised text. Each version of the text shall be clearly labeled. Alternatively, a group may elect to jointly edit a document during a meeting, with all participants offering comments during the session.

PCWA will maintain a cumulative record of the decisions reached on a given document.

Documents will include a footer, the title of the document, page numbers, date of origination, date of revision, version number, and initials of last person who has edited the document.

## 6.3 Confidentiality

Some information developed under the ILP may be confidential under California or applicable law. For example, information on Native American resources, locations of sensitive environmental and cultural resources, and engineering drawing of Project facilities are considered confidential material with restrictions on their distribution. It is the responsibility of the Licensing Participant providing confidential information under applicable law to identify the information as confidential in advance of disclosure and inform the group.



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PCWA's approach is to provide an open and transparent process acknowledging that confidentiality agreements with the tribes as well as FERC's regulations regarding the distribution of Critical Energy Infrastructure Information (CEII) must be honored.

When settlement negotiations begin, additional confidentiality agreements between the Relicensing participants may be necessary.

## **7.0 PERSONAL CONDUCT**

### **7.1 Respect for Participants**

The personal integrity, values, and legitimacy of the interests of each Licensing Participant are expected to be respected by all other Relicensing Participants. In addition, each Licensing Participant agrees to adhere to the ground rules provided and reviewed by the Facilitator at each meeting.

### **7.2 Commitments**

Commitments will not be made lightly and will be kept.

### **7.3 Communicating Interests**

Every Relicensing Participant is responsible for communicating their interests and the interests of the governmental agency or non-governmental organization they represent on topics under consideration. It is incumbent upon each Relicensing Participant to state his or her interests. Voicing these interests is essential to enable meaningful dialogue and full consideration of different points of view. Resource information germane to assessment of potential Project impacts and development of potential protection, mitigation and enhancement (PM&E) measures is expected to be shared with the other Relicensing Participants.

### **7.4 Good Faith**

All Relicensing Participants are expected to make a good faith effort to achieve Relicensing objectives through use of the ILP.

## **8.0 COMMUNICATIONS**

### **8.1 Communications Among Relicensing Participants**

All Relicensing Participants are free to informally communicate with each other; however, Relicensing Participants are encouraged to share relevant communications among all Relicensing Participants as appropriate.

Other than verbal communications at meetings, e-mail will be the primary means of formal communication among the Relicensing Participants. The initiator of any such e-mail is responsible for ensuring that it is sent to all Relicensing Participants, as applicable.

Licensee anticipates that telephone calls among Relicensing Participants will be treated informally, with no specific documentation.

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## **8.2 Communications with FERC**

Written comments to FERC should be mailed to FERC's Secretary of the Commission (not FERC's staff assigned to the Relicensing) or electronically filed on FERC's website at [www.ferc.gov](http://www.ferc.gov). Written comments received by FERC will not be distributed but will become part of the official record for the Project and be posted and publicly available in the E-Library on FERC's website. Each participant in the Relicensing can register to receive a notice each time FERC posts a document to its website regarding the Relicensing (see Section 6.1.1, FERC's Documents).

## **8.3 Media Communications**

Relicensing Participants may communicate with the media regarding their own views, interests and positions, but will avoid making statements characterizing other Relicensing Participants' interests. Relicensing Participants will make a reasonable effort to promptly inform Licensee and other Relicensing Participants of relevant communications with the media. The Facilitator will not make public statements, except at the request of the Relicensing Participants.

## **9.0 COMPLIANCE WITH PROTOCOLS**

Each Relicensing Participant is expected to voluntarily abide by these Project Relicensing Communication Protocols. Licensee does not propose that participation in the Relicensing is contingent upon formal acceptance of these Relicensing Communication Protocols, but that Licensee, Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others participating in Relicensing voluntarily abide by the letter and intent of these Relicensing Communication Protocols.

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## Attachment A-Supplemental Stakeholder Participation Statement

### SWRCB Collaborative Process Participation Statement

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards are the principal state agencies responsible for administering the state's water quality control program. (Wat. Code, §§ 13000-14958.) This includes responsibility to grant, waive, or deny water quality certification as provided for under section 401 of the federal Clean Water Act. (Wat. Code, § 13160; see generally 33 U.S.C. § 1341.) The SWRCB issues water quality certification before a license to operate a hydropower project may be issued by the Federal Energy Regulatory Commission (FERC). In addition, the SWRCB is the state agency responsible for administering surface water rights throughout the state. (Wat. Code, §§ 1000-5976.)

Where the SWRCB's regulatory approval is required, the SWRCB has a legal duty, independent of any arguments raised by parties to the proceeding before the SWRCB, to assure that the requirements for that approval are satisfied. In this case, the SWRCB has an independent statutory duty under the Clean Water Act and the applicable regional water quality control plan to ensure that the operation of the Middle Fork American River Hydroelectric Project (FERC No. 2079) will not adversely affect water quality or the beneficial uses of the affected lakes and stream reaches within the Middle Fork American River drainage.

The SWRCB agrees to participate in the development of information regarding the Middle Fork American River Project that may lead to a settlement among the interested parties. It is the policy of the SWRCB to promote voluntary settlements among the parties to adjudicative proceedings before the SWRCB. It is also the policy of the SWRCB to assist applicants and members of the public by making available information about the requirements of the programs it administers. The SWRCB will participate in the collaborative process with a view towards encouraging settlement among the parties and other persons interested in proceedings before the SWRCB, and providing applicants, protestants and other interested persons with information concerning the requirements applicable to SWRCB approvals.

While the SWRCB can provide information that will help guide the parties towards a settlement that is likely to obtain the necessary regulatory approvals, however, the SWRCB cannot make a prior commitment to the outcome of any regulatory approval that must be issued by the SWRCB. The SWRCB acts in an adjudicative capacity when it acts on a request for water quality certification, water right application, change petition, or other water right approval that may be required for or requested in connection with a proposed project. The SWRCB must be an impartial decision-maker, avoiding bias, prejudice or interest, in any adjudicative proceedings conducted in accordance with the SWRCB's regulatory approvals. Consistent with its adjudicative responsibilities, including its obligation to consider any arguments that may be raised or information provided by parties to a SWRCB proceeding, the SWRCB cannot execute any settlement agreement or make any other commitment that would be binding on the SWRCB as part of its action on a request for water quality certification or other necessary SWRCB permit, license, or other regulatory approval.