



# United States Department of the Interior

OFFICE OF THE SECRETARY  
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Pacific Southwest Region  
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IN REPLY REFER TO:  
ER11/493

*Filed Electronically or Hardcopy Where Necessary*

5 August 2011

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

Subject: **Middle Fork American River Project**, FERC No. 2079-069  
Department of the Interior's Response to Commission's June 7, 2011, Notice that  
Project is Ready for Environmental Analysis

Dear Ms. Bose:

The Department of the Interior herewith files its preliminary comments, terms and conditions, prescriptions, and recommendations, as applicable, in response to the Federal Energy Regulatory Commission's June 7, 2011, Notice soliciting the filing of such comments, recommendations, terms and conditions, and prescriptions for the Middle Fork American River Project. The Department's submission is provided in two attachments.

Please direct any questions regarding the Department's submission as follows:

- Questions relating to Attachment A, pertaining to the Bureau of Land Management comments and recommendations, may be directed to Jim Eicher, Associate Field Manager, Bureau of Land Management, (916) 941-3103.
- Questions relating to Attachment A, pertaining to the Bureau of Reclamation comments and recommendations, may be directed to Rob Schroeder at (916) 989-7274.
- Questions relating to Attachment B, the Fish and Wildlife Service comments and preliminary fishway prescription may be directed to Alison Willy at (916) 414-6600; or questions pertaining specifically to federally-listed species should be directed to Jeremiah Karuzas at the same number.

Thank you for the opportunity to review and respond to this project.

Sincerely,

A handwritten signature in black ink, reading "Patricia Sanderson Port". The signature is written in a cursive style with a large, looped initial "P" at the end.

Patricia Sanderson Port  
Regional Environmental Officer

Enclosure

cc: Service List for Project 2079-069  
OEPC, Washington, DC

# **ATTACHMENT A**

## **U.S. Department of The Interior** **Preliminary Comments and** **10(a) Recommendations for** **the Beneficial Use of** **BLM and Reclamation Lands**

**Middle Fork American River,  
FERC Project No. 2079,  
Including the Reach Downstream of  
Oxbow Reservoir**

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| <br><b>Exhibit 2 - Sierra RMP and Record of Decision (2008)</b>   |   |           |

## **I. BRIEF INTRODUCTION**

The United States Department of the Interior (Department), including its component agencies the U.S. Fish and Wildlife Service (Service), the Bureau of Land Management (BLM), and the Bureau of Reclamation (Reclamation or BOR), is a participant in the new licensing proceeding for Middle Fork American River Project (MFP), Project No. 2079-069. On June 7, 2011, the Federal Energy Regulatory Commission (FERC) issued a notice that the Project was ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions for the Projects (REA Notice). Based upon the REA Notice date and FERC regulations, the Department has until August 8, 2011, for filing comments, recommendations, etc... with FERC. By Notice filed August 4, 2011, the Department has intervened in this proceeding for the purposes of becoming a party.

The Department has an interest in the MFP and its related impacts on the downstream reach of the Middle Fork American River below the Oxbow Powerhouse and reservoir. Pursuant to this interest, the BLM and Reclamation entered into negotiations with PCWA to address these impacts. The negotiations led to an agreement (Agreement) for PCWA's contribution or advancement of funds to the respective agencies to help fund actions related to the annual operation, maintenance, and administration of project affected BLM and Reclamation lands or facilities thereon along the downstream reach currently managed by Reclamation for recreation purposes and to provide for the health and safety of the members of the public engaging in recreational activities at those lands and facilities along the downstream reach. The Agreement is included with this filing as "Exhibit 1." In accordance with this agreement, the BLM and Reclamation have submitted below both a comment of support of the agreement and recommended a reopener clause for inclusion within the project license. Accompanying the comment and recommended reopener, BLM and Reclamation also are relying on the section 10(a) authority discussed below to provide the basis for four additional submitted recommendations.

Immediately following this introduction is a short section describing BLM's and Reclamations applicable planning documents which illustrate how the 10(a) recommendations further applicable comprehensive plans for improving and developing the downstream reach below Oxbow reservoir for such beneficial uses as public recreation, aquatic, and riparian resources.

## **II. RESOURCE MANAGEMENT PLAN GOALS AND OBJECTIVES**

### **a. Bureau of Land Management**

In the management of its lands, the BLM is required to satisfy the management objectives as outlined in the *Federal Land Policy Management Act (FLPMA)*. 43 U.S.C. § 1701. These objectives should, among other things, protect the quality of scenic, historical, environmental values; preserve and protect public lands; and provide for outdoor recreation, human occupancy, and a variety of other actions. Pursuant to the FLPMA, the Agencies should utilize the principles of multiple use and sustained yield to design their land plans. *Federal Land Policy Management*

Act § 102, 43 U.S.C. § 1701(a)(7)(8). The “multiple use” concept is more fully defined as follows:

“The term ‘multiple use’ means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” 43 U.S.C. § 1702 (c).

Additionally, BLM has developed the regional Sierra Resource Management Plan to follow the requirements of the FLPMA, and provide a more focused approach to land management representing local understanding of the uses and concerns about public lands. Below is description of a relevant provision from the management plan.

***Sierra Resource Management Plan and Record of Decision*** (2008) (“BLM’s Sierra RMP”) – Maintain and/or improve wildlife and fisheries habitats in order to support viable populations. Provide for the protection of threatened habitats of game and nongame species. Ensure adequate river flows for boating, fishing, swimming, etc. Develop recreation sites that meet health and safety standards. Mitigate or eliminate conflicts among recreation users. Maintain existing campground, trail, and day use facilities to accepted BLM Standards. Sierra RMP and Record of Decision (2008) 2.3 Water Resources pg 8-10, 2.5 Fish and Wildlife pg 12-13, 2.15 Recreation pg.26-29 (included as “Exhibit 2”).

#### **b. Bureau of Reclamation**

In 1965, Congress authorized the Auburn-Folsom South Unit of the Central Valley Project, including the Auburn Dam Project, which includes Auburn Dam and Reservoir. See Act of September 2, 1965, 79 Stat. 615. Pursuant to that authority, Reclamation acquired and manages federal lands within the Auburn Dam Project boundary. The Auburn Dam Project remains authorized, but Auburn Dam has not yet been constructed and Auburn Reservoir does not yet exist; thus, the stretch of the Middle Fork American River below the Oxbow Power House to below the confluence of the Upper Fork and Middle Fork of the American River continue to provide river-based recreational opportunities.

In September 1992, Reclamation, with the assistance of the California Department of Parks and Recreation, released the *Auburn Interim Resource Management Plan* (AIRMP), an interim

management plan for federal lands within the Auburn Dam Project boundary (referred to as Auburn State Recreation Area in the AIRMP) for that period of time until Auburn Dam is constructed. The AIRMP recognizes that Auburn Dam may still be constructed, but provides guidance on managing recreation, including river-based recreation below Oxbow Power House along the Middle Fork of the American River to below its confluence with the Upper Fork of the American River, and resources on federal lands within the Auburn Project area until that time.

### **III. GENERAL COMMENT**

As mentioned in the introduction, BLM and Reclamation entered into negotiations with PCWA to address project-related impacts to the downstream reach of the Middle Fork American River below the Oxbow Powerhouse and reservoir. These negotiations led to the Agreement. As provided within this Agreement, BLM and Reclamation agreed to provide a comment to FERC in which the two agencies recognize that:

As long as PCWA complies with the terms of the Agreement, the contribution or advancement of funds by PCWA pursuant to the Agreement sufficiently satisfies and mitigates any impacts of the MFP to Project Affected Federal Lands and facilities thereon along the Downstream Reach. Exhibit 1, at 8.

This agreement is provided for informational purposes and general review by the Commission at this time, not for inclusion within any new project license, except as described in the following 10(a) recommendation number 1.

### **IV. PRELIMINARY 10(a) RECOMMENDATIONS**

#### **a. Department's Section 10(a) Statutory Authority**

The Federal Power Act requires in § 10(a) that the project adopted shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply and recreation and other purposes (such as energy conservation, protection of recreational opportunities and the preservation of other aspects of environmental quality) 16 U.S.C. § 803(a)(1); 16 U.S.C. § 797(e). To ensure compliance with this provision, the FERC is to consider the recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations of Indian Tribes affected by the project, 16 U.S.C. § 803(a)(2).

The Department has prepared these preliminary recommendations based on current information regarding the proposed new licensing of the MFP. If material new information becomes available that may significantly affect the adequacy of the proposed measures, the Department may modify these section 10(a) FPA Terms as needed to be consistent with finalized design

plans, new information developed as a result of the FERC's environmental review process, or to correct deficiencies or problems found during post-license monitoring or evaluation.

The first preliminary recommendation is derived from the Agreement (Exhibit 1). This recommendation is meant to support and solidify the BLM's, Reclamation's, and PCWA's commitment to adhering to the terms of the Agreement. The second and third preliminary recommendations are derived from general new project licensing negotiations amongst a variety of parties. The Department strongly requests and urges FERC to accept the preliminary recommendations in full and without change as license conditions.

## **b. BLM's and Reclamation's 10(a) Preliminary Recommendations**

### **1. Reopener Provision (From Exhibit 1 Agreement)**

The Licensee shall provide, or arrange to provide, for the management and administration of a recreation program including the obligation to construct, maintain, and operate, such reasonable recreational facilities, including modifications thereto, such as access roads, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped; and shall also be responsible for reasonably addressing recreation related resource impacts and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation or condition of the Secretary of the Interior, after notice and opportunity for hearing.

### **2. Minimum Streamflows**

The Licensee shall maintain minimum streamflows in and Middle Fork American River below Oxbow Powerhouse. For compliance purposes, the point of measurement for each required minimum streamflow is described in the introduction to the minimum streamflow schedule for that particular stream reach. All specified streamflows are in cubic feet per second (cfs). The schedules specify minimum streamflows, by month and water year type, for each of the specified stream reaches. Streamflow compliance is based on hourly or daily average flows as described below.

#### **Water Year Types**

The streamflow and reservoir minimum pool elevation requirements have been specified for six different water year type classifications. The water year type classifications are based on either forecasts or estimates of American River unimpaired flow (acre-feet) below Folsom Lake. The water year types and associated American River unimpaired flow ranges in acre-feet (ac-ft) are provided below:



| <b>Water Year Types</b> | <b>American River Unimpaired Flow Below Folsom Lake (ac-ft)</b> |
|-------------------------|---|
| Wet (W)                 | ≥3,400,000  |
| Above Normal (AN)       | 2,400,000–<3,400,000  |
| Below Normal (BN)       | 1,500,000–<2,400,000  |
| Dry (D)                 | 1,000,000–<1,500,000  |
| Critical (C)            | 600,000–<1,000,000  |
| Extreme Critical (EC)   | <600,000  |

The American River unimpaired flow (ac-ft) below Folsom Lake for the water year (October 1-September 30) is to be determined using the California Department of Water Resources (DWR) Bulletin 120 Forecast of Unimpaired Flow Below Folsom Lake and/or the DWR’s estimated Full Natural Flow record for the American River at Folsom (California Data Exchange Center site AMF sensor 65) (<http://cdec.water.ca.gov>).

The Licensee shall determine the water year type for minimum streamflow requirements based on the following time periods and forecast/estimate methods using the water year types above unless otherwise specified.

**Minimum Streamflow Water Year Type Determination for Middle Fork American River Below Oxbow Powerhouse**

The Licensee shall determine the water year type for minimum streamflows for the Middle Fork American River below Oxbow Powerhouse based on the following time periods and forecast/estimate methods using the water year type classification above.

| <b>Time Period</b>     | <b>American River Unimpaired Flow (ac-ft) below Folsom Lake Determination Method</b> | <b>Water Year Type Classification</b>                |
|------------------------|--|--|
| June 1–October 31      | DWR Bulletin 120 May Forecast <sup>1</sup>   | See water year types above (Wet, AN, BN, Dry, C, EC) |
| November 1–February 14 | End of Water Year Estimate of Full Natural Flows <sup>2</sup>                        |  |
| February 15–Mar 14     | DWR Bulletin 120 February Forecast <sup>1</sup>                                      |  |
| March 15–May 31        | DWR Bulletin 120 March Forecast <sup>1</sup>   |  |

<sup>1</sup> American River unimpaired flow (ac-ft) below Folsom Lake for the water year, October 1 through September 30, is to be determined using the California Department of Water Resources (DWR) Bulletin 120 Forecast of Unimpaired Flow Below Folsom Lake.

<sup>2</sup> American River unimpaired flow (ac-ft) below Folsom Lake for the water year is to be determined by DWR’s Full Natural Flow record for the American River at Folsom (California Data Exchange Center site AMF sensor 65) after the end of the water year (October 1 – September 30) (<http://cdec.water.ca.gov>).

**Minimum Streamflow Compliance**

Compliance with the minimum flow schedules must meet the following conditions:

1. All specified minimum streamflows are in cubic feet per second (cfs).
2. Minimum streamflows must be released by 5 pm on the date specified in the flow schedule tables below for each location unless access to release facility is prohibited by hazardous conditions (risk to operator safety). If this occurs, FERC, BLM, BOR, FS, CDFG, and State Water Board must be notified of the circumstances as soon as possible, but no later than 7 days after such incident and the minimum streamflows must be released as soon as practicable.
3. The minimum streamflows specified from March 15–May 31 shall not be lower than the minimum streamflow that was in effect on March 14.
4. The streamflow hourly running average measurements (based on flow measured in 15-minute time increments) shall never be less than the thresholds specified in the tables below for each location, except as authorized below:
  - The minimum streamflow may be temporarily modified for short periods upon approval of FS, BLM, BOR, CDFG, and State Water Board and notification of FERC.
  - The minimum streamflows may be temporarily modified due to equipment malfunction or public safety emergencies reasonably beyond the control of the Licensee. If the streamflow is so modified, the Licensee shall notify FERC, BLM, BOR, FS, CDFG, and State Water Board as soon as possible, but no later than 10 days after such incident.

**Implementation Schedule**

The Licensee shall provide the streamflow releases within 30 days of License issuance at locations where existing infrastructure and flow gages can provide and measure the new releases. Year 1 begins 30 days after license issuance. For all other locations, the Licensee will provide streamflow releases and pool elevations according to the following schedule.

**Implementation Schedule for Instream Flow Compliance.**

| Measure  | Flow Compliance Location                          | New Conditions Time Period (after License Issuance) |
|--|---|---|
| <b>Minimum Instream Flows</b>                  |   |   |
|  | Middle Fork American River below Oxbow Powerhouse | Within 30 days - License Term                       |
| <b>Peaking Reach Ramping Rate Requirements</b> |   |   |
|  | Middle Fork American River below Oxbow Powerhouse | Within 30 days - License Term                       |
| <b>Recreation Flow Releases</b>                |   |   |
|  | Middle Fork American River below Oxbow            | Within 30 days -                                    |

|  |            |              |
|--|------------|--------------|
|  | Powerhouse | License Term |
|--|------------|--------------|

**Middle Fork American River Below Oxbow Powerhouse**

The Licensee shall maintain the minimum streamflow specified in the following schedule based on month and water year type. Minimum streamflow shall be measured at Middle Fork American River near Foresthill gage (USGS Gage No. 11433300). Please note that water year type for Middle Fork American River below Oxbow Powerhouse is different than for other stream reaches, as stated above.

| <b>Middle Fork American River Below Oxbow Powerhouse*</b> |  |     |     |     |     |     |  |
|---|--|-----|-----|-----|-----|-----|--|
| Month   | Minimum Streamflow by Water Year (cfs) |     |     |     |     |     |  |
|   | EC                                     | C   | DRY | BN  | AN  | WET |  |
| <b>OCT</b>  | 90                                     | 125 | 140 | 165 | 165 | 200 |  |
| <b>NOV</b>  | 90                                     | 140 | 145 | 185 | 225 | 250 |  |
| <b>DEC</b>  | 90                                     | 140 | 145 | 185 | 225 | 250 |  |
| <b>JAN</b>  | 90                                     | 140 | 145 | 185 | 225 | 250 |  |
| <b>FEB</b>  | 90                                     | 140 | 145 | 185 | 225 | 250 |  |
| <b>MAR 1-14</b>   | 90                                     | 140 | 145 | 185 | 225 | 250 |  |
| <b>MAR 15-31</b>  | 100                                    | 160 | 210 | 290 | 375 | 450 |  |
| <b>APR</b>  | 100                                    | 160 | 210 | 290 | 375 | 450 |  |
| <b>MAY</b>  | 100                                    | 160 | 210 | 290 | 375 | 450 |  |
| <b>JUNE</b>   | 100                                    | 160 | 210 | 245 | 300 | 350 |  |
| <b>JULY</b>   | 100                                    | 160 | 200 | 245 | 300 | 350 |  |
| <b>AUG</b>  | 100                                    | 160 | 200 | 245 | 300 | 350 |  |
| <b>SEPT 1-14</b>  | 100                                    | 150 | 160 | 200 | 250 | 300 |  |
| <b>SEPT 15-30</b>   | 100                                    | 150 | 160 | 200 | 250 | 300 |  |

\* Water Year Type based on minimum flow table specific to Oxbow Powerhouse.

**3. Peaking Reach Ramping Rate and Oxbow Powerhouse Operations**

The Licensee shall provide the following ramping rates in the months of March through October in the Middle Fork American River below Oxbow Powerhouse based on the flow present in the Middle Fork American River near Foresthill USGS Gage (No. 11433300):

| <b>Middle Fork American River Below Oxbow Powerhouse Ramping Rate</b> |   |  |   |
|---|---|--|---|
| <b>Up Ramp</b>  |   | <b>Down Ramp</b>                             |   |
| <b>Gage Flow<sup>1</sup></b><br><b>(cfs)</b>                          | <b>Maximum Flow</b><br><b>Change<sup>2</sup></b><br><b>(cfs / hr)</b> | <b>Gage Flow<sup>1</sup></b><br><b>(cfs)</b> | <b>Maximum Flow</b><br><b>Change<sup>2</sup></b><br><b>(cfs / hr)</b> |
| ≤175  | 300   | ≤500   | 250   |
| >175–400  | 450   | >500–800                                     | 400   |
| >400–750  | 600   | >800–1300                                    | 550   |
| >750  | 750   | >1300  | 750   |

<sup>1</sup>Gage Flow is the discharge (cfs) at the Middle Fork American River near Foresthill USGS Gage (No. 11433300) at the beginning of the Oxbow Powerhouse flow change.

<sup>2</sup>Maximum Flow Change is the maximum increase in Oxbow Powerhouse release given the Gage Flow for the up ramp, or the maximum decrease in Oxbow Powerhouse release given the Gage Flow for the down ramp.

In Years 1 and 2 after license issuance (Year 1 begins 30 days after license issuance), the ramping rate in the Middle Fork American River downstream of Oxbow Powerhouse shall be measured at the Middle Fork American River near Foresthill Gage (USGS Gage No. 11433300).

In Year 3 after license issuance, or as soon as the new Oxbow Powerhouse Penstock gage is operational, the ramping rate requirement will be measured at the new Oxbow Powerhouse Penstock gage and the Middle Fork American River near Foresthill gage (USGS Gage No. 11433300).

During the months of November through February, the Licensee will make an effort to regulate Oxbow Powerhouse flow releases in the peaking reach. This will include, to the degree possible, scheduling Oxbow Powerhouse generation to moderate peaking in the Middle Fork American River using available active Ralston Afterbay storage. If Ralston Afterbay spills due to natural flow conditions beyond the control of the Licensee, the effort to moderate Middle Fork American River peaking shall cease until control is regained or for the remainder of the period.

The Licensee shall make available to FS, BLM, BOR, CDFG, and State Water Board the streamflow records related to ramping rates upon request.

The Licensee shall be excused from complying with the ramping rate requirements in the event of law enforcement or search and rescue activities, Division of Safety of Dams compliance requirements, equipment malfunction or failure that is directly related to providing the specified ramping rates, or a large storm event that is beyond its ability to control. The Licensee shall provide notice to FS, BLM, BOR, CDFG, and State Water Board within 10 days after such an event occurs and shall provide a report documenting the reason that ramping rates were not followed within 1 month after such an event occurs.

#### **4. Outages**

##### **Unplanned Middle Fork and Ralston Powerhouse Outage (May–September)**

If a short-term (less than 2 weeks) unplanned outage occurs at the Middle Fork Powerhouse and Ralston Powerhouse in May - September, the minimum flow in the Middle Fork American River

below Oxbow Powerhouse (peaking reach) during the outage will be established as described below based on the water surface elevation in Ralston Afterbay:

- If the Ralston Afterbay water surface elevation is greater than 1,161 feet at the time of the outage, the minimum flow release requirement will be 200 cfs or the minimum flow specified in Section 1 above, whichever is less, until the elevation reaches less than or equal to 1,161 feet.
- If the Ralston Afterbay water surface elevation is less than or equal to 1,161 feet any time during the outage, the minimum flow release requirement will be the October minimum flow specified in Section 1, above.

It may be necessary to release additional water from Hell Hole Reservoir into the Rubicon River and from French Meadow Reservoir/Middle Fork Interbay into the MFAR to meet the minimum flow requirements in the peaking reach or downstream consumptive demands. In this case, release water will be split between the two rivers up to a maximum of 55 cfs release (60 cfs in Wet water years) in the Rubicon River and a maximum of 80 cfs in the MFAR below French Meadows Reservoir and below Interbay Reservoir. If these maximum flows of 80 cfs in the MFAR below Interbay Reservoir and 55 cfs (60 cfs in Wet water years) below Hell Hole Reservoir Dam are less than is necessary to meet the minimum streamflows described in the bulleted items above, the Licensee shall not release flows above these maximum flows except in the following circumstance: releases into the MFAR below Interbay Reservoir may exceed 80 cfs if necessary to meet consumptive demands and required minimum streamflows at the American River Pump Station (75 cfs requirement pursuant to PCWA's pump station mitigation requirement below American River Pump Station) upon commencement of FYLF monitoring and 24 hours advanced noticed to the FS, BLM, BOR, CDFG, and the State Water Board.

If the unplanned outage extends beyond 2 weeks, minimum streamflows in the MFAR peaking reach during the remainder of the outage will be determined in consultation with FS, BLM, BOR, CDFG, and State Water Board. The flow release in the Rubicon River during the remainder of the outage will also be determined in consultation with FS, CDFG, and the State Water Board. Flow releases in the MFAR (from French Meadows Reservoir and/or the Middle Fork Powerhouse) will be determined by the Licensee in accordance with minimum streamflow requirements, water supply demands, and operational requirements (e.g., reservoir management, power generation).

### **Unplanned Ralston Powerhouse Outage (June–September) – Middle Fork Powerhouse Operational**

If the Middle Fork Powerhouse is operational during the short-term (less than 2 weeks) unplanned outage (and Ralston Powerhouse is not operational in June - September), water will be released from the Middle Fork Powerhouse for minimum flow compliance in the peaking reach, water supply, and to avoid or minimize spill of Hell Hole Reservoir. The minimum streamflow requirement in the MFAR below Interbay Dam will be based on the following table.

| <b>Middle Fork American River Below Oxbow Powerhouse</b> |   |          |            |           |           |            |  |
|--|---|----------|------------|-----------|-----------|------------|--|
| <b>Month</b>   | <b>Minimum Streamflow by Water Year (cfs)</b> |          |            |           |           |            |  |
|  | <b>EC</b>                                     | <b>C</b> | <b>DRY</b> | <b>BN</b> | <b>AN</b> | <b>WET</b> |  |
| <b>JUNE</b>  | 100   | 160      | 210        | 245       | 300       | 350        |  |
| <b>JULY</b>  | 100   | 160      | 165        | 190       | 200       | 200        |  |
| <b>AUG</b>   | 100   | 160      | 165        | 190       | 200       | 200        |  |
| <b>SEPT</b>  | 100   | 160      | 165        | 190       | 200       | 200        |  |

Release water in the Rubicon River and MFAR to meet the minimum streamflow in the peaking reach will be split between the two rivers up to a maximum of 55 cfs release in the Rubicon River (60 cfs in Wet water years) and a maximum of 80 cfs in the Middle Fork American River below Interbay Reservoir. If these maximum flows of 80 cfs in the MFAR below Interbay Reservoir and 55 cfs (60 cfs in Wet water years) below Hell Hole Reservoir Dam are less than is necessary to meet the minimum streamflows described in the table above, the Licensee shall not release flows above these maximum flows except in the following circumstance: releases into the MFAR below Interbay Reservoir may exceed 80 cfs if necessary to meet consumptive demands and required minimum streamflows of 75 cfs at the American River Pump Station (75 cfs requirement pursuant to the Licensee’s pump station mitigation requirement below American River Pump Station) upon commencement of FYLF monitoring and 24 hours advanced noticed to the FS, BLM, BOR, CDFG, and the State Water Board.

If the unplanned outage extends beyond 2 weeks, minimum streamflows in the peaking reach during the remainder of the outage will be determined in consultation with FS, BLM, BOR, CDFG, and the State Water Board. The flow release in the Rubicon River during the remainder of the outage will also be determined in consultation with the FS, CDFG, and the State Water Board. Streamflow releases in the MFAR (from French Meadows Reservoir and/or the Middle Fork Powerhouse) will be determined by the Licensee in accordance with minimum flow requirements, water supply demands, and operational requirements (e.g., reservoir management, power generation).

### **5. Recreation Streamflows in the Middle Fork American River Below Oxbow Powerhouse**

All provisions for recreation streamflows are subject to the safe operability of the Project facilities and equipment necessary to provide such streamflows. The recreation streamflows described below may be temporarily modified if required by equipment malfunction or operating emergencies reasonably beyond the control of the Licensee. If the described recreation streamflows are so modified, the Licensee shall provide Notice to FERC, FS, State Water Board, CDPR, BOR, and BLM as soon as possible but no later than 24 hours after such incident and shall provide Notice via the website to be developed by the Licensee to disseminate flow information. The described recreation streamflows may also be temporarily modified for short periods in non-emergency situations upon approval of FS. If the described recreation streamflows are so modified, the Licensee shall provide Notice to FERC, FS, State Water Board, CDPR, BOR, and BLM.

## Whitewater Boating

The Licensee shall, within 30 days following license issuance, provide the recreation streamflows specified in the following schedules based on water year type, date, and time. The recreation streamflows shall be measured at the Middle Fork American River near Foresthill gage (USGS Gage No. 11433300). Recreation streamflow requirements for (1) weekday Class IV; (2) weekend Class IV; (3) Class II; and (4) and recreation events for recreation flow releases are specified below.

### **Weekday Class IV Run Recreation Streamflow Releases**

| <b>Water Year Type</b>  | <b>Flow Magnitude<sup>1</sup></b> | <b>Timing</b> | <b>June–Labor Day</b>  | <b>After Labor Day–Sept 30</b> |
|-------------------------|-----------------------------------|---------------|--|--------------------------------|
| <b>Wet</b>              | 1000 cfs                          | 3 hrs         | 5 (M,T,W,Th,F)   | 4 (T,W,Th,F)                   |
|                         |                                   | (9 am–12 pm)  |  |                                |
| <b>Above Normal</b>     | 1000 cfs                          | 3 hrs         | 5 (M,T,W,Th,F)   | 3 (T,W,F)                      |
|                         |                                   | (9 am–12 pm)  |  |                                |
| <b>Below Normal</b>     | 1000 cfs                          | 3 hrs         | 4 (T,W,Th,F)   | 3 (T,W,F)                      |
|                         |                                   | (9 am–12 pm)  |  |                                |
| <b>Dry</b>              | 1000 cfs                          | 3 hrs         | 3 (T,W,F) except for Friday before Labor Day and Memorial Day <sup>2</sup> | 2 (W,F)                        |
|                         |                                   | (8 am–11 am)  |  |                                |
| <b>Critical</b>         | 1000 cfs                          | 3 hrs         | 2 (W,F) except for Memorial Day <sup>2</sup>                               | --                             |
|                         |                                   | (8 am–11 am)  |  |                                |
| <b>Extreme Critical</b> | 1000 cfs                          | 3 hrs         | 1 (W)  | --                             |
|                         |                                   | (8 am–11 am)  |  |                                |

<sup>1</sup>Flow compliance measured at the Middle Fork American River near Foresthill USGS Gage (No. 11433300).

<sup>2</sup>One of the days during this week is used for the Class II Run (Confluence) boating.

### **Scheduled Weekend Class IV Run Recreation Flow Releases**

| <b>Water Year Type</b>  | <b>Flow Magnitude<sup>1</sup></b> | <b>Timing</b>      | <b>Saturday before Memorial Day–Labor Day</b>                                 | <b>After Labor Day–Sept 30</b> |
|-------------------------|-----------------------------------|--------------------|---|--------------------------------|
| <b>Wet</b>              | 1000 cfs                          | 4 hrs              | Saturdays and Sundays   | Saturdays and Sundays          |
|                         |                                   | (8 am–12 pm)       |   |                                |
| <b>Above Normal</b>     | 1000 cfs                          | 4 hrs              | Saturdays and Sundays   | Saturdays and Sundays          |
|                         |                                   | (8 am–12 pm)       |   |                                |
| <b>Below Normal</b>     | 1000 cfs                          | 4 hrs              | Saturdays (except for Western States 100 and Tevis Cup Race Days) and Sundays | Saturdays and Sundays          |
|                         |                                   | (8 am–12 pm)       |   |                                |
| <b>Dry</b>              | 1000 cfs                          | 3 hrs              | Saturdays except for Western States 100 and Tevis Cup Race Days               | Saturdays and Sundays          |
|                         |                                   | (8:30 am–11:30 am) | Sundays except one Sunday <sup>2</sup> in July                                |                                |
| <b>Critical</b>         | 1000 cfs                          | 3 hrs              | Saturdays except for Western States 100 and Tevis Cup Race Days               | Saturdays                      |
|                         |                                   | (8:30 am–11:30 am) | Sundays except one Sunday <sup>2</sup> in July                                |                                |
| <b>Extreme Critical</b> | 1000 cfs                          | 3 hrs              | Saturdays except for Western States 100 and Tevis Cup Race Days               | ---                            |
|                         |                                   | (8:30 am–11:30 am) | Sundays except one Sunday <sup>2</sup> in July                                |                                |

<sup>1</sup>Flow compliance measured at the Middle Fork American River near Foresthill USGS Gage (No. 11433300).

<sup>2</sup>This Sunday used for Class II Run (Confluence) boating.

### Scheduled Class II Run (Confluence) Recreation Flow Releases

| Water Year Type  | Flow Magnitude <sup>1</sup> | Timing      | Weekdays                                 | Weekends                             |   |                         |
|------------------|-----------------------------|-------------|--|--------------------------------------|---|-------------------------|
|                  |                             |             | Memorial Day–Labor Day                   | Saturday before Memorial Day–June 30 | July 1–Labor Day                        | After Labor Day–Sept 30 |
| Wet              | 800 cfs                     | 5 hrs       | --                                       | --                                   | Saturdays                               | 2 Saturdays per month   |
|                  |                             | (3 am–8 am) |  |                                      |   |                         |
| Above Normal     | 800 cfs                     | 5 hrs       | --                                       | --                                   | Saturdays                               | 2 Saturdays per month   |
|                  |                             | (3 am–8 am) |  |                                      |   |                         |
| Below Normal     | 800 cfs                     | 4 hrs       | --                                       | 2 Saturdays per Month                | 2 Saturdays per month                   | 1 Saturday per month    |
|                  |                             | (4 am–8 am) |  |                                      |   |                         |
|                  | 1000 cfs                    | 3 hrs       | --                                       | Western States 100 Race Day          | Tevis Cup Race Day                      | --                      |
|                  |                             | (4 am–7 am) |  |                                      |   |                         |
| Dry              | 1000 cfs                    | 3 hrs       | Memorial Day and Friday before Labor Day | Western States 100 Race Day          | 1 Sunday in July and Tevis Cup Race Day | --                      |
|                  |                             | (4 am–7 am) |  |                                      |   |                         |
| Critical         | 1000 cfs                    | 3 hrs       | Memorial Day                             | Western States 100 Race Day          | 1 Sunday in July and Tevis Cup Race Day | --                      |
|                  |                             | (4 am–7 am) |  |                                      |   |                         |
| Extreme Critical | 1000 cfs                    | 3 hrs       | --                                       | Western States 100 Race Day          | Tevis Cup Race Day                      | --                      |
|                  |                             | (4 am–7 am) |  |                                      |   |                         |

<sup>1</sup>Flow compliance measured at the Middle Fork American River near Foresthill USGS Gage (No. 11433300).

In addition to the above schedules, up to two unscheduled days per year may be scheduled for special whitewater flow events. Individuals, groups, or agencies may submit a request for single-day whitewater flow events to the Licensee by April 15 each year. The Licensee will select the event(s) based on available water supply and existing consumptive demands, hydro-electric generation demands, and generating unit availability. The Licensee will respond to requests for single-day flow event requests by May 15.

Whitewater boating flow requirements are superseded by the Tevis Cup and Western States 100 event recreation flows outlined in the special event recreation coordination section below.

The Licensee shall determine the water year type for recreation flow releases based on the DWR Bulletin 120 May forecast of American River Unimpaired Flow (ac-ft) below Folsom Lake for the water year and the water year type classification in Section 1.

Compliance with the recreation flow releases specified below requires that the Licensee meet the following:

1. All specified minimum streamflows are in cubic feet per second (cfs).
2. The recreation flow releases must be provided at the time specified.
3. Once initiated, the streamflow hourly running average measurements (flow measured in 15-minute time increments) must be no less than the required recreation streamflow releases.



4. If there is a forced or unplanned outage at the Middle Fork Powerhouse, Ralston Powerhouse or Oxbow Powerhouse then whitewater boating flow requirements will be suspended until the powerhouse(s) are returned to service.

### **Special Event Recreation Coordination**

The Licensee will provide the whitewater boating and special event recreation flows in the peaking reach (Middle Fork American River below Oxbow Powerhouse) as specified below.

#### **Tevis Cup and Western States 100 Events**

The Licensee will annually coordinate with representatives of the Tevis Cup and Western States 100 to identify and provide flows suitable for trail crossing conditions for these events (when such flows are controllable by the Project). The Tevis Cup/Western States 100 event recreation flows, when they occur, take priority over whitewater boating flows. Where possible, whitewater boating flows will be provided as described in the whitewater boating section above.

#### **Wounded Warrior**

If the Licensee has been notified by June 1 that a Horseshoe Bar Fish and Game Preserve Wounded Warrior Event has been scheduled during an annual maintenance outage based on an annual maintenance outage schedule posted by the Licensee (May 1) and the outage schedule changes, the Licensee will work with the event organizers to provide steady flows during the event (for up to 5 days).

## **IV. CONCLUSION**

Through the above BLM and Reclamation administrative goals and objectives, the comment, and the preliminary 10(a) recommendations, BLM and Reclamation seek to ensure that appropriate levels of resource and recreation protection are incorporated in any new license that may be issued for the MFP. By accepting the preliminary recommendations, FERC will be supporting implementation of BLM and BOR management plans for the areas adjacent to the MFP, and implementation of a negotiated agreement between BLM, Reclamation, and PCWA, to effectively administer lands just downstream of the Oxbow Powerhouse and reservoir.

Thank you for your attention. If you have any questions regarding this correspondence, please use the contact information provide in the cover letter for this filing.

# **Exhibit 1**

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

PLACER COUNTY WATER AGENCY  
FERC PROJECT NO. 2079

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Mother Lode Field Office

**AGREEMENT BETWEEN  
THE U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT,  
THE U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION, AND  
PLACER COUNTY WATER AGENCY  
IN CONNECTION WITH MANAGEMENT OF CERTAIN  
RECREATION LAND, FACILITIES, AND ACTIVITIES  
ALONG THE DOWNSTREAM REACH BELOW AND ENABLED  
BY PROJECT NO. 2079**

This Agreement is entered into between the U.S. Department of the Interior Bureau of Land Management ("BLM"), U.S. Department of the Interior Bureau of Reclamation ("Reclamation") and Placer County Water Agency ("Agency" or "PCWA" or "Licensee") in connection with the relicensing and operations of PCWA's Middle Fork American River Project, Federal Energy Regulatory Commission ("FERC") No. 2079 ("MFP" or "Project"). This Agreement is effective as of the Effective Date defined below. BLM, Reclamation, and PCWA are sometimes referred to in this Agreement collectively as "Parties."

**EXPLANATORY RECITALS**

WHEREAS, the United States of America has constructed and is operating the Central Valley Project ("CVP"), for diversion, storage, carriage, distribution and beneficial use, flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River and the San Joaquin River and their tributaries; and,

WHEREAS, Congress authorized Reclamation to acquire or otherwise to include within the Auburn-Folsom South Unit of the CVP “such adjacent lands or interests in land as are necessary for present or future public recreation or fish and wildlife use.” Act of September 2, 1965, 79 Stat. 615, 616. The Auburn-Folsom South Unit of the CVP includes the Auburn Dam Project, which remains authorized, but has not been constructed. Pursuant to that authority, Reclamation has acquired and manages federal lands for the Auburn Dam Project, and some of those lands are adjacent to the Middle Fork American River and below the confluence of the Upper and Middle Forks of the American River along the Downstream Reach as defined herein; and,

WHEREAS, within the Auburn-Folsom South Unit of the CVP there are approximately 11,400 acres of public lands held in fee title and administered by the BLM located along the Middle and North Forks of the American River; and,

WHEREAS, within the Auburn-Folsom South Unit of the CVP there are Reclamation Lands and BLM Lands adjacent to the Middle Fork American River along the Downstream Reach. Reclamation currently manages recreation and recreation facilities on Reclamation Lands and BLM Lands, pursuant to the “Memorandum of Understanding Between the Water and Power Resource Service Department of Interior and the Bureau of Land Management, Department of the Interior” dated September 30, 1980 (“MOU”). This MOU explains the management roles of BLM and Reclamation on those lands along the Downstream Reach; and,

WHEREAS, the Agency is the owner of the MFP, a water supply and hydroelectric generation project located on the Middle Fork American River upstream of the Downstream Reach, and operates the MFP pursuant to a FERC license; and,

WHEREAS, the Agency’s FERC license for the MFP expires February 28, 2013; and,

WHEREAS, the Agency wishes to renew its license for Project No. 2079 and is currently conducting studies and analysis to determine the impacts of the operation of the MFP in preparation for FERC to issue a new license for the MFP; and,

WHEREAS, on June 7, 2011, FERC accepted the Agency's application for a New Project License, and solicited preliminary recommendations, prescriptions, terms, and conditions under Sections 4(e), 10(a), 10(j) and 18 of the Federal Power Act ("FPA") from federal and state resource agencies, nongovernmental organizations, and members of the public; and,

WHEREAS, the Parties have determined that the daily operation of the MFP frequently produced, and continues to produce, conditions which enable opportunities for whitewater boating and other recreation activities within the Downstream Reach; and,

WHEREAS, the BLM and Reclamation own and administer certain federal lands within the Downstream Reach that contain Project-enabled recreation sites which constitute a "reservation" within the meaning of FPA Section 3(2); and,

WHEREAS, Agency's Board of Directors and the Placer County Board of Supervisors have each passed resolutions expressing their support for the United States' continued management of recreation and provision of public health and safety needs along the Downstream Reach; and,

WHEREAS, the County of Placer, although not a party to this Agreement, is a recognized financial partner with the Agency in the proceeds and financial obligations of the MFP operation and is understood to support the Agency's execution of this Agreement as recognized fulfillment of Agency's FERC license obligations to support continued management of recreation and provision of public health and safety needs along the Downstream Reach; and,

WHEREAS, the Agency is willing to enter into this Agreement to contribute or advance funds to BLM and Reclamation, on behalf of itself and the County of Placer, to be used for annual operation, maintenance, and administration of Project Affected Federal Lands or facilities thereon along the Downstream Reach currently managed by Reclamation for recreation purposes and to provide for the health and safety of the members of the public engaging in recreational activities at those lands and facilities along the Downstream Reach; and,

WHEREAS, BLM and Reclamation are willing and authorized to enter into this Agreement, and to receive contribution or advancement of funds from the Agency for annual

operation, maintenance, and administration of such Project Affected Federal Lands and facilities thereon along the Downstream Reach for recreation purposes and for providing for the health and safety of the members of the public engaging in recreational activities at those lands and facilities along the Downstream Reach.

### **DEFINITIONS APPLICABLE TO THIS AGREEMENT**

When used herein, the terms noted below, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, are defined as follows:

(a) “Advanced Funds” shall mean moneys received by Reclamation from the Agency for operation and maintenance purposes pursuant to the Act of January 12, 1927, 43 U.S.C. § 397(a);

(b) “Auburn Dam Project” shall mean the Auburn Dam and Reservoir, which is authorized to be part of Auburn-Folsom South Unit of the CVP;

(c) “Auburn Dam Project Boundary” shall mean the boundary of the Auburn Dam and Reservoir components of the Auburn-Folsom South Unit of the CVP;

(d) “BLM Lands” shall mean, for the purposes of this Agreement, the federal lands within the Auburn Dam Project Boundary adjacent to the Downstream Reach that are owned in fee by the BLM;

(e) "Contributed Funds" shall mean moneys received by BLM from the Agency for the annual operation, maintenance, and administration of BLM lands and facilities thereon along the Downstream Reach for recreation purposes;

(f) “Downstream Reach” shall mean the stretch of the Middle Fork American River below the Oxbow Power House to below the confluence of the North Fork and Middle Fork of the American Rivers to the China Bar Area (T12N, R8E, Sec 23);

(g) “Effective Date” shall mean the date set forth in Article 3 of this Agreement;

- (h) “FERC” shall mean the Federal Energy Regulatory Commission;
- (i) “Final” shall mean, with respect to the New Project License under this Agreement, shall mean the Licensee’s acceptance of a New Project License for the MFP that is no longer subject to any administrative or judicial appeal or review;
- (j) “FPA” shall mean the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*;
- (k) “Good Faith” shall mean honesty of purpose, free from intention to defraud, and faithful to one’s duty or obligation;
- (l) “Middle Fork Project” or “MFP” shall mean the Agency’s Middle Fork American River Project, which is owned and operated by the Placer County Water Agency under FERC Project License No. 2079;
- (m) “New Project License” shall mean the new license issued by FERC pursuant to Section 15 of the FPA to PCWA for the MFP in response to PCWA’s application for new license filed February 23, 2011;
- (n) “Next License Term” shall mean the period of time, if any, for which FERC grants the Agency, and the Agency accepts, the New Project License for the operation of the MFP after the current license expires on February 28, 2013, including any annual licenses issued subsequent to that New Project License, provided such New Project License or subsequent annual license has not been surrendered or terminated;
- (o) “Notice” shall mean a written communication that meets the requirements of Article 13 of this Agreement and any other requirements for notice specifically provided in any other applicable Article of this Agreement;
- (p) “Project Affected Federal Lands” shall mean those recreation areas on BLM Lands and Reclamation Lands along the Downstream Reach;
- (q) “Reclamation Lands” shall mean, for the purposes of this Agreement, federal lands acquired by Reclamation within the Auburn Dam Project Boundary adjacent to the Downstream Reach that are owned in fee by Reclamation;

(r) "Regional Director" shall mean the Regional Director of the Mid-Pacific Region of the United States Bureau of Reclamation, as the Federal official authorized to execute this Agreement on behalf Reclamation;

(s) "Section 4(e) Conditions" or "Section 4(e)" for the purpose of this Agreement shall mean final mandatory terms and conditions submitted to FERC regarding Agency's MFP by BLM or Reclamation under Section 4(e) of the FPA related to the annual operation, maintenance, and administration of Project Affected Federal Lands or any facilities thereon along the Downstream Reach for recreation purposes;

(t) "State" shall mean the State of California;

(u) "State Director" shall mean the State Director for California, United States Bureau of Land Management, as the Federal official authorized to execute this Agreement on behalf of the BLM;

(v) "Uncontrollable Force" means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond the Parties' control. Uncontrollable Force does not include an act of negligence or intentional wrongdoing.

## **TERMS OF AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. AUTHORITIES**

The Parties are authorized to enter into this Agreement pursuant to Federal and State laws including, but not limited to, the following authorities:

1.1 BLM: Section 307(b) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. §1737(b)-(c)).



1.2 Reclamation: Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto, commonly referred to as Federal Reclamation Law, particularly Section 2 of the Act of August 26, 1937 (50 Stat. 844), the Act of August 4, 1939 (53 Stat. 1187), as amended and supplemented, the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. 397a), and the Act of September 2, 1965 (79 Stat. 615).

1.3 Agency: a political subdivision of the State of California, duly organized, existing and acting pursuant to Chapter 81 of the California Water Code Appendix, with its principal place of business in Auburn, California.

## **2. PURPOSES OF AGREEMENT**

The Parties agree that the purposes of this Agreement are as follows:

2.1 To provide a fair and reasonable resolution of issues regarding the Licensee's application for a New Project License to operate the MFP and to address Project impacts on Project Affected Federal Lands and facilities thereon along the Downstream Reach.

2.2 To establish the obligations of Licensee to help fund actions including but not limited to annual operation, maintenance and administration of Project Affected Federal Lands and facilities thereon along the Downstream Reach and for providing for the health and safety of members of the public using those Project Affected Federal Lands and facilities thereon.

## **3. EFFECTIVE DATE AND TERM OF AGREEMENT**

This Agreement shall become effective upon execution by all Parties, and it shall remain in effect throughout the Next License Term, as well as the term of any annual license(s) that may be issued after the Next License Term expires, unless earlier terminated as provided in this Agreement.

## **4. OBLIGATIONS OF THE PARTIES**

4.1 The Parties acknowledge and agree that each will comply with the terms of this Agreement.

4.2 The Agency agrees to contribute and/or advance funds as provided in Article 5 of this Agreement. Reclamation and BLM agree that this contribution or advancement of funds (which Agency has indicated is equally provided by Placer County) shall, for the duration of this Agreement constitute full and complete satisfaction of the Agency's responsibilities and obligations to compensate Reclamation and BLM for any impacts resulting from MFP operations on Project Affected Federal Lands and facilities thereon along the Downstream Reach.

4.3 BLM and Reclamation each agree not to object to the Agency's application for a New Project License for the MFP; and BLM and Reclamation agree to file with FERC a copy of this Agreement, along with a comment stating that, if Agency complies with its terms, the contribution or advancement of funds by the Agency sufficiently satisfies and mitigates any impacts of the MFP to Project Affected Federal Lands and facilities thereon along the Downstream Reach.

4.4 BLM and Reclamation each agree that it will not file with FERC Section 4(e) conditions in the current relicensing proceeding for the MFP, FERC Project No. 2079-069, or seek to reopen the New Project License, except as provided in Articles 9 and 10 of this Agreement.

## **5. AGENCY CONTRIBUTION OF FUNDS FOR PROJECT-RELATED IMPACTS**

The Agency shall contribute or advance funds provided as part of this Agreement under the following terms and conditions:

5.1 By October 1, 2013, and annually by October 1 of each year thereafter throughout the term of this Agreement, to make available to BLM Contributed Funds in the amount of \$226,538.00 to partially fund the cost of annual operation, maintenance, and administration of Project Affected Federal Lands and facilities thereon along the Downstream Reach for recreation purposes. Each annual payment shall be made pursuant to instructions provided by BLM to the Agency at least 120 days prior to the date payment is due. The amount of each annual payment shall be adjusted annually based on the U.S. Gross Domestic Product – Implicit Price Deflator (GDP-IPD) (beginning in year 2013 cost basis). BLM's instructions will include specific directions to submit the annual payment to Reclamation as the current managing entity, or to

other successor entity responsible for managing BLM's interests in recreation and recreation facilities at Project Affected Federal Lands. BLM will retain approximately \$20,000 adjusted for the GDP-IPD annually to cover BLM's role in administering BLM lands.

5.2 By October 1, 2013, and annually by October 1 of each year thereafter throughout the term of this Agreement, to make available to Reclamation Advanced Funds in the amount of \$161,896.00 to partially fund the cost of the annual operation, maintenance, and administration of Project Affected Federal Lands and facilities thereon along the Downstream Reach for recreation purposes. The initial payment shall be made pursuant to instructions provided by Reclamation to the Agency at least 30 days prior to the date payment is due. The amount of each annual payment shall be adjusted annually based on the GDP-IPD (beginning in year 2013 cost basis).

5.3 Reclamation will establish an account in the U.S. Treasury for Advanced Funds paid to Reclamation by the Agency under this Agreement. Reclamation will establish a corresponding account for payments received from the Agency at the direction of BLM. Payments received by Reclamation from the Agency at the direction of BLM will be received and recorded by Reclamation under authority of the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. § 397a). The Agency will transmit any payments to Reclamation by Electronic Fund Transfer (EFT) to a designated lockbox location by October 1, 2013, and by every October 1 of each subsequent year throughout the term of this Agreement. Reclamation will provide separate instructions for that purpose.

## **6. MODIFICATION AND AMENDMENT**

6.1 Changes, modifications, or amendments to the text of this Agreement must be in writing and agreed to by all Parties.

6.2 The Parties agree to enter into a written modification of the Agency's obligation to contribute or advance funds to Reclamation and BLM under this Agreement, upon written notice by Agency to Reclamation and BLM, if FERC issues a Final New Project License for the MFP that contains a license article requiring Agency to provide lump sum or annual payments to BLM and/or Reclamation for the maintenance or management of Project Affected Federal Lands

or facilities thereon along the Downstream Reach. Such written modification will, to the extent possible, reduce the annual payment amount required by this Agreement by the amount of payments required under the license article, unless the payments required under the license article exceed the amounts due under this Agreement in which case the amount due under this Agreement shall be zero. *Provided that* this agreement to enter into a written modification of the Agency's payment obligations under the Agreement shall not apply with respect to any requirement in the Final New Project License requiring Agency to construct one or more recreational facilities at Project Affected Federal Lands along the Downstream Reach.

## **7. TERMINATION**

7.1 This Agreement may be terminated by mutual agreement in writing by the Parties.

7.2 The BLM or Reclamation may each terminate this Agreement upon written notice to Agency under the following conditions:

7.2.1 If Agency does not provide the Contributed Funds or Advanced Funds, respectively, as provided in Article 5 of this Agreement.

7.2.2 If Agency does not provide the statement of support as provided in Article 10.2 of this Agreement.

7.2.3 In the event only one of the two federal agencies elects to terminate this Agreement pursuant to this Article 7.2, the Agreement remains binding and continues under the Agreement's terms in regards to the non-terminating federal agency and the Agency.

7.3 The Agency may terminate this Agreement upon written notice to BLM and Reclamation under the following conditions:

7.3.1 if either BLM or Reclamation files with FERC Section 4(e) conditions in this relicensing proceeding for the MFP, FERC Project No. 2079-069, or seeks to reopen the New Project License as provided in Articles 9 and 10 of this Agreement;

7.3.2 upon completion of construction of the Auburn Dam Project, such that existing recreational opportunities at the Project Affected Federal Lands cease to exist;

7.3.3 upon FERC's approval of the surrender of the existing license for the MFP or New Project License and cessation of MFP operations for hydropower purposes pursuant to final FERC order.

## **8. EFFECT OF THE AGREEMENT ON OTHER PROCEEDINGS**

### **8.1 No Precedent for Other Proceedings**

This Agreement is made upon the express understanding that it constitutes a negotiated resolution of issues among the Parties relating to the New Project License and operation of the Project. Accordingly, this Agreement shall not be offered against the Agency, Reclamation, or BLM as argument, admission, or precedent in any mediation, arbitration, litigation, or other administrative or legal proceeding that does not involve or relate to the New Project License or the operation of the Project.

### **8.2 Future Relicensing of the MFP**

Nothing in this Agreement is intended or shall be construed to affect or restrict the Agency's, Reclamation's, or BLM's participation in or comments about the provisions of any future relicensing of the Project subsequent to the current relicensing, or any other hydroelectric project licensed, or that may be licensed, to the Agency under the FPA.

## **9. AUTHORITY TO PETITION FOR REOPENER OF NEW PROJECT LICENSE**

In the event the Agency fails to make any of the annual payments to BLM or Reclamation as provided in this Agreement, and after proper Notice set forth in Article 13, BLM and/or Reclamation may, in addition to all other remedies available at law or in equity (including money damages) or as otherwise provided pursuant to this Agreement, petition FERC to amend the New Project License pursuant to the reopener condition described in Article 10 to expand the project boundary to encompass all applicable Project Affected Federal Lands, and to include within the

license for the remainder of its term, any new condition(s) requiring the payment of such cost of annual operation, maintenance, and administration of Project Affected Federal Lands and facilities thereon along the Downstream Reach, or conditions to mitigate MFP impacts at Project Affected Federal Lands. The Agency agrees it shall not contest in any manner BLM's or Reclamation's right to petition to reopen and amend the license on the grounds that Agency violated this Agreement but reserves all other rights to oppose any of the new conditions.

#### **10. REOPENER PROVISION FOR INCLUSION IN THE NEW PROJECT LICENSE**

10.1 BLM and Reclamation agree to file by August 5, 2011, a recommended condition for inclusion in the new MFP license that provides BLM and Reclamation the ability to petition to FERC to reopen the MFP license and seek new license conditions to fund the cost of annual operation, maintenance, and administration of Project Affected Federal Lands and facilities thereon along the Downstream Reach. The reopener clause for inclusion in the MFP license is provided in Article 10.3. BLM and Reclamation agree not to exercise or to seek to change this reopener condition in the New Project License, unless the Licensee fails to comply with the payment requirements of this Agreement.

10.2 Agency agrees to submit by (12:00 p.m.) August 8, 2011, a statement to FERC indicating its support for the inclusion of the reopener provision from 10.3 in the New Project License.

10.3. Language of the agreed upon reopener condition to be filed by BLM and Reclamation and supported by Agency:

The Licensee shall provide, or arrange to provide, for the management and administration of a recreation program including the obligation to construct, maintain, and operate, such reasonable recreational facilities, including modifications thereto, such as access roads, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped; and shall also be responsible for reasonably addressing recreation related resource impacts and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation or condition of the Secretary of the Interior, after notice and opportunity for hearing.

**11. NOTICE OF AMENDMENTS TO FERC PROJECT LICENSE**

While this Agreement is in effect, the Agency shall not seek a substantial Amendment to its existing license for the MFP or New Project License that affects recreational flows, without prior written notice of at least 60 days to BLM and Reclamation, provided that such notice shall not be required in cases of emergencies.

**12. DISPUTE RESOLUTION**

12.1 The Parties agree that, in the event of a dispute, the Parties shall use their best efforts to resolve that dispute in an informal and prompt fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties.

12.2 Each party will bear its own costs associated with participating in any such alternative dispute resolution, or by mutual agreement may equally split those costs that may be necessary to initiate and complete such alternative dispute resolution. With respect to the federal agencies, this provision is not meant to guarantee the expenditure of resources in advance of the availability of appropriations from Congress.

12.3 This provision shall not apply to the decision to terminate this Agreement in accordance with its terms.

**13. NOTICES**

13.1 Any verbal or written Notice to be provided under this Agreement shall be given to the following person on behalf of PCWA, Reclamation, and BLM:

Mother Lode Field Office Manager  
Bureau of Land Management  
5151 Hillside Circle  
El Dorado Hills, CA 95762  
916-985-4474

Area Manager, Central California Area Office  
Mid-Pacific Region, Bureau of Reclamation  
7794 Folsom Dam Road  
Folsom, California 95630-1799  
916-989-7200

Board of Directors of the Placer County Water Agency  
P.O. Box 6570  
Auburn, California 95604  
530-823-4850

13.2 Each of Parties may change its designated representative by giving written Notice to the other entities as soon as practicable after learning that its designated representative will change.

13.3 In the event that BLM and/or Reclamation believes that the Agency has failed to make a timely and/or full payment under this Agreement, then BLM's and/or Reclamation's representative identified in Article 13.1 shall make verbal contact with the Agency's representative designated in that same Article, as appropriate, to notify and discuss the apparent lack of payment. If contact is not successfully made with the Agency's representative within 5 business days of BLM's and/or Reclamation's attempt to make verbal contact under this Article, then BLM and/or Reclamation may proceed under Article 13.5 of this Agreement.

13.4 When verbal contact is made under Article 13.3, the representatives of BLM and/or Reclamation and the Agency shall cooperate and take the time mutually agreed is reasonably necessary to determine the status of payment. If no mutual agreement is reached regarding the time necessary to determine the status of payment, the Agency will have no more than 10 business days to determine and communicate the status of payment to the BLM and/or Reclamation.

13.5 In the event no verbal contact has been made under Article 13.3, or if verbal contact is made and the time provided under Article 13.4 expires, then BLM and/or Reclamation shall give the Licensee written Notice that if payment is not made to BLM and/or Reclamation within 20 business days, BLM and/or Reclamation may exercise its rights under Articles 9 and



10 of this Agreement to petition FERC to amend the New Project License and impose new conditions with respect to the Project Affected Federal Lands.

13.6 Except as otherwise provided in this Article 13, all Notices required by this Agreement shall be in writing.

13.7 To the extent practicable, a written Notice shall be sent by U.S. Mail overnight or comparable method of distribution with a certificate of service attached.

13.8 For the purpose of this Agreement, and unless otherwise specified, a written Notice shall be effective upon the next business day after mailing.

13.9 PCWA, Reclamation, and BLM acknowledge that if practicable, e-mail or facsimile may also be used as additional methods of providing written Notice under this Agreement.

#### **14. SUPPORT BY THE PARTIES OF THE AGREEMENT**

##### 14.1 Support of Agreement

Except as necessary to fulfill a statutory, regulatory or other legal requirement, PCWA, Reclamation, and BLM have a continuing duty to support this Agreement, or as appropriate, recommend such support, during an administrative rehearing or judicial review.

##### 14.2 Cooperation Among PCWA, Reclamation, and BLM

PCWA, Reclamation, and BLM shall cooperate in the implementation of this Agreement. None of PCWA, Reclamation, and BLM shall exercise its discretion in a manner that results in an action or requirement that is inconsistent with this Agreement unless necessary to comply with statutory, regulatory, or other legal requirement.

##### 14.3 Support for Implementation

Upon the request of Licensee, Reclamation or BLM shall provide written communications (or orally, in the event written communication is impossible/inappropriate under

the circumstances) of support in any administrative approval process that may be required for implementation or support of this Agreement, but subject to available agency resources and agency authority.

**15. AGREEMENT NOT SUBJECT TO RECLAMATION REFORM ACT OF 1982**

This Agreement does not constitute a contract or an amendment of a contract as described in Section 203(a) of the Reclamation Reform Act of 1982 (“RRA”), as amended, or the rules and regulations enforcing the RRA.

**16. MISCELLANEOUS**

16.1 Preliminary Negotiations Privileged and Confidential

PCWA, Reclamation, and BLM have entered into the negotiations and discussions leading to this Agreement with the understanding that all discussions, communications, drafts, work papers, and notes relating to this Agreement are privileged and confidential. This material shall not prejudice the position of any entity taking part in such discussions and negotiations, and shall not be used by any entity in any manner, including but not limited to admission into evidence, admission, or argument in any forum or proceeding for any purpose, to the fullest extent allowed by law, including but not limited to 18 C.F.R. § 385.606. This provision does not apply to any information that was in the public domain prior to the development of this Agreement or that became part of the public domain at some later time through no unauthorized act or omission by PCWA, Reclamation, and BLM. This provision does not apply to any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law. This Article shall survive any termination of this Agreement.

16.2 Entire Agreement

This Agreement contains the complete and exclusive agreement of PCWA, Reclamation, and BLM with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this Agreement, with respect to its subject matter.

### 16.3 Non-Severable Terms of Agreement

The terms of this Agreement are not severable one from the other. This Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Agreement. If a court of competent jurisdiction rules that any provision in this Agreement is invalid, this Agreement is deemed modified to conform to such ruling, unless PCWA, Reclamation, or BLM objects. If PCWA, Reclamation, or BLM objects, the others agree to meet and confer regarding the continued viability of this Agreement. If agreement cannot be reached, any party may terminate its participation in this Agreement. This Agreement shall continue in full force and effect with regard to the remaining parties.

### 16.4 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any entity other than PCWA, Reclamation, and BLM to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of PCWA, Reclamation, and BLM with respect to third parties shall remain as imposed under applicable law.

### 16.5 Expenses

Each Party shall use its own resources in asserting its rights and performing its obligations under this Agreement, and no Party shall be required to reimburse the other Party for any expense or cost incurred hereunder.

### 16.6 Successors and Assigns

This Agreement shall apply to, and be binding on, and inure to the benefit of the PCWA, Reclamation, and BLM and their successors and assigns, unless otherwise specified in this Agreement.

### 16.7 Continuation of Certain Obligations

Upon completion of a succession or assignment, the initial party shall no longer be a party to this Agreement. The initial party shall not take any action adverse to this Agreement, or the New Project License. This provision does not apply to activities carried out pursuant to the MOU or Interagency Agreement (IAG), including the direction for Agency to send funds to Reclamation as provided by BLM under this Agreement.

#### 16.8 Change of Ownership of Projects

No change in ownership of the Projects or transfer of the existing or New Project License by PCWA shall in any way modify or otherwise affect Reclamation's or BLM's interests, rights, responsibilities, or obligations under this Agreement. Unless prohibited by applicable law, Licensee shall provide in any transaction for a change in ownership of its Project or transfer of its existing or New Project License, that such new owner shall be bound by, and shall assume the rights and obligations of the Licensee under this Agreement upon completion of the change of ownership and approval by FERC of the license transfer.

#### 16.9 Extension of Time; Inability to Perform

None of PCWA, Reclamation, and BLM shall be in breach of this Agreement as a result of a failure to perform or for delay in performance of any contractual obligation under this Agreement, if it is unable to perform or delays performance due to any Uncontrollable Force.

#### 16.10 Notice of Delay or Inability to Perform

The entity among PCWA, Reclamation, and BLM whose performance of an obligation under this Agreement is affected by any delay or inability to perform this Agreement due to any Uncontrollable Force reasonably beyond its control shall provide verbal and written Notice under Article 13 above. This Notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for the implementation of the measures or performance of the obligation. The affected entity shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal and written Notice when it resumes performance of the obligation. Upon Agency

providing Notice to Reclamation or BLM under this Article, neither Reclamation nor BLM shall exercise its right to petition FERC to open the New Project License, expand the Project boundary, and impose new conditions with respect to the Project Affected Federal Lands as provided in Articles 9 and 10 of this Agreement for a period of no less than 60 days.

#### 16.11 Waiver

The failure of PCWA, Reclamation, or BLM to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such entity.

#### 16.12 Governing Law

The New Project License and any other terms of this Agreement over which a federal agency has statutory or regulatory jurisdiction shall be governed, construed, and enforced in accordance with the statutory and regulatory authorities of such agency. By executing this Agreement, Reclamation, or BLM is not consenting to the jurisdiction of a state court unless such jurisdiction is determined to govern. All activities undertaken pursuant to this Agreement shall be in compliance with all applicable law.

#### 16.13 Elected Officials Not to Benefit

No elected officials shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

#### 16.14 Relationship of the Parties

Except as otherwise expressly set forth herein, nothing contained in this Agreement is intended or shall be construed to create an association, trust, partnership, or joint venture, or impose any trust or partnership duty, obligation, or liability on PCWA, Reclamation, or BLM, or create an agency relationship between or among PCWA, Reclamation, and BLM or between any of PCWA, Reclamation, and BLM and any employee of another entity.

#### 16.15 No Changes to Existing Contracts and Agreements

Except as otherwise stated here, this Agreement is entirely separate from and independent of other contracts and agreements among PCWA, Reclamation, and BLM. This Agreement does not and will not be deemed to change any rights or obligations under previously executed contracts or agreements between or among PCWA, Reclamation, and BLM. This provision does not apply to the MOU or any new interagency agreement executed between BLM and Reclamation clarifying the agencies' implementation of this Agreement.

#### 16.16 Reference to Regulations

Any reference in this Agreement to any federal or state law or regulation shall be deemed to be a reference to such law or regulation, or successor law or regulation, in existence as of the date of the action at the time in question or which becomes applicable during the term of this Agreement.

#### 16.17 Article Titles for Convenience Only

The titles for the Articles of this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of PCWA, Reclamation, and BLM. This Agreement has been jointly drafted by PCWA, Reclamation, and BLM and therefore shall be construed according to its plain meaning and not for or against any of PCWA, Reclamation, and BLM.

### **17. EXECUTION OF AGREEMENT**

#### 17.1 Signatory Authority

Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

## 17.2 Signing in Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

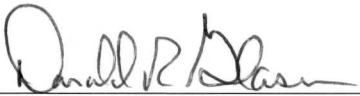




**IN WITNESS THEREOF,**

PCWA, Reclamation, and BLM, through their duly authorized representatives, have caused this Agreement to be executed as of the date set forth in this Agreement.

United States Department of the Interior, Bureau of Reclamation




AUG 04 2011

By: Donald R. Glaser, Regional Director  
(Print) (Title)

**IN WITNESS THEREOF,**

PCWA, Reclamation, and BLM, through their duly authorized representatives, have caused this Agreement to be executed as of the date set forth in this Agreement.

United States Department of the Interior, Bureau of Land Management

 08/04/2011

By: for Peter Dutton, Acting State Director  
(Print) (Title)

# **Exhibit 2**

**Sierra RMP and Record of Decision (2008)**

**\*\* Due to size, this is provided in separate electronic document/format \*\***

# **ATTACHMENT B**

## **U.S. Department of The Interior** **Preliminary Comments and** **Reservation of § 18 Authority for** **The Fish and Wildlife Service**

**Middle Fork American River,  
FERC Project No. 2079,  
Including the Reach Downstream of  
Oxbow Reservoir**

**USFWS Comments on FERC Project No. 2079  
Middle Fork American River Project  
Placer and Eldorado Counties**

**Service Goals and Objectives**

The Service has adopted an ecosystem approach to fish and wildlife resource conservation. This approach requires protecting or restoring the function, structure, and species composition of an ecosystem while providing for its sustainable socioeconomic uses. The Service's overall goal is to restore and protect fish and wildlife resources supported by the American River ecosystem. Without development and implementation of appropriate planning and avoidance measures, we believe this Project could threaten basic resource values of the riverine environment.

Included in the ecosystem approach is conservation of ecosystems that support species listed under the Endangered Species Act (ESA). The Service's goal is to engage in ESA Section 7 consultation on the California red-legged frog and other terrestrial species that might be affected by the Project.

If the threatened Central Valley steelhead (*Oncorhynchus mykiss*) gains access to the Project area during the life of the license, the Service may seek to conserve habitat values and Central Valley steelhead life-history patterns through fishway passage prescriptions under Section 18 of the FPA.

**ESA Listed Species**

Since 2008, the Service has been in informal consultation with the Applicant regarding service-area effects to listed species that may result from increased capacity and water delivery should a license be issued for the Project. If it is determined through informal consultation that formal consultation is needed, the Service requests that the Commission be the lead Federal agency in the consultation unless another lead Federal agency is agreed upon. If increases in water storage capacity do not result in increased water delivery, the Service requests a clear analysis of the destination of the additional water held back by the Project facilities that will have increased capacity under the new license.

As a result of the National Marine Fisheries Service (NMFS) biological opinion on operations criteria (OCAP) for the Central Valley Project (NMFS BiOp), the Central Valley steelhead may be affected by the Project during the life of the license. The Commission should include alternatives in the EA or EIS that address: (1) a combination of passage scenarios at all dams, and (2) passage scenarios at a subset of dams. The guiding documents on prioritizing fish passage alternatives should be: (1) the National Marine Fisheries Service (NMFS) biological opinion on operations criteria (OCAP) for the Central Valley Project, (2) the Draft Recovery Plan for Central Valley Salmonids. Consultation on Project effects to Central Valley steelhead should occur with the National Marine Fisheries Service, the agency with regulatory oversight for this species.

**Geographic Scope**

The appropriate “Geographic Scope” of the proposed action should encompass the entire area where effects can be detected, estimated, or measured. In addition, the effects of interrelated and interdependent actions in the Middle Fork American River watershed should guide the geographic scope of both the ESA consultation and analyses in the EA or EIS. For example, flows and diversions on the Middle Fork American River may affect projects, actions, and habitat downstream. In addition, water temperature changes, resulting from the Project, are likely to be detected, estimated, and measured downstream.

### **Reservation of Section 18 Authority Article**

Authority is reserved for the Department of the Interior 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 Section 18 of the Federal Power Act, as amended, during the term of the Project license.

### **Justification for Reservation of Section 18 Authority Article**

As a result of recovery actions for the species and regulation under the ESA, the Central Valley steelhead may gain access to the Middle Fork of the American River during the life of a new license. At such time this species will be blocked from the Middle Fork of the American River by Project works.

Pursuant to Section 18 of the Federal Power Act, the Commission shall require the construction, maintenance, and operation by a Licensee 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 the Interior is exercising the Department's Section 18 authority through the inclusion in the license of a separate license article that reserves the Department's authority to prescribe fishways, over the term of the license, pursuant to Section 18 of the FPA.

### **Conclusion**

In light of the above comments and goals and objectives, the Service seeks to ensure that appropriate levels of resource protection are incorporated in any new license that may be issued for the Middle Fork American River Project.

Thank you for your attention. If you have any questions regarding this correspondence, please contact Alison Willy of the Conservation, Restoration and Contaminants Program at (916) 414-6600. Questions pertaining specifically to federally-listed species should be directed to Jeremiah Karuzas of the Coast Bay Forest Foothill Division at the same phone number.

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

|   |   |                         |
|---|---|-------------------------|
| <b>Middle Fork American River Project</b> | ) |                         |
|   | ) |                         |
|   | ) | <b>Project No. 2079</b> |
| <b>Application for New License</b>        | ) |                         |
|   | ) |                         |
|   | ) |                         |

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Certificate of Service

I hereby certify that the foregoing Response to Commission's June 7, 2011, Notice that Project is Ready for Environmental Analysis of the Department of the Interior in the above-captioned proceeding has this day been filed electronically with the Federal Energy Regulatory Commission and served, via electronic-mail where electronic-mail addresses were provided, or via deposit in U.S. mail where no electronic-mail addresses were provided or where electronic-mail service failed, upon each person designated on the Service List compiled by the Commission Secretary for this Project.

Dated at Sacramento, California, this 5<sup>th</sup> day of August, 2011.



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Luke Miller  
Office of the Solicitor  
Department of the Interior  
2800 Cottage Way, E-1712  
Sacramento, CA 95825