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ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE Room 1-A
Washington D.C. 20426

Re: Comments on Scoping Document 1, Pre-Application Document, Merced River Hydroelectric Project No. 2179-042

Applicant's Proposed Actions

Invading a Federal wild and scenic river corridor:

The January 2009 FERC EA Scoping Document 1 identifies “increasing usable storage and the *maximum storage elevation* at Lake McClure” as a change under consideration by the applicant, the Merced Irrigation District (MID). According to Scoping Document 1, FERC’s environmental analysis “*will consider...*, at minimum, the potential applicant’s proposed action.” (*emphasis added*) Increasing the maximum storage elevation at Lake McClure would invade the wild & scenic river upstream of the FERC-licensed reservoir.

This raises an important issue: as a matter of law or policy, should FERC and Federal agencies *assist* in the development of such projects by adopting, developing, and carrying forward such licensing alternatives in FERC’s National Environmental Policy Act (NEPA) analysis.

Wild & scenic river boundary discussion

There is no doubt that increasing the maximum storage elevation of New Exchequer Dam (which impounds Lake McClure Reservoir) would invade the Merced national wild and scenic river.¹

¹ This is perhaps not disputed by MID. See PAD Executive Summary, section 7.9, §4, p. ES-14. However, in the PAD (8.2.9.7), MID notes that it “plans to include in its application for a new license an assessment regarding whether the proposed storage increase [installing control structures on the ungated spillway] would affect the Merced River Wild and Scenic River.” Perhaps a letter from the Commission or the wild and scenic river managing agency could save them the trouble of the assessment.

Reflecting on the bill language that ultimately was adopted, the Senate Report (102-231) described the effect of the legislation on projects that might be permissible in this licensing proceeding:

Section 3 specifically provides that the designation of the lower² Merced as a component of the Wild and Scenic Rivers System shall not affect the continued operation and maintenance of the New Exchequer Project as licensed by the Federal Energy Regulatory Commission, nor will it affect the Commission's authority to relicense the project within the project boundaries set forth in the license on the date of enactment of this Act (provided that if FERC relicenses the project, the normal maximum operating pool water surface level shall not exceed elevation 867.0 feet, mean sea level).

This section recognizes and provides that there will be an overlap between a part of the lower Merced River designated as a component of the Wild and Scenic Rivers System by this Act and part of the project boundaries of the New Exchequer project, as currently licensed. Section 3 also authorizes, but does not require, the Federal Energy Regulatory Commission to relicense the New Exchequer Project although a part of the lower Merced River designated as a Wild and Scenic River will continue to be inside the boundaries of the project as licensed by the Commission.

The Committee understands that some parties have expressed concern about the possible effect designation of the lower Merced as a Wild and Scenic River might have on the New Exchequer Project. Section 3 makes clear that designation of the river as a component of the Wild and Scenic Rivers System will not affect the continued operation and maintenance of the project or with the Federal Energy Regulatory Commission's authority to relicense the project. Section 3 ensures that if the project is relicensed, it will not be expanded beyond its current normal maximum operating pool water surface level of elevation 867.0 feet, mean sea level.³

In addition to the specific direction from the Congress defining the wild and scenic river boundary at Lake McClure Reservoir's current normal maximum operating pool, FERC Chairman Martin L. Allday's March 20, 1991, letter to the Chair of the Senate Committee on Energy & Natural Resources concerning the then pending Merced River wild-and-scenic-river bill noted the following:

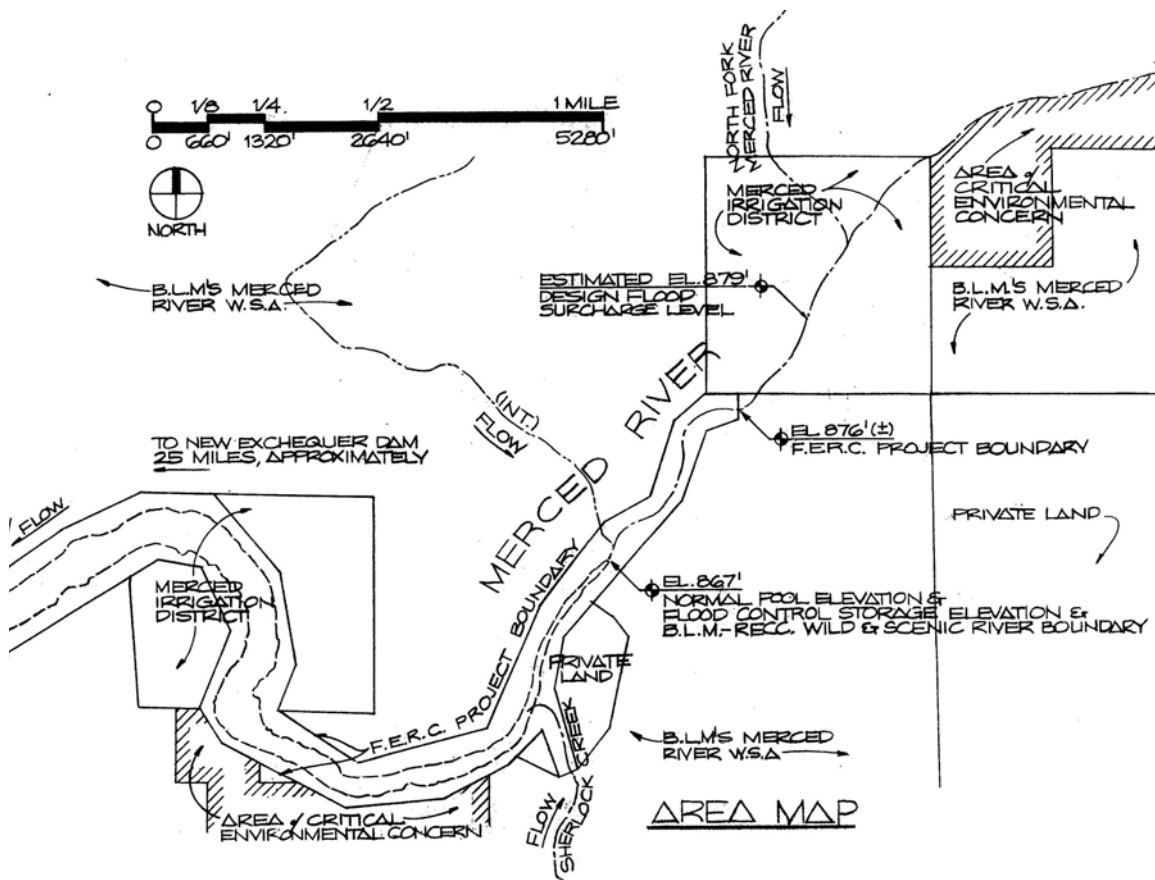
² During the Congressional Merced River wild-and-scenic river deliberations, the Merced River from Briceburg to Lake McClure Reservoir was referred to as the Lower Merced. In this FERC licensing proceeding, the Lower Merced refers to the river downstream of the FERC-licensed dams to the Merced's confluence with the San Joaquin River.

³ 867 feet msl (mean sea level, NGVD 1929) is the elevation (minus one foot for waves and slosh) of the existing ungated spillway lip, the low point of the dam structure that impounds water.

The Commission has determined that it is the responsibility of the administering Secretary, not the Commission, to make determinations regarding the consistency of a proposed project with provisions of the Rivers Act. See China Flat Company, 27 FERC § 61,024 (1984).

Congress’s designation, boundary determination, and direction to FERC followed the 1986 and 1991 recommendations of the Bureau of Land Management (BLM), Forest Service, and National Park Service for the boundary between the Merced Irrigation District’s (MID) FERC-licensed Lake McClure Reservoir and the then proposed Merced wild & scenic river upstream.

The joint agency policy was established in the Sierra National Forest’s 1986 draft land and resource management plan. This plan consolidated wild-and-scenic-river recommendations from all three federal agencies managing land along the river. Subsequent BLM planning documents reaffirmed the earlier agency boundary policy. The agency recommendations were embodied in the Congressional action designating this reach of the Merced in 1992, and shown on the following map presented by Friends of the River in Congressional testimony.



F.O.R Map prepared for 1991 Congressional testimony showing agency-proposed wild and scenic river/reservoir boundary — We understand that the MID parcel at the North Fork confluence just upstream of the project boundary was subsequently acquired by the BLM.

The wild-and-scenic-river managing agencies recommended establishing the wild-and-scenic-river/reservoir boundary at the upstream river location corresponding to the elevation of the ungated spillway of the dam (in this specific case, the nominal “normal pool” of the reservoir). The agencies took the view that this was the location on the river where the FERC-licensed project works no longer impound a reservoir “on” or “directly affecting” a wild and scenic river. They took this view because above this point a dam lacks the operational capacity to *store* water, the conventional definition of a reservoir. Their view was embodied in the legislation passed by the Congress. In the view of the agencies and the Congress, below this point the District has (if Providence provides) the ability to conduct any reservoir storage or release operations consistent with the FERC license, Corps of Engineers reservoir regulation manual, Endangered Species Act compliance, state water rights, its agreements, or other provisions of law.

Effect of the Boundary determination

Section 7(a) of the Wild & Scenic Rivers Act is the critical section here. This section prohibits FERC from licensing any reservoir “on or directly affecting” a wild and scenic river. Just as importantly, the following language appears in another key section of section 7:

[n]o department or agency of the United States shall *assist* by loan, grant, license, or *otherwise* in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. (*emphasis added*)

As noted in the §7 section of the Interagency Wild & Scenic Rivers Coordinating Council’s Wild & Scenic Rivers Reference Guide: “Section 7 is one of the most important and powerful parts of the Wild and Scenic Rivers Act... This key provision directs federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally authorized study rivers.”

This section of the Reference Guide further defines the following key terms:

Construction: Any action carried on with federal assistance affecting the free-flowing characteristics or the scenic or natural values of a wild and scenic river...

Federal Assistance: Any assistance by an authorizing agency *before*, during, or after construction. Such assistance may include but is not limited to: a license, preliminary permit, permit, or other authorization granted by FERC...

Free-flowing: Defined in the Act at Section 16(b) as “existing or flowing in natural condition *without impoundment*, diversion, straightening, rip-rapping, or other modification of the waterway.”

Values for Which the River Is Designated... : Defined in the Act at Section 1(b) as the river's *free-flowing* condition, water quality, and outstandingly remarkable values.
(*emphasis added*)

It seems clear that the adoption of a FERC NEPA review alternative that is carried forward that the Commission is specifically prohibited from licensing is a questionable use of Federal resources and — by policy — should not be carried forward. But more importantly, adoption of such a plan alternative would appear to be prohibited “*assistance* by an authorizing agency *before*” construction of a prohibited project. Thus such actions would be precluded by Section 7(a) according to the Interagency Reference Guide. To highlight that a study process action can be considered Federal Assistance, the Reference Guide identifies FERC preliminary permits as Federal Assistance. These permits are a priority-preservation mechanism that allows an aspiring licensee who might face a competing license application to more confidently participate in the pre-licensing application development process — a study and NEPA process intended to result in the application for a *new license*, a term that the Commission also uses for new licenses issued in relicensing proceedings.

It should also be obvious that the Reference Guide’s definition of Federal Assistance (confining the definition of assistance to an authorizing agency) does not capture the wide reach of the statute itself:

no department or agency of the United States shall assist by loan, grant, license, or otherwise... (*emphasis added*)

It is also important to recognize that Federal wild-and-scenic-river managing agencies (and Federal resources agencies) may participate in the relicensing process as cooperating, condition-setting, or commenting agencies. Thus, they, too, have a responsibility to not provide “*assistance* by loan, grant, license, or *otherwise*” to a prohibited project.⁴

Invading the Corps of Engineers Required Flood Pool

The January 2009 FERC EA Scoping Document 1 identifies “*increasing usable storage and the maximum storage elevation at Lake McClure*” as a change under consideration by the applicant,

⁴ Although not germane to the policy and legal question of Wild & Scenic Rivers Act compliance, it is not particularly clear what significant benefit could be derived from increasing the size of Lake McClure Reservoir. Exchequer Dam has never spilled over its ungated spillway nor made a release significantly larger than its downstream objective flood release in its entire history — creating a small defacto floodway certainly less than one tenth the Merced’s natural floodway. With full reservoirs, 24 miles of the Merced River can lay under the District’s FERC-licensed reservoirs. In a long series of its annual reports at the time of the designation, the District asserted, “The district now has virtual control of the waters of the Merced as long as such waters are put to beneficial use and it is assured of an adequate irrigation supply for the foreseeable future.”

the Merced Irrigation District (MID). (*emphasis added*) The mechanism of “increasing usable storage” is not defined, but presumably is intended to mean conditional storage in the existing Corps of Engineers flood-control-space reservation.⁵

Allowing or increasing conditional storage to encroach into currently required flood-control space degrades flood-control performance of a reservoir, particularly those in the San Joaquin Valley. The circumstances here are succinctly summarized in the report from the Independent Review Panel to the Department of Water Resources, State of California, A California Challenge — Flooding in the Central Valley chaired by General Gerald Galloway:

The San Joaquin Valley is also rimmed with dams, but floodway capacities in this system are small and designed for managing snow-melt flooding. Unregulated rain-flood flows from many dams are quite foreseeable (and occurred in 1997), in part because major reservoir-flood-space encroachments can occur from storms that may have happened days, weeks, or even months earlier. Only some of the San Joaquin levees have been certified, have received accreditation status from the Federal Emergency Management Agency, and are mapped as providing protection from 100-year flooding.

Risk management approaches in the San Joaquin basin are largely the official recognition of floodplain flooding and some relatively minor levee improvements and setbacks. In contrast to the Sacramento Valley, *in the San Joaquin Valley, the effectiveness of dam operation for modification of rain-generated floods is substantially limited by the Valley’s minimal floodway capacity.* The first flood fills the reservoir, and evacuation of the water is limited by the downstream channel capacities. This makes the likelihood of spilling large flood flows from the reservoir much greater during subsequent flood events. *Expansion of floodways in tributary streams would be very helpful for dam operations during floods* if the water could be either safely routed

⁵ “Conditional” storage in this context means rules that permit storage of water for conservation and power production purposes in the otherwise required empty space of a Corps of Engineers required “flood pool.” The conditions are usually watershed conditions that would make it less likely for a reservoir to experience challenging flood operations. Conditions also include rules to recover the required flood space when watershed conditions change. This is very difficult to accomplish when dam low-level outlet capabilities and downstream floodway capacities are very small in relation to inflows or reservoir storage — the circumstances at New Exchequer Dam in large rain floods.

through the Sacramento/San Joaquin River Delta or into valley-bottom floodplains.⁶
(*emphasis added*)

The limited effectiveness of modifications to dam operations without expanded floodways to improve floodwater management operations at San Joaquin Valley dams was recognized by Governor Wilson's Flood Emergency Action Team (FEAT) "Final Report" ten years earlier. Reflecting on the unregulated release of 60,000 cfs from the Modesto and Turlock Irrigation Districts' FERC-licensed Don Pedro Dam ungated spillway into the Tuolumne River, the "Final Report" recommended the following:

The FEAT recommends CALFED and DFG expedite funding and construction of the Tuolumne River floodway emergency repair and long-term restoration project. The proposal is to restore the floodway width to safely convey floods *twice* the size of existing channel capacity. (P. 136, *emphasis added*)

The undertaking would be significant. Again, according to the FEAT:

An emergency repair and long-term restoration plan has been proposed by the Tuolumne River Stakeholders group and the Tuolumne River Technical Advisory Committee who strongly support restoration of this reach of the Tuolumne River.

Repair of this reach will require reconstruction of the levee system. This proposal is to acquire lands, rights of way, and retire the existing levees and build setback levees to create a floodway and riparian zone with a minimum width of 500 to 600 feet. This width would safely convey floods up to 20,000 cfs.

This is a cooperative effort between gravel operators, water districts, land owners and state and local agencies. Costs of this work are estimated to be \$15 million; the work is proposed to be constructed in two phases, with Phase I of the construction scheduled to begin this summer. (Pp. 135-136)⁷

⁶ Pp. 11-12. October 15, 2007. The Independent Review Panel consisted of Dr. Gerald E. Galloway (University of Maryland), Dr. John J. Boland (Johns Hopkins University), Dr. Raymond J. Burby (University of North Carolina at Chapel Hill), Cristophery B. Groves (Shannon & Wilson Inc., St. Louis, MO), Susan Lien Longville (Water Resources Institute, California State University, San Bernardino), Dr. Lewis E. Link, Jr. (University of Maryland), Dr. Jeffrey F. Mount (University of California, Davis), Dr. Jeff Opperman (The Nature Conservancy), Dr. Raymond B. Seed (University of California, Berkeley), George L. Sills (U.S. Army Corps of Engineers Research and Development Center), James J. Smyth (Smyth Water Planning Solutions, Raleigh NC), Ronald Stork (Friends of the River), Edward A. Thomas, Esq. (Association of State Floodplain Manager). The Report is available from DWR. <http://www.water.ca.gov/news/newsreleases/2008/101507challenge.pdf>

⁷ Final Report, Governor's Flood Emergency Action Team, May 10, 1997. The FEAT was chaired by California Resources Agency Secretary Douglas Wheeler. A response to the 1997 California New Years Day floods, it included the heads of thirteen State of California agencies, departments, and

Since any proposal to conditionally store water in Lake McClure's flood pool would necessarily increase the risk of very large unregulated flood releases from New Exchequer Dam, any permission to do so would, in all probability, result in a requirement to reduce that risk. There is one obvious way to do this. As noted by the Independent Review Panel, "Expansion of floodways in [San Joaquin River] tributary streams would be very helpful for dam operations during floods if the water could be either safely routed through the Sacramento/San Joaquin River Delta or into valley-bottom floodplains."

The ability to meaningfully increase the objective flood release from the New Exchequer Dam could mitigate for the lost flood-control performance that encroaching the flood pool would create. In order to do this, the area of the floodway downstream that is institutionally prepared to accommodate regulated flood releases would have to be increased. Such an area of project effect would be well downstream of Commission-licensed and MID dams on the Merced River.⁸ Additionally, low-level outlet capacity of New Exchequer Dam might be needed to fully utilize the increased floodway capacity, and especially to achieve mitigative conditional increases in required flood space when watershed conditions are favorable for flooding.⁹ In addition, there is no discussion about the suitability of the current gated and ungated spillway (or Howell-Bunger valve, for that matter) if there is an operational change that might increase the frequency of their use.¹⁰

boards.

⁸ In Section 4.2.4 of Scoping Document 1, the effect of the project on riparian/wetland resources is limited to upstream of the licensee's main irrigation diversion dam (Crocker-Huffman Dam). Clearly, any increased objective flood release into an expanded floodway would extend well downstream of Crocker-Huffman Dam. Thus the Scoping Document 1 project effect for this and related resources does not extend far enough downstream. The effect of the project is limited to the upstream of Crocker-Huffman Dam for other important resources issues, an issue cogently discussed by CSPA and others in their comments. This determination is not likely to stand as the Commission looks more closely at the project.

⁹ The FEAT recommendation to double the Tuolumne River designated floodway was based on the existing, but, given downstream flow constraints, not fully usable low-level outlet capacity of FERC-licensed Don Pedro Dam (plus expected downstream accretion flows). Thus only downstream floodway expansions would be required to materially increase the flood-control performance of Don Pedro Dam. The difference between New Exchequer Dam's low-level outlet capacity and its objective flood release is far smaller, so both dam modifications and floodway expansion might be required to materially improve the floodwater-management performance of New Exchequer Dam to compensate for loss of usable flood space in the applicant's implied proposal.

¹⁰ The description the initial filling of the reservoir in History of the Merced Irrigation District is illustrative.

In the meantime, settlement in the dam's rock fill caused several ruptures at the joints between the slabs comprising the dam facing and, while a great deal of corrective work had been done by divers with the aid of an underwater television camera since March, the

Although neither the PAD or Scoping Document 1 make the views of the applicant or the Commission clear, this issue is not entirely an issue for the U.S. Army Corps of Engineers. FERC must play a role as well. The applicant is proposing to increase usable storage at New Exchequer Dam as part of this relicensing. (*Scoping Document 1, p. 5*) An expansion of the downstream floodway would be a necessary part of any such project to utilize the Corps' required flood pool. Expanded low-level outlet capability at the dam may be a necessary part of any such project to permit prompt and complete evacuation of any conditionally stored water in the flood-control space or advance-release space. However, the applicant also is proposing that MID's 1981 Agreement with the Department of the Army regarding flood control be included as an article in the FERC license and, if the agreement is modified, the modification would be filed with the Commission. (*PAD, 9.2.2, Scoping Document 1 4.3*)

leakage had risen to over 300 cubic feet per second.

...[District consultants] reported that there was no question whatsoever as to the dam's safety and stability but that the leakage was an economic problem in that the water did not go through the generator.

Nevertheless, on June 23rd the State Division of Dam Safety ordered that the water be lowered some 34 feet to the bottom of the spillway gates, even if it meant that some river bottom land would be flooded. Accordingly the 96-inch Howell-Bunger valve was opened to its design of 8,000 cubic feet per second and preparations were made to reinforce two roadway culverts across the spillway channel so that the spill gates might be opened to add to the flow. The planning was for naught.

On the evening of June 26th the valve failed and parts of it were hurled several hundred feet from the powerhouse. At risk of life and limb, Eugene Turlis, the District operator on duty, was able to close the inlet gate and isolate the damaged machine; however, this meant that the total discharge must be put through the spillway gates; it was, with far reaching results.

The roadways over the culverts washed out within hours, leaving the top of the dam isolated except for an old and steep work road from the Exchequer housing area; the velocity created by a better than 9,100 cubic feet per second flow down the [gated] spillway channel caused erosion that deposited thousands of cubic yards of rock and earth in the Merced River below the dam; this debris raised the tailwater at Exchequer higher than was acceptable under the P.G.&E. contract. Improved, but roundabout, access to the dam and power plant was arranged by building a ramp to the top of the gated spillway; this was done on June 27.

...The District insisted that the valve failure was the responsibility of the Allis-Chalmers Company, a Sub-Contractor which had designed the valve; the specifications had simply called for a valve that would discharge 8,000 cubic feet per second at a certain head. Since its failure cause the spillway gates to have been used and the wash-outs and debris deposits, it was clearly Dravo's responsibility (under normal conditions and with prudent operation, there is no need for discharge through the spillway; the valve will take care of all but catastrophic floods. It has not been used since that fateful 1967 period except for occasional scenic effects.) History of the Merced Irrigation District, by Kenneth R. McSwain, Merced Irrigation District, 1978.

The Commission's authorities and responsibilities regarding this matter impose a duty to engage on this issue and not merely leave the issue unexamined for some undefined future decision between the applicant and the Corps of Engineers.

Under Section 10(a) of the Federal Power Act, projects licensed by the Commission "will be best adapted to a comprehensive plan for improving or developing the waterway...and for other beneficial uses, including irrigation, *flood control*, water supply, and recreation, and for other purposes referred to in section 4(e). (*emphasis added*)

Section 10(b) of the Federal Power makes it clear that "no substantial alteration or addition not in compliance with the approved plans shall be made to any dam or other project works...without the approval of the Commission."

But neither the PAD or Scoping Document 1 provide any discussion on the nature of the applicant's implied proposal to modify its Corps required flood-control operations or any physical changes to the dam. Neither are any studies proposed to help design any potential modifications. Indeed, the PAD states that the licensee's proposed measure 33 is to "adhere to the existing 1981 agreement with the Department of the Army" and to simply file with the Commission any subsequent agreements with the Commission. (*PAD 9.2.2*)

This is a state of confusion that should not exist in either the PAD or Scoping Document 1. From the perspective of responding to the PAD, it is simply impossible to provide the Commission with proposed studies when there is no information about what the applicant is proposing as part of its "increase usable storage" proposal.

Such Exchequer Dam reoperation studies could include the following: optimization modeling for floodway expansion size and conditional storage into flood space; resource inventories along the potential floodway expansion area; cost assessments for flood easements and rights of way; identification of floodway facilities that might need to be relocated or modified; assessments for habitat improvement possibilities associated with floodway expansion; development of habitat design approaches; modeling and surveys necessary to establish the design philosophy for routing higher regulated flood releases into the Central Valley floodwater-management systems; assessments of the environmental impacts of flood-season flow reductions because of flood-pool encroachments; engineering assessments for increasing low-level outlet capacity at Exchequer Dam; and assessments of the capabilities and suitability of outlet structures, spillways, and routes for dam flood releases.

And this may by no means be a comprehensive list or required studies.

We believe that there could be significant environmental and floodwater management advantages to expansion of the downstream Merced River floodway. There are some water conservation, energy production, and water management advantages to the associated conditional storage in the dam's flood pool. Of course, increases in the risks of flows over and through the dam's flood outlets carry their own issues and environmental risks that must be

counterbalanced — but there could be potential environmental benefits if designed properly. Indeed, enhancing habitat characteristics on the Lower Merced has been a significant focus of resources agencies. This is an important puzzle to work through. But if the Commission wishes to make an informed decision on this important matter, a vigorous planning, modeling, and optimization design effort will have to be made — an effort that should begin with a serious project design and study effort by the applicant, resources agencies, California State and Federal flood planners, and other relicensing participants.

Actions Not Proposed by the Applicant

The existing record, and the record augmented by other contemporaneous filings, is clear that a major issue in the relicensing of the Merced River Hydroelectric Project (P-2170) and Merced Falls Project (P-2467) will be how the licensing and related decisions contribute to the recovery of anadromous fisheries of interest to State and Federal resources agencies. This will be a challenge. The projects and MID's downstream facilities block access to habitats historically necessary for the health of many of these fish stocks. Flows downstream of the dams are also insufficient to keep these fisheries in good condition. Temperatures affected by project and MID dams are also not favorable for these fisheries.

The Commission, resources agencies, the State Water Resources Control Board, the applicants, and participants in these licensing proceedings will have to grapple with these fundamental problems, both in the context of this relicensing and other proceedings undertaken under the respective authorities and responsibilities of the governmental agencies.

This is not beyond the Commission's comprehensive planning mission embodied in section 10(a)(1) of the Federal Power Act:

That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will 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 recreational and other purposes...

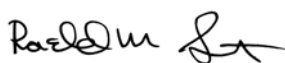
Putting together just such a comprehensive plan requires the Commission to approach the watershed comprehensively and work with the relicensing participants, particularly with State and Federal agencies to appropriately use their authorities to achieve such a plan. It is unlikely to achieve success if it takes a narrow view of its authority, the project, and the roles and responsibilities of the other participants in this proceeding. It must recognize and seek to achieve the aims of the comprehensive plans of State and Federal agencies. This project can influence water quality issues of importance. This project affects endangered species. Do a good job.

Of general concern in reviewing the PAD is the absence of information and studies aimed at designing project features that could be reasonably expected to appear in the relicensed project. For example, we have already discussed the absence of information about implied project requirements for an “increase usable storage” project element. But neither does there appear to be any project-element design studies on how to create better temperature-control capabilities of the project that affect downstream waters. Clearly adverse water temperatures from the project have created problems for anadromous fisheries of concern for resources agencies.¹¹

One easy traditional approach to that managing temperatures better at many dams has been the construction of deeper multilevel inlet structures for power production inlets. Use of higher inlets during times of low temperature stress avoids unnecessary depletion of deeper, colder waters. Use of the lower inlet(s) draws on the lowest and, usually, coldest layers of a reservoir’s temperature profile. The approach is, by itself, unlikely to be sufficient to solve the anadromous fishery downstream, but it is likely to be helpful. Relicensing is the time to make modifications to project facilities to address resource issues of concern.

Let’s roll up our sleeves and tackle them.

Sincerely yours,



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¹¹ Restoring Central Valley Streams: A Plan for Action, Department of Fish and Game, November 1993, p. VII-96.

1992 Merced River designation, final language (P.L. 100-149)

(B)(1) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the normal maximum operating level of lake McClure (elevation 867 feet mean sea level) consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990.

SEC. 6. NEW EXCHEQUER PROJECT.

The designation of the river segments referred to in section 1 of this Act as components of the Wild and Scenic Rivers System shall not affect the continued operation and maintenance (including flood control operations) of the New Exchequer Project (project No. 2179) as licensed by the Federal Energy Regulatory Commission on the date of enactment of this Act or the Commission's authority to issue a new license to the existing license on the date of enactment of this Act: *Provided* that if the Commission issues a new license to the existing licensee for such a project, the normal maximum operating pool water surface level authorized in the project's license shall not exceed elevation 867.0 mean sea level.

SEC. 7a. WILD AND SCENIC RIVERS ACT

SEC. 7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.) on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be in writing of its intention so to do at least sixty day in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act...

