UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 0 2 2012

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

Subject: Draft Environmental Impact Statement for Hydropower License, Middle Fork American River Hydroelectric Project FERC Project No. 2079-069, California (CEQ# 20120250)

Dear Ms. Bose:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (EIS) for the Hydropower License for the Middle Fork American River Hydroelectric Project, FERC Project No. 2079-069, Placer and El Dorado Counties, California. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Draft EIS evaluates the Federal Energy Regulatory Commission's (FERC) proposal to issue a new major license, for a period of 50 years, to Placer County Water Authority (PCWA) to operate and maintain its Middle Fork American River hydroelectric project. EPA appreciates the efforts by FERC staff to incorporate requirements into the relicense to protect and enhance environmental resources. Nevertheless, EPA has some concerns regarding potential impacts to air and water quality from the project's construction, maintenance, or operational activities. We are also concerned about the document's heavy reliance on a suite of management plans that are yet to be developed. We recognize that many of these plans are intended to provide environmental benefits; however, the lack of analysis in the Draft EIS regarding the impacts of their implementation precludes full assessment of the environmental impacts of the proposed project. Accordingly, based on our review of the Draft EIS, we have rated the project and document as Environmental Concerns – Insufficient Information (EC-2). Please see the enclosed "*Summary of EPA Rating Definitions*". The enclosed detailed comments elaborate on the above and other concerns, and provide recommendations regarding analyses and documentation needed to fully assess the potential adverse impacts from the Proposed Action and Action Alternatives.

Please note that, as of October 1, 2012, EPA Headquarters no longer accepts paper copies or CDs of EISs for official filing purposes. Submissions on or after October 1, 2012 must be made through EPA's new electronic EIS submittal tool: *e-NEPA*. To begin using *e-NEPA*, you must first register with EPA's electronic reporting site - https://cdx.epa.gov/epa_home.asp. Electronic filing with EPA Headquarters does not change the requirement to submit a hard copy to the EPA Region 9 Office for review.

EPA appreciates the opportunity to provide input on this hydroelectric relicense. We are available to discuss all recommendations provided. When the Final EIS is released for public review, please send one hard copy and one CD to the address above (Mail Code: CED-2). If you have any questions, please

contact me at 415-972-3521, or contact Stephanie Skophammer, the lead reviewer for this project. Stephanie can be reached at 415-972-3098 or skophammer.stephanie@epa.gov.

Sincerely,

Connell Dunning

FOR Kathleen Martyn Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures: Summary of EPA Rating Definitions
Detailed Comments

cc: Mo Tebbe, Forest Service
Beth Paulson, Forest Service
Water Quality Control Board

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment

U.S. EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR HYDROPOWER LICENSE, MIDDLE FORK AMERICAN RIVER HYDROELECTRIC PROJECT FERC PROJECT NO. 2079-069, CALIFORNIA OCTOBER 2, 2012

Air Quality

The Draft EIS does not include an evaluation of existing air quality within the geographic scope of the project and does not examine the potential impacts to air quality from the project. Such an evaluation is necessary to assure compliance with State and Federal air quality regulations, and to disclose the potential impacts from temporary or cumulative degradation of air quality (referenced on p. 361 but not discussed).

The Draft EIS lists numerous environmental measures proposed by Placer County Water Authority (PCWA) and Federal Energy Regulatory Commission (FERC) staff that have the potential to impact air quality as a result of construction, maintenance, or operational activities (p.26). These actions include vegetation management. For example, the Draft EIS explains that burning activities associated with Large Woody Debris (LWD) might be taking place currently and in the future as part of the Action Alternatives (p. 60, p. 317). The impacts of the burning are not evaluated, nor are they compared to existing conditions (project baseline).

The proposed project would include fire prevention, management, and response actions; however, no analysis of the environmental impacts of such actions is included in the Draft EIS. We note that the U.S. Forest Service conditions specify that PCWA must file a fire prevention and response plan within 1 year of license issuance (p. 246).

> ***Recommendation:***
> The Final EIS should include a discussion of existing air quality and conformity with State and Federal air regulations. It should describe and estimate air emissions from potential construction and other activities, as well as proposed mitigation measures to minimize those emissions. It should compare proposed emissions with current conditions.
>
> Include an analysis of impacts expected from implementation of a fire management and response plan. This should include direct, indirect, and cumulative impacts.

Clean Water Act (CWA) Requirements

CWA Section 404 Permitting

The Draft EIS indicates that construction activities would occur as part of the Action Alternatives. These activities include the construction of recreational facilities, de-watering impoundments, access roads, and modifying Hell Hole dam spillway. The Draft EIS defers to the Sediment Management Plan and does not discuss the applicability of CWA Section 404 and Rivers and Harbors Act Section 10 to these or other project operations and maintenance that may involve dredging or discharge to Waters of the U.S. (p. 184).

> ***Recommendation:***
> The Final EIS should include a discussion of the applicability of CWA Section 404 and Rivers and Harbors Act Section 10 to project operations and maintenance activities (including potential dredging activities). In addition, the document should clearly identify the potential environmental impacts from dredging activities, and discuss the permit requirements under these statutes, and the role of the Army Corps of Engineers in implementing these programs.

CWA Section 401 Water Quality Certification

Page 6 of the Draft EIS states that PCWA filed a request on July 18, 2011 with the State Water Resources Control Board (SWRCB) for CWA Section 401 Water Quality Certification, and that the SWRCB has not yet taken action on those requests, but has until July 18, 2012 to do so.

> ***Recommendation:***
> The Final EIS should describe the current status of the CWA 401 Water Quality Certifications that PCWA has requested from the SWRCB.

Methylmercury

The North Fork American River, Hell Hole reservoir, and Oxbow reservoir are currently on the 303(d) list of impaired waters for mercury (p. 85). Although the Draft EIS states that the likely source of mercury in the project area is due to historical resource extraction, project actions -- particularly the pool sediment augmentation events -- have potential to affect mercury levels in these impaired bodies (p. 53). The mitigation proposed is to implement a Mercury Bioaccumulation Monitoring Plan; however, this document is yet to be finalized (p. 101). As part of the Proposed Action, PCWA would continue to restock the reservoirs with fish for recreational trout fishing; however, the safety and health impacts of consuming such fish are not discussed in the Draft EIS.

> ***Recommendation:***
> EPA recommends that the Final EIS discuss the health impacts of consuming fish that contain elevated concentrations of methylmercury, and that the ROD commit to a continuation of the monitoring of methylmercury found in the fish that are annually stocked by PCWA. If monitoring continues to reveal exceedances of the California Office of Environmental Health Hazard Assessment's methylmercury standards, signs should be posted warning recreationists of the risks of consuming fish that exceed recommended health levels. More information regarding methylmercury can be found at EPA's website http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/pollutants/methylmercury/index.cfm

Management Plans

Proposed environmental measures are listed on p. 26. The list includes a Sediment Management Plan, Erosion Control Plan, Water Quality Monitoring Plan, among many others, for a total of 17 plans. The Draft EIS indicates that PCWA has consulted with the Forest Service in the various plans' development, but it is unclear whether these plans are being prepared pursuant to directives from the Forest Service, FERC, PCWA or a combination thereof. These environmental measures are included in the Action Alternatives, but are inconsistently described throughout the resource sections of the EIS and not thoroughly described in the Alternatives chapter.

It is unclear whether these Plans were filed with the initial application or if they are separate proposed measures that are all filed separately and individually. Do the plans overlap or coincide? Little information is provided as to what the plans entail, including mitigation measures. The plans seem to be an integral part of the project, particularly the Sediment Management Plan, which includes direction and initiatives for ongoing sediment augmentation and removal. None of the 17 plans are described in the existing conditions (No Action) chapter, so it appears that all the plans contain new actions that are not being currently implemented.

Recommendation:
The monitoring and management plans should be more thoroughly described in the Final EIS. Information should include timing, responsibility, and specific actions that would be taken under each of these plans.

Sediment Management
Throughout the document, there are multiple references to the Sediment Management Plan. It appears the Sediment Management Plan will play a large part in the proposed action or Alternative that is chosen; however, it is difficult to ascertain the components of the plan and the monitoring that would be associated with it. Some actions that may be included in the Sediment Management Plan appear to be periodic sediment removal, sediment augmentation, dewatering of reservoirs for maintenance, and surface erosion management (p. 51).

Recommendation:
EPA recommends that the Sediment Management Plan be discussed in further detail in the Final EIS and attached as an appendix. In addition to identifying the actions included in the Plan, the Final EIS should explain what monitoring has been taking place since the dam was put into place, how that was used to formulate the decisions regarding requirements to include in the current update to the Plan, and what monitoring would be associated with the Sediment Management Plan under each Alternative.

We also request clarification of whether or not the plan is project-specific and whether it is required by the Forest Service or FERC.

Noxious Weed Management
Throughout the Draft EIS, there are multiple references to the Vegetation and Integrated Pest Management Plan and Fire Prevention and Suppression Plan; however, details on the contents of these two plans are discussed sporadically and unsystematically. It seems clear that the Action Alternatives involve noxious weed control (p. 162). We note that the weeds targeted for control are listed in Table 3.3.3-3; however, details about the extent, location, types of application, and involvement of other entities are missing from the document. Who will be applying pesticides, how often, and where will they be applied? How long have the noxious weeds been established in the project area? It is unclear how the Action Alternatives compare to what is occurring presently in the project area because, while the effects of the action alternatives are discussed (p. 164), they are not compared to current conditions.

Recommendation:
The Final EIS should discuss noxious weed treatment methods, the need for such treatment, details regarding pesticide applications, and the likely effectiveness of the proposed measures at reducing spread of noxious weeds in the project area and to neighboring Forest Service lands. The likely effects of the proposed treatments should be sharply compared to existing conditions in the project area.

Trails and Roads
The Transportation System Management Plan is proposed to address maintenance that may be needed regarding access and use of trails and roads by recreationists, Placer County, and the Forest Service. The Draft EIS does not describe the impacts from the roads that serve the project site. It is unknown whether any roads in the project area are currently in need of maintenance. Page 219 of the EIS states that accessibility compliance would be delayed up to 14 years- would this be in regards to deferred

maintenance of roads and trails that provide access to the reservoirs? Does this pertain to compliance with the Americans with Disabilities Act?

> ***Recommendation:***
> The Final EIS should discuss the current and anticipated maintenance needs of the roads and trails that serve the project site, and provide details regarding the Transportation System Management Plan. Any Best Management Practices (BMPs) that would be used to respond to needed maintenance should be described. The impacts of implementing the Transportation System Management Plan under each action Alternative should be compared to those of the No Action Alternative.
>
> The Final EIS should discuss the proposed project's compliance with the Americans with Disabilities Act.

Impacts from Construction-related Activities

The Draft EIS describes a number of proposed actions that involve construction activities, such as the dismantling of small diversions, sediment removal, and a number of recreation improvements, including the construction of boat ramps and docks. Such actions have the potential to cause increased turbidity and other impacts.

> ***Recommendation:***
> EPA recommends that the Final EIS describe measures that would be taken to avoid and minimize both short- and long-term adverse impacts to water quality, aquatic resources, and other resources, from construction activities. This discussion should include a list of proposed BMPs. Propose mitigation to compensate for unavoidable impacts and commit to these measures and mitigation in the ROD.

Cumulative Effects of Climate Change

The discussion of cumulative effects in the Draft EIS does not address potential cumulative effects of climate change on the project area and how this may affect future conditions in Middle Fork American River, Rubicon River, and their tributaries. Nor does the Draft EIS address the potential effects of climate change on the performance and effects of the Action Alternatives. While it may be difficult to predict specific climate change effects, they should be identified and discussed to the extent available information allows. The Forest Service has done extensive modeling, monitoring, and data collection regarding climate change impacts within its Region 5 (http://www.fs.fed.us/psw/topics/climate_change/).

Possible effects on the proposed project could include average temperature increases in Spring with earlier initial and maximum snow melt and higher water levels; changing precipitation patterns with more rain and less snow in winter, causing winter stream flows to increase; decreased snowpack and altered timing of Spring runoff; larger and more severe storms; warming temperatures and more severe drought with increased risk of warmer stream temperatures negatively affecting aquatic organisms and fish species that thrive in cold water. The Draft EIS states that the Ralston afterbay may be drawn down substantially in advance of a high storm event to facilitate capture of high flows (p. 18). Climate change may affect the frequency with which measures such as this must be implemented.

> ***Recommendation:***
> We recommend that the Final EIS include a discussion of climate change and its potential effects on the Proposed Action and Action Alternatives, and on their potential performance and impacts.

We recommend that this discussion include a short summary of applicable climate change studies, including their findings on potential environmental and water supply effects and their recommendations for adaptation to these effects.

Threatened and Endangered Species

The Draft EIS states that there are three species (Layne's Ragwort, California red-legged frog, and Valley elderberry longhorn beetle) potentially present in the study area that are listed as threatened or endangered under the Endangered Species Act (ESA). The Draft EIS concludes that the proposed project operations are unlikely to affect these species (p. 191), and that FERC will seek concurrence with this determination from the U.S. Fish and Wildlife Service (FWS).

Recommendation:

The Final EIS should include a discussion of the project's compliance with Section 7 of the ESA. The document should provide an update of the status of consultations with the FWS regarding impacts to the Layne's Ragwort, California red-legged frog, and Valley elderberry longhorn beetle, and include any concurrence issued by FWS.

Given that the license may be in effect for 50 years, it is important that FERC's action be consistent with long term ecological restoration efforts, such as reintroduction of steelhead salmon along the American River. Although we acknowledge that considerable uncertainties remain regarding the implementation program set forth by National Marine Fisheries Service (NMFS) in the 2009 Biological Opinion, it is important that actions taken now do not impede future recovery actions for the listed species.

Recommendation:

The Final EIS should discuss any measures underway or planned to support the recovery of steelhead salmon in the Middle Fork American River, and the extent to which the proposed project could support such efforts. For example, if downstream dams are to be outfitted with appropriate fish ladders in the future, discuss whether dams that are included in the proposed project (French Meadows, Middle Fork Interbay Dam) may be applicable for such retrofits and/or suitable for salmon passage.

Cultural and/or Tribal Resources

The Draft EIS states that PCWA has been contacting, interviewing, consulting, and conducting field visits with several tribes whose resources may be potentially affected by the proposed hydropower operations (Section 3.6.6). In addition, the Draft EIS states that a final programmatic agreement between the licensee and the State and Tribal Historic Preservation Offices, addressing how potential impacts to cultural resources will be addressed, has been developed and filed with FERC. The EIS does not give examples of the types of avoidance and mitigation measures that might be employed to protect cultural resources. Neither does the document indicate how previous impacts to cultural resources from the existing project operations and maintenance have been addressed.

Recommendation:

The Final EIS should discuss the status of consultation with tribes affected by the proposed project operations and maintenance. The tribes should be included in the distribution list of the Final EIS and ROD. In addition, the Final EIS should clearly discuss the mitigation measures of the programmatic agreement, and include it as an appendix.

Environmental Justice

The Draft EIS does not include an analysis of the potential environmental justice impacts of this project. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. Guidance by the Council of Environmental Quality (CEQ) clarifies the terms low-income and minority population (which includes American Indians) and describes the factors to consider when evaluating disproportionately high and adverse human health effects (*Guidance for Federal Agencies on Key Terms in Executive Order 12898*, December 1997).

> ***Recommendations:***
> The Final EIS should include an evaluation of environmental justice populations within the geographic scope of the project. If such populations exist, the Final EIS should document the public involvement methods used, describe the likely impacts of the project on those populations, and discuss any measures that could mitigate those impacts. Assessment of the project's impact on minority and low-income populations should reflect coordination with those affected populations.

Cumulative Impacts Analysis

The Draft EIS identifies the geographic scope of the project as extending from French Meadows reservoir to Oxbow powerhouse. The document identifies water quality, water temperature, and California Central Valley steelhead as resources having the potential to be cumulatively affected by recommended measures in the relicensing of these projects.

The Draft EIS does not evaluate the potential cumulative effects from any activities in the surrounding area other than hydropower operations. It lacks information on projected growth, development, and other activities within the identified geographic and temporal scope of the project, and the cumulative impacts that may result from those activities. The cumulative effects analysis also does not take into account the historic loss of environmental and cultural resources due to inundation of waters from the original construction of the project.

> ***Recommendation***:
> The Final EIS should provide a substantive discussion of, and quantify where possible, the cumulative effects of the proposed action when considered with other past, present, or reasonably foreseeable actions, regardless of what agency or person undertakes those actions (see 40 CFR Part 1508.7). The Final EIS should specifically discuss the cumulative effects of sediment accumulation in the reservoir. The document should also propose mitigation for cumulative impacts, and clearly identify the lead agency's mitigation responsibilities and the mitigation responsibilities of other entities.