State Water Resources Control Board

APR 12 2019

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

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR DON PEDRO AND LA GRANGE HYDROELECTRIC PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION PROJECTS NOS. 2299 & 14581; TUOLUMNE COUNTY

Dear Secretary Bose:

On February 12, 2019, the Federal Energy Regulatory Commission (FERC) issued the Draft Environmental Impact Statement (Draft EIS) for Don Pedro and La Grange Hydroelectric Projects (collectively, Projects), FERC Project Nos. 2299 & 14581, respectively, and an accompanying notice that FERC is accepting comments on the Draft EIS. The Projects are owned and operated by co-licensees Turlock Irrigation District and Modesto Irrigation District. The State Water Resources Control Board (State Water Board) appreciates the opportunity to comment on the Draft EIS. State Water Board staff provides timely comments on the Draft EIS in Attachment A.

If you have questions regarding this letter please contact me by phone at (916) 323-0358, or by email at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Water Quality Certification Program
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Sincerely,

Chase Hildeburn, WRCE
Water Quality Certification Program
Division of Water Rights

Enclosure: Attachment A – Comments on Draft Environmental Impact Statement for the Don Pedro and La Grange Hydroelectric Projects

cc: See next page.

cc: Mr. Tomás Torres, Director
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ATTACHMENT A:
COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE DON PEDRO AND LA GRANGE HYDROELECTRIC PROJECTS
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NOS. 2299 & 14581

State Water Resources Control Board (State Water Board) staff provides the following comments on the Federal Energy Regulatory Commission's (FERC or Commission) Draft Environmental Impact Statement (Draft EIS or DEIS) for the Don Pedro and La Grange Hydroelectric Projects (Projects), FERC Project Nos. 2299 & 14581. The Projects are owned and operated by co-licensees Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts).

1. State Water Board Section 401 Authority

   Prior to obtaining a new license from FERC, the Districts must obtain water quality certifications (certification) from the State Water Board, pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. §1341). Section 401 of the federal Clean Water Act requires any applicant for a federal license or permit which may result in discharge to navigable waters to obtain certification from the state in order to ensure the discharge will comply with the state's water quality standards and other appropriate requirements of state or federal law. The State Water Board is the certifying agency under Section 401 for the Projects. Accordingly, the State Water Board may set conditions implementing Clean Water Act requirements, including the requirements of Section 303 of the Clean Water Act for water quality standards and implementation plans, or to implement "any other appropriate requirement of State law." (33 U.S.C. § 1341(d).).

   The Districts requested certification for the Projects from the State Water Board on January 26, 2018. However, their request for certification was denied without prejudice on January 24, 2019 due to procedural inadequacies. In California, issuance of a certification is a discretionary act and is therefore subject to the California Environmental Quality Act (CEQA). The Districts are the lead agencies for the purposes of CEQA compliance and are responsible for developing an environmental document for the Projects. The State Water Board cannot issue a certification until the Districts complete the CEQA process.

2. Water Quality Control Plans and Water Quality Standards

   The California Regional Water Quality Control Boards have primary responsibility for the formulation and adoption of water quality control plans for their respective regions, subject to State Water Board and the United States Environmental Protection Agency (USEPA) approval, as appropriate. (Wat. Code, §13240 et seq.) The State Water Board may also adopt water quality control plans, which will supersede regional water quality control plans for the same waters to the extent of any conflict. (Wat. Code, §13170.) For a specified area, the water quality control plans designate the beneficial uses of water to be protected, water quality objectives established for the reasonable protection of those beneficial uses or the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050 subd. (h), and 13050 subd. (j).) The beneficial uses together with the water quality objectives that are contained in the water quality control plans, and state and federal anti-degradation requirements constitute California's water quality standards. Water Code section 13247 requires state agencies, in carrying out activities that may affect water quality, to comply with water quality control plans in most instances.

3. Water Quality Control Plan for the Sacramento River and San Joaquin River Basins

The Central Valley Regional Water Quality Control Board adopted, and the State Water Board and USEPA approved, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan). According to the Basin Plan, the designated beneficial uses currently designated for the Projects' area are categorized in two surface waterbodies.

- Existing beneficial uses currently designated for Don Pedro Reservoir include hydroelectric power generation, contact and non-contact water recreation, warm and cold freshwater habitat, and wildlife habitat. Municipal and domestic supply is a proposed beneficial use that has been designated for Don Pedro Reservoir.

- Existing beneficial uses currently designated for the Lower Tuolumne River (i.e., from Don Pedro Reservoir to the confluence with the San Joaquin River) include irrigation, stock watering, contact and non-contact recreation, canoeing and rafting, warm and cold freshwater habitat, cold freshwater migration, warm and cold freshwater spawning habitat, and wildlife habitat. Municipal and domestic supply is a proposed beneficial use that has been designated for the Lower Tuolumne River.

4. Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

The State Water Board adopted amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) for Lower San Joaquin River and tributary flows and southern Delta salinity on December 12, 2018 through Resolution No. 2018-0059. On February 25, 2019, the Office of Administrative Law approved the amended Bay-Delta Plan for the Lower San Joaquin River and tributary flows and southern Delta salinity objectives. On February 26, 2019, State Water Board staff filed a Notice of Decision for the Plan amendments with the Secretary of the Natural Resources Agency. The 2018 Bay-Delta Plan is in effect and is posted on the State Water Board "Plans and Policies" webpage at: https://www.waterboards.ca.gov/plans_policies/.

The 2018 Bay-Delta Plan establishes narrative and numeric Lower San Joaquin River flow objectives for the protection of fish and wildlife beneficial uses. Of note, the numeric flow objectives require a percentage of unimpaired flow from February through June from each of the Stanislaus, Tuolumne, and Merced Rivers to protect fish and wildlife beneficial uses. More specifically, they require a range of 30 to 50 percent unimpaired flow with a starting point of 40 percent from February through June on each of the tributaries. If certain criteria are met, the unimpaired flow requirement can be adaptively implemented within a range of unimpaired flow in response to changing information and changing conditions. The unimpaired flow objective may be used to determine a quantity of water that can be "shaped" or shifted in time to target flows for activating and sustaining ecosystem functions such as increased floodplain habitat, more optimal temperatures, or a salmonid migration cue. The amended Bay-Delta Plan and the Substitute Environmental Document supporting it are available on the State Water Board's website at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/.

At the December 12, 2018 Bay-Delta Plan adoption meeting, the California Department of Water Resources and California Department of Fish and Wildlife presented information on a potential Delta watershed-wide agreement to protect fish and wildlife. Resolution No. 2018-0059 encourages stakeholders to continue to work together to reach voluntary agreements and present those agreements to the State Water Board for its review as soon as feasible. The Delta watershed-wide voluntary agreement is a discrete project encompassing a larger area than the Lower San Joaquin River but does include the Tuolumne River. Ongoing efforts have been made to develop an enforceable agreement, join additional parties, analyze the agreement and how it interacts with the Bay-Delta Plan, and asses what, if any, changes may be necessary to the Bay-Delta Plan for the agreement to serve as an implementation mechanism to reasonably protect beneficial uses in the Tuolumne River and applicable portions of the Bay-Delta watershed, while providing a suitable regulatory backstop. State Water Board staff continues to provide appropriate technical and regulatory information to assist in the completion of a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses. Such an agreement could result in future amendments to the Bay-Delta Plan.

5. 303(d) Listed Impairments

Section 303(d) of the Clean Water Act requires the identification of waterbodies in each state that do not meet, or are not expected to meet, water quality standards (i.e., impaired waterbodies). The 2008-2010 303(d) list (303(d) list) is the most current list that USEPA has approved. The 303(d) list designates impairments near the Projects for the following pollutants or stressors in the Lower Tuolumne River: chlorpyrifos, diazinon, Group A pesticides, mercury, and water temperature. Don Pedro Reservoir is also 303(d) listed for mercury.

6. FERC Policy Change Regarding Monitoring

The FERC Staff Alternative reduces or eliminates key components of the proposed Protection, Mitigation, and Enhancement (PM&E) measures that require monitoring in the Districts' proposal and Agencies' and NGO's recommendations. Monitoring is integral to determining license compliance, adaptive management, achieving biological goals, and demonstrating progress toward attaining flow objectives in the Bay-Delta Plan. In general, water quality certifications include conditions that require compliance with water quality standards and other appropriate requirements of state law, and State Water Board staff uses data collected from project monitoring to compare resources in the project-affected area to such requirements.

A certification must protect against a Project's effects on water quality over the life of the Project, including ongoing or prior effects. State Water Board staff cannot reliably project that cumulative effects will be constant during the term of a 30 – 50 year license. Monitoring can identify the potential need to revise license measures or require additional PM&E measures to adequately protect resources.

In addition, monitoring supports adaptive implementation of flow objectives and adaptive management of aquatic resources that together can provide regulatory flexibility, increase certainty in expected biological outcomes, and reduce costs. Although a formal adaptive management process was not included in State Water Board staff's preliminary conditions,

State Water Board staff will include a formal adaptive management process for implementation of the Lower San Joaquin River flow objectives identified in the 2018 Bay-Delta Plan.

Finally, relicensing studies often provide data collected over a short one to two-year period of time. Although this data is extremely informative to the relicensing process, it is often difficult to determine specific project impacts and develop associated PM&E measures to ameliorate such impacts based on this limited data set. Data collected during the term of a license will more comprehensively inform the next relicensing for the project.

7. Stanislaus, Tuolumne, and Merced Working Group
State Water Board staff supports a forum for stakeholders to be informed of Project activities and elements impacted by the Projects. Such a practice can improve operations and facilitate communication, as well as provide access to non-institutional input relevant to Project impacts. Such a condition is particularly appropriate in this proceeding in light of the extensive non-governmental participation in the relicensing process. The State Water Board has issued certifications that require the licensee to provide an opportunity for public/non-governmental organization participation during various project-related activities for the following projects that do not have settlement agreements: Big Creek No. 4 Hydroelectric Project (FERC Project No. 2017); Pit 3, 4, and 5 Hydroelectric Project (FERC Project No. 233); Poe Hydroelectric Project (FERC No. 2107); and DeSabla-Centerville Hydroelectric Project (FERC No. 803).

8. Water Quality Monitoring Plan
FERC's Staff Alternative does not provide adequate water quality monitoring to determine compliance with water quality objectives in the Lower Tuolumne River and Don Pedro Reservoir for the duration of their license. As discussed in Comment No. 6 above, monitoring is integral to ensure the Projects' compliance with water quality standards and other state law requirements and to adaptively manage Project operations if certain objectives are not being met. The Water Quality Monitoring Plan should include monitoring sites throughout affected river reaches throughout the Lower Tuolumne River and Don Pedro Reservoir, not just at locations near La Grange dam and La Grange Reservoir. The Water Quality Monitoring Plan should also include monitoring needed to inform assessment of biological goals, recreation related water quality and bioaccumulation monitoring components, in addition to dissolved oxygen and temperature.

9. Water Temperature Monitoring Plan
FERC's Staff Alternative requires the Districts to monitor water temperature at various locations including Don Pedro Reservoir near the dam and sites between La Grange gage and river mile 26. While State Water Board staff supports the idea of diversified monitoring locations, the proposed locations do not capture the full extent of the Projects' potential impact of the impounded water above Don Pedro Dam and on the Lower Tuolumne River. Additional monitoring locations from river mile 26 to the confluence with the San Joaquin River are necessary to measure and track changes in water temperature throughout affected reaches.

Additionally, the requirement that the Districts must only monitor water temperature when Don Pedro Reservoir levels are below 600 feet elevation does not recognize the effect that reservoir storage has on water temperatures in the Lower Tuolumne River and is insufficient given the importance of water temperature to salmonids, infrequency of this event, and the lack of benefit the data would provide. According to California Data Exchange Center, the lowest elevation level Don Pedro Reservoir has reached since 2001 is about 670 feet. Although the Districts were likely considering their ability to deliver water to customers in potentially another drought year, Don Pedro's lowest reservoir elevation during the worst drought since record-keeping began is still 70 feet higher than the trigger elevation at which FERC's Staff Alternative is requiring the Districts to begin temperature monitoring. Data gathered under this monitoring effort would not offer a representative sample of Project operations at normal operating reservoir levels and water year types and would not provide data important to informing biological goals or adaptive implementation of flow objectives. Annual seasonal water temperature monitoring for the duration of a 30 – 50 year license at any reservoir level would help determine the effects of the Projects' operations on thermal conditions in Don Pedro Reservoir and the Lower Tuolumne River and offer solutions to adaptively manage Project operations to meet temperature requirements.

10. Exclusion of Non-Flow Measures

The Districts' PM&E measures are a combination of non-flow measures and slight flow increases that are similar to existing FERC-required flows and substantially lower than the flows required in the amended Bay-Delta Plan. The FERC Staff Alternative omits several non-flow PM&E measures proposed by the Districts, such as in-channel, riparian, and floodplain improvements in the Lower Tuolumne River. This is problematic because the Districts' modeling represents corresponding results for implementation of flow and non-flow measures. Page 3-135 of the DEIS says…

> "*As shown in figures 3.3.2-26 through 3.3.2-40, the Districts' proposed minimum instream flows (and non-flow measures) would likely increase the in-river abundance of juvenile and adult fall-run Chinook salmon and steelhead compared to the base case…."*

FERC Staff relied upon the results of these models for recommending minimum flows and pulse flows. In section 3.3.2.2 of the DEIS (page 3-146), FERC staff conclude "implementing the Districts' proposal would likely further benefit juvenile salmonids through the reestablishment of riparian vegetation and its associated increase in prey availability, which appears to be a major limiting factor in the lower Tuolumne River." Without the non-flow measures, the aquatic resource benefits shown in the modeling results would not be an accurate predication of what can be expected with implementation of only flow measures.

It also should be noted; the validity of the Districts' biological models is highly uncertain and remains challenged by outstanding agency comments that were not resolved in the final study reports for the juvenile fish production models. Agency criticisms of the Districts' biological models include, but are not limited to, concerns that models do not recognize existing rearing and spawning habitat limitations or accurately represent temperature

sensitivity, predation, and the effect of flow in establishing rearing and floodplain habitat benefits.[1]

[1] Please refer to the response to comments included in the Final Substitute Environmental Document on the State Water Board's website at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/