



October 28, 2011

Filed via Electronic Submittal (E-File)

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

SUBJECT: Yuba River Development Project
FERC Project No. 2246-058
Implementation of Study Determination Based on Filing of Disputes

Dear Secretary Bose:

This letter, filed by the Yuba County Water Agency (YCWA), provides to the Federal Energy Regulatory Commission (FERC or Commission), a list of studies that YCWA has implemented in support of the relicensing of YCWA's Yuba River Development Project, FERC Project No. 2246 (Project). The letter also requests a change to the deadline, as contained in the Commission's September 30, 2011 Study Plan Determination (Determination), for filing with FERC of some modified and new study plans.

BACKGROUND

On September 30, 2011, the Commission issued the Determination for YCWA's relicensing of its Project. The Determination directed YCWA: 1) to perform 31 studies proposed by YCWA in its August 17, 2011 Revised Study Plan; 2) to slightly modify and perform six studies proposed by YCWA in its August 17, 2011 Revised Study Plan; 3) to significantly modify five studies proposed by YCWA in its August 17, 2011 Revised Study Plan and, after providing agencies and other Relicensing Participants a 30-day review period, file with FERC the modified study plans with evidence of consultation within 90 days of the Determination; and 4) to develop two new studies and, after providing agencies and other Relicensing Participants a 30-day review period, file with FERC the new study plans with evidence of consultation within 90 days of the Determination. In sum, FERC directed YCWA to perform 44 studies. Table 1 lists the studies proposed by YCWA in its Revised Study Plan, lists the studies the Commission directed YCWA to perform in its Determination, and identifies which studies required YCWA to modify or develop a study plan and file it with FERC for approval.

Table 1. Studies proposed by YCWA in its Revised Study Plan, studies ordered by FERC in its Determination, and the status of YCWA's implementation of studies.

Study Number	Study Description	Included in YCWA's 8/17/11 Revised Study Plan	Included in FERC's 9/30/11 Study Determination	Implementation Status as of 10/21/11	
				Begun	On Hold
1.1	Channel Morphology Upstream of Englebright Reservoir	X	X	--	X ¹
1.2	Channel Morphology Downstream of Englebright Dam	X	Modify, Consult and File by 12/29/11	--	X ¹
2.1	Hydrologic Alteration	X	Modify	--	X ²
2.2	Water Balance/Operations Model	X	X	X	--
2.3	Water Quality	X	Modify	X	--
2.4	Bioaccumulation	X	X	X	--
2.5	Water Temperature Monitoring	X	X	X	--
2.6	Water Temperature Model	X	X	X	--
3.1	Aquatic Macroinvertebrates Upstream of Englebright Reservoir	X	Modify	X	--
3.2	Aquatic Macroinvertebrates Downstream of Englebright Dam	X	Modify	X	--
3.3	Special-Status Aquatic Mollusks	X	X	X	--
3.4	Special-Status Amphibians – Foothill Yellow-Legged Frog Surveys	X	X	X	--
3.5	Special-Status Amphibians – Foothill Yellow-Legged Frog Habitat Modeling	X	X	X	--
3.6	Special-Status Turtles – Western Pond Turtle	X	X	X	--
3.7	Reservoir Fish Populations	X	X	X	--
3.8	Stream Fish Populations Upstream of Englebright Reservoir	X	X	X	--
3.9	Non-ESA-Listed Fish Populations Downstream of Englebright Dam	X	X	X	--
3.10	Instream Flow Upstream of Englebright Reservoir	X	X	X	--
3.11	Entrainment	X	Modify, Consult and File by 12/29/11	X	--
3.12	New Colgate Powerhouse Ramping	--	Develop, Consult and File by 12/29/11	--	X ³
4.1	Special-Status Wildlife – California Wildlife Habitat Relationships	X	Modify	X	--
4.2	Special-Status Wildlife – Bats	X	X	X	--
5.1	Special-Status Plants	X	X	X	--
6.1	Riparian Habitat Upstream of Englebright Reservoir	X	Modify, Consult and File by 12/29/11	--	X ⁴
6.2	Riparian Habitat Downstream of Englebright Dam	X	Modify, Consult and File by 12/29/11	--	X ⁴
6.3	Wetlands	X	X	X	--
7.1	ESA-Listed Plants	X	X	X	--
7.2	Narrows 2 Powerhouse Intake	X	X	--	X ³
7.3	ESA-Listed Amphibians – California Red-Legged Frog	X	X	X	--
7.4	ESA-Listed Wildlife – Valley Elderberry Longhorn Beetle	X	X	X	--
7.5	CESA-Listed Plants	X	X	X	--
7.6	CESA-Listed and Fully Protected Wildlife – California Wildlife Habitat Relationships	X	X	X	--
7.7	CESA-Listed and Fully Protected Wildlife – Bald Eagle	X	X	X	--

Table 1. (continued)

Study Number	Study Description	Included in YCWA's 8/17/11 Revised Study Plan	Included in FERC's 9/30/11 Study Determination	Implementation Status as of 10/21/11	
				Begun	On Hold
7.8	ESA/CESA-Listed Salmonids Downstream of Englebright Dam	X	X	X	--
7.9	North American Green Sturgeon Downstream of Englebright Dam	X	X	X	--
7.10	Instream Flow Downstream of Englebright Dam	X	Modify		X ⁶
7.11	Assessment of Narrows 2 Powerhouse as a Barrier to Anadromous Fish Upstream Migration	X	Modify, Consult and File by 12/29/11	--	X ⁵
7.12	Evaluation of Project Effects on Daguerre Point Dam's and Hallwood-Cordua's Fish Facilities	--	Develop, Consult and File by 12/29/11	--	X ⁷
8.1	Recreation Use and Visitor Surveys	X	X	X	--
8.2	Recreational Flow	X	X	X	--
9.1	Primary Project Roads and Trails	X	X	X	--
10.1	Visual Quality	X	X	X	--
12.1	Historic Properties	X	X	X	--
13.1	Native American Traditional Cultural Properties	X	X	X	--
<i>Subtotal</i>		42	44	34	10
Total			44		

¹ YCWA proposes that Studies 1.1 and 1.2 be placed on hold for two reasons. First, at page 29 of Enclosure A of its October 20, 2011 letter, NMFS states it does not agree with the Determination regarding the two studies. Second, to accommodate NMFS's requested Effects of the Project and Related Activities on Coarse Substrate for Anadromous Fish Study, the Determination directed YCWA to modify Studies 1.1 and 1.2 (pages 54 and 55 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding these studies.

² YCWA proposes Study 2.1 be placed on hold because to accommodate element #8 of NMFS's requested Effects of the Project and Related Activities on Hydrology for Anadromous Fish Study, the Determination directed YCWA to modify Study 2.1 (page 50 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding this study.

³ YCWA proposes Study 3.12 be placed on hold for two reasons. First, at numerous places in its October 20, 2011 letter, NMFS states that it disagrees with the Determination regarding studies to address anadromous fish passage and effects at Project facilities upstream of Englebright Dam (e.g., page 25 of Enclosure A). Second, to accommodate element #4 of NMFS's requested Effects of the Project and Related Activities on Hydrology for Anadromous Fish Study, the Determination directed YCWA to modify Study 3.12 (page 47 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding this study.

⁴ YCWA proposes that Studies 6.1 and 6.2 be placed on hold for two reasons. First, at pages 30 through 32 of Enclosure A of its October 20, 2011 letter, NMFS notes that these two studies are closely related to its requested study, and specifically states NMFS does not agree with the Determination regarding Study 6.1. Second, to accommodate NMFS's requested Effects of the Project and Related Activities on Large Wood and Riparian Habitat for Anadromous Fish Study, the Determination directed YCWA to modify Studies 6.1 and 6.2 (pages 55 and 56 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding these studies.

⁵ YCWA proposes Studies 7.2 and 7.11 be placed on hold for two reasons. First, at numerous places in its October 20, 2011 letter (e.g., pages 8 through 23 of Enclosure A), NMFS states that it disagrees with the Determination regarding FERC's treatment of the Narrows 2 Powerhouse as a barrier to anadromous fish upstream migration. Second, to accommodate elements #1, #2 and #8 of NMFS's requested Effects of the Project and Related Activities on Fish Passage for Anadromous Fish Study, the Determination directed YCWA to modify Study 7.11 (pages 40 through 41 and 44 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding this study.

⁶ YCWA proposes Study 7.10 be placed on hold because to accommodate element #5 of NMFS's requested Effects of the Project and Related Activities on Hydrology for Anadromous Fish Study, the Determination directed YCWA to modify Study 7.10 (pages 48 and 49 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding this study.

⁷ YCWA proposes Study 7.12 be placed on hold for two reasons. First, at page 17 in Enclosure A of its October 20, 2011 letter, NMFS states it seeks additional information regarding Project effects on Daguerre Point Dam and Hallwood-Cordua diversions and fish screens. Second, to accommodate element #3 of NMFS's requested Effects of the Project and Related Activities on Fish Passage for Anadromous Fish Study, the Determination directed YCWA to develop a study plan for Study 7.12 (page 42 of Appendix A to FERC's Determination). Resolution of the dispute could result in FERC modifying the Determination regarding this study.

On October 20, 2011, the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) filed with FERC a dispute regarding the Commission's Determination. NMFS identified as "in dispute" seven studies that were requested by NMFS and not adopted by the Commission in its Determination. Each of the studies included "elements," which were in effect separate studies. In total, the seven studies include 54 elements. The NMFS-requested studies in dispute are: 1) Effects of the Project and Related Activities on Fish Passage for Anadromous Fish (12 elements); 2) Effects of the Project and Related Activities on Hydrology for Anadromous Fish (8 elements); 3) Effects of the Project and Related Activities on Water Temperature for Anadromous Fish (3 elements); 4) Effects of the Project and Related Activities on Coarse Substrate for Anadromous Fish (6 elements); 5) Effects of the Project and Related Activities on Large Wood and Riparian Habitat for Anadromous Fish (4 elements); 6) Effects of the Project and Related Activities on the Loss of Marine-Derived Nutrients in the Yuba River (7 elements); and 7) Anadromous Fish Ecosystem Effects (14 elements).

YCWA anticipates FERC will implement its regulations at 18 CFR § 5.14 to resolve the dispute. Those regulations provide that 70 days after the dispute is filed (i.e., by December 29, 2011), FERC's Director of the Office of Energy Projects (Director) will issue a written Determination.

STATUS OF STUDY IMPLEMENTATION

Section 5.14(c) of 18 CFR states studies or portions of studies approved in a study plan determination that are not subject to a notice of dispute are deemed approved, and an applicant shall proceed with those studies or portions of studies.

Upon review of NMFS's notice of dispute, YCWA identified 10 studies that could be substantially affected, in whole or in part, by the outcome of the dispute. These studies are listed in Table 1 and YCWA requests that FERC approve placing implementation of those studies on hold pending the outcome of the dispute process.

At this time, YCWA believes that the remaining 34 studies will not be affected by the outcome of the dispute process, and YCWA has begun those studies. These 34 studies include four studies that the Determination required be modified without consultation or refile a study plan with FERC (i.e., Studies 2.3, Water Quality; Study 3.1, Aquatic Macroinvertebrates Upstream of Englebright Reservoir; Study 3.2, Aquatic Macroinvertebrates Downstream of Englebright Dam; and Study 4.1, Special-Status Wildlife – California Wildlife Habitat Relationships). YCWA has modified these study plans as directed by the Determination and posted the modified study plans to the Relicensing Website (www.ycwa-relicensing.com) under "FERC-approved Studies" on the Quick Launch bar. The 34 studies also include one study (i.e., Study 3.11, Entrainment) that the Determination required YCWA modify the study plan, provide the modified study plan to agencies for 30-day review, and file the modified plan with evidence of consultation with FERC by December

29, 2011. YCWA is proceeding on this schedule for Study 3.11, and will file the modified study plan with FERC by December 29, 2011.

**REQUEST FOR A CHANGE TO DEADLINE
FOR FILING MODIFIED AND NEW STUDY PLANS
POTENTIALLY AFFECTED BY THE DISPUTE**

As shown in Table 1, the Determination required YCWA modify, without consulting agencies or filing a modified study plan, two study plans (i.e., Study 2.1, Hydrologic Alteration and Study 7.10, Instream Flow Downstream of Englebright Dam). In addition, the Determination required YCWA to develop study plans for six studies that may be affected by the outcome of the dispute process. These studies are: 1) Study 1.2, Channel Morphology Downstream of Englebright Dam; 2) Study 3.12, New Colgate Powerhouse Ramping; 3) Study 6.1, Riparian Habitat Upstream of Englebright Reservoir; 4) Study 6.2, Riparian Habitat Downstream of Englebright Dam; 5) Study 7.11, Assessment of Narrows 2 Powerhouse as a Barrier to Anadromous Fish Upstream Migration; and 6) Study 6.12, Evaluation of Project Effects on Daguerre Point Dam's and Hallwood-Cordua's Fish Facilities. For each of these six studies, YCWA was directed to develop a study plan; provide the study plan to agencies and other Relicensing Participants, depending on the specific study; and file the plan with FERC within 90 days of the Determination, which would be by December 29, 2011, the date that the Director's resolution of the study dispute is due for issuance.

Therefore, YCWA requests that for these studies, FERC modify the filing deadline in the Determination from December 29, 2011 to March 8, 2012, 70 days after the Director's resolution of the dispute is scheduled to be issued. This modification would provide YCWA a total of 90 days, which was the timeline in the Determination, to develop and file the six study plans and modify the other two study plans - 20 days from September 30, 2011 (when the Determination was issued) to October 20, 2011 (when NMFS filed its notice of dispute) plus 70 days from December 29, 2011 (when the Director is scheduled to issue his resolution) to March 8, 2011.

If you have any questions regarding this letter, please contact me.

Sincerely,



Curt Aikens
General Manager

cc: Alan Mitchnick – FERC DC
Ken Hogan – FERC DC
Yuba River Development Project Relicensing Contact List (via e-mail)