

SECTION 9

EXISTING AND LICENSEE PROPOSED MEASURES

9.1 Introduction

This section describes Project operation and management activities Yuba County Water Agency (YCWA or Licensee) currently undertakes or proposes to undertake as a condition of the new license for the purpose of: 1) protecting or mitigating impacts from continued operation and maintenance (O&M) of the Yuba River Development Project (Project); or 2) enhancing resources affected by continued Project O&M. These activities are collectively referred to as Protection, Mitigation and Enhancement (PM&E) measures in this Pre-Application Document (PAD).

Besides this introductory subsection, this section has four other subsections. Section 9.2 describes PM&E measures included in the existing Federal Energy Regulatory Commission (FERC) license. Section 9.3 describes preliminary PM&E measures proposed by Licensee at this time for inclusion in the new license. Section 9.4 describes PM&E measures in the existing Project license that, at this time, are not proposed by Licensee for inclusion in the new license. Section 9.5 includes PM&E measures that were proposed by Relicensing Participants at the January 13, 2010, issues identification meetings for inclusion in the new license.

For the purpose of this section, Licensee has assumed that the FERC requirements regarding inspections of Project facilities (e.g., annual FERC inspections, Part 12 Dam Safety Inspections, and Environmental and Public Use Inspections) and other similar general requirements (e.g., requirement for Emergency Action Plans) will be included in “Form L-5 Standard Articles” and will apply to the Project if FERC issues a new license. Therefore, these requirements are not addressed in this section.¹

9.2 Existing Measures

The Federal Power Commission (FPC), FERC’s predecessor, issued the Project’s initial license to Licensee on May 16, 1963. Subsequently, on May 6, 1966, the FPC issued an order ruling that the license would be effective for the period from May 1, 1966 through April 30, 2016. The initial license included 50 articles numbered 1 through 57 (articles 9, 14, 15, 16, 17, 23, and 24 were left blank by the FPC). Since the initial license was issued, the FPC and FERC have added 10 articles to the license, numbers 58 through 67. As a result, the existing license contains 60 articles. Of these, Licensee considers 19 articles (articles 28, 29, 30, 35, 36, 41, 42, 43, 44, 48, 50, 51, 52, 58, 60, 62, 65, 66, and 67) to be “expired” or “out of date” because each pertains to a construction activity that has been completed, a filing related to a construction activity that has been completed, or another activity that has been completed. As a result, the existing license

¹ Licensee has also assumed the specific requirements included in other non-Federal Energy Regulatory Commission (FERC) agreements, such as dam certificates issued by the California Division of Safety of Dams (DSOD) for Project dams within DSOD’s jurisdiction and appropriate water rights issued by the California State Water Resources Control Board (SWRCB) for power generation will not change under a new license.

contains 41 “active” articles. Each of the 41 articles or measures is quoted in its entirety in Section 6.4.1.

9.3 Licensee’s Preliminary Proposed Measures

In this section, Licensee proposes 31 measures to be included in the new license. The section is divided into two parts. The first part (Section 9.3.1) discusses FERC’s *37 Terms and Conditions of License for Constructed Project Affecting Navigable Waters and Lands of the United States* (Form L-5 Standard Articles), which FERC includes in all new licenses for existing projects. These may be considered “standard.” The second part (Section 9.3.2) describes measures proposed by Licensee at this time. In both parts, Licensee has made a good faith effort to state where each Licensee proposed measure is identical or similar to an article or measure in the existing license and the resource area or areas to which each Licensee’s proposed measure applies.

Licensee believes it is highly likely each of the measures Licensee proposes in this section will be included in the new license in one form or another, regardless of whether the measure is related to an issue or impact identified in the PAD. Licensee believes it is prudent and appropriate to acknowledge these measures in the PAD because they may affect identification of studies and eventual development of measures to be included in a new license.

Licensee fully anticipates that measures different than, and in addition to, those proposed by Licensee or in the existing license may be recommended and ultimately included in a new license. However, only through a concise understanding of an issue, a thorough evaluation of information pertaining to the issue, and a rigorous examination of potential measures, can appropriate and cost-effective measures be developed. Licensee anticipates that this process will continue during FERC’s National Environmental Policy Act (NEPA) scoping process, development of study proposals, performance of studies, and preparation of the Preliminary Licensing Proposal (PLP)/Draft License Application (DLA) and License Application (LA).

Licensee reserves its right to modify, including adding or withdrawing at any time in the Relicensing proceeding, Licensee-proposed measures described in this section.

9.3.1 FERC’s Form L-5 Standard Articles

As stated above, Licensee anticipates that FERC will include in a new license for the Project FERC’s *Terms and Conditions of License for Constructed Project Affecting Navigable Waters and Lands of the United States* (Form L-5 Standard Articles), which FERC includes in all new licenses for existing projects of the type of the Yuba River Development Project. For the purpose of this PAD, Licensee considers FERC’s 37 Form L-5 Standard Articles as Licensee’s proposed measures, with the understanding that only FERC has the authority to modify these standard articles or include them in a new license.

Table 9.3.1-1 provides each Form L-5 Standard Article and the corresponding article in the existing FERC license, if it exists. Ten of the Form L-5 Standard Articles are identical to 10

articles in the existing license; 16 of the articles in Form L-5 are similar to 17 articles in the existing license (one of the FERC Standard Articles overlaps with two of the existing license’s articles); and 12 of the Form L-5 Standard Articles are not in the existing license.

Table 9.3.1-1. Measures proposed by Licensee that are the same as FERC’s Terms and Conditions of License for Constructed Project Affecting Navigable Waters and Lands of the United States (Form L-5 Standard Articles), resource areas to which each applies, and corresponding measure in the existing license for the Yuba River Development Project.

Licensee’s Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 1 - FERC Standard Article 1. Entire Project Subject to License The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.</p>	--	Article 1 (identical)
<p>Measure 2 - FERC Standard Article 2. FERC Approval of Project Changes No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.</p>	--	Article 2 (identical) Article 5 (similar)
<p>Measure 3 - FERC Standard Article 3. Conformity with License The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.</p>	--	Article 3 (similar)
<p>Measure 4 - FERC Standard Article 4. FERC Inspection of Project The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.</p>	All	Article 4 (similar)

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 5 - FERC Standard Article 5. Acquire Title or Right to Use Necessary Lands; FERC approval of Ownership Changes The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.</p>	LU	Articles 25 & 26 (similar)
<p>Measure 6 - FERC Standard Article 6. Takeover of Project In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.</p>	--	Not in existing FERC license
<p>Measure 7 - FERC Standard Article 7. Determination of Project Cost The actual legitimate original cost of the project and of any addition thereto or betterment thereof shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.</p>	--	Not in existing FERC license
<p>Measure 8 - FERC Standard Article 8. Reservoir and Stream Gages The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.</p>	WR	Article 6 (similar)
<p>Measure 9 - FERC Standard Article 9. FERC Direction to Install Additional Capacity The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.</p>	--	Article 54 (similar)

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 10 - FERC Standard Article 10. Coordination with Other Projects The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.</p>	WR, LU	Article 55 (identical)
<p>Measure 11 - FERC Standard Article 11. Headwater Benefits Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.</p>	--	Not in existing FERC license
<p>Measure 12 - FERC Standard Article 12. Adherence to Minimum Streamflow Requirements The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.</p>	WR, AR, WI, BR, WRL, T&E, RR, VR	Article 33 (similar)
<p>Measure 13 - FERC Standard Article 13. Use of Project by Others On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of stream-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.</p>	WR, LU	Not in existing FERC license
<p>Measure 14 - FERC Standard Article 14. Transmission Lines In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.</p>	All	Article 10 (similar)

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 15 - FERC Standard Article 15. Facilities for Fish and Wildlife Conservation and Development The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.</p>	G&S, WR, AR, WI, BR, WRL, T&E	Article 31 (similar)
<p>Measure 16 - FERC Standard Article 16. Permit US to Modify Project for Fish and Wildlife Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.</p>	G&S, WR, AR, WI, BR, WRL, T&E	Article 32 (identical)
<p>Measure 17 - FERC Standard Article 17. Recreation Facilities The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.</p>	RR, LU,	Article 61 (similar)
<p>Measure 18 - FERC Standard Article 18. Public Access to Project Waters and Project Lands Owned by Licensee So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.</p>	RR, LU, VR, TI	Article 7 (similar)
<p>Measure 19 - FERC Standard Article 19. Prevention of Soil Erosion, Sedimentation and Air Pollutants In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.</p>	G&S, WR, AR, BR, WRL, T&E, LU, VR	Article 37 (similar)
<p>Measure 20 - FERC Standard Article 20. Keep Project Facilities Clear Including Reservoir Periphery The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.</p>	BR, WI, WRL, RR, LU, VR	Not in existing FERC license

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 21 – FERC Standard Article 21. Dredge Materials Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.</p>	G&S, WR, AR, WRL, LU, VR	Not in existing FERC license
<p>Measure 22 – FERC Standard Article 22. Navigation Facilities, Rights of Passage Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.</p>	WR, LU	Not in existing FERC license
<p>Measure 23 – FERC Standard Article 23. Navigation Facilities, Rules of Operation The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.</p>	WR, LU, VR	Article 18 (similar)
<p>Measure 24 – FERC Standard Article 24. Navigation Facilities, Provision of Power The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.</p>	WR, LU	Not in existing FERC license
<p>Measure 25 – FERC Standard Article 25. Navigation Lighting and Signals The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.</p>	WR, LU, VR	Not in existing FERC license
<p>Measure 26 - FERC Standard Article 26. Removal of Timber, Slash and Debris on US-Owned Lands Timber on lands of the United State cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, that timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.</p>	BR, WRL, LU, VR, SR	Article 13 (similar)
<p>Measure 27 - FERC Standard Article 27. Fire Suppression The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.</p>	WI, BR, WRL, LU, VR	Article 45 (identical)
<p>Measure 28 - FERC Standard Article 28. Water for Fire Suppression The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.</p>	WI, BR, WRL, LU, VR	Article 19 (identical)

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License
<p>Measure 29 - FERC Standard Article 29 Licensee Liability The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.</p>	LU	Article 20 (identical)
<p>Measure 30 - FERC Standard Article 30. Construction of Transportation and Communication Routes by US The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.</p>	LU	Article 21 (identical)
<p>Measure 31 - FERC Standard Article 31. US Approval of Roads, Trails, and Other Uses of US-Owned Lands In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.</p>	WR, AR, WI, BR, WRL, T&E, RR, LU, VR	Article 8 (similar)
<p>Measure 32 - FERC Standard Article 32. Avoidance of Inductive Interference The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.</p>	LU	Article 11 (identical)
<p>Measure 33 - FERC Standard Article 33. Transmission Lines The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.</p>	WI, BR, WRL, LU, VR	Article 12 (similar)
<p>Measure 34 - FERC Standard Article 34. Disposal of Mineral and Vegetative Material on US-Owned Lands The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.</p>	G&S, BR, WRL, LU, VR	Not in existing FERC license

Table 9.3.1-1. (continued)

Licensee's Proposed Measure	Pertinent Resource Area(s) ¹	Related Measure in Existing License ²
<p>Measure 35 - FERC Standard Article 35. Surrender of Licensee If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.</p>	LU	Not in existing FERC license
<p>Measure 36 - FERC Standard Article 36. Licensee Assignment of Rights on US-Owned Lands The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.</p>	LU	Article 26 (similar)
<p>Measure 37 - FERC Standard Article 37. Terms and Conditions in Federal Power Act The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.</p>	--	Article 27 (identical)

1 Resource Area Codes: G&S = Geology and Soils; WR = Water Resources; AR = Aquatic Resources; WI = Wildlife Resources; BR = Botanical Resources; WRL = Wetlands, Riparian and Littoral Habitats; T&E = Threatened, Endangered and Fully Protected Species; RR = Recreation Resources; LU = Land Use; VR = Aesthetic Resources; CR = Cultural Resources; TI = Tribal Interests; SR = Socio-economic Resources.
2 Measures in the current FERC license are found in Section 6.4.1 of this PAD.

9.3.2 Other Licensee Proposed Measures

As discussed in sections 1.2.1 and 5.2.4 of this PAD, the Lower Yuba River Accord is a comprehensive, consensus-based program to protect and enhance aquatic habitat in the Yuba River downstream of USACE's Englebright Dam. One of the most important elements of the Yuba Accord is the set of Yuba Accord minimum flow schedules for the Yuba River. These schedules are described in section 6.3.1.6 of this PAD. Implementation of these schedules is discussed in section 6.3.1.7 of this PAD.

Section 5.4.9 of the Yuba Accord's Lower Yuba River Fisheries Agreement provides that all parties to the agreement will work together and in good faith, using the Yuba Accord minimum flow schedules as a starting point, and using all of the data that is being and will be collected on the Lower Yuba River during the term of that agreement, to try to develop a consensus proposal for the Lower Yuba River instream-flow requirements for Licensee's new Federal Power Act license. Licensee intends to take these actions during the re-licensing process.

At this time, Licensee does not propose any other measures.

9.4 Measures in Existing License Not Proposed by Licensee at This Time

As described Section 6.4.1 and summarized above, the existing license contains 60 articles. Of these, Licensee considers 19 articles (articles 28, 29, 30, 35, 36, 41, 42, 43, 44, 48, 50, 51, 52, 58, 60, 62, 65, 66, and 67), to be “expired” or “out of date” because each pertains to a construction activity that has been completed, a filing related to a construction activity that has been completed, or another finite activity that has been completed. As shown in Section 9.3, above, Licensee’s preliminary proposed measures for the new license incorporate, in one form or another, 26 of the current license’s 41 active articles. This section describes each of the remaining 15 articles that are not expired or proposed for the new license and why Licensee does not propose at this time to include them in the new license.

9.4.1 Administrative-Type Articles in Existing License Not Proposed by Licensee

Five of the remaining 15 active articles in the existing FERC license are administrative in nature and are not included in one of FERC’s 37 L-5 Standard Articles. These articles are:

- Article 46: Agreement with the Department of Army Regarding Flood Control. This article requires Licensee to operate New Bullards Bar Reservoir for flood control in accordance with rules provided by the United States Army Corps of Engineers (USACE).
- Article 47: Agreement with the Department of Army Regarding Water Storage. This article requires Licensee to supply water for storage in USACE’s Englebright Reservoir, for use for New Narrows Power Plant.
- Article 53: Additional Transmission Lines if Ordered by FERC. This article states that FERC may add transmission lines to the Project in the future.
- Article 57: Payment of Annual Charges. This article requires Licensee to annually pay to the United States fees to reimburse FERC’s cost and for use of United States-owned land.
- Article 59: Liability. This article states that the United States is not liable for damages to New Narrows Power Plant from construction of a federal reservoir downstream.

Licensee is confident that FERC will include appropriate administrative-type articles in the new license, especially with regards to Articles 46 and 47 regarding flood management.

9.4.2 Articles in Existing License Not Proposed by Licensee at This Time

Eight of the remaining thirteen articles in the current FERC license are not proposed by Licensee for inclusion in the new license at this time. These articles are:

- Article 33: Instream Flow Schedules. This article requires Licensee, for maintenance of fishlife, to maintain specified minimum streamflows (or the natural flows, whichever is less) at the following locations: the Middle Yuba River below Our House Diversion Dam, Oregon Creek below Log Cabin Diversion Dam, and the North Yuba River below New Bullards Bar

Dam, and to maintain specified minimum streamflows in the lower Yuba River below USACE's Daguerre Point Diversion Dam. This article also requires Licensee to maintain specified releases from Englebright Dam during the October 16 through March 31 period, and it specifies limits on authorized lower Yuba River flow fluctuations and reductions.

As discussed in section 9.3.2 above, Licensee will be working with other parties to the Yuba Accord's Lower Yuba River Fisheries Agreement to try to develop a consensus proposal for the Lower Yuba River instream-flow requirements for Licensee's new license.

- Article 34: Minimum Pool. This article states that Licensee shall maintain a minimum pool in New Bullards Bar Reservoir.
- Article 38: Minimize Habitat Alterations Due to Project Activities, Except in the Case of Enhancement. This article states that the Licensee shall construct and operate the project in a manner providing minimum possible alteration of fish and wildlife habitat.
- Article 39: Mitigations of Damages to Wildlife Resulting from Project Activities. This article states that the Licensee will mitigate damages to wildlife resulting from project activities.
- Article 40: Operation of Multiple-level Power Intakes in New Bullards Bar Dam. This article states that the Licensee shall operate the multiple-level power intakes in New Bullards Dam to provide water of suitable quality in the Yuba River downstream from the New Narrows Power Plant for the production of anadromous fish.
- Article 56: Recreation Management Plan. This article states that Licensee shall file a recreational use and management plan for the project.
- Article 61: Recreation Management Plan. This article requires Licensee to construct, operate and maintain recreation facilities as may be prescribed by the Commission during the term of the license.
- Article 63: Dissolved Oxygen Monitoring Plan. This article applies to the North Fork of the Yuba River, and consists of developing a dissolved oxygen monitoring plan.
- Article 64: Historic Properties Management Plan. This article states that Licensee shall develop a Historic Properties Management Plan.

Licensee does not propose that these measures be included in the new license at this time because it is premature to speculate as to what PM&E measures may be needed or appropriate until a final list of issues to be addressed is developed through the FERC's NEPA public scoping process, and existing and yet-to-be-developed information is used to evaluate the issues that prompted these initial license conditions.

9.5 Potential Measures Recommended by Relicensing Participants

While discussion of potential new license conditions was not on the agenda for the Licensee-sponsored January 13, 2010 issue identification Agency/Public meeting, some Relicensing Participants provides some proposed PM&E measures they would like to have included in a new license for the Project. Licensee agreed to list these proposed measures in its PAD, but stated

that listing these measures in the PAD should not be inferred to mean that Licensee plans to propose them for inclusion in the new license. These measures are:

- Public access to California Department of Water Resources (CDWR) Data Exchange Center (CDEC) water quantity data in cubic feet per second (cfs), including at Parks Bar, Marysville and Simpson Lane (i.e., availability of real-time, 15-minute or hourly data).
- Ability to enhance fish passage at USACE's Daguerre Point Dam.
- Opportunities for new trails around New Bullards Bar Reservoir, and connection to existing trails.
- Potential uses of sediment and dredged material from the Our House Diversion Dam impoundment.

9.6 List of Attachments

None.