



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
WEST COAST REGION
650 Capitol Mall, Suite 5-100
Sacramento, California 95814-4706

July 7, 2020

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

Re: NOAA's National Marine Fisheries Service, West Coast Region, Comments on Scoping Document 1 for the Camp Far West Hydroelectric Project, Federal Energy Regulatory Commission Project No. P-2997.

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) has reviewed the Scoping Document 1 filed by FERC for the Camp Far West Hydroelectric Project, FERC No. 2997 (Project) on June 9, 2020 and hereby provides our comments below.

If you have questions regarding this letter, please contact Mr. Tom Holley at (916) 930-5592. (Thomas.Holley@noaa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "S. Edmondson".

Steve Edmondson
FERC Hydropower Branch Supervisor
NMFS, WCR, Sacramento Area Office

cc: FERC Service List for P-2997

1.0 Introduction

NMFS has statutory responsibility for the protection and enhancement of living marine resources, including anadromous fish and their supporting habitats, under the Federal Endangered Species Act (ESA) (16 U.S.C. §1531 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §1801 *et seq.*), Fish and Wildlife Coordination Act (16 U.S.C. §661 *et seq.*), and Reorganization Plan No.4 of 1970 (84 Stat. 2090). NMFS has authority to prescribe fish passage at licensed projects under the Federal Power Act (FPA) §18, and the duty to provide recommendations for the protection, mitigation of damage to, and enhancement of fish and their habitats under FPA § 10(j) and 10(a). NMFS submits these comments pursuant to its authorities under these statutes.

The anadromous fish and anadromous fish habitat potentially impacted by facilities and operations of the Camp Far West Hydroelectric Project (P-2997) are preliminarily determined to be those occurring in the lower Bear River watershed, including Dry Creek, and in areas downstream in the Feather River, Sacramento River, and the Sacramento-San Joaquin Delta; these resources are identified below:

Anadromous fish and habitat resources protected under the Endangered Species Act (ESA):

- 1) Central Valley (CV) spring-run Chinook salmon evolutionarily significant unit (ESU) (*Oncorhynchus tshawytscha*), threatened (June 28, 2005, 70 FR 37160);
- 2) CV spring-run Chinook salmon critical habitat (September 2, 2005, 70 FR 52488);
- 3) California CV (CCV) steelhead distinct population segment (DPS) (*Oncorhynchus mykiss*), threatened (January 5, 2006, 71 FR 834);
- 4) CCV steelhead critical habitat (September 2, 2005, 70 FR 52488);
- 5) Southern DPS of North American (NA) green sturgeon (*Acipenser medirostris*), threatened (April 7, 2006, 71 FR 17757); and
- 6) Southern DPS of NA green sturgeon critical habitat (October 9, 2009, 74 FR 52300);

Anadromous fish habitat resources protected under the Magnuson-Stevens Fishery Conservation and Management Act (MSA):

- 1) CV fall/late fall-run (fall-run) Chinook salmon ESU, Species of Concern (those species about which NMFS has concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA): April 15, 2004, 69 FR 19975 and
- 2) Chinook salmon “Essential Fish Habitat” (EFH), (October 15, 2008 73 FR 60987); EFH has been identified in the Bear River extending upstream to approximately Camp

Far West Dam and in areas downstream in the Feather and Sacramento Rivers, and the Sacramento-San Joaquin Delta.

2.0 Comments on FERC's Scoping Document 1

4.2.1 Geologic and Soil Resources

There are no proposed protection, mitigation, and enhancement (PM&E) measures related to geologic and soil resources or for threatened and endangered species for the Camp Far West Hydroelectric Project. NMFS expects FERC will adopt PM&E measures that fully mitigate the Project's effects to Threatened and Endangered Species and their habitat.

During the term of the next FERC license, Camp far West Dam and associated diversion dam will continue to block downstream transport of all coarse gravel necessary for salmonid spawning, as well as significant amounts of large woody material (LWM). Significant spill events will occur at that Project that will continue to transport some of the existing substrate downstream. It is reasonable to consider that future sediment/LWM surveys and new substrate augmentations are likely to be needed over the decades-long term of the new license. This Project effect should be acknowledged and analyzed by FERC in their Environmental Assessment and long-term PM&E measures should be adopted.

4.1.2 Geographic Scope

FERC should extend the geographic scope for cumulative effects to water resources, aquatic resources and threatened and endangered species to include the Feather River downstream of the Bear River confluence, the Sacramento River downstream of the Feather River confluence and the San Francisco Bay-Delta. While the geographic scope currently proposed in FERC's Scoping Document 1 may be appropriate to analyze certain effects of the action, the cumulative effects of this action extend downstream to the San Francisco Bay-Delta. This is demonstrated by the fact that South Sutter Water District (SSWD) agreed to enter into the "Bear Agreement" with the California Department of Water Resources, which required SSWD to release water from the Project in order to implement water quality control objectives outlined in the *Water Quality Control Plan for the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary* (1995 Bay-Delta Plan).

It is implicit that in order to provide for "protection, mitigate of damage to, and enhancement of fish and wildlife.....," FERC must first evaluate environmental impacts. The FPA clearly distinguishes between the project boundaries and the environment affected by the project (action area). For instance, FERC's relicensing regulations at 18 CFR 16.8(b)(i) require that the applicant provide detailed maps of the project boundaries, and at 16.8(b)(iv) the applicant must additionally provide an identification of the environment affected, or to be affected, and proposed mitigation. FERC wouldn't make these separate requirements of a description of the affected environment if it was the same as the project boundaries.

Further, in FERC's regulations stipulating what must be included in a license application, at 18 CFR 4.41(f)(3), FERC requires information on fish and wildlife "in the vicinity of the proposed project", not just the project boundaries. In 18 CFR 4.41(f)(3)(i), FERC requires a description of resources in the "proposed project area and its vicinity" and requires mitigation for impacts on fish and wildlife. Thus, FERC clearly distinguishes between the project area and the vicinity for purposes of considering impacts on natural resources.

Regulations governing the preparation of the license application require the inclusion of an Exhibit E. FERC's guidance on what must be in Exhibit E includes a summary of the resource agencies' views on resource needs in the project vicinity and region. This further confirms the absolute requirement to collect information on resources affected beyond the project boundaries. From a purely scientific basis, by its very nature, a dam could affect resources well beyond project boundaries. If the project is affecting the environment upstream or downstream of the actual project boundaries, it would be arbitrary to consider and mitigate only for impacts occurring within the project boundaries. Further, FERC has the authority to collectively formulate and impose PM&E measures on more than one license at a time. On past occasions where public resource and licensing decisions overlapped within a shared watershed, FERC has collectively evaluated impacts and imposed PM&E measures on multiple project licenses within the watershed. For instance, in the Ohio River proceedings, FERC collectively evaluated direct, indirect, and cumulative impacts (including water quality and fish passage) and imposed PM&E measures for over a dozen different project licenses. Such actions may be necessary for FERC to meet the comprehensive development and balancing standards of the FPA.¹

4.2.3 Aquatic and Fisheries Resources

“Effects of continued project operation on aquatic resources, including entrainment mortality of resident fish in the Bear River at the non-project diversion dam or in Camp Far West Reservoir.” (SD1 p. 15)

NMFS supports FERC analyzing the effects of the Camp Far West Diversion Dam as a part of the direct and indirect effects of the Project. Although the Diversion Dam is not a facility under FERC's jurisdiction, the Diversion Dam possesses little independent utility apart from the Project. Were it not for the storage of winter runoff by Camp Far West Dam, there would be little if any water available to divert at the Diversion Dam during the summer for consumptive uses. In addition to the entrainment effects of the Diversion Dam, FERC should analyze the fish passage, hydrologic and geomorphic effects of the Diversion Dam.

4.2.5 Threatened and Endangered Species

¹ Also see *See Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, 962 F.2d 27, 34 (D.C. Cir. 1992) (holding that “FERC was not required to first determine extent to which first power district[licensee], rather than second power district [licensee] was responsible for alleged harm to birds... prior to imposing...flow conditions [on first licensee]).

We anticipate the need for FERC to consult with NMFS under Section 7 of the Endangered Species Act for the species and habitat listed above. In order to facilitate a timely and productive ESA consultation, NMFS and FERC need to have a shared understanding of the environmental effects of the “environmental baseline” under the ESA. In describing the relicensing of ongoing FERC projects, the ESA consultation handbook (FWS 1998) states a section 7 analysis of the project's effects on listed species is done in the same way as new projects (pg. 4-30):

- The total effects of all past activities, including effects of the past operation of the project, current non-Federal activities, and Federal projects with completed section 7 consultations, form the environmental baseline.
- To this baseline, future direct and indirect impacts of the operation over the new license or contract period, including effects of any interrelated and interdependent activities, and any reasonably certain future non-Federal activities (cumulative Effects), are added to determine the total effect on listed species and their habitat.

Because the effects of the new license will be added to the environmental baseline to determine the total effect on listed species, it is crucial to understand the effects of all past activities (including effects of the past operation of the Project), and the current, ongoing effects of the Project that form the environmental baseline. Only then can the effects of the proposed licensing action be evaluated during ESA consultation. It is incorrect to conflate the ESA environmental baseline with a NEPA “no- action alternative”— in the ESA context the effect of the actions will be *added* to the baseline, while in NEPA, the no action alternative will be compared *against* the action alternatives.

In addition, a NEPA analysis should not simply describe current operations and facilities of the Project as the “no-action alternative” without analysis of the environmental effects of the “no action alternative”— i.e. a *description* of the current project does not *analyze* the current effects of the Project.

The Council on Environmental Quality requires an analysis and disclosure of environmental impacts resulting from the no-action alternative:

“Accordingly, the regulations require the analysis of the no-action alternative even if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives” (46 Fed. Reg. 18026 (March 23, 1981)).

Similarly, the Commission’s manual for preparing NEPA documents specifies, under Section 3.4 NO_ACTION ALTERNATIVE:

“This section describes the effects of implementing the no-action alternative on the environment. Discuss the no-action alternative for your project. In relicensing cases, be sure to discuss any ongoing effects that would continue.” (FERC 2008).

5.0 Request for Information

NMFS has already filed information on the Project that will assist FERC in conducting their environmental analysis including: comments on the PAD and study requests, comments regarding the development of the Project's study plan, and comments on the draft license application.

In addition NMFS is providing pertinent information for the Bear River from NMFS' (2014) Recovery Plan for Sacramento River winter-run Chinook salmon, CV spring-run Chinook salmon ESU, and CV steelhead Distinct Population Segment (DPS). In FERC's EA there should be discussion regarding how the Project and associated facilities, operations and maintenance are consistent with NMFS' Recovery Plan.

NMFS' *Final Recovery Plan for Sacramento River Winter-run Chinook Salmon, Central Valley Spring-run Chinook Salmon, and California Central Valley Steelhead* (Recovery Plan) (NMFS 2014), classified the Bear River as a core 3 watershed for CV steelhead. This means that the Bear River is part of the steelhead recovery process, but it is considered a lower priority watershed. Core 3 watersheds support populations that are characterized as being small, possibly intermittent, and dependent on other nearby populations for their existence. Although the Bear River is considered a low priority for CCV steelhead recovery, its persistence does increase the species' viability by providing increased habitat and life history diversity and serving as a buffer against local catastrophic occurrences that could affect other nearby populations (e.g., Feather or Yuba river populations).

Inadequate streamflow in the Bear River prevents the establishment of a self-sustaining CCV steelhead population (JSA 2004 as cited in NMFS 2014). The minimum flows released below Camp Far West Diversion Dam to meet current FERC license requirements are likely too warm to support all freshwater life-stages of CCV steelhead. However, during periods of high flows, CCV steelhead are known to utilize the river for limited spawning (JSA 2004 as cited in NMFS 2014). The present system of diversions results in abnormal flow fluctuations, in contrast to historical, natural, seasonal flow variations. The presence of the diversion dam limits upstream migration and any habitat that may have occurred upstream of the Project is now inundated by the CFW Reservoir.

3.0 References

FERC 2008. Preparing Environmental Documents. Guidelines for Applicants, Contractors and Staff. Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing. September 2008.

National Marine Fisheries Service (NMFS). 2014. Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook salmon and the Distinct Population Segment of California Central Valley Steelhead. California Central Valley Area Office. July 2014.

South Sutter Water District (SSWD). 2018. Draft License Application for the Relicensing of the South Sutter Water District's Camp Far West Hydroelectric Project, Federal Energy Regulatory Commission's Project (P-2997). SSWD, Trowbridge, CA December 2018.

United States Fish and Wildlife Service (USFWS). 1998. Consultation Handbook. Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act. United States Fish and Wildlife Service and National Marine Fisheries Service. March 1998.

Enclosure A

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

South Sutter Water District)
Camp Far West Hydroelectric Project)
Bear River)

Project No. 2997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, by first class mail or electronic mail, a letter to Secretary Bose, Federal Energy Regulatory Commission (FERC), the National Marine Fisheries Service's comments on FERC's Scoping Document 1 and this Certificate of Service upon each person designated on the official service list compiled by FERC in the above-captioned proceeding.

Dated this 7th day of July 2020



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Document Content(s)

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