

Foothills Water Network

COMMENTS ON DRAFT LICENSE AMENDMENT APPLICATION FOR NEW BULLARDS BAR ARC SPILLWAY THE YUBA RIVER DEVELOPMENT PROJECT (P-2246)

August 22, 2023

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

Via Electronic Submittal

Dear Ms. Bose:

Pursuant to 18 C.F.R. § 5.16(e), the Foothills Water Network (Network) submits these Comments on the Draft License Amendment Application (DLAA) for the New Bullards Bar Atmospheric River Control Spillway to the Yuba River Development Project (YRDP or Project) as filed on June 23, 2023, by the Yuba County Water Agency (YWA or Licensee). ¹

Foothills Water Network

This response was jointly developed and signed by non-governmental organizations and individuals participating in the Yuba River Development Project relicensing. The Network represents a broad coalition of non-governmental organizations and water resource stakeholders in the Yuba, Bear, and American watersheds. The overall goal of the Foothills Water Network is to provide a forum that increases the effectiveness of non-profit conservation organizations to achieve river and watershed restoration and protection benefits for the Yuba, Bear, and American Rivers. This includes negotiations at the county, state, and federal levels, with an immediate focus on the FERC relicensing processes.

BACKGROUND

The initial license for the Yuba River Development Project (Project) issued to YCWA took effect on May 1, 1966, and set the expiration date as April 30, 2016.² On June 6, 2017, YWA filed its Amended Final License Application (AFLA) to relicense the project.³ As part of the AFLA, YWA proposed the addition of a new secondary spillway to New Bullards Bar Dam.

¹ YWA, Draft License Amendment Application (DLAA) for the New Bullards Bar Atmospheric River Control Spillway to the Yuba River Development Project, eLibrary no. 20230623-5180.

³ See YWA, Draft License Amendment Application, eLibrary no 20170605-5050.

On January 2, 2019, FERC released the Final Environmental Impact Statement (FEIS) for the YRDP relicensing.⁴ On June 23, 2023, YWA filed the DLAA.

KEY SUGGESTED CHANGES

(1) Recreational Access Immediately below New Bullards Bar Dam

Paddlers, anglers, and other river recreationists have a strong interest in access below New Bullards Bar Dam. *This location is the only existing access point* to the upper part of this reach of the North Yuba River.

The DLAA makes no mention of recreational access below the dam. Spillway construction could provide an opportunity to create road access to the North Yuba River at a location that is downstream from the dam. We recommend that the Final License Amendment Application include the use of construction roads built for the new spillway as permanent access to this river reach.

The Recreation Flow Study for YRDP highlighted the fact that the North Fork Yuba River from New Bullards Bar Dam to the Colgate Powerhouse is a high-quality whitewater boating reach. This reach is also of interest to hikers and anglers. The only feasible access to the North Yuba downstream of New Bullards Bar Dam is via the access road to the base of the dam. New license conditions negotiated as part of the YRDP will provide additional whitewater boating opportunities in this reach. Improved base flows and habitat measures will improve conditions for fish and angling opportunities.

For these reasons, the California Department of Fish and Wildlife (CDFW), United States Forest Service (USFS), and the National Park Service all recommended or supported requiring vehicular and public access below New Bullards Bar.⁵

FERC's draft Environmental Impact Statement (DEIS) very clearly described the rationale for requiring vehicular access to the North Yuba River downstream of New Bullards Bar Dam:

Providing vehicular access as the agencies and FWN recommend would be reasonable because it appears that: (1) access is likely constraining river-based recreation; (2) providing public vehicular use on the access road can be provided concurrent with providing security at project infrastructure; and (3) improved access is necessary to support whitewater boating and other river-based recreation uses downstream of New Bullards Bar Dam.⁶

⁴ Final Environmental Impact Statement for New Hydropower License, Yuba River Development Project Project No. 2246-065 – California (Jan 2, 2019), eLibrary no 20190102-3000

⁵ CDFW 10(j) Condition 2.22 to require public access for angling. Forest Service 10(a) Recommendation 17. The National Park Service also supported recreational access below New Bullards Bar Dam.

⁶ DEIS, pp. 3-324 and 3-325.

The Network continues to support this analysis and feels that this description accurately depicts the reality on the ground.

YCWA opposed this staff recommendation citing several concerns, including:

- The existing road is narrow and unsuitable for public access.
- Allowing public access near the base of New Bullards Bar Dam creates an unacceptable safety risk for project facilities.
- Paddlers and anglers would be at significant risk in passing the existing spillway when it is in operation.

In the Network's comments in response to the Notice of Ready for Environmental Analysis REA for the YRDP relicensing, the Network recognized YWA's concerns regarding the use of the existing road for public access and recommended the following:

In the event that the Licensee determines that it is unacceptable to provide public access at the base of New Bullards Bar Dam using the existing access road, the *Licensee shall build an alternative access point* that provides security for Project facilities and parking and access for whitewater boaters at the top of the run.⁷

The Network's recommendation is still relevant here when considering the environmental impacts of the Project. We believe that reasonable public access to project-affected reaches is required under the equal consideration clause of Section 4(e) of the Federal Power Act.⁸

The FEIS included the State Water Control Board's preliminary Condition 22: Develop a plan to provide public access to the North Yuba River below New Bullards Bar Dam for designated beneficial uses.⁹

In the FEIS, FERC stated:

Providing public vehicle access below New Bullards Bar Dam (preliminary 401 condition 22) would increase access to class V and V+ whitewater boating resources. However, because of the infrequent occurrence of boatable flows and the limited number of boaters with sufficient expertise to safely boat the flows, these benefits to recreation resources would be small. Providing public access would increase security concerns around and operation of project infrastructure, and public vehicular use on the narrow road and sudden, high outlet or spillway releases would increase public safety concerns.¹⁰

The Network disagrees with the unfounded assertion that there is little recreational interest in the reach of the North Yuba River downstream of New Bullards Bar Dam. In

4

⁷ Foothills Water Network, Comments and Recommendations Ready for Environmental Analysis for the Yuba River Development Project (P-2246), eLibrary no. 20170825-5257 (FWN REA Comments), p. 83 (emphasis added).

⁸ See Heather Campbell and Frank Calgano, Offering Public Access While Maintaining Security, Hydro Review, October 2005, pp. 16ff.

⁹ FEIS pp. xxxvii

¹⁰ FEIS pp. xlvi

addition, for 50 years, a road has crossed the dam. The increased access opportunity to the river reach downstream does not appear to add security concerns. Real-time reporting of gage data and advisories regarding prospective flood releases on YWA's website reduces the safety hazard for recreationists. Signage would further reduce the hazard.

Measures in the new license will provide boatable flows within a safe range for kayakers to access this class V section. There are many examples of class V runs in the Sierra that are similar to this stretch. The primary reason that this stretch is not boated is because of access.

The Network recommends that the FLAA include options to provide river access to boaters, anglers, and other river recreationists. Construction of the ARC Spillway will necessitate new roads and access down the river left side of the dam. This new road could alleviate some of the concerns previously raised by YWA. The FLAA and environmental analysis should include this option and other feasible alternatives that would provide pedestrian and/or vehicular access.

(2) Operations and Flood Control Encroachment

The project description and operations in the DLAA focus solely on the spillway's use for rare events or emergencies. Nowhere in the DLAA is there an explanation or analysis of operations outside of these rare events.

YWA, however, also intends to benefit from the spillway during dry years. According to a public education film on the relicensing website:

"Additionally, during some dry water years, if no storms are forecast, we can potentially hold on to water that we normally would have had to release, which could be especially valuable when water availability is scarce." The film also states that "water can be held in the reservoir during times of scarcity.¹¹

(a) Project Description and Uses

The Network is concerned that the DLAA and associate draft NEPA analysis is deficient in that it does not disclose all of the anticipated operations at the ARC Spillway. In accordance with NEPA, all anticipated operations must be fully identified and evaluated for impacts, and feasible mitigations must be described.

(b) Anticipated Operations

With the new spillway, YWA will have more operational flexibility, not only during atmospheric river events, but also to potentially conditionally encroach (store water) into the New Bullards Bar flood reservation during and after high flow, but non-flood, events in years of relative water scarcity, in a re-evaluation that is already ongoing. The DLAA makes no mention of this strategy or, for that matter, of any operations plans outside of flood events.

¹¹ "Yuba Water Agency New Bullards Bar ARC Spillway Explainer," August 11, 2021, minute 1:40 https://vimeo.com/585848656 (last accessed 8/14/23)

The NEPA analysis incorporated into the DLAA thus does not address environmental effects associated with all anticipated or potential operational uses of the spillway. As described in the aforementioned YWA video, the second spillway's location 31.5 feet below the currently existing New Bullards Bar Dam spillway location will allow YWCA to better operate the reservoir based on Forecast Informed Reservoir Operations (FIRO), rather than an inflexible time-of-year based approach. The FIRO model is likely to allow for more flexible operations that result in more storage of water during certain times of the year, including the fall (when storms are intermittent and, in dry years). FERC's NEPA document will need to address the potential effects of reduced flood control releases that such operations will enable.

(c) YRDP Recession Rates

The FEIS and FLA for YRDP require a specific ramp-down rate for New Bullards Bar. These same recession rates need to be applied to the new ARC Spillway. The FLA needs to specifically include that Condition AR4¹² also applies to the new ARC Spillway.

(d) Forecast Informed Reservoir Operations

In analyzing the impacts of the ARC Spillway project, FERC's NEPA analysis will need to analyze the reasonably foreseeable impacts of FIRO operations, because construction of the ARC Spillway is a condition precedent to FIRO modifications to New Bullards Bar operations. However, the DLAA and associated NEPA analysis fails to analyze FIRO operations and new anticipated or likely operations ¹³ to be implemented under a new USACE Flood Control Manual (Corps of Engineers Water Control Manual) ¹⁴. As a result, they fail to analyze the impacts to fish, other aquatic species, hydrology, and the riparian corridor that result from the associated reduction in downstream flow, and in particular, reduced frequency of flood control releases associated with likely increased water storage availability.

(e) Operational Alternatives

[40 C.F.R.] Section 1502.14 requires the EIS to examine reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and use common sense rather than simply desirable from the standpoint of the applicant.

Since YWA is already proposing to make changes to reservoir operations allowed by the new spillway and is working on proposed FIRO operations, YWA's FLAA should contain sufficient information such that the Commission's NEPA document can analyze such operational change as an alternative to the proposed action or as part of an alternative to the proposed action.

_

¹² FEIS, pp. 5-4

¹³ https://cw3e.ucsd.edu/FIRO_docs/Yuba-Feather_PVA.pdf.

¹⁴ "New Bullards Bar Reservoir, North Yuba River, California, Reservoir Reguation for Flood Control, Appendix V to Master Manual of Reservoir, Regulation, Sacramento River Basin, California," Department of the Army, Sacramento District, Corps of Engineers, Sacramento, California, June 1972.

(f) Potential Mitigation Measures for Project Related Impacts

NEPA requires disclosure of feasible mitigations of significant impacts of a proposed action. Since the DEIR does not analyze all the anticipated operations of New Bullards Bar Reservoir associated with the operation of the new spillway, and the impacts of such operations, it does not analyze mitigation for those impacts. Reduced downstream flow, and particularly reduced frequency of flow pulses. will negatively affect already threatened and endangered fish populations in the Lower Yuba River.

YWA could mitigate the reduced frequency of flow pulses due to FIRO operations enabled by the new spillway. YWA could devote a portion of water conserved through changes to the effective flood reservation to additional pulse flow releases to the lower Yuba River. The River Management Team or successor could define the details of such releases. A starting point for quantity would be 20% of the gained water; this amount would be equivalent to the "gainshare" water that East Bay Municipal Utility District applies to fisheries benefits from water diverted in dry years through its Freeport facilities.

The FLAA should include this, or a similar, mitigation measure.

CONCLUSION

Thank you for considering these comments. If you have comments or questions, please contact Traci Sheehan, Coordinator, Foothills Water Network.

Respectfully submitted,

DW

Traci Sheehan Coordinator, Foothills Water Network PO Box 573 Coloma, CA 95613 (530) 919-3219 Traci.sheehan@gmail.com CSPA

A

Since 1983 * Hold

Chris Shutes

Executive Director, California Sportfishing Protection Alliance 1608 Francisco St., Berkeley, CA 94703 (510) 421-2405 blancapaloma@msn.com





Done Stand

Meghan Quinn California Dam Removal, Program Director **American Rivers** 120 Union Street, Nevada City, CA 95959 (530) 539-5530 mquinn@americanrivers.org

Dave Steindorf California Field Staff 4 Baroni Dr. Chico, CA 95928 dave@amwhitewater.org





Roseld M Str

Ronald Stork Senior Policy Staff Friends of the River 3336 Bradshaw Road, Suite 335 Sacramento, CA 95827 (916) 442-3155 rstork@friendsoftheriver.org

Frank Rinella Conservation Education Chair Gold Country Fly Fishers 303 Vista Ridge Dr. Meadow Vista CA, 95722 (530) 906-4116 sierraguide@sbcglobal.net



C. Mark Rochwell, Se

Mark Rockwell Director and VP of Education Northern California Council, Fly Fishers International 5033 Yaple Ave. Santa Barbara, CA 93111 (530) 559-5759

mrockwell1945@gmail.com



Hobert C Burne

Robert C. Burness Conservation Committee Acting Chair Sierra Club - Mother Lode Chapter 1722 J Street, Suite 226 Sacramento, CA 95811 (916) 956-0362 rmburness@comcast.net



hoffen

Aaron Zettler-Mann Executive Director South Yuba River Citizens League 313 Railroad Avenue, Suite 101 Nevada City, CA 95959 (530) 265-5961 aaron@yubariver.org



Brian J. Johnson

California Director Trout Unlimited 5950 Doyle Street, Suite 2 Emeryville, CA 94608 (510) 528-4772 bjohnson@tu.org