Foothills Water Network

COMMENTS ON THE FINAL LICENSE APPLICATION FOR NARROWS 1 PROJECT AND ADDITIONAL STUDY REQUESTS
(P-1403-068)

January 16, 2024

Acting Secretary Debbie-Anne Reese
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

Via Electronic Submittal

Dear Ms. Reese:

Pursuant to 18 C.F.R. 4.32(b)(7), the Foothills Water Network (FWN or Network) submits Additional Study Requests and Comments on the Final License Application (FLA) and the Applicant Prepared Scoping Document 1 (SD1) for the Narrows 1 Project (Narrows or Project) as filed on November 13, 2023, by the Yuba County Water Agency (YCWA or Licensee).[1]

Foothills Water Network

This response was jointly developed and signed by non-governmental organizations and individuals participating in the Narrows 1 Project relicensing.[2] The Network represents a broad coalition of non-governmental organizations and water resource stakeholders in the Yuba, Bear, and American River 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 Federal Energy Regulatory Commission (FERC or Commission) relicensing processes.

[1] eLibrary no: 20231114-5136. All subsequent footnote citations or references to the FLA omit the eLibrary accession number.

[2] Foothills Water Network, California Sportfishing Protection Alliance, American Rivers, American Whitewater, Friends of the River, Conservation Committee Co-Chairs of the Gold Country Fly Fishers, Northern California Chapter, Fly Fishers International, Sierra Club, South Yuba River Citizens League, and Trout Unlimited.

The Network and its member groups have been active participants in all five relicensing proceedings related to the use of the Yuba River.[3] In addition, several member organizations were involved in the prior relicensing of the Narrows 1 Project and other collaborative processes impacting the Yuba River. We welcome the opportunity to comment and provide critical information on this Project.

BACKGROUND

The Project license was issued to PG&E on February 11, 1993.[4] FERC approved a 3-year extension of the license on January 26, 2018. On October 17, 2018, PG&E and YCWA filed a joint application for approval of Project license transfer (with the exception of the Narrows 1 Transmission Line and Substation) from PG&E to YCWA.[5] The Narrows Project was transferred from PG&E to YCWA on May 2, 2019, and YCWA began operations in April 2020. The existing license is set to expire January 31, 2026.

PROJECT DESCRIPTION AND SCOPE

I. Project Works and Description

According to YCWA, the Narrows 1 project works are located on the south bank of the river extending approximately 0.2 miles downstream of Englebright Dam and Reservoir and YCWA's Narrows 2 Powerhouse and Full Bypass, which are located on the north bank of the river at the base of Englebright Dam. Narrows 2 Powerhouse and Full Bypass are part of YCWA's Yuba River Development Project (YRDP), FERC Project No. 2246.[6]

II. Englebright in Scope

Since the YRDP relicensing process' inception, YCWA has maintained that Englebright Dam is not part of the Project due to U.S. Army Corps of Engineers (USACE) ownership. However, excluding Englebright Dam from the Project Description is a fundamental omission and a significant flaw in the Narrows 1 relicensing process. The operation of Narrows is dependent on water from Englebright Reservoir. If Englebright Dam were removed or altered, substantial modifications would be necessary for Narrows to maintain its operation and power generation capabilities. Englebright is not just "related to" the Narrows 1 Project; Englebright Dam and Reservoir are necessary for Narrows operation.

The Final License Application (FLA) and the previous Draft License Application (DLA) downplay the significance and need of Englebright, merely stating that the Project "takes

[3]Upper Drum-Spaulding Hydroelectric Project (FERC No. 2310-193), Lower Drum Hydroelectric Project (FERC Project No. 14531-000), Deer Creek Hydroelectric Project (FERC Project No. 14530-000), Yuba-Bear Hydroelectric Project (FERC Project No. 2266-102), and Yuba River Development Project (FERC Project No. 2246-065)

[4]*Id.*

[5] FERC eLibrary accession # 20181017-5077

[6] FLA, p. B-2.

advantage of water in the reservoir."[7] This casual mention inaccurately represents YCWA's control and operations of Englebright for the Narrows 1 Project. The reality is that YCWA operates all functions of Englebright. YCWA possesses the sole water rights for storage, diversion, and re-diversion of water at Englebright.[8] YCWA owns and operates the only outlets on the dam, and those outlets are the only way for water to exit the reservoir (unless there is spill). The USACE does not even control or manage daily reservoir levels --YCWA does.[9] All operational decisions are made by YCWA, except for operations related to the flood control agreement reserving flood storage space in the reservoir. This is further corroborated by the SWRCB's findings,[6] which state that Englebright Reservoir serves as the afterbay for YCWA's New Colgate Powerhouse and the forebay for power generation at the Narrows 1 and Narrows 2 Powerhouses. The USACE has also recognized that the primary purpose of Englebright Dam and Reservoir is power generation.[10]

FWN requests that FERC review FWN's previously filed comments on YRDP for further rationale for incorporating Englebright Dam into this Project Definition and scope.[11]

See also our below comments regarding the Applicant-prepared Scoping Document 1 (SD1).

KEY SUGGESTED CHANGES TO FLA

I. The FLA Should be Revised to Include an Evaluation of Infrastructure Necessary to Induce Flows for Floodplain Inundation.

In the YRDP Final Environmental Impact Statement (FEIS), FERC acknowledged that YRDP has negative impacts on flows in the lower Yuba River. These negative impacts are also acknowledged in the Draft Staff Report of the Bay Delta Plan.

> *High winter and spring storm flows from rain and snowmelt inundate the riparian and floodplain habitat vital for prolonged juvenile salmonid rearing. These flows also provide outmigration cues in which juvenile salmonids have evolved and mobilize and clean spawning gravels (State Water Board 2017). The current flow regime on the Yuba River does not allow for floodplain inundation during the winter and spring juvenile growth periods. This limits habitat diversity and complexity necessary for juvenile refugia. The*

[7] DLA, p. IS-4.

[8] YCWA holds Water License 6388 (A008794), which authorizes the storage and diversion of water at Englebright to the Narrows 1 Powerhouse. YCWA also holds Water Licenses 5544 (A010282), 11565 (A005631), 11566 (A015205), and 11567 (A015563), which authorize the diversion of water at Englebright to its Narrows 2 powerhouse.

[9] YCWA Offer of Settlement, October 31, 2022, under which YCWA would manage flows in and out of Englebright Reservoir to achieve specific water surface elevations.

[10] *See infra* note xx.

[11] Foothills Water Network et al. comments on the Pre-Application Document (YRDP P-2046) p 3-12. FERC eLibrary accession # 20110307-5081.

habitat that does become inundated dewaters rapidly, disconnecting habitat availability and diminishing the amount of time available for a meaningful growth period. In addition, some regulated flow fluctuations under current conditions have dewatered redds and created isolated pools, thereby stranding juveniles (ICF Jones & Stokes 2009; Larrieu and Pasternack 2021).[12]

The limited outlet capacity of the powerhouses at Englebright Dam is the primary limiting factor for achieving releases that would inundate the floodplain. During the YRDP relicensing, the Network recognized that inducing spill at Englebright could impact upstream operations, including power generation. This was a key factor in the development of the agency and Network flow proposal for the YRDP that sought to increase the area of inundated floodplain along the lower Yuba River at flows within the existing outlet capacity. However, YCWA is now adding an additional spillway at New Bullards that has the ability to augment flows into Englebright Reservoir.

Article 9 of the license allows FERC to determine that additional outlet capacity is needed. According to the Project license, "[t]he Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes to the project as directed by the Commission to the extent that it is economically sound and in the public interest to do so."

The Network requests that FERC review our comments from the PAD and DLA for more detailed information on this issue.

II. The FLA Should Be Revised to Include Measures that Would Reduce Lower Yuba River Water Temperatures.

The FLA does not consider measures that reduce temperatures in the lower Yuba. The Additional Information Requests (AIRs) that were filed with FERC include some potential solutions and new information; however, this information is not included in the FLA. The Network concurs with comments by the California Department of Fish and Wildlife[13] and recommends that the FLA include an assessment of the information developed for the cumulative temperature impacts for the AIR.

III. The FLA Should Be Revised to Provide Legal and Safe River Access for the Public.

Anglers, boaters, and recreational users have an interest in legal and safe access to the Yuba River and the reach directly below Narrows 1. Narrows Canyon and the whitewater run existing in that location have been described on American Whitewater's website.[14]

[12] From the Bay Delta Draft Staff Report. 2.1.3.4 Habitat Connectivity

[13] FERC eLibrary accession # 20240110-5088

[14] *See*: https://www.americanwhitewater.org/content/River/view/river-detail/335/main.

Articles 17 and 18 of the license allow the public legal access to project waters. YCWA does not allow public access within the FERC boundary, even though all roads to the Narrows 1 Project are public.

The FLA should provide and outline options to allow legal and safe river access at or near Narrows 1 powerhouse.

IV. Considerations for aligning license terms

The FLA proposes to adjust and align the license terms of YRDP and Narrows 1, which seems logical at first glance.

However, the original FERC license for the YRDP expired in 2016. Since then, YWA has been operating on an automatic renewal of the original license, allowing the project to operate under the existing terms and conditions. FERC is currently preparing a Supplemental EIS (SEIS) is now being prepared by FERC. The issuance date for the YRDP license remains uncertain.

The Narrows 1 license was set to expire in 2023, but because of the license transfer, FERC extended the expiration to 2026. Given the current timing, it seems Narrows relicensing might be completed before the YRDP final license is issued. Aligning the license terms during relicensing could potentially extend the Narrows 1 license to an unknown time.

FERC's policy sets the license default term to 40 years. That 2017 policy was based on concerns about project impacts on fish and wildlife over a longer license term.

If aligning the license terms delays licensing and implementing new license conditions critical to mitigating project impacts, the Network may recommend that FERC consider not aligning the projects during the relicensing period. Instead, a license amendment could be utilized later to align the license terms.

V. Include Yuba fisheries information and data

According to Section 4.41(g) of the Commission's regulations, the FLA should include recent data that illustrates "the temporal and spatial distributions and densities of relevant species." The FLA needs to include the data that has been collected over the last 15 years by the River Management Team, including information from the Mitigation and Enhancement (M&E) Program about habitat details, including water flow and temperature. Also needed is data on the quantity, location and spawning details of fish downstream of Englebright Dam.

This data is essential for a comprehensive understanding of the environmental impacts of the project and for the planning of mitigation measures.

ADDITIONAL STUDY REQUESTS

I. Additional Study Request: Increasing infrastructure and capacity of Narrows 1 outlet to achieve floodplain inundation

The Narrows I Project has a direct impact on floodplain inundation that then impacts the availability and quality of habitat for fish. This ongoing project effect should guide the study plan and potential mitigation strategies for the relicensing of Narrows 1. Therefore, the Study should consider enhancing the Narrows 1 intake's capacity by building an additional intake or bypass.

Criteria 1: Goals and Objectives of the Study

The primary aim of this study is to assess the feasibility of upgrading infrastructure to provide sufficient outlet capacity at Englebright Dam to release floodplain-inundating flows in the lower Yuba River without spilling water over the dam. The target is to increase the combined release capacity of Narrows 1 and YRDP project facilities to exceed 5,000 cfs, which is necessary for floodplain inundation. These releases would be in a controlled manner.

The objectives of the study are to:

1. Generate a Feasibility Report that:
- Outlines different infrastructure alternatives that can provide additional outflow capacity to the lower Yuba below Englebright.
- Estimate and consider the modeling of alternative scenarios using the new spillway to augment flows into Englebright.
- Determine location, cost, and technical details.
-Identify potential applications for necessary permits.

Criteria 2: Resource Management Goals

The study aligns with the protection of the lower Yuba River and its salmonid species, three of which are listed under the Endangered Species Act (ESA). The study seeks to mitigate the adverse impacts of project infrastructure that lacks the capacity to release sufficient flows and reduces the frequency and duration of floodplain inundation.

Criteria 3: Relevant Public Interest Considerations

The South Yuba River Citizens League (SYRCL) is a member of the Foothills Water Network and plays a significant role in the restoration of the Yuba River. SYRCL's mission is to unite the community to protect and restore the Yuba River watershed. SYRCL has implemented several projects focusing on salmonid habitat enhancement. These projects, such as the Hallwood Side Channel and Floodplain Restoration Project, are critical to help improve conditions for native salmon and steelhead trout. The lower Yuba River is home to several special status fish species, including spring-run Chinook salmon, Central Valley steelhead trout, and green sturgeon. All three species are listed as threatened under the Federal Endangered Species Act.

Criteria 4: Existing Information and Need for Additional Information
According to models from the YRDP process, lower Yuba River floodplain habitats are flooded when the river flow reaches its peak capacity of 5,000 cfs. To achieve full benefits for juvenile CV Chinook salmon and CCV steelhead growth, these peak flows must be sustained for at least 21 days. According to modeling conducted during the relicensing of the YRDP, this 21-day period of floodplain-inundating flows occurs under present conditions approximately every three years.

Criteria 5: Explain the nexus between project operations and effects on the resources to be studied and how the study results would inform license development.
The Narrows Project operations directly impact the flow regime in the lower Yuba River. The current infrastructure limits the release capacity, thereby reducing the frequency and duration of floodplain inundation. Lack of inundation negatively impacts the habitat quality for salmonid species, which rely on these conditions for their lifecycle. The study results would inform license development by providing alternative infrastructure and flow scenarios that can mitigate project operations. This information could lead to modifications in project infrastructure and operations to enhance inundation and improve habitat conditions.

Criteria 6: Explain how any proposed study methodology is consistent with generally accepted practice.
The proposed study methodology will follow standard engineering practices for infrastructure assessment and enhancement. This includes reviewing existing infrastructure, identifying potential alternatives to increase outflow capacity, and using modeling to simulate their effects.

Criteria 7: Describe considerations of level of effort and cost.
The cost will depend on the specific alternatives identified for increasing the outflow capacity. However, it is important to note that the long-term benefits of improved conditions for salmonid species outweigh the cost of a study.

II. Additional Study Request: Longevity of Englebright

Englebright Reservoir was built in 1941 to trap mining debris and sediment, with an original storage capacity of 69,750 acre-feet (AF). A bathymetric study in 2001 and 2002 showed that the capacity had decreased to 51,950 AF, a 25.5% reduction in 62 years (Childs et al. 2003)[1]. Assuming the same sedimentation rate, the reservoir could have lost an additional 8.5% of its capacity by now. However, the reservoir's primary functions have shifted to recreation and hydropower generation. Englebright Reservoir does not provide any flood control benefits.

A 1994 agreement with the Army Corps states, "The Corps neither covenants nor guarantees that debris levels will be maintained below the intake level."[15] Therefore, it is essential to assess the

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longevity of the reservoir and its ability to support the operation of Narrows 1 and Narrows 2 powerhouses, especially since YCWA is seeking a 50-year license term.

We recommend conducting a study to measure the current and projected sedimentation rates in Englebright Reservoir. The study results can help determine the lifespan of the reservoir and inform the license conditions and duration. The bathymetric surveys of the reservoir should be updated regularly or after major flood events to monitor that the reservoir is fulfilling its purpose of debris control. If the sedimentation rates are comparable to those of other reservoirs, then debris control should no longer be considered a formal function of the reservoir.

Criteria 1: Describe the goals and objectives of the study

The goal of this study is to assess the current and projected sedimentation rates in Englebright Reservoir, which was built in 1941 to trap mining debris and sediment. The reservoir's original storage capacity was 69,750 acre-feet (AF), but it had decreased to 51,950 AF by 2003, a 25.5% reduction in 62 years (Childs et al. 2003). Assuming the same rate of sedimentation, the reservoir would have lost an additional 8.5% of its capacity by now. However, the reservoir's primary functions have shifted to recreation and hydropower generation, which depend on the availability and quality of water in the reservoir.

The objectives of the study are to:

- Measure the current storage capacity of the reservoir using bathymetric surveys
- Estimate the sedimentation rate of the reservoir under different scenarios of inflow, outflow, and sediment management, including under climate change scenarios that are likely to increase the intensity of high-intensity rain events (commonly referred to as atmospheric rivers) [citation], which are known to significantly contribute to erosion.
- Evaluate the implications of sedimentation on the reservoirs' function of hydroelectric generation

Criteria 2: Explain the relevant resource management goals

The study is relevant to the resource management goals of the Yuba County Water Agency (YCWA), which operates the Narrows 1 and Narrows 2 powerhouses that rely on the water from Englebright Reservoir. The study will help YCWA optimize the operation and maintenance of the powerhouse(s) and comply with the environmental and safety regulations of the Federal Energy Regulatory Commission (FERC), the Army Corps of Engineers, and other agencies. The study will also support YCWA's application for a 50-year license term from FERC, which requires a comprehensive analysis of the project's impacts and benefits.

Criteria 3: Explain any relevant public interest considerations

This study will provide information on the current storage capacity and sedimentation rate in Englebright Reservoir over the last roughly twenty-year period. The sedimentation rate at Englebright Reservoir will likely inform the operations and maintenance of the reservoir, including the operation of the Narrows 1 (and Narrows 2) power plant over the requested 50-year license. These operations, especially any modification to them in response to the sedimentation rate, may have an impact on public access and recreation at the reservoir, which is of public interest.

The study will provide information on the current and future conditions of the reservoir, such as water level, water quality, sediment accumulation, and water availability.

Criteria 4: Describe existing information concerning the subject of the study proposal and the need for additional information.
The existing information on the subject of the study proposal is limited and outdated.

A 2003 study by Childs et al. (2003) reported a storage capacity of 51,950 AF and a sedimentation rate of 0.41% per year. The study also recommended that "A follow-on survey would be appropriate in the event of a major flood event." Since 2003, a number of flood events have occurred as recorded at USGS gage 11417500 on the South Yuba upstream of Englebright Reservoir, including in 2005 (30,200cfs), 2012 (18,700cfs), and 2017 (28,300cfs). Reliable stream gauge data on the combined Middle and North Yuba inflow during these events does not exist, so these inflow numbers are a minimum representing inflow from approximately 30% of the watershed area. In addition to being outdated, the sedimentation rate may have changed since the 2003 study was completed due to variations in the management of upstream water storage facilities, changes in vegetation, and changing land-use practices. The study by Childs et al. (2003) did not address the impacts of sedimentation on the reservoir's functions, such as hydropower generation, nor did it propose any sediment management strategies to mitigate those impacts.

The USACE recommends reservoir sedimentation surveys be completed routinely, about every 5 to 10 years, with some needing more frequent surveys and others less frequent, depending on sedimentation rates (USACE, 2013).

Therefore, there is a need for additional information on the current and projected sedimentation rates and their implications for the reservoir's function and management.

Criteria 5: Explain the nexus between project operations and effects on the resources to be studied and how the study results would inform license development.
The nexus between the project operations and the effects on the resources to be studied is clear and direct. Sedimentation of Englebright Reservoir can impact the safe operation of the water intakes of Narrows 1 (and Narrows 2), potentially adversely affecting water temperatures in the reservoir and, thus, downstream. The project operations rely on the unobstructed use of the Narrows 1 intake (and the coordinated operation of the Narrows 2 intake). The rate of sedimentation of Englebright Reservoir since 2003 is unknown. However, the thickest area of reservoir deposits is approximately 115 ft (35m) deep and is predominately sand. It is located approximately 10,000 m downstream from the furthest upstream extent of the reservoir water surface. This deposit is located approximately 6,000 m from Englebright Dam, suggesting that bedload deposition and delta foreset propagation processes have transported bedload material approximately two-thirds of the way through the reservoir since its construction. Based on published data, we estimate that the horizontal movement downstream of the deepest portion of the sediment deposit, the delta foreset could hit the face of the dam in as little as 36 years with a

deposited sediment surface of 440 ft MSL, 10 ft below the intake to Narrows 1.[16] We recognize that this is an aggressive estimate of the propagation of the sediment foreset. Still, it suggests that the lack of current information and the lack of an ongoing monitoring plan may have a detrimental impact on project operations and long-term viability.

Additionally, it is understood that shallower bodies of water will warm at a faster rate and that water bodies worldwide are expected to warm at a faster rate under future climate change scenarios. Sedimentation of Englebright Reservoir in the upper roughly two-thirds of the reservoir is between 20 and 120 feet thick. The area of most intense sedimentation – making a shallower reservoir – also represents approximately two-thirds of the water's surface area. As the rate of sedimentation continues, the reservoir will continue to decrease in depth, resulting in an increased rate of warming of the water within the reservoir. Over the proposed life of the project, there is a risk that Narrows 1 (and Narrows 2) will not be able to provide the cold water necessary to preserve the downstream fishery.

Criteria 6: Explain how any proposed study methodology is consistent with generally accepted practice.

The proposed study methodology is consistent with the generally accepted practice in the field of reservoir sedimentation and management. The study will use a combination of field measurements and numerical modeling to address the study objectives. The study will follow the guidelines and standards of the relevant agencies and organizations, such as FERC, the Army Corps of Engineers, the US Geological Survey, and the International Commission on Large Dams. The study will also review and incorporate the best practices and lessons learned from similar studies and projects in other reservoirs.

The considerations of the level of effort and cost of the study are based on the scope and complexity of the study, as well as the availability and quality of the existing data and resources. The 2003 study used a boat-deployed multibeam echosounder, a differential global positioning system, and a geographic information system to process the data. They also conducted geological studies of the reservoir sediment, which would be beneficial but are unnecessary.

Criteria 7: Describe considerations of level of effort and cost.

According to a recent Reservoir Survey Coste Estimating by the Bureau of Reclamation, the median bathymetric reservoir survey cost estimate is $54,000, and about 80% of the surveys are estimated to cost less than $100,000.[17] About 20% of Reclamation's reservoirs are large enough that the estimated rapid cost is over $100,000 (-30 to +50% error). The USACE suggests that reservoir sedimentation surveys should be completed on a routine basis, approximately every 5 to 10 years, with some needing more frequent surveys and others less frequent, depending on sedimentation rates (USACE, 2013).

[16] Childs et al. 2003 https://digitalcommons.unl.edu/usgsstaffpub/489/

[17] https://www.usbr.gov/tsc/techreferences/reservoir/ReservoirSurveyCostEstimatingVer2TechRpt_08-2023_508.pdf

Additional costs associated with this project would include the development of a 3D mesh surface of the new data and geomorphic change detection analysis with the 2003 study to estimate sedimentation rates of the last twenty years.

In 2022, SYRCL submitted a grant application to the National Marine Fisheries Service to study fish passage alternatives at Daguerre Point Dam. That application included topo bathymetric surveys of the entire lower Yuba River and a bathymetric survey of Englebright Reservoir to inform sediment transport models. The estimate for the LiDAR topo bathymetric flight of the entire lower Yuba River, boat-based bathymetric infill in the lower Yuba River, and boat-based bathymetric surveys of Englebright Reservoir were approximately $150,000, of which approximately $80,000 was allocated to the LiDAR data collection. As such, we do not expect this survey's cost to be significantly greater than the median survey cost estimate by the Bureau of Reclamation.

III. Juvenile Outmigration Study Request

The Network supports the California Department of Fish and Wildlife Study Request pertaining to juvenile outmigration.

Project-related effects impact flow and temperature, influencing both the quantity and quality of rearing habitat available to salmonids and the timing of their migration from the Yuba River.

The FLA Narrows 1 Hydroelectric Project relies on outdated data on the lower Yuba River salmon populations, which have declined significantly in recent years, especially the spring-run Chinook salmon. The Network believes that a Study is needed to evaluate the current status and trends of the salmon populations and determine the degree to which the lack of successful juvenile outmigration contributes to the population decline. The study results would inform the development of the new license for the Narrows 1 and the potential mitigation measures to enhance the salmon habitat and survival in the lower Yuba River.

YWA's previous response to a CDFW-requested juvenile outmigration study cited existing data and costs as reasons not to implement the study. However, the existing data YWA cited related to the escapement, not to the success of juvenile outmigration. And the cited costs did not consider that the study would also fulfill a major data gap for information not collected in the YRDP relicensing and not otherwise collected.

YWA-PREPARED SCOPING DOCUMENT (SD1)

As part of the Final License Application, Yuba County Water Agency (YCWA) included a copy of a proposed SD1.[18] However, pursuant to the Commission's regulations, FERC has exclusive authority over issuance of SD1.[19] Consequently, the Network views YCWA's proposed SD1 an attempt to constrain the scope of a future National Environmental Policy Act ("NEPA") environmental review, by providing the Commission with a document that omits: (1) details

[18] *See* FERC eLibrary 20231114-5136, *hereafter* SD1.

[19] 18 CFR § 5.8.

regarding the Project, (2) the opportunity for a public meeting, (3) details regarding the development and evaluation of potential Project alternatives, and (4) necessary mitigation measures. We address each of these issues in turn below to provide the Commission a more complete basis for the development of its NEPA Scoping Document.

1. Proposed SD1 Omits a Complete Description of Project Facilities Necessary for Commission Evaluation of Project Operations and Impacts

YCWA's description of the Narrows Hydroelectric Project fails to include "structures used and useful in connection with" the unit of hydropower development, which are "necessary or appropriate in the maintenance and operation," of the hydropower unit in question. Pursuant to the Federal Power Act ("FPA"), the Commission licenses hydropower "project works."[20] The FPA defines project works as the physical structures of a "project," which means, a "complete unit of improvement or development" consisting of:

> All dams and appurtenant works and structures (including navigation structures) … and all storage, diverting or forebay reservoirs … all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit ….[21]

Thus, the Commission must license any "work" that is related to and necessary for project operation.[22] However, YCWA continues to omit from its Project definition and filings significant "project works" necessary for project operation[23], specifically Englebright Dam and Reservoir.[24]

According to YCWA, "[p]roject works are located on the south bank of the river extending approximately 0.2 mile downstream of the non-Project Harry L. Englebright Dam and Reservoir, a federally owned and maintained facility administered by the USACE located in Nevada and Yuba counties (Figure 2). The project occupies 2.37 ac of YCWA-owned lands and 0.55 ac of federal lands administered by the USACE."[25] YCWA goes on to allege that, "Englebright Dam and Reservoir and associated facilities are owned and operated by the [US Army Corps of Engineers] USACE and are not subject to FERC's jurisdiction or in the FERC-designated Project

[20] 16 U.S.C. § 797(e).

[21] 16 U.S.C. §796(11) – (12).

[22] *See Big Bear Area Regional Wastewater Agency*, 33 F.E.R.C. ¶ 61,115, 61,245 (1985).

[23] Pursuant to the Yuba River Development Project License (Project No. 2246), Article 47, "The Licensee shall enter into contractual arrangements with the [Corps] . . . with respect to supplying storage for water in the Corps' Englebright Reservoir for power development at the New Narrows Power Plant. . ."

[24] *See e.g.* SD1, pp. 4-5; *see also* FERC AIR, FERC eLibrary 20230112-3002.

[25] SD1, p. 4.

Boundary.[26] (*Id.*, p. 5.) This approach flies in the face of Commission precedent, and YCWA's own arguments.

According to the Commission, if a dam used for power generation is owned by a non-licensee, the licensee must acquire an easement or other possessory interest sufficient to accomplish such generation and other project purposes, and generally to assure that the Commission may carry out its obligations under FPA Part I.[27] However, information provided by YCWA's attorneys regarding the licensing for the Yuba River Development Project (Project No. 2246) indicates that YCWA believes no such easement is necessary, in light of the Commission's "exclusive authority to authorize the use, occupancy, and enjoyment of federal lands in conjunction with licensed water power projects."[28] In fact, YCWA's position regarding the use of Corps owned properties appears to be that FERC has ***exclusive*** authority over the regulation of non-federal development of hydropower, including the occupancy and use of all federal property not regulated under the Federal Land Policy and Management Act, which is necessary for operation of the hydropower unit.[29] Consequently, the occupancy and use of Corps owned property, such as Englebright Dam and Reservoir must be regulated through the Commission-issued license, given this exclusive authority.

As detailed in Foothill Water Network comments on YCWA's Pre-Application Document (PAD) for the Narrows 1 Hydroelectric Project (P-1403), Englebright Dam and Reservoir are necessary for the operation of the Narrows Project.[30] Yet, YCWA continues to narrowly construe the Project, clearly omitting "dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit [of improvement or development]." FERC should require YCWA to define the Project in a manner that meets the demands of the Federal Power Act. Anything less would circumvent Congressional intent for regulation of the "complete unit of improvement or development" through the licensing process. Moreover, allowing the establishment of a precedent whereby dams and reservoirs necessary for the generation of hydropower[31] may be omitted from the project definition creates a dangerous pathway through which dam owners could avoid regulation of significant hydropower project works and operations by contracting with other parties.

Information regarding why Englebright Dam and Reservoir, which appear essential to operation of the Project, are appropriately omitted from the project definition is required to fully evaluate

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[26] *Id.*, p. 5.

[27] *Niagara Mohawk Power Corporation,* Letter Order (Aug. 27, 1992), eLibrary no. 19920910-0059, p. 3; *New York State Electric & Gas Corporation*, 23 FERC ¶ 61,034.

[28] *See* eLibrary no. 20210210-5071, p. 4.

[29] *See ibid; see also California v. FERC*, 966 F.2d 1541 (9th Cir. 1992).

[30] *See* eLibrary no. 20110307-5081

[31] [14] The Corps long ago recognized that power generation is the primary function of Englebright:

> The reservoir is operated for hydraulic mining debris control and power generation. However, since project completion, there has been practically no upstream hydraulic mining activity, consequently ***reservoir storage has been used entirely for power generation*** and for incidental recreation. The debris which has been deposited is minimal and does not affect the use of the reservoir for other purposes. *Harry L. Englebright Lake Master Plan* (1975), p.7.

compliance with the Federal Power Act. We recommend that the Commission seek such information from YCWA through an Additional Information Request justifying its approach. Such information is critical to evaluating whether the dam and reservoir are "necessary or appropriate in the maintenance and operation," of the Narrows I hydroelectric project.

II. YCWA's Proposed SD1 Fails to Comply with the Commission's Requirements for Public Outreach

According to Proposed SD1, YCWA, "do[es] not anticipate holding public or agency scoping meetings, or an environmental site review. Instead, [YCWA is] soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in SD1."[32] However, according to the Commission's regulations regarding the contents of Scoping Document 1, such document must include, "[a]n introductory section describing the purpose of the scoping document, the date and time of the scoping meeting, procedures for submitting written comments, and a request for information or study requests from state and Federal resource agencies, Indian tribes, non-governmental organizations, and individuals."[33] YCWA's attempts to eliminate public meetings are not permitted as a matter of law. The required elements of the scoping document to not allow for an approach where written comments may take the place of a public meeting. Rather, both a public meeting and solicitation of written comments are required. Given that Proposed SD1 omits numerous considerations, project works, and impacts associated with proposed relicensing, the Foothills Water Network urges the Commission to require an in-person public meeting to ensure all scoping issues are appropriately identified in compliance with NEPA precedent and Commission regulations.

III. Proposed SD1 Fails to Identify Any Considered Project Alternatives

Commission regulations require that Scoping Document 1 include, "alternatives to the proposed action, ***including alternatives considered but eliminated from further study***, and the no action alternative."[34] However, YCWA has inappropriately constrained the examined alternatives such that only current operations and the no action alternative are examined. This approach omits critical information regarding an alternative for project operations considered by YCWA. Even if YCWA has eliminated a considered alternative, information regarding that alternative must be included in SD1 pursuant to the Commission's regulations.

Currently, the Project operates along with the Yuba River Development Project to meet minimum flow requirements established pursuant to the Yuba Accords. As written, Proposed SD1 assumes that the Yuba Accords will continue in their current form and provides no alternatives to such continued operations despite conservation organization and agency efforts to see the Yuba Accords revisited and revised to ensure flows can provide floodplain habitat inundation below Englebright and Daguerre Point Dams. In fact, one of the most important

[32] SD1, p.

[33] 18 CFR § 5.8(c)(1).

[34] 18 CFR § 5.8(c)(2).

conditions in the Yuba Accord was the promise to revisit all of the flows and procedures in relicensing, as the Accord Signatories acknowledged that adaptive management was necessary to protect the Yuba River watershed. However, more than 10 years later, such re-evaluation has not yet occurred. With relicensing underway, the conditions triggering negotiation of the Accord flow schedules has arrived. Consequently, information regarding alternatives to the Yuba Accords flow schedule should be included in SD1 as an alternative considered by YCWA, regardless of whether the agency has eliminated proposed flow schedules from further study.

On October 9, 2015, California Department of Fish and Wildlife ("CDFW) and the U.S. Fish and Wildlife Service ("USFWS") presented to YCWA and licensing participants a joint flow proposal for the lower Yuba River, downstream of Englebright Dam. This Flow Proposal identified: (1) target species, including State and federally listed as threatened spring-run Chinook salmon and federally listed as threatened steelhead; (2) lifestages, including incubating eggs, fry, juveniles, and adults; and (3) specific functions, including winter freshets in dry water years ("WYs") to provide an upstream migration cue to adult steelhead and provide a downstream migration cue for juvenile salmonids, increased spring flows in wet WYs to provide floodplain inundation of sufficient duration for juvenile salmonid rearing, a spring through summer recession rate to reduce juvenile stranding on the floodplain (and to allow for riparian tree germination and establishment), a spring migration cue for adult spring-run Chinook salmon entering the river, and increased flow during the summer months in the driest WYs to maintain suitable temperatures for multiple salmonid life stages, and recommended flows to achieve those functions. However, all details and information regarding the development and consideration of this alternative are omitted from SD1.

CDFW and USFWS conducted modeling to determine the appropriate flows to accomplish spring floodplain inundation to improve rearing conditions for juvenile salmonids, including through the coordination of YRDP and Narrows Project releases. In recent years, YCWA, SYRCL, and others have restored the floodplain habitat below Englebright and Daguerre Point dams to provide spawning and rearing habitat for salmonids. Such habitat is particularly important, given the area below the dams is the extent of anadromy for all fish, given Englebright Dam is a complete barrier to all aquatic organism migration. The National Marine Fisheries Service's 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 ("Recovery Plan"), recognizes the importance of such actions, prioritizing an increase in the floodplain habitat in the lower Yuba River, and "Implement[ing] flow fluctuation and ramping rates found to be protective of embryos and juveniles."[18]35 We therefore recommend the Commission include in its Scoping Document the examination of additional flow scenarios and schedules as part of Narrows 1 operation to evaluate which flows provide the best recovery opportunities for salmonids.

[35] Recovery Plan, pp. 255, 257.

CONCLUSION

Thank you for consideration of the Network's Additional Study Requests and Comments on the Final License Application for the Narrows 1 Project relicensing. Please contact Traci Sheehan, Coordinator, Foothills Water Network, if you have any questions.

Respectfully submitted,

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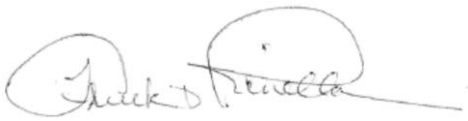

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BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of the Application of	)	
	)	
Yuba County Water Agency (YCWA)	)	
	)	
	)	FERC Project No. 1403
For a new major license for the Narrows Hydroelectric Project	)	

Certificate of Service

I hereby certify that the foregoing Comments of Foothills Water Network, American Rivers, California Sportfishing Protection Alliance, Gold Country Fly Fishers, Northern California Council Federation of Fly Fishers International, Sierra Club Motherlode Chapter, South Yuba River Citizens League and Trout Unlimited in the above-captioned proceeding has this day been filed online with the Federal Energy Regulatory Commission and served via email or surface mail upon each person designated on the Service List compiled by the Commission Secretary for this Project.

Dated on January 16, 2024

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Traci Sheehan Van Thull
Coordinator
Foothills Water Network