

FERC PROJECT No. P-1389-059
RUSH CREEK HYDROELECTRIC PROJECT
SOUTHERN CALIFORNIA EDISON, LICENSEE

**JLRPAC AND INDIVIDUAL COMMENTS (DAVID ROSKY) ON SCOPING DOCUMENT SD1
AND PROJECT PAD**

April 13, 2022

BACKGROUND

On December 16, 2021, SCE submitted a Pre-Application Document (PAD) indicating their intention to relicense the Rush Creek Project with significant modifications. The Commission has since issued Scoping Document SD1 pursuant to the PAD.

Many elements of the project and the proposed modifications are important to the local community due to the direct effects they will have on the community, both short term and longer term.

The June Lake Regional Planning Advisory Committee (JLRPAC), also known as the June Lake CAC, is a local advisory body which, among other functions, acts as a conduit to the local community to gather concerns and other input from the community, and provide relevant information to the community regarding local projects and development activity. Due to time limitations and constraints of California's Brown Act, the comments contained herein are not, at this time, an official position of the Committee; however, they contain significant input from the community that I received as the contact person for this issue within the Committee. Aspects of these comments are also presented on behalf of myself (David Rosky) as a private citizen of the June Lake / Mono Basin community.

The PAD and Scoping Document SD1, including the updated draft Technical Study Plans, cover many of the issues of concern to the community. There are some issues, however, that we feel have not been adequately addressed, and that we request be addressed in Scoping Document 2.

Comments on Project Scoping (SD1)

I. Wilderness issue: Lack of agreement between the Forest Service and SCE on the basic path and process to legally relicense the project, and SCE's unwillingness to discuss the issue with stakeholders

The proposed project modifications involve the removal of two dams and reservoirs (Agnew and Rush Meadows Dams), and the lowering of the third dam (Gem Dam). As part of our efforts to scope this project, I contacted Inyo National Forest personnel, seeking both general and specific information regarding the relicensing of the project. This led to a series of discussions with National Forest Service personnel wherein a significant issue relating to the presence of the remaining dam and reservoir within designated wilderness was made evident to us.

From our discussions with Forest Service personnel, the issue involves the following aspects:

1. FPA part 4(e), which requires FERC to make a determination of the compatibility of a hydropower license with the purposes for which the land is designated and managed, which in this case is designated wilderness.
2. Lack of any non-expiring existing private rights or other specific exceptions enumerated in the Wilderness Act. The Wilderness Act itself creates no specific exception whereby the existence of past hydropower licenses alone confers a right to a new license in the absence of an existing private right that is not subject to discretionary renewal, a specific exemption granted within the legislation which designated the wilderness area, an exception granted by the President, or an exemption granted post-designation by Congress.
3. Recent case law rulings (High Sierra Hikers, et al., vs. Forest Service), which ruled that the Wilderness Act is worded sufficiently unambiguously as to restrict the ability to apply Chevron deference to the terms and specified outcomes of the Act, and provided a strong ruling and interpretation of what constitutes wilderness under the Act and how existing structures are dealt with short of a specific exemption provided by the Act, Congress, or the President.

As we understand this, the Forest Service is concerned that, as the agency responsible for managing the Ansel Adams Wilderness, they may be constrained from approving relicensing under current conditions.

As a result of this information, we attempted to raise this issue in recent discussions with SCE during the pre-application phase of the relicensing process. Our attempt to raise this issue for discussion with stakeholders was rebuffed. Additionally, no arguments have been presented by SCE as to why the Forest Service's conclusions are incorrect. It has furthermore been brought to our attention that this issue has been known to both the Forest Service and SCE for several years.

The presence of the project within designated wilderness is acknowledged in the Scoping Document SD1 (as well as in the PAD); however, neither document makes mention of this long-standing, fundamental unresolved issue.

The relicensing process is now progressing in the presence of a large disagreement regarding the fundamental legal path and basic process required to relicense the project. This large disagreement has not been acknowledged in either the PAD or in Scoping Document SD1. Disagreement on such a fundamental issue between the licensee and the managing agency casts significant uncertainty over the process and we request that this issue be acknowledged by the Commission in Scoping Document 2. Moreover, we request the parties (including all stakeholders) be asked to resolve this large

difference during the scoping and study process, so that stakeholders can be assured that the process is following a path of reasonable legal certainty.

II. Climate change and changing renewable energy landscape: Potential effects on long-term economic viability of the project, and long-term effects on aesthetics and scenic quality due to fluctuating reservoir stage.

As part of the evaluation of this application, the effects of climate change and the rapidly changing renewable energy landscape must be considered in at least two contexts as they may affect the long-term operation of the project:

1. *The economic viability of the project and possibility of future marginal economics which must then be borne by ratepayers.*

The storage assets of the project, including Gem Dam and reservoir which would remain in place after SCE's proposed project modifications, are in roadless backcountry areas which must be accessed via numerous expensive helicopter flights to facilitate both the extensive project modifications as well as ongoing long-term project repair and maintenance.

The proposed project represents a significant reduction in storage capacity. The resulting initial reduction in total generating capacity will, over time, be exacerbated by the effects of climate change. Estimates presented in the Fourth National Climate Assessment, as well as research studies, show significant reductions in electricity generation capacity of hydro projects in the Sierra Nevada are likely over the next 50 years.

The rapid addition of non-hydro renewable energy to the grid has drastically reduced the mid-day price of electricity, in some cases to less than zero. The rapid development and deployment of storage technology and non-intermittent renewable energy (geothermal, etc.) that is now underway is likely to erode the price of peaking power as well. (ref. NREL long-term storage projections)

The public is not privy to the economic analysis of the project; however, the combination of these factors, several of which do not apply to other Eastern Sierra hydro projects of similar size, points to a significantly higher cost of operation, especially since other projects have not needed such extensive modifications or reductions in original design capacity for continued operation. We request that SCE, at a minimum, be required to demonstrate with reasonable certainty that the project will remain independently economically sound into the future, and that long-term operational changes in the presence of climate change and the changing energy landscape will not cause the project to become a financial burden to ratepayers and cease to provide any significant public benefit in exchange for its considerable footprint in designated wilderness.

2. *Increasing challenges in managing reservoir levels for required scenic quality*

Within designated wilderness areas, Forest Service scenic integrity management requires a level of *Very High* for scenic integrity, the highest possible level. This may involve license requirements for reservoir stage during the active recreational seasons. There may also be environmentally and aesthetically based requirements for instream flow. SCE should be asked to demonstrate with reasonable certainty, in the presence of climate change over the requested license period, that reservoir stage can be balanced with energy production and instream flows to a degree that is consistent with the *Very High* level of scenic integrity, as

defined by the Forest Service. This aspect can potentially be included in the existing LAND 1 Aesthetic Technical Study Plan.

We request that the Commission acknowledge these climate-change and changing energy landscape related issues as a necessary part of project scoping and study, and that SCE analyze them as part of project study and scoping.

III. The Commission and SCE should analyze a full decommissioning alternative

While the Commission generally wishes to discourage full decommissioning alternatives, there are circumstances where full decommissioning should be analyzed as a possible alternative. In this relicensing, there are currently large, unsettled issues and disagreements between the licensee and the managing agency involving the presence of the proposed modified project within designated wilderness and the fundamental path required to relicense such a project with the greatest legal certainty. These differences may take significant time to fully resolve; furthermore, their resolution is not guaranteed.

Due to the current high level of uncertainty, as well as SCE's current reluctance to discuss these issues with stakeholders in the near term, we request that the Commission require SCE to evaluate the alternative of full decommissioning as part of project scoping and study, including the removal of storage assets and the effects of their removal on the project environment.

IV. Dam removal options: Inadequate stakeholder input into the potential options for dam removal

As part of this relicensing, SCE is proposing the removal of two of the three existing dams, one of which is in a designated wilderness area, and a reduction in size of the third dam, also within a designated wilderness area. The PAD and Scoping Document SD1 describe two possible options for removal of these dams: partial removal with some material left onsite but redistributed in an aesthetically acceptable way, and full removal. While these two basic options have been briefly outlined in the PAD and SD1, there have been very few details presented regarding implementation.

There has been considerable interest from the local community during the recent pre-application process regarding the details of dam removal options and how decisions will be made between the options, and there is a perception that community stakeholders are not adequately involved in this process. There may also be additional options and details that have not been presented or considered.

Some aspects of the proposed dam removal options are being studied in existing study plans, such as LAND 2 (Noise); however, while the removal and modification of dams are major features of the relicensing and reconfiguration of the project, there has been no Technical Working Group and no proposed study plan involving the details of dam removal and modification. Given the large effect that the dam removal options will have on project aesthetics, and the large interest in the community, we request that SCE involve all stakeholders in the determination of dam removal plans as part of project scoping and study.

V. Lake bed and shoreline restoration: involvement of stakeholders

In various places in the PAD, SCE refers to potential restoration of various areas that would be exposed by the removal or lowering of dams. Mostly, these references refer to the river channel. A

few other aspects, such as vegetation studies, are noted. The PAD, however, does not contain comprehensive plans for the full restoration of permanently exposed shorelines or lakebed areas. The newly exposed areas are significant in size and are regularly frequented by members of the community and visitors. There has been interest and concern within the community regarding the details of how these areas would be restored. We request that SCE be required to develop and present detailed plans for the restoration of these area as part of the scoping and study phase of the project.

Respectfully,

A handwritten signature in black ink, appearing to read 'David Rosky', with a stylized flourish at the end.

David Rosky
Member, JLRPAC,
Member of June Lake Community,
530-320-0404
dave.rosky@gmail.com