



April 15, 2022

Via Electronic Filing

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

Re: Rush Creek Hydroelectric Project (P-1389-059) – Comments on Scoping Document 1 and Pre-application Document

Friends of the Inyo, on behalf of our nearly 1,000 members, submits these comments in response to Scoping Document 1 and the Pre-Application Document (PAD) for the Rush Creek Hydroelectric Project, including Technical Study Plans. Friends of the Inyo (FOI) is a grassroots non-profit organization based in Bishop, California. Our mission is to ensure the public lands of the Eastern Sierra exist in an intact, healthy natural state for people and wildlife through preservation, stewardship, exploration, and education. Over our 30-year history, FOI has actively engaged with land and water management agencies in the Eastern Sierra, including the National Forest Service (NFS) and the project applicant, Southern California Edison (SCE).

I. Comments on Scoping Document 1

A. Project Decommissioning Alternative

FOI believes that a full project decommissioning alternative should be included in a revised scoping document and studied in detail. There are serious resource concerns related to the project's existence that cannot be addressed with appropriate license measures and that make decommissioning a reasonable alternative. Namely, a large portion of the project is located in a congressionally designated wilderness area, the Ansel Adams Wilderness, which was established after the project was constructed. The project facilities significantly impair



wilderness characteristics such as unspoiled views and access to the flowing waters of Rush Creek. Under the language of the Wilderness Act, there may not be a legal basis for relicensing and continued operation of the project within the wilderness boundary. The project is a non-conforming use, and the Forest Service does not appear to have authorization to approve an ongoing wilderness exemption for the project. (See *High Sierra Hikers Assn. v. U.S. Forest Service*, E.D. Cal. Case No. 1:05-cv-00496-AWI-DLB, Memorandum Opinion dated June 8, 2006; and the Wilderness Act, 16 U.S.C. § 1133(c) (“there shall be no ... structure or installation within any such area.”))

SCE already proposes to remove two of the three dams that make up the project, Rush Meadows and Agnew Dams. It also proposes to lower and retrofit the remaining dam, Gem Dam, which lies within the Ansel Adams Wilderness Area. Given these facts, a full decommissioning alternative is reasonable and prudent here. Indeed, without a closer look at the effects of also decommissioning Gem Dam, there is a strong risk that impacts related to lakebed exposure, downstream flood control, materials hauling, recreation and other resources could be neglected or left unmitigated.

II. Comments on PAD and Associated Technical Study Plans

A. Survey Technique for Nesting Raptors

The draft TERR 2 – Wildlife Resources Technical Study Plan indicates that SCE proposes to conduct aerial surveys for nesting raptors, using a helicopter or drone. FOI is opposed to the use of helicopters or drones for raptor surveys due to the likelihood of disturbance of sensitive species including nesting birds. This is particularly true in the Ansel Adams Wilderness Area where drones should not be used.¹ The proposal to conduct aerial surveys should be removed.

¹ See U.S. Forest Service, *Drone (Unmanned Aircraft Systems) Use on National Forest Lands & the Protection of Wildlife*, available at: https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd493612.pdf



B. Visual Impacts to Wilderness

The draft Land 1 – Aesthetics Technical Study Plan indicates that SCE will study “the existing scenic integrity (ESI) of the Project facilities on NFS land compared to surrounding landscape conditions and scenic integrity objectives (SIO) established by the INF.” In addition to any scenic integrity objectives established by the NFS, however, the study should also compare the scenic integrity of the project facilities with the congressional objectives of the Wilderness Act. These objectives are that wilderness areas shall be administered to “leave them unimpaired for future use and enjoyment as wilderness,” and for “the preservation of their wilderness character.” 16 U.S. C. 1131(a). Wilderness character stands “in contrast with those areas where man and his own works dominate the landscape.” 16 U.S. C. 1131(c). A wilderness is an “area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” *Id.* It is “undeveloped Federal land retaining its primeval character and influence, without permanent improvements,” which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” *Id.*

Because it is uncommon to relicense a hydropower facility in a wilderness area, SCE must take these statutory SOIs into account when conducting its study of aesthetic impacts. The project should be undertaken so as to reduce the visual impacts of the project facilities (decommissioned or not) and exposed lakebeds. This should be included in a revised scoping document and/or the PAD.

II. Information Requests

A. Power Grid Reliability

FOI requests more information related to the effects of the proposed hydropower operations at Gem Dam on the resiliency and reliability of the local and regional electricity grid. This information is relevant to the project proposal, and because SCE is an electric power purveyor in the region, the information should be in SCE’s possession or easily obtained with the exercise of due diligence.



Specifically, FOI wishes to better understand the role that the project's continued power generation would or would not play in maintaining electricity to the community of June Lake in the event of an emergency, such as a wildfire or other short-term condition that causes a regional power outage.

B. Lakebed Reclamation and Restoration

FOI requests more information regarding the methods and materials that SCE could employ to reclaim and restore the natural character of the dry lakebeds resulting from full or partial decommissioning of the project dams. Specifically, FOI requests a copy of SCE's proposed reclamation/remediation/restoration plan for Waugh Lake, Gem Lake, and Agnew Lake. The lakebeds will undergo desiccation as a result of the lowering and removal of the Rush, Gem, and Agnew Dams. This will lead to dusty conditions that could impair the quality of air, water, and snow in the Eastern Sierra. Adverse biological impacts to species along Rush Creek are also anticipated.

Also, in addition to causing visual impacts, the lowering of lake levels without remediation will adversely affect wilderness camping availability and water access for recreation. The existing lakes created by the project present some of the only camping sites on the first nine miles of trail beginning from the Rush Creek trailhead. There are only a handful of level camping sites with tree cover for backpackers to find shade, water, and rest. Active restoration of the lakebeds should be a critical project component to avoid significant impacts on biological resources, air, water, and snow quality, aesthetics, recreation, and public health and safety. The requested information about lakebed restoration and remediation should be included in a revised scoping document.

Thank you for the opportunity to comment on Scoping Document 1 and the Pre-Application Document (PAD) for the relicensing of the Rush Creek Hydroelectric Project. We look forward to continued engagement in this licensing proceeding.



**FRIENDS
OF
THE INYO** SINCE 1986

Sincerely,

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