

Final EIS Issued for Dam Licensing

Peter Drekmeier, Policy Director, Tuolumne River Trust

August 14, 2020

This summer, the Federal Energy Regulatory Commission (FERC) issued its Final Environmental Impact Statement (FEIS) for the licensing of Don Pedro and La Grange Dams. While it includes some promising conditions – addition of gravel and large woody material to improve fish habitat; fall and spring pulse flows to improve in- and out-migration of salmonids and to inundate some floodplains; and slightly higher instream flows – these measures do not go far enough to revive the Tuolumne. The preferred alternative is based on the inadequate Tuolumne River Voluntary Agreement the Modesto and Turlock Irrigation Districts have been promoting, with a few modifications.



Don Pedro Dam



La Grange Dam

FERC relied heavily on highly suspect studies commissioned by the Irrigation Districts. For example, one study supposedly found that fish in the Tuolumne have adapted to warmer water temperatures, and can therefore survive with lower, warmer flows. However, the study failed to assess how warmer temperatures affect food sources, such as aquatic insect larvae, and how non-native fish (which evolved in slow moving, warm water and prey on baby salmon and trout) might outcompete native species.

Unlike the State's Bay Delta Water Quality Control Plan, which was proceeding in parallel with the FERC licensing process until it took a back seat to the Voluntary Agreements, the FERC proposal does not include quantifiable goals and objectives, such as numbers of fish, by which success could be measured. The Bay Delta Plan, on the other hand, includes adaptive management – if goals and objectives can be met through non-flow measures, unimpaired flow could be reduced to as low as 30% between February and June. If the goals are not being met, unimpaired flow could be increased to as high as 50% in those months.

Regarding instream flows, the Voluntary Agreement (and hence FERC's preferred alternative) sounds much better than it actually is. It emphasizes that "required discharge" would be 38%

greater than it is today. However, this number is based mostly on better management of spill (water that has to be released into the River because the reservoirs are full), something the Irrigation Districts should have been doing all along in order to “release sufficient water to keep in good condition any fish that may be planted or exist below the dam,” as required by Fish and Game Code Section 5937. Total discharge into the River would increase by a mere 4%, hardly a sacrifice by the Irrigation Districts.

Fortunately, the State Water Board has a role to play in the FERC licensing process – it has the authority to issue a water quality certification, including flow requirements, under Section 401 of the Clean Water Act. Unfortunately, FERC has recently been determining that the State has waived this authority on a number of other recent licensing proceedings, based on a court ruling (Hoopa Valley) that concluded a process used by the Water Board and project proponents to address timing issues, known as “withdraw and resubmit,” was inappropriate.

The environmental community celebrated a big victory in June when the State legislature approved a bill that allows the Water Board to issue water quality certifications within the one year time limit, but can then come back to revise them following environmental review, which usually takes more than a year. TRT also is fortunate to have pro bono legal support from Morrison Foerster to help us prepare a challenge should the Irrigation Districts and FERC attempt to evade State authority.