

APPENDIX B
STAFF RESPONSE TO COMMENTS ON THE EL DORADO PROJECT
DRAFT ENVIRONMENTAL IMPACT STATEMENT

The Federal Energy Regulatory Commission (FERC or Commission) made available to the public its draft environmental impact statement (EIS) for the relicensing of the El Dorado Project on or about March 7, 2003. The Commission requested comments be filed by May 13, 2003 (later amended to May 19, 2003), and the following entities filed comments pertaining to the draft EIS:

<u>Commenting Entities</u>	<u>Date of Letter</u>
U.S. Environmental Protection Agency	April 22, 2003
El Dorado County Citizens for Water	May 8, 2003
U.S. Forest Service	May 9, 2003
Alice Q. Howard	May 11, 2003
California Department of Fish and Game	May 14, 2003
El Dorado Irrigation District	May 16, 2003
State Water Resources Control Board	May 19, 2003
Shingle Springs Rancheria	June 11, 2003
League to Save Sierra Lakes and associated intervenors	June 16, 2003
U.S. Army Corps of Engineers	June 20, 2003

In this appendix, the Commission staff summarizes the comments received, provides responses to those comments, and indicates where modifications to the text of the draft EIS have been made. The Commission staff has grouped the comments by topic.

General and Procedural

Comment: El Dorado Irrigation District (EID) recommends that the Commission grant a term of 40 years for any new license that may be issued for this project, and Alice Howard recommends, on behalf of the Sierra Club, the shortest license term available, but would support a modest extension of the term beyond 30 years to enable the terms of the El Dorado Project license to expire concurrently with the terms of Upper American River Project (FERC No. 2101) and the Chili Bar Project (FERC No. 2155). The League to Save Sierra Lakes recommends that if a license for this project is issued at all, it be for a period of not more than 10 years.

Response: The Commission will make its determination regarding the term of any new license, which by regulation can range from 30 to 50 years, that may be issued for this project in the license order, after considering appropriate information prior to the order issuance.

Comment: League to Save Sierra Lakes states that the Commission must evaluate the long-term impacts of dewatering 39 miles of the South Fork of the American River (SFAR) downstream of the Kyburz diversion dam by comparing pre-project conditions with the current “degraded” condition.

Response: As indicated in section 2.4, *No Action*, of the EIS, our baseline for analysis is the no-action alternative, which is the project continuing to operate as required by the original license.

Comment: The League to Save Sierra Lakes indicates that hydrologic, geomorphologic, cultural, and biologic resource studies have not been completed, as requested by numerous agencies. When these studies have been completed, the League suggests that the EIS be revised and recirculated for comment.

Response: With the exception of ongoing cultural studies that will be addressed in the Historic Properties Management Plan (HPMP), the Commission staff is not aware of any additional studies that are ongoing that have not been addressed in the draft EIS. The Settlement provides for the continuation of a number of the studies that were conducted prior to the licensing decision.

Comment: California Department of Fish and Game (CDFG) comments that although the Commission rejected 4 of their 28 Section 10(j) recommendations, all of the rejections were resolved by the Settlement, which CDFG fully endorses. CDFG recommends that the Settlement be incorporated in its entirety into any license that may be issued for this project and would consider the 10(j) process completed if the Commission should do so.

Response: In section 5.4, *Fish and Wildlife Agency Recommendations*, of the final EIS, the Commission staff discusses whether measures proposed by CDFG are adopted by the Commission staff and discusses the inconsistencies. The Commission staff agrees with the provisions of the Settlement that address two of the four inconsistencies. The Commission staff recognizes that the conditions of the Settlement represent the result of substantial negotiations among the stakeholders, including CDFG, and therefore the Commission staff would not object to the implementation of the other two items in accordance with the Settlement. Consequently, the Commission staff considers the 10(j) inconsistencies to be resolved.

Comment: The League to Save Sierra Lakes comments that the range of alternatives evaluated in the draft EIS was too narrow and should have included EID’s ability to obtain water from alternative sources such as Folsom Reservoir, Sly Park Reservoir, and “Fazio” water from the North Fork of the American River.

Response: The Commission staff analyzed EID's proposed action, EID's proposed action with additional staff recommended measures, project decommissioning, and the no-action alternative in the draft EIS, consistent with our stated intention in Scoping Document 2 (SD2). In addition, the Commission staff analyzed the U.S. Forest Service (FS) alternative in the draft EIS, but dropped this alternative based on the convergence of this alternative and EID's proposed action that resulted from the Settlement. The League confuses our National Environmental Policy Act (NEPA) document for relicensing this hydroelectric project with a NEPA document for a consumptive water project. It is unclear to us how water from Folsom Reservoir, Sly Park Reservoir, or the North Fork of the American River could be used for power generation at the El Dorado Project.

Comment: EID comments that the proposed Settlement measures supersede the measures proposed in the application and that the Settlement incorporates proposed measures that would address the Commission staff's recommendations provided in the draft EIS.

Response: The Commission staff discusses our analysis of EID's proposed measures (as provided in the Settlement) in section 3.3, *Proposed Action and Alternatives*, and our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative*, of the final EIS.

Comment: State of California, State Water Resources Control Board (SWRCB) comments that the draft EIS does not include information from studies not yet available at the time of preparation such as the results of the water temperature modeling.

Response: The Commission staff incorporated information available and provided it as part of the record in the development of the draft and final EIS. The only water temperature related studies that the Commission staff obtained was related to calibration of the water temperature model, and the Commission staff incorporated information from that study, as appropriate, into both the draft and final EIS. The Commission staff is not aware of any additional water temperature modeling results that have been filed as part of this proceeding..

Comment: SWRCB comments that the draft EIS does not include certain analyses such as growth-inducing impacts that may result from relicensing the project and that the cumulative impacts section may need to be expanded to meet the requirements of the California Environmental Quality Act for the SWRCB's pending water quality certification decision. SWRCB comments that they may need to supplement the final EIS with the Settlement to meet CEQA obligations, and SWRCB will evaluate the whole record and consider the Settlement in their water quality certification decision.

Response: The Commission staff recognizes that an analysis of growth-inducing impacts is

typically included in environmental impact reports prepared under the requirements of CEQA. The Commission does not normally address this issue in its NEPA documents, and the Commission staff did not indicate in SD2 that this issue would be addressed. However, EID, in its May 28, 2003, letter to the Commission, states that it would supplement the EIS record as necessary with additional analyses to describe growth-inducing and/or cumulative effects and develop a mitigation monitoring plan to the extent that these topics are not covered in the final EIS.

Comment: SWRCB and Alice Howard comment that the Settlement resolves many issues for which the draft EIS proposes conditions. SWRCB and Alice Howard comment that it would have been beneficial to have waited for the Settlement before issuing the draft EIS to understand what issues had been resolved by the signatory parties.

Response: SWRCB's and Alice Howard's opinions are noted. The Commission has publicly communicated its schedule for this proceeding on numerous occasions.

Comment: The FS, in its letter to the Commission dated May 9, 2003, provided three revised Section 4(e) conditions (conditions 63, 64, and 65) that pertain to the construction of the Mill Creek to Bull Creek tunnel.

Response: The Commission analyzed the environmental effects of EID's proposed license amendment to reconstruct the Kyburz diversion dam and construct the Mill Creek to Bull Creek tunnel in its final environmental assessment for that proceeding issued on July 20, 2000. The Commission will make a determination in any license order issued for this project whether conditions pertaining to the approved license amendment should be included as a condition of a new license.

Water Resources

Comment: El Dorado County Citizens for Water comments that the history of water development and use cited on page 1 of the draft EIS must be revised to state the recorded earliest and prior use of the project water for consumptive use. They state that according to official records of the California Railroad Commission and the California Supreme Court, the project waters have been used continuously for consumptive public water use since 1876 with original water rights filed in 1856, 1860, 1867, and 1872. El Dorado County Citizens for Water comments that the EIS statement "After 1884, water from the project was used for industrial, irrigation, and domestic purposes in the Placerville area." fails to recognize this earlier history, particularly in view of the important California Supreme Court decision of November 1880, which was decided on the identical water system that now comprises the project.

Response: The information presented in the draft EIS pertaining to the history of the El Dorado Project was extracted from EID's license application. The Commission staff considers it sufficient for our purposes.

Comment: El Dorado County Citizens for Water comments that the California Supreme Court affirmed land use and water rights on the SFAR, Echo and Silver Lakes, Osgood Creek, as well as all other tributary waters, such as Alder, Plum, Alpine, Wolf, and Mill Creeks, among others in November 1880. El Dorado County Citizens for Water comments that these rights predate all use of these waters and public domain lands for hydroelectric generation and predate creation of U.S. National Forests and appropriation of water rights by the State of California. El Dorado County Citizens for Water comments that the draft EIS fails to recognize the seniority of these rights to all subsequent actions or determinations whether by the Commission, the SWRCB, FS, and all other state and federal agencies.

El Dorado County Citizens for Water comments that action by the California Railroad Commission in 1919 established mandatory flow rates on the SFAR at Kyburz for diversion into the El Dorado canal for public use as follows: 40 cfs from April through October; 20 cfs for March, November, and December; and 10 cfs for January and February. El Dorado County Citizens for Water comments that these flow rates are not subject to reduction or impairment by any subsequent actions or licensing activities. El Dorado County Citizens for Water comments that in the early part of the twentieth century, Western States Gas and Electric company attempted to restrict all water delivered by the El Dorado canal to hydroelectric development, thus eliminating domestic use of any water from this system. In response, the El Dorado Water Users Association initiated legal action and the Railroad Commission determined that the system has been used continuously since 1876 for public use and it is the duty of Western States to proceed to sell water for public use. El Dorado County Citizens for Water comments that it remains a mandate for all subsequent owners and operators of the system to sustain this adequate water supply for domestic use, as well as to increase supply and delivery capacity as demand warrants.

El Dorado County Citizens for Water comments that the draft EIS should be modified to clearly express restrictions imposed by pre-existing water- and land-use rights and that the Commission must insist on more flexibility in flow regimes to meet historic ownership interests. El Dorado County Citizens for Water comments that the EIS should include cautionary statements concerning violation or impairment of these rights in all appropriate sections of the EIS and any ensuing license.

Response: The Commission staff considers it unlikely that EID, which is in the business of providing consumptive water to its customers, would opt to forego providing this water

so that it could produce hydroelectric generation. If such an unusual circumstance should arise during the term of a new license, the Commission and the SWRCB would review the facts of the circumstances and determine if it is appropriate to establish the priority of the water use.

Comment: The League to Save Sierra Lakes points out that the draft EIS fails to address EID's lack of consumptive water rights to the water in question and that the Commission should either provide this documentation or ask EID to withdraw its application as incomplete.

Response: The purpose of our EIS is to assess the environmental consequences of relicensing the El Dorado Project, not to document whether EID has appropriate consumptive water rights. The Commission staff considers this to be properly determined by the SWRCB.

Comment: EID states that it has agreed, as identified in appendix A, Section 22 of the Settlement, to achieve target lake levels in excess of that recommended in the draft EIS. EID comments that the Settlement recognizes that below the specified target levels, discretionary releases for power production cannot be made, while at other times the lakes can be maintained at higher levels for longer into the year to provide additional recreational enhancement.

Response: The Commission staff agrees with EID's proposed target lake levels as specified in the Settlement.

Comment: EID comments that they essentially agree with our analysis of the Caples Lake spill channel in the draft EIS; however they have agreed to a program of further monitoring, stabilization plans, and adaptive management of pulsed flows as described in Appendix A, Sections 4 and 8, items 3 and 4 of the Settlement. EID comments that it believes that the provisions of the Settlement provide a more flexible and effective response to Caples Creek pulse flows.

Response: As stated in section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS, the Commission staff does not concur that EID's proposed pulsed flows to Caples Creek are needed; however, the Commission staff would not object to the implementation of scheduled spring pulsed flow events during other than critically dry years, if such releases would not occur under the existing operating regime. The Commission staff agrees with EID's proposed stabilization plan for the auxiliary dam spillway channel.

Comment: In the draft EIS, the Commission staff disagreed that a 5-day pulsed flow is

needed in the Caples Creek channel, as originally recommended by the FS and CDFG. The FS comments that Appendix A, Section 4 of the Settlement recommends the 5-day pulsed flow. FS comments that additionally, Appendix A, Section 8 of the Settlement states that the FS may adjust the maximum flow if the results of geomorphic monitoring indicate that the flows are resulting in damage to the Caples Creek channel or that reduced flows are effective in meeting the fluvial geomorphology objective described in Appendix B, Section 1 of the Settlement. The FS states that the Settlement also allows for increasing the flows or flow duration if the geomorphology objective is not met.

Response: The Commission staff still does not consider 5-day pulsed flows in this reach to be warranted, as discussed in section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS. However, the Commission staff recognizes that the terms of the Settlement represent the results of extended negotiations with appropriate stakeholders, and the Commission staff would therefore not object to the implementation of scheduled pulsed flow events during other than critically dry years, if such releases would not occur under the existing operating regime. If the results of the geomorphological monitoring suggests that sediment and bedload transport could be enhanced with increased volume or duration of pulsed releases, the Commission would need to approve any such operational changes.

Comment: In the draft EIS, the Commission staff disagreed that limiting flow in the spillway channel to 60 cfs is the best solution to address channel degradation and erosion problems in the Caples Lake auxiliary dam spillway channel and instead recommended a spill channel monitoring plan. The FS comments that Appendix A, Sections 4 and 8 of the Settlement still specifies the 60-cfs spillway channel release, but excuses EID from complying with this restriction in the event of an emergency or large storm beyond EID's ability to control. Furthermore, the FS states that Settlement allows the FS to adjust the maximum flow if the geomorphic monitoring indicates that the flows are resulting in damage to the spillway or it can withstand higher flows.

Response: With the specific exceptions to this 60-cfs spill channel limitation provided in the Settlement and the notification procedures if the 60-cfs limitation is exceeded, the Commission staff now agrees that the 60-cfs flow limitation is reasonable and recommends that it be included in any license that would be issued for this project. The Commission staff also recommends that in addition to the parties that would be notified as in the Settlement, that the Commission also be notified when the flow restriction in the spillway channel is exceeded. The Commission staff modified section 3.3.1.2, *Environmental Effects and Recommendations*, in the *Water Resources* section of the final EIS accordingly.

Comment: The FS comments that Appendix A, Section 8, of the Settlement describes a

feasibility study that EID has agreed to complete for assessing what modifications could be made to the gate at the Caples Lake main dam to allow more than 350 cfs (the existing maximum capacity of the valve) to be released and whether the auxiliary dam spillway could be modified to release up to 350 cfs. Based on the results, EID may be able to convey flows exceeding 350 cfs at the main dam or through the spillway channel if it can be reconfigured to adequately handle the flows and meet resource objectives and if the FS determines that flows exceeding 350 cfs are necessary based on monitoring results.

Response: The Commission staff does not concur that the feasibility study is needed at this time (as discussed in section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS), because the Commission staff concludes that existing pulsed flows provide sufficient channel properties to maintain aquatic and riparian habitat. If such major project modifications as envisioned by the feasibility study were to be implemented, EID would first need to apply to the Commission for a license amendment. Such a study could provide support for the license amendment. However, because this measure is included as part of the comprehensive Settlement, the Commission staff would not object if this feasibility study was conducted.

Comment: In the draft EIS, the Commission staff recommended that EID conduct 2 more years of bed profile monitoring at the Kyburz diversion dam. The FS comments that monitoring at the diversion dam site is included in the geomorphic monitoring described in Appendix A, Section 7, of the Settlement. As specified in the Settlement, up to 6 years of bed profile monitoring could occur, but provisions are included to terminate monitoring if the relevant ecological resource objective has been met or no change in resource response is expected. EID notes that the conditions of the Settlement provide an appropriate and longer-term response to bed profile monitoring at the Kyburz diversion dam.

Response: The Commission staff concurs with the provisions for bed profile monitoring at the Kyburz diversion dam and modified section 3.3.1.2, *Environmental Effects and Recommendations*, in the *Water Resources* section of the final EIS accordingly.

Comment: EID comments that they concur with our conclusion in the draft EIS that non-project related effects appear to be largely responsible for the degraded section of Oyster Creek downstream of the State Highway 88 crossing, and thus EID should not be responsible for remediating these conditions. However, EID has agreed to take the lead for developing a plan for investigating and stabilizing the Oyster Creek stream channel as described in the Settlement. The FS comments that Appendix A, Section 5, of the Settlement addresses this issue and requires a stabilization plan and clarifies that EID is responsible for portions that are project related. The Settlement further states that EID may pursue a Coordinated Resource Management Program for Oyster Creek with other landowners in the area.

Response: The Commission staff continues to conclude that the highway's drainage system is most likely the primary cause of the degraded channel conditions in Oyster Creek. However, in the final EIS, the Commission staff agrees that if further investigation reveals that some of the channel degradation downstream of Highway 88 is related to project operations, then EID should be responsible for an appropriate portion of the restoration costs. Therefore, the Commission staff agrees with EID's proposed measures for conducting additional surveys of Oyster Creek, developing a stabilization plan, and implementing project-related restoration measures, as presented in the Settlement. Any restoration efforts that would occur pursuant to this recommendation would be most efficiently implemented if coordinated with related restoration efforts that can be attributed to other landowners in the area. The Commission staff modified section 3.3.1.2, *Environmental Effects and Recommendations*, in the *Water Resources* section of the final EIS accordingly.

Comment: The Commission staff addressed the need for water quality recommendations on page 61 of the draft EIS. The FS comments that the Settlement addresses water quality monitoring in Appendix A, Section 7, and the revised preliminary 4(e) condition nos. 28–30 also address water quality.

Response: In the final EIS, the Commission staff continues to conclude that the broad range of water quality monitoring specified in the Settlement is not needed, although the Commission staff agrees that spot monitoring related to certain construction and ground disturbing activities is appropriate and should be included in plans for such activities. However, the Commission staff recognizes the conditions of the Settlement represent the product of substantial negotiations between the stakeholders, and the Commission staff would therefore not object to the implementation of the water quality monitoring plan as provided for in the Settlement.

Comment: **The U.S. Army Corps of Engineers (Corps) comments that the range of alternatives that Commission staff considers in the EIS should include those that avoid impacts to wetlands and other waters of the United States. The Corps also notes that every effort should be made to avoid project features that entail the discharge of dredged or fill material into the waters of the United States. If there are no practicable alternatives to filling waters of the United States, then mitigation plans should be developed to compensate for the unavoidable losses resulting from project implementation.**

Response: **The EIS considered practicable measures to avoid dredge and fill of waters of the United States. EID has not identified the need to conduct any dredging as part of this relicensing proceeding. Where the Commission staff has identified actions that could entail discharges to the waters of the United States, such as new or enhanced recreational facilities and road rehabilitation, we have recommended that EID develop site-specific**

erosion and sedimentation control plans to ensure that such discharges do not occur. The proposed new boat launch at Caples Lake, planned for completion within 10 years from license issuance, would most likely entail obtaining a dredge and fill permit, pursuant to Section 404 of the Clean Water Act. Hydroelectric project licensees are not excused from the need to acquire any additional state or federal approvals that may be needed for project operations, as appropriate.

Comment: EID provides additional information regarding Jenkinson Lake for the cumulative impacts analysis provided in the draft EIS.

Response: The Commission staff notes this additional information and has incorporated it into section 3.3.1.3, *Cumulative Effects on Water Quality and Water Quantity*, in the *Water Resources* section of the final EIS, as appropriate.

Comment: The League to Save Sierra Lakes indicates that the draft EIS does not address the cumulative effects of the El Dorado Project and the Sly Park Reservoir (Jenkinson Lake).

Response: The Commission staff was unable to secure details regarding Jenkinson Lake and its inter-relation with the El Dorado Project until we received EID's letter of May 16, 2003, commenting on the draft EIS. The Commission staff incorporated this information into section 3.3.1.3, *Cumulative Effects on Water Quality and Water Quantity*, in the *Water Resources* section of the final EIS.

Comment: The League to Save Sierra Lakes states that the draft EIS does not consider the cumulative effects of proposed project operations on the San Francisco Bay and Sacramento-San Joaquin River Delta.

Response: The Commission staff defined the scope of our geographic cumulative effects analysis in our SD2, issued on December 8, 2000, and in section 3.2.2, *Aquatic Resources*, of the EIS to include the drainage basin of the SFAR upstream of the Slab Creek Reservoir dam. No basis is provided as to how operation of the El Dorado Hydroelectric Project could influence the San Francisco Bay or Sacramento-San Joaquin River Delta.

Aquatic Resources

Comment: The League to Save Sierra Lakes requests EID to provide detailed Instream Flow Incremental Methodology studies that have been requested for years by the FS and CDFG.

Response: EID provided these studies, and the Commission staff analyzed the results in

section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the EIS.

Comment: In response to bullet 3 of section 2.1.2, *Proposed Environmental Measures*, of the draft EIS, EID comments that the indicated ramping rates are intended to represent current license provisions, but do not accurately portray them. The ramping rates in effect under the current license are actually different for Echo Lake and Lake Aloha and Silver and Caples Lakes as a result of the configuration of the gages and outlet structures. EID and FS comment that Appendix A, Section 2, of the Settlement recommends ramping rates that are consistent with those in the current license.

Response: Our interpretation of the existing ramping rates for this project came from page B-4 of the license application, which is reflected in bullet 3 of the draft EIS. No distinction was made that this rate only applied to Caples Lake and Silver Lake. The Commission staff modified the text of section 2.1.2, *Proposed Environmental Measures*, of the final EIS to reflect the conditions of the Settlement and the clarification that these ramping rates represent a continuation of existing conditions, which was not previously apparent.

Comment: In the draft EIS, the Commission staff recommended development of a plan for ramping rates to be filed with the Commission within 1 year of license issuance. The FS comments that Appendix A, Section 2, of the Settlement proposes ramping rates that are consistent with the ramping rates in the current license.

Response: In the final EIS, the Commission staff concludes that because the proposed ramping rate criteria represent a continuation of existing conditions, development of a plan that specifies how the criteria would be implemented should not be necessary. The Commission staff modified section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS to reflect the clarification that is referenced in our previous response. However, if any structural modifications are proposed to better enable the ramping rate criteria to be implemented, the Commission staff recommends that EID develop a plan for such modifications prior to modifying any project features.

Comment: In response to bullet 8 of section 2.2, *Proposed Action with Additional Staff-Recommended Measures*, of the draft EIS, EID and the FS comment that Appendix A, Section 9, includes an additional fish screen at the Carpenter Creek diversion, besides the screening that the Commission staff recommended at the Alder Creek diversion.

Response: Based on EID's comments on the draft EIS, Carpenter Creek apparently also has a reasonable amount of available spawning gravel. Because of this, it is likely that both

Alder and Carpenter creeks serve as important sources of trout to the SFAR. Screening the Alder Creek and Carpenter Creek diversions would prevent trout from entering the intake canal and allow these fish to contribute to the fishery in both lower Alder and Carpenter creeks, where they could be caught by anglers at the Alder Tract or Sand Flat Campground, and the SFAR. Therefore, the Commission staff now recommends EID's proposal to implement fish screens at both Alder and Carpenter creeks at the diversion points. The Commission staff modified section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS accordingly.

Comment: CDFG would like clarification of our rationale for not requiring fish screens on six of seven tributaries. CDFG asks the Commission to re-examine the criteria above as they may be applied to future projects.

Response: The Commission staff provides the rationale for our recommendations for fish screens in section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS.

Comment: In response to bullet 10 in section 2.2, *Proposed Action with Additional Staff-Recommended Measures*. EID comments that Appendix A, Section 7, item 1 of the Settlement addresses fish monitoring that is more extensive and longer-term than the Commission staff recommended in the draft EIS. Our draft EIS also differs from the Settlement regarding the use of fish biomass indices to determine potential project-related effects on fisheries, and regarding frequency of fish data collection. EID concurs with the reasoning presented in the draft EIS fisheries assessment, but believes that the Settlement provides a superior approach to fish monitoring. EID also comments that 1 year of fish population sampling could be adequate if the data are within the range of attributes calculated from the 3-year baseline study.

Response: The Commission staff is in agreement that sampling during the fifth and sixth year from license issuance would provide a measure of the fish communities' response to the proposed flow regime. The rationale provided in the Settlement for not sampling for more than 2 years in a row is that it would reduce electroshocking effects on individuals (which could influence the monitoring results). The Commission staff agrees with this rationale, as long as the FS, Ecological Resources Committee (ERC), and SWRCB take into account the potential variability that is inherent when conducting only 2 years of post-treatment monitoring to ascertain effects of the initial measures on fish populations. The Commission staff modified section 3.3.2.2, *Environmental Effects and Recommendations*, in the *Aquatic Resources* section of the final EIS to reflect our revised conclusions regarding fish monitoring.

Comment: EID comments that the draft EIS should reflect the fact that both cutthroat

trout and lake trout are non-native species in the project area. EID comments that the Lahontan cutthroat, while historically native to Lake Tahoe and the Truckee River, was not found in Echo Creek within the project area. EID comments also that while native to northern California, the Tui chub is not native to the American River basin.

Response: The Commission staff modified table 3-13 of the final EIS to reflect EID's comments.

Terrestrial Resources

Comment: In response to bullet 6 in section 2.1.2, *Proposed Environmental Measures*, and bullet 12 in section 2.2, *Proposed Action with Additional Staff-Recommended Measures*, of the draft EIS, EID and the FS comment that monitoring and control of noxious weeds is addressed in Appendix A, Section 14, which recognizes that EID has prepared a Noxious Weed Control Plan (Technical Memorandum Number 2, dated October 23, 2002). EID comments that appendix E of that plan is the Pesticide Application Guide. The Settlement does not specifically address pesticide use for the control of insects and rodents on FS lands, but EID does not disagree with this staff recommendation.

Response: In section 3.3.3.2, *Environmental Effects and Recommendations*, in the *Terrestrial Resources* section of the final EIS, the Commission staff recommends that EID finalize and implement its Plan for Prevention and Control of Noxious Weeds. In addition, the Commission staff recommends implementation of FS 4(e) condition 15, which would ensure that the justification for pesticide use to control noxious insects or rodents would be verified prior to its use. Although use of insect or rodent pesticide is not currently envisioned by EID, the Commission staff considers it appropriate to have proactive procedures in place to prevent the unnecessary use of pesticides in the vicinity of project lands and waters.

Comment: The Commission staff recommends in the draft EIS that surveys for foothill yellow-legged frogs be conducted from June through September at any time the SFAR below the El Dorado diversion dam at Kyburz is 100 cfs or less and changes by 25 cfs or more. EID comments that the threshold in the Settlement (flow change of 50 cfs or more in 1 day) is more appropriate. EID comments that during June and July, foothill yellow-legged frogs are most vulnerable to large-scale fluctuations in streamflow and that it is unlikely that flows would drop to as low as 100 cfs during this period. EID further comments that by August and September, SFAR flow levels may decline to stages of 100 cfs or less, but at this time, larvae are further developed and more able to adjust to flow fluctuations.

Response: The Commission staff agrees with EID's proposed timing for surveys for

foothill yellow-legged frogs. With the proposed minimum flow regime, flows in the SFAR during June and July would only infrequently be less than 100 cfs, and during August and September, tadpoles would be more mobile and thus likely able to adjust to flow fluctuations of less than 50 cfs in a day. The Commission staff modified the text of section 3.3.3.2, *Environmental Effects and Recommendations*, in the *Terrestrial Resources* section to reflect EID's comments, consistent with the terms of the Settlement.

Comment: In the draft EIS, the Commission staff did not agree with all aspects of the FS and CDFG recommendation to prevent spills over Lake Aloha auxiliary dams to prevent trout from entering pools below the auxiliary dams that are inhabited by mountain yellow-legged frogs (specifically, that EID be required to develop a trout removal plan within 5 days of a spill event, since it may not be feasible to determine if spill has occurred without on-site telemetry equipment, which may not be allowed in the designated wilderness area). The FS states that Appendix A, Section 10, of the Settlement provides for EID to complete an investigation to determine whether telemetry equipment can be installed at Lake Aloha to monitor conditions and/or control operations, which would address our concern that the information is not necessarily transmitted in real-time fashion. The Settlement also increased the time for plan development from 5 to 14 days.

Response: If the results of the investigation specified in Section 10 of the Settlement reveal that it is feasible and consistent with the rules governing activities in the Desolation Wilderness to install telemetry equipment at Lake Aloha, then our concerns would likely be addressed (as the Commission staff discusses in section 3.3.3.2, *Environmental Effects and Recommendations*, in the *Terrestrial Resources* section of the final EIS). However, the specific aspects of trout removal may need to be adjusted if telemetry equipment is not installed for whatever reason. To cover this possibility, the Commission staff continues to recommend that EID develop a plan for survey and trout removal that addresses the concerns that the Commission staff raised in the draft EIS.

Comment: Alice Howard suggests that our discussion of "amphibians" on page 149 of the draft EIS should change "brook trout" to "trout" in the discussion of predation on mountain yellow-legged frogs in the vicinity of Lake Aloha.

Response: From the information available to us, brook trout are the only trout known to currently reside in Lake Aloha. However, the Commission staff agrees that if other trout should occur, they also would likely prey on mountain yellow-legged frog tadpoles and small adults. The Commission staff therefore has deleted the word "brook," as Ms. Howard suggests.

Comment: Alice Howard indicates that our discussion of birds on page 151 of the draft EIS omitted mention of the bald eagles that are present at Silver Lake.

Response: The bald eagle is federally listed as a threatened species. Therefore, the Commission staff addressed it in section 3.3.4, *Threatened and Endangered Species*, of the draft EIS. The bald eagles that have been observed foraging and roosting at Silver Lake were mentioned on page 155 of the draft EIS.

Comment: The U.S. Environmental Protection Agency (EPA) comments that the draft EIS did not provide a definition of “federal species of concern” or how they relate to the Endangered Species Act.

Response: The Commission staff added the requested information to section 3.3.3.1, *Terrestrial Resources, Sensitive Species*, of the final EIS.

Comment: The Shingle Springs Rancheria indicates that our discussion of the affected environment for the bald eagle fails to point out the spiritual significance of this species to the Washoe, Nisenan, and Miwok Indians, and dismisses the possible influence of disturbances around Silver and Caples lakes based on our absence of knowledge regarding bald eagle nesting locations.

Response: In response to the Shingle Springs Rancheria’s comment, the Commission staff added a sentence to section 3.3.4.1, *Affected Environment*, in the *Threatened and Endangered Species* section of the final EIS that acknowledges the spiritual significance of this species to the Washoe, Nisenan, and Miwok Indians. As the Commission staff noted in this section of the draft EIS, EID’s consultants conducted bald eagle surveys at Caples and Silver lakes and only observed roosting and foraging eagles at Silver Lake and roosting eagles at Caples Lake. The Commission staff has no documentation of any bald eagle nesting at either lake. Consequently, our conclusions regarding potential effects of continued project operation on bald eagles remains unchanged.

Comment: The EPA comments that the draft EIS did not provide a discussion of the consultation requirements under Section 7 of the Endangered Species Act, or whether Section 7 consultation with the FWS has begun. EPA recommends that the final EIS include a discussion of the project’s compliance with the FWS regarding effects on the bald eagle, California red-legged frog, and valley elderberry longhorn beetle, and include the Biological Opinion, if it has been issued by FWS.

Response: Section 5.6.4, *Endangered Species Act*, of the draft EIS indicates the Commission’s responsibility to consult with the FWS when a proposed action may adversely affect federally listed species. The Commission staff concluded in the draft EIS that relicensing the El Dorado Project would not likely have an adverse effect on California red-legged frog and bald eagle and would have no effect on valley elderberry longhorn beetle. In section 5.6.4 of the draft EIS, the Commission staff indicated that it would seek

concurrence with the conclusion from the FWS. In section 5.6.4 of the final EIS, the Commission staff provides an update regarding the status of Section 7 consultation. On March 13, 2003, Commission staff issued a letter to FWS seeking concurrence with Commission staff's conclusion within 30 days. On July 1, 2003, Commission staff issued a follow-up letter to FWS seeking concurrence with Commission staff's conclusion within 10 days. To date, the Commission has not received a reply to either of its letters from the FWS. Given Commission staff's conclusion that relicensing the project would not adversely affect federally listed species, formal consultation pursuant to Section 7 is not required and a biological opinion from the FWS would not be needed.

Comment: The EPA asks if a separate biological assessment has been prepared for the licensing of the El Dorado Project.

Response: In this case, the Commission considered the draft EIS to be its biological assessment. The Commission staff added a statement to the introductory paragraph of section 3.3.4, *Threatened and Endangered Species*, to make this clear to the reader.

Recreational Resources

Comment: In response to bullets 17 and 18 in section 2.2, *Proposed Action with Additional Staff-Recommended Measures*, in the draft EIS, EID comments that the recreation plan is addressed in Appendix A, Sections 16–21 of the Settlement. EID comments that it has agreed to a comprehensive set of measures that address project related facilities both within the project boundary and on FS-managed land. EID comments that the proposed measures include recreation enhancements, operation and maintenance, and heavy maintenance tasks that, although different from those that the Commission staff recommended in the draft EIS, provide at least as much recreational mitigation and enhancement.

Response: As discussed in section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* section and in section 5.2, *Comprehensive Development and Recommended Alternative*, of the final EIS, the Commission staff agrees with some of the proposed recreational measures and includes these measures among our recommendations. Although the Commission staff may not concur that remainder of the proposed recreational enhancements should be EID's responsibility, primarily those that are located outside of the project area or that include measures beyond those the Commission staff concludes are needed, the Commission staff does not object to their implementation.

Comment: In the draft EIS, the Commission staff recommends that EID develop a recreation plan within 1 year of license issuance. FS comments that Appendix A, Section

16, of the Settlement requires that EID develop a recreation implementation plan within 6 months of license issuance in consultation with the FS.

Response: The Commission staff concurs with EID's proposed recreation implementation plan as presented in the Settlement. In addition, the Commission staff recommends the following measures, as described in section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* section and in section 5.2, *Comprehensive Development and Recommended Alternative*, of the final EIS: identification of specific procedures that would be used to maintain and update the implementation plan in conjunction with the review of recreational developments; preliminary designs and estimated costs for the new or enhanced facilities that would be implemented during the 6-year period following license issuance; and identification of the entity responsible for constructing specific recreational enhancements and conducting operation and maintenance of project-related recreational facilities, if other than EID.

Comment: In the draft EIS, the Commission staff disagreed that EID should be required to provide a FS liaison for the new license. FS comments that this issue was addressed in Appendix A, Section 18, of the Settlement, which requires that EID and the FS each provide a liaison when planning or constructing recreational facilities.

Response: In the final EIS, the Commission staff continues to not recommend this measure since EID has the authority to decide on staffing for the management of recreational facilities, and management and such requirements are not mandated as part of the Commission's authorization for issuance of a license. However, this does not mean that the Commission staff concludes that such a liaison is inappropriate and would not object to the implementation of this measure.

Comment: In the draft EIS, the Commission staff recommended that EID develop a recreation monitoring plan within 1 year of licensee issuance. The FS comments that this issue is addressed in Appendix A, Section 16, of the Settlement, which refers to specific sections (Appendix A, Sections 17, 19, and 22) where recreational monitoring is specified throughout the license term.

Response: Although the Settlement provides for recreation monitoring, the Commission staff did not find that the Settlement provided for the development of a recreation monitoring plan. Accordingly, the Commission staff recommends in the final EIS that EID develop a recreation monitoring plan, in consultation with the FS, and file it with the Commission for approval within 6 months of license issuance. The recommended plan would include the following components: the specific methodology that would be used to assess changes in types of use and use patterns, levels of use, user preferences in recreational activities, types and sizes of recreational vehicles, preference for day use

versus overnight use, carrying capacity information sufficient to indicate changes in capacity, and recreational-user trends in the project area; the seasonal and annual frequency of proposed recreational monitoring; and a clear statement of how the proposed recreational monitoring report review, which would include EID, the FS, the ERC, and other interested parties, as specified in Section 17 of the Settlement, would relate to the review of recreational developments, which would include EID and the FS, as specified in Section 19 of the Settlement.

Comment: In the draft EIS, the Commission staff did not recommend that EID be required to provide recreational enhancements at China Flat Picnic Area, and Silver Fork and China Flat campgrounds. The FS comments that these recommended improvements have been eliminated from both the Settlement and the revised preliminary Section 4(e) conditions.

Response: The Commission staff has adjusted the text of section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* section accordingly.

Comment: In the draft EIS, the Commission staff did not recommend that EID be required to provide angling and whitewater boating access at riverine reaches that are outside the project boundary. FS comments that Appendix B, Section 3, of the Settlement describes several areas that will be explored as potential access sites. The FS comments that these measures are not recommended to be included in the license nor are they included in the revised preliminary Section 4(e) conditions.

Response: The Commission staff has adjusted the text of section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* accordingly.

Comment: In the draft EIS, the Commission staff did not recommend that EID be required to upgrade facilities at Silver Lake, including Ferguson Point, Sandy Cove, and Silver Lake West to comply with FS design standards. The FS comments that Appendix A, Section 21, of the Settlement specifies that EID should bring these facilities into compliance with accessibility standards and to continue to operate and maintain these sites; however it would not require EID to meet FS design standards.

Response: In the final EIS, the Commission staff recommends that EID provide accessibility enhancements at Ferguson Point and Silver Lake West. The Commission staff does not concur that additional accessibility facilities are needed at Sandy Cove and Woods Creek fishing access since these facilities already have accessible facilities; however, the Commission staff would not object if these proposed enhancements are implemented.

Comment: In the draft EIS, the Commission staff did not recommend that EID replace the gate at Caples Lake second dam, as recommended by the FS, because no information was

provided regarding why the gate should be replaced. The FS comments that Appendix A, Section 27, of the Settlement specifies that EID should replace the gate at Caples Lake Second Dam.

Response: The Settlement or the FS in its letter dated May 9, 2003, to the Commission still did not provide any details regarding why this gate needed to be replaced. In its June 23, 2003, response to our June 12, 2003, letter to EID requesting clarification of this point, EID and the FS provided information that indicates that the gate was at the Caples Lake main dam, it has been heavily damaged by snow, and it prevents the public from driving vehicles on a road designed solely to access project facilities. Given this information, the Commission staff now recommends that EID replace the indicated gate at the Caples Lake dam.

Comment: In the draft EIS, the Commission staff did not agree that all the facilities at Silver Lake East Campground need to be disabled accessible. The FS comments that Appendix A, Section 20, of the Settlement describes the work at Silver Lake East Campground for which EID would be responsible for completing.

Response: The Commission staff recommends in the final EIS that EID implement the proposed accessibility enhancements at Silver Lake East Campground. The Commission staff concludes that no basis has been provided regarding the need for EID's proposed resurfacing of the campground roads, widening of the spurs, and replacement of the waterlines; however, the Commission staff acknowledges that such measures could enhance the recreational facilities at Silver Lake East Campground, and the Commission staff would not object to the implementation of these measures.

Comment: In the draft EIS, the Commission staff did not agree with the original FS recommendation that EID should pursue measures to prohibit camping on Treasure Island, in Silver Lake, and EID lands surrounding Caples Lake. FS comments that neither the Settlement nor the revised preliminary Section 4(e) conditions include such measures.

Response: The Commission staff has adjusted the text of section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* accordingly.

Comment: In the draft EIS, the Commission staff did not agree that EID should provide funding to perform monitoring and permit compliance assurance. The FS comments that Appendix A, Section 21, of the Settlement specifies that EID should provide annual funding for performing monitoring and permit compliance assurance for the campground concessionaire permits at Caples Lake and Silver Lake East campgrounds.

Response: In the final EIS, the Commission staff continues to not recommend this

measure because it is not within the Commission's jurisdiction to ensure compliance with FS special use permits, but would not object to its implementation.

Comment: In the draft EIS, the Commission staff did not agree that EID should provide maintenance for Caples Lake Campground, Silver Fork Campground, China Flat Campground and Picnic Area, Sand Flat Campground, Bridal Veil Picnic Area, Pyramid Creek Trailhead, Shealor Lake Trailhead, Horse Canyon Trailhead, Lake Margaret Trailhead, Allen's Camp Trailhead, and Martin Meadow Overflow Camping Area, as originally recommended by the FS. The FS comments that Appendix A, Section 21, of the Settlement describes EID's responsibilities for operations and maintenance at Caples Lake Campground and Pyramid Creek Trailhead. The FS states that all other sites mentioned herein have been eliminated from the Settlement and the revised preliminary 4(e) conditions.

Response: In the final EIS, the Commission staff does not recommend that EID be responsible for heavy maintenance for Caples Lake Campground and Pyramid Creek Trailhead, but would not object to their implementation. The Commission staff has adjusted the text of section 3.3.5.2, *Environmental Effects and Recommendations*, in the *Recreational Resources* section of the final EIS to reflect the terms of the Settlement.

Comment: In the draft EIS, the Commission staff did not recommend that EID provide funding to perform site policing, signing, maintenance, monitoring, public information, and enforcement of dispersed public-use sites as originally recommended by the FS. The FS comments that Appendix A, Section 21, of the Settlement describes EID's responsibility to provide funding for patrol and operation of non-concessionaire developed and dispersed recreation facilities as well as trails and other locations utilized by visitors to the project, within and adjacent to the project boundary.

Response: In the final EIS, the Commission staff still does not recommend that EID provide funding to perform site policing, signing, maintenance, monitoring, public information, and enforcement of dispersed public use sites, but would not object to their implementation.

Land Use and Aesthetic Resources

Comment: In the draft EIS, the Commission staff did not recommend that EID be required to update special use authorizations associated with the project as a condition of any new license that may be issued, as recommended by the FS. The FS comments that FS-revised preliminary Section 4(e) condition no. 62 requires that EID bring existing special-use authorizations for project-related occupancy and use of National Forest System lands up to current standards through the issuance of new permits or the reissuance of obsolete

authorizations.

Response: The Commission staff does not recommend inclusion of this measure as a new license condition in the final EIS. The Commission staff concludes that the FS, not the Commission, has jurisdiction over special-use permits for use of National Forest System lands.

Comment: In response to bullet 22 in section 2.3, *Proposed Action with Additional Staff-Recommended Measures*, in the draft EIS, EID comments that they have already prepared a Visual Resources Assessment (Technical Memorandum Number 16 prepared by EIP Associates), which can be upgraded to a management plan pursuant to Appendix A, Section 24, of the Settlement.

Response: In section 3.3.6.2, *Environmental Effects and Recommendations*, in the *Land Use and Aesthetic Resources* section of the final EIS, the Commission staff recommends that EID develop a visual resource management plan that defines the process for visual resource protection, such as when a visual resource protection plan would be needed (i.e., new construction and type of maintenance activities), consultation process with the FS in the development and review of the plan, and components to be included in the visual resources protection plans.

Cultural Resources

Comment: The Shingle Springs Rancheria states that tribal elders and other responsible Indian leaders have never been provided with published detailed maps as referenced on page 231 of the draft EIS.

Response: Upon request from the Tribe, EID should be able to furnish published maps, or any other information pertaining to cultural resources, to the Shingle Springs Rancheria.

Comment: The Shingle Springs Rancheria takes issue with the EID report that the Commission staff cites on page 233 of the draft EIS, which states that there are 7 identified ethnographically significant traditional cultural properties. Numerous significant cultural properties are claimed to have been dismissed.

Response: As also indicated on page 233, EID has initiated an additional ethnographic study that entails direct contact with seven Native American communities, including the Shingle Springs Rancheria. The Commission expects to receive a report documenting this study, including contact logs with Native American groups, when it is completed. The results of that study can be incorporated into the HPMP, as appropriate. The final HPMP would also allow for continued consultation with the Shingle Springs Rancheria concerning

properties that may be of interest to the Tribe and this can also provide another opportunity for them to voice any new concerns and provide any relevant information that they find important for EID to act upon.

Comment: The Tribe takes issue with our analysis on page 235 of the draft EIS that the proposed new license would not have any unanticipated effects on cultural resources and that they would be protected during the term of the new license.

Response: The purpose of the HPMP is designed to resolve any possible adverse effects that might occur to important cultural resources throughout the term of the license. Thus, implementation of the final HPMP will allow for a practical outcome that the new license will have minimal effect on cultural resources. Measures for addressing unanticipated adverse effects will also be detailed in the final HPMP, and the Shingle Springs Rancheria has an additional opportunity to comment on such measures in the HPMP, as well as being consulted with, and involved in implementing such measures.

Comment: The EPA comments that the final EIS should include a discussion regarding the status of consultation with tribes affected by the proposed project and clearly indicate when the programmatic agreement would be prepared and implemented.

Response: The section 3.3.7.2, *Cultural Resources* of the final EIS summarizes that status of tribal consultation and notes that the final PA was circulated for review and signature on June 30, 2003.

Developmental Analysis

Comment: Alice Howard points out that in footnote 9 of the draft EIS, the phrase “under whose supervision the recreation falls” should be “under whose supervision the reservation falls.”

Response: The suggested change to the draft EIS is appropriate, and the Commission staff appreciates the correction of our typographical error. This footnote provides explanation of the FS alternative, which was substantially different from EID’s proposed project, or our recommended project, and therefore represented a reasonable alternative to consider at that time. However, with the signing of the Settlement, the FS alternative is very similar to EID’s proposed project, so the Commission staff deleted the FS alternative from our developmental analysis. Therefore, the footnote in question has been deleted from the final EIS.

Comment: EID’s consultant, Mead and Hunt (M&H), states that the analysis in the draft EIS is not intended to evaluate the total contribution of Project 184 to EID. Rather, it

compares the cost of operating the project for the sole purpose of producing power to the expected cost of purchasing power in the California energy market.

Response: M&H accurately and fairly presents the purpose of the Commission’s developmental analysis is “to determine how the cost of power from the hydroelectric project compares to the cost of power from the most economical alternative source of electric power. The Commission evaluates the hydroelectric project as a stand-alone ‘water power only’ project, and gives no consideration of the value of the project for water supply, recreational, or other benefits.” M&H further states that, “It is very important to view any FERC analysis for what it is designed to portray.” The Commission staff concurs with their assessment and comments. It is left to the licensee to perform a true business accounting analysis to determine the effect of these measures on the long-term economics of their business, which in this case includes both water for power and water for consumptive use.

Comment: EID’s consultant, M&H, states that the interest rate used in the analysis exceeds current rates for public entities. Specifically, M&H states that “...a public entity such as EID should be able to obtain financing for several percentage points less than 5.73 percent.” M&H performed a revised economic analysis using a value of 3.5 percent.

Response: The interest rate of 5.73 percent was taken from EID’s license application (Exhibit D, Page D-2) and represents EID’s current cost in revenue bond debt in 1996. M&H provides a value of 3.5 percent as being more appropriate and current, but provides no references for that value. EID passed along M&H’s comments to the Commission, but makes no stipulation that they either did, or could, obtain financing at that rate, or a rate lower than 5.73 percent. The Commission staff finds no basis to support the value suggested by M&H, and therefore the Commission staff has not revised the interest rate in our analysis.

Comment: EID’s consultant, M&H, states the project net investment value appears to be overstated. M&H states that EID has actually expended more funds to reconstruct the diversion dam, rehabilitate the powerhouse, repair the canal, construct the new tunnel from Mill Creek to Bull Creek, and to relicense the project than the amount used in the draft EIS. Specifically, M&H states that “Information provided to us by the EID indicates that additional expenditures have occurred since EID submitted its figures to the FERC. The current project costs are estimated at about \$44.5 million. However, it is our understanding the EID’s agreement with Pacific Gas and Electric Company (PG&E) for transfer of the project included receipt of \$15 million from PG&E. Unless these funds were expended on project-related work and the cost of that work was not included in the net investment value of \$12,945,758 that EID provided to the FERC in 2000, the true net investment value of the project is estimated at about \$29.5 million.”

Response: The Commission staff uses the most accurate information available in the preparation of our economic analyses and rely primarily on information provided by the applicant in the license application or other filings made to the Commission. M&H correctly points out that all of the values used were based on values provided by EID in various Commission filings. However, the information EID provided to M&H for their evaluation of the draft EIS was more recent than the information available to the Commission during preparation of the draft EIS. Therefore, our developmental analysis in the draft EIS did not take this new information into account. However, the Commission staff does not have any documentation from EID to support the suggested values.

The Commission staff also has reservations about reducing the net investment value due to the \$15 million payment by PG&E to EID. The Commission staff recognizes that the payment was intended to offset EID's costs to restore the project to operation following damage from several natural disasters. The point raised by M&H is that if EID used those proceeds to fund some of the restoration costs it would have been able to avoid financing of that portion of the costs. However, the Commission staff has no way of knowing how EID actually used the payment received from PG&E. EID could have financed the work anyway, choosing to use the money for other business purposes, perhaps even investing it. Lacking supporting documentation on which to base such changes, the Commission staff has not revised the net investment values in the final EIS.

Comment: EID's consultant, M&H, states that power values used in the analysis are not well-aligned with current energy markets, and no allowance is made for energy price escalation. M&H notes that the value used in the draft EIS had three components: (1) a 34 mills per kilowatt-hour (kWh) value for energy alone; (2) a 3.4 mills per kWh value for ancillary services; and (3) an assumed capacity value of \$75 per kilowatt-year for 21 MW of dependable capacity. M&H states that the total value used in the draft EIS of 54.63 mills per kWh is higher than values used in various EID cost analyses and reports. M&H further states that the energy rates used in the analysis should in some way consider future energy pricing in relation to general price inflation. M&H performed a revised economic analysis using a value of 4.33 cents per kWh (43.3 mills per kWh).

Response: Due to the current volatility of energy markets, there is much speculation about the selection of appropriate values to represent current or future energy markets. This volatility is expected to continue, at least into the near future, as competitive markets continue to develop.

The energy rate the Commission staff used in the draft EIS was provided by EID in the license application, and was based on forecasts by the California Energy Commission for years 2005 or 2006. The same energy rate was provided by PG&E as applicable to their Pit 3, 4 and 5 Project (FERC No. 233), which is located within the same region of

California. PG&E also provided ancillary service and capacity rates. The energy, ancillary services, and capacity rates provided by PG&E are considered to be reasonable values to reflect current and near-term markets. Therefore, those values were used in preparation of draft EISs for both the El Dorado and Pit 3, 4, and 5 projects.

M&H provides their opinion of what the appropriate values should be without citing a supportable, defensible source, other than their professional opinion. Further, M&H does not provide comments on the three energy components of the composite energy rate used in the draft EIS. Therefore, it is not clear if M&H is taking issue with the energy only rate, the ancillary services rate, the capacity value, or all three.

In the absence of a valid, defensible argument for a different energy value, or a recommended value for each of the three components to the composite energy value based on some supportable, defensible information for us to consider, the Commission staff is reluctant to change the energy value. The Commission staff encourages EID to perform its own independent economic analysis to assess the effect of the relicensing of the project on its business and to use whatever assumptions it feels are prudent for that purpose.

Comment: EID's consultant, M&H, notes that the estimated annual energy value used in the draft EIS to reflect the project as proposed by EID, with additional recommendations by the Commission staff, shows a greater energy effect than recently estimated by EID's consultant, Hydrologics, Inc. The draft EIS used a value of 91,400,000 kWh per year, while M&H claims that Hydrologics produced a current value of 95,000,000 kilowatt-hours in energy runs conducted in January 2003. M&H also notes that the Commission staff stated in the draft EIS that information necessary to differentiate the effects on generation due to a variety of measures was not available when the draft EIS was prepared.

Response: The annual energy estimates used in the draft EIS were based on a single energy value provided by EID in its November 27, 2002, Response to Ready for Environmental Assessment comments. Due to the need to protect the confidentiality and sanctity of the collaborative process, the Commission staff members who prepared the draft EIS were not party to the meetings and discussions that took place, including access to the collaborative's various study results. The analysis performed by Hydrologics in January 2003 was not filed with the Commission.

EID does not confirm that the energy estimate referred to by M&H was the correct value to represent the Settlement, and the Commission staff has no other filings that provide this information. Therefore, the Commission staff has not revised the energy estimate in the final EIS to reflect this updated value.