

FEDERAL ENERGY REGULATORY COMMISSION
Washington, DC 20426
March 4, 2022

OFFICE OF ENERGY PROJECTS

Project No. 2290-122 – California
Kern River No. 3 Hydroelectric Project
Southern California Edison Company

VIA FERC Service

Subject: Scoping Document 2 for the Kern River No. 3 Hydroelectric Project

To the Parties Addressed:

The Federal Energy Regulatory Commission (Commission) is currently reviewing the Pre-Application Document submitted by Southern California Edison for relicensing the Kern River No. 3 Hydroelectric Project (Kern 3 Project) (FERC No. 2290). The project is located on the North Fork Kern River and Salmon and Corral Creeks near the town of Kernville in Kern and Tulare Counties, California.

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, Commission staff will prepare either an environmental assessment or an environmental impact statement (collectively referred to as the “NEPA document”), which will be used by the Commission to determine whether, and under what conditions, to issue a new license for the project. The public scoping process will support and assist our environmental review, to ensure that all pertinent issues are identified and analyzed and that the NEPA document is thorough and balanced.

Our preliminary review of the scope of environmental issues to be addressed in our NEPA document was contained in Scoping Document 1 (SD1), which was issued on November 21, 2021. We requested comments on SD1 to obtain the views of all interested entities on the scope of issues that should be addressed in the NEPA document. Due to restrictions on mass gatherings related to COVID-19, Commission staff were unable to conduct any on-site scoping meetings or an on-site environmental site review. Rather, two virtual scoping meetings were held. Based on comments from these scoping meetings and written comments we received during the scoping process, we have updated SD1 to reflect our current view of issues and alternatives to be considered in the NEPA document. ***Key changes from SD1 to Scoping Document 2 (SD2) are identified in bold, italicized type.***

SD2 is being distributed to both SCE's distribution list and the Commission's official mailing list for the project (see Section 9.0, *Mailing List* of the attached SD2). If you wish to be added to or removed from the Commission's official mailing list, please send your request by email to efiling@ferc.gov or by mail. Submissions sent via the U.S. Postal Service must be addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All written or emailed requests must specify your wish to be added to or removed from the mailing list and must clearly identify the following on the first page: **Kern River No. 3 Hydroelectric Project No. 2290-122.**

The enclosed SD2 supersedes SD1. SD2 is issued for informational use by all interested parties; no response is required. If you have any questions about SD2, the scoping process, or how Commission staff will develop the NEPA document for the project, please contact Quinn Emmering, the Commission's relicensing coordinator for the project, at (202) 502-6382 or quinn.emmering@ferc.gov. Additional information about the Commission's licensing process and the project may be obtained from the Commission's website, www.ferc.gov.

Enclosure: Scoping Document 2

SCOPING DOCUMENT 2
KERN RIVER NO. 3 HYDROELECTRIC PROJECT
PROJECT NO. 2290
CALIFORNIA



Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Licensing
Washington, DC

March 4, 2022

TABLE OF CONTENTS

TABLE OF CONTENTS	II
LIST OF FIGURES.....	III
LIST OF TABLES.....	III
1.0 INTRODUCTION.....	1
2.0 SCOPING.....	3
2.1 PURPOSES OF SCOPING	3
2.2 SCOPING COMMENTS.....	3
2.3 ISSUES RAISED DURING SCOPING	6
3.0 PROPOSED ACTION AND ALTERNATIVES.....	19
3.1 NO-ACTION ALTERNATIVE	19
3.1.1 Existing Project Facilities	19
3.1.2 Existing Project Operation	23
3.2 SCE'S PROPOSAL.....	25
3.2.1 Proposed Project Facilities and Operations	25
3.2.2 Proposed Environmental Measures.....	25
3.3 DAM SAFETY.....	25
3.4 ALTERNATIVES TO THE PROPOSED ACTION	26
3.5 ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED STUDY	26
3.5.1 Federal Government Takeover.....	26
3.5.2 Non-power License	26
3.5.3 Project Decommissioning	27
4.0 SCOPE OF RESOURCE ISSUES.....	28
4.1 RESOURCE ISSUES.....	28
4.1.1 Geologic and Soils Resources.....	28
4.1.2 Water Resources	28
4.1.3 Aquatic and Fishery Resources.....	28
4.1.4 Terrestrial Resources.....	29
4.1.5 Threatened and Endangered Species.....	30
4.1.6 Recreation Resources.....	30
4.1.7 Land Use and Aesthetic Resources.....	31
4.1.8 Cultural and Tribal Resources.....	31
4.1.9 Socioeconomics	31

4.1.10 Environmental Justice	31
4.1.11 Air Quality	32
5.0 PROPOSED STUDIES	33
6.0 CURRENT PROCESSING SCHEDULE	35
7.0 PROPOSED NEPA DOCUMENT OUTLINE	36
8.0 COMPREHENSIVE PLANS	38
9.0 MAILING LIST	40
APPENDIX A.....	A-1

LIST OF FIGURES

Figure 1. Location and project facilities for the Kern 3 Project.....	2
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LIST OF TABLES

Table 1. Minimum Instream Flows for Salmon and Corral Creek Diversions.....	24
Table 2. Whitewater Recreation Flow Releases Schedule.	24
Table 3. SCE's initial study proposals for the Kern 3 Project.....	33

SCOPING DOCUMENT 2

Kern River No. 3 Hydroelectric Project No. 2290-122

1.0 INTRODUCTION

The Federal Energy Regulatory Commission (Commission or FERC), under the authority of the Federal Power Act (FPA),¹ may issue licenses for terms ranging from 30 to 50 years for the continued operation, and maintenance of non-federal hydroelectric projects. On September 22, 2021, Southern California Edison Company (SCE) filed a Pre-Application Document (PAD) and Notice of Intent (NOI) to seek a new license for the Kern River No. 3 Hydroelectric Project (Kern 3 Project or project) (FERC Project No. 2290).² The Kern 3 Project is located on the North Fork Kern River and Salmon and Corral Creeks in Kern and Tulare Counties, California. The existing FERC project boundary encompasses a total of 234.6 acres of land, consisting of 9.4 acres of land owned by SCE and 225.2 acres of federal land in Sequoia National Forest administered by the U.S. Forest Service. The project has a total installed capacity of 40.2 megawatts (MW) and the average annual generation from 1997 to 2020 was 120,375 megawatt-hours. Section 3.0, *Proposed Action and Alternatives* provides a detailed description of the project, and Figure 1 shows the project location and the primary project facilities.

The National Environmental Policy Act (NEPA) of 1969,³ the Commission's regulations, and other applicable laws require that we independently evaluate the environmental effects of relicensing the project as proposed and consider reasonable alternatives.⁴ We will prepare an environmental document (NEPA document) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an environmental assessment (EA) or an environmental impact statement (EIS).

¹ 16 U.S.C. § 791(a)-825(r).

² The current license for the project was issued on December 24, 1996, with an effective date of December 1, 1996 and the license expires on November 30, 2026.

³ 42 U.S.C. §§ 4321-4370(f).

⁴ The Council on Environmental Quality (CEQ) issued a final rule on July 16, 2020, revising the regulations under 40 C.F.R. Parts 1500 – 1518 that implement NEPA (see *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43,304). The Final Rule became effective on September 14, 2020, and applies to any NEPA process begun after September 14, 2020. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

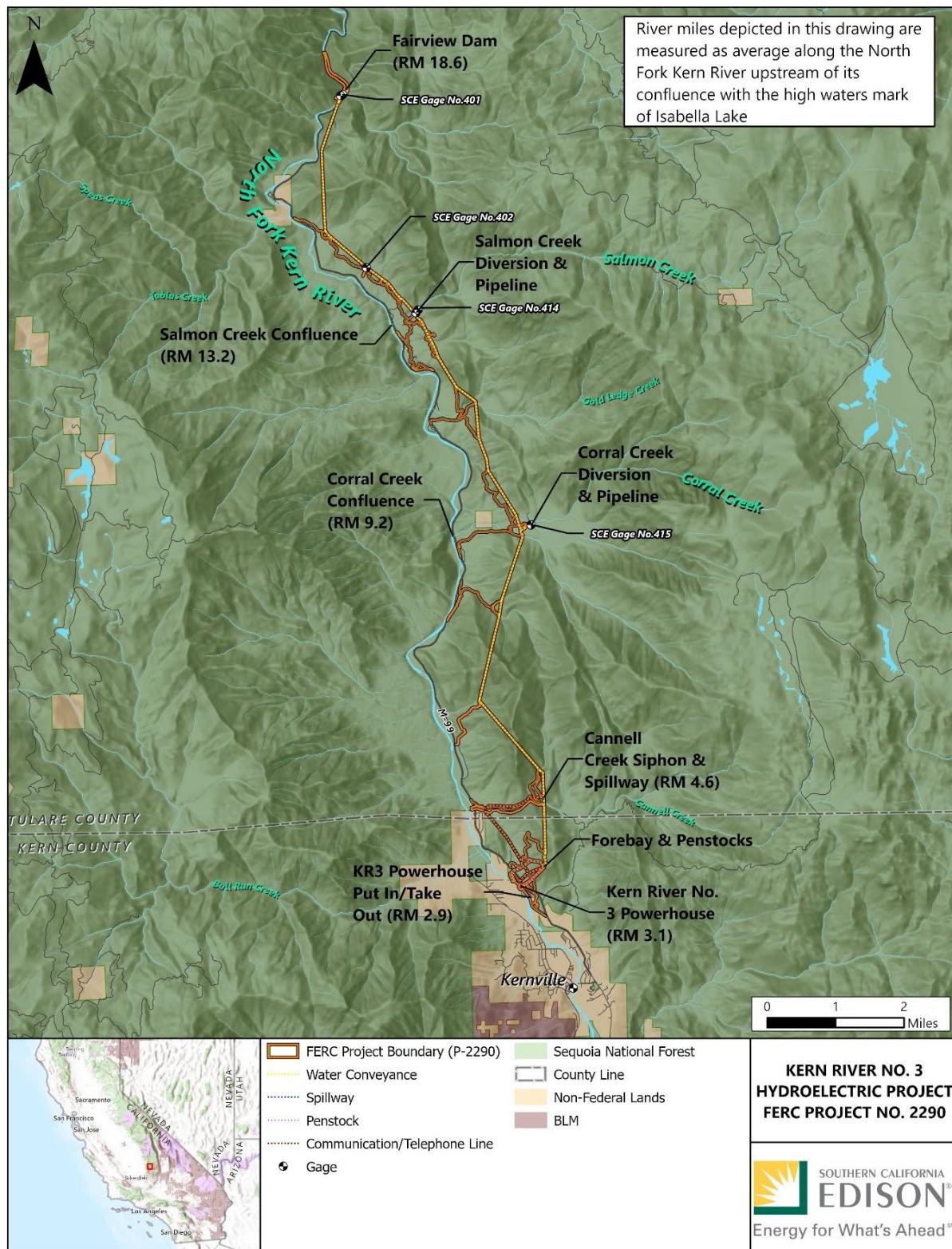


Figure 1. Location and project facilities for the Kern 3 Project (Source: SCE's PAD).

2.0 SCOPING

This Scoping Document 2 (SD2) is intended to advise all participants as to the proposed scope of the Commission's NEPA document and to seek additional information pertinent to this analysis. This document contains: (1) a description of the scoping process and current processing schedule for the license application; (2) a description of the licensee's proposed action and alternatives; (3) a preliminary identification of environmental issues and proposed studies; (4) a request for comments and information; and (5) a preliminary list of comprehensive plans that apply to the project.

2.1 PURPOSES OF SCOPING

Scoping is the process used to identify issues, concerns, and opportunities for enhancement or mitigation associated with a proposed action. In general, scoping should be conducted during the early planning stages of a project. The purposes of the scoping process are as follows:

- invite the participation of federal, state, and local resource agencies; Indian tribes; non-governmental organizations (NGOs); and the public to identify significant environmental and socioeconomic issues related to the proposed project;
- determine the resource issues, depth of analysis, and significance of issues to be addressed in the NEPA document;
- identify reasonable alternatives to the proposed action that should be evaluated in the NEPA document;
- solicit, from participants, available information on the resources at issue, including existing information and study needs; and
- determine the resource areas and potential issues that do not require detailed analysis during the review of the project.

2.2 SCOPING COMMENTS

Commission staff issued Scoping Document 1 (SD1) on November 22, 2021, to enable resource agencies, Native-American Tribes, NGOs, and the public to participate more effectively, and contribute to, the scoping process. In SD1, we requested clarification of preliminary issues concerning the project and identification of any new issues that needed to be addressed in the NEPA document. Due to restrictions on mass gatherings related to Novel Coronavirus Disease (COVID-19), Commission staff were unable to conduct any on-site scoping meetings or participate in any in-person environmental site review. Instead, on December 14, 2021, we conducted virtual scoping

meetings and SCE provided a virtual site tour with drone video footage on its website.⁵ The scoping meetings were transcribed by a court reporter. We also solicited written comments, recommendations, and information on SD1.

We revised SD1 following the scoping meetings and after reviewing comments filed during the scoping comment period, which ended January 20, 2022. SD2 presents our current view of issues to be considered in the NEPA document. ***To facilitate review, key changes from SD1 to SD2 are identified in bold, italicized type.***

<u>Commenter</u>	<u>Filing Date</u>
<i>Robert Nash</i>	<i>1/18/22</i>
<i>Neil Nikirk</i>	<i>1/18/22</i>
<i>Lacey Anderson</i>	<i>1/18/22</i>
<i>Richard Arner</i>	<i>1/18/22</i>
<i>John Neff</i>	<i>1/18/22</i>
<i>Blake Foster</i>	<i>1/18/22</i>
<i>Anatoly Muchnikov</i>	<i>1/19/22</i>
<i>Eugene Hacker</i>	<i>1/19/22</i>
<i>Brian Kohl</i>	<i>1/19/22</i>
<i>Eric Kroh</i>	<i>1/19/22</i>
<i>James Ahrens</i>	<i>1/19/22</i>
<i>Eric Giddens</i>	<i>1/19/22</i>
<i>Ben Skye-Babbott</i>	<i>1/19/22</i>
<i>Henry Sweat</i>	<i>1/19/22</i>
<i>Samuel Raskin</i>	<i>1/19/22</i>
<i>Sean Naugle</i>	<i>1/19/22</i>
<i>Richard Norman</i>	<i>1/19/22 and 1/20/22</i>
<i>David Packard</i>	<i>1/19/22</i>
<i>Lawrence Elman</i>	<i>1/20/22</i>
<i>Liz Duxbury</i>	<i>1/20/22</i>
<i>John Warnshuis</i>	<i>1/20/22</i>
<i>Jenna</i>	<i>1/20/22</i>
<i>Heather Ford</i>	<i>1/20/22</i>

⁵ Access at <https://www.sce.com/regulatory/hydro-licensing/kr3> under ‘Stay Informed’.

<u>Commenter</u>	<u>Filing Date</u>
<i>John Garee</i>	1/20/22
<i>Ross Allen</i>	1/20/22
<i>Kent Varvel</i>	1/20/22
<i>Lacey Anderson</i>	1/20/22
<i>Benjamin Karp</i>	1/20/22
<i>Amin Nikravan</i>	1/20/22
<i>Juan Zwolinski</i>	1/20/22
<i>Kern River Outfitters</i>	1/20/22
<i>Nina F.</i>	1/20/22
<i>Alex Koutzoukis</i>	1/20/22
<i>Jose Burgos</i>	1/20/22
<i>Elizabeth Jen</i>	1/20/22
<i>Ralph Day</i>	1/20/22
<i>James Spring</i>	1/20/22
<i>Geoffrey Charles</i>	1/20/22
<i>Dennis Rushing</i>	1/20/22
<i>Jose L. Pino</i>	1/20/22
<i>National Park Service</i>	1/20/22
<i>Bridget Crocker</i>	1/20/22
<i>American Whitewater</i>	1/20/22
<i>U.S. Forest Service</i>	1/20/22
<i>James Proctor</i>	1/20/22
<i>Nicholas Pocquette</i>	1/20/22
<i>James L. Schrodт</i>	1/20/22
<i>Anthea Raymond</i>	1/20/22
<i>Kern River Boaters</i>	1/20/22
<i>California State Water Resources Control Board</i>	1/20/22
<i>Jeff Johnson</i>	1/20/22
<i>Jacqueline L. Bell-Nichols</i>	1/21/22
<i>Deborah Harris</i>	1/21/22
<i>Michael Farrell</i>	1/21/22
<i>Michael Pechtel</i>	1/21/22
<i>Bryan S. Batdorf</i>	1/21/22
<i>Dale Murphy</i>	1/21/22

<u>Commenter</u>	<u>Filing Date</u>
<i>Environmental Protection Agency</i>	1/21/22
<i>Whitewater Voyages</i>	1/21/22
<i>Lynn Siodmak</i>	1/21/22
<i>SCE</i>	2/24/22

Scoping meeting transcripts and all comments received are part of the Commission’s official record for the project. Information in the official file is available for review on the Commission’s website at <https://www.ferc.gov>, using the “eLibrary” link. At this time, the Commission has suspended access to the Commission’s Public Reference Room due to the proclamation declaring a National Emergency concerning COVID-19 issued by the President on March 13, 2020. For assistance, please contact FERC at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

2.3 ISSUES RAISED DURING SCOPING

The issues raised by participants in the scoping process are summarized below. We revised SD1 to address only those comments relating directly to the scope of environmental issues. Further, we do not address recommendations for license conditions, such as protection, mitigation, and enhancement (PM&E) measures (e.g., specific whitewater flow releases, resource management plans), as these recommendations will be addressed in the NEPA document or any license order issued for the project. We also do not address requests for studies in the scoping document as these requests will be addressed through the ILP’s study plan development process. After Commission staff accept the license application for filing and determine we have sufficient information to evaluate environmental resource and engineering issues, we will request final terms, conditions, recommendations, and comments when we issue our Ready for Environmental Analysis Notice. Finally, we do not address comments or recommendations that are administrative in nature or outside of the Commission’s authority for relicensing the project.

General Comments

Comment: *The Environmental Protection Agency (EPA) provided several comments and recommendations on the development of the NEPA document that were not project-specific, but more general in nature, including baseline conditions, analysis of alternatives, and addressing various environmental resources.*

Response: *The NEPA document will describe the existing environment of potentially affected resources in the project area and where appropriate include supporting information, and an analysis of the effects of the proposed project and*

alternatives, including reasonably foreseeable effects, on potentially affected environmental resources, including the issues identified in SD2 and any additional project-related issues identified during the licensing proceeding for the project.

Alternatives to the Proposed Project

Comment: *The Kern River Boaters, Kern River Outfitters, American Whitewater, and several individuals comment that the NEPA document should address a decommissioning alternative. In response, SCE stated its unequivocal intent to seek a new license for the project. Several individuals also comment that removal of facilities if the project were decommissioned would be relatively easy compared to other decommissioned hydropower projects. The Kern River Boaters further comment that a decommissioning fund should also be studied because SCE should not continue operating the project just because it cannot afford the costs of decommissioning.*

Response: *Commission policy has held that decommissioning is not a reasonable alternative, if not proposed by the licensee (SCE). Further, the relicensing process for the project is currently in the pre-filing stage of the Commission's Integrated Licensing Process (ILP). The purpose of the pre-filing process is to inform stakeholders about the project proposal, consult with stakeholders to identify issues (i.e., scoping), identify study needs, and to gather information and conduct studies to provide information for the licensee to prepare its license application for filing with the Commission. Information in the application and the project record is used to inform staff's environmental analyses and evaluate recommendations for environmental measures in the NEPA document. Therefore, it is premature to demonstrate whether any potential serious resource issues exist that could not be mitigated with appropriate measures to include in any license issued for the project that would make decommissioning a reasonable alternative. Also, the relative level of effort required to remove or disable the operation of existing project facilities (e.g., dams, diversions, conduits) is not a factor that is considered for decommissioning a project.*

Commission policy is to not recommend requests for decommissioning cost studies and/or establishment of decommissioning funds where there is no evidence in the project record indicating the life the project will end during the term of any new license that may be issued for the project and there is no indication that the licensee would lack the financial resources if it were to be decommissioned.

Comment: *The Kern River Boaters question how the Commission can fulfill its responsibility to consider non-developmental values in the absence of an environmental review of the protected river corridor without the project.*

Response: *As described in Section 3.0 Proposed Action and Alternatives of the scoping document, our environmental analysis, in accordance with NEPA, will*

evaluate the following alternatives, at a minimum: the no-action alternative, SCE's proposed action, and alternatives to the proposed action. The environmental baseline considered in relicensing proceedings is the environment as it exists at the time of relicensing, not conditions that pre-date the project before it was built. The no-action alternative is the continued operation of the project under the current license (i.e., the status quo) until another action changes the status quo. The no-action alternative serves as our environmental baseline for comparison with other alternatives.

As required by Sections 4(e) and 10(a) of the Federal Power Act, the Commission fulfills its responsibility when deciding whether to authorize a hydropower project as it must give equal consideration to non-developmental values that are in the public interest, which can include the protection, mitigation, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Such non-development values are addressed in the NEPA document as recommended environmental measures for any license issued for the project. Environmental measures may include those proposed by SCE, recommended by resource agencies including those with mandatory conditioning authority (e.g., Forest Service), and measures that staff have developed and/or modified, as appropriate.

Comments: Several individuals assert that the amount of power generated by Kern River 3 Project is small compared to that generated by solar power facilities in the region, particularly during daylight hours. Therefore, they state project operations should be substantially reduced during the day to allow for greater flows in the Kern River to benefit water-based recreation, fish, and other resources, or that the project should be decommissioned.

Response: Commission policy is to evaluate the economics of hydropower projects, as articulated in Mead Corp.,⁶ comparing the current cost to produce project power to an estimate of the cost to provide the same amount of energy and capacity⁷ for the region using the most likely alternative source of power (cost of alternative power). In keeping with the policy described in Mead Corp., our economic analysis is based on current electric power cost conditions and does not anticipate or estimate changes in fuel costs that could occur during a project's license term. Currently, generation from solar power project is not used as the alternative source of power for the comparison,

⁶ See Mead Corp., 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

⁷ We use the term "capacity benefit" to describe the benefit a project receives for providing capacity to the grid, which may be in the form of a dependable capacity credit or credit for monthly capacity provided.

rather Commission practice uses natural gas-fired combined-cycle plants based on data provided by the U.S. Energy Information Administration in an annual report. This analysis will be included in Section 4.0 Developmental Analysis of the NEPA document that will be prepared after SCE files its final license application of the project.

Our environmental analysis will evaluate various flow regimes that are in the public interest as well as their effects on environmental resources and power generation. Regarding decommissioning alternatives, see discussions above.

Cumulative Effects

Comment: *EPA comments that while the updated NEPA regulations remove the definitions of indirect and cumulative impacts, it does not remove the need to discuss them. EPA also recommends the NEPA document address cumulative effects for several resources.*

Response: *As noted in Section 1.0 above, staff will conduct the NEPA review in accordance with CEQ's new regulations. Consistent with CEQ's revised regulations, the NEPA document will consider and evaluate effects from the proposed action and alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.*

Project Facilities and Operations

Comment: *The Kern River Boaters comment that the description of existing project operation in SD1 fails to note that the 35-cubic-feet-per-second (cfs) diversion for the hatchery flow takes precedence over the minimum instream flow.*

Response: *We have revised Section 3.1.2 to include information regarding the allocation of water for hatchery and minimum instream flows.*

Comment: *Several individuals express concern regarding the potential effects of the 300-cfs flow that is diverted to the powerhouse during the whitewater boating season regardless of whitewater flow targets and request that SCE provide additional data regarding the need to maintain a 300-cfs flow in the project's conveyance system.*

Response: *As indicated in Section 4.1.2 of this document, Commission staff will analyze the potential effects of project operation on the hydrology of the North Fork Kern River downstream of Fairview Dam and downstream of the powerhouse. Further, in the Additional Information Request issued on January 13, 2022, staff requested that SCE provide any available information regarding the 300-cfs diversion and effects of changing flows on the tunnel walls of the conveyance system.*

Comment: *A few individuals raise concerns regarding the public safety of project facilities, commenting that the relicensing process should address effects of geologic faults and earthquakes on project facilities and public safety hazards, including landslides, posed by the project's elevated conduits, pipelines, tunnels, and forebay that are located above public roads, campgrounds, and other public-use facilities (non-project).*

Response: *The dam safety program at the Kern River 3 Project and other Commission projects is set forth in Part 12 of the Commission's regulations and is independent of the relicensing process. However, any information relating to dam safety concerns developed during this relicensing proceeding will be forwarded to our Division of Dam Safety and Inspections (D2SI) for their review. Because the dam safety program is ongoing throughout the license term, any changes that could affect dam safety, such as changes in land stability, would be addressed as they occur. Under Part 12, the project is inspected annually by D2SI engineers. Further, Part 12, Subpart D requires a comprehensive analysis of the project, including stability and adequacy of project structures, and the adequacy of the inflow design flood by independent consultants every five years. As described in Section 3.3 Dam Safety of this scoping document, more information concerning D2SI's engineering guidelines can be accessed on the Commission's website.*

Air Quality

Comment: *EPA notes that the project area is in non-attainment for several National Ambient Air Quality Standards (NAAQS). EPA recommends that the NEPA document include a detailed discussion of ambient air conditions (existing conditions), NAAQS, and criteria pollutant non-attainment areas in the project vicinity, including estimating criteria pollutant emissions and a discussion of the timeframe for release of these emissions through the term of any new license issued for the project.*

Response: *We have revised Section 4.1 Resource Issues, to include the effects of continued and proposed operation and maintenance of the project on air quality including the timeframe and estimates of potential emissions of criteria pollutants to be addressed in the NEPA document.*

Geology and Soils Resources

Comment: *The Forest Service recommends that soil erosion along the project's access roads be included in the preliminary list of resource issues to be addressed in the NEPA document.*

Response: *We have revised Section 4.1.1, Geologic and Soil Resources, to include effects of continued use and maintenance of access roads on soil erosion.*

Water Resources

Comment: *Neil Nikirk suggests that Commission staff use hourly flow data to evaluate the effects of the project's diversion on flows in the bypassed reach.*

Response: *We routinely use the best available information to evaluate project effects. In the proposed hydrology study (Appendix E of the PAD) SCE indicates that it will compile the available hourly flow data from various gaging stations at the project.*

Comment: *A few commenters expressed concern over the project's potential effects on water quality including effects on fecal coliform bacteria and water temperature downstream of Fairview Dam.*

Response: *We have modified Section 4.1.2 Water Resources, to clarify that staff will analyze the potential effects of project operation on water quality which includes effects on dissolved oxygen, temperature, and potentially other parameters as necessary to inform potential conditions of any license issued for the project.*

Aquatic and Fishery Resources

Comment: *The Forest Service recommends that the effects of project water diversions and instream flows on benthic macroinvertebrates be included in the preliminary list of resource issues to be addressed in the NEPA document.*

Response: *We have modified Section 4.1.3 Aquatic Resources, to include effects of water diversions and instream flows on macroinvertebrates.*

Comment: *EPA recommends that the NEPA document provide a detailed hydrologic analysis to adequately assess the project's potential biological and geomorphic impacts. At a minimum, include wet, average, and dry year analyses at a daily time-step and also consider potential influences of temperature and precipitation trends on future hydrology.*

Response: *As indicated in Section 4.1.1 through Section 4.1.3 of this document, Commission staff will analyze the potential effects of project operation on geology and soil resources, hydrology of the North Fork Kern River, and fish and other biota. We routinely consider seasonal and interannual variation in hydrology in our NEPA documents and would consider temperature and precipitation trends to the extent specific information for the North Fork Kern River is available.*

Comment: *A number of individuals comment that operation of project dams affects water quantity and water quality (e.g., temperature), which consequently impacts game fish populations.*

Response: *As indicated in Section 4.1.1 through Section 4.1.3 of the scoping document, Commission staff will evaluate the continued effects of project operations on hydrology, habitat, suspended sediment, water temperature, flows, etc. on fish populations, which will include effects on species of game fish.*

Terrestrial Resources

Comment: *The Forest Service comments that effects of continued project operations on the Fairview slender salamander and Greenhorn Mountains slender salamander should be evaluated in the NEPA document.*

Response: *We have modified Section 4.1.4 Terrestrial Resources, to include project effects on the salamander species.*

Comment: *Jose Pino commented that the project's pipelines could have environmental impacts.*

Response: *We have revised Section 4.1.4 Terrestrial Resources, to indicate that staff will evaluate the potential effects of project pipelines, conduits, penstocks, and other project facilities on terrestrial resources including artificial lighting on facilities and movements of wildlife traversing the project area.*

Climate Change

Comment: *EPA and several individuals recommend including a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project, and what impacts the proposed project will have on climate change consequences. EPA also comments that such considerations could help inform the development of measures to improve the resilience of the project.*

Response: *In the NEPA document, we will assess any reasonably foreseeable effects that changes in precipitation patterns, hydrology, vegetation, and temperature potentially have on the project and environmental resources in the project area using conventional hydrologic studies, monitoring techniques, and predictive models. If the project is licensed and there is a need to adjust the conditions of the license as a result of changes in the aforementioned patterns, such adjustments can be addressed through the Commission's standard reopeners article that would be included in any issued license.*

Recreational Resources

Comment: *Several individuals comment that the effects of project operation on whitewater boating in the Kern River, including the quantity and timing/schedule of flow releases, be included in the preliminary list of resource issues to be addressed in the NEPA document. The Kern River Outfitters comment that the current whitewater release regime is confusing, unpredictable, and poorly timed.*

Response: *We have modified Section 4.1.6, Recreational Resources, to include project effects on the timing and quantity of flows in the Kern River on whitewater boating.*

Land Use and Aesthetic Resources

Comment: *The Forest Service recommends that the effects of project operation on the Wild and Scenic River segments of the Kern River be included in the preliminary list of resource issues to be addressed in the NEPA document.*

Response: *We have modified Section 4.1.7 Land Use and Aesthetic Resources, to include project effects on the Wild and Scenic River segments of the Kern River.*

Tribal and Cultural Resources

Comment: *EPA emphasizes the importance of government-to-government consultation with Indian tribes to take place early in the scoping phase, and that summaries of the results of these tribal consultations should be provided in the draft NEPA document, and include any concerns the involved tribes may have and how these concerns were addressed. In a separate, but related comment by Lacey Anderson, she emphasizes that the Commission should also initiate contact other non-federally recognized tribal groups.*

Response: *We initiated consultation with all of the potentially interested federally recognized Indian tribes beginning in October 2021 and are continuing to participate with interested tribes involving cultural and tribal technical workgroups throughout the pre-application phase involved with this relicensing. The NEPA document will provide summaries of these tribal consultations along with any concerns the tribes may provide, and how these concerns were addressed. Regarding Lacey Anderson's comment, pursuant to our 2003 Policy Statement on Consultation with Indian Tribes, we work with federally recognized Indian tribes and will seek to address the effects of proposed projects involving the Commission's environmental and decisions documents. Although our tribal policy statement pertains to consultations with federally recognized Indian tribes, this does not preclude our involvement with*

other non-federally recognized tribal groups who have an interest in the project. We are currently working with such non-federally tribal groups in cultural and tribal resources technical work groups involved with this relicensing.

Comment: *EPA comments that consultation for tribal and cultural resources are required under Section 106 of the National Historic Preservation Act (Section 106 of NHPA), and such consultation should also be conducted with the appropriate State Historic Preservation Office (SHPO). The EPA notes that all such Section 106 investigations and consultations should be provided in the NEPA document with a discussion on how the Commission would avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties, throughout the project's APE. Such discussions should also include mitigation measures for archaeological sites and traditional cultural properties (TCPs). The EPA also encourages the Commission to ensure that any sensitive information involving archeological sites and TCPs be protected from public disclosure, pursuant to Section 304 of NHPA. The EPA also requests that the Commission provide a summary of all coordination with tribes and with the appropriate SHPO and Tribal Historic Preservation Officer (THPO), including identification of National Register of Historic Places (National Register) eligible cultural resources and the development of a cultural resource management plan.*

Response: *We will carry out a full Section 106 review involving the identification, National Register evaluation, and assessment of effects to all historic properties (including cultural and tribal resources) identified within the project's Area of Potential Effects (APE). SCE has proposed to conduct intensive cultural and tribal resources studies that would provide Section 106 documentation of all cultural and tribal resources that may exist within the project's APE. Such studies would contain all sensitive cultural and tribal resources information that would be protected from public disclosure and filed with the Commission as privileged (i.e., not public) in the project's record. These cultural and tribal resources studies would also be summarized in the NEPA document (but not revealing sensitive information), including a discussion of PM&E measures to protect or mitigate any National Register eligible cultural or tribal resources located within the project's APE, as appropriate. Under Commission review, a historic properties management plan (HPMP) would also be crafted and filed by SCE that would provide a detailed accounting of all the involved Section 106 processes and findings associated with the location and identification of all historic properties (including archaeological sites and TCPs), including all consultations involving Commission staff, the appropriate SHPO/THPOs, tribal representatives, and other involved agencies. A review of the HPMP would also be provided in the NEPA document for the project.*

Comment: *EPA notes that through Executive Order 13007, "Indian*

Sacred Sites”, federal land managing agencies must account for the use and access of any Indian sacred site by Indian religious practitioners and to avoid adversely affecting the physical integrity, accessibility, or use of such sacred sites. The EPA further notes that such sacred sites may not meet NHPA criteria for historic properties; nonetheless, such sacred sites should be protected or mitigated against any potential adverse effects. The EPA further states that the NEPA document should address the existence of Indian sacred sites within the project’s APE that may be considered spiritual sites by regional tribal groups.

Response: *Through the cultural and tribal resources studies that would be conducted by SCE, we note that such studies would be completed with the full participation of involved tribal members who would provide such information about sacred areas or sites if they exist within the project’s APE. We also understand that such sacred areas or sites do not necessarily meet National Register eligibility, but would be protected or mitigated against project-related adverse effects, and would be discussed in the NEPA document.*

Socioeconomics

Comment: *SCE comments that in SD1, Commission staff recommend a socioeconomic study that analyzes the effects of continued project operation and flow diversions on agriculture and other consumptive uses in the North Fork Kern River watershed.*

Response: *To clarify, Section 4.1 Resource Issues of SD1, provides a preliminary list of potential issues to be analyzed in the NEPA document. However, this section does not include a recommendation for a socioeconomics study (or other studies) as suggested by SCE. The NEPA document will analyze potential socioeconomic effects of the project as described in Section 4.1.9 below. Staff’s analyses will use existing information in the project record and any additional information developed during the relicensing process.*

Comment: *Regarding Section 4.1.9 Socioeconomics, the National Park Service (Park Service) comments that economic impacts on agriculture due to project operations and flow diversions are unlikely since the water diverted by the project enters back into the North Fork Kern River upstream of agricultural-use areas. The Park Service also comments that “other consumptive” uses should be identified, specifically that of flow-dependent recreation. Lastly, the Park Service requests that to account for project effects on the local economy, the socioeconomic issues section should include effects to water-based expenditures and economy of the local communities.*

Additionally, American Whitewater comments that the socioeconomic value of recreation is not captured in Section 4.1.9. They state that recreation and tourism is a staple economic driver within the Kern River Valley and relicensing of the project should assess the economic impacts of project operations on surrounding communities as a driver of recreation and tourism spending. The Forest Service also comments that the local economy is dependent on recreation and tourism to support business, and much is focused on the Kern River including kayaking and rafting. Several individuals also expressed similar concerns regarding effects of project operations on water-based recreation, including boating, and potential effects on the local economy.

In response, SCE agrees with the Park Service and the Forest Service that the scope of the project's effects on socioeconomics should be expanded to include water-based recreation and tourism in the project area. SCE also comments that staff consider the project's contribution to the economic value of the area.

Response: *We have modified Section 4.1.9 Socioeconomics, to include effects of continued and proposed operation of the project on water-based expenditures, recreation, and tourism in the North Fork Kern River watershed and the economy of local communities. We also removed impacts to agriculture and “other consumptive uses” from Section 4.1.9. Section 4.0 Developmental Analysis of the NEPA document will address the power and economic benefits of the Kern River 3 Project.*

Environmental Justice

Comment: *EPA comments that SD1 does not address environmental justice. EPA recommends that the NEPA document address the environmental effects of the proposed project on minority and low-income communities, both adverse and beneficial, as directed by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EPA also recommends that staff use EPA’s EJSCREEN to determine the presence of minority and low-income populations.*

Response: *We have revised Section 4.1 Resource Issues of the scoping document to include Section 4.1.10 Environmental Justice to indicate the need to analyze whether minority and low-income communities are subject to disproportionately high adverse human health or environmental effects as a result of the Kern River 3 Project. We also intend to use EPA’s EJSCREEN tool to conduct a block-level analysis of whether there are environmental justice communities in the vicinity of the project. In addition, we have added Section 7.0, Proposed NEPA Document Outline, to the scoping document, which includes sections describing the Commission’s responsibilities regarding environmental justice issues based on Executive Orders 12898 and 14008 and for analyzing potential environmental justice issues.*

Comment: *EPA states that the NEPA Committee of the Federal Interagency Working Group on Environmental Justice has noted that, in some cases, it may be appropriate to use a threshold for identifying low-income populations that exceeds poverty level. EPA comments that for the Kern River 3 Project, a low-income population may not be accurately recognized by U.S. Census Bureau data as it does not account for California's housing costs or other critical family expenses and resources. For example, the California Department of Public Health suggests that "200 percent of the federal poverty level (FPL) is a more realistic measure of financial hardship than the official 100 percent FPL" due to California's high cost of living. Therefore, EPA recommends that the 200 percent FPL is used when analyzing low-income populations.*

Response: *Because of California's high cost of living, Commission staff's analysis will use the California Department of Public Health's threshold of 200 percent of the federal poverty level to define low-income households, as this will provide a more accurate measure of financial hardship than the federal poverty level identified by the U.S. Census Bureau.*

Comment: *EPA recommends that the NEPA document also address whether any of the alternatives would cause any disproportionate adverse impacts, such as higher exposure to toxins; changes in existing ecological, cultural, economic, or social resources or access; cumulative or multiple adverse exposures from environmental hazards; or community disruption.*

Response: *We have revised Section 4.1 Resources Issues to include effects of the project on: minority and low-income communities that may occur in the project-affected area and that could potentially be subject to disproportionately high adverse human health or environmental effects as a result of continued project operation; Tribal populations in the project-affected area; air quality, including the timeframe and estimates of potential emissions of criteria pollutants; tourism and water-based recreation expenditures in the North Fork Kern River watershed and the economy of local communities; historic or archaeological resources; aesthetic resources, including visual quality and noise; traffic; recreation access; wildlife hunting and plant gathering; subsistence fishing; water quality for human activities or consumption; and water availability for use by local communities in the project-affected area.*

Comment: *EPA comments that the Commission should present opportunities for affected communities to provide input into the NEPA process. EPA also recommends that the NEPA document include information describing what was done to inform environmental justice communities about the project and its potential impacts on their communities (e.g., notices, mailings, fact sheets, surveys, etc.), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the project.*

Response: As required by Commission regulations,⁸ and stated above in Section 2.1 Purposes of Scoping, opportunities are available for the public to participate in the scoping process, specifically, and in project licensing or relicensing processes, in general. One way the public is advised of these opportunities is by the required publishing of the notice of commencement of proceeding in a daily or weekly newspaper published in the county or counties in which the project, or affected land, is located.⁹ Although the Commission does not instruct the public how to acquire newspapers, typically, newspapers are free for the public to read at their local library. Comments (i.e., input) regarding projects can be submitted to the Commission in writing or through the Commission's eFiling system, at any time, and are reviewed and addressed by Commission staff in determining whether to issue a license for a project.

Except for the regulations implementing Section 106 of the NHPA that require the Commission to conduct Tribal consultation,¹⁰ the Commission does not have a process to notify specific potentially affected communities, or individual members of such communities, beyond the methods of notice required by 18 C.F.R. § 5.8(e).¹¹ Additionally, except for the required Tribal consultation, the Commission does not have a process in place to receive input only from specific potentially affected communities, or individual members of such communities. As such, the Commission cannot know stakeholders' affiliations with communities, such as environmental justice communities, unless those affiliations are publicly and voluntarily shared by the stakeholder. Nevertheless, the Commission will consider input from stakeholders noting the concerns of potentially affected communities when making decisions regarding the project. In addition, Section 4.1.10 Environmental Justice of the NEPA document will include a description of how stakeholders were informed of Commission issuances, the content of stakeholder comments, and how stakeholders provided their comments to the Commission.

⁸ 18 C.F.R. §§ 5.8 and 5.9.

⁹ 18 C.F.R. § 5.8(e)(2).

¹⁰ 36 C.F.R. § 800.3.

¹¹ This regulation requires the Commission's notice of commencement of proceeding and scoping document be provided by: (1) publishing notice in the Federal Register; (2) publishing notice in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers; and (3) notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

3.0 PROPOSED ACTION AND ALTERNATIVES

In accordance with NEPA, the environmental analysis will consider the following alternatives, at a minimum: (1) the no-action alternative, (2) SCE's proposed action, and (3) alternatives to the proposed action.

3.1 NO-ACTION ALTERNATIVE

Under the no-action alternative, the Kern 3 Project would continue to operate as required by the current project license (i.e., there would be no change to the existing environment). No new environmental protection, mitigation, or enhancement measures would be implemented. We use this alternative to establish baseline environmental conditions for comparison with other alternatives.

3.1.1 Existing Project Facilities

Fairview Dam

Fairview Dam and intake structure are a mass concrete overflow gravity structure located on the North Fork Kern River (river mile 18.6). The structure is about 26 feet high with a 206-foot-long, 6.5-foot-wide overflow crest with a radiused top that is 60 feet high at its highest point at 3,632 feet above mean sea level. The downstream dam face is rounded with a 5-foot radius at the crest where the downstream slope and the crest join. The upstream face has a 12 to 1 slope. The crest of the dam also serves as a spillway and is designed for a capacity of approximately 15,000 cfs with 8 feet of head.

Water is diverted from the river on the east abutment of the dam. There are two 300-cfs-capacity flowline intake gates with trash racks with 2-inch spacing located at the east end of the dam that diverts water into a concrete-lined sediment trap (sandbox). Two fish release slide gates located near the east dam abutment can release up to 300 cfs each, depending upon head pressure behind the dam. The fish release slide gates are adjusted remotely from the project powerhouse and provide the required instream flows below the dam.

Diversions

Two smaller diversions, Salmon Creek diversion and Corral Creek diversion, divert seasonal runoff through a metal pipe to the main water conveyance system. The Salmon Creek diversion is constructed from reinforced concrete and is located on Salmon Creek, approximately 5.4 river miles downstream from Fairview Dam and approximately 0.4 miles upstream of the confluence with the North Fork Kern River. The upstream face of this diversion is lined with vertical metal grating. The structure measures approximately 61 feet across the crest and has a height of 5 feet above the streambed.

There are three hand-operated gates: two drain gates that direct water into Salmon Creek, and a third gate that conveys water into the diversion pipe. From the Salmon Creek diversion, flow is diverted past a trash rack and into a 26-inch-diameter, 226-foot-long steel pipe that connects into Tunnel 9A of the project's main water conveyance line. Flow from the diversion pipe can be returned to the creek approximately 180 feet downstream from the diversion through interchangeable fixed-orifice plates to provide the 1 or 4 cfs minimum instream flow release, as described in Table 1 of Section 3.1.2

The Corral Creek diversion is a 43-foot-long, 8-foot-high, steel-reinforced, concrete gunite structure located on Corral Creek approximately 9.4 river miles downstream from Fairview Dam and 1.1 miles upstream of the confluence with the North Fork Kern River. A 17-foot-wide spillway notch is cut into the top of the diversion. The diversion pond is formed in a rock pool. When not diverting flow, natural inflow is passed downstream through an 8-inch manually operated slide gate. When diverting flow, water is first released through interchangeable fixed-orifice plates that provide the current 0.5 or 1 cfs minimum instream flow release. Flows exceeding the minimum instream flow requirements are diverted to the flowline via a 14- to 11-inch-diameter steel pipe that runs approximately 900 feet from the diversion to a connection with a concrete flume on the project's main conveyance flowline between Tunnels No. 17 and No. 18.

Water Conveyance System

A 13-mile-long water conveyance system runs along the eastern hillslope above the North Fork Kern River. Water from the intake at Fairview Dam is directed through the sandbox, and then into a series of buried concrete-lined tunnels, open and covered above-ground flumes, and a steel siphon before connecting to a regulating pressure flume, forebay, and penstocks as described below.

Sandbox

A 449-foot-long, 89-foot-wide, (divided into two 43-foot-wide compartments) reinforced concrete sandbox with a depth between 10 to 20 feet is located downstream of Fairview Dam at the head of the water conveyance system along the east bank of the river. There is a short section of flume that connects the dam intakes and the sandbox. At the downstream end of the sandbox, there are two fish screens to prevent fish from entering the water conveyance system. The sandbox acts as a settling basin, where abrasive sediments settle out at the deepest points to be returned to the river, as required by the current license. To operate the sandbox, two additional sets of gates exist for each compartment, one upstream and one downstream, which are used to control flows into and out of the sandbox.

Tunnels, Flumes, and Adits

There are 24 tunnel segments totaling 60,270-feet-long, numbered sequentially north to south. The tunnel segments vary in length from several hundred feet to over 1 mile. The tunnel segments range in size from 8.5 feet wide by 8 feet high to 9.5 feet wide by 8 feet high. Water flow in the tunnel does not achieve a depth of greater than 7.5 feet. Tunnel portal access points (adits) are situated at various tunnel or tunnel/flume junctions along the flowline. The above-ground sections of the conveyance system (flumes) are located between tunnel segments. The flumes are constructed of reinforced concrete and are 8.5 feet wide and 8.25 feet high. The majority of the 4,600-foot-long concrete flumes are enclosed; however, there are about 1,000 feet of uncovered, or open-topped flume segments. The water conveyance system descends between 1.5 to 2 vertical feet for every 1,000 horizontal feet.

Cannell Creek Siphon and Spillway

The Cannell Creek Siphon is situated about 1 mile upstream from the forebay. The siphon is made of riveted steel pipe and is supported on concrete piers that are anchored to bedrock as it crosses above Cannell Creek. The total length of the siphon, which is situated between Tunnel No. 22 and Tunnel No. 23, is 1,146 feet. The diameter of the pipe measures 9.5 feet at the upstream tunnel connection and 8 feet at the lowest point.

The upstream section of the siphon is connected to a small concrete reservoir that serves to regulate flow into the siphon. Water from the conveyance flowline may be released from the concrete reservoir into a 45-foot-long concrete spillway and approximately 470-foot long, rock-lined spillway channel down to Cannell Creek. These water releases may occur if excess tunnel pressure needs to be reduced or water in the flowline needs to be drained. The confluence of Cannell Creek and the North Fork Kern River is approximately 1 river mile downstream from the spillway.

Pressure Flume and Forebay

The end of the water conveyance system is located after Tunnel No. 23 and consists of a 1,100-foot-long reinforced concrete pipe, referred to as the pressure flume, and a forebay, a 61-foot-long, 20-foot-wide, and 30-foot-high concrete box. The pressure flume and forebay are situated on the hill above the powerhouse and regulate the flow into the penstocks. Under operating conditions, water from the pressure flume and forebay is directed through the two 24-inch slide gates into either of the two penstocks leading to the powerhouse.

Spillway

A spillway gate is located on the west side of the flowline between the end of the pressure flume and the forebay. If flow into the penstocks and powerhouse needs to be restricted or if the gates are closed at the forebay, excess water can be redirected into a bedrock-lined spillway (or into the Cannell Creek spillway discussed above). The spillway channel runs west adjacent to the two penstocks along the slope until it rejoins with the North Fork Kern River about 700 feet upstream from the powerhouse. The spillway channel is about one half-mile-long with an elevation change of about 815 feet.

Penstocks and Release Valve

The penstocks are comprised of two metal pipes, each approximately 2,500 feet long, extending from the forebay to the powerhouse, with a varying diameter of 84 inches in diameter at the forebay tapering down to 60 inches in diameter where they meet the powerhouse. The average static head is 821 feet between the forebay and penstocks. The last 160 feet of pipe (downhill nearest the powerhouse) is buried under earth fill.

Cooler water from the conveyance flowline is provided to the Kern River Fish Hatchery (hatchery) via an intake pipe immediately downstream of the powerhouse tailrace along the left bank of the North Fork Kern River. Cooler water from the tailrace mixes with the water in the river before it naturally flows over the intake pipe into the hatchery. The release valve is arranged such that water may be taken from either of the two penstocks using the penstock tie header located inside the powerhouse.

Powerhouse and Appurtenant Facilities

The 130-foot-long, 88-foot-wide, reinforced concrete project powerhouse is located along the North Fork Kern River, about 2 miles north of the town of Kernville. The powerhouse stands approximately 57.5 feet above the uphill grade and extends another 40 feet below. The powerhouse contains the two original Francis reaction-type turbines rated at 57,400 horsepower (hp) total and two generators with a total normal operating capacity of 36.8 MW. The total installed capacity of the powerhouse is 40.2 MW. Diverted water is returned directly to the North Fork Kern River via a tailrace comprised of a 90-foot-long, 20-foot-high, and 18-inch-thick concrete wing wall attached to the powerhouse. There are no project transmission lines. Electricity generated by the project enters SCE's bulk electric grid on the 66-kilovolt bus at the project substation located inside the powerhouse.

Gaging Stations

SCE maintains two recording gaging stations that monitor and record water flow for project compliance. SCE also maintains and inspects two other non-recording gaging

stations associated with the small diversions. These gages are inspected monthly to observe and log flow conditions based on the fixed-orifice release plate in place.

Access Roads

The project boundary includes 33 roads (totaling over 18 miles) that SCE uses to access project facilities to conduct ongoing operations and maintenance activities. The majority of the roads are on federal lands, with only a short segment (about 0.5 miles) of the powerhouse Access Road located on SCE-owned lands. SCE is responsible for the maintenance and upkeep of the project roads.

Project Recreation Site

A put-in/take-out is located approximately 250 yards downstream of the project powerhouse and consists of a dirt boat launch ramp, graded parking area, and two signs designating the launch site. The site is on lands owned by SCE and accessible to rafting outfitters and the general public.

3.1.2 Existing Project Operation

The project is operated in compliance with existing regulatory requirements, agreements, and water rights to generate power.

Water Management

Water for power is diverted primarily from the North Fork Kern River and the project is operated as a run-of-river facility. Therefore, the amount and timing of flow diverted for power at Fairview Dam are a function of inflow from the North Fork Kern River upstream of the project, current license requirements for minimum instream flow (MIF), seasonal whitewater flow releases, flowline capacities, and other operational agreements. The powerhouse operates when sufficient water is available at the primary intake at Fairview Dam and the two small diversions that supply additional water to the water conveyance system (Salmon Creek and Corral Creek diversions). The normal operating flow capacity of the water conveyance is 585-605 cfs. SCE is required to maintain continuous minimum flows or natural flows, whichever is less, as measured by SCE gage 401 below Fairview Dam. The current license requires the following seasonal MIF releases from Fairview Dam:

October:	80 cfs	April through June:	100 cfs
November through February:	40 cfs	July through August:	130 cfs
March:	70 cfs	September:	100 cfs

Additionally, SCE provides 35 cfs year-round to the California Department of Fish and Wildlife's Kern River Planting Base Hatchery via the project conveyance system and the powerhouse tailrace. SCE includes an additional buffer of 5 to 10 cfs in the hatchery flow to count for the diurnal flow fluctuations. *If flow in the North Fork Kern River is not available to meet both the hatchery flow and the minimum instream flow, the hatchery flow takes precedence over the minimum instream flow.* SCE is also required to maintain MIFs below Salmon Creek and Corral Creek Diversions, as outlined in Table 1 below.

Table 1. Minimum Instream Flows for Salmon and Corral Creek Diversions.

Diversion	Dates	Minimum Instream Flow
Salmon Creek	February through June 30	4 cfs
Salmon Creek	July 1 through January 31	1 cfs
Corral Creek	February through June 30	1 cfs
Corral Creek	July 1 through January 31	0.5 cfs

The diversions are manually operated, and SCE may elect to “turn-out” the diversions in lower flow months and let natural flows continue downstream. However, if large rainfall is predicted, SCE will “turn-in” the diversion to capture and divert additional flow once the MIFs have been met. The diversions are configured so that the required instream flows are provided before any additional flow is diverted to the conveyance flowline.

During peak runoff in the spring and summer, a flow schedule was designed to enhance whitewater recreation opportunities in the Fairview Dam bypass reach, as per Article 422 of the current license (amended January 30, 2019) (Table 2).

Table 2. Whitewater Recreation Flow Releases Schedule.

Dates	Boating Days	River Flow Fairview Dam (cfs)	Minimum Whitewater Release (cfs)
April 1 up to the weekend before Memorial Day Weekend	Fridays and Weekends	1,000 to 1,300 More than 1,700	700 1,400

The weekend before Memorial Day Weekend until July 4	Daily	1,000 to 1,300	700
		More than 1,700	1,400
July 5 up to July 31	Weekends	1,000 to 1,300	700
		More than 1,700	1,400

Depending upon the availability of water in the conveyance system, SCE may elect to utilize none, one, or both of the generating units. For example, during low-flow periods (e.g., November through April), SCE may elect to operate only one unit and take the other off-line to conduct routine maintenance or may elect to remove both generating units from service.

The powerhouse is operated as a baseload facility.¹² All energy, minus that necessary to operate the plant auxiliaries, is transmitted to the SCE transmission system. The amount of energy necessary to operate the plant auxiliaries is normally 15-20 megawatt-hours (MWh) per month.

The current license also requires SCE to operate the project such that flow reductions below Fairview Dam do not exceed 30 percent of the existing flow per half hour.

3.2 SCE'S PROPOSAL

3.2.1 Proposed Project Facilities and Operations

The proposed action is to continue to operate and maintain the project as required by the existing license. No new or upgraded facilities, structural changes, or operational changes to the project are proposed by SCE at this time.

3.2.2 Proposed Environmental Measures

SCE does not currently propose any new environmental measures.

3.3 DAM SAFETY

It is important to note that dam safety constraints may exist and should be taken into consideration in the development of proposals and alternatives considered in the

¹² Baseload facilities are those power plants that generate dependable power consistently to meet demand.

pending proceeding. For example, proposed modifications to the dam structure, such as the addition of flashboards or fish passage facilities, could impact the integrity of the dam structure. As the proposal and alternatives are developed, the applicant must evaluate the effects and ensure that the project would meet the Commission's dam safety criteria found in Part 12 of the Commission's regulations and the Engineering Guidelines: <http://www.ferc.gov/industries/hydropower/safety/guidelines/eng-guide.asp>.

3.4 ALTERNATIVES TO THE PROPOSED ACTION

Commission staff will consider and assess all alternative recommendations for operational or facility modifications, as well as protection, mitigation, and enhancement measures identified by the Commission, agencies, Indian tribes, NGOs, and the public.

3.5 ALTERNATIVES CONSIDERED BUT ELIMINATED FROM DETAILED STUDY

At present, we propose to eliminate the following alternatives from a detailed study in the NEPA document.

3.5.1 Federal Government Takeover

In accordance with § 16.14 of the Commission's regulations, a federal department or agency may file a recommendation that the United States exercise its right to take over a hydroelectric power project with a license that is subject to Sections 14 and 15 of the FPA.¹³ We do not consider federal takeover to be a reasonable alternative. Federal takeover of the project would require congressional approval. While that fact alone would not preclude further consideration of this alternative, there is currently no evidence showing that federal takeover should be recommended to Congress. No party has suggested that federal takeover would be appropriate, and no federal agency has expressed interest in operating the project.

3.5.2 Non-power License

A non-power license is a temporary license the Commission would terminate whenever it determines that another governmental agency is authorized and willing to assume regulatory authority and supervision over the lands and facilities covered by the non-power license. At this time, no governmental agency has suggested a willingness or ability to take over the project. No party has sought a non-power license, and we have no basis for concluding that the Kern 3 Project should no longer be used to produce power.

¹³ 16 U.S.C. §§ 791(a)-825(r).

Thus, we do not consider a non-power license a reasonable alternative to relicensing the project.

3.5.3 Project Decommissioning

As the Commission has previously held, decommissioning is not a reasonable alternative to relicensing in most cases.¹⁴ Decommissioning can be accomplished in different ways depending on the project, its environment, and the particular resource needs.¹⁵ For these reasons, the Commission does not speculate about possible decommissioning measures at the time of relicensing but rather waits until an applicant proposes to decommission a project, or a participant in a relicensing proceeding demonstrates that there are serious resource concerns that cannot be addressed with appropriate license measures and that make decommissioning a reasonable alternative.¹⁶ SCE does not propose decommissioning, nor does the record to date demonstrate there are serious resource concerns that cannot be mitigated if the project is relicensed; as such, there is no reason, at this time, to include decommissioning as a reasonable alternative to be evaluated and studied as part of staff's NEPA analysis.

¹⁴ See, e.g., *Eagle Crest Energy Co.*, 153 FERC ¶ 61,058, at P 67 (2015); *Public Utility District No. 1 of Pend Oreille County*, 112 FERC ¶ 61,055, at P 82 (2005); *Midwest Hydro, Inc.*, 111 FERC ¶ 61,327, at PP 35-38 (2005).

¹⁵ In the unlikely event that the Commission denies relicensing a project or a licensee decides to surrender an existing project, the Commission must approve a surrender “upon such conditions with respect to the disposition of such works as may be determined by the Commission.” 18 C.F.R. § 6.2 (2020). This can include simply shutting down the power operations, removing all or parts of the project (including the dam), or restoring the site to its pre-project condition.

¹⁶ See generally *Project Decommissioning at Relicensing*; Policy Statement, FERC Stats. & Regs., Regulations Preambles (1991-1996), ¶ 31,011 (1994); see also *City of Tacoma, Washington*, 110 FERC ¶ 61,140 (2005) (finding that unless and until the Commission has a specific decommissioning proposal, any further environmental analysis of the effects of project decommissioning would be both premature and speculative).

4.0 SCOPE OF RESOURCE ISSUES

4.1 RESOURCE ISSUES

In this section, we present a preliminary list of potential environmental issues to be addressed in the NEPA document.¹⁷ We identified these issues, which are listed by resource area, by reviewing the PAD and the Commission’s public record for the Kern 3 Project. This list is not intended to be exhaustive or final but contains the issues raised to date. After the scoping process is complete, we will review the list and determine the appropriate level of analysis needed to address each issue in the NEPA document.

4.1.1 Geologic and Soils Resources

- Effects of continued project operation on turbidity and suspended sediment loads.
- *Effects of continued use and maintenance of project access roads on soil erosion.*

4.1.2 Water Resources

- Effects of continued project operation on the hydrology of the North Fork Kern River in the project bypassed reaches and downstream of the powerhouse.
- Effects of continued project operation on *water quality, including* water temperature and dissolved oxygen in the project bypassed reaches and downstream of the powerhouse *and for human activities or consumption in the project-affected area.*
- *Effects of continued project operation on water availability for use by local communities in the project-affected area.*

4.1.3 Aquatic and Fishery Resources

- Effects of continued project operation on fish habitat and fish resources in the project impoundment, bypassed reaches, and downstream of the powerhouse *and on subsistence fishing in the project-affected area.*
- Effects of continued project operation on western pearlshell mussel in the project area.

¹⁷ Per CEQ’s final rule (July 16, 2020), Commission staff will consider and evaluate effects that are reasonably foreseeable and have a reasonably close causal relationship (proximate cause) to the proposed action.

- Effects of project water diversions and instream flow on fish, *macroinvertebrates, and aquatic* habitat in the project bypassed reaches.
- Effects of project flow fluctuations on fish resources during project start-up and shut-down below Fairview Dam and the powerhouse.
- Effects of Fairview Dam sandbox flushing on aquatic habitat and aquatic resources in the North Fork Kern River bypassed reach.
- Effects of fish entrainment at Fairview Dam, Salmon Creek diversion, and Corral Creek diversion on fish resources in the project area.
- Effects of Fairview Dam, Salmon Creek diversion, and Corral Creek diversion on upstream and downstream fish passage.

4.1.4 Terrestrial Resources

- Effects of continued project operations on instream flows and aquatic habitat in the North Fork Kern River and Salmon and Corral Creeks, including project bypassed reaches, on aquatic and semi-aquatic amphibians and reptiles, including the *Fairview slender salamander (Batrachoseps bramei)*, *Greenhorn Mountains slender salamander (Batrachoseps altasierrae)*, ~~*foothill yellow-legged frog (Rana boylii)*~~, and western pond turtle (*Actinemys marmorata*).
- Effects of continued project operation and maintenance on wetlands, riparian habitat, and sensitive natural communities: Great Valley Cottonwood Riparian Forest and Southern Interior Cypress Forest.
- Effects of continued project operation and maintenance activities including project-related recreation, vegetation management, and herbicide use on native vegetation and special-status plant species including those identified in SCE's PAD¹⁸ as well as the Springville clarkia (*Clarkia springvillensis*) and Bakersfield cactus (*Opuntia basilaris*).
- Effects of continued project operation, maintenance activities, and project-related recreation on the introduction and spread of non-native, invasive plant species¹⁹ including potential effects of invasive plants on native plant communities, special-status species, and wildlife habitat.

¹⁸ Section 5.4.4 of the PAD identified eight special-status plant species known to occur in the vicinity of the project.

¹⁹ *Non-native, invasive species are any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem; and whose introduction does or is likely to cause economic or environmental harm or harm to human health.*

- Effects of continued project operation and maintenance activities including project-related recreation, vegetation management, and herbicide use on special-status wildlife species including those identified in SCE's PAD²⁰ as well as Forest Service Species of Conservation Concern and nesting migratory birds.²¹
- *Effects of existing above-ground sections of project pipelines, conduits, penstocks, and operation of other project facilities on terrestrial resources, including artificial lighting and movements of wildlife traversing the project area.*
- *Effects of continued project operation and maintenance activities on wildlife hunting and plant gathering in project-affected area.*

4.1.5 Threatened and Endangered Species

- Effects of continued *and proposed* project operation and maintenance on the federally endangered Southern Sierra Nevada Distinct Population Segment (DPS) of fisher (*Pekania pennanti*) *and its proposed critical habitat*, California condor (*Gymnogyps californianus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*) *and its critical habitat*, and the Northern California DPS of mountain yellow-legged frog (*Rana muscosa*), the federally threatened California red-legged frog (*Rana draytonii*), the Western DPS of yellow-billed cuckoo (*Coccyzus americanus*) *and its critical habitat*, and delta smelt (*Hypomesus transpacificus*), *the proposed endangered South Sierra DPS of the foothill yellow-legged frog (Rana boylii)*, and a candidate for listing under the Endangered Species Act (ESA), the monarch butterfly (*Danaus plexippus*).²²

4.1.6 Recreation Resources

- Effects of continued project operation and maintenance on recreation *access in the project-affected area and recreation resources, including effects on the*

²⁰ Section 5.5.4 of the PAD identified 30 special-status wildlife species known to occur or potentially occurring in the vicinity of the project.

²¹ Migratory birds include any species protected under the Migratory Bird Treaty Act (See 50 C.F.R. 10.13).

²² *On March 3, 2022, staff filed to the project record the official list of federally threatened and endangered species generated on the U.S. Fish and Wildlife Service's (FWS) Information for Planning and Consultation website (<https://ipac.ecosphere.fws.gov/>). On December 28, 2022, FWS proposed to list the South Sierra DPS of the foothill yellow-legged as endangered under the ESA, after SD1 was issued.*

quantity and timing of flow releases on whitewater recreation and boating in the Kern River.

4.1.7 Land Use and Aesthetic Resources

- Effects of continued project operation and maintenance on land use.
- Effects of continued project operation and maintenance on aesthetic resources, *including visual quality and noise, in the project-affected area.*
- *Effects of continued project operation and maintenance on traffic in the project-affected area.*
- *Effects of continued project operation and maintenance on the designated Wild and Scenic segments of the Kern River.*

4.1.8 Cultural and Tribal Resources

- Effects of continued project operation and maintenance on historic or archaeological resources *in the project-affected area, and including* traditional cultural properties that may be eligible for inclusion in the National Register of Historic Places, or on other areas or places of religious, cultural, and traditional importance to Indian tribes.

4.1.9 Socioeconomics

- Effects of continued project operations and flow diversions on *the economy of local communities in the project-affected area, including tourism and water-based recreation expenditures, agriculture and other consumptive uses* in the North Fork Kern River watershed.

4.1.10 Environmental Justice

- *Effects on minority and low-income communities that may occur in the project-affected area and that could potentially be subject to disproportionately high adverse human health or environmental effects as a result of continued project operation.*
- *Effects of continued operation and maintenance on Tribal populations in the project-affected area.*

Additionally, SCE's PAD indicates that the yellow-billed cuckoo potentially occurs in the project vicinity.

4.1.11 Air Quality

- *Effects of continued operation and maintenance of the project on air quality in the project-affected area, including the timeframe and estimates of potential emissions of criteria pollutants.*

5.0 PROPOSED STUDIES

Depending upon the findings of studies completed by SCE and the recommendations of the consulted entities, SCE will consider and may propose certain other measures to enhance environmental resources affected by the project as part of the proposed action. SCE's initial study proposals are identified by resource area in Table 3. Detailed information on SCE's initial study proposals can be found in the PAD. Further studies may need to be added to this list based on comments provided to the Commission and SCE from interested participants, including Indian tribes.

Table 3. SCE's initial study proposals for the Kern 3 Project. (Source: SCE's PAD Volume II, Appendix E)

PROPOSED STUDIES
Water Resources
Study WR-1: Water Temperature and Dissolved Oxygen – SCE proposes to continuously monitor temperature and dissolved oxygen during the summer months by installing loggers within all three project bypass reaches, above Fairview Dam, and downstream of the project powerhouse.
Study WR-2: Hydrology – SCE proposes to: (1) compile hydrologic gage data from SCE, U.S. Geological Survey, and/or U.S. Army Corp of Engineers; (2) verify gage data through a quality assurance process at the hourly level; and (3) summarize gage data for use in resource evaluations.
Terrestrial Resources
Study BIO-1: Foothill Yellow-legged Frog (FYLF) – SCE proposes to (1) evaluate habitat suitability for all FYLF life stages within project-affected stream reaches; (2) determine whether any life stage of FYLF is present within project-affected stream reaches using eDNA sampling; and (3) conduct visual encounter surveys for FYLF and other amphibians or aquatic reptile species within suitable habitats within project-affected stream reaches.
Study BIO-2: Western Pond Turtle and Special-status Salamanders – SCE proposes to: (1) identify and map potential nesting/breeding habitat for western pond turtle and special-status salamanders within the project area; (2) conduct visual encounter surveys for western pond turtles and special-status salamanders within identified nesting/breeding habitats; and (3) resurvey previously documented locations of western pond turtles and salamanders within the project area.

Study BIO-3: General Wildlife Resources – SCE proposes to: (1) conduct literature review to identify and map known locations and potentially suitable habitats for special-status wildlife including Forest Service Species of Conservation Concern; (2) perform pedestrian surveys for identified species in known or potentially suitable habitats, as determined by the literature review; (3) install and periodically review trail cameras at locations likely to capture wildlife activity; and (4) document other wildlife species observed during field surveys.

Study BOT-1: General Botanical Resources – SCE proposes to: (1) conduct floristic field surveys in the vicinity of project facilities to document special-status plants including Forest Service Species of Conservation Concern and non-native, invasive plants with high ecological impact; (2) map sensitive natural communities; and (3) ground-truth Forest Service vegetation mapping.

Recreation and Land Use

Study REC-1: Whitewater Boating Resource Evaluation – SCE proposes to conduct a phased study. Phase 1 would conduct a desktop review of existing whitewater information and hydrology analysis assessment to further refine whitewater boating flow ranges. Phase 2 would develop a whitewater boating survey and focus group to obtain information on boating preferences in the Fairview Dam bypass reach.

Study REC-2: Recreation Facilities Use Assessment – SCE proposes to: (1) characterize visitor use, through the use of a visitor intercept survey (questionnaire), at recreation resources within the project boundary and along the Fairview Dam bypass Reach and (2) utilize the results of the survey to determine if use at individual recreation sites is induced by the project.

Cultural Resources

Study CUL-1: Cultural Resources – SCE proposes to (1) search records to compile additional information from available repositories; (2) conduct a pedestrian survey within the area of potential effects (APE) in areas that have not been surveyed or should be resurveyed, to identify and record any new sites; and (3) record and document all sites and built environment resources within the APE.

Study TRI-1: Tribal Resources – SCE proposes to: (1) conduct background archival research of the study area; (2) identify and document tribal resources within or immediately adjacent to the APE; (3) conduct a Native American ethnographic/ethnohistoric survey of the APE; and (4) conduct interviews with knowledgeable tribal informants.

6.0 CURRENT PROCESSING SCHEDULE

The decision on whether to prepare an EA or EIS will be determined after the license application is filed and we fully understand the scope of effects and measures under consideration. The NEPA document will be distributed to all persons and entities on the Commission's service and mailing lists for the Kern 3 Project. The NEPA document will include our recommendations for operating procedures, as well as environmental protection and enhancement measures that should be part of any license issued by the Commission. The comment period will be specified in the notice of the availability of the NEPA document.

The major milestones, with pre-filing target dates, are as follows:

<u>Major Milestone</u>	<u>Date</u>
FERC Issues SD2	<i>March 4, 2022</i>
SCE Files Proposed Study Plan	March 6, 2022
FERC Issues Study Plan Determination	August 3, 2022
SCE Conducts Studies	Spring/Summer 2022/2023
SCE's Final License Application Due	November 30, 2024

A process plan, which has a complete list of relicensing milestones for the Kern 3 Project is attached as Appendix A.

7.0 PROPOSED NEPA DOCUMENT OUTLINE

The preliminary outline for the Kern River No. 3 Hydroelectric Project's NEPA document is as follows:

TABLE OF CONTENTS

LIST OF APPENDICES

LIST OF FIGURES

LIST OF TABLES

ACRONYMS AND ABBREVIATIONS

1.0 INTRODUCTION

1.1 Application

1.2 Purpose of Action and Need for Power

1.3 Statutory and Regulatory Requirements

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescriptions

1.3.1.2 Section 10(j) Recommendations

1.3.2 Clean Water Act

1.3.3 Endangered Species Act

1.3.4 National Historic Preservation Act

1.3.5 Executive Orders 12898 and 14008

1.4 Public Review and Comment

1.4.1 Scoping

1.4.2 Interventions

1.4.3 Comments on the Application

1.4.4 Comments on the Draft Environmental Document

2.0 PROPOSED ACTION AND ALTERNATIVES

2.1 No-action Alternative

2.2 Applicant's Proposal

2.3 Staff Alternative

2.4 Staff Alternative with Mandatory Conditions

2.5 Other Alternatives (as appropriate)

2.6 Alternatives Considered but Eliminated from Detailed Study

2.6.1 Federal Government Takeover of the Project

2.6.2 Issuing a Nonpower License

2.6.3 Retiring the Project

3.0 ENVIRONMENTAL ANALYSIS

3.1 General Description of the River Basin

3.2 Proposed Action and Action Alternatives

3.2.1 Geology and Soils

3.2.2 Water Resources

- 3.2.3 *Fish and Aquatic Resources***
- 3.2.4 *Terrestrial Resources***
- 3.2.5 *Threatened and Endangered Species***
- 3.2.6 *Recreation, Land Use, and Aesthetics***
- 3.2.7 *Cultural Resources***
- 3.2.8 *Socioeconomics***
- 3.2.9 *Environmental Justice***

3.3 *No-action Alternative*

4.0 *DEVELOPMENTAL ANALYSIS*

- 4.1 *Power and Economic Benefits of the Project***
- 4.2 *Comparison of Alternatives***
- 4.3 *Cost of environmental Measures***

5.0 *CONCLUSIONS AND RECOMMENDATIONS*

- 5.1 *Comprehensive Development and Recommended Alternative***
- 5.2 *Unavoidable Adverse Effects***
- 5.3 *Recommendations of Fish and Wildlife Agencies***
- 5.4 *Consistency with Comprehensive Plans***

6.0 *FINDING OF NO SIGNIFICANT IMPACT [OR SIGNIFICANT IMPACT]*

7.0 *LITERATURE CITED*

8.0 *LIST OF PREPARERS*

APPENDICES

A – Draft License Conditions Recommended by Staff

8.0 COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA, 16 U.S.C. Section 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal and state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by a project. Commission staff has preliminarily identified and reviewed the plans listed below that may be relevant to the Kern 3 Project. Agencies are requested to review this list and inform the Commission staff of any changes. If other comprehensive plans should be considered for this list that is not on file with the Commission, or if there are more recent versions of the plans already listed, they can be filed for consideration with the Commission according to 18 C.F.R. 2.19 of the Commission's regulations. Please follow the instructions for filing a plan at <https://cms.ferc.gov/media/list-comprehensive-plans>.

The following is a list of comprehensive plans currently on file with the Commission that may be relevant to the Kern 3 Project.

Federal Plans

Bureau of Land Management. 2014. Bakersfield Field Office Resource Management Plan. Department of the Interior. Bakersfield, California. December.

Federal United States Forest Service. 1988. Sequoia National Forest Land and Management Plan. Department of Agriculture, Forest Service, Sequoia National Forest. March.

United States Forest Service. No Date. Comprehensive Management Plan—North and South Forks of the Kern Wild and Scenic River. U.S. Department of Agriculture, Forest Service, Pacific Southwest Region, Sequoia, and Inyo National Forests.

National Park Service. 1933. *The Nationwide Rivers Inventory*. Department of the Interior, Washington, D.C.

California Plans

California Department of Fish and Game. 2003. *Strategic Plan for Trout Management: A Plan for 2004 and Beyond*. Sacramento, California. November 2003.

California Department of Fish and Wildlife. 2008. *California Aquatic Invasive Species Management Plan*. Sacramento, California. January 18, 2008.

California Department of Parks and Recreation. 1998. *Public Opinions and Attitudes on Outdoor Recreation in California*. Sacramento, California. March 1998.

California State Water Resources Control Board. 2018. *Water quality control plan for the Tulare Lake Basin*. Sacramento, California. Revised May 2018 (with Approved Amendments).

9.0 MAILING LIST

The list below is the Commission's official mailing list for the Kern River No. 3 Hydroelectric Project (FERC No. 2290). If you want to receive future mailings for the project and are not included in the list below, please send your request by email to efiling@ferc.gov or by mail to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, DC 20426. All written and emailed requests to be added to the mailing list must clearly identify the following on the first page: **Kern River No. 3 Hydroelectric Project No. 2290-122**. You may use the same method if requesting removal from the mailing list below.

Register online at <https://ferconline.ferc.gov/FERConline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Official Mailing List for the Kern River No. 3 Hydroelectric Project

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APPENDIX A

PROCESS PLAN AND SCHEDULE

KERN RIVER NO. 3 HYDROELECTRIC PROJECT NO. 2290

Shaded milestones are unnecessary if there are no study disputes. If the due date falls on a weekend or holiday, the due date is the following business day. Early filings or issuances will not result in changes to these deadlines.

Responsible Entity	Milestone	Due Date	FERC Regulation
SCE	Filed NOI and PAD	9/22/2021	5.5, 5.6
FERC	Consultation Meetings with Tribes	10/22/2021	5.7
FERC	Issue Notice of Commencement of Proceeding and SD1	11/21/2021	5.8
All Stakeholders	File Comments on PAD/SD1 and Study Requests	1/20/2022	5.9
FERC	Issue SD2	3/4/2022	5.10
SCE	File Proposed Study Plan	3/6/2022	5.11(a)
All Stakeholders	Study Plan Meeting	4/5/2022	5.11(e)
All Stakeholders	File Comments on SCE's Proposed Study Plan Due	6/4/2022	5.12
SCE	File Revised Study Plan	7/4/2022	5.13(a)
All Stakeholders	File Comments on SCE's Revised Study Plan	7/19/2022	5.13(b)
FERC	Issue Study Plan Determination	8/3/2022	5.13(c)
Mandatory Conditioning Agencies	File Any Study Disputes	8/23/2022	5.14(a)
Dispute Panel	Select Third Dispute Resolution Panel Member	9/7/2022	5.14(d)
Dispute Panel	Convene Dispute Resolution Panel	9/12/2022	5.14(d)(3)

Responsible Entity	Milestone	Due Date	FERC Regulation
SCE	File Comments on Study Disputes	9/17/2022	5.14(i)
Dispute Panel	Dispute Resolution Panel Technical Conference	9/22/2022	5.14(j)
Dispute Panel	Issue Dispute Resolution Panel Findings	10/12/2022	5.14(k)
FERC	Issue Director's Study Dispute Determination	11/1/2022	5.14(l)
SCE	Conduct First Study Season	8/3/2022	5.15(a)
SCE	File Initial Study Report	8/3/2023	5.15(c)(1)
All Stakeholders	Initial Study Report Meeting	8/18/2023	5.15(c)(2)
SCE	File Initial Study Report Meeting Summary	9/2/2023	5.15(c)(3)
All Stakeholders	File Disagreements/Requests to Amend Study Plan	10/2/2023	5.15(c)(4)
All Stakeholders	File Responses to Disagreements/Amendment Requests	11/1/2023	5.15(c)(5)
FERC	Issue Director's Determination on Disagreements/Amendments	12/1/2023	5.15(c)(6)
SCE	Conduct Second Study Season	Spring/Summer 2023	5.15(a)
SCE	File Updated Study Report	8/2/2024	5.15(f)
All Stakeholders	Updated Study Report Meeting	8/17/2024	5.15(f)
SCE	File Updated Study Report Meeting Summary	9/1/2024	5.15(f)
All Stakeholders	File Disagreements/Requests to Amend Study Plan	10/1/2024	5.15(f)
All Stakeholders	File Responses to Disagreements/Amendment Requests	10/31/2024	5.15(f)
FERC	Issue Director's Determination on Disagreements/Amendments	11/30/2024	5.15(f)

Responsible Entity	Milestone	Due Date	FERC Regulation
SCE	File Preliminary Licensing Proposal (or Draft License Application)	7/3/2024	5.16(a)-(c)
All Stakeholders	File Comments on Preliminary Licensing Proposal (or Draft License Application)	10/1/2024	5.16(e)
SCE	File Final License Application	11/30/2024	5.17
SCE	Issue Public Notice of Final License Application Filing	12/14/2024	5.17(d)(2)