

March 20, 2018

Michaela E. Noble  
Director, Office of Environmental Policy and Compliance  
Department of the Interior  
1849 C Street N.W.  
Mail Stop 5538  
Washington, DC 20240

**Re: Turlock Irrigation District and Modesto Irrigation District, Don Pedro  
Hydroelectric Project (FERC no. 2299)**

**Notice of Interventions, Appearances, and Responses by Tuolumne River Trust,  
American Whitewater, American River Touring Association, Inc., Sierra Mac River  
Trips, Inc., Central Sierra Environmental Resource Center, California Sportfishing  
Protection Alliance, Friends of the River, O.A.R.S. West Inc., All Outdoors  
California Whitewater Rafting, Inc., Regarding Turlock and Modesto Irrigation  
Districts' Request to the U.S. Department of the Interior's Office of Environmental  
Policy and Compliance for Trial-Type Hearing Under Federal Power Act Section  
4(e)**

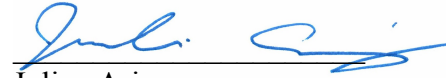
Dear Ms. Noble:

Pursuant to 43 C.F.R. §45.10, Tuolumne River Trust, American Whitewater, American River Touring Association, Inc., Sierra Mac River Trips, Inc., Central Sierra Environmental Resource Center, California Sportfishing Protection Alliance, Friends of the River, O.A.R.S. West Inc., All Outdoors California Whitewater Rafting, Inc. hereby file this notice of interventions, appearances, and responses to the "Request of Turlock Irrigation District and Modesto Irrigation District For a Trial-Type Hearing on Disputed Issues of Material Fact Pertaining to Certain Preliminary Section 4(e) Conditions Submitted By the Bureau of Land Management for the Don Pedro Hydroelectric Project No. 2299," as filed on February 28, 2018 before the U.S. Department of Interior (FERC e-Library no. 20180228-5265).

Please contact Julian Aris if you have any questions about this filing.

Michael E. Noble  
March 20, 2018  
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Respectfully submitted,



Julian Aris  
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**BEFORE THE  
UNITED STATES DEPARTMENT OF INTERIOR  
OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE**

Turlock Irrigation District and Modesto Irrigation District, )	OEPC Docket No. _____
Don Pedro Hydroelectric Project )	
(FERC No. 2299) )	
)	

**NOTICE OF INTERVENTION, APPEARANCES, AND RESPONSES BY TUOLUMNE  
RIVER TRUST, AMERICAN WHITEWATER, AMERICAN RIVER TOURING  
ASSOCIATION, INC., SIERRA MAC RIVER TRIPS, INC., CENTRAL SIERRA  
ENVIRONMENTAL RESOURCE CENTER, CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, FRIENDS OF THE RIVER, O.A.R.S. WEST INC., ALL  
OUTDOORS CALIFORNIA WHITEWATER RAFTING, INC., REGARDING  
TURLOCK AND MODESTO IRRIGATION DISTRICTS' REQUEST FOR TRIAL-  
TYPE HEARING  
UNDER FEDERAL POWER ACT SECTION 4(e)**

On January 29, 2018, the U.S. Department of Interior (“Department”) filed its “COMMENTS, RECOMMENDATIONS, PRELIMINARY TERMS AND CONDITIONS, and PRELIMINARY FISHWAY PRESCRIPTIONS on the Federal Energy Regulatory Commission Ready for Environmental Analysis Notice for the Don Pedro Hydroelectric Project, Federal Energy Regulatory Commission Project No. P-2299-082, Tuolumne River, Tuolumne and Stanislaus Counties, California.” *See* e-Library no. 20180129-5298. This included preliminary mandatory conditions filed by the Departments’ Bureau of Land Management (“BLM”) pursuant to Federal Power Act (“FPA”) section 4(e), 16 U.S.C. § 797(e). *See id.* at 104-160.

On February 28, 2018, Modesto and Turlock Irrigation Districts (collectively, the “Districts”) filed a Request for Trial-Type Hearing on Disputed Issues of Material Fact (“Hearing Request”) pertaining to certain preliminary Section 4(e) conditions filed by BLM. *See* e-Library no. 20180228-5265.

Tuolumne River Trust, American Whitewater, American River Touring Association, Inc., Sierra Mac River Trips, Inc., Central Sierra Environmental Resource Center, California Sportfishing Protection Alliance, Friends of the River, and O.A.R.S. West Inc., and All Outdoors California Whitewater Rafting, Inc. (collectively, “Intervenors”) now file Notice of Appearances and Notice of Intervention and Response to the Hearing Request.

Intervenors have made a good faith effort to comply with the requirements for appearances, intervention and response at 43 C.F.R. §§ 45.10, 45.22. We reserve the right to supplement or amend this filing, including the preliminary lists of witnesses and exhibits, as provided in 43 C.F.R. § 45.42.

## **I.** **LICENSE PARTY STATUS**

Intervenors are parties to the relicensing proceeding and are thus eligible to intervene as parties in the hearing process pursuant to 43 C.F.R. § 45.22(a)(1)(i).

The Tuolumne River Trust is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 23, 2018. *See* e-Library no. 20180123-5010.

American Whitewater is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 23, 2018. *See* e-Library no. 20180123-5010.

American River Touring Association, Inc. is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 22, 2018. *See* e-Library no. 20180122-5119.

Sierra Mac River Trips, Inc. is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 22,

2018. *See* e-Library no.20180122-5178.

Central Sierra Environmental Resource Center is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 23, 2018. *See* e-Library no. 20180123-5010.

California Sportfishing Protection Alliance is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 23, 2018. *See* e-Library no. 20180123-5010.

Friends of the River is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 23, 2018. *See* e-Library no. 20180123-5010.

O.A.R.S. West Inc. is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 24, 2018. *See* e-Library no. 20180124-5013.

All Outdoors California Whitewater Rafting, Inc. is a party in the relicensing proceeding pursuant to 18 C.F.R. § 385.102(c). It filed a timely, unopposed motion to intervene in the proceeding on January 26, 2018. *See* e-Library no. 20180126-5165.

## **II.**

### **NOTICE OF APPEARANCES**

Pursuant to 43 C.F.R. § 45.10, Intervenors hereby file this notice of appearances in these proceedings. All representatives consent to electronic service in accordance with 43 C.F.R. § 45.13(c)(4).

Julie Gantenbein is authorized to appear as counsel for American Whitewater. She is a member in good standing of the State Bar of California (Bar No. 224475). Her contact information is:

Julie Gantenbein  
Water and Power Law Group PC  
2140 Shattuck Ave., Suite 801  
Berkeley, CA 94704  
(510) 296-5590  
[jgantenbein@waterpowerlaw.com](mailto:jgantenbein@waterpowerlaw.com)

Bryan Wilson is authorized to appear as counsel for Tuolumne River Trust. He is a member in good standing of the State Bar of California (Bar No. 138842). His contact information is:

Bryan Wilson  
Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, CA 94304  
(650) 813-5603  
[BWilson@mofo.com](mailto:BWilson@mofo.com)

Julian Aris is authorized to appear as counsel for Tuolumne River Trust. He is a member in good standing of the State Bar of California (Bar No. 319494). His contact information is:

Julian Aris  
Morrison & Foerster LLP  
755 Page Mill Road  
Palo Alto, CA 94304  
(650) 813-6487  
[JAris@mofo.com](mailto:JAris@mofo.com)

Christopher Shutes is authorized to appear on behalf of the California Sportfishing Protection Alliance. Mr. Shutes represents the California Sportfishing Protection Alliance on all hydropower relicensing matters and is authorized to represent the organization in this proceeding. His contact information is:

Christopher Shutes  
1608 Francisco St.  
Berkeley, CA 94703  
(510) 421-2405  
[blancapaloma@msn.com](mailto:blancapaloma@msn.com)

20. Theresa Simsiman is authorized to appear on behalf of American Whitewater. Ms. Simsiman is the California Stewardship Director and is authorized to represent the organization in this proceeding. Her contact information is:

Theresa Simsiman  
7969 Madison Avenue #1706  
Citrus Heights, CA 95610  
(916) 835-1460  
[theresa@americianwhitewater.org](mailto:theresa@americianwhitewater.org)

21. Patrick Koepele is authorized to appear on behalf of Tuolumne River Trust. Mr. Koepele is the Executive Director and is authorized to represent the organization in this proceeding. His contact information is:

Patrick Koepele  
67 Linoberg Street  
Sonora, CA 95370  
(209) 588-8636  
[patrick@tuolumne.org](mailto:patrick@tuolumne.org)

22. Steve Welch is authorized to appear on behalf of the Tuolumne River Outfitters (American River Touring Association, Inc., Sierra Mac River Trips, Inc., O.A.R.S. West Inc., All Outdoors California Whitewater Rafting, Inc.). Mr. Welch is the President of A.R.T.A. River Trips and is authorized to represent the outfitters in this proceeding. His contact information is:

Steve Welch  
24000 Casa Loma Road  
Groveland, CA 95321  
(209) 962-7873  
[steve@arta.org](mailto:steve@arta.org)

23. John Buckley is authorized to appear on behalf of Central Sierra Environmental Resource Center. Mr. Buckley is the Executive Director and is authorized to represent the organization in this proceeding. His contact information is:

John Buckley  
P.O. Box 396  
Twain Harte, CA 95383  
(209) 586-7440  
[johnb@cserc.org](mailto:johnb@cserc.org)

24. Ronald Stork is authorized to appear on behalf of Friends of the River. Mr. Stork is Senior Policy Staff and is authorized to represent the organization in this proceeding. His contact information is:

Ronald Stork  
1418 20<sup>th</sup> Street, Suite 100  
Sacramento, CA 95811  
(916) 442-3155 x220  
[rstork@friendsoftheriver.org](mailto:rstork@friendsoftheriver.org)

### **III.**

#### **LEGAL FRAMEWORK FOR SECTION 18 TRIAL-TYPE HEARING**

Section 241 of the Energy Policy Act of 2005 (EPAAct), Pub. L. No. 109-58, § 241 (2005), amended FPA section 4(e), 16 U.S.C. § 797(e), to permit any party to a licensing proceeding to request a trial-type hearing to challenge a mandatory condition necessary to protect a federal reservation affected by a project. Section 4(e), as amended, provides:

That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: The license applicant and any party to the proceeding shall be entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, on any disputed issues of material fact with respect to such conditions. All disputed issues of material fact raised by any party shall be determined in a single trial-type hearing to be conducted by the relevant resource agency in accordance with the regulations promulgated under this subsection and within the time frame established by the Commission for each license proceeding.

16 U.S.C.A. § 797(e).



A material fact is “a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.” 43 C.F.R. § 45.2. As stated in the preamble of these rules, material facts are “issues such as whether the river has historically been a cold or warm water fishery or whether fish have historically been found above or below the dam.” 70 Fed. Reg. 69804, 69809 (Nov. 17, 2005).

The rules provide that “legal or policy issues would not qualify as issues of material fact.” *Id.*

Examples of such matters include water types and levels of adverse effects to a species from a project would be “acceptable,” or what kinds of mitigation measures may be desirable or “necessary” to protect a resource. These are not matters of fact, but rather matters of policy judgment committed to the discretion of the Departments, in light of their management objectives for the resources. Under EPCA and these regulations, the Departments retain the prerogative to make these ultimate decisions in light of their policies; the ALJ may not appropriately address those issues.

80 Fed. Reg., 17156, 17177-78 (Mar. 31, 2015). As shown below, many of the issues disputed in the Hearing Request are arguments about law or policy and thus are not properly heard under these rules.

On any disputed issue of material fact, the party requesting hearing has the burden of persuasion with respect to the issues of material fact raised by that party. 43 C.F.R. § 45.57(a). “The standard of proof is preponderance of the evidence.” *Id.* at § 45.57(b).

#### **IV. RESPONSES TO DISTRICTS’ HEARING REQUESTS**

Intervenors hereby respond to the Disputed Issues and supporting information in the Hearing Requests.

**1. Disputed Issue of Material Fact No. 1**

**a. Issue.** “Whether the presence or operation of the Project causes whitewater rafts to converge at Wards [sic] Ferry Bridge over a short period of time.”

**b. Response.** Intervenors disagree with the Districts’ statement of the disputed issue and position. Intervenors agree with BLM’s position and the information it has submitted in support thereof, specifically the findings that there is significant congestion at Ward’s Ferry Bridge, and that the Project contributes to such congestion by inundating takeout locations that were readily available prior to construction of the Don Pedro Dam.

The Districts argue that “whitewater rafts arrive at Wards [sic] Ferry not because of any constraints imposed by the Project but rather because of the launching and exit schedules chosen by the whitewater rafting companies and individuals.” Hearing Request, p. A-3. Based on our review, BLM makes no assertions that the Districts control the timing of whitewater trips. Rather, BLM states that the Project contributes to convergence and congestion at Ward’s Ferry Bridge by inundating other potential takeout locations.

Prior to project construction, there was a suitable takeout location at the sandbar adjacent to Jacksonville. Don Pedro Reservoir inundated Jacksonville and destroyed the sandbar. The only remaining takeout locations are Ward’s Ferry Bridge and Moccasin Point. Moccasin Point is not a popular takeout location because it requires non-motorized boaters to paddle across the reservoir, a 6-mile journey across flat water that takes several hours.

Additionally, the existence of the reservoir causes a buildup of silt and soil deposits as the particulates carried by the river settle out at the reservoir entrance. This leads to mud hazards downstream of Ward’s Ferry when the reservoir water levels get low. It is hard to paddle and portage in these areas, so boaters generally prefer to takeout upstream at Ward’s Ferry. Thus,

Project constraints do contribute to the convergence of rafts at Ward's Ferry Bridge, causing congestion at this location.

**c. Preliminary Witness List.** Intervenors intend to call the following witnesses in support of their response.

**Dr. Gerald Meral.** Dr. Meral's address is PO 1103 (410 Via de la Vista) Inverness, CA 94937. His phone number is 415-717-8412. Dr. Meral has over 52 years of experience in conservation and water planning. He currently serves as California Water Program Director of the Natural Heritage Institute. From 2011 to 2013 Dr. Meral served as Deputy Secretary of the California Natural Resources Agency, in charge of the Bay Delta Conservation Plan. Previously, he served as Executive Director of the Planning and Conservation League, a California statewide conservation group, from 1983-2003. He developed a variety of statewide conservation and health measures which produced more than \$20 billion in new statewide programs, and directed the League's program of conservation legislation. Prior to that, Dr. Meral served as Deputy Director of the California Department of Water Resources from 1975-1983, where he directed the statewide water planning and energy programs. He also served as Director of Western Water Programs for the Environmental Defense Fund from 1971 to 1975. He holds a Ph.D. in Zoology from UC Berkeley. He is also an experienced whitewater boater. He is expected to testify about his experiences kayaking and rafting the Tuolumne River from Holm Powerhouse to Jacksonville, including takeout locations and conditions before and after construction of Don Pedro Dam beginning in 1968 through the present.

**Stephen Welch.** Mr. Welch's address is 197 Theall Street, Sonoma, CA 95370. His phone number is 209-352-4588. Mr. Welch is the President and General Manager of American River Touring Association, Inc. one of the four outfitters permitted to conduct trips on the Tuolumne

River. He has served in that capacity since 1984. Prior to that he was a student at University of California, Davis from which he graduated with a Bachelor's Degree in 1980. He has used the Ward's Ferry and Moccasin Point takeouts on the Tuolumne River for over 40 years. We expect Mr. Welch will testify on the use of the Tuolumne River by whitewater boaters, trends over time, how the Project affects the choice of boaters when selecting a takeout location, the erosion of the volunteer-constructed trail over time, and other related issues.

**Martin McDonnell.** Mr. McDonnell's address is: 27890 CA HWY 120, Groveland, CA 95321 (Mailing: P.O. Box 264 Groveland CA 95321-0264). His phone number is 209-591-8027. Mr. McDonnell is currently the President of Sierra Mac River Trips, Inc. and Tuolumne River Shuttles, Inc. and owns 100% of both corporations. Mr. McDonnell first kayaked and rafted the Tuolumne River from Meral's Pool to Jacksonville in 1969 and led the first commercial Tuolumne River rafting trip with guests in 1970. He also pioneered the first raft descent of the Cherry Creek/Upper Tuolumne section from Holm Powerhouse to Merals Pool in 1973. He developed the first Wards Ferry hoisting truck for raft trip takeouts in 1978. McDonnell has over 50 years of commercially guiding, outfitting and providing equipment/passenger transportation requirements for whitewater river rafting trips on the Tuolumne River and throughout California. McDonnell serves on the Tuolumne River Trust Board of Directors. He also served the Tuolumne County Sheriff's Search & Rescue team as the Swiftwater Rescue Team leader and as Team Captain from 1975 to 1982. He is expected to testify about his experiences kayaking and rafting the Tuolumne River from Holm Powerhouse to Jacksonville, including takeout locations and conditions before and after construction of Don Pedro Dam beginning in 1969 through the present.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts’ Hearing Request.

Document Title	Location
Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299	Tab 1 – See e-Library no. 20130117-5108 (27957204)
Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	Tab 2 – <a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>
Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Boating Take-Out Feasibility Study Focus Group Meeting Summary	Tab 3 – See e-Library no. 20130117-5108 (27957206)
Screenshot of Stent Jacksonville Bridge – CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>	Tab 4 – CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>
Screenshot of Shoreline Road at Jacksonville - CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>	Tab 5 – CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>
Supplemental Information from Bob Hackamack under P-2299	Tab 6 – See e-Library no. 20110608-5080 (25844623)

**2. Disputed Issue of Material Fact No. 2**

**a. Issue.** “Whether annual fluctuations in the Don Pedro Reservoir level are causing erosion of the unpaved take-out/access paths near Wards [sic] Ferry Bridge.”

**b. Response.** Intervenors agree with BLM’s position and the information it has provided in support thereof, including the finding that the takeout path/access road is almost impassable at certain locations due to erosion caused by water level fluctuations at the reservoir.

The volunteer trails used by non-motorized boaters are within the zone of seasonal fluctuation/drawdown, and thus they are particularly vulnerable to erosion. The reservoir can fluctuate as much as 50-80 feet at the site of Ward’s Ferry Bridge, exposing a considerable length of trail to erosion. Further, steep slopes are also more prone to erosion, and many of the slopes in the vicinity of the Ward's Ferry Bridge are likely in excess of 30 degrees.

**c. Preliminary Witness List.** Intervenors intend to call the following witnesses in support of their response.

**Noah R. Triplett.** Mr. Triplett’s address is 1080 Woodridge Road, Placerville CA 95667. His phone number is 530-305-7943. Mr. Triplett is currently the River Recreation Supervisor for El Dorado County. From 2002-2005 he served as the Bureau of Land Management River Patrol and Recreation Technician out of the Mother Lode Field Office responsible for monitoring conditions on the Tuolumne including Ward’s Ferry Bridge. Prior to that work he worked as a raft guide for Zypher River Expeditions on the Wild & Scenic Tuolumne River between Meral’s Pool and Ward’s Ferry Bridge from 1993-2001. Growing up by the Tuolumne River, he has 35 years’ experience on the watershed. With his history on the Tuolumne River, he is expected to testify about his experiences boating the Tuolumne River from Meral’s Pool to Ward’s Ferry Bridge and his experiences monitoring conditions at Ward’s Ferry during his time with BLM. He

is also expected to testify regarding standards for recreational trails based on his experience as a river recreation supervisor.

**Rune Storesund, D. Eng., P.E., G.E., QSP, QSD.** Mr. Storesund's address is 154 Lawson Rd., Kensington, CA 94707. His phone number is 510-526-5849. Dr. Storesund has 16 years of planning, design, engineering, and construction experience and has worked on a variety of projects throughout California, the United States, and internationally. Dr. Storesund is the CEO and founding member of Storesund Engineering LLC, a State of California Class A and Class B General Contractor specializing in mass grading, earthen reservoirs, water tanks, and water distribution and treatments systems. One of his areas of expertise is on the application of reliability and risk-based approaches to engineering projects (with a specialization in environmental restoration and flood control projects) in order to effectively manage project uncertainties. He serves as an on-call expert Geotechnical Engineer to the State of California's Department of Consumer Affairs for their annual examination. He holds a D. Eng., M.S., and B.S. in Civil Engineering from UC Berkeley, and a B.A. in Anthropology from UC Santa Cruz. He is a licensed Professional Engineer and Geotechnical Engineer in the State of California. He is expected to testify about the potential means of constructing a whitewater takeout and day-use facility in the vicinity of the Ward's Ferry Bridge, the costs associated with constructing such a facility, and the erosive factors on unpaved access paths in the vicinity of the Ward's Ferry Bridge.

**Stephen Welch.** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 1.

**Robert Feraru.** Mr. Feraru's address is 1801 Butte Street, Richmond CA 94804. Mr. Feraru is retired from 25 years of State service in senior positions for the California State Senate

and California Public Utilities Commission. He has done over 40 trips on the Wild and Scenic Tuolumne River between Meral's Pool and Ward's Ferry Bridge in the last 32 years. He is expected to testify about the hazardous conditions of the trails at Ward's Ferry Bridge.

**Anthony DeRiggi, M.D.** Dr. DeRiggi's address is 932 46<sup>th</sup> Street, Sacramento CA 95819. His phone number is 916-452-8975. Dr. DeRiggi is a retired physician. He has rafted the Wild and Scenic Tuolumne River between Meral's Pool and Ward's Ferry Bridge since 1978. He is expected to testify about the hazardous conditions of the trails and cancelled trips due to the conditions at Ward's Ferry Bridge.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
Amended Final License Application, Exhibit E	Tab 7 – See e-Library no. 20171011-5067
Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299 Page 5-1	Tab 1 – See e-Library no. 20130117-5108 (27957204)
Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	Tab 2 – <a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>
Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Boating Take-Out Feasibility Study Focus Group Meeting Summary	Tab 3 – See e-Library no. 20130117-5108 (27957206)
Photo 1 M McDonnell - South Side Tuolumne River Upstream of Ward's Ferry Bridge, There was a construction road switching back to the river on the south side	Tab 8 – Attached 2/13/13, M.McDonnell



Photo 2 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream, with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Tab 9 – Attached 2/13/13, M.McDonnell
Photo 3 2-13-13 M McDonnell - Close-up Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Tab 10 – Attached 2/13/13, M.McDonnell
Photo 4 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with two cement blocks installed by Don Pedro Recreation administrator, Carl Rust	Tab 11 – Attached 2/13/13, M.McDonnell

### **3. Disputed Issue of Material Fact No. 3**

**a. Issue.** “What was the frequency of whitewater rafting that took place on the upper Tuolumne River before Don Pedro Reservoir was filled.”

**b. Response.** Intervenors disagree that this issue, while factual, is appropriate for hearing. The frequency of whitewater rafting that took place on the upper Tuolumne before Don Pedro Reservoir was filled is not a disputed issue of material fact because BLM’s rationale did not rely on it.

In section (a) of this issue the Districts list three quotes in an effort to frame a dispute about the frequency of whitewater rafting that took place on the upper Tuolumne before the Don Pedro Reservoir was filled. Notably, none of these quotes discuss the frequency of whitewater rafting on the upper Tuolumne, never mind variations therein over time. The quotes merely discuss the availability of additional take-outs prior to inundation caused by the Don Pedro Reservoir. Fluctuations in the frequency of whitewater rafting on the Tuolumne River are not logically related to whether there were previously other take-outs for non-motorized boaters that

are now inundated because of the reservoir, and the record does not show that the BLM relied on this when finding that the Project had turned Ward's Ferry into "the logical closest place for whitewater boaters to takeout." DOI Recommendations, Preliminary Terms and Conditions and Preliminary Fishway Prescriptions, eLibrary no. 20180129-5298, p. 139. Because the frequency of whitewater rafting as it may have varied over time is unrelated to the inundation of former takeout locations and was not part of BLM's rationale, this disputed issue is both logically irrelevant and immaterial, and is not properly considered in this hearing.

**c. Preliminary Witness List.** Intervenor intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to historical use numbers and conditions at Ward's Ferry Bridge. Since his employer has not agreed to Intervenor naming the witness at this time, they will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenor do not intend to submit exhibits beyond those already submitted for related matters in this Response. We reserve the right to submit exhibits at a later date as appropriate.

**4. Disputed Issue of Material Fact No. 4**

**a. Issue.** "Whether conditions at the Wards [sic] Ferry have caused a decline in non-commercial boating on the upper Tuolumne River since the mid-1980s."

**b. Response.** Intervenor agree with the BLM's position and the information it has submitted in support therefor, including the finding that conditions at Ward's Ferry Bridge have contributed to the decline in whitewater boating.

Whitewater boating on the Tuolumne River has declined overall since 1977. Private boaters have reported that they would boat the Tuolumne more frequently but for the poor takeout conditions at Ward's Ferry Bridge.

Districts argue that a decrease in popularity, as indicated by a fall in kayak sales nationally since 2001, is a cause for the decline in boating on the Tuolumne River. Hearing Request, p. A-11. However, sales do not equate to the number of boaters participating in whitewater paddling. Sampling from Outdoor Recreation Participation Topline Report 2017 by the Outdoor Foundation show only a 5% drop in rafting participation between 2006 and 2016. Rafting participation in 2016 was 3,428,000 compared to 3,609,000 in 2006. However, in that same period whitewater kayaking saw a 300% increase in participation. Whitewater kayaking participation in 2016 was 2,552,000 compared to 828,000 in 2006.

**c. Preliminary Witness List.** Intervenors intend to call the following witnesses in support of their response.

**Robert Feraru** Mr. Feraru's address is 1801 Butte Street, Richmond CA 94804. Mr. Feraru is retired from 25 years of State service in senior positions for the California State Senate and California Public Utilities Commission. He has done over 40 trips on the Wild and Scenic Tuolumne River between Meral's Pool and Ward's Ferry Bridge in the last 32 years. He is expected to testify about the hazardous conditions of the trails at Ward's Ferry Bridge.

**Anthony DeRiggi, M.D.** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 2.

**Stephen Welch.** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 1.

**Nicholas Ewing, PhD.** Dr. Ewing's address is 4252 N. River Way, Sacramento CA 95864. His phone number is 916-402-1000. Dr. Ewing is a Professor Emeritus Department of Biological Sciences at California State University Sacramento. He has 19 years of individual and family experience boating the Wild and Scenic Tuolumne River between Meral's Pool and

Ward's Ferry Bridge. He is expected to testify about his limited ability to do trips due to the conditions at Ward's Ferry Bridge.

Intervenors intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to law enforcement and safety issues at Ward's Ferry Bridge.

Since his employer has not agreed to Intervenors naming the witness at this time, they will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
American Whitewater Review of Draft License Application: Don Pedro Project FERC Project No. P-2299	Tab 12 – See e-Library no. 20140225-5015 (29153884)
Conservation Groups Comments on Draft License Application and Updated Study Report	Tab 13 – See e-Library no. 20140224-5095 (29152488)
BLM Responses to Draft License Application Don Pedro Hydroelectric Project, FERC No. 2299	Tab 14 – See e-Library no. 20140303-5117 (29165863)
NPS - Comments on the Update Study Reports (USRs) for the Don Pedro Project (P-2299) located in Tuolumne County, California	Tab 15 – See e-Library no. 20140220-5091 (29147176)
Stanislaus National Forest	Tab 16 – See e-Library no. 20140227-5011 (29159410)
Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 17 – See e-Library no. 20180129-5200(32662503)
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298 (32663089)

The Outdoor Foundation. (2017). <i>Outdoor Recreation Participation Topline Report 2017</i> . Washington D.C.: The Outdoor Foundation Page 8	Tab 19 – Attached
California Department of Boating and Waterways. (2009). <i>Non-Motorized Boating in California March 2009</i> Page ES-9	Tab 20 – Attached
USDA Forest Service Stanislaus National Forest. <i>1978-2016 Tuolumne Wild &amp; Scenic River Use</i>	Tab 21 – Attached
Sierra Mac River Trips - FERC P-2299 - Don Pedro Project Relicense Whitewater Boating Take-Out Improvement Feasibility Study Report	Tab 22 – See e-Library no. 20140225-5056 (29154574)
Comments Karl Schnneider, Santa Cruz CA	Tab 23 – See e-Library no. 20180129-5012 (32659061)
Comments Derek C. Carr, Oakland, CA	Tab 24 – See e-Library no. 20180129-5019 (32659075)
Comments Stephen Webber, Glendale, CA	Tab 25 – See e-Library no. 20180129-5118 (32660894)
Comments Matt Cronin, Santa Rosa, CA	Tab 26 – See e-Library no. 20180129-5133(32661201)
Comments Noah Triplett, Placerville, CA.	Tab 27 – See e-Library no. 20180129-5146(32661254)
Comments Anthony DeRiggi, sacramento, CA.	Tab 28 – See e-Library no. 20180129-5163(32661662)
Comments Margie DeRiggi, sacramento, CA.	Tab 29 – See e-Library no. 20180129-5179(32662303)
Comments John Lynch, Corte Madera, CA.	Tab 30 – See e-Library no. 20180129-5190 (32662424)
Comments Paul Raffaeli, San Jose, CA.	Tab 31 – See e-Library no. 20180129-5194 (32662438).pdf
Comments James Lance Brogden (Lance), Live Oak, CA.	Tab 32 – See e-Library no. 20180129-5199 (32662454)

Comments Susan Smith, Lafayette, CA.	Tab 33 – See e-Library no. 20180130-5002 (32663209)
Comments Janet Hayes, Placerville, CA.	Tab 34 – See e-Library no. 20180130-5006 (32663229)
Comments Adam Ferguson, Twain Harte, CA.	Tab 35 – See e-Library no. 20180130-5011 (32663256)
Comments Christopher Hest, Chico, CA.	Tab 36 – See e-Library no. 20180130-5014 (32663265)
Comments Wayne Greenway, Moraga, CA.	Tab 37 – See e-Library no. 20180130-5017 (32663271)
Comments Michelle Francesco, Sunnyvale, CA.	Tab 38 – See e-Library no. 20180130-5025(32663287)
Comments Daisy Ixquiac, Woodland, CA.	Tab 39 – See e-Library no. 20180130-5027 (32663291)
Comments Sean Fraser, Sacramento, CA.	Tab 40 – See e-Library no. 20180130-5033 (32663303)
Comments Edward Roseboom, Palo Alto, CA.	Tab 41 – See e-Library no. 20180130-5035 (32663307)
Comments Jeffrey Venturino, Davis, CA.	Tab 42 – See e-Library no. 20180130-5043 (32663323)

## **5. Disputed Issue of Material Fact No. 5**

**a. Issue.** “Whether rafts and kayaks could be taken out during the rafting season at locations other than Wards [sic] Ferry.”

**b. Response.** Intervenors disagree with the Districts statement of the issue and position. Intervenors agree with BLM’s position that Ward’s Ferry Bridge is preferable to alternative takeout locations and the information it has provided in support thereof.

The Districts argue that “BLM’s demand that the Districts pay for exorbitant take-out facilities at Wards Ferry is premised in large part on the assertion that no other take-out point for

boaters exist.” Hearing Request, p. A-13. However, it does not point to any quotes where BLM made this assertion.

BLM’s rationale is not premised on a finding that “no other take-out point” exists. As shown in the quotes cited by the Districts, the BLM’s rationale is based on findings that there are several problems with takeout at Moccasin Point, including navigability issues and increased difficulty and travel time of paddling the approximately 6-miles of flatwater needed to reach Moccasin Point, that make it a less suitable takeout location. Thus, the Districts have not raised a true factual dispute.

Instead, the Districts appear to be challenging BLM’s judgment that Ward’s Ferry is a superior takeout location as compared to Moccasin Point, and the overall reasonableness of the condition (calling the costs “exorbitant”). Such challenges go to issues of law and policy and are not appropriate for trial-type hearing.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenors intend to call the following witnesses in support of their response.

Intervenors intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to historical use numbers and conditions at Ward’s Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

Intervenors intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to the hazards of towing out non-motorized boats downstream from Ward’s Ferry Bridge. Since his employer has not agreed to Intervenors naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts’ Hearing Request.

Document Title	Location
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298 (32663089)
Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 17 – See e-Library no. 20180129-5200 (32662503)

**6. Disputed Issue of Material Fact No. 6**

**a. Issue.** “Whether the unpaved take-out/access paths at Wards [sic] Ferry are on BLM-administered land.”

**b. Response.** Intervenors agree with BLM’s position and the information it has provide in support. They disagree with the Districts’ statement of the issue and position. While factual, this issue is undisputed and immaterial, making it inappropriate for trial-type hearing.

The Districts do not show that ownership of the lands proposed for the day use area is material to BLM’s rationale, or disputed by BLM. As stated in BLM’s rationale, the Ward’s Ferry area contains a mix of BLM and District land, and the proposed amenities are distributed across both.

In support of this issue, the Districts cite BLM statements that the proposed amenities would provide for the *beneficial use* of BLM-administered land. Based on this, it appears that the Districts real dispute is whether Section 4(e) authorizes BLM to impose mandatory conditions for the benefit of BLM lands that affect non-BLM lands. That is a purely legal argument that is inappropriate for trial-type hearing.



Additionally, the BLM conditions do not mandate that the license conditions be met on non-BLM land; they merely *permit* the Districts to meet the condition on District land instead of BLM land.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenors intend to call the following witnesses in support of their response.

Intervenors intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to engineered road and facility conditions at Ward's Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
BLM - Comments and Study Requests on the Pre-Application Document and Scoping Document 1 for the Don Pedro Hydroelectric Project, FERC No. 2299	Tab 44 – See e-Library no. 20110610-5224 (25864581)
NPS - Don Pedro Relicensing (Project License Number 2299), Comments on the Pre- Application Document, Scoping Document 1, and Submittal of Study Requests	Tab 45 – See e-Library no. 20110610-5021 (2589026)
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298 (32663089)
Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 17 – See e-Library no. 20180129-5200 (32662503)

**7. Disputed Issue of Material Fact No. 7**

**a. Issue.** “Whether the Wards [sic] Ferry take-out is highly unsafe for boaters.”

**b. Response.** Intervenor disagree with the Districts’ statement of issue and position. Intervenor agree with BLM’s position that existing takeout facilities and conditions at Ward’s Ferry Bridge create safety hazards, and the information it has provided in support of that position.

In support of this issue, the Districts quote BLM’s statement that, “[u]nfortunately, the current existing whitewater boating takeout facility and access for both commercial and non-commercial boaters and general recreational users at Ward’s Ferry is highly unsafe for boaters, creates a public safety hazard on the bridge for vehicles and pedestrians, and conflicts with other recreational uses.” Hearing Request, p. A-18. They counter that, “[i]n the 40 years that tens of thousands of boaters have been exiting the Tuolumne River at Wards [sic] Ferry Bridge, no fatalities or serious injuries have been reported to the Districts.” *Id.* However, BLM relied on information other than the Districts’ incident report log in finding existing conditions unsafe, including staff observations, photographs, and reports from private boaters and commercial outfitters.

The Districts’ argument that conditions at Ward’s Ferry cannot be highly unsafe because no fatalities have been reported to the Districts or recorded by the local fire department appears to challenge BLM’s risk tolerance, rather than a discrete fact relied upon by BLM. Based upon the available information, BLM concluded that unsafe conditions at Ward’s Ferry interfered with the recreational use of lands and waters under its administration. There is no bright line rule that conditions are safe if there have been no fatalities. The Districts may not be heard in this proceeding on the issue of whether BLM properly exercised its discretion in determining that

safety improvements were needed to protect the reservation even though no one has died taking out at Ward's Ferry Bridge.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenor's intend to call the following witnesses in support of their response.

Intervenor's intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to law enforcement and safety issues at Ward's Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

Intervenor's intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to the ability to call out for emergency personal at Ward's Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenor's list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
Comments Karl Schnneider, Santa Cruz CA	Tab 23 – See e-Library no. 20180129-5012 (32659061)
Derek C. Carr, Oakland, CA	Tab 24 – See e-Library no. 20180129-5019 (32659075)
Stephen Webber, Glendale, CA	Tab 25 – See e-Library no. 20180129-5118 (32660894)
Matt Cronin, Santa Rosa, CA	Tab 26 – See e-Library no. 20180129-5133 (32661201)
Noah Triplett, Placerville, CA.	Tab 27 – See e-Library no. 20180129-5146 (32661254)

Anthony DeRiggi, Sacramento, CA.	Tab 28 – See e-Library no. 20180129-5163 (32661662)
Margie DeRiggi, Sacramento, CA.	Tab 29 – See e-Library no. 20180129-5179 (32662303)
John Lynch, Corte Madera, CA.	Tab 30 – See e-Library no. 20180129-5190 (32662424)
Paul Raffaeli, San Jose, CA.	Tab 31 – See e-Library no. 20180129-5194 (32662438).pdf
Comments James Lance Brogden (lance), Live Oak, CA.	Tab 32 – See e-Library no. 20180129-5199 (32662454)
Comments Susan Smith, Lafayette, CA.	Tab 33 – See e-Library no. 20180130-5002 (32663209)
Comments Janet Hayes, Placerville, CA.	Tab 34 – See e-Library no. 20180130-5006 (32663229)
Comments Adam Ferguson, Twain Harte, CA.	Tab 35 – See e-Library no. 20180130-5011 (32663256)
Comments Christopher Hest, Chico, CA.	Tab 36 – See e-Library no. 20180130-5014 (32663265)
Comments Wayne Greenway, Moraga, CA.	Tab 37 – See e-Library no. 20180130-5017 (32663271)
Comments Michelle Francesco, Sunnyvale, CA.	Tab 38 – See e-Library no. 20180130-5025 (32663287)
Comments Daisy Ixquiac, Woodland, CA.	Tab 39 – See e-Library no. 20180130-5027 (32663291)
Comments Sean Fraser, Sacramento, CA.	Tab 40 – See e-Library no. 20180130-5033 (32663303)
Comments Edward Roseboom, Palo Alto, CA.	Tab 41 – See e-Library no. 20180130-5035 (32663307)
Comments Jeffrey Venturino, Davis, CA.	Tab 42 – See e-Library no. 20180130-5043 (32663323)

**8. Disputed Issue of Material Fact No. 8**

**a. Issue.** “Whether the take-out/access paths at Wards [sic] Ferry are almost impassable in places.”

**b. Response.** Intervenorors disagree with the Districts’ statement of the issue and position. Intervenorors agree with BLM’s position that the takeout path/access road is almost impassable in places due to erosion resulting from annual reservoir water level fluctuations, and the information it has provided in support of that position.

The Districts argue that BLM’s finding that the paths at Ward’s Ferry are “almost impassable” is incorrect because “tens of thousands of boaters have used the take-out path in the past 40 years.” Hearing Request, p. A-21. This argument is both inappropriate for this hearing and incoherent. It is inappropriate because what are disputing is whether the paths are *sufficiently* passable. They are challenging the reasonableness of BLM’s determination that the paths do not provide safe or convenient passage for users carrying boats and gear. That is an issue of law and policy which is not appropriate for trial-type hearing.

The Districts’ argument is incoherent because it is not a counterargument to a statement that a path is “almost impassable” to note that people have passed through. To treat this as a counterargument is to pretend that the word “almost” has no meaning or function in BLM’s statement. Furthermore, what people have been doing for the last four decades does not address BLM’s position, which is that the paths are “[c]urrently” impassable due to the cumulative effects of *erosion over time*. Even if this was an appropriate subject for dispute in this hearing, the Districts have not disputed any material fact relied on by BLM. This issue is therefore not appropriate heard in this proceeding.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenor's intend to call the following witnesses in support of their response.

**Noah R. Triplett** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 2.

**Stephen Welch.** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 1.

**d. Preliminary List of Exhibits.** Intervenor's list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
Photo 5 M McDonnell - Raft Carry Past Districts Cement Block	Tab 47 – Attached M McDonnell
Photo 3 2-13-13 M McDonnell - Close-up Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Tab 10 – Attached 2/13/13, M.McDonnell
Photo 4 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with two cement blocks installed by Don Pedro Recreation administrator, Carl Rust	Tab 11 – Attached 2/13/13, M.McDonnell
Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299	Tab 1 – See e-Library no. 20130117-5108 (27957204)
Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	Tab 2 – <a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>

Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Bjoating Take-Out Feasibility Study Focus Group Meeting Summary	Tab 3 – See e-Library no. 20130117-5108 (27957206)
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298(32663089)
Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 17 – See e-Library no. 20180129-5200(32662503)

**9. Disputed Issue of Material Fact No. 9**

**a. Issue.** “Whether an adequate take-out at Wards [sic] Ferry needs to be able to simultaneously accommodate six groups of rafters, with up to six rafts each.”

**a. Response.** Intervenor disagree with the Districts’ position and statement of the issue. Intervenor agree with BLM’s determination of needed capacity, and the information it has provided in support.

The Districts quote BLM’s statement that, “[p]roviding a launch/retrieval facility at Wards’ Ferry Bridge that will accommodate at least six vehicles at reservoir/rivers edge at all pool elevations and down to river level appears to be the minimum action to solve the dangerous situation presently existing there (Stanley 2017).” Hearing Request, p. A-23. They also quote BLM’s explanation for how it calculated need. *Id.* They argue that the need described by BLM in these statements does not actually exist, and that BLM erred in describing its calculation of the number of boaters that may be on the river at any one time as a direct quote excerpted from the U.S. Forest Service’s *Tuolumne Wild and Scenic River Management Plan* (1988). *See id.*

Intervenors agree that the BLM mis-quoted the *Tuolumne Wild and Scenic River Management Plan*; however, they disagree that BLM mis-calculated potential need under the new license. BLM's calculations are based directly on use standards established in the *Tuolumne Wild and Scenic River Management Plan* (1988). These standards include quotas for existing, commercial outfitters (2 launches of 26 people each per day) and for non-commercial boaters (90 people per day). By contrast, the Districts' Hearing Request appears to address only non-commercial boaters. Hearing Request, p. A-23.

Based on these standards, BLM determined "[i]n order to meet the potential number of users and water craft needing to exist the river safely before dark it is important to design a takeout facility large enough to handle this amount of use." Department Conditions, p. 140. BLM's decision to rely on potential need based on permitting standards, rather than average use under the existing license is one committed to its discretion under authority of Section 4(e) and cannot be challenged in a trial-type hearing.

**c. Preliminary Witness List.** Intervenors do not intend to list any witnesses for this issue beyond those already identified for related matters in this Response. They reserve the right to cross-examine witnesses called by other parties and to amend this list as appropriate.

**d. Preliminary List of Exhibits.** Intervenors list the following additional information in support of their responses to the Districts' Hearing Request.

Document Title	Location
Tuolumne Wild and Scenic River Management Plan (1988).	<a href="https://www.rivers.gov/documents/plans/tuolumne-plan.pdf">https://www.rivers.gov/documents/plans/tuolumne-plan.pdf</a>
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298 (32663089)



Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 18 – See e-Library no. 20180129-5200 (32662503)
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**10. Disputed Issue of Material Fact No. 10**

**a. Issue.** “Whether 20-25 parking spots at the two ends of Wards Ferry Bridge and multiple toilets are needed to adequately accommodate recreational users of the Project or BLM-administered land.”

**b. Response.** Intervenors disagree with the District’s position and statement of the issue. Intervenors agree with BLM’s determination of the number of parking spots needed for adequate and safe day use and the information BLM has submitted in support.

The Districts challenge BLM’s statement that, “[t]he need to meet public use demands requires at least two restroom facilities with two ports per facility. The current restroom facility is not adequate to accommodate the number of users. Parking is not defined and is inadequate.” Hearing Request, p. A-26. They argue, “[j]ust as BLM is inflating the take-out facilities needed to reasonably accommodate whitewater rafters, so too is it exaggerating the parking and restroom needs.” *Id.* The Districts’ dispute goes to BLM’s policy decision that facilities must be adequate to accommodate users on a busy day under the new license as opposed to an average day under the existing license. Because this argument does not address a material fact, it is not appropriate for trial-type hearing.

The Districts’ arguments are variants on those offered in support of Disputed Issue No. 9, with the addition of some irrelevant and internally inconsistent assertions. For example, the Districts note that there is a bathroom available at Moccasin Point. It is not clear how this would be relevant to an individual waiting to use the bathroom at Ward’s Ferry. The Districts also

assert that “BLM offers no evidence to support its supposition of 400 people potentially using the Wards Ferry Bridge site in an afternoon,” which is an odd assertion to make given that they describe the exact math BLM used to arrive at that number in their discussion of Disputed Issue No. 9 (“17 large groups of people of 26 people per group”).

Moreover, this is simply another version of the argument that the BLM should have been making its policy decisions based on the average usage over eight days of observation by the Districts’ consultants instead of potential traffic calculated based on permit distribution. As was the case with Disputed Issue No. 9, BLM’s decision to base facility needs on potential user days instead of average observed user days is a *policy* decision. The Districts’ cannot be heard to challenge that policy decision in this proceeding.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenor intends to call the following witnesses in support of their response.

Intervenor intends to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to engineered road and facility conditions at Ward’s Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenor lists the following additional information in support of their responses to the Districts’ Hearing Request.

Document Title	Location
DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	Tab 18 – See e-Library no. 20180129-5298 (32663089)
Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	Tab 17 – See e-Library no. 20180129-5200 (32662503)

**11. Disputed Issue of Material Fact No. 11**

**a. Issue.** “Whether the facilities required under the BLM mandatory condition can feasibly be planned and built at Wards [sic] Ferry within the schedule specified in the BLM mandatory condition.”

**b. Response.** Intervenors agree with the BLM’s decision to establish a schedule for design and construction of the Ward’s Ferry Day Use Recreation Area. They consider the Districts’ argument that it is “highly unlikely that the Districts could meet BLM’s schedule,” (Hearing Request, p. A-28) as premature. Further, this issue goes to the reasonableness of BLM’s condition, rather than a dispute over a material fact. The Districts list the reasons why meeting this schedule would be difficult but cite no evidence that it would not be possible.

While this issue is not appropriate for hearing, it may nonetheless be resolvable by stipulation. Specifically, the parties may stipulate to the availability of time extensions upon the Districts showing of good cause and good faith efforts to comply with 4(e) condition no. 13.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenors intend to call the following witnesses in support of their response.

**Rune Storesund, D. Eng., P.E., G.E., QSP, QSD.** *See* description of qualifications and expected testimony under Disputed Issue of Material Fact No. 2.

**d. Preliminary List of Exhibits.** Intervenors do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**12. Disputed Issue of Material Fact No. 12**

**a. Issue.** “Whether the Districts can feasibly maintain and coordinate different uses of the proposed facilities and ensure the facilities are used in an orderly and safe fashion.”

**b. Response.** Intervenors disagree with the Districts' position and statement of the issue. Intervenors agree with BLM that the Districts should be responsible for maintenance of the Ward's Ferry Day Use Recreation Area Facility and the information BLM has provided in support of that determination.

The Districts quote various BLM statements that the Districts will be expected to maintain the Ward's Ferry Day Use Recreation Area Facility according to certain standards. Hearing Request, p. A-31. They challenge BLM's implicit assumption "that the Districts can ensure use of the Wards Ferry facilities in an orderly and safe fashion and keep the facilities clean and aesthetically pleasing." *Id.* They argue that they do not have law enforcement powers, and so cannot be expected to effectively maintain facilities or manage user conflicts. *Id.* This is a straw man argument.

Nothing in the BLM's condition or rationale suggests the Districts are expected to act as law enforcement. Rather, the condition requires that the Districts "provide maintenance, management, and staffing . . . to ensure that the take out is being utilized in an orderly and safe fashion." Provision of knowledgeable District staff would provide direction, monitoring, and assistance, which helps ensure safe and orderly use of facilities and discourages conflicts between users.

Moving past the straw man problem, the substance of the Districts' challenge goes to the reasonableness of the condition. The Districts effectively argue that the condition is unreasonable because the condition will not produce the desired effect – no matter what the Districts do, they will not be able to ensure safe and orderly use of the Ward's Ferry facilities. This is not an issue that can be resolved through trial-type hearing.

c. **Preliminary Witness List.** If this issue goes to hearing, Intervenor intend to call the following witnesses in support of their response.

Intervenor intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to the ability to call out for emergency personal at Ward's Ferry Bridge. Since his employer has not agreed to Intervenor naming the witness at this time, we will do so at the earliest possible date.

d. **Preliminary List of Exhibits.** Intervenor do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**13. Disputed Issue of Material Fact No. 13**

a. **Issue.** "Whether Wards [sic] Ferry Road can safely handle the traffic that would be generated by the construction and operation of the proposed improvements at Wards [sic] Ferry."

b. **Response.** Intervenor disagree with the Districts' position and statement of the issue. Intervenor agree with BLM's position and supporting information.

The Districts again challenge assumptions that they claim are implicit to BLM's rationale in support of 4(e) condition no. 13. Specifically, they argue that BLM's statements "imply that if the Districts complete the mandated Wards Ferry Bridge site improvements, any safety issues related to boater take-out will be resolved, including egress from Wards Ferry Bridge." Hearing Request, p. A-33. Intervenor disagree that BLM's rationale relies on such implicit assumptions. Rather, BLM's rationale finds that the Ward's Ferry Day Use Area will improve public safety by remedying certain dangerous conditions.

The Districts do not articulate any disputes with the underlying facts that formed the basis for BLM's decision. Rather, they take issue with BLM's prioritization of certain risks and safety threats. For example, they assert that the mandated improvements will generate traffic issues and thus create a risk that is not worth the enhanced safety at the takeout. But this is a policy dispute, not a factual one, and thus is not appropriate for trial-type hearing.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenor's intend to call the following witnesses in support of their response.

Intervenor's intend to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to engineered road and facility conditions at Ward's Ferry Bridge. Since his employer has not agreed to Intervenor's naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenor's do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**14. Disputed Issue of Material Fact No. 14**

**a. Issue.** "Whether the cost of constructing the improvements required by the mandatory condition will be approximately \$52.7 million."

**b. Response.** Intervenor's disagree with the Districts' position and statement of issue. BLM's rationale does not state a cost estimate for construction. The Districts may not be heard to challenge a fact that BLM did not rely upon in issuing the condition.

Instead of raising a disputed issue of material fact, the Districts appear to be challenging the legality and reasonableness of BLM's condition. Hearing Request, p. A-35 ("The mandatory

condition is not cost-effective, in violation of the Forest Service's Wild and Scenic Management Plan . . ."). Such challenges are not appropriate for trial-type hearing.

Further, to the extent the Districts are arguing that there are more cost-effective alternatives, that argument can be raised properly in the alternatives process under 43 C.F.R. § 45.70 et seq.

**c. Preliminary Witness List.** Intervenors do not intend to list any witnesses for this issue beyond those already identified for related matters in this Response. They reserve the right to cross-examine witnesses called by other parties and to amend this list as appropriate.

**d. Preliminary List of Exhibits.** Intervenors do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

#### **15. Disputed Issue of Material Fact No. 15**

**a. Issue.** "Whether the annual cost of operating and maintaining the Wards Ferry facilities will be at least \$282,000."

**b. Response.** Intervenors disagree with the Districts' position and statement of issue. BLM's rationale does not state a cost estimate for operation and maintenance of the Ward's Ferry facilities. The Districts may not be heard to challenge a fact that BLM did not rely upon in issuing the condition.

Instead of raising a disputed issue of material fact, the Districts appear to be challenging the legality and reasonableness of BLM's condition. Hearing Request, p. A-39 ("The size of this monetary burden shows that the Section 4(e) condition does not meet BLM's stated objective, as it imposes maintenance obligations that exceed BLM's standards and the standards by which the

U.S. government maintains its own facilities on the Tuolumne River.”) Such challenges are not appropriate for trial-type hearing.

Further, to the extent the Districts are arguing that there are more cost-effective alternatives, that argument can be raised properly in the alternatives process under 43 C.F.R. § 45.70 et seq.

**c. Preliminary Witness List.** If this issue goes to hearing, Intervenor intends to call the following witnesses in support of their response.

Intervenor intends to call a witness by subpoena pursuant to 43 C.F.R. § 45.47. The witness is expected to testify as to facility maintenance and conditions at Ward’s Ferry Bridge. Since his employer has not agreed to our naming the witness at this time, we will do so at the earliest possible date.

**d. Preliminary List of Exhibits.** Intervenor does not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**16. Disputed Issue of Material Fact No. 16**

**a. Issue.** “Whether BLM’s recovery of operation, maintenance, and administration costs from the Districts would result in a double-billing of the Districts.”

**b. Response.** Intervenor disagrees with the Districts’ position and statement of the issue. This issue plainly turns on the legal definition of double-billing and is not appropriate for trial-type hearing.

**c. Preliminary Witness List.** Intervenor does not intend to list any witnesses for this issue beyond those already identified for related matters in this Response. They reserve the right to cross-examine witnesses called by other parties and to amend this list as appropriate.



**d. Preliminary List of Exhibits.** Intervenors do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**17. Disputed Issue of Material Fact No. 17**

**a. Issue.** “Whether BLM was aware before 2017 of the Districts disposing of woody debris on land managed by BLM.”

**b. Response.** Intervenors disagree with the Districts’ position and statement of the issue. We agree with BLM’s permit requirements for burning of woody debris.

Whether BLM was aware of the Districts’ practice of burning woody debris on BLM-administered land under the existing license appears immaterial to BLM’s requirement that the Districts comply with BLM’s requirements for such activities under the new license.

**c. Preliminary Witness List.** Intervenors do not intend to list any witnesses for this issue beyond those already identified for related matters in this Response. They reserve the right to cross-examine witnesses called by other parties and to amend this list as appropriate.

**d. Preliminary List of Exhibits.** Intervenors do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**18. Disputed Issue of Material Fact No. 18**

**a. Issue.** “Whether the Districts can feasibly keep the Tuolumne River navigable and the Wards Ferry take-out accessible, as required under BLM’s mandatory condition, if BLM must supervise removal and disposal of the woody debris that accumulates in the Tuolumne River.”

**b. Response.** Intervenors disagree with the Districts' position and statement of issue. We support BLM's position and the information it has provided in support of the measures for removal and disposal of woody debris.

The Districts argue that "the BLM-mandated condition is not workable," and that the requirement that BLM supervise the removal and disposal of woody debris is "unnecessary." Hearing Request, p. A-45. The Districts are plainly challenging the reasonableness of BLM's condition. Such challenges are not appropriate for trial-type hearing.

To the extent the Districts wish to advocate for an alternative that does not include BLM supervision, they may do so in the alternatives process under 43 C.F.R. § 45.70 et seq.

**c. Preliminary Witness List.** Intervenors do not intend to list any witnesses for this issue beyond those already identified for related matters in this Response. They reserve the right to cross-examine witnesses called by other parties and to amend this list as appropriate.

**d. Preliminary List of Exhibits.** Intervenors do not intend to submit exhibits beyond those already submitted for related matters in this Response. They reserve the right to submit exhibits at a later date as appropriate.

**V.**  
**PRELIMINARY LIST OF EXHIBITS FOR ALL DISPUTED ISSUES OF MATERIAL FACT**

Intervenors list the following exhibits in support of our responses to the Districts’  
Hearing Request.

<b><u>Disputed Issue of Material Fact No. 1</u></b>		
1	Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299	See e-Library no. 20130117-5108 (27957204)
2	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	<a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>
3	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Boating Take-Out Feasibility Study Focus Group Meeting Summary	See e-Library no. 20130117-5108 (27957206)
4	Screenshot of Stent Jacksonville Bridge – CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>	CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>
5	Screenshot of Shoreline Road at Jacksonville - CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>	CBS5 KPIX-TV. “Jacksonville to be Flooded Under New Don Pedro Dam” <i>San Francisco Bay Area Television Archive</i> , added by J. Paul Leonard Library, 14 October 2011, <a href="https://diva.sfsu.edu/collections/sfbatv/bundles/191578">https://diva.sfsu.edu/collections/sfbatv/bundles/191578</a>
6	Supplemental Information from Bob Hackamack under P-2299	See e-Library no. 20110608-5080(25844623)

<b><u>Disputed Issue of Material Fact No. 2</u></b>			
	7	Don Pedro AFLA	See e-Library no. 20171011-5067
	1	Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299 Page 5-1	See e-Library no. 20130117-5108 (27957204)
	2	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	<a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>
	3	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Boating Take-Out Feasibility Study Focus Group Meeting Summary	See e-Library no. 20130117-5108 (27957206)
	8	Photo 1 M McDonnell - South Side Tuolumne River Upstream of Ward's Ferry Bridge, There was a construction road switching back to the river on the south side	Attached 2/13/13, M.McDonnell
	9	Photo 2 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream, with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Attached 2/13/13, M.McDonnell
	10	Photo 3 2-13-13 M McDonnell - Close-up Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Attached 2/13/13, M.McDonnell
	11	Photo 4 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with two cement blocks installed by Don Pedro Recreation administrator, Carl Rust	Attached 2/13/13, M.McDonnell

Disputed Issue of Material Fact No. 4			
12	American Whitewater Review of Draft License Application: Don Pedro Project FERC Project No. P-2299	See e-Library no. 20140225-5015(29153884)	
13	Conservation Groups Comments on Draft License Application and Updated Study Report	See e-Library no. 20140224-5095(29152488)	
14	BLM Responses to Draft License Application Don Pedro Hydroelectric Project, FERC No. 2299	See e-Library no. 20140303-5117(29165863)	
15	NPS - Comments on the Udate Study Reports (USRs) for the Don Pedro Project (P-2299) located in Tuolumne County, California	See e-Library no. 20140220-5091(29147176)	
16	Stanislaus National Forest	See e-Library no. 20140227-5011(29159410)	
17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)	
18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)	
19	The Outdoor Foundation. (2017). <i>Outdoor Recreation Participation Topline Report 2017</i> . Washington D.C.:The Outdoor Foundation Page 8	Attached	
20	California Department of Boating and Waterways. (2009). <i>Non-Motorized Boating in California March 2009</i> Page ES-9	Attached	
21	USDA Forest Service Stanislaus National Forest. <i>1978-2016 Tuolumne Wild &amp; Scenic River Use</i>	Attached	
22	Sierra Mac River Trips - FERC P-2299 - Don Pedro Project Relicense Whitewater Boating Take-Out Improvement Feasibility Study Report	See e-Library no. 20140225-5056(29154574)	
23	Comments Karl Schnneider, Santa Cruz CA	See e-Library no. 20180129-5012(32659061)	

24	Comments Derek C. Carr, Oakland, CA	See e-Library no. 20180129-5019(32659075)
25	Comments Stephen Webber, Glendale, CA	See e-Library no. 20180129-5118(32660894)
26	Comments Matt Cronin, Santa Rosa, CA	See e-Library no. 20180129-5133(32661201)
27	Comments Noah Triplett, Placerville, CA.	See e-Library no. 20180129-5146(32661254)
28	Comments Anthony DeRiggi, sacramento, CA.	See e-Library no. 20180129-5163(32661662)
29	Comments Margie DeRiggi, sacramento, CA.	See e-Library no. 20180129-5179(32662303)
30	Comments John Lynch, Corte Madera, CA.	See e-Library no. 20180129-5190(32662424)
31	Comments Paul Raffaeli, San Jose, CA.	See e-Library no. 20180129-5194(32662438).pdf
32	Comments James Lance Brogden (lance), Live Oak, CA.	See e-Library no. 20180129-5199(32662454)
33	Comments Susan Smith, Lafayette, CA.	See e-Library no. 20180130-5002(32663209)
34	Comments Janet Hayes, Placerville, CA.	See e-Library no. 20180130-5006(32663229)
35	Comments Adam Ferguson, Twain Harte, CA.	See e-Library no. 20180130-5011(32663256)
36	Comments Christopher Hest, Chico, CA.	See e-Library no. 20180130-5014(32663265)
37	Comments Wayne Greenway, Moraga, CA.	See e-Library no. 20180130-5017(32663271)
38	Comments Michelle Francesco, Sunnyvale, CA.	See e-Library no. 20180130-5025(32663287)
39	Comments Daisy Ixquiac, Woodland, CA.	See e-Library no. 20180130-5027(32663291)
40	Comments Sean Fraser, Sacramento, CA.	See e-Library no. 20180130-5033(32663303)
41	Comments Edward Roseboom, Palo Alto, CA.	See e-Library no. 20180130-5035(32663307)
42	Comments Jeffrey Venturino, Davis, CA.	See e-Library no. 20180130-5043(32663323)

<b>Disputed Issue of Material Fact No. 5</b>			
	18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)
	17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)
	43	Draft Field Report - Stanislaus National Forest Groveland District Ranger	Attached - US Forest Service Doc
<b>Disputed Issue of Material Fact No. 6</b>			
	44	BLM - Comments and Study Requests on the Pre-Application Document and Scoping Document 1 for the Don Pedro Hydroelectric Project, FERC No. 2299	See e-Library no. 20110610-5224(25864581)
	45	NPS - Don Pedro Relicensing (Project License Number 2299), Comments on the Pre- Application Document, Scoping Document 1, and Submittal of Study Requests	See e-Library no. 20110610-5021(2589026)
	18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)
	17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)
<b>Disputed Issue of Material Fact No. 7</b>			
	23	Comments Karl Schndeider, Santa Cruz CA	See e-Library no. 20180129-5012(32659061)
	24	Comments Derek C. Carr, Oakland, CA	See e-Library no. 20180129-5019(32659075)
	25	Comments Stephen Webber, Glendale, CA	See e-Library no. 20180129-5118(32660894)
	26	Comments Matt Cronin, Santa Rosa, CA	See e-Library no. 20180129-5133(32661201)
	27	Comments Noah Triplett, Placerville, CA.	See e-Library no. 20180129-5146(32661254)
	28	Comments Anthony DeRiggi, sacramento, CA.	See e-Library no. 20180129-5163(32661662)
	29	Comments Margie DeRiggi, sacramento, CA.	See e-Library no. 20180129-5179(32662303)
	30	Comments John Lynch, Corte Madera, CA.	See e-Library no. 20180129-5190(32662424)

31	Comments Paul Raffaeli, San Jose, CA.	See e-Library no. 20180129-5194(32662438).pdf
32	Comments James Lance Brogden (lance), Live Oak, CA.	See e-Library no. 20180129-5199(32662454)
33	Comments Susan Smith, Lafayette, CA.	See e-Library no. 20180130-5002(32663209)
34	Comments Janet Hayes, Placerville, CA.	See e-Library no. 20180130-5006(32663229)
35	Comments Adam Ferguson, Twain Harte, CA.	See e-Library no. 20180130-5011(32663256)
36	Comments Christopher Hest, Chico, CA.	See e-Library no. 20180130-5014(32663265)
37	Comments Wayne Greenway, Moraga, CA.	See e-Library no. 20180130-5017(32663271)
38	Comments Michelle Francesco, Sunnyvale, CA.	See e-Library no. 20180130-5025(32663287)
39	Comments Daisy Ixquiac, Woodland, CA.	See e-Library no. 20180130-5027(32663291)
40	Comments Sean Fraser, Sacramento, CA.	See e-Library no. 20180130-5033(32663303)
41	Comments Edward Roseboom, Palo Alto, CA.	See e-Library no. 20180130-5035(32663307)
42	Comments Jeffrey Venturino, Davis, CA.	See e-Library no. 20180130-5043(32663323)
46	ARTA River Trips FERC P-2299 - DON PEDRO PROJECT RELICENSE - Whitewater Boating Take-Out Improvement Feasibility Study Report	See e-Library no. 20140225-5055(29154577)
<b>Disputed Issue of Material Fact No. 8</b>		
47	Photo 5 M McDonnell - Raft Carry Past Districts Cement Block	Attached M McDonnell
10	Photo 3 2-13-13 M McDonnell - Close-up Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with Cement Block installed by Don Pedro Recreation administrator, Carl Rust	Attached 2/13/13, M.McDonnell



11	Photo 4 2-13-13 M McDonnell - Old Wards Ferry Road leaving the new Ward's Ferry Bridge on the north side headed upstream with two cement blocks installed by Don Pedro Recreation administrator, Carl Rust	Attached 2/13/13, M.McDonnell
1	Whitewater Boating Take-Out Improvement Feasibility Study Report Don Pedro Project FERC No. 2299	See e-Library no. 20130117-5108 (27957204)
2	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment A Photographs of the Ward's Ferry Bridge Take-out Site	<a href="http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf">http://www.donpedro-relicensing.com/Documents/P-2299_DP_ISR_RR-02_WhtwtrBoatTakeOut_AttachA_130118.pdf</a>
3	Study Report RR-02 Whitewater Boating Take-Out Improvement Feasibility Attachment B Whitewater Boating Take-Out Feasibility Study Focus Group Meeting Summary	See e-Library no. 20130117-5108 (27957206)
18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)
17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)
22	Sierra Mac River Trips - FERC P-2299 - Don Pedro Project Relicense Whitewater Boating Take-Out Improvement Feasibility Study Report	See e-Library no. 20140225-5056(29154574)
<b>Disputed Issue of Material Fact No. 9</b>		
18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)
17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)
<b>Disputed Issue of Material Fact No. 10</b>		
18	DOI Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions	See e-Library no. 20180129-5298(32663089)
17	Conservation Groups REA Comments and Recommendations Don Pedro Project P-2299	See e-Library no. 20180129-5200(32662503)

## **VI.** **REMEDIES**

Intervenors respectfully request the following relief: any hearing should be limited to issues of material fact which were timely raised, in BLM's rationale, and disputed by the Districts. Hearing should not occur on: (A) policy or legal arguments regarding whether BLM properly exercised its discretion under authority of FPA section 4(e), or (B) disputes regarding facts not stated in BLM's rationale for the prescription.

Intervenors respectfully request notice and the opportunity to participate in any settlement communication between BLM and the Districts related to this Hearing Request.

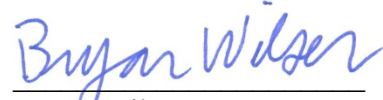
## **VII.** **CONCLUSION**

Intervenors respectfully request that the Department consider this response to the Districts' Hearing Request.

\\

Dated: March 20, 2018

Respectfully submitted,



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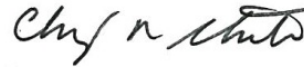
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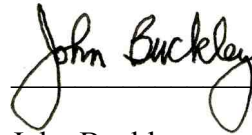
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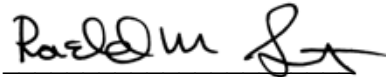
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*STEVE.*

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## **CERTIFICATE OF FILING AND SERVICE**

Pursuant to 43 C.F.R. § 45.12, I hereby certify that this Notice of Intervention, Appearances, and Response was filed on March 20, 2018 by same-day delivery via courier to:

Office of Environmental Policy and Compliance  
Department of the Interior  
1849 C Street, N.W.  
Mail Stop 5538  
Washington, D.C. 20240

Pursuant to 43 C.F.R. § 45.13, I hereby certify that this Notice of Intervention, Response, and Appearances was served on March 20, 2018, by sending a copy by electronic means or, for those parties denoted with two asterisks (\*\*), express mail on this date for delivery by the next business day to the following:

Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

\*\*U.S. Department of the Interior  
Bureau of Land Management  
1849 C Street, N.W., Room 5665  
Washington, D.C. 20240

\*\*Jerome E. Perez  
California State Director  
Bureau of Land Management  
2800 Cottage Way # W1623,  
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Service List for FERC P-2299 (attached)

Dated: March 20, 2018



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